

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually,
and BRADLEY J, EDWARDS,
individually.

Defendants.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. 502009CA040800XXXXMBAG

JUDGE: HAFELE

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S
MOTION TO DISQUALIFY TRIAL JUDGE**

Plaintiff/Counter-Defendant Jeffrey Epstein (hereinafter "Epstein"), by and through his undersigned attorney and pursuant to Rule 2.330 of the *Florida Rules of Judicial Administration* and § 38.10 of the *Florida Statutes*, 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:

PROCEDURAL REQUISITES

Based upon the facts delineated below, Epstein has a well-founded fear that he will not receive a fair trial before this Court and that this Court will not be impartial, but will be prejudiced against Epstein. Epstein makes this motion in a timely manner within ten (10) days of discovery of the facts which constitute the grounds for this motion pursuant to Rule 2.330(e) of the *Florida Rules of Judicial Administration*, and submits that he has not filed any other Motions to Disqualify under this Rule. This Rule requires that this Court only determine the legal sufficiency of this Motion; the Court may not pass on the truth of the facts alleged. Further, the Rule requires the Court to immediately enter an order granting disqualification and proceed no

further in the action if the motion is legally sufficient. Finally, a certificate of good faith from counsel for Epstein, and a copy of the Affidavit of Epstein are also provided herein.

STATEMENT OF FACTS

On October 3, 2017, the parties to this action were before this Court on several Motions, one of which was Defendant/Counter-Plaintiff Jeffrey Epstein's Motion for Enlargement of Time to Respond to certain Motions filed by Defendant/Counter-Plaintiff Bradley Edwards's ("Edwards") on September 25, 2017, which Responses were due on September 28, 2017¹. The reasons for the request for more time were delineated clearly in the Motion, and included the following facts: that many of the Motions were directed at Epstein's assertions of various privileges, including his privilege against self-incrimination, and that due to Hurricane Irma and Hurricane Maria completely devastating Epstein's home and all infrastructure on the island on which he resides in the United States Virgin Islands, undersigned had little to no contact with Epstein; that the volume of Motions to which Epstein had to respond in the three days was insurmountable for undersigned with all of the other depositions, mediations, and work obligations in the three-days in which she had to respond² and with co-counsel, as he had presented to the Court, out of town for the entire week; and finally, that because undersigned could not communicate with her client due to the devastation from the hurricane, she was unable to advise Epstein of the several Motions filed by Edwards, or discuss with him the possible

¹ Epstein was able to file responses to two of the three Motions directed at his Motion for Summary Judgment, as well as to two of the other Motions filed by Edwards, but did not file responses to any Motions pursuant to which overruling Epstein's privileges were asserted.

² Undersigned has been lead civil counsel of record for Epstein since 2012 and has never once missed a deadline or requested an enlargement of time within which to comply with a Court Order or other deadline.

ramifications/outcomes regarding these Motions, his privileges, and any waiver or overruling of the assertion of same. A true and correct copy of the Motion is attached hereto as "Exhibit A."

At the hearing, the Court denied the Defendant/Counter-Plaintiff's Motion, which is not the basis for this Motion to Disqualify. After denying same, however the Court made the following comments:

8 Number one, I don't want to be accused
9 of being insensitive to those who have
10 suffered through the recent storms, nor do I
11 want to be accused of being insensitive to
12 the fact that Jewish holidays fell within
13 the time period at issue. But at the same
14 time, the information, at least that is
15 contained in the documents that I have
16 reviewed, for example, reflect Mr. Epstein's
17 access to airplanes.

See Transcript of October 3, 2017 hearing, Volume I, p 21; lines 8-17, attached hereto as "Exhibit B." Next, the Court stated the following:

1 Also, while I eminently respect choice
2 of counsel, at the same time there has not
3 been any demonstration that, for whatever
4 reason, Mr. Epstein does not have the
5 wherewithal economically to be able to have
6 sufficient representatives so as to fortify
7 lead counsel in the preparation and defense
8 of the -- in preparation of any written
9 materials or in the defense of the subject
10 claim.
11 So again, while I have personal empathy
12 for anyone who is a sole practitioner, that
13 is not my choice. That is the choice of a
14 sophisticated business person in the form of
15 Mr. Epstein, who again, to my knowledge, and
16 totally from what I have read in the
17 materials and his agreement, at least at one
18 point in time, to stipulate to a significant
19 net worth.

