

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO. 12-CF-1083-A

STATE OF FLORIDA,

Plaintiff,

vs.

GEORGE ZIMMERMAN,

Defendant.

**ORDER GRANTING DEFENDANT'S VERIFIED MOTION TO DISQUALIFY
TRIAL JUDGE**

THIS MATTER came before the Court for consideration on the Defendant's Verified Motion to Disqualify Trial Judge, filed on April 16, 2012 pursuant to Rule 2.330, Florida Rules of Judicial Administration, and Canon 3 of the Florida Code of Judicial Conduct.

The commentary to Canon 3 of the Florida Code of Judicial Conduct, pertaining to Canon 3E(1), provides:

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. The fact that the judge conveys this information does not automatically require the judge to be disqualified upon a request by either party, but the issue should be resolved on a case-by-case basis.

However, the commentary to Canon 3E(1)(d) later provides:

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonable be questioned" under section 3E(1), or that the relative is known by the judge to have an interest in the law firm that can be "substantially affected by the outcome of the proceeding" under section 3E(1)(d)(iii) may require the judge's disqualification.

Canon 3 outlines this Court's ethical obligations, but Fla. R. Jud. Admin. 2.330 sets forth the procedural requirements for disqualification. The Defendant specifically cites to subsection (d)(2) in his motion. According to that rule,

(d) Grounds. A motion to disqualify shall show:

(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*, or that said judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to the cause. *Emphasis added*

Given that this is the Defendant's first motion to disqualify, this Court is required by law to review the motion for the sole purpose of determining its legal sufficiency. *Turner v. State*, 598 So. 2d 186 (Fla. 1st DCA 1992). For purposes of determining legal sufficiency, the Court must assume all of the factual allegations supporting the motion are true. *Deren v. Williams*, 521 So. 2d 150 (Fla. 5th DCA), review denied, 531 So. 2d 169 (Fla. 1988). The Court is not permitted to deny the allegations supporting the motion as untrue, reject them as unfounded, or comment upon them at all. To do so establishes independent grounds for disqualification. *Bundy v. Rudd*, 366 So. 2d 440, 442 (Fla. 1978). Therefore, as required by law, the Court assumes the factual allegations supporting the motion for disqualification are true solely for the purpose of determining the legal sufficiency of the motion.

The Defendant first cites that the Court's spouse is a partner with Nejame, LaFay et al and further states that Mark Nejame, individually, is acting as a legal analyst for CNN and is expected that he will provide commentary as to this case, which was disclosed by this Court on Thursday, April 12, 2012. It does not allege "an interest in [the case] that can be '*substantially affected by the outcome of the proceeding.*'" See *Canon 3E*. Therefore, this in and of itself is not a legally sufficient basis for disqualification according to the judicial canons or the rule governing disqualification.¹ However, this is not the sole basis for the Defendant's motion.

The Defendant further states as a basis for his motion that Mark Nejame had contact with Mr. Zimmerman, as disclosed by this Court at the hearing on Friday, April

¹ While the defendant mentions it "has become a national media focus" in his motion it is not stated as a basis for the disqualification. However, it would not be a legally sufficient basis, if stated. Further, every defendant is entitled to equal justice under the law.

13, 2012. The Defendant further indicates that Mark Nejame "spoke to Zimmerman and members of Zimmerman's immediate family and received confidential privileged information pertaining to the case." He further states "[i]t is undisputed that the Nejame Law firm had significant contact with the Zimmerman family and gained specific information regarding the case." The Defendant concedes that he has no knowledge of any communications between Mark Nejame and the Court's spouse regarding these conversations. This basis, also, in and of itself is legally insufficient. See *S.J. Groves and Sons Company v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local, 627*, 581 F.2d 1241(1978)

Even though this Court finds that neither of these, standing alone, is legally sufficient for disqualification, the cumulative effect of the events and the totality of the circumstances provides a legally sufficient basis for this Court to grant the Motion to Disqualify. See *Chillingsworth v. State*, 846 So.2d 674, (Fla. 4th DCA 2003) Consequently, this Court finds that the Defendant's motion should be granted. Accordingly, it is

ORDERED AND ADJUDGED:

1. The Defendant's Verified Motion to Disqualify Trial Judge is hereby **GRANTED**.
2. This Court shall not hear any further matters relating to this case.
3. This file shall be returned to the Chief Judge for re-assignment in accordance with Circuit policy.

DONE AND ORDERED in chambers at Sanford, Seminole County, Florida this 18 day of April, 2012.


JESSICA J. RECKSIEDLER, Circuit Judge

Copies furnished this 18 day of April, 2012 to:

Bernie de la Rionda, Esquire
John Guy, Esquire
Office of the State Attorney
220 East Bay Street
Jacksonville, FL 32202-3429

Mark M. O'Mara, Esquire
1416 East Concord Street
Orlando, FL 32803



JUDICIAL ASSISTANT