

IN THE CIRCUIT COURT FOR HILLSBOROUGH COUNTY, FLORIDA
FAMILY LAW DIVISION

IN RE: THE MARRIAGE OF

JONATHAN ALPERT,

Former Husband

Case No.: 29-2001-DR-4977-C


ELIZABETH ALPERT,

Former Wife.

MOTION FOR DISQUALIFICATION, FLORIDA STATUTES §38.10

Ex-husband, Jonathan L. Alpert, a person with multiple sclerosis and associated disabilities related to multiple sclerosis, by his undersigned attorneys, files this his Motion for Disqualification of the Trial Judge in this cause, the Honorable Monica Sierra, and states that pursuant to the attached Affidavit of Jonathan L. Alpert, the said trial judge bears bias and prejudice against him prejudicial to the administration of justice such that he cannot receive a fair trial in this cause.

Respectfully Submitted this 20th day of October, 2003


Jonathan L. Alpert, Esq.
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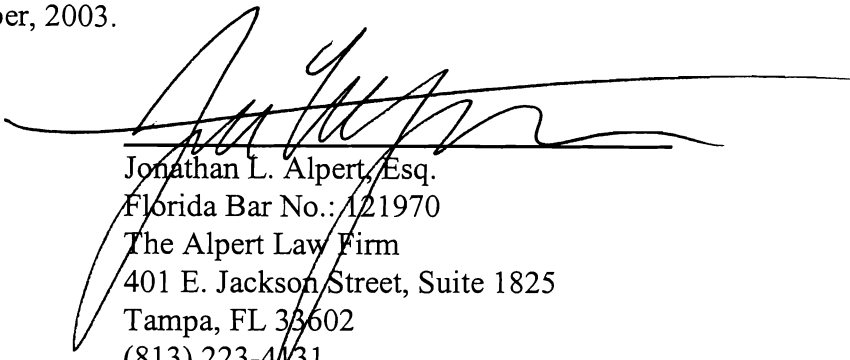
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CIRCUIT COURT
HILLSBOROUGH COUNTY, FLA
2003 OCT 20 AM 3:34

Mary Taylor, Esq.
Florida Bar No.: 207160
7419 U.S. Highway 19
New Port Ritchey, FL 34652
(727) 846-1828

CERTIFICATION OF COUNSEL OF RECORD

This Motion for Disqualification and accompanying Affidavit are made in good faith upon the bases set forth in the accompanying Affidavit and undersigned counsel so certify.

Dated this 22nd day of October, 2003.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished via hand delivery to Stanford Solomon, Esq., The Solomon Tropp Law Group, P.A., 400 North Ashley Plaza, Suite 3000, Tampa, FL 33602 this 22nd day of October, 2003.



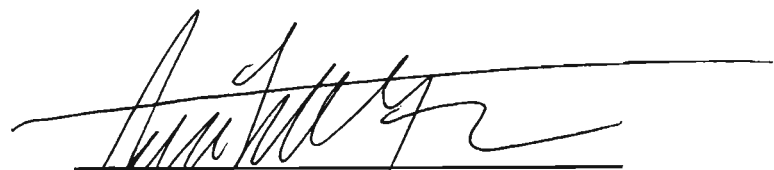
ATTORNEY

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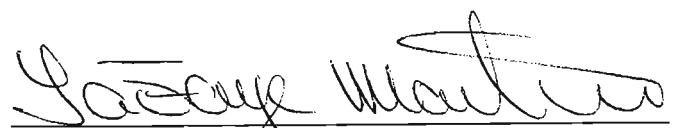
The Complaint to the Judicial Qualifications Commission, states those grounds, which need not be repeated herein.

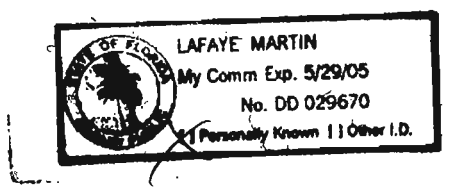
5. The acts and conduct of Monica Sierra have caused me grave and serious bodily injury and inflicted upon me cruel, inhumane, and degrading treatment, including but not limited to, a serious attack or exacerbation of multiple sclerosis for which I have received and am receiving medical treatment.

FURTHER, Affiant sayeth not.


Jonathan L. Alpert

Subscribed to and sworn before me on this 20th day of October, 2003 by Jonathan L. Alpert who is personally known to me.


