IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL LAW DIVISION

NEIL J. GILLESPIE,
Plaintiff,

Case No: 05-CA-007205
Division: G

and

BARKER, RODEMS & COOK, P.A.,
A Florida Corporation, and
WILLIAM J. COOK,
Defendants.
_____/

ORDER DENYING MOTION TO DISQUALIFY CIRCUIT COURT JUDGE MARTHA J. COOK

THIS CAUSE came before the Court on the Plaintiff's "Motion to Disqualify Circuit Court Judge Martha J. Cook," received by the undersigned on or around June 14, 2010. This Court, having reviewed the Motion and being otherwise fully advised in the premises, finds as follows:

1. Generally, a judge against whom a motion to disqualify is filed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. Fla. R. Jud. Admin. 2.330. The undersigned is the fourth judge to have been assigned to this matter, two prior judges have recused themselves, *sua sponte* (only after having first denied the Plaintiff's motions to disqualify as "legally insufficient"). The third judge granted the Plaintiff's motion to disqualify him, thereby freeing up the undersigned, as a successor judge, to "rule on the truth of the facts alleged in support of the motion." Fla. R. Jud. Admin. 2.330(g).
2. The Court considered the positions presented by the Plaintiff, and **DENIES** his motion as legally insufficient. The Court is, in fact, fair and impartial to this cause of

action, having been only recently assigned to the matter. Moreover, pursuant to the permissive nature of Fla. R. Jud. Admin. 2.330(g), the Court responds to the Plaintiff's expressed concerns by taking note of the following rules of procedure, administrative orders, and case law.

3. The subjective fears of a party seeking disqualification of a judge are not reasonably sufficient to justify a well-founded fear of prejudice; instead, fears of judicial bias must be objectively reasonable to a non-interested third party. *May Investments, Inc. v. Lisa, S.A.*, 814 So.2d 471 (Fla. 3rd DCA 2002), *rehearing* and *rehearing en banc denied.* This motion, as a whole, describes a generalized "fear of prejudice" without basis or factual support. No hearing has been conducted before the undersigned judge and no judgment – adverse or otherwise – has been rendered.

4. The single hearing that was scheduled – a case management status conference set by the judge, *sua sponte*, as is permitted Fla. R. Civ. Pro. 1.020(a) – was cancelled due to illness, as is permitted and foreseen by Administrative Order S-2006-035, Section 1 (uncontested hearings may be cancelled if events such as "holidays, judges' trial schedules, vacations, illness or similar circumstances prevent such hearings"). Plaintiff's apparent objection to this cancellation, as expressed in his motion for disqualification, does not align with his previous letters and phone calls, wherein he complained about the form of notice for this hearing and objected to his having to make an appearance therefor.

5. Regarding the generalized complaints of the Plaintiff that the Court has not responded to his letter dated June 3, 2010 (or to his phone calls to Ms. Fish), the Court is not obliged to comment or pass judgment on mere correspondence. Fla. R. Civ. Pro.

1.100(a) states "there shall be a complaint or . . . petition, and an answer to it; an answer to a counterclaim . . . an answer to a cross claim [if applicable]; a third party complaint [and answer, if applicable] . . . no other pleading shall be allowed." The letters sent by the Petition do not represent a pleading, and even if construed as such are duplicative of already filed pleadings and papers by the Plaintiff.

6. Moreover, the Plaintiff's letters to the Court cannot be accepted as properly plead motions, nor can his telephone calls be accepted or entertained by the judge, judicial assistant, staff counsel, or other personnel as dispositive of any evidentiary issue. Fla. R. Civ. Pro. 1.100(b) notes that any and all motions "shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Alternatively, the "requirement of writing [the motion] is fulfilled if the motion is stated in a written notice of the hearing." Id. A notice of hearing must state with particularity what motions are to be heard and may not "piggyback" issues (see, generally, civil division administrative orders as well as each trial judge's individual procedures), and shall be submitted by the party who is making the motion (Fla. R. Civ. Pro. 1.090(d) ("A copy of any written motion which may not be heard ex parte and a copy of the notice of the hearing thereof shall be served a reasonable time before the time specified for the hearing"). Only after a movant has properly followed the procedures in scheduling will a hearing be conducted and a judge will render a decision.

7. That is, if a hearing is even determined to be required. Even properly filed motions are not always set for hearing. Unless the moving party is entitled as a matter of right to the relief demanded, it is *not* error to deny a motion which cannot be allowed substantially in the form presented. *Padgett v. State*, 59 So. 946 (Fla. 1912). The

granting of a motion for rehearing is always discretionary (Fla. R. Civ. Pro. 1.530) and due process does not entitle a movant to a hearing prior to the denial of such a motion. *Aubourg v. Erazo*, 922 So.2d 1106 (Fla. 4th DCA 2006). Furthermore, repeat filings that attempt to revisit the same issue may be found to rise to the level of a sanctionable offense, as described in *Lanier v. State of Florida*, 982 So. 2d 626 (Fla. 2008).

8. The letter sent by the Plaintiff on or around June 3, 2010 (and any and all other non-formal correspondence, including telephone calls to the judicial assistant) do not meet the procedural requirement of being either an acceptable pleading or a motion properly noticed for hearing. Moreover, it has long been established that, "a motion which is wholly frivolous and without merit is nullity and may be ignored." *State ex rel. Dillman v. Tedder*, 166 So. 590 (Fla. 1936). The letter is duplicative of positions already expressed by the Plaintiff in various pleadings and motions, and was not, therefore, interpreted as a *pro se* attempt to comply with required procedure and format.

