

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

WILLIAM WINDSOR,  
Plaintiff,

CASE NO. 2018-CA-010270-O

vs.

ROBERT KEITH LONGEST, an individual, and BOISE CASCADE BUILDING MATERIALS  
DISTRIBUTION, L.L.C., a Foreign Limited Liability Company,  
Defendants.

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**PLAINTIFF WILLIAM M. WINDSOR'S**  
**VERIFIED MOTION TO DISQUALIFY JUDGE JEFFREY I. ASHTON**

Comes Now, William M. Windsor (“Windsor” or “Plaintiff”), and asks that Jeffrey L. Ashton (“Judge Ashton”) be disqualified from the above entitled matter under Florida Statute 38.10, Florida Rule of Judicial Administration 2.330, and Canons 2 and 3 of the Code of Judicial Conduct, all other relevant statutory and state and federal case law, as well as the First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Constitution of the State of Florida, and the Court’s inherent powers. Based upon this Verified Motion to Disqualify, the attached Affidavit of Prejudice, and the Certificate that Motion to Disqualify is filed in Good Faith, Windsor moves for disqualification of Judge Jeffrey L. Ashton from all further proceedings in this case.

1. Florida Rules of Judicial Administration Rule 2.330 allows a party to seek disqualification of the assigned trial judge where the party feels he will not receive a fair trial or hearing because of a specifically described prejudice or bias of the judge. Florida Rule of

Judicial Administration 2.330 (f) provides that, upon receipt of a legally sufficient motion to disqualify, “the judge shall immediately enter an order granting disqualification and proceed no further in the action.”

2. The principal facts constituting the grounds for this Motion were discovered on February 1, 2021. They are being presented to the Court for an immediate ruling. This motion is timely filed.

4. The Plaintiff fears he will not receive a fair hearing because of continuing demonstrable prejudice by Judge Ashton against him.

5. A recitation of the facts forming the basis for this fear will demonstrate this fear is well-founded. This is provided in the attached Affidavit of Prejudice. The Affidavit of Prejudice contains factual details of the prejudice as is required by the statute and rules.

6. Prejudice and bias may be either for or against. In the instant action, there is both. Judge Ashton has a bias against the Plaintiff. Judge Ashton has a prejudice in favor of the Defendants.

7. Judge Ashton has demonstrated to Windsor that he has a bias against pro se parties. BUT “... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws.” *Elmore v. McCammon* (1986) 640 F. Supp. 905.

8. Windsor has not been treated fairly by Judge Ashton. Judge Ashton has not demonstrated the impartiality required of a judge. He is demonstrating that he is a heartless person who has no business sitting in judgment on people.

9. Canon 2 of the Florida Code of Judicial Conduct (“CJC”) provides: “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.”

Every person “has a constitutional and statutory right to an impartial and fair judge at all stages of the proceeding.” *Liteky v U.S.*, 510 US 540 (1994).

### FACTUAL BACKGROUND

10. The factual background in this case is recited in the Affidavit of Prejudice and the affidavit attached thereto.

### ARGUMENT

#### DISQUALIFICATION IS APPROPRIATE: ALL REQUIREMENTS ARE MET

11. A Motion to Disqualify is governed by Florida Statute 38.10 and Florida Rule of Judicial Administration 2.330.

“A motion to disqualify is governed substantively by section 38.10, Florida Statutes . . . and procedurally by Florida Rule of Judicial Administration 2.330.” *Gregory v. State*, 118 So.3d 770, 778 (Fla. 2013) (quoting *Gore v. State*, 964 So.2d 1257, 1268 (Fla. 2007)). “The statute requires that the moving party file an affidavit in good faith ‘stating fear that he or she will not receive a fair trial . . . on account of the prejudice of the judge’ as well as ‘the facts and the reasons for the belief that any such bias or prejudice exists.’” *Peterson v. State*, 221 So.3d 571, 581 (Fla. 2017) (quoting § 38.10, Fla. Stat. (2014)).

