

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: 2012CF011572AMA

DIVISION: CR-I

vs.

MICHAEL DUNN,

Defendant.

INITIAL MOTION TO RECUSE OR DISQUALIFY

Comes now the above named, MICHAEL DUNN, and moves to recuse or disqualify the Honorable Judge Suzanne Bass from the above entitled matter under Florida Statute 38.10, Rule 2.330(c), Rule 2.330(d)(1), Rule 2.330(f), 28 U S C Sec. 455, and further cites Marshall v Jerrico Inc., 446 US 238, 242, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980).

"The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law."

"State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law."

The United States Constitution guarantees an unbiased Judge who will always provide litigants with full protection of all rights. Therefore, Defendant respectfully demands said judge recuse herself in light of the details of conduct which gives Defendant good reason to believe the above Judge cannot hear the above case in a fair and impartial manner.

"Accordingly, we hold that upon filing of this opinion all motions for disqualification of a trial judge must be in writing and otherwise in conformity with this Court's rules of procedure. The writing requirement cannot be waived and a presiding judge must afford a petitioning party a

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reasonable opportunity to file its motion. Rogers v. State of Florida, 630 So.2d 513 (Fla. 1993).

Pursuant to Statute 38.10, whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified.

Further, pursuant to Rule 2.330, this is an initial request to recuse the Honorable Judge Bass, and that no prior recusal has been requested or granted, in this cause.

Therefore, and as grounds presented in good faith, the Defendant would state as follows:

1. I am the person named in the above cause and was present in court on or about April 29, 2013 for my Motion for Indigence and Costs before the Honorable Judge Bass.
2. I learned that Judge Bass, prior to the case being called up for hearing, asked my attorney, Cory Strolla, to approach the bench along with ASA Erin Wolfson. At the bench, Judge Bass apparently indicated that my attorney should not hold out, or something similar to that remark, for her Honor to grant my motion prior to any facts, evidence, or argument even being presented in my presence or on my behalf at that time.
3. I further learned that Judge Bass was not going to call a crucial and necessary party to my Motion for Indigence and Costs, the Attorney for JAC, Mr. Christian Lake. Judge Bass exclusively and sua sponte decided not to include Mr. Lake in the hearing, in which Mr. Lake specifically requested to appear via telephone, and provided his toll-free line, in his response to my Motion. The JAC did not file an objection to my Motion for Indigence and Costs.
4. In the hearing, my attorney requested several times to call Mr. Lake to corroborate my attorney's argument on my behalf, in which Judge Bass refused. Mr. Lake would have been able to provide argument on the open record that Judge Bass had the judicial discretion to go outside of the statute and the statutory numbers she provided on the record. Mr. Lake would have also been able to concur with my attorney's interpretation of the statutes and monetary figures argued before the Court in my favor. It should be noted that Judge Bass refused my counsel to fully and completely testify to all of the

evidence and sua sponte ceased his testimony several times to reiterate the same statute the Court used exclusively to deny my motion.

5. I have also learned that Judge Bass had ex parte communications with the JAC attorney, Mr. Christian Lake, prior to my hearing. Judge Bass at no time communicated this ex parte communication with my attorney, nor disclose her ex parte communications with JAC attorney Mr. Lake prior to, or even during, my hearing on April 29, 2013. It should be noted that Judge Bass denied my motion without having Mr. Lake appear telephonically at the hearing.
6. During the pre-trial hearing on April 29, 2013, one of the alleged victim's fathers, Mr. Davis I presume, made inappropriate remarks and a verbal outburst during my pre-trial hearing in which Judge Bass ignored and acted as if it did not occur, nor did the Judge admonish the father's improper and unprovoked behavior inside the courtroom while my hearing was taking place. Several in court deputies had to rush over to Mr. Davis, the father of the alleged victim, to ensure the safety and sanctity of the courtroom.
7. Based on the totality of the above factors, I have a reasonable and well founded fear that I cannot receive fair and impartial pre-trial hearings or a trial while the Honorable Judge Bass presides over my case. I feel the objective factors stated above give rise to a reasonable doubt as to the fairness of Judge Bass and there appears to be signs of impropriety based on the above factors as well.

I SWEAR OR AFFIRM THAT THE FOREGOING IS TRUE AND CORRECT UNDER PENALTY OF PERJURY.

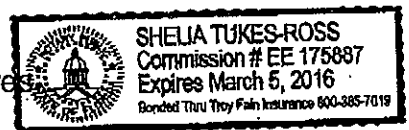
Signature: *Michael D. Dunn*

Print name: Michael D. Dunn

SWORN TO AND SUBSCRIBED BEFORE ME, who personally appeared, who is personally known to me or has produced JAIL ID BAND as identification, and has taken an oath on this 10th day of MAY 2013.

