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Judicial Disqualification: What Every Practitioner (and Judge) Should Know

by Douglas J. Glaid

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In the course of representing a client, something may occur or be discovered which will cause an attorney and his or her client to conclude that the client will be unable to receive a fair hearing or trial before the trial judge. Assuming that the judge does not disqualify himself or herself *sua sponte*, counsel may consider filing a motion to disqualify or recuse the trial judge from further presiding in the action. This article will explain the procedure counsel must follow when filing such a disqualification motion, review the requirements imposed upon trial judges when determining disqualification motions, and examine the case law addressing the legal sufficiency of disqualification motions. Additionally, the procedure and law applicable to disqualification of trial judges in federal cases will be briefly discussed.

Procedure Under Fla. R. Jud. Admin. 2.160

The procedure for filing disqualification motions for civil and criminal cases is set out in rule 2.160 of the Florida Rules of Judicial Administration. Counsel should also be mindful of the fact that a statute relating to judicial disqualification exists, F.S. §38.10,¹ the requirements of which are consistent with rule 2.160 and should be satisfied by counsel. Additionally, Fla. Code Jud. Conduct Canon 3E(1) sets forth a nonexclusive list of instances in which a judge must disqualify himself or herself from a case in which the judge's "impartiality might reasonably be questioned."

A motion to disqualify must be in writing and "specifically allege the facts and reasons" relied on to show the basis for disqualification. See Fla. R. Jud. Admin. 2.160(c). The motion must be sworn to by the "party" by signing the motion under oath or by a separate affidavit. *Id.* Counsel for the party seeking disqualification must also separately certify that the motion and his or her client's statements contained therein are made in good faith. *Id.*

Rule 2.160(d) sets forth the following bases for a disqualification motion, at least one of which must be shown in the motion:

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;
2. that the judge before whom the case is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto or is interested in the result thereof;
3. that the judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree; or
4. that the judge is a material witness for or against one of the parties to the cause.

An important requirement contained in rule 2.160(e) is that a disqualification motion must be made within 10 days after the "discovery of the facts constituting the grounds" for the motion. Additionally, the motion must be "promptly presented" to the trial court for "immediate ruling." *Id.*

If the facts forming the basis for the disqualification motion are discovered during trial, the motion nevertheless must be in writing in accordance with rule 2.160(c). Such motions made at trial must be determined "immediately." See Fla. R. Jud. Admin. 2.160(e). Regardless of when the motion was made, it has been held that once a judge has signed an order of disqualification, the judge may not reconsider his or her decision and reinstate himself or herself in the proceedings.²

The failure to comply with the procedural requirements contained in rule 2.160 justifies the denial of the disqualification motion. For instance, the denial of disqualification motions has been upheld as proper when a party untimely files the motion,³ when the motion fails to specifically describe any prejudice or bias on the part of the trial judge,⁴ when the motion omits the certification of good faith by counsel,⁵ and when a party fails to sign a motion to disqualify the judge.⁶

Initial and Successive Disqualification Motions

If an initial disqualification motion alleges a fear of prejudice or bias under rule 2.160(d)(1), the trial judge is required to determine *only* the "legal sufficiency" of the motion and is prohibited from passing on the truth of the facts averred. See Fla. R. Jud. Admin. 2.160(f). Indeed, the *only* reason a judge can properly give for denying a disqualification motion other than a procedural deficiency is that the motion is "legally insufficient." *Id.* In the event a trial judge expresses another reason for denying the motion or "takes issue" with the motion either personally or through counsel, the judge is required to disqualify himself *regardless* of the insufficiency of the motion.⁷ As observed by the Supreme Court in *Bundy v. Rudd*, 366 So. 2d 440, 442 (Fla. 1978), the purpose of this prohibition is to prevent the creation of an "intolerable adversary atmosphere" between the trial judge and the litigant. Some appellate courts have broadly interpreted the phrase "passing on the truth of the facts" so as to strictly enforce the prohibition against disputing the facts alleged in the motion. For example, in *Rowe-Linn v. Berman*, 601 So. 2d 618 (Fla. 4th DCA 1992), the Fourth District held that since it "feared" that the trial judge "stepped over the line" by attempting to justify the denial of a disqualification motion on grounds other than legal sufficiency, disqualification was required.⁸ This was so even though the appellate court felt that the disqualification motion was legally insufficient. *Id.* at 619. On the other hand, it has been held that if the trial judge merely explains the status of the record when determining the disqualification motion, the judge has not contested the allegations contained in the motion and disqualification is not required.⁹ Similarly, when a judge did not deny making the remarks which formed the basis for a recusal motion, but rather merely stated that he was quoted out of context, the appellate court upheld the judge's denial of the motion.¹⁰