12. **MOTION:** This Motion to Disqualify is in writing. Windsor has filed an Affidavit of Prejudice stating his fear that he will not receive a fair trial due to the prejudice of Judge Jeffrey Ashton. It provides the facts and the reasons for the belief that such bias and prejudice exist. This Motion is signed under oath. There has been one previously granted motion to disqualify a former judge. There has been one previously denied motion to disqualify Judge Kest. A Certificate of Good Faith is also filed. This Motion to Disqualify is filed with the Clerk, and a copy has been sent by email to Judge Ashton’s assistant.

13. **GROUND:** This Motion to Disqualify shows that the Plaintiff fears he will not receive a fair trial because of specifically described prejudice or bias of Judge Jeffrey Ashton.

14. **TIME:** The Motion to Disqualify has been filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the Motion and has been promptly presented to the Court for an immediate ruling.

**IT IS THE DUTY OF JUDGE JEFFREY ASHTON TO ACKNOWLEDGE  
THE SUFFICIENCY OF THE MOTION.**

15. Judge Ashton must now determine the legal sufficiency of the Motion.

The rule provides that “[t]he judge against whom an initial motion to disqualify . . . is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged.” *Pasha v. State*, 225 So.3d 688, 703 (Fla. 2017) (quoting Fla. R. Jud. Admin. 2.330(f)). “The disqualification [statute and] rules are designed to keep the courts free from bias and prejudice.” *Tableau Fine Art Group, Inc. v. Jacoboni*, 853 So.2d 299, 301 (Fla. 2003). “[T]he disqualification statute and rules are [also] designed to ensure confidence in the judicial system, ‘as well as to prevent the disqualification process from being abused for the purposes of judge-shopping, delay, or some other reason not related to providing for the fairness and impartiality of the proceeding.’” *Id.* (quoting *Livingston v. State*, 441 So.2d 1083, 1086 (Fla. 1983)). (*Law Offices of Herssein and Herssein, P.A. v. United Services Automobile Association*, SC17-1848 (Fla. 11/15/2018).)

16. Judge Ashton shall rule on the Motion to Disqualify immediately, but no later than 30 days after the service of the motion.

**THIS MOTION IS PROCEDURALLY ADEQUATE, AND JUDGE ASHTON MUST  
ACCEPT THAT THE AFFIDAVIT IS TRUE.**

17. This Motion to Disqualify Judge Ashton is procedurally adequate and Judge Ashton must determine so. This is a proper application for a change of judge.

18. Windsor has a well-grounded fear that he will not receive a fair trial. Judge Ashton has ignored all of the prejudice and bias of Judge Kest. Judge Munyon granted a protective order to stop discovery when there was no legal authority to do so. Judge Kest

allowed that to continue. Judge Kest allowed hearings on frivolous motions by the Defendants while ignoring violations of his own rules and orders. Judge Kest outrageously stated in an order that two motions were not being set for hearings because they were motions for reconsideration when clearly they were no such thing. Judge Kest claimed Windsor made a false statement to the Court denying that the case had been stayed. The case was never stayed, and saying Windsor made a false statement to the Court was both improper and erroneous. Judge Kest ignored the fact that there was no legal basis given by the Defendants for either of the motions that Judge Kest ordered to be set for hearing. Judge Kest extended the trial date for another year when he will not even be a judge, with no consideration given to Windsor's medical condition. Judge Kest announced at the Case Management Conference that he treats pro se parties the same as attorneys, but this is neither fair nor the law. Judge Kest indicated at the Case Management Conference that he had independently researched cases that Windsor had been involved in, and he threatened him with sanctions for frivolous motions under Florida Statute 57.105. Windsor has never filed anything frivolous. Judge Kest argued with Windsor over whether there had been the required "meet and confer" with the Defendants' attorneys. Judge Kest claimed that a telephone bullying by Attorney Asstrin amounted to a "confer." Windsor tried to explain that confer means an actual discussion. Judge Kest rejected that, yet he knew the specifics of the law while pro se Windsor did not. Windsor was absolutely right about the requirements to confer, and Judge Kest lied and claimed he was wrong. Judge Kest is a past president and Governor of the Bar Association, so he has been a very active member of a club that the Defense attorneys belong to that Windsor will never belong to. Judge Kest has been an attorney for 48 years and a judge for 17 years. He has seemingly developed disdain for pro se parties over the past 48 years. Windsor has these feelings because after studying the developments in this case, he saw Judge

Kest acting with bias again and again. Judge Ashton dismissed without any consideration

Windsor's motion to have him reconsider Judge Kest's orders. No honest judge could do that.

