FILED
SEP 23 2023
JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

ERIC A. GARLAND Plaintiff,	)	
v.	)	Case No. 23SL-AC24108
DR. AAMINA AKHTAR, M.D.	)	
VIJOY UMMER	)	
SETH REEDER	)	
WEST END MANAGEMENT, Defendants	)	

PLAINTIFF'S AMENDED VERIFIED EMERGENCY MOTION TO DISQUALIFY ALL JUDGES OF THE TWENTY-FIRST JUDICIAL CIRCUIT DUE TO PREJUDICE, BIAS, AND THE APPEARANCE OF IMPROPRIETY AGAINST PLAINTIFF AND MEMORANDUM OF LAW IN SUPPORT

Plaintiff Eric A. Garland, *pro se,* files this Motion to Disqualify All Judges of the Twenty-First Judicial Circuit from hearing the above captioned case based on the prejudice, bias, and appearance of judicial impropriety by multiple judges against Plaintiff. The statements in this Motion are true and made in good faith, made to the best of Plaintiff's knowledge, information, and belief. *State ex rel. McNary v. Jones*, 472 S.W.2d 637 (Mo. Ct. App. E.D. 1971) and RSMo. § 508.090. Plaintiff requests the Court to transfer his case to the Missouri Supreme Court for an appointment of a judge from another circuit.

PROCEDURAL HISTORY

1. On or about November 20, 2015, Plaintiff filed his Petition for Dissolution of Marriage. The case, styled *Garland v. Garland*, 16SL-DR06612, was assigned to the Hon. Mary Patricia Bruntrager Schroeder.

2. On or about July 24, 2016, the Court entered its Order and Judgment.

3. On or about June 11, 2019, a Motion to Modify was filed, 16SL-DR06612-01.

4. On or about July 14, 2019 a temporary order was entered in 16SL-DR06612-01.

5. On or about November 20, 2020, Judge Schroeder emailed Plaintiff to set a trial for November 24, 2020.

6. On or about November 24, 2020, the parties appeared for trial. Judge Schroeder did not call the court to order. Judge Schroeder entered a Final Order and Judgment declaring that the parties did not appear and made final the temporary order entered on July 14, 2019 without any hearing held nor evidence adduced.

7. On or about December 15, 2020, The Hon. Mary B. Schroeder retired from the bench.

8. On or about December 31, 2020, *Garland v. Garland* was assigned to the the Hon. John R. Lasater in Division 38.

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9. On or about June 24, 2021, a trial was called in the case of *Garland v. Garland*, 16SL-DR06612-02.

10. On or about December 21, 2021, Judge Lasater entered his Order and Judgment in the case of *Garland v. Garland*, 16SL-DR06612-02.

11. On or about January 19, 2023, Plaintiff filed a case styled *Garland v. Schroeder et al.* in the Federal District Court of the Eastern District of Missouri. The case is a civil rights action pursuant to 42 U.S. Code § 1983. Judge Schroeder, Judge Lasater, and Clerk of the Court of the 21st Circuit Joan Gilmer are defendants. Said case is still pending.

12. On or about August 30, 2023, Plaintiff filed the instant case in St. Louis County Circuit Court at the courthouse in Clayton, Missouri.

13. Because he is proceeding *pro se*, Plaintiff is required to file a civil complaint on paper at the courthouse in person with the Clerk of the Court.

14. On or about August 30, 2023 at approximately 10:30am, Plaintiff filed his Complaint, Motion to establish an account *in custodia legis*, his first Motion to Disqualify, and elected private process service of with a process server already identified to the Circuit Court.

15. Based on information and belief, Plaintiff spoke with Circuit Court employees "Phoebe" and "Sharonda."

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16. The summonses provided to Plaintiff by Circuit Court employees were incorrect and unable to be served upon the parties. Instead of serving the complaint, the Circuit Court arranged for the Defendants to be served with Plaintiff's Affidavit in support of his Complaint.

17. Circuit Court employees selected a date of initial appearance fewer than 30 days from the filing of the Complaint.

18. Plaintiff informed the Circuit Court employees that the documents provided to the process server were incorrect. Circuit Court employees claimed not to know the difference between a Complaint and an Affidavit.