Shelia Tukes-Ross

NOTARY PUBLIC
State of Florida
My Commission Expires



Pursuant to Rule 2.330(d)(1), that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge as stated above.

Pursuant to Rule 2.330(f), 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

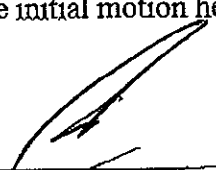
immediately enter an order granting disqualification and proceed no further in the action.

“Every litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question.” Hayslip v. Douglas, 400 So. 2d. 553 (Fla 4th DCA 1981).

WHEREFORE, the Defendant respectfully requests and prays that this Court will Grant it's Order of Disqualification in the above cause.

Certificate of Counsel


The undersigned counsel does hereby certify that the instant motion and the client's statements are made in good faith. That pursuant to Rule 2.330(c), this Motion is in writing, alleges specifically the facts and reasons upon which the Defendant relies as the grounds for disqualification, is sworn to under oath and notarized by the defendant, and states that there were no prior motions to recuse filed and that this is the initial motion herein to recuse or disqualify the Honorable Judge Suzanne Bass.

By: 
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Certificate of Service

Pursuant to Florida Rule of Civil Procedure 1.080, I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Honorable Judge Suzanne Bass via U.S. Mail or email on or about May 10, 2013.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Office of the State Attorney, Duval County, 220 East Bay St., Jacksonville, Florida 32202 by U.S. Mail, Email or Facsimile this May 10, 2013.



By:

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CASE NO.: 16-2012-CF-011572-AXXX-MA

DIVISION: CR-I

STATE OF FLORIDA,

v.

MICHAEL D. DUNN,
Defendant.

**ORDER GRANTING DEFENDANT'S INITIAL MOTION TO RECUSE OR
DISQUALIFY**

This cause came before this Court upon Defendant's "Initial Motion to Recuse or Disqualify," which he timely filed on May 10, 2013, pursuant to section 38.10, Florida Statutes (2012), and Florida Rule of Judicial Administration 2.330. In his Motion, Defendant requests the Honorable Suzanne Bass be disqualified from presiding over his pending case. As grounds therefor, Defendant alleges Judge Bass is prejudiced against him as demonstrated by her alleged actions and comments during a hearing on April 29, 2013, wherein the judge denied Defendant's Motion for Indigence and Costs.¹

In reviewing a motion for disqualification, a court must determine only the legal sufficiency of the motion, not the truth of the facts alleged. Fla. R. Jud. Admin. 2.330(f). Taking Defendant's allegations as true as required by law, this Court finds allegations numbered two through five render the instant Motion legally sufficient. See Parker v. State, 3 So. 3d 974, 982 (Fla. 2009); State v. Thompson, 79 So. 3d 933 (Fla. 1st DCA 2012); see also Gonzalez v. Goldstein, 633 So. 2d 1183, 1184 (Fla. 4th DCA 1994). Thus, without commenting on the

¹ According to the online court docket, April 29, 2013 was the date Defendant filed his Motion for Indigence and Costs; the hearing on said Motion occurred on May 3, 2013.

veracity of Defendant's allegations, this Court finds Defendant's Motion is legally sufficient as to the issue of judicial disqualification. With respect to Defendant's allegation numbered as the sixth paragraph in the instant Motion, this Court finds that, taking the allegation as true, is insufficient to warrant disqualification. See Braddy v. State, 37 Fla. L. Weekly S 703 (Fla. 2012), citing Liteky v. United States, 510 U.S. 540, 556, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).

In view of the above, it is:

ORDERED AND ADJUDGED that Defendant's "Initial Motion to Recuse or Disqualify" is hereby **GRANTED** as to disqualification. The undersigned requests that the Chief Judge appoint a successor judge in Defendant's case.

DONE AND ORDERED in Chambers, at Jacksonville, Duval County, Florida, on this

20 day of May, 2013.



SUZANNE BASS,
Circuit Court Judge

Copies to:


The Honorable Donald R. Moran, Jr.
Chief Judge, Fourth Judicial Circuit

Ms. Erin Wolfson, Esquire
Office of the State Attorney

Mr. Cory C. Strolla, Esquire
Attorney for Defendant
2247 Palm Beach Lakes Blvd., Suite 107
West Palm Beach, FL 33409

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Ms. Erin Wolfson, Esquire, Office of the State Attorney, 220 E. Bay Street, Jacksonville, Florida 32202; and Mr. Cory C. Strolla, Attorney for Defendant, 2247 Palm Beach Lakes Blvd., Suite 107, West Palm Beach, Florida 33409 by e-mail this 20 day of May, 2013.



Deputy Clerk

Case No.: 16-2012-CF-011572-AXXX-MA

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