The motion is legally sufficient if it shows the party's well-grounded fear that the party will not receive a fair trial. See *Livingston v. State*, 441 So.2d 1083, 1087 (Fla.1983). In other words, would the facts (which must be taken as true in a motion to disqualify) prompt a reasonably prudent person to fear that he could not get a fair and impartial trial. See e.g., *Peterson v. Asklipious*, 833 So. 2d 262 (Fla. 4th DCA 2002).

The facts alleged in the motion need only show that "the party making it has a well grounded fear that he will not receive a fair trial at the hands of the judge." *Dewell*, 131 Fla. at 573, 179 So. at 697. "If the attested facts supporting the suggestion are reasonably sufficient to create such a fear, it is not for the trial judge to say that it is not there." *Parks*, 141 Fla. at 518, 194 So. at 614. Further, "it is a question of what feeling resides in the affiant's mind and the basis for such feeling." *Dewell*, 131 Fla. at 573, 179 So. at 697-98. (*Livingston v. State*, 441 So.2d 1083 (Fla. 10/27/1983).)

19. In determining the legal sufficiency of a motion to disqualify, a court looks to see whether the facts alleged would place a reasonably prudent person in fear of not receiving fair and impartial treatment from the trial judge. See, e.g., *Johnson v. State*, 769 So. 2d 990 (Fla. 2000). In the instant case, a reasonably prudent person, would be in fear that Judge Ashton, because of his prejudice or bias deprived him of fair and impartial treatment.

20. Judge Ashton has to accept the truth of Windsor's statements.

When a party seeks to disqualify a judge under section 38.10, the judge cannot pass on the truth of the statements of fact set forth in the affidavit. *State v. Dewell*, 131 Fla. 566, 179 So. 695 (1938). The facts and reasons for the belief of prejudice must be taken as true, and the judge may only pass on the legal sufficiency of the motion and supporting affidavits to invoke the statute. *Raybon v. Burnette*, 135 So.2d 228 (Fla. 2d DCA 1961). Section 38.10 creates a substantive right to seek the disqualification of a trial judge, but the process of the disqualification is procedural. *Livingston v. State*, 441 So.2d 1083 (Fla.1983).

### **THE IMPARTIALITY OF JUDGE ASHTON MUST BE QUESTIONED.**

21. An objective observer, lay observer, and/or disinterested observer must entertain significant doubt of the impartiality of Judge Ashton.

22. The Code of Judicial Conduct requires that Judge Ashton disqualify himself.

The Code of Judicial Conduct sets forth basic principles of how judges should conduct themselves in carrying out their judicial duties. Canon 3-C(1) states that “[a] judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned ....” This is totally consistent with the case law of this Court, which holds that a party seeking to disqualify a judge need only show “a well grounded fear that he will not receive a fair trial at the hands of the judge. It 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.” *State ex rel. Brown v. Dewell*, 131 Fla. 566, 573, 179 So. 695, 697-98 (1938). See also *Hayslip v. Douglas*, 400 So.2d 553 (Fla. 4th DCA 1981). 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.

