

THE SUPREME COURT OF OHIO

(PREEMPTORY WRIT)

CASE NO **08-2400**
verified
Complaint in Mandamus

STATE EX REL LARRY E. EALY
4687 Marlin Ave.
Trotwood Ohio 45416,

Relator,

Vs.

JUDGE BARBARA GORMAN (12520)
41 North Perry Street
Dayton Ohio 45422
Respondents, et al.

DEMAND FOR THE DISQUALIFICATION
OF JUDGE JAMES R. RUPPERT AND REQUEST
FOR RECIPICLE DISCOVERY PURSUANT TO
CRIM. R. 46 AND 149.43 PUBLIC RECORDS
REQUEST

Larry E. Ealy files this complaint in Mandamus citing In re AMERICAN
Medical SYS INC., Pfizer, Inc., Petitioners, Nos. 95-3303, 95-3327 directing
Judge Gorman to disqualify Judge James R. Ruppert.


Larry E. Ealy Pro Se
4687 Marlin Ave
Trotwood Ohio 45416



Prosecuting Attorney
Addie J. King
335 West Third Street
Dayton OHIO 45422

SUPPORTING MEMORANDUM (i.e.)

Judge Ruppert has established that he cannot be fair in this matter where he has refuted claims of bias on August 8, 2008.

In this matter, concerning case NO. 2008TRD3189 the refutation to the Defendants affidavit of disqualification exceeded the Judges jurisdiction. Citing management Corp of America v. Grossman(1981), Florida App.D3)396 So 2d. 1169. See Bundy v. Rudd 366 So 2d 440, 442 (Florida 1978). Dickens v Parks 104 Florida 577 140(1932), Suarez. State 95 Florida 42 115 So 519 (1928) also see Theo Hirsch Co. v. McDonald Furniture Co. 94 Florida 185 114 So, 517 (1929).

When a Judge has looked beyond the mere legal sufficiency of a motion and attempts to refute the charges of partiality and bias, the Judge has exceeded the proper scope of inquiry, the Defendant has filed a second affidavit of disqualification and a Writ of Prohibition to the Ohio Supreme Court docketed on 12-10-08 that should prevent the Judge from retaining jurisdiction.

In the present case the Defendant filed an affidavit to recuse Judge Ruppert on 7-18-08 and the Judge responded to the allegation complained of about his conduct, it's now confirmed that if a Judge goes beyond legal sufficiency in a matter an intolerable adversary atmosphere is created calling for automatic disqualification but he is still presiding over this matter because of the failure to act of the presiding Judge Barbara P. Gorman. Judge Gorman allowed the trial Judge to refute the claims of prejudice now causing this intolerable atmosphere.

After the affidavit was challenged by the Judge he held the Defendant in contempt at the next hearing for being late showing bias for filing the first affidavit of disqualification whereas he was required to recuse himself. See Brewer v. District Court of Seventh Judicial District. (1991, Colo),811 P.2d 812.

See attachment (1)In Judge Gormans final decision allowing the trial Judge to retain jurisdiction she affirmed that Judge Ruppert responded to the claims of bias showing that he as a personal interest in the case whereas as a memorandum generated by Dave Vore under the direction of Judge Langer was used to circumvent the Relators due process rights by illegally stopping him on sight.

The Dayton Police have retained the services of Judge Ruppert who has allowed the prosecutor to destroy the video tape of the stop. On February 11, 2008 Dayton Police Officer Nathan Speelman dispatched several Dayton Police to the scene whereas he displayed the memorandum in his cruiser that stated Ealy and his sons are to be apprehended because Ealy constantly speaks at City Hall about Police brutality, Spellman asked Ealy was he famous and that Officer Steve Heiber told him to arrest him, during the suppression hearing held in this matter Officer Speelman testified to that Officer Heiber was not at the scene but the video of the stop has Speelman Heiber and several other Dayton Police Officers ripping through the 1998 Chrysler Concord looking for guns and drugs they claimed, now Judge Ruppert prosecuting attorney Addie J. King and several Dayton Police whom where at the scene claim they destroyed the tape.

The Police who beat Ealy in 1990 have continued the vendetta and are using there authority to settle a score with him.

In Judge Gormans entry she stated that the Relator alleged misconduct of the Court bailiff John Thompson it's not alleging it's a fact that Thompson and prosecutor Cynthia Cook took Judge Rupperts final decision and entry and the docket statement out of case NO. 2007TRD5411 App. 22635 SC.t 08-1625. the records have been shredded.

