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NOV 9 - 2009

Judge Robert W. Gettleman
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JAIME HERNANDEZ)	Case No. 09 C 661
Plaintiff,)	
)	Judge <u>Gettleman</u>
v.)	Judge Presiding
)	
Cook County Sheriff Tom Dart, et al.)	
Defendants.)	

MOTION FOR SUBSTITUTION OF JUDGE

COMES NOW, Plaintiff Jaime Hernandez, (herein, "Mr. Hernandez") unrepresented and indigent, to move the court to grant his Motion for Substitution of Judge of Cause. Hernandez is respectfully requesting a substitution of judge of cause for Honorable Judge Robert Gettleman, See *People v. Aldridge*, 101 Ill. App. 3d 181, 56 Ill. Dec. 596, 427 N.E.2d 1001 (1 Dist. 1981) Hernandez believes that he will not receive a fair and impartial hearing or trial from Judge Gettleman, reasons are set forth in his Supporting Affidavit which is incorporated into this motion. See 28 U.S.C. §§ 455(a) and 455(b) (1) and also 735 ILCS 5/2-1001 (attached Attachment A). Hernandez has incorporated a supporting affidavit with attachments stating why he is requesting a substitution of judge.

WHEREFORE, JAIME HERNANDEZ, for reasons clearly set forth herein, in good faith and for just cause, and warranted in law and fact, respectfully prays that an order will be granted for a substitution of judge and for any other relief that justice dictates would be just and proper.

**AFFIDAVIT SUPPORTING MOTION FOR SUBSTITUTION OF JUDGE OF
CAUSE**

I, Jaime Hernandez, first being duly sworn, on oath, states as follows:

1. That I am of legal age and competent. This affidavit is made on my personal knowledge of all matters set forth herein. If sworn and called as a witness in this case, I can and would testify competently as to each fact set forth herein.
2. That this motion and supporting affidavit is warranted in fact and law.
3. That on 10/8/09, I arrived in Judge Robert Gettleman's courtroom, Room 1703 of the United States District Court, Northern District of Illinois, Eastern Division at approximately 9:15 am in response to the *Defendant's Motion for an Extension of Time to Answer or Otherwise Plead*.
4. That on 10/8/09, there were two cases called before my case was called by Judge Gettleman, suddenly three United States Marshals entered the courtroom and stood off to the side of the courtroom; they had not been there the entire morning.
5. That at approximately 9:30 am, my case was called and I stepped up as well as the attorney for the Defendants stepped up before the judge.
6. That Judge Gettleman denied my *Motion of 10/2/09 to Reconsider the Dismissal of all Judges and Prosecutors Dismissed from the Case*. Judge Gettleman denied this motion and said in words to the effect of, "I am not going to reconsider the motion that Judge Aspen had ruled on." - (*Judge Aspen stated in*

his 6/10/09 that Cook County Judges Maria Kuriakos-Ciesil and Thomas More Donnelly, that any of the allegations against them would fall within their judicial capacity-See Attachment A), See Stump V. Sparkman, 435 US 349 (1978) pg 334, and 42 USC 1983.

7. That I went on to ask Judge Gettleman for the audiotapes and the transcripts of this proceeding, he stated to me that there are no audiotapes. (*Attachment B Order Form for Audio Tapes/CD*). See *Wzorek v. 84 C 9978*, July 23, 1992, (*Attachment C*) transcript where Judge Brian Barnett Duff states, "It is not a routine matter, Mr. Arnett. If I had to take every person's request for my court reporter's personal property, her tapes, which she uses only to be sure of her accuracy, and you know her skills with that machine, she does it for her own benefit, she is paid for the machine, she is paid for the tapes, she uses them for her own use, and if you could get them, then everybody in the world would be playing them every night on Channel 7, Channel 5, on Channel 2 and Channel 9 and Channel 6 and Channel 32 whenever they wanted them. They are personal property, they are used as a tool just like a pencil, and I am not going to make her give you her pencils, okay?"
8. That I asked Judge Gettleman for the transcripts in this case. He told me that I can order those.
9. That on 10/15/09, I was in courtroom 304 of the Circuit Court of Cook County, located at 555 W. Harrison in Chicago. I was before Circuit Court Judge Anita Rivkin-Carothers on a status hearing pertaining to the remainder of my transcripts and audiotapes in my case there. That Judge Carothers stated to me in words to

the effect of, "that in federal court, there are audiotapes", I stated to her that, in my federal case, Judge Gettleman stated to me that there are no audiotapes.

10. That I have received an audiotape for a proceeding which I was a court watcher, I received this audiotape via court order from Cook County Judge Patrick O'Brien on 11/21/07 (**Attachment D**) which proves that there was no disturbance in courtroom 1506 of the Daley Center on 2/2/07, Judge James G. Donegan (deceased), caused by me.
11. That the transcripts which I am still waiting on are pertinent to this captioned case and I cannot proceed effectively without the remainder of them.
12. Further affiant sayeth naught.