Notary Public



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The Alpert Law Firm
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

FROM THE DESK OF:
JONATHAN L. ALPERT

401 E. JACKSON STREET, SUITE 1825
TAMPA, FLORIDA 33602

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TAMPA, FL 33601-3270
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PINELLAS COUNTY NO.
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October 20, 2003

Judicial Qualifications Commission
1110 Thomasville Road
Tallahassee, FL 32303

VIA CERTIFIED MAIL RRR

**Re: Monica Sierra, Circuit Judge
Thirteenth Judicial Circuit
Hillsborough County**

Gentlemen:

This is a complaint against Monica Sierra, Circuit Judge in and for the Thirteenth Judicial Circuit, Hillsborough County, Florida.

The specific acts of judicial misconduct include, but are not limited to, the following:

1. Refusal to complete record on appeal in the case styled Alpert v. Alpert, Case No. 29-2001-DR-4977-C;
2. Refusal to consider evidence and summary denial without hearing of Motion for Temporary Reduction in Alimony (Cf., October 8, 2003, Transcript Vol. IV at pp 4-5 with Order dated September 11, 2003);
3. Refusal to disqualify herself after evidencing significant and pervasive judicial bias prejudicial to the administration of justice;
4. Conduct unbecoming a judicial officer in the manner, method and timing of rulings and hearings and the conduct of same;

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5. The prejudgment of issues in the above-referenced litigation and deliberate disregard for the rights of the litigants, including but not limited to the following:
 - a) Determination of a civil contempt by impermissibly imputing income and ability to pay and in particular by imputing income (i) without consideration of a severe ongoing disability -- multiple sclerosis (MS); without evaluating actual, current income and ability to pay; and without consideration of specific, limiting impairments (disabilities) pursuant to the individual assessment mandated under the ADA, including tailoring actual ability to pay by evaluating actual current income and specific limiting impairments as required by the Americans With Disabilities Act of 1990 (ADA)s individualized assessment requirement and instead making impermissible imputed prohibited assumptions;
 - b) The entry of a civil contempt order at 7:00 p.m. in the evening, including an immediate remand to the custody of the county jail so as to preclude the opportunity to obtain a stay from an appellate court due to the timing and method of entry of same so as to deliberately oppress, embarrass, harass, and intimidate;
 - c) De facto converting a purported civil contempt proceeding into a criminal contempt proceeding, without notice or opportunity to be heard;
 - d) Prior to entering her Order, refusing to consider, entertain or hear evidence, including evidence pertaining to significant disability and conducting the proceedings while the purported contemnor was suffering from a significant and meaningful disability precluding an adequate defense in regard to same -- an exacerbation or attack of multiple sclerosis;
 - e) The preparation of an Order of Contempt (at least in part) in advance of and/or during the hearing on the matter.
 - f) Failure to demonstrate and sustain burden of proof that the federally mandated ADA Self-Evaluation was conducted and completed with ongoing compliance reviews and updates with the input of disabled individuals and organizations with multiple sclerosis before undertaking judicial acts;
 - g) Failure to comply in all aspects with the ADA as required by the Chief Justice in signing the 1996 Settlement Agreement Between the Chief Justice and the United States (copy attached), governing all Courts in the Florida State Courts System, including failure to obtain ADA required head-of-the-entity order before doing all of the above and impermissibly measuring time allowed for person with multiple sclerosis to present defense by her personal babysitting needs;

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- h) Retaliating against an individual, myself, for attempting to exercise my rights;
- i) Violation of the International Covenant on Civil and Political Rights, eg., United States v. Duarte-Acero, 208 F.3d 1282 (11th Cir. 2000) by cruel, inhumane and degrading treatment;
- j) Violating the Code of Judicial Conduct Canons 1, 2A, 2B, 3A, 3B(2), 3B(4), 3B(5), 3B(6), 3B(7), 3E(1) and the Commentary thereto by doing the above. Note also Fla. Bar Rule 4-8.4(d) along with the Commentary.

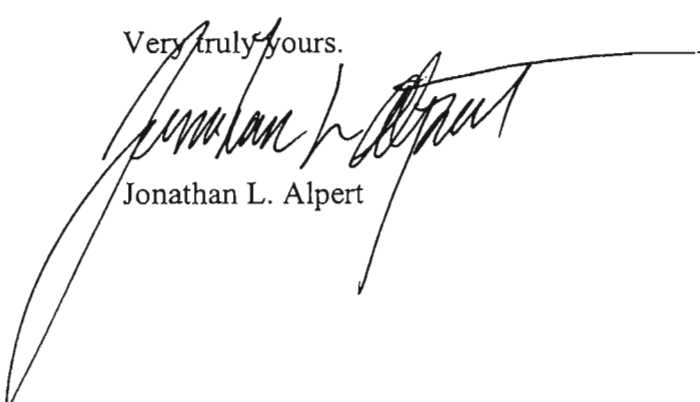
Monica Sierra, at minimum, is suffering from such judicial inadequacy and incompetence so as to render her unfit for service as a judicial officer of the State of Florida. Her actions, including but not limited to manifest denial of due process of law, violate the Judicial Canons. They are also in violation of federally-mandated disability sensitivity and awareness and as well as ADA compliance and training concerning multiple sclerosis.