**JUDGE ASHTON IS REQUIRED TO RULE IMMEDIATELY.**

23. Judge Ashton is required to immediately address the Motion to Disqualify.

This Court has strictly applied the above language because an allegation of judicial prejudice is always a serious matter. Thus, the rule provisions concerning “immediate” resolution have been accorded their plain meaning, which the Court has explained requires action that is “prompt” and “with dispatch.” *Livingston v. State*, 441 So.2d 1083, 1085 (Fla. 1983). Our comment on the adoption of rule 2.160 emphasizes a trial judge’s responsibility to act quickly on such a motion: “We find the motion [to disqualify] should be ruled on immediately following its presentation to the court.” *Florida Bar re Amendment to Fla. Rules of Judicial Admin.*, 609 So.2d 465, 466 (1992). When a trial court fails to act in accord with the statute and procedural rule on a motion to disqualify, an appellate court will vacate a trial court judgment that flows from that error. See, e.g., *Cave v. State*, 660 So.2d 705, 708 (Fla. 1995) (“[W]e find that Judge Walsh’s conduct failed to follow the procedural process outlined in rule 2.160 and his error requires us to vacate Cave’s sentence.”). (*Escalona v. Wisotsky*, 781 So.2d 1063, 25 Fla. L. Weekly S1080 (Fla. 11/30/2000).)

**WINDSOR IS ENTITLED TO THE COLD NEUTRALITY OF AN IMPARTIAL JUDGE.**

24. Windsor is entitled to an impartial judge, and that isn’t Judge Jeffrey Ashton.

“Every litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of 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 at 557 (quoting *State ex rel. Davis v. Parks*, 141 Fla. 516, 194 So. 613, 615 (1939)).

“We find that the motion and supporting affidavits were legally sufficient, and the proper procedure, in light of the serious allegation of bias, was for the judge to grant the motion. (*James v. Theobald*, 557 So.2d 591, 15 Fla. L. Weekly D215 (Fla.App. Dist.3 01/16/1990).)

“Where there is any legally sufficient basis, whether factually accurate or not, for a founded fear of possible prejudice to exist in the mind of a defendant, recusal is mandated.” See, e.g., *Management Corporation of America, Inc. v. Grossman*, 396 So.2d 1169 (Fla. 3rd DCA 1981).

**JUDGE ASHTON FAILED TO PROVIDE DUE PROCESS  
AND EQUAL PROTECTION TO WINDSOR.**

4. Judge Ashton has violated Windsor’s civil and constitutional rights under color of law.

“[t]rial before an ‘unbiased judge’ is essential to due process.” *Johnson v. Mississippi*, 403 U.S. 212, 216 (1971); accord *Concrete Pipe & Prods. V. Constr. Laborers Pension Trust*, 508 U.S. 602, 617 (1993) (citation omitted). (See also *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S. Ct. 11, 13 (1954); *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976); *Peters v. Kiff*, 407, U.S. 493, 502 (1972)

5. Windsor has just cause to believe that he cannot be given a fair trial.

6. The due process clauses of both the Florida and the United States Constitutions guarantee a party an impartial and disinterested tribunal in civil cases. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610, 1613 (1980).

Partiality in favor of the government may raise a defendant’s due process concerns.” *In re United States of America*, 441 F.3d at 66 (citing *In re Murchison*, 349 U.S. 133 (1955).

28 U.S.C. 155 may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties, but due process of law requires no less.” *Taylor v. Hayes*, 418 U.S. 488, 501 (1974) (citations and quotation marks omitted). See also *Murchison*, 349 U.S. at 136.

7. Judge Ashton has effectively denied Windsor’s rights of the equal protection under the law under Article VI of the Constitution.



