

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) ROBBIE EMERY BURKE,)
as the Special Administratrix of Elliott Earl)
Williams, Deceased,)
))
Plaintiff,)
))
v.)
))
(1) STANLEY GLANZ, in His Individual)
Capacity;)
(2) VICTOR REGALADO, in His Official)
Capacity;)
Defendants.)

Case No. 11-CV-720-JED-PJC

MOTION TO DISQUALIFY TRIAL JUDGE

Defendants, Stanley Glanz, in his Individual Capacity, and Vic Regalado, in his Official Capacity, by and through their attorneys Brewster & De Angelis, hereby file this motion requesting that the assigned judge to this cause, Hon. John E. Dowdell, recuse, pursuant to 28 U.S.C. § 455. The parties submit that the Court’s impartiality is in question because, 1) while a lawyer in private practice, the judge’s law firm sued Defendant Glanz in his personal capacity, and now that same defendant is before this Court as a defendant in his personal capacity; 2) the parties have become aware of extrajudicial materials that suggest that the judge’s personal relationships with some third-parties (whose interests are materially adverse to the defense parties in this case) raise serious questions about this Court’s impartiality and disinterestedness. As the parties elaborate further below, the impartiality of the Court is in question and the appropriate remedy is disqualification.

The Legal Framework Governing This Motion

As relevant here, two statutory provisions govern judicial disqualifications—28 U.S.C.

§§144 & 455. In pertinent part, §455 provides:

§ 455. Disqualification of justice, judge or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding *in which his impartiality might reasonably be questioned*.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

Id. (emphasis added). To be sure, disqualification is required when there is reason to believe that a judge’s “impartiality might reasonably be questioned.” *Id.* In a related sense, 28 U.S.C. §144, in relevant part, provides that:

Whenever a party to any proceeding in a district court *makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice* either against him or in favor of any adverse party, *such judge shall proceed no further* therein, but another judge shall be assigned to hear such proceeding.

Id. (emphasis added). The disqualification tests are applied from the perspective of a reasonable person, having due regard for the totality of circumstances. See *Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir. 1987).

A presiding trial judge is required to “inform *himself* about his personal and fiduciary financial interests.” 28 U.S.C. §455(C)(emphasis added). That duty continues throughout the litigation. *United States v. Greenspan*, 26 F.3d 1001, 1005–06 (10th Cir.1994). The statute thus places the judge under a self-policing obligation to recuse himself from a case where the proper legal grounds exist. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 867–68 (1988).

The motion must be made as promptly and as soon as the matters underlying the motion come to light. See *United States v. Stenzel*, 49 F.3d 658, 661 (10th Cir. 1995). As indicated herein, the facts underlying this motion have recently come to light to the attention of the defense parties.

Judge John Dowdell was a partner at Norman Wohlgemuth Chandler and Dowdell at the time the Tulsa County Case was filed and litigated, and his name appears on pleadings. As a partner of the firm, which had less than twelve attorneys, Judge John Dowdell not only participated in strategic discussions about the Tulsa County Case with other partners and attorneys at the firm, but he benefitted financially from fees paid to his firm.¹

Judge John Dowdell’s former law firm alleged, *inter alia*, in the Tulsa County Case the following:

- a. That the “...condition of the [Tulsa County] jail [under Sheriff Glanz] violated the constitutional rights of prisoners and detainees.” Exhibit __, ¶ 16;

¹ Judge John Dowdell’s clerk, Christine Little, was also a partner at the firm for years, but not at the time the Tulsa County Case was filed.

- b. That Sheriff Glanz demanded unreasonable fees for “medical expenses associated with detainees booked into the County Jail by the City.” *Id.*, ¶41;
- c. That Sheriff Glanz “interfere[d] with the negotiating process [with the City] ...thereby creating more money-making opportunities for himself and the County.” *Id.*, ¶40.
- d. The “actions of Sheriff Glanz were unauthorized, malicious, wrongful, and without justification.” *Id.*, ¶85.
- e. The “malicious interference of Sheriff Glanz rises to the level of willful, wanton, oppressive, or reckless conduct for which he should be punished by an award to the City of exemplary and punitive damages in an amount sufficient, taking into consideration the assets and worth of Sheriff Glanz, to render the consequences of his conduct an example...” *Id.*, ¶87.

At no time during the litigation of the instant matter did Judge Dowdell disclose his involvement in the Tulsa County Case on the record. Disqualification cannot be waived by a party without a “full disclosure on the record of the basis for disqualification.” 28 U.S.C. § 455(e).

Given the involvement of Judge Dowdell, and the firm, in litigation against Defendant Glanz and Tulsa County in CJ-2008-8659 covering the events at issue in the instant matter-reasonable questions as to Judge Dowdell’s impartiality are raised. His disqualification is mandatory pursuant to 28 U.S.C. § 455. Attached as Exhibits hereto are the Affidavits of Stanley Glanz and Vic Regalado as required by the statute outlining the reasons for the disqualification and the perceived bias in this matter.

WHEREFORE, Defendant Stanley Glanz, in his Individual Capacity, and Vic Regalado, in his Official Capacity respectfully requests that the assigned judge to this cause, Hon. John E. Dowdell, recuse, pursuant to 28 U.S.C. § 455.

Respectfully submitted,

/s/Guy A. Fortney

Clark O. Brewster, OBA #1114

Guy A. Fortney, OBA #17027

Katie Arnold Wassam, OBA #32345

BREWSTER & DE ANGELIS, PLLC

2617 E. 21st Street

Tulsa, OK 74114

Tel: (918) 742-2021

Fax: (918) 742-2197

**Attorneys for Defendants Stanley Glanz
And Vic Regalado**

CERTIFICATE OF SERVICE

I hereby certify February 9, 2017, I electronically transmitted the foregoing document using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants who have appeared in this case.

Daniel Smolen

danielsmolen@ssrok.com

Donald Smolen

donaldsmolen@ssrok.com

Robert Blakemore

bobblakemore@ssrok.com

Attorneys for Plaintiffs

/s/ Guy A. Fortney

Guy A. Fortney