Section (g) of rule 2.160 deals with the filing of successive disqualification motions so as to prevent the possibility of an abuse of the disqualification rule, such as "judge-shopping." The rule provides that if an initial judge has been disqualified on the ground of alleged prejudice or partiality, the successor judge cannot be disqualified on a successive motion by the same party "unless the successor judge rules that he or she is in fact not fair or impartial in the case." Unlike the first judge, the successor judge is permitted to pass on the truth of the facts alleged in support of the successive motion. Additionally, under rule 2.160(h) a successor judge may reconsider, vacate, or amend any prior legal or factual rulings of a disqualified judge. This is accomplished by the filing of a motion for reconsideration within 20 days of the order of disqualification. *Id.* The 20-day period for filing a motion for reconsideration may be extended upon a showing of good cause for a delay in moving for reconsideration or where other grounds for reconsideration exist. *Id.*

What Are "Legally Sufficient" Motions?

Even assuming that a disqualification motion meets the procedural requirements set forth in Fla. R. Jud. Admin. 2.160 and F.S. §38.10, it nevertheless must be denied if not "legally sufficient."¹¹ Conversely, if the motion is legally sufficient, it must be granted immediately.¹² The test for determining the legal sufficiency of a motion for disqualification is an objective one which asks whether the facts alleged in the motion would place a reasonably prudent person in fear of not receiving a fair and impartial trial.¹³ The disqualification motion must contain an "actual factual foundation" for the alleged fear of prejudice.¹⁴ Although the term "legally sufficient" is fluid in nature, a review of the case law considering the legal sufficiency of disqualification motions reveals certain recurring principles that counsel should keep in mind when drafting a motion to

disqualify a trial judge.

A party's complaint about the trial court's rulings as a basis for disqualification has consistently been held to be insufficient to require the judge's recusal.¹⁵ In this regard it is established that a judge may not be disqualified for *judicial* bias, but rather only for *personal* bias against a party or his or her case.¹⁶ Thus, for example, disqualification has been held to be inappropriate when its basis has been the trial judge's recession of previously entered orders granting the moving party assistance and the denial of interim attorneys' fees to the party.¹⁷ Additionally, a trial judge's innocuous inquiry during voir dire concerning a prospective juror's availability to serve on the venire was held not to demonstrate prejudice warranting recusal.¹⁸ In another case, a judge's statement at a bond reduction hearing that he did not care whether the defendant got out of jail or not was held to be legally insufficient to show that the judge was prejudiced, either against the defendant or in favor of the state.¹⁹ On the other hand, cases reflecting a personal bias mandating disqualification have included situations when the trial judge provided a cross-examination tip to the prosecutor;²⁰ when the trial judge made comments that he would be uncomfortable making credibility determinations regarding certain members of one party's family, even though it did not appear that the outcome of the proceedings rested upon the credibility of any of the persons involved;²¹ when one of the parties or his or her counsel had dealings with a relative of the court;²² or when a judge told others that he would kill the defendant if the defendant had done to the judge's daughter what he had done to the victim.²³ In short, it appears that either a trial judge's demonstration of ill will or, conversely, favoritism toward one of the parties to an action is needed to disqualify the judge.