20 There is no suggestion of economic
21 hardship so as to limit his choice of
22 lawyers or law firms, lawyers or law firms
23 that have sufficient resources to be able to
24 respond instantaneously to many of the
25 arguments that were raised by way of the
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1 motions filed on September 25th.

See Exhibit B; p. 22-page 23; line 1. These comments were regarding both Epstein's wealth and his counsel.

Later on in the hearing, which lasted approximately six hours, counsel for Edwards tried to address the several Motions he filed on September 25 related to Epstein's assertion of his privilege against self-incrimination; the Motions to which Epstein did not respond due to both time constraints created by the three-day turnaround for filing same and the complete inability to discuss these constitutional and statutory rights and privileges with Epstein, as explained above.

The Court responded by pronouncing the following:

17 THE COURT: The only reason I'm
18 concerned -- again, I made myself clear to
19 counsel for Mr. Epstein that I will not
20 accept, respectfully, the excuse that there
21 is insufficient representation or that
22 there's not enough time.
23 Having been an attorney or litigator
24 for the better part of 17 years prior to
25 being on the bench and now as a judge for
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1 the better part of 18 years, I think I have
2 a pretty good handle, based upon that
3 combined 35 years of experience on what is
4 necessary to properly defend and prosecute
5 civil cases.
6 And this is a major undertaking from
7 both sides, and also a major undertaking
8 from the Court. I harken back to a case
9 yesterday on a very complex business matter

10 where one of the attorneys was a clerk for
11 Judge Middlebrooks, federal court. And he
12 gave somewhat of a wry smile when he stated
13 that our trial courts here in the state of
14 Florida are not afforded with the same
15 support as our federal judges and our
16 appellate court judges.

17 And while I am not complaining, it's a
18 reality. But I spend as much time as I can
19 to prepare myself and to read the materials.
20 And if help is an absolute requirement, we
21 seek it out through our trial clerks, who,
22 while they do an exceptional job, are
23 themselves busy, because I think there's
24 about nine of them assigned to somewhere
25 around 50 judges in the main courthouse, one

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1 up in South County -- one down in South
2 County, one up in North County. So they're
3 stretched, so we don't have that same
4 luxury. The litigants do.

5 And I want to make clear that if help
6 is needed, make sure you get it, because,
7 again, this is complex. These are multitude
8 issues, they're involved, and I want to give
9 fair warning that the lack of time for solo
10 practitioners -- while, again I'm empathetic
11 to it, while I understand, it's not going to
12 suffice here.

13 So whatever the proper support -- help
14 may be required -- I am giving you fair
15 warning now, a couple months before trial,
16 that it be secured.

17 All right, so again, I don't want to
18 overstate the situation, or -- it is not
19 being critical of anyone. It's just that
20 based upon the time and experience that I
21 have had in dealing with cases of this
22 type -- not so much these issues, but
23 certainly of the magnitude that you are
24 dealing with. I recognize that there will
25 be support -- help required. And perhaps

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1 that has to be emphasized today so that we

2 are not going to be running into this issue
3 in the future.
4 And again, that has nothing to do with
5 the holidays. I don't want it to be
6 misconstrued. It has nothing to do with
7 anything that may have transpired as a
8 result of the recent hurricane. It's only
9 as a matter of observation, and, again,
10 replying on what was brought up by
11 Ms. Haddad Coleman at the inception of the
12 hearing today, as far as time constraints.

Id. at pp. 100; line 17 – p. 103; line 12. Next, despite the representations to the Court regarding issues addressing Epstein's Fifth Amendment Privilege against self-incrimination, Edwards is permitted to raise the issue before the Court, and the following occurs:

2 THE COURT: Well, my understanding is
3 that anything of a substantive nature it
4 gets into, any of the areas that have
5 already been previously inquired into would
6 be privileged as it relates to the Fifth
7 Amendment and the assorted other amendments
8 that he has stood upon will continue to be
9 asserted. And presumably the
10 attorney-client privilege also?
11 MR. GOLDBERGER: Subject to
12 consultation with our client, obviously,
13 Judge.
14 THE COURT: But it sounds like it will
15 be. I am going to accept that as a yes.

See Transcript of Hearing October 3, 2017 hearing, Volume II, p. 128; lines 2-15.

