

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 June 23, 2010. 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). The Court considered the positions presented by the Plaintiff, and **DENIES** his motion as legally insufficient on all stated grounds, noting specifically:

1. **Re: Alleged Conflict of Code of Conduct for Failing to Consider Complaints About Disqualification of Opposing Counsel:** The Plaintiff's original attempt to disqualify Defendants' counsel was first dismissed, with prejudice, on May 12, 2006. Pursuant to the doctrine of *res judicata*, any and all subsequent motions on the same subject must also be denied. There is no violation in judicial canon in refusing an issue that has already been disposed of with prejudice.
2. **Re: Alleged Conflict with ADA Accommodations:** ADA accommodations, as the Plaintiff has been noticed in this Court's prior orders,<sup>1</sup> are to be made through Court administrators, and not by pleading, nor are they disposed of by a judge. Plaintiff's ADA requests have been denied by Court administrators as non-compliant with the goals of that law.
3. **Re: Conflict of Judge on Disability Matters:** The details alleged by the Plaintiff are legally insufficient in that they are based upon an "inadequate oath or affidavit."<sup>2</sup>

<sup>1</sup> Most recently the July 16, 2010 order denying disqualification of Judge Cook.

<sup>2</sup> *Hahn v. Frederick*, 66 So.2d 823, 825 (Fla. 1953).

4. **Re: Court Not Cooperative in Setting Hearings:** Unless set by the Court, notices of hearing shall be submitted by the party who is making the motion (Fla. R. Civ. Pro. 1.090(d)). Only after a movant has properly followed the procedures in scheduling will a hearing be conducted and a judge will render a decision. The Court is not obliged to set hearings for the litigants, which means it is the Plaintiff's responsibility to coordinate acceptable hearing times with opposing counsel. In certain cases, the Court will set hearings. All hearings must be set in compliance with the procedural rules. All communications were made to all parties and are on the record.
5. **Re: Judge Cook Unlawfully Proceeded with CMC on July 12, 2010:** After several other objections and attempts to avoid hearing on case management status, the Plaintiff orally renewed his motion to disqualify the judge. In keeping with the rules, the undersigned offered the Plaintiff opportunity to recess and reduce his objection to writing. Instead, the Plaintiff shifted focus and claimed to be ill, demanding to be excused. The Court allowed him to make that voluntary decision to prematurely leave the hearing. The record of proceedings shows that the Plaintiff was given his chance to record, properly and in keeping with the rules, a *procedurally sufficient* motion to disqualify. The Plaintiff, himself, chose to walk out on that opportunity.
6. **Re: Judge Cook Has an Actual Conflict with Plaintiff:** Regarding the Plaintiff's "noticed" lawsuit against the 13<sup>th</sup> Judicial Circuit, it is well-established law that the Plaintiff's filing does not present legally sufficient grounds for this Court's disqualification or recusal from this case.<sup>3</sup>

It is therefore **ORDERED AND ADJUDGED** that Plaintiff's "Motion to Disqualify Circuit Court Judge Martha J. Cook" as submitted July 23, 2010, is hereby **DENIED** as legally insufficient.

**DONE AND ORDERED** in Chambers at Tampa, Hillsborough County, Florida, on July 29, 2010.

ORIGINAL SIGNED  
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Martha J. Cook  
CIRCUIT COURT JUDGE  
JUL 27 2010  
MARTHA J. COOK  
CIRCUIT JUDGE

Copies Furnished To:

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<sup>3</sup> See *Dowdy v. Salfi*, 455 So.2d 604 (Fla. 5<sup>th</sup> DCA 1984), *5-H Corporation v. Padovana*, 708 So.2d 244 (Fla. 1997), *May v. South Florida Water Management*, 866 So.2d 205 (Fla. 4<sup>th</sup> DCA 2004) and *Bay Bank & Trust v. Lewis*, 634 So.2d 672 (Fla. 1<sup>st</sup> DCA 1994).