

IN THE CIRCUIT COURT OF THE  
17TH JUDICIAL CIRCUIT, IN AND  
FOR BROWARD COUNTY, FLORIDA

State of Florida,  
Plaintiff,

Case No. 16014447CF10A

v.

Judge: DUFFY

HELIO LESSA,  
Defendant.

**MOTION FOR DISQUALIFICATION OF JUDGE**

Pursuant to Florida Rule of Judicial Administration 2.330, the Defendant, HELIO LESSA, by and through the undersigned attorney, requests this Court to enter an order disqualifying itself from all further proceedings in the above-styled cause, and as grounds therefore states the following:

**FACTS**

1. The Defendant is charged with:

Count I AGGRAVATED ASSAULT (DEADLY WEAPON)

2. The Defendant is Hispanic.

3. Assistant Public Defender Lorena Mastrarrigo was contacted by a private defense attorney who advised that he was informed by a sitting Broward County Judge who was present with this Court at a judicial conference that this Court made disparaging remarks about Hispanics at a bar. Attorney Mastrarrigo was advised that the sitting judge informed the private attorney that this Court was drunk at the bar and called out to a bartender. This Court called the bartender several different traditionally Hispanic first names and then said whatever your name is "you're all the same anyway."

4. Chief Assistant Renee Dadowski met with this Court regarding this information

and this Court denied being drunk but stated that it could not “1000 percent” deny the allegation.

5. This office was also independently contacted by a sitting judge who attended the conference and was present with this Court prior to and immediately after the bartender incident. That judge advised that this Court was acting in a boorish and loud manner prior to that judge leaving the bar area momentarily. Upon return to the bar, the reporting judge advised that other sitting Broward County judges, whose names were not disclosed to this office, advised him of the this Court’s comments to the bartender and stated that they were very offended by the exchange. The reporting judge also advised this office that the incident was observed by several judges and was being widely discussed.

6. Upon informing Chief Judge Peter Weinstein that this office was contacted about this incident, Judge Weinstein confirmed to Howard Finkelstein that an incident occurred and this Court apologized to Florida Supreme Court Chief Justice Jorge Labarga for her conduct.

7. This Court’s statements calling a Hispanic man several traditionally Hispanic names evidences this Court’s belief that Hispanics are interchangeable and that all Hispanics are the same and causes the defendant to reasonably fear that the court dehumanizes Hispanics and is prejudiced against Hispanics and he will not receive a fair and impartial trial or hearing in this matter.

8. This Motion for Disqualification of Judge is timely made within 10 days of the Defendant being advised of the court’s statement.

9. Based on the foregoing, the defendant has a well-founded fear that he will not

receive a fair hearing.

## ARGUMENT

This Court's statement calling a Hispanic man several traditionally Hispanic names and stating that "you're all the same," caused the Defendant to reasonably fear that he will not receive a fair and impartial trial or hearing in this case.

A trial court presented with a motion to disqualify must limit its review of the motion to making a "bare determination of legal sufficiency." Bundy v. Rudd, 366 So. 2d 440, 442 (Fla. 1978). The purpose of such a limitation is to "ensure public confidence in the integrity of the judicial system . . . ." Livingston v. State, 441 So. 2d 1083, 1086 (Fla. 1983); see also Rogers v. State, 630 So. 2d 513 (Fla. 1993). The Florida Supreme Court reiterated in Livingston:

Prejudice of a judge is a delicate question to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised, should be prompt to recuse himself [sic]. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned.

....

The judiciary cannot be too circumspect, neither should it be reluctant to retire from a cause under circumstances that would shake the confidence of the litigants in a fair and impartial adjudication of the issues raised.

441 So. 2d at 1085-86 (emphasis supplied) (citation omitted); see also Hayslip v.

Douglas, 400 So. 2d 553, 555 (Fla. 4th DCA 1981); CODE of JUDICIAL CONDUCT Canon 3-C (2008).

The proper avenue to seek disqualification of a trial judge in Florida is through a Motion for Disqualification pursuant to Florida Rule of Judicial Administration 2.330. See Brown v. St. George Island, Ltd., 561 So. 2d 253, 255 (Fla. 1990). Attached to this motion is a sworn affidavit signed by the Defendant alleging specifically the facts and

reasons relied on to show the grounds for disqualification. This motion is timely filed. Michaud-Berger v. Hurley, 607 So. 2d 441 (Fla. 4th DCA 1992). This motion complies in all respects with the requirements contained in Rule 2.330.

Rule 2.330 provides that this Court shall "determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action."

This motion is legally sufficient pursuant to Rule 2.330. The inquiry in a motion for disqualification "focuses on the reasonableness of the defendant's belief that he or she will not receive a fair hearing." Rogers v. State, 630 So. 2d 513 (Fla. 1993). The defendant "need only show a well-grounded fear" that this Court cannot provide a fair hearing in this matter. Id. (citation omitted).