Pursuant to the provisions of 28 USC 1746, I aver to the veracity of all factual averments Contained herein in regard to which I possess percipient knowledge.



Jaime Hernandez, Pro Se Plaintiff

Jaime Hernandez
Pro Se

Attachment A

§ 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;
 - (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
 - (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;
 - (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (i) Is a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) Is acting as a lawyer in the proceeding;
 - (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
 - (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.
- (c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.
- (d) For the purposes of this section the following words or phrases shall have the meaning indicated:
- (1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
 - (2) the degree of relationship is calculated according to the civil law system;
 - (3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
 - (4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
 - (i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
 - (ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
 - (iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
 - (iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
- (e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.
- (f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(735 ILCS 5/Art. II Pt. 10 heading)
Part 10. Pre-trial Steps

(735 ILCS 5/2-1001) (from Ch. 110, par. 2-1001)
Sec. 2-1001. Substitution of judge.

(a) A substitution of judge in any civil action may be had in the following situations:

(1) Involvement of judge. When the judge is a party or interested in the action, or his or her testimony is material to either of the parties to the action, or he or she is related to or has been counsel for any party in regard to the matter in controversy. In any such situation a substitution of judge may be awarded by the court with or without the application of either party.

(2) Substitution as of right. When a party timely exercises his or her right to a substitution without cause as provided in this paragraph (2).

(i) Each party shall be entitled to one substitution of judge without cause as a matter of right.

(ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties.

(iii) If any party has not entered an appearance in the case and has not been found in default, rulings in the case by the judge on any substantial issue before the party's appearance shall not be grounds for denying an otherwise timely application for substitution of judge as of right by the party.

(3) Substitution for cause. When cause exists.

(i) Each party shall be entitled to a substitution or substitutions of judge for cause.

(ii) Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant.

(iii) Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition. The judge named in the petition need not testify but may submit an affidavit if the judge wishes. If the petition is allowed, the case shall be assigned to a judge not named in the petition. If the petition is denied, the case shall be assigned back to the judge named in the petition.

(4) Substitution in contempt proceedings. When any defendant in a proceeding for contempt arising from an attack upon the character or conduct of a judge occurring otherwise than in open court, and the proceeding is pending before the judge whose character or conduct was impugned, fears that he or she will not receive a fair and

impartial trial before that judge. In any such situation the application shall be by petition, verified by the applicant, and shall be filed before the trial of the contempt proceeding.

(b) An application for substitution of judge may be made to the court in which the case is pending, reasonable notice of the application having been given to the adverse party or his or her attorney.

(c) When a substitution of judge is granted, the case may be assigned to some other judge in the same county, or in some other convenient county, to which there is no valid objection. If the case is assigned to a judge in some other county, the provisions of subsections (f) through (m) of Section 2-1001.5 shall apply.

(Source: P.A. 94-531, eff. 1-1-06.)

Attachment B

SAO 436
(Rev. 12/04)

Administrative Office of the United States Courts

CD/TAPE ORDER

Read Instructions on Next Page

1. NAME		2. PHONE NUMBER		3. DATE	
4. MAILING ADDRESS			5. CITY		6. STATE
7. CASE NUMBER			9. CASE NAME		
			DATES OF PROCEEDINGS		
			10. FROM		11. TO
12. PRESIDING JUDGE			LOCATION OF PROCEEDINGS		
			13. CITY		14. STATE

15. ORDER FOR:
 APPEAL CRIMINAL CRIMINAL JUSTICE ACT BANKRUPTCY
 NON-APPEAL CIVIL IN FORMA PAUPERIS OTHER (Specify)

16. TAPE REQUESTED (Specify portion(s) and date(s) of proceeding(s) for which duplicate cd/tape(s) are requested.)

PORTION(S)	DATE(S)	PORTION(S)	DATE(S)
<input type="checkbox"/> VOIR DIRE		<input type="checkbox"/> TESTIMONY (Specify Witness)	
<input type="checkbox"/> OPENING STATEMENT (Plaintiff)			
<input type="checkbox"/> OPENING STATEMENT (Defendant)			
<input type="checkbox"/> CLOSING ARGUMENT (Plaintiff)		<input type="checkbox"/> PRE-TRIAL PROCEEDING (Specy)	
<input type="checkbox"/> CLOSING ARGUMENT (Defendant)			
<input type="checkbox"/> OPINION OF COURT		<input type="checkbox"/> OTHER (Specify)	
<input type="checkbox"/> JURY INSTRUCTIONS			
<input type="checkbox"/> SENTENCING			
<input type="checkbox"/> BAIL HEARING			