**JUDGE ASHTON IS VIOLATING THE CONSTITUTIONAL RIGHTS OF WINDSOR.**

8. Judge Ashton has violated Windsor's Constitutional rights.
9. The Sixth Amendment provides the Constitutional right to self-representation. That right should be enjoyed without fear of harassment or judicial prejudice. Furthermore, no law, regulation, or policy should exist to abridge or surreptitiously extinguish that right. Pro Se Litigants have no less of a right to effective due process as those who utilize an attorney.
10. For due process and to secure the Constitutional rights of Windsor, judges may not take the law into their own hands. But this is precisely what Judge Ashton has done. He has ignored the law, ignored the facts, and claimed laws and rules provide something that they do not provide, while abusing and disadvantaging Windsor.
11. For due process to be secured, the laws must operate alike upon all and not subject the individual to the arbitrary exercise of governmental power. (*Marchant v. Pennsylvania R.R.*, 153 U.S. 380, 386 (1894).) Judge Ashton has violated Windsor's rights by using his power to inflict his bias.
12. For due process, Windsor has the right to protections expressly created in statute and case law. Judge Ashton has violated Windsor's rights by using his power to ignore facts and the law.
13. Due process allegedly ensures that the government will respect all of a person's legal rights and guarantee fundamental fairness and justice. Judge Ashton's actions have violated Windsor's rights and denied justice.
14. Due process requires an established course for judicial proceedings designed to safeguard the legal rights of the individual. Action denying the process that is "due" is unconstitutional. Inherent in the expectation of due process is that the judge will abide by the

rules. Judge Ashton has interfered with the process and violated rules for the purpose of damaging Windsor.

15. An inherent Constitutional right is the honesty of the judge. Judge Ashton has not been honest. Judge Ashton has violated Canon 2 and other Canons of the Code of Judicial Conduct.

16. Due process guarantees basic fairness and to make people feel that they have been treated fairly. Windsor has not been treated fairly.

17. Judge Ashton has effectively denied Windsor's rights of the equal protection under the law.

#### **FLORIDA HAS LONG RECOGNIZED AN IMPARTIAL JUDGE IS ESSENTIAL**

This Court has recognized the sensitivity and seriousness involved whenever the issue of judicial prejudice is raised. We have stated that:

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. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned.

... It is a matter of no concern what judge presides in a particular cause, but

it is a matter of grave concern that justice be administered with dispatch, without fear or favor or the suspicion of such attributes. The outstanding big factor in every lawsuit is the truth of the controversy. Judges, counsel, and rules of procedure are secondary factors designed by the law as instrumentalities to work out and arrive at the truth of the controversy.

The judiciary cannot be too circumspect, neither should it be reluctant to retire from a cause under circumstances that would shake the confidence of litigants in a fair and impartial adjudication of the issues raised.

*Dickenson v. Parks*, 104 Fla. 577, 582-84, 140 So. 459, 462 (1932). This Court has also expressed the view that:

“Every litigant, including the State in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge.” It is the duty of courts to scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. The exercise of any other policy tends to discredit and place the judiciary in a compromising attitude which is bad for the administration of justice.

*State ex rel. Mickle v. Rowe*, 100 Fla. 1382, 1385, 131 So. 331, 332 (1930).

WHEREFORE, having now filed this Verified Motion to Disqualify, the sworn Affidavit of Prejudice, and the Certificate of Good Faith, Plaintiff Windsor respectfully requests as follows:

- (1) that Windsor’s Motion to Disqualify Judge Ashton is granted;
- (2) that this Motion be referred to another judge for a hearing;
- (3) that the Court issue an order disqualifying Judge Ashton;
- (4) that the Court reconsider or strike all orders by Judge Munyon, Judge Kest, and Judge Ashton; and
- (5) that the Court grant such other and further relief as justice requires.

Submitted this 1st day of February, 2021.



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**VERIFICATION**

Personally appeared before me, the undersigned Notary Public duly authorized to administer oaths, William M. Windsor, who after being duly sworn deposes and states that he is authorized to make this verification and that the facts alleged in the foregoing are true and correct based upon his personal knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

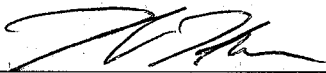
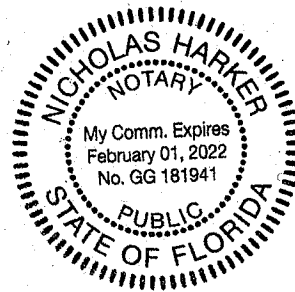
I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

This 1st day of February, 2021,



William M. Windsor

Sworn and subscribed before me this 1st day of February, 2021, by means of physical presence.

  
Notary Public

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by Electronic Mail

to:

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This 1st day of February, 2021.



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