The trial Judge was in the complete absence of all jurisdiction by covering for the misconduct of the Court Bailiff like what he did is legal but rather illegal and under handed. Citing Rankin v. Howard 633F.2d 844(1980). {Reversed and Reversed},

In Rankin it's found that Judge Howard lacked jurisdiction over a party, then he lacks jurisdiction to adjudicate the parties rights whether or not the subject matter was properly before it. The 1983 action against Judge Howard was dismissed because he imposed immunity. The District Court relied on the decision in Sykes .v California, 497 F.2d 197(9th Cir.1974) for the proposition that an immune state official coconspirators are derivatively immune because they donot act under the color of state law.

But in later cases the Court acknowledged that the status of derivative immunity was unclear in this circuit Aldabe . Aldabe , 616 F.2d 1089,1092 n2(9thCir.1980). Citing Briley v. California, 564 F.2d 849, 858 n. (9thCir.1977). The Supreme Court resolved this issue in Dennis v. Sparks U.S. 101 S.Ct. 183, 66 L.Ed. 2d. 185(1980).

The Court held that an immune Judge's private Coconspirators do not enjoy derivative immunity. at 101 S.Ct. 183, 66 L.Ed. 2d. 186(1980).

The Court observed that the immunity does not change the Judge's action or that of the Coconspirators. In deed, his immunity is dependent upon the challenged conduct being an official act within his statutory jurisdiction, broadly construed. at 101 S.Ct. 183, 66 L.Ed. 2d 186(1980).

It follows that a private party who corruptly conspires with a Judge in connection with such conduct are... acting under color of state law with the meaning of 1983. at 101 S.Ct. 183, 66 L.Ed. 2d. 187(1980).

Gorman stated that the Relator has far more knowledge than most prose litigants as though we are not suppose to have any type of knowledge in this game the Relator is not trained as the Judge or most attorneys but I have learned from the best while having been maliciously prosecuted since Nineteen Hundred and Ninety.

The Judge stated that the Relator filed over 28 complaints seeking damages well that's what the constitution says that the action taken is the remedy for judicial misconduct prosecutorial and police misconduct.

According to the United States Constitution a 1983 Title 42 USC remedy is said to be the thing in America to secure ones federally protected rights to life liberty and property the State of Ohio has never recognized the citizens due process rights under the 14 Amendment where thousands have been denied and deprived after selective persecution in Dayton Ohio. Terry v. Ohio 392,U.S 1 1968. This case must be analyzed under Parratt v. Taylor 451 U.S.527, 535 (1981) citing Leach v. Shelby County Sheriff Department, 891 F.3d 1241-1244(6Cir. (1989).citing West Atkins, 487 U.S. 42, 48(1988) where it's abundantly clear that R.C.2323.52. is being secretly applied as a tool of deprivation to deprive the Relator of his due process Rights Enumerated under the United States Constitution.

{THE XIV AMENDMENT}

The Guaranteed Right to due process enumerated in the Bill of Rights under the Amendment XIV of the United States Constitution states as follows; Section 1. All persons born or naturalized in the United States and subject to jurisdiction thereof are citizens of the United States and of the State where they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any State deprive any person of life liberty and property, without due process of law; Nor deny to any person within its jurisdiction the equal protection of laws.

{OHIO CONSTITUTION}

Ohio Constitution 1.16 Redress in Courts Pursuant to section {1851 Amend 1912} All Courts shall be open, and every person for an injury done him in his land, goods, person or reputation, shall have remedy by due course of law.....

In Blacks Law Dictionary {SIXTH EDITION} it defines Due course of law as follows and the phrase is synonymous with due process of law or and the law of the land,.....The trial Judge reeled off several cases and many filed in the Ohio Supreme Court that should have been granted and since the cases we're cited by her she determined that what Thompson did is ok, this kind of thinking has this country in deep trouble because of denial in the State Courts.

Judge Gorman stated that the claims against Thompson and Ruppert were frivolous citing Walton v. Old Insurance Co., et al (1988) 36 Ohio St. 3d 607, 608, I dnt know what an insurance claim has to do with this case but the Judge has shown that in her world the privileged can break the laws of the land but that 's not how it works, a "crime is a crime" Thompson and the others may not be Judged in common law but the final Judge will have something to say about what's occurred in Dayton where the poor have been and continue to be abused by state actors.