19. Plaintiff asked for a date of initial appearance more than thirty days from the date of filing of the Complaint to afford Defendants enough time to formulate an answer. Circuit Court employees gave Plaintiff unwanted, incorrect legal advice that no answer was required from Defendants. Only after Plaintiff's insistence did Circuit Court employees agree to move the court date to October 18, 2023.

20. On September 4, 2023, William Stage, a licensed process server, completed service of process on all Defendants. He subsequently gave Plaintiff affidavits to be provided to the Court showing process had been served.

21. On or about September 4, 2023 at approximately 8:28am, Plaintiff sent, in accordance with Local St. Louis County Court Rule 3.4, the documentation showing

service of process directly to Division 44 at the fax machine number provided on the St. Louis County Circuit Court's website. The transmission was successful.

22. On or about September 6, 2023 at approximately 11:04am, Plaintiff sent the documentation showing service of process directly to the Clerk of the Court's main office at the fax machine number provided on the St. Louis County Circuit Court's website. The transmission was successful.

23. On or about September 12, 2023 at approximately 9:11am, Plaintiff went personally with original paper copies of said affidavits of process service directly to Division 44 of St. Louis County Court at the courthouse in Clayton, Missouri. However, Division 44 was closed; no clerk was present; no bailiff was present.

24. On or about September 12, 2023 at approximately 9:20am, Plaintiff presented said documentation to the Civil desk of the Clerk of the Court. However, multiple Circuit Court employees claimed they did not know what summonses were, nor how to file same.

25. On or about September 19, 2023, Amy Raimondo, Esq. and Michael J. Payne, Esq. entered appearance for Defendants Akhtar and Ummer.

26. On or about September, 20, 2023 at approximately 9:15am, Plaintiff filed his Supplemental Memorandum of Law in support of his initial Motion to Disqualify directly to the Clerk of the Court's main office at the fax machine number provided on

the St. Louis County Circuit Court's website. The transmission was successful. However, this Supplement Memorandum of Law is not reflected in the docket.

27. On or about September, 22, 2023 at approximately 3:17am, Plaintiff filed the exhibits in support of his Supplemental Memorandum of Law directly to the Clerk of the Court's main office at the fax machine number provided on the St. Louis County Circuit Court's website. The transmission was successful. However, these exhibits are not reflected in the docket.

28. Because Division 44 does not schedule hearings using the Acuity system similar to other divisions of the 21st Circuit, Plaintiff also placed multiple calls to Division 44 clerk Mary Balles to set an emergency hearing. However, no hearing was scheduled.

29. On or about September 21, 2023 at approximately 9:53am, Division 44 clerk Mary Balles stated to Plaintiff that the division will not set an emergency hearing date until he files documents only at the Clerk of the Court's office in person with the same staff unable to identify process service documents.

ARGUMENT

Standard of Review

No system of justice can function at its best or maintain broad public confidence if a litigant can be compelled to submit his case in a court where the litigant sincerely

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believes the judge is incompetent or prejudiced. That is the price to be paid for a judicial system that seeks to free a litigant from a feeling of oppression. *State ex rel. McNary v. Jones*, 472 S.W.2d 637, 639-640 (Mo.App. 1971). The right to a change of judge depends on the litigant's sworn belief that the judge is interested or prejudiced rather than on proof of the fact that the judge is interested or prejudiced." *Id.* When a timely affidavit in proper form is filed the judge may not question its merits but must then disqualify himself and take prescribed steps to obtain another judge. *Id.* The authority to ask the court to transfer a judge is necessary, if for example, all the judges within a particular circuit are recused. *State v. Nunley*, 923 S.W.2d 911, 917 (Mo. banc 1996). Missouri courts have, therefore, traditionally liberally construed statutes and rules in favor of the right to disqualify. *In re S.M.H.*, 160 S.W.3d 355, 373 (Mo. 2005), citing *State ex rel. Wesolich v. Goeke*, 794 S.W.2d 692, 695 (Mo.App. 1990).

I. Plaintiff has a right to move for a change of judge as a matter of course.

The right to disqualify a judge is "one of the keystones of our legal administrative edifice." *State ex Rel. Wedemeier v. McKenzie*, 889 S.W.2d 99, 100-01 (Mo. Ct. App. 1995), citing *State ex rel. Campbell v. Kohn,* 606 S.W.2d 399, 401 (Mo.App. 1980). Plaintiff has the right to request a change of judge pursuant to Rule 51.05. The application need not allege or prove any cause for such change of judge and need not be verified. Rule 51.05(a).