17. ORDER

NO. OF COPIES REQUESTED	COSTS
<input type="checkbox"/> REFORMATTED DUPLICATE TAPE(S) FOR PLAYBACK ON A STANDARD CASSETTE RECORDER AT 1-7/8 INCHES PER SECOND	
<input type="checkbox"/> UNREFORMATTED DUPLICATE TAPE(S) FOR PLAYBACK ON A 4-TRACK CASSETTE RECORDER AT 1-7/8 INCHES PER SECOND	
<input type="checkbox"/> UNREFORMATTED DUPLICATE TAPE(S) FOR PLAYBACK ON A 4-TRACK CASSETTE RECORDER AT 15/16 INCHES PER SECOND	
<input type="checkbox"/> RECORDABLE COMPACT DISC - CD	
CERTIFICATION (18. & 19.) By signing below, I certify that I will pay all charges (deposit plus additional) upon completion of the order.	ESTIMATE TOTAL
	0.00

18. SIGNATURE _____ 19. DATE _____

PROCESSED BY _____ PHONE NUMBER _____

ORDER RECEIVED	DATE	BY	DEPOSIT PAID	
DEPOSIT PAID			TOTAL CHARGES	0.00
TAPE / CD DUPLICATED			LESS DEPOSIT	0.00
ORDERING PARTY NOTIFIED TO PICK UP TAPE			TOTAL REFUNDED	
PARTY RECEIVED TAPE / CD			TOTAL DUE	0.00

DISTRIBUTION: COURT COPY ORDER RECEIPT ORDER COPY

Attachment
C

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EUGENE WZOREK,)	
)	
Plaintiff,)	No. 84 C 9978
)	
v.)	Chicago, Illinois
)	
THE CITY OF CHICAGO,)	July 23, 1992
)	
Defendant,)	9:30 a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE BRIAN BARNETT DUFF

APPEARANCES:

For the Plaintiff: MR. GORDON JAMES ARNETT
5865 North Lincoln Avenue, Suite 112
Chicago, Illinois 60659

For the Defendant: MR. TERENCE J. MORAN
Assistant Corporation Counsel
Labor Division
180 North LaSalle Street, Suite 1408
Chicago, Illinois 60601

MICHAEL P. SNYDER, CSR, RPR, CM
Official Reporter
United States District Court
219 South Dearborn Street, Room 2128
Chicago, Illinois 60604
Telephone (312) 435-5563

APPENDIX C

1 THE CLERK: 84 C 9978, Eugene Wzorek versus the City
2 of Chicago; motion for the tapes of the court reporter.

3 MR. ARNETT: Good morning, Your Honor. Gordon Arnett
4 for the plaintiff.

5 MR. MORAN: Good morning, Judge. Terry Moran on
6 behalf of the defendant.

7 THE COURT: Good morning. Now, Mr. Arnett, you have
8 made a motion that I don't think that there is any basis in law
9 for, and you have intimated that you wanted an in camera
10 meeting or something because of something that might be less
11 than could face the public eye. I don't like the inference,
12 and so I have got another court reporter here this morning so
13 that my court reporter can speak up if there is anything you
14 would like to say.

15 Now, before you say anything let me tell you that the
16 transcripts in this case were certified and sent to the federal
17 court of appeals three, four years ago, and you have them, you
18 can read them. There is no question that they are the
19 transcripts. They have been verified by my court reporter,
20 they have been used by both sides, they have been accepted as
21 factual, and you have asked to refer to her tapes. Now, her
22 tapes are only used so that she can verify her work. They are
23 her personal property. You have no right to them, and she told
24 you so.

25 Now, I don't know what this suggestion is that we

MICHAEL P. SNYDER, Official Reporter

1 should be careful because some television station is watching
2 us. We are not worried about television stations, Mr. Arnett.

3 Now, what is it you would like to say?

4 MR. ARNETT: In view of your comments just now, Your
5 Honor, I think the best approach would be for me to withdraw
6 this motion and perhaps file one later on outlining in as much
7 detail as I can compile.

8 THE COURT: Mr. Arnett, I am denying your motion to
9 require me to give, to tell my court reporter to give you her
10 personal property. It is denied. If you don't like it, I will
11 let you appeal it.

12 MR. ARNETT: Very well. However, I may be unwise to
13 say this, but I have obtained such tapes in other courts in
14 this building as though it were a routine matter, and that is
15 what I thought it was.