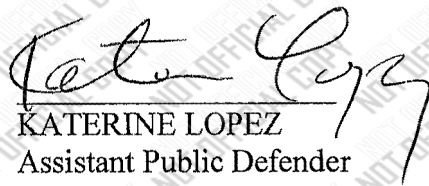
The Florida Supreme Court has reasoned that "[t]he attitude of the judge and the atmosphere of the court room should indeed be such that no matter what charge is lodged against a litigant. . . [the litigant] can approach the bar with every assurance that he [or she] is in a forum where the judicial ermine is everything that it typifies, purity and justice." Crosby v. State, 97 So. 2d 181,184 (Fla. 1957)(quoting Davis v. Parks, 141 Fla. 516, 194 So. 613, 615)). The trial court's statements calling a Hispanic man several traditionally Hispanic names and that Hispanics are all the same has left the Defendant with a reasonable belief that he will not receive a fair and impartial hearing.

**CONCLUSION**

WHEREFORE, based upon the foregoing, the Defendant requests this Court to grant the Motion for Disqualification of Judge so another circuit court judge may be randomly assigned to preside over this case.

Respectfully Submitted,

Howard Finkelstein  
Public Defender  
17th Judicial Circuit

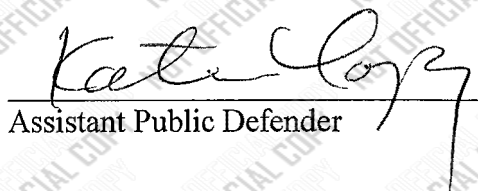


KATHERINE LOPEZ  
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Third Floor - North Wing  
Ft. Lauderdale, Fl. 33301

Attorney for the Defendant

**CERTIFICATE OF GOOD FAITH**

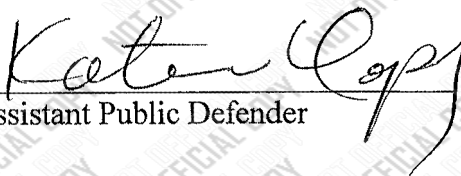
I HEREBY CERTIFY that the motion and the Defendant's statements contained in the attached affidavit are made in good faith.



Assistant Public Defender

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Disqualification of Judge has been furnished by e-service to the Honorable Barbara Duffy at plind@17th.flcourts.org and CAMILLE SMITH, Office of the State Attorney at courtdocs@sao17.state.fl.us, Broward County Courthouse, Fort Lauderdale, Florida, this 2nd day of February, 2017.

  
Assistant Public Defender

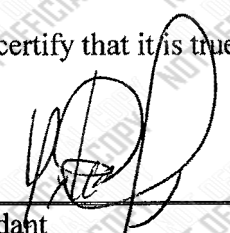
## AFFIDAVIT OF DEFENDANT

The undersigned affiant, HELIO LESSA, after being duly sworn, deposes and states as follows:

1. I am the defendant in this case and my case is assigned to Judge Barbara Duffy's division.
2. I am Hispanic.
3. My attorney informed me of the following on January 31, 2017.
  - a. Assistant Public Defender Lorena Mastrarrigo was contacted by a private defense attorney who advised that he was informed by a sitting Broward County Judge who was present with this Court at a judicial conference that this Court made disparaging remarks about Hispanics at a bar. Attorney Mastrarrigo was advised that the sitting judge informed the private attorney that this Court was drunk at the bar and called out to a bartender. This Court called the bartender several different traditionally Hispanic first names and then said whatever your name is "you're all the same anyway."
  - b. Chief Assistant Renee Dadowski met with this Court regarding this information and this Court denied being drunk but stated that it could not "1000 percent" deny the allegation.
  - c. This office was also independently contacted by a sitting judge who attended the conference and was present with this Court prior to and immediately after the bartender incident. That judge advised that this Court was acting in a boorish and loud manner prior to that judge leaving the bar area momentarily. Upon return to the bar, the reporting judge advised that other sitting Broward County judges, whose names were not disclosed to this office, advised him of the this Court's comments to the bartender and stated that they were very

offended by the exchange. The reporting judge also advised this office that the incident was observed by several judges and was being widely discussed among the judiciary.

- d. Upon informing Chief Judge Peter Weinstein that this office was contacted about this incident, Judge Weinstein confirmed to Howard Finkelstein that this Court apologized to Florida Supreme Court Chief Justice Jorge Labarga for her conduct.
4. This Court's statements calling a Hispanic man several traditionally Hispanic names evidences this Court's belief that Hispanics are interchangeable and that all Hispanics are the same and causes me to reasonably fear that the court de-humanizes Hispanics and is prejudiced against Hispanics and I will not receive a fair and impartial trial or hearing in this matter.
5. This Motion for Disqualification of Judge is timely made within 10 days of me being advised of the court's statement.
6. Based on the foregoing, I have a well-founded fear that I will not receive a fair hearing.
7. I have read the Motion for Disqualification of Judge and certify that it is true and correct.

  
\_\_\_\_\_  
Defendant

Pursuant to Florida Statutes section 92.525(2), under penalties of perjury, I HELIO LESSA, declare that I have read the foregoing and that the facts stated are true and correct.

  
\_\_\_\_\_  
Defendant