Finally, the Court asks Edwards how much time he needs to file a reply to Epstein's Motion responsive to the privilege and fifth amendment issues, and Edwards's counsel tells the Court that he is going on vacation. The Court replies the following to counsel for Edwards:

12 THE COURT: That's why I'm saying I'm
13 certainly not going to compromise your
14 vacation to require you to be here.

15 I don't know what your schedule looks
16 like during the earlier part of November,
17 other than I'm sure you're going to be in a
18 jam with others that are going to be
19 demanding your time.

Id. at p. 139; lines 12-19. *See also page 140; lines 10-12* (“You get back, you said, on the 3rd?

MR. SCAROLA: Yes, sir. THE COURT: So we can give you some time as well.”). The Court continued:

6 THE COURT: Again, I want the record to
7 be clear that, in a case of this type and
8 magnitude -- usually I hold consistent no
9 matter what the case -- but certainly I'm
10 not seeking to compromise anyone's vacation
11 time. They're well deserved. I don't want
12 to put anybody in any form of awkward
13 position simply to accommodate the Court's
14 deadlines.

Id. at p. 144; lines 6-14.

As Epstein asserts in his affidavit, he does not feel that he can receive a fair hearing before Judge Hafele, particularly in light of the Judge's repeated comments regarding his wealth, his choice of counsel, and his determination of his assertion of privilege at the October 3, 2017 hearing. Accordingly, disqualification of the Court should be ordered.

ARGUMENT

The proper avenue through which to seek disqualification of a trial judge in Florida is a motion pursuant to Rule 2.330 of the *Florida Rules of Judicial Administration*. *Brown v. St. George Island, Ltd.*, 561 So. 2d 253, 255 (Fla. 1990). As stated above, attached to this Motion is a sworn affidavit signed by Jeffrey Epstein delineating the facts relied upon as grounds for disqualification. This Motion is timely filed and complies in all respects with the requirements

contained in § 38.10 of the *Florida Statutes*, Rule 2.330 of the *Florida Rules of Judicial Administration*, and controlling case law.

It is well-settled in Florida that “every litigant is entitled to nothing less than the cold neutrality of an impartial judge.” *State ex rel. Davis v. Parks*, 194 So. 613, 615 (Fla. 1939). Likewise, the question of disqualification focuses not on what the judge intended, but rather how the message is received. *See Livingston v. State*, 441 So. 2d 1083, 1086 (Fla. 1983) (“[I]t is not a question of how the judge feels; it is a question of what feeling resides in the affiant’s mind and the basis for such feeling.”). “Judges ought to be more learned than witty; more reverend (sic) than plausible; and more advised than confident . . . Patience and gravity of hearing is an essential part of justice; and an overspeaking judge is no well tuned cymbal.” *Great Am. Ins. Co. of New York v. 2000 Island Blvd. Condo. Ass’n, Inc.*, 153 So. 3d 384, 390 (Fla. 3d DCA 2014) (citations omitted). Florida law mandates recusal of a judge when a litigant establishes a reasonable, well-grounded fear that he will not receive a fair and impartial trial, or that the judge has pre-judged the case. *See Wargo v. Wargo*, 669 So. 2d 1123 (Fla. 4th DCA 1996) (Party seeking to disqualify judge need only show well-grounded fear that he will not receive fair trial at hands of judge; it is not question of how judge feels, but rather, of what feeling resides in affiant's mind and basis for such feeling.); *Nunez v. Backman*, 645 So. 2d 1063, 1064 (Fla. 4th DCA 1994) (“A motion for disqualification should be granted if the facts alleged therein, taken as true, would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial from the judge.”) (citing *Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981)).

“Where a motion for disqualification fulfills the procedural requirements of that rule, is supported by a verified statement of specific facts that are reasonably sufficient to create a well-founded fear on the part of a party that he or she will not receive a fair trial, and is timely made, it should be granted.” *Borjas v. Brescher*, 579 So. 2d 399, 400 (Fla. 4th DCA 1991) (citing *Fischer v. Knuck*, 497 So. 2d 240, 242 (Fla.1986)). A trial court, when presented with a motion to disqualify, must limit its review of the motion to 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) (“The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially.”); *see also Rogers v. State*, 630 So. 2d 513 (Fla. 1993). In *Livingston*, the Supreme Court of Florida submitted the following:

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.

Livingston, 441 So. 2d at 1085-86 (citation omitted); *see also Hayslip v. Douglas*, 400 So. 2d 553, 555 (Fla. 4th DCA 1981); CODE OF JUD. CONDUCT Canon 3-C.