II. Plaintiff has a right to move for a change of judge due to prejudice, bias, and appearance of impropriety.

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In addition to his right to request a change of judge as a matter of course pursuant to Rule 51.05, Plaintiff also has the right to a change of judge due to prejudice, bias, and the appearance of impropriety. "During the time within which Rule 51.05 applies, a party may obtain a change of judge without any cause, whereas if § 508.090 is followed a party would be required to allege and prove prejudice." *Hough v. Hough*, 819 S.W.2d 751, 752 (Mo. Ct. App. 1991)

III. Plaintiff has a right to the change or transfer of the entire judicial circuit.

Plaintiff also has the right to move that the entire judicial circuit recuse itself due to prejudice, bias, or the appearance of impropriety. "The test, however, is whether a reasonable person would have factual grounds to find an appearance of impropriety and doubt the impartiality of the court. *State v. Smulls*, 935 S.W.2d 9, 17 (Mo. 1996), citing *State v. Nunley*, 923 S.W.2d 911, 918 (Mo. banc 1996) (citing *State ex rel. Wesolich v. Goeke*, 794 S.W.2d 692, 698 (Mo.App. 1990).

IV. In the instant case, a reasonable person would find that the 21st Circuit Court of St. Louis County has prejudice, bias, and the appearance of impropriety against Plaintiff.

Plaintiff is currently suing two judges of the 21st Circuit in Federal District Court in their individual capacity. The spouse of one of the defendants in that case also sits on the bench in the 21st Circuit. A Commissioner in the 21st Circuit was opposing counsel in Plaintiff's domestic relations case. Another Associate Circuit Judge was Guardian *ad litem* in Plaintiff's domestic relations case. Further, Plaintiff is suing the Clerk of the Court of this judicial circuit, Joan Gilmer, in her individual capacity over violations of his right to due process in the prosecution of his only other case in the 21st Circuit. A reasonable person would conclude that the prosecution

of the instant case results in an implicit prejudice, bias, and appearance of impropriety against Plaintiff.

V. This judicial circuit has recused itself in its entirety when there is a case involving quasi-judicial arms of the court.

All judges of the 21st Circuit Court of St. Louis County recused themselves in the case of *Tolu v. Reid*, 20SL-CC4680 after plaintiff Tolu's January 28, 2021 Emergency Motion to Disqualify All the Judges of the Twenty-First Judicial Circuit Because of the Appearance of Impropriety by the Presiding Judge and Bias Against Plaintiff. In her civil complaint, Plaintiff Tolu sought damages against three quasi-judicial arms of the court—two psychologists and one private attorney—who were appointed in her domestic relations case. Upon the revelation of emails by then-Presiding Judge Michael Burton disparaging plaintiff Tolu, she made her emergency motion for recusal of the entire circuit. Said motion incorporated emails which insulted not only plaintiff Tolu, but indeed any litigant critical of the conduct, ethics, or professionalism of anyone associated with the domestic relations section of the 21st Circuit Court. All judges of the circuit subsequently recused themselves, and the case was transfered to another judicial circuit.

In the instant case, is reasonable to assume that a similar culture continues to exist within the St. Louis County Circuit. Further, in Plaintiff's Federal civil rights case, the defendants are not merely the quasi-judicial arms of the court, but the judges themselves. Further, attorneys connected to Plaintiff's only other case in this judicial circuit have now ascended to its bench. It

is thus reasonable to assume that there is at least as much bias against Plaintiff as there was against Tolu.

VI. The Circuit Court of St. Louis County is further denying Plaintiff his certain and guaranteed rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution.

By denying Plaintiff access to the courts where he is a citizen, the Clerk of the Court of the 21st judicial circuit is violating Plaintiff's certain and guaranteed rights under the First Amendment to the United States Constitution.

By denying Plaintiff due process, the Clerk of the Court of the 21st judicial circuit is violating Plaintiff's certain and guaranteed rights under the Fifth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, for the foregoing reasons, Plaintiff prays that the St. Louis County Circuit Court should recuse all judges from presiding over Plaintiff's case; that this case should be referred to the Missouri Supreme Court for appointment of a judge outside of St. Louis County; and that the Court should grant such other and further relief as the Court deems just under the circumstances herein.

Respectfully submitted,

ERIC A. GARLAND

/s/ Eric A. Garland

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