A related principle mitigating against disqualification is that a judge is not required to abstain from forming mental impressions and opinions during the course of judicial proceedings. For instance, in *Mobil v. Trask*, 463 So. 2d 389 (Fla. 1st DCA 1985), a deputy commissioner's remark to an employer/carrier's attorney at a workers' compensation hearing that "I don't see how you can't find this accident compensable," which comment related directly to the merits of the petitioner's case, was nonetheless held to be insufficient to justify the granting of a recusal motion. And, in *Brown v. Pate*, 577 So. 2d 645 (Fla. 1st DCA 1991), the First District held that in a dependency adjudication of minor children following a father's acquittal in the prosecution for the mother's murder, the trial judge's expression of "grave concern" regarding the father's visitation did not serve as a basis for judicial disqualification. Citing the rationale of the *Mobil* case, the court opined that, "A judge may form mental impressions and opinions during the course of presentation of evidence so long as she does not prejudice the case." *Pate*, 577 So. 2d at 647.²⁴ It has been said that a judge is the "sum of his past" who is expected to be influenced by real life experiences.²⁵

As evident from the holding in *Mobil*, the principle allowing trial judges to express their opinions during legal proceedings is not without exception. Statements made by trial judges during judicial proceedings have been held to be sufficient to require disqualification when the remarks demonstrate that the judge has prejudged the case. For example, in *Barnett v. Barnett*, 727 So. 2d 311 (Fla. 2d DCA 1999), it was held that a judge should have disqualified himself in a dissolution action based on his comment to the wife's counsel at the close of the evidence, but before final arguments were heard, that her client should attempt to negotiate for more visitation than she would otherwise receive if the trial court made the decision, since the comment could reasonably be interpreted to mean that the judge had "crossed that line" from forming mental impressions to prejudging the issue of custody prior to the conclusion of the trial. Likewise, in *Lewis v. State*, 530 So. 2d 449 (Fla. 1st DCA 1988), a criminal case, disqualification was held required when the judge stated before trial that he did not try third degree felony cases, that he exceeded the guidelines in the last four cases he tried, and that the defendant would get four years in prison if convicted.²⁶

A trial judge's hostility toward or criticism of counsel or counsel's client has proved to be a fertile ground for litigation concerning judicial disqualification. As held by the Supreme Court in *Ginsberg v. Holt*, 86 So. 2d 650, 651 (Fla. 1956), a trial court's bias or prejudice against a litigant's attorney is grounds for disqualification when the prejudice "is of such degree that it adversely affects the client." Consequently, disqualification has been held to be appropriate in the following circumstances: when the judge "directs base vernacular towards an attorney . . . in open court," *Olszewska v. Ferro*, 590 So. 2d 11 (Fla. 3d DCA 1991); the judge says he will "deal with" an attorney for having "gone over" his head, *Lamendola v. Grossman*, 439 So. 2d 960 (Fla. 3d DCA 1983); the judge states that the client's attorney "should not be in the case," *Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981); the judge delivers a tirade about the lawyer's opposition to the judge's appointment to other

judicial positions, *McDermott v. Grossman*, 429 So. 2d 393 (Fla. 3d DCA 1983); or when attorneys for petitioners had testified against the judge at impeachment proceedings brought against the judge, *Brewton v. Kelly*, 166 So. 2d 834 (Fla. 2d DCA 1964).²⁷ The fact that a trial judge has been disqualified in one case due to prejudice against an attorney will not justify the granting of a blanket order restraining the judge from hearing all cases involving the attorney.²⁸

The above notwithstanding, it has been held that a judge's expression of dissatisfaction with counsel or counsel's client's behavior *alone* does not give rise to a reasonable belief that the trial judge is biased so as to warrant recusal. For example, in *Oates v. State*, 619 So. 2d 23 (Fla. 4th DCA 1993), the trial judge held an obstreperous criminal defendant in contempt. Based on the judge's remark to the press that the defendant was "being an obstinate jerk," the defendant unsuccessfully moved for the judge's disqualification. In denying the defendant's petition for a writ of prohibition, the appellate court concluded that the defendant could not have reasonably had a legitimate fear of not receiving a fair trial based on the judge's remark.²⁹ Thus, counsel should be mindful of the fact that a judge's lone critical comment of counsel or the client, unless particularly egregious, will not generally suffice for disqualification purposes.