9. Regarding motions that have not yet been set for hearing, it is the movant's responsibility to coordinate with opposing counsel and to schedule a hearing, not the Court's. See AO S-2006-35 regarding uniform/uncontested motions and AO S-2008-145, which in Section 17 specifically states, "Unrepresented parties may identify available hearing times on a judge's calendar by either telephoning the judge's judicial assistant or by accessing the judge's link on the Thirteenth Judicial Circuit's webpage at www.fliudl3.org, but may only set hearings by telephoning the judge's judicial assistant." Since there has been no hearing set on the Plaintiff's outstanding motions,

there has therefore been no outcome, adverse or otherwise, and no denial of due process to the Plaintiff.

10. The Plaintiff alleges that the court ignored his "motion for reconsideration" as ostensibly was included in his letter. The letter, however, is not a formal motion under the rules (see above) which is required before the judge can make a ruling. Furthermore, Fla. R. Jud. Admin. 2.330(h) is clear that all reconsideration motions requested subsequent to a disqualification are merely discretionary and not a matter of right ("prior factual or legal rulings by a disqualified judge *may* be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration").

11. There were several other miscellaneous complaints registered in the motion, including but not limited to the following:

    a. Delayed access to Court file for the purpose of copying documents: Any and all paperwork in this cause of action is required, by law, to be certified as having been provided to the other party. See, Fla. R. Civ. Pro. 1.080, generally. Whether or not the receiving party facilitates acceptance of that copy (i.e. refuses to accept certified mail and/or federal express deliveries) is irrelevant; the question is the "good faith" of the party who is attempting to produce the document, which can be proven up by delivery receipts and/or any other evidence of legitimate attempt at service. In addition, "the certificate [of service] shall be taken as prima facie proof of such service in compliance with these rules." Fla. R. Civ. Pro. 1.080(f). Any paper which the Plaintiff would have required, therefore, should have been readily provided to him by either his own files or the copy forwarded to him by Defendants – provided he accepted its delivery. Even if, *arguendo,* the

Defendants could be found to have failed to comply with Fla. R. Civ. Pro. 1.080, the mere delay of access to the file by the Plaintiff is not sufficient basis, in and of itself, to claim denial to "public information" as the Plaintiff contends, particularly when he has since been provided with said information and his complaint of non-production is moot. Finally, AO S-2007-078 states, "Judges, judicial assistants, and the clerk may check out court files as necessary for the performance of official duties" (Section 2) and "nothing in this order shall be interpreted to prohibit any person from having access to any court file that is a judicial record or public record in accordance with Florida Rule of Judicial Administration 2.420 or Chapter 119, Florida Statutes" (Section 10).

b. Campaign Contributions/Duty to Disclose: An attorney's legal campaign contributions within the statutorily permitted amount are not a legally sufficient ground for disqualification. *MacKenzie v. Super Kids Bargain Store, Inc.,* 565 So.2d 1332 (Fla.1990). Furthermore, the mere fact that a Defendant and the Judge share a surname is not sufficient basis to conclude that kinship exists. Regarding the Plaintiff's request that the undersigned is obliged to deny said kinship, per the guidance of Canon 3E(1), a judge is not required to disclose or confirm non-issues – the rule only applies if the Judge "believes the parties or their attorneys might consider [information] relevant to disqualification." There is no relevant information to disclose; therefore, the Court is not obliged to answer the Plaintiff.

c. Transfer of case to "complex" litigation section: A specialized subdivision may be created by an administrative order. See, for example, *Robertson v. State*, 719 So.

2d 371 (Fla. 4th DCA 1998). The instant cause of action between the Plaintiff and Defendants does not meet the definition of a complex business litigation matter as set forth under AO S-2008-105; indeed, pursuant to Section 3 this case is "ineligible" for transfer. Furthermore, all circuit judges are equipped to handle all manner of cases, and the assignment of divisions is merely a housekeeping designation. For the purpose of doing business, one circuit judge constitutes a circuit court. *Kosham v. Bernstein*, 51 So. 2d 495 (Fla. 1951). Where there is more than one circuit judge in a county, each of the judges is vested with power to exercise all of the authority of a circuit judge in that county and the decision of one judge is the decision of the court. Id. A circuit court is a trial court (F.S. § 26.012(5)) and it may hold civil and criminal trials and hearings in any place within the territorial jurisdiction of the court as designated by the chief judge of the circuit (Fla. Constitution, Art. V, § 7).

d. The ADA request made by the Plaintiff: Because the only hearing heretofore scheduled before the undersigned was cancelled, the Court had no cause to review the Plaintiff's ADA request, which was rendered moot by the cancellation. Furthermore, the judge is not the person designated by Court Operations to review and implement said procedures; rather, that duty falls to the "ADA Coordinator" who thereafter makes any necessary planning known to the judge. The ADA policy of the Thirteenth Judicial Circuit is outlined at http://www.fljud13.org/ada.htm, and in AO S-29-93-08. In future, if the Plaintiff is directed to make any request for ADA accommodations to Court Administration at least seven (7) days before the scheduled hearing, in keeping

with the rules published on the court website. Per the AO and Courthouse guidelines, the Plaintiff must complete a Request for Accommodations Form and submit it to 800 E. Twiggs Street, Room 604, Tampa, FL 33602, in order for his request to be processed.

12. Any detail of the Plaintiff's motion that has not been addressed specifically was nonetheless considered on its merits and has been determined to be legally insufficient under the law and rules of procedure and therefore is considered denied.

It is therefore **ORDERED AND ADJUDGED** that Plaintiff's Motion to Disqualify is **DENIED.**

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida, on June 16, 2010.

ORIGINAL SIGNED
JUN 16 2010
MARTHA J. COOK
CIRCUIT JUDGE

Martha J. Cook
CIRCUIT COURT JUDGE

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