Further, 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 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). Moreover, in *Rucks v. State*, 692 So. 2d 976 (Fla. 2d DCA 1997), the court stated that pursuant to § 38.10 of the *Florida Statutes*, a defendant is not required to prove actual prejudice, but rather must show a well-grounded fear that he would not receive a fair trial or hearing at the hands of the judge. The court looks to see whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial. *Id.* See also *Roberts v. State*, 840 So. 2d 962, 969 (Fla. 2002); *Correll v. State*, 698 So. 2d 522, 524 (Fla. 1997); *Cave v. State*, 660 So. 2d 705, 708 (Fla. 1995).

This Court must review the motion from the Epstein’s perspective, questioning the “judge’s impartiality rather than [from] the judge’s [perspective] of his ability to act fairly and impartially.” *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So. 2d 1332, 1334 (Fla. 1990). Irrefutably, the entire critique by the Court at the October 3, 2017 hearing, as set forth above, coupled with the pending Motions and issues raised therein, would place any “reasonably prudent person” in fear of not receiving and fair and impartial hearing from the Court. Here, Epstein’s net worth is a central issue in this case and the subject of countless pending Motions. Indeed, the Court has made repeated references questioning whether Epstein even suffered any damages in this hearing. However, the Court’s repeated commentary regarding Epstein’s wealth; including the reference to Epstein’s plane in response to Epstein’s home and the entire infrastructure on the island on which he resides being completely destroyed by two back-to-back

hurricanes, and assertions that he should be required to pay for more attorneys because he has the means to do so, create grave concern; especially when Edwards is seeking punitive damages in this case and worth discovery is still being litigated. Moreover, the obvious disparate treatment afforded to counsel for Epstein as opposed to the prodigious deference shown to counsel for Edwards, as quoted above, create a real, substantial, and well-founded fear in Epstein that he cannot receive a fair hearing or trial before this Court.

Canon 3(E)(1)(a) of the *Code of Judicial Conduct* provides, in relevant part, that “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where the judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of disputed evidentiary facts concerning the proceedings.” CODE OF JUD. CONDUCT Canon 3-C; *Shore Mariner Condo. Ass’n v. Antonious*, 722 So. 2d 247, 248 (Fla. 2d DCA 1998) (“Trial judges must studiously avoid the appearance of favoring one party in a lawsuit...”). Prejudice against a party’s attorney can be as detrimental to the interests of that party as prejudice against the party himself. *Livingston v. State*, 441 So.2d 1083, 1087 (Fla. 1983). Where a judge displays contempt or antipathy for a party’s counsel, such conduct is sufficient to prompt a reasonably prudent person to believe she will not get a fair trial. *See Wicklund v. Schoff*, 755 So. 2d 192, 193 (Fla. 5th DCA 2000).

The case of *Jiminez v. Ratine*, 954 So. 2d 706 (Fla. 2nd DCA 2007) is instructive. In *Jiminez*, the petitioner sought to have the trial judge disqualified based upon comments made by the trial judge that showed hostility toward the petitioner’s attorney. These comments created in the petitioner the fear that she would not receive a fair trial by the trial judge. *Id.* Petitioner filed

a motion to disqualify the trial judge, which was denied. The appellate court reversed, and in so doing held that the trial judge erred in not granting the motion. *Id.* at 709. The court, finding that the cumulative effect of the statements made by the trial court satisfied this burden, stated:

The motion must be granted provided only that the facts alleged “would place a reasonably prudent person in fear of not receiving a fair and impartial trial.” MacKenzie, 565 So.2d at 1335 (quoting *Livingston v. State*, 441 So.2d 1083, 1087 (Fla.1983)). Moreover, the court must review the motion from the litigant's perspective questioning the “judge's impartiality rather than [from] the judge's [perspective] of his ability to act fairly and impartially.” *Id.* at 1334 (quoting *Livingston*, 441 So.2d at 1086).