The trial Judge stated that Judge Ruppert has no personal interest in the case that's not quite true it's established that Judge Ruppert was instructed by prosecuting attorney Addie J. King to respond to the affidavit of disqualification showing Ex-parte communication.

Justice White Delivered in Burns, 111S.Ct 1934, (1999). With the opinion here along with Rehnquist C,J and Stevens, O'Conner , Kennedy Souter, JJ joined Scalia J filed opinion concurring in the judgment in part and dissenting in part in which Blackmun, J., and in part III which Marshal J., joined,. It's erroneous to allow prosecutors to be absolute immune from liability for giving advice to the police or Judges which is obvious in this case and has occurred.

After the second affidavit of disqualification having been filed now attorney Alan Gable just confirmed on December 10, 2008 that visiting Judge James R. Ruppert denied the video of the stop, prior to this denial a change of venue was denied in the attempted to cover the individual and official acts of Court bailiff John Thompson and prosecuting attorney Cynthia Cook whom violated Appellate rule 2.12 and 2.13 by obstruction of justice when they forcefully seized the appeals jacket in 2007TRD 5411/CA-22635.

As mentioned in the taking of Judge Rupperts final decision and entry and shredding the docket statement sheet now Addie J. King has conspired to withhold exculpatory evidence showing the innocents of the Relator this is outrageous conduct, how could Judge Ruppert even sleep knowing this kind of acts are occurring lets wake up here.

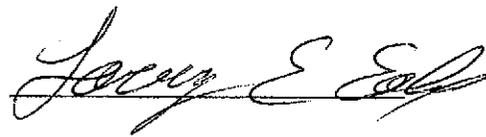
Judge Gorman stated the Relator was simply dissatisfied with the trial Judges ruling how is that when Thompson committed a crime in broad day light and she stated that's dissatisfaction.

Addie J. King in her response states primarily what Judge Gorman stated showing that they want to continue the malicious prosecution of citizens and I, thought the Courts were designed to protect the under privileged from arbitrary agents of the states, some of us I guess have to find out the hardway.

The Relator requests the Supreme Court to direct the lower Court to remove the visiting judge for denial of due process in the State Court and for allowing the tampering with evidence and attempting to refute the claims of bias.

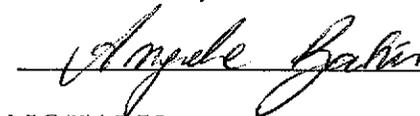
Attachment (2) affidavits of Addie J. King and Judge Ruppert refuting the claims of bias in 08-TRD3189 and other documents showing that the Courts and prosecutors are withholding states evidence. See attachment 3 request for discovery and the on going malicious prosecution of citizens and the attempted to slander the Realtors name and cases knowing full well they the state have broken the laws of the land and are biased.

Larry E. Ealy



(Signature of affiant)

Larry E. Ealy Sworn to and subscribed before me a notary public in and for the County of Montgomery, State of Ohio/by Larry E. Ealy, identified before me on this 12th day of December, 2008.



NOTARY

SEAL



ANGELA BAKER, Notary Public
in and for the State of Ohio
My Commission Expires June 3, 2012

CERTIFICATE OF SERVICE

I hereby certify a copy of the above demand for removal of the trial Judge and request for the video was served to Deidre Logan and Addie J. King of the City of Dayton's prosecutor's office at 335 West Third Street Dayton Ohio.


Larry E. Ealy Pro Se
4687 Marlin Ave
Trotwood Ohio 45416

FILED
DAYTON MUNICIPAL COURT
TRAFFIC DIVISION

2008 NOV 21 AM 6:40

MARK E. OWENS
CLERK

DAYTON MUNICIPAL COURT

STATE OF OHIO)	
Plaintiff)	CASE NO. 08-TRD-03189
-vs-)	
LARRY E. EALY, SR.)	
Defendant)	DECISION AND ENTRY

This cause came on before the Court pursuant to the Defendant's Motion to Suppress all evidence obtained as a result of the traffic stop of the Defendant on February 16, 2008. The Defendant argues that the stop of the Defendant's vehicle was illegal in that no probable cause existed to stop the Defendant's vehicle and all evidence obtained therefrom must be suppressed.