Ms Sierra's conduct and rulings may further amount to corruption and/or abuse of power under the applicable criminal laws of the State of Florida. Therefore, the Judicial Qualifications Commission may also wish to refer this matter to the Florida Department of Law Enforcement and/or the United States Department of Justice, Civil Rights Division, Disability Rights Section as well as the Public Integrity Division for further investigation.

I am enclosing copy of various orders entered by Judge Sierra as well as a portion of the transcript of the Hearing of October 8, 2003. Additional information regarding this matter, including transcripts and orders, is also available.

Thank you for your attention to this.

Very truly yours.


Jonathan L. Alpert

JLA:lmm

**Settlement Agreement Between
the United States of America
and
the Florida State Courts System**

This matter was initiated by a complaint filed under title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, with the United States Department of Justice (hereinafter "the Department") against the Twentieth Judicial Circuit of Florida, which is part of the Florida State Courts System. The complaint was filed with the Civil Rights Division of the Department of Justice, under the authority of 28 C.F.R. Part 35, Subpart F. The complainant, who is hard of hearing and who is a defendant in an eminent domain proceeding, alleged that the Twentieth Judicial Circuit discriminated against her on the basis of her disability by failing to take the appropriate steps to ensure that the communication with her during the August 1993 proceedings was as effective as communication with others. She also alleged that the transcription equipment that the Twentieth Judicial Circuit provided was ineffective in providing her access to what was being said at her three-day trial because of confusing and distracting information being displayed on the screen. She further alleged that even though she had filed a grievance against the usage of such technology, the same technology was used at a later hearing in April 1994.

The Department of Justice is authorized under 28 C.F.R. Part 35, Subpart F, to investigate the allegations of the complaint in this matter, to determine the compliance of the Twentieth Judicial Circuit with title II of the ADA and the Department's implementing regulation, issue findings, and, where appropriate, negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized under 42 U.S.C. § 12133 to bring a civil action enforcing title II of the ADA should the Department fail to secure voluntary compliance pursuant to subpart F.

The parties to this Agreement are the United States of America and the Chief Justice of the Supreme Court of Florida as chief administrative officer of the judicial branch (Art. V, § 2, Fla. Const.) (hereinafter "Chief Justice"). In consideration of the terms of this Agreement as set forth below, the Attorney General agrees to refrain from undertaking further investigation or from filing a civil suit in this matter.

Pursuant to the provision of the ADA entitled "Alternative Means of Dispute Resolution," 42 U.S.C. § 12212, the parties have entered into this Agreement. In order to secure compliance by voluntary means, the parties hereby agree as follows:

1. The Chief Justice does not admit by the signing of this Agreement that the Florida State Courts System's current policies and practices are in violation in any respect with the ADA or its implementing regulation.
2. The ADA applies to the Florida State Courts System because it is a public entity as defined in 42 U.S.C. § 12131 and the Department of Justice's regulation implementing title II, 28 C.F.R. § 35.104.
3. The purpose of the Settlement Agreement is to ensure that persons who are deaf or hard of hearing have an equal opportunity to benefit from the programs and services of the Florida State Courts System.
4. The Florida State Courts System has established, and will continue to maintain, a written policy, which requires that all Florida courts ensure that real-time transcription services used in court proceedings be accurate in order to ensure effective participation by a party, witness, attorney, judicial employee, judge, or juror who is deaf or hard of hearing. The policy states that in order to ensure complete accuracy of real-time transcription, the Florida courts must comply with the minimum guidelines as set forth in the policy.
5. Beginning on the effective date of this Agreement, all appropriate state court officials responsible for conducting proceedings will be instructed to comply with the provisions of this Agreement.
6. The Florida Supreme Court, through its administrative arm, the Office of the State Courts Administrator, will:
 - a. distribute notice of the Agreement and policy to all Florida judges and trial court administrators within 30 days of the effective date; and
 - b. schedule and conduct training for chief judges and trial court administrators on the practical application of the ADA and this Agreement in jury trials and other court proceedings, at their next regularly scheduled meetings.
7. The Department of Justice may review compliance with this Agreement at any time. If it determines that this Agreement or any requirement thereof has been violated, it may institute a civil action seeking specific performance of the provisions of this Agreement in an appropriate Federal court.
8. Failure by the Department of Justice to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein

will not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.

