

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

CASE NO: 16005628MM10A

JUDGE: DIAZ

STATE OF FLORIDA, :  
Plaintiff, :  
vs. :  
MARK GOOD, :  
Defendant. :



**SWORN MOTION TO RECUSE**

**COMES NOW** the State of Florida, by and through the undersigned Assistant State Attorney, and files this Motion to Recuse Judge DIAZ, pursuant to the Florida Rules of Judicial Administration, Rule 2.330, and states the following grounds in support of said motion:

**FACTS**

1. The Defendant has been charged with Battery.
2. On March 6, 2018 the case was scheduled for a hearing in front of Judge Diaz.
3. Judge Diaz called for the undersigned to appear in his courtroom. The following exchange ensued: (taken from courtroom audio- March 6,2018 starting at 9:42:25)

ALCALDE: I am currently still in trial I request this be reset  
 JUDGE DIAZ: I got to figure something out Miss.  
 ALCALDE: It's Ms. Alcalde, your honor.  
 JUDGE DIAZ: I know what your name is.  
 ALCALDE: You were calling me Miss.  
 JUDGE DIAZ: I call everyone who is female Miss,

so I don't mess up their name, I'm not sure that is a problem.

ALCALDE: It kind of is, I would rather be referred to as Ms. Alcalde.

JUDGE DIAZ: Okay Miss, I will, is that OK? Now I want to find out what happened to contacting the victim cause this was in November.

ALCALDE: Judge I wasn't the prosecutor in November and again, I take offense to the court referring to me as Miss, when I have already advised the court I find it offensive.

JUDGE DIAZ: (interrupts) noted for the record.

4. It has come to the attention of the undersigned that Judge Diaz repeatedly refers to women attorney's as Miss, even after objection. (see case number 17003180MM10A)
5. A Motion was filed in that case and it states that the court apologized for referring to the female defense attorney as Miss (See Attachment "A").
6. Ms. Edgely, the Assistant Public Defender on case number 17003180MM10A advised the court to please stop referring to her as Miss. The court acknowledged and apologized for referring to her as Miss the following day on the record. The court again, went on to say he refers to all women in this manner.
7. In the present case the Court continues to refer to the undersigned as Miss after being advised that it is offensive and acknowledging that the Court knows what the undersigned's name is.
8. Notwithstanding the fact that the Court has already been advised that referring to women in this manner is offensive, the Court continues to do so without regard for the female attorney's that must appear in front of him.
9. The fact that in the present case the judge continues to refer to this female prosecutor as Miss, even after being advised that it is offensive, leads the undersigned to believe that


that the State of Florida will not receive a fair trial as long as this female prosecutor is assigned to the case.

10. Due to the aforementioned facts the State has a well-founded fear it will not receive a fair trial if this Court remains on this case.

**WHEREFORE**, the State respectfully moves this Honorable Court to enter an order of recusal for the above-stated reasons.

MICHAEL J. SATZ  
State Attorney

By:

  
\_\_\_\_\_  
Adriana R. Alcalde, Esq.  
Assistant State Attorney  
Florida Bar #0609331

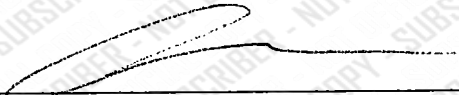
STATE OF FLORIDA :

:SS


COUNTY OF BROWARD :

BEFORE ME, the undersigned authority duly authorized to administer oaths and take acknowledgments, personally appeared Adriana Alcalde, who, being by me first duly sworn, deposes and says that she is a duly authorized Assistant State Attorney of the Seventeenth Judicial Circuit of Florida and that, as such, she is authorized to execute and has executed the foregoing Motion to Recuse; and Affiant further states that the facts and matters as set forth in the foregoing Motion to Recuse are true and correct and belief and that this Motion is filed in good faith.

FURTHER AFFIANT SAITH NOT.

  
\_\_\_\_\_  
Adriana R. Alcalde, Esq.  
Assistant State Attorney/Affiant

SWORN TO AND SUBSCRIBED before me by the above-named Affiant who is personally known to me and who did take the oath as reflected hereinabove, this 14<sup>th</sup> day of March A.D., 2018.

  
\_\_\_\_\_  
Notary Public, State of Florida  
My Commission expires:



EDNA DAVIS  
Commission # FF 227369  
Expires July 5, 2019  
Bonded Thru Troy Fahn Insurance 800-385-7019

**I HEREBY CERTIFY** that a true copy hereof has been furnished by U.S. Mail delivery this 14<sup>th</sup> day of March, 2018, to: Robert Davis, Esq.

MICHAEL J. SATZ  
State Attorney

By: 

\_\_\_\_\_  
Adriana R. Alcalde, Esq.  
Assistant State Attorney  
Florida Bar #0609331  
201 S.E. Sixth Street  
Fort Lauderdale, Florida 33301

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

STATE OF FLORIDA,  
Plaintiff,

Case No. 17003180MU10A

Judge: DIAZ

v.