Conversely, an attorney's or party's criticism of a trial judge, without more, has not been held to be sufficient to warrant disqualification. For instance, an expressed intent to appeal a judge's ruling, or to file a complaint with the Judicial Qualifications Commission against the judge, does not in itself constitute a legally sufficient ground for disqualification.³⁰

The issue of judicial disqualification has occasionally arisen in the context of contempt proceedings. Consistent with the principle that a judge cannot be disqualified for judicial bias, the mere fact that a judge has held a party in contempt does not require the judge's recusal.³¹ This is especially true in cases of direct criminal contempt when it is necessary for immediate and summary action on the part of the trial judge. An exception to this rule exists, however, when the trial judge becomes personally involved in the conflict giving rise to the finding of contempt.³² For example, as the court explained in *Bryant v. State*, 363 So. 2d 1141, 1144 (Fla. 1st DCA 1978), in certain exceptional cases, due process may be violated if a judge tries a contempt committed against himself or herself or a contempt concerning disobedience to an order rendered by the judge, thus justifying the judge's disqualification. In *Bryant*, the court held that due process was denied the contemnor since the judge was the *only* witness available to prove the contempt charge, and the judge testified without being under oath and refused to be cross-examined.

Judicial Disqualification in Federal Cases

In federal cases, the law governing the disqualification of any justice, judge, or magistrate is contained in 28 U.S.C. §144, which requires the movant to file a timely and sufficient affidavit alleging that the judge has a "personal bias or prejudice either against him or in favor of any adverse party," as well as 28 U.S.C. §455, which sets forth two sections enumerating the grounds mandating disqualification.³³ Section §455(a) requires the disqualification of a judge when the judge's "impartiality might reasonably be questioned." Under this section, the proper inquiry for evaluating a disqualification motion is whether "an objective, disinterested observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt that justice would be done in the case."³⁴ Moreover, "the reasonable person is assumed to know all the publicly available facts bearing on the issue of recusal."³⁵

On the other hand, §455(b) of the statute provides for disqualification if certain facts exist, such as the judge's relationship with the parties or a pecuniary interest in the case. Under this section, it is important to note that it is not necessary to demonstrate that these facts establish the judge's partiality.³⁶

Insofar as the procedure to be utilized in drafting disqualification motions, aside from the requirements contained in 28 U.S.C. §144 counsel should also refer to the applicable rule of procedure—Fed. R. Crim. P. 25(a) in criminal cases and Fed. R. Civ. P. 63 in civil cases. Additionally, as in state cases, counsel should consult decisional law interpreting the applicable statutory grounds for disqualification.

Summary

Trial counsel should be aware of the procedural requirements of Fla. R. Jud. Admin. 2.160, the statutory requirements of F.S.

§38.10, and the ethical requirements of Fla. Code Jud. Conduct Canon 3E(1) when drafting a motion to disqualify a trial judge from presiding in a state case. In federal cases, counsel should consult 28 U.S.C. §§144 and 455 as well as the applicable procedural rule. Counsel should also research the case law in order to be aware of grounds that have been held to be legally sufficient for judicial disqualification. The filing of "legally sufficient" motions for disqualification in good faith will reduce the judicial time spent in determining such motions and ensure that cases are decided by trial judges who are fair and impartial. While the late Judge Letts' lament that it is "too easy to get rid of a judge nowadays, a result which engenders judicial impotency"³⁷ may still be true, counsel's knowledge of and compliance with the requirements contained in the law governing judicial disqualification will invariably lead to judicial efficacy.

¹ Fla. Stat. §38.10 (1999), provides: "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 prescribing judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. However, when any party to any action has suggested the disqualification of a trial judge and an order has been made admitting the disqualification of such judge and another judge has assigned and transferred to act in lieu of the judge so held to be disqualified, the judge so assigned and transferred is not disqualified on account of alleged prejudice against the party making the suggestion in the first instance, or in favor of the adverse party, unless such judge admits and holds that it is then a fact that he or she does not stand fair and impartial between the parties. If such judge holds, rules, and adjudges that he or she does stand fair and impartial as between the parties and their respective interests, he or she shall cause such ruling to be entered on the minutes of the court and shall proceed to preside as judge in the pending cause. The ruling of such judge may be assigned as error and may be reviewed as are other rulings of the trial court."

² See *Deberry v. Ward*, 625 So. 2d 992 (Fla. 4th D.C.A. 1993).

³ See, e.g., *Willacy v. State*, 696 So. 2d 693 (Fla. 1997); *Carter v. Howey*, 707 So. 2d 906 (Fla. 5th D.C.A. 1998); *Foley v. Fleet*, 644 So. 2d 551 (Fla. 4th D.C.A. 1994); but see *Marcotte v. Gloekner*, 679 So. 2d 1225 (Fla. 5th D.C.A. 1996); *State ex rel. Morgan v. Baird*, 660 So. 2d 328 (Fla. 2d D.C.A. 1995) (motions deemed timely filed).