16 THE COURT: It is not a routine matter, Mr. Arnett.
17 If I had to take every person's request for my court reporter's
18 personal property, her tapes, which she uses only to be sure of
19 her accuracy, and you know her skills with that machine, she
20 does it only for her own benefit, she is paid for the machines,
21 she is paid for the tapes, she uses them for her own use, and
22 if you could get them, then everybody in the world could get
23 them, and we would be playing them every night on Channel 7,
24 Channel 5, on Channel 2, and Channel 9, and Channel 6 and
25 Channel 32 whenever they wanted them. They are personal

MICHAEL P. SNYDER, Official Reporter

1 property, they are used as a tool just like a pencil, and I'm
2 not going to make her give you her pencils. Okay?

3 MR. ARNETT: I didn't mean to --

4 THE COURT: Now, is there any other issue you want to
5 bring before me today?

6 MR. ARNETT: No, Your Honor.

7 THE COURT: Okay, next case.

8 MR. MORAN: Thank you, Judge.

9 (Proceedings concluded.)

10 C E R T I F I C A T E

11
12 I, Michael P. Snyder, do hereby certify that the
13 foregoing is a complete, true, and accurate transcript of the
14 proceedings had in the above-entitled case before the Honorabl
15 BRIAN BARNETT DUFF, one of the judges of said Court, at
16 Chicago, Illinois, on July 23, 1992.

17
18 

19 Official Court Reporter
20 United States District Court
21 Northern District of Illinois
22 Eastern Division
23
24
25

MICHAEL P. SNYDER, Official Reporter

2180 - Served
2280 - Not Served
2380 - Served By Mail
Subpoena - Subpoena Duces Tecum

CCG N006-10M-6/09/04 ()

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of the State of Illinois
v.
Jaime Hernandez

} No. 07MC119441701

SUBPOENA

To: Eunice Sachs & Associates, also Beth M. Young
218 Shea Drive
Flossmoor, IL 60422

YOU ARE COMMANDED to appear to testify before the Honorable Presiding Judge
in Room 304, 555 W. Harrison, Chicago Illinois on
NOV 28, 2007, at 9 ^{am.} _{p.m.}

YOU ARE COMMANDED ALSO to bring the following:
Audio tapes and transcripts of court proceedings held on Feb. 2, 2007 at 10:30 am in Rm 1506 of the Richard J. Daley Center, before Honorable Judge James G. Donegan, Case # 06-OP-30185, Mannix v. Sheetz.

in your possession or control.

YOUR FAILURE TO APPEAR IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

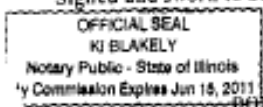
WITNESS 11-13 2007
Dorothy Brown
Clerk of Court

Atty. No. Pro Sc 99500
Name: Jaime Hernandez
Attorney for: _____
Address: _____
City/State/Zip: _____
Telephone: _____



I served this subpoena by handing a copy to Eunice Sachs & Associates, Also by
11-13 on 27 I paid the witness
\$ 25.40 for witness and mileage fees.

Signed and sworn to before me on this 13th day of November, 2007
Ki Blalock Notary Public



ROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

People of the State of IL

v.

No. 07119441701

Jaime Hernandez

ORDER

This matter having come before the Honorable Pat O'Brien on the Defendant's motion, it is hereby ordered:

- ① The Defendant's motion to advance is granted.
- ② That the court reporter forward a copy of the audiotape of the Feb. 2, 2007 proceeding before Judge James Donegan in case No. 93 02984, Mannix v. Sheetz for in-camera examination.
- ③ That the audiotape be delivered on or before Nov. 28, 2007 at 9am to Judge Patrick O'Brien, Br. 46, 555 W. Harrison, Chicago, IL.

FILED

NOV 21 2007

Atty. No. : Pro Se
 Name : J. Hernandez
 Atty. for : Pro Se
 Address : _____
 City/State/Zip : _____
 Telephone : _____

DOROTHY BROWN
CLERK OF CIRCUIT COURT

Nov 21 2007

ENTER :

Pat O'Brien 1935
 Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ORIGINAL - COURT FILE

CCG N002-200M-1/21/02 (23350095)

Eunice Sachs and Associates



Via Federal Express

November 26, 2007

The Honorable Patrick O'Brien
Circuit Court of Cook County, Illinois
555 West Harrison Street
Brach 46 - Room 304
Chicago, IL 60607

In Re: People of the State of Illinois v. Jaime Hernandez 07 MC 119441701

Dear Judge O'Brien:

Per your request, enclosed please find a copy of our court reporters audio cassette from the hearing which was taken at the Daley Center on February 2, 2007. The case that we were present for was: Sheila Mannix v. Daniel Sheetz 06 OP 30185.

We have also enclosed copies of all the correspondence our office has received in regards to this action.

Please feel free to contact our office if you have any questions or require additional information. Thank you!

Best regards,


Mindy Sachs

/ms
Attach



Certified Court Reporters
218 Shea Drive
Flossmoor, IL 60422
(708) 709-0500
Fax (708) 709-0522