9. This Agreement is a public document. A copy of this document or any information contained in it may be made available to any person. The Office of the State Courts Administrator will provide a copy of this Agreement to any person upon request.

10. In the event that the Florida State Courts System fails to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the Department as a temporary modification of the relevant terms of this Agreement, all terms of this Agreement will become enforceable in an appropriate Federal court.

11. The effective date of this Agreement is the date of the last signature below.

12. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement, will be enforceable. This Agreement is limited to the facts set forth in the first paragraph, and it does not purport to remedy any other potential violations of the ADA or any other Federal law. This Agreement does not affect the continuing responsibility of the Florida State Courts System, or the Twentieth Judicial Circuit, to comply with all aspects of the ADA.

For the Florida State Courts System:

For the United States of America:

Stephen H. Grimes
STEPHEN H. GRIMES, Chief Justice
as chief administrative officer and on
behalf of the Florida State Courts System
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1925

Robert J. Mather
JOHN L. WODATCH, Chief
L. IRENE BOWEN, Deputy Chief
ROBERT J. MATHER, Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738

Date May 31, 1996

Date June 20, 1996

Attachment

Florida State Courts System

Policy on Court Real-Time Transcription Services for Persons Who Are Deaf or Hard of Hearing

It is the policy of the Florida State Courts System that all judges and court staff will abide by the following guidelines in those court proceedings where real-time transcription services are utilized as a reasonable and necessary method of ensuring effective participation by a party, witness, attorney, judge, court employee, juror, or other participant who is deaf or hard of hearing and entitled to auxiliary aids or services pursuant to Title II of the Americans with Disabilities Act of 1990:

1. Real-time transcription services should be performed by a court reporter who is specially trained in this skill.
2. The device selected should display text in a manner that accomplishes full access to the service and should be a non-glare, display-type computer monitor; a large-screen image from a data projection panel and overhead projector; or other device that ensures effective communication. It is recommended that the monitor be 15 inches or larger. The size of the monitor should take into account the number of persons viewing it. The display of the text should be dark letters on a light background, double spaced, with mixed case as appropriate for the context of the proceedings. The display font or type size should be a minimum of 18 points. The real-time transcription service should display not less than four (4) and no more than 17 lines of text at any one time. The display view should be limited to text that relates to the real-time transcription service; no system information should be visible to the user.
3. Text displayed on the monitor should appear within three (3) seconds from the time of steno-type input. This time frame requirement includes time for any and all related spell checks including phonetic translation for untranslates.
4. At the commencement of the proceeding, the court should determine whether effective communication is occurring. The court should instruct the person receiving the service and other participants in the proceeding to alert the court should a translation or other problem occur that impedes the person receiving the service from effectively participating in that person's appropriate role in the proceeding. Furthermore, if the court reporter becomes aware that an unacceptable number of untranslates or other problem is occurring with the real-time transcription service, the court reporter should immediately alert the court. Should the real-time transcription service become ineffective, the court should determine the cause of the problem and implement any corrective action the court deems reasonable or necessary.

5. The reporter, prior to the beginning of the proceeding, should review the case file and build a good client/job dictionary. This same job dictionary should be used at each subsequent proceeding in a particular case. The job dictionary should be updated during the course of the proceeding to include untranslates that may be corrected by any of the parties during the proceedings. Such updates should be operable throughout the remainder of the proceeding's real-time transcription service and carried over to any future proceedings.

6. The real-time transcription service and corrections that were displayed on the screen or monitor during the proceeding must be preserved in a manner to reflect what was actually displayed. Any corrections that were not viewed but that later become a part of the official court record must be maintained separately from the record of displayed text. At the conclusion of any proceeding (other than juror deliberations) in which real-time transcription service has been provided to ensure effective communication for a person who is deaf or hard of hearing, the reporter shall preserve the record of the real-time transcription service in accordance with rule 2.075(e), Florida Rules of Judicial Administration, unless otherwise directed by the court.

7. If real-time transcription services are required for a juror who is deaf or hard of hearing, a court reporter shall be present in the jury room during jury deliberations. The role of the reporter, when in the jury room, is not as a reporter of the official record; therefore the real-time transcription service of jury deliberations must be deleted immediately upon the conclusion of jury deliberation. The reporter shall not counsel, advise, attempt to explain terms, or interject personal opinion. Furthermore, the reporter shall not read back the real-time transcription service from the proceeding or jury deliberations without express judicial approval or authorization.