⁴ See, e.g., *Davis v. Bat Management Foundation, Inc.*, 723 So. 2d 349 (Fla. 5th D.C.A. 1998).

⁵ See *Berkowitz v. Rieser*, 625 So. 2d 971 (Fla. 2d D.C.A. 1993).

⁶ See, e.g., *Gaines v. State*, 722 So. 2d 256 (Fla. 5th D.C.A. 1998).

⁷ See *Fabber v. Wessel*, 604 So. 2d 533, 534 (Fla. 4th D.C.A. 1992) (written response to litigant's petition for writ of prohibition filed by assistant attorney general on behalf of the judge had effect of creating an intolerable adversary atmosphere between the judge and the movant so as to require the granting of the writ); *accord Ellis v. Henning*, 678 So. 2d 825, 827 (Fla. 4th D.C.A. 1996).

⁸ See also *Gieske v. Moriarty*, 471 So. 2d 80, 81 (Fla. 4th D.C.A. 1985) (where trial judge "undertook to controvert each of the asserted grounds for recusal" and thereby "assumed the posture of an adversary").

⁹ *Barwick v. State*, 660 So. 2d 685, 693-694 (Fla. 1995); *Kowalski v. Boyles*, 557 So. 2d 885, 887 (Fla. 5th D.C.A. 1990) (statement by judge during hearing on motion for disqualification of judge merely stating the status of the record and not attempting to refute the charges of partiality, did not require disqualification of the judge); *Sanders v. Yawn*, 519 So. 2d 28, 29 (Fla. 1st D.C.A. 1987).

¹⁰ *Nassetta v. Kaplan*, 557 So. 2d 919, 921 (Fla. 4th D.C.A. 1990).

¹¹ See *Gieske v. Grossman*, 418 So. 2d 1055, 1057 (Fla. 4th D.C.A. 1982) ("The term 'legal sufficiency' encompasses more than mere technical compliance with the rule and statute. . . ."). Although not strictly within the purview of this article, it is noted that a petition for writ of prohibition is the appropriate procedural vehicle to test the validity of the denial of a disqualification motion filed pursuant to rule. See *Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th D.C.A. 1981), and cases cited therein.

¹² Fla. R. Jud. Admin. 2.160(f); *Livingston v. State*, 441 So. 2d 1083 (Fla. 1983).

¹³ See *Livingston*, 441 So. 2d at 1087; *Fischer v. Knuck*, 497 So. 2d 240, 242 (Fla. 1986); *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So. 2d 1332, 1335 (Fla. 1990).

¹⁴ *Fisher*, 497 So. 2d at 242.

¹⁵ See *Barwick*, 660 So. 2d at 692, and cases cited therein.

¹⁶ See *United States v. Archbold-Newball*, 554 F.2d 665, 682 (5th Cir. 1977); *Wiley v. Wainwright*, 793 F.2d 1190, 1193 (11th Cir. 1986) (bias or prejudice sufficient to disqualify a judge must stem from extrajudicial sources).

¹⁷ *Barwick*, 660 So. 2d at 692.

¹⁸ *Williams v. State*, 689 So. 2d 393, 395 (Fla. 3d D.C.A. 1997).

¹⁹ *Nassetta*, 557 So. 2d at 920.

²⁰ *Chastine v. Broome*, 629 So. 2d 293 (Fla. 4th D.C.A. 1993).

²¹ See *Smith v. Santa Rosa Island Authority*, 729 So. 2d 944 (Fla. 1st D.C.A. 1998).

²² See *Lytte v. Rosado*, 711 So. 2d 213 (Fla. 3d D.C.A. 1998), and cases cited therein; accord *McQueen v. Roye*, 25 Fla. L. Weekly D1415] (recusal required when movant's counsel had provided legal services and advice to the trial judge's brother).

²³ See *Fogelman v. State*, 648 So. 2d 214 (Fla. 4th D.C.A. 1994).

