

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA

GEORGE SHELDON,
a citizen and registered voter
in Florida

Case Number: 2014-CA-002657

Petitioner/Plaintiff,

v.

RICHARD "RICK" L. SCOTT,
Individually (and in his capacity
as a candidate for election to the
Office of the Governor of Florida)

Respondent/Defendant.

_____ /

PLAINTIFF'S MOTION TO RECUSE

Plaintiff, George Sheldon, respectfully moves pursuant to § 38.10, Fla. Stat. and Rule 2.330 of the Florida Rules of Judicial Administration, to recuse Judge Angela Dempsey from proceeding further in this action. As grounds for this motion, Plaintiff alleges:

1. The disqualification of a Judge is not a reflection on the personal ethics, qualifications or abilities of the Judge. It is a motion directed only to the appropriateness of the Judge serving on a particular case. Because of the facts and circumstances involved in this case, it must be reassigned to another Judge.

2. This is a case against Richard "Rick" Scott, the sitting Governor of the State of Florida, arising out of his failure to comply with the Sunshine Amendment to the Florida Constitution. It is specifically alleged that Scott failed to disclose extensive financial interests, including assets he attempts to sequester in a "blind trust" managed

by a long-time business associate. Paragraphs 64 to 72 of the Petition deal exclusively with the “blind trust” disclosure issue.

3. Scott’s General Counsel, Peter Antonacci, has been a critical participant in the establishment and use of the “blind trust” and he is both the attorney for the Defendant and a potential witness in this case. He is the author of Exhibit 28 to the Petition, which is attached hereto as part of Exhibit 1. Even before the latest disclosure, Mr. Antonacci has been active in Scott’s attempts to obfuscate his financial interests. Additional correspondence is attached as Exhibit 2. During the course of this litigation Mr. Antonacci will continue to serve as counsel to the Defendant, and will be a critical witness.

4. Peter Antonacci is also the attorney of record for Judge Angela Dempsey, having defended her on ethics charges. See, *In Re Dempsey*, 29 So.3d 1030 (Fla. 2010)(Exhibit 3). He has represented both Judge Dempsey and the Defendant Scott.

5. Mr. Antonacci not only represents the Defendant Scott, he has personal knowledge of many of the material facts in the case and the Plaintiff plans to call Mr. Antonacci as a witness, probably an adverse witness, at the trial of this case. In that event Judge Dempsey would be required to rule on the credibility of the testimony of the attorney who helped her in a very important adversarial matter. The Plaintiff reasonably fears that, no matter how much the judge attempts to be completely fair and neutral in resolving all issues in this case, it is clear from human experience that it is virtually impossible for a person to set aside and erase a natural bias or prejudice in favor of the

credibility of a witness with whom that person has or has had a close personal or professional relationship.

6. The law recognizes this concern: “The general rule is that disqualification of the judge is required if counsel for one of the parties is representing or has recently represented the judge.” *City of Ft. Lauderdale v. Palazzo Las Olas Group, LLC*, 882 So.2d 1102 (Fla. 4th DCA 2004).

7. In *Marcotte v. Gloeckner*, 679 So.2d 1225 (Fla. 5th DCA 1996) the trial judge erred in failing to recuse herself where she had previously been represented by one of law firms representing a party in the case. The Court stated, “[t]hrough the trial judge in the instant case may not have been biased as a matter of fact, that is of no moment because . . . the appearance of justice proscribes the trial judge from continuing, even though the record may be void of any actual bias or prejudice on her part.” Citing and quoting, *Atkinson Dredging Co. v. Henning*, 631 So.2d 1129, 1130 (Fla. 4th DCA 1994).

8. *City of Ft. Lauderdale*, *Marcotte* and *Atkinson* all cite with approval the Federal case of *Smith v. Sikorsky Aircraft*, 420 F.Supp. 661 (C.D.Calif.1976). In *Smith* the judge *sua sponte* ordered a case reassigned based on past representation of the judge by the plaintiffs' law firm. The representation had apparently been years earlier; the opinion was issued August of 1976 and cites a mandamus proceeding decided on appeal in 1971. The judge found that although he had no personal bias or prejudice concerning any party herein or any personal knowledge of disputed evidentiary facts,

his impartiality "might reasonably be questioned" and it was therefore required that he recuse himself.

9. That Judge Dempsey and the Defendant Scott share the representation of Peter Antonacci is alone grounds for disqualification.

10. However there is more. Judge Dempsey also has close ties to the Scott Administration and at least indirectly to Scott himself. Her former husband was Scott's "insider" General Counsel. *Hayden Dempsey is the Insider in Gov. Rick Scott's Team of Outsiders, Tampa Bay Times, July 3, 2011 (Exhibit 4)*. By virtue of her ex-husband's friendship, Governor Scott is credited with provided insight and advice about raising their daughters. Dempsey Resignation Letter (Exhibit 5).

11. Should she continue on the case, Judge Dempsey would be required to rule on the credibility of the party who apparently helped her children in a very important way and who is a very close political ally and former employer of their father. The Plaintiff reasonably fears that, no matter how much the judge attempts to be completely fair and neutral in resolving all issues in this case, that there would be a natural bias or prejudice when the decision would have consequences to her personal life and in particular the relationship with both Judge Dempsey's ex-husband as well as her children.

12. Plaintiff fears that for both these reasons he would not receive a fair trial in that Judge Dempsey has a bias and prejudice against him and in favor of the Defendant. Any reasonable person faced with these circumstances would experience a well-grounded fear that he or she would not receive a fair hearing in front of a judge with

these relationships. Plaintiff's supporting affidavit is attached to as Exhibit 6 and specifically incorporated herein.

13. There have been no previously filed motions to disqualify.

14. A copy of this motion is being immediately served by hand delivery, as set forth in Rule 1.080, upon Judge Dempsey.

15. This motion is filed within ten days of 10 days after discovery of the facts constituting the grounds for the motion.

16. Attached, as Exhibit 7, is the undersigned attorney's separate certification, incorporated herein, that the motion and his client's affidavit are made in good faith.

17. Pursuant to Rule 2.330(f), "The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged." If this motion is deemed legally sufficient, the Court shall immediately enter an order granting disqualification and proceed no further in the action.

18. The Florida Code of Judicial Conduct, Cannon 3 (E)(1) provides that, "A judge *shall* disqualify himself or herself in a proceeding in which the judge's impartiality *might reasonably be questioned*, including *but not limited to* instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer . . ."

19. In this case, the reasonably questioned impartiality relates to the Defendant's lawyer, Peter Antonacci, having previously represented Judge Dempsey and the family relationship she, her ex-husband and her daughters appear to have with Defendant Scott. The law is clear, because this is the first time the right has been

invoked, the Plaintiff is entitled to the entry of an order disqualifying Judge Angela Dempsey from proceeding further in this case and directing the Clerk to reassign this case.

WHEREFORE, Plaintiff respectfully requests the entry of an order of disqualification of the Honorable Angela Dempsey and reassignment to another Circuit Judge.

Respectfully submitted,

/s/ Donald M. Hinkle

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been electronically filed via the Florida Courts E-Filing Portal and hand delivered to Richard "Rick" L. Scott, 700 N. Adams Street, Tallahassee, Florida and the Honorable Angela Dempsey, Leon County Courthouse, Tallahassee, Florida on October 20, 2014.

/s/ Donald M. Hinkle

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