TONY JERMAINE SHERROD,  
Defendant.

\_\_\_\_\_ /

**MOTION FOR DISQUALIFICATION OF JUDGE**

Pursuant to Florida Rule of Judicial Administration 2.330, the Defendant, TONY JERMAINE SHERROD, 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 one count of DUI.
2. The Defendant is facing a maximum sentence of 12 months' probation and/or 180 days Broward County Jail.
3. Assistant Public Defender Jennifer Edgley represents the Defendant.
- 4 On February 14, 2018 Defense Counsel presented a motion to disqualify to the Court. The Court reviewed the motion and denied it. Immediately following the Court's denial, the Court began to discuss some "ground rules" the court would impose during trial. The Court addressed the rule that attorneys must stand when making objections. The Court discussed the Court's expectation that attorneys stand when objecting and discussed what had occurred the day before—the subject matter of the previous motion to disqualify. The Court confirmed the Court would deny any objections that were made from a seated position. The Court also addressed his reference to Attorney Edgley as "Miss" from the day before and provided an explanation of why he referred to her that way. The Court apologized to Ms. Edgley and

"Exhibit A"

indicated that it wasn't his intention to be disrespectful. This also amounted to a comment on the motion to disqualify.

12. Based on the foregoing, the Defendant has a well-founded fear that this Court is prejudiced against Defendant and that Defendant will not receive a fair trial and/or hearing and/or sentencing hearing in this cause.

**ARGUMENT**

By discussing what had happened on February 13, 2017 in regards to objections made from a seated position and the Court's reference to Attorney Edgley as "Miss" constitutes a comment on the motion to disqualified.

A judge who is presented with a motion for disqualification 'shall not pass on the truth of the facts nor adjudicate the question of disqualification.'" Bundy v. Rudd, 366 So. 2d 440, 442 (Fla. 1978). A judge's comment on the facts of a motion to disqualify warrant disqualification. See Hewitt v. State, 839 So.2d 763 (Fla 4<sup>th</sup> DCA 2003). (Finding that the trial court's comment that it did not recall ever representing the Defendant's husband—the basis for disqualification—warranted disqualification because the Court improperly passed on the truth of the facts alleged."). 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).<sup>1</sup> 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.

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<sup>1</sup> Florida Rule of Judicial Administration 2.330(f) explicitly provides the following:

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 the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

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 Jud. Conduct Canon 3-C. 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, previously Florida Rule of Judicial Administration 2.160. 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(f) 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).

In Siegel v. State, 861 So. 2d 90 (Fla. 4<sup>th</sup> DCA 2003), the district court held that prejudice against a party's attorney can result in disqualification. In In Re Woodard, 919 So. 2d 389 (Fla. 2006), the Supreme Court of Florida reiterated that the Code of Judicial conduct broadly prohibits conduct

unbecoming a judicial officer. The Court specifically cited several of the relevant Canons of the Florida Code of Judicial Conduct in determining that the judge's conduct warranted disciplinary action. In re Woodard, 919 So. 2d at 390-392. Canon 1 states: "A judge should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved." Canon 2A provides that a judge "shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 3 requires a judge to perform judicial duties impartially and diligently. "Significantly, this canon makes clear that the 'judicial duties of a judge take precedence over all the judge's other activities.'" In re Woodard, 919 So. 2d at 391 (quoting Fla. Code Jud. Conduct Canon 3A). Moreover, Canon 3B(4) provides that a judge "shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity," while "dispos[ing] of all judicial matters promptly, efficiently, and fairly." In re Woodard, 919 So. 2d at 391 (quoting Fla. Code Jud. Conduct Canon 3B(4) and 3B(8)).

By discussing what had happened on February 13, 2017 in regards to objections made from a seated position and the Court's reference to Attorney Edgley as "Miss" constitutes a comment on the motion to disqualified. Because the facts alleged herein "would place a reasonably prudent person in fear of not receiving a fair and impartial" hearing, this Court should grant the motion. See id. The court's perception of whether it can be fair and impartial is not at issue. State ex rel. Brown v. Dewell, 131 Fla. 566, 573, 179 So. 695, 697-98 (Fla. 1938).

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)).



**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

S/ KRISTEN ELIZABETH COLLINS

KRISTEN ELIZABETH COLLINS, Esq.  
Fla. Bar No. 1002426  
Assistant Public Defender  
Attorney for the Defendant  
(954) 831-8675  
discovery@browarddefender.org

**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.

S/ KRISTEN ELIZABETH COLLINS

Assistant Public Defende

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to the Office of the State Attorney, MICHAEL JULIAN, at courtdocs@sao17.state.fl.us, Broward County Courthouse, Fort Lauderdale, Florida, this February 14, 2018. I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Court by email on February 14, 2018.

HOWARD FINKELSTEIN  
Public Defender  
17th Judicial Circuit

S/ KRISTEN ELIZABETH COLLINS

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