Id. at 708. The *Jiminez* court continued, stating that “[i]n evaluating motions to disqualify, sufficiency of the substance is essentially an extension of sufficiency of the form. This legal sufficiency is a pure question of law.” *Id.* at 709 (citing *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So. 2d 1332, 1335 (Fla. 1990)). “Further, if the form of the motion is sufficient — i.e., the motion is procedurally sufficient — it does not matter whether the substance of the allegations are true.” *Id.* (citing *Madura v. Turosienski*, 901 So. 2d 396, 398 (Fla. 2d DCA 2005) (noting that, in evaluating a motion to disqualify, the court must accept the facts alleged as true)). Similarly, in the case at hand, the movant’s fear is well-grounded in that the Court’s actions and statements at the October 3, 2017 hearing gave Epstein a well-founded fear that he will not receive a fair hearing in front of a judge making such comments and announcing such opinions regarding his financial status and his counsel. Accordingly, disqualification is required. *See also Ginsberg v. Holt*, 86 So. 2d 650, 651 (Fla. 1956); *Olszewska v. Ferro*, 590 So. 2d 11 (Fla. 3d DCA 1991).

CONCLUSION

Accordingly, based upon the aforementioned facts and the case law delineated herein,

this Motion for Disqualification meets the requirements of Rule 2.330 of the *Florida Rules of Judicial Administration*, § 38.10 of the *Florida Statutes*, and prevailing case law, and should be granted.

CERTIFICATE OF COUNSEL

The undersigned, as counsel for Jeffrey Epstein, based upon her review of the law, her presence in the courtroom, her review of the hearing transcript, her communications with witnesses who were present at the hearing, and her representation of the Plaintiff/Counter-Defendant, hereby certifies that this Motion is made in good faith. The undersigned counsel further certifies that the affidavit of the Plaintiff/Counter-Defendant is likewise in good faith, and is based upon his well-founded fear that he cannot receive a fair hearing or trial from Judge Hafele.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served, via electronic service, to all parties listed below, and upon Judge Donald Hafele, via hand delivery, this October 12, 2013.

Tonja Haddad Coleman
Tonja Haddad Coleman, Esq.
Florida Bar No.: 176737
Tonja Haddad, PA
5315 SE 7th Street
Suite 301
Fort Lauderdale, Florida 33301
954.467.1223
954.337.3716 (facsimile)
Counsel for Epstein

SERVICE LIST

Jack Scarola, Esq.
Searcy Denney Scarola et al.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jack Goldberger, Esq.
Atterbury, Goldberger, & Weiss, PA
250 Australian Ave. South
Suite 1400
West Palm Beach, FL 33401

Marc Nurik, Esq.
1 East Broward Blvd.
Suite 700
Fort Lauderdale, FL 33301

Bradley J. Edwards, Esq.
Farmer Jaffe Weissing Edwards Fistos Lehrman
425 N Andrews Avenue
Suite 2
Fort Lauderdale, Florida 33301

Fred Haddad, Esq.
301 SE 7th Street
Suite 301
Fort Lauderdale, FL 33301
Dee@FredHaddadLaw.com

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JUDGE: CROW

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S AFFIDAVIT IN
SUPPORT OF HIS MOTION FOR DISQUALIFICATION**

Before me, the undersigned authority, personally appeared Jeffrey Epstein, who being sworn, states the following:

I am the Plaintiff/Counter-Defendant in this matter and I am moving to disqualify Judge David Crow. I have, after discussions with my attorney and witnesses, as well as reading the transcript of this hearing, instructed my attorney to file this Motion as I firmly believe that I cannot receive a fair trial or hearing before Judge Crow, the presiding Judge in this matter.

After reading and reviewing the Transcript of the March 11, 2013 hearing on Defendant/Counter-Plaintiff's Motion to strike discovery objections as untimely, I feel that the Judge's inquiry into my attorney's familial relationship with or to attorneys who I have come to understand were involved in another case on which the Judge ultimately was required to recuse himself only two days after my hearing, particularly when my attorney's relationship with such attorneys had absolutely no bearing whatsoever to the issues presented at my hearing, coupled with the Judge's questioning and commentary regarding my previous challenge to his rulings,

departed from the Judge's detached, neutral role. As such, I do not feel that I will receive a fair hearing before Judge Crow.

Judge Crow's statements, coupled with and the manner in which he conducted his inquisition of my attorney regarding the above-referenced issues convinces me that I cannot receive a fair hearing in this case. As such, I have directed my attorney to file this Motion to Disqualify Judge Crow as I am convinced I cannot receive a fair hearing or a fair trial before Judge Crow.

FURTHER AFFIANT SAYITH NAUGHT.

State of New York)
County of New York)

Before me, the undersigned authority, this day personally appeared Jeffrey Epstein, who is personally known to me, and who first being duly sworn, says that all of the matters contained herein are true and correct.

NOTARY PUBLIC,

Sworn and Subscribed before me this March ____, 2013.