²⁴ See also *Nateman v. Greenbaum*, 582 So. 2d 643, 644 (Fla. 3d D.C.A. 1991) (while a trial court's expression of disbelief in a witness' testimony may reflect negatively on the judge's temperament, it is ordinarily no basis for disqualification); *Moser v. Coleman*, 460 So. 2d 385 (Fla. 5th D.C.A. 1984) (fact that the judge had heard at least some of the evidence and had an attitude regarding the guilt of probationer, as expressed by the judge at the probation revocation hearing, did not disqualify him from proceeding further in the case, since nothing in the record showed any bias, prejudice, or ill will on the part of the judge, and he was merely exercising his control over the probationer at the hearing).

²⁵ See *Nateman*, 582 So. 2d at 644, quoting *In re Inquiry Concerning a Judge*, 357 So. 2d 172, 178 (Fla. 1978).

²⁶ See also *Dempsey v. State*, 415 So. 2d 1351 (Fla. 1st D.C.A. 1982); *State v. Steele*, 348 So. 2d 398 (Fla. 3d D.C.A. 1977).

²⁷ Compare *Cherradi v. Andrews*, 669 So. 2d 326 (Fla. 4th D.C.A. 1996) (judges are not required to disqualify themselves solely upon an allegation that attorney for a party made campaign contribution to the judge's political campaign).

²⁸ See *Livingston v. State*, 441 So. 2d 1083 (Fla. 1983).

²⁹ See also *Nassetta v. Kaplan*, 557 So. 2d 919, 921 (Fla. 4th D.C.A. 1990); *Ellis v. Henning*, 678 So. 2d 825 (Fla. 4th D.C.A. 1996) (sworn allegations contained in motions to disqualify the trial judge that the judge treated plaintiffs' counsel with disdain and hostility did not set forth a legally sufficient ground for recusal, where there was no transcript of the hearing or sworn factual allegations concerning the context in which the alleged comments arose).

³⁰ See *Cherradi v. Andrews*, 669 So. 2d 326 (Fla. 4th D.C.A. 1996); but see *Wicklund v. Schoff*, 25 Fla. L. Weekly D955 (allegations that judge and movant's attorney had opposed each other in cases before judge was appointed to the bench, that judge exhibited what appeared to be a demonstrative dislike of movant's attorney, that judge wrote a letter to the attorney in a prior case expressing low regard for attorney's approach to the practice of law, and that the attorney had represented to the court that the judge attempted to improperly influence the special master appointed in a case were sufficient grounds to require recusal).

³¹ See *Oates v. State*, 619 So. 2d 23, 25 (Fla. 4th D.C.A. 1993); *Bryant v. State*, 363 So. 2d 1141 (Fla. 1st D.C.A. 1978).

³² See *Sandstrom v. State*, 402 So. 2d 461, 463 (Fla. 4th D.C.A. 1981); accord *Wells v. State*, 487 So. 2d 1101, 1102 (Fla. 5th D.C.A. 1986).

³³ See *Liteky v. United States*, 510 U.S. 540 (1994) (tracing the history of the recusal provisions in 28 U.S.C. §144 and 28 U.S.C. §455); *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988).

³⁴ See *Pepsico, Inc. v. McMillen*, 764 F.2d 458, 460 (7th Cir. 1985); see also *United States v. McLain*, 701 F. Supp. 1544, 1555 (M.D. Fla. 1988).

³⁵ See *Union Carbide Corp. v. U.S. Cutting Service, Inc.*, 782 F.2d 710, 716 (7th Cir. 1986).

³⁶ The factual grounds for disqualification without a showing of actual partiality encompass charges that the judge: 1) has a personal bias for or against a party or has personal knowledge of a fact at issue; 2) was associated in private law practice with a lawyer who acted as a lawyer or witness, during the association, in the matter now before the court; 3) was a government employee who participated as counsel or adviser or expressed an opinion as to the merits of the controversy; 4) has a financial interest in the proceedings or other interest that could be substantially affected by the outcome of the case, or has a spouse or minor child with such an interest; 5) is related to a party or an officer or trustee of a party, a person acting as counsel in the proceeding, a person known by the judge to have an interest that could be substantially affected by the outcome of the proceeding, or a person known by the judge as a material witness in the action.

³⁷ *Michaud-Berger v. Hurley*, 607 So. 2d 441, 447 (Fla. 4th D.C.A. 1992) (Judge Letts specially concurring).

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