On February 16, 2008, Officer Speelman of the City of Dayton Police Department was on routine patrol at approximately 10:15 a.m. when he observed the Defendant's vehicle eastbound on Edgewood Road. Officer Speelman testified that as the Defendant approached Salem Avenue, he initiated a left turn signal approximately twenty-five feet before stopping at the intersection. Thereafter, the Defendant turned left onto Salem Avenue traveling north in the lefthand lane for a short distance before changing lanes to the right hand lane without initiating a further signal for change of lanes. The Officer thereafter initiated a stop upon the Defendant turning right at the first street.

Officer Speelman indicated that the Defendant was stopped as a result of the failure to signal a change of lanes, although the Officer did not cite the Defendant for the lane change. The Officer did cite the Defendant for Failing to

Initiate a Signal of Intention to Turn during not less than the last 100 feet traveled before turning.

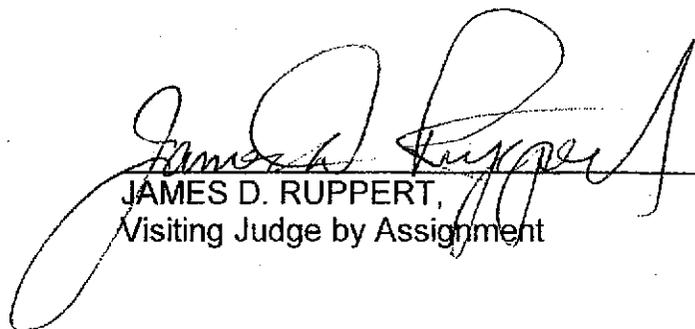
Upon cross examination, Officer Speelman testified that the Defendant could have initiated his signal of intention to turn anywhere from twenty-five to fifty feet, but according to his observations, the signaling was clearly less than the one hundred feet requirement for a signal before turning. The Officer further testified that he was not acquainted with the Defendant before effectuating the stop, did not call in the Defendant's license plate prior to the stop, and had no knowledge of the Defendant's prior violations. According to his testimony, Officer Speelman likewise had no information or knowledge of the Defendant's troublesome relationship with the City of Dayton Police Department. Upon further questioning, the Officer further testified that he issues several citations per week for similar violations of this statute requiring turn signal during not less than one hundred feet prior to the turn.

The Defendant testified that he in fact did turn on his left turn signal and believed that he complied with the law. The Defendant testified that he has a poor relationship with the Dayton Police Department and is singled out as a result of his prior history with that Department. It is clear to the Court that the Defendant believes that he is subjected to harassment and unreasonable treatment by the Police Department, whether or not there is a valid basis for that opinion.

Although the Defendant argues that the stop in the instant case for a turn signal violation was a pretext to investigate the Defendant's record, there was no evidence in the record to support such a finding other than the Defendant's conjecture. The Ohio Supreme Court has held that where a police officer stops a vehicle, based on probable cause, that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the officer had some ulterior motive for making the stop. *City of Dayton v. Erickson*, 76 Ohio St. 3d 3 (1996). Thus, where an officer has probable cause to stop a motorist for any criminal violation, including a minor traffic violation, the stop is valid regardless of the officer's underlying subjective intent or motivation.

IT IS THEREFORE ORDERED that the Defendant's Motion to Suppress is hereby overruled.

Nov. 14, 2008



JAMES D. RUPPERT,
Visiting Judge by Assignment

B-FILED
CLERK OF COMMON PLEAS

2008 OCT -7 P 12:09

GREGORY A. BRUSH
CLERK OF COMMON PLEAS

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY
CIVIL DIVISION

STATE OF OHIO,

Plaintiff,

v.

LARRY E. EALY,

Defendant.

: CASE NO. 2008-CV-8417

: (Judge Barbara P. Gorman)

ORDER

The Montgomery County Clerk of Courts is hereby ORDERED to return to the Dayton Municipal Court all Dayton Municipal Court records contained in Montgomery County Court Case No. 2008-CV 8417.

SO ORDERED:


BARBARA P. GORMAN, JUDGE

Copies of this Decision, Order and Entry were sent to the following persons by regular mail

on the date hereof:

Attorney for Plaintiff,
Addie King
Assistant City Prosecutor
335 W. Third Street
Room 372
Dayton, OH 45402

Defendant,
Larry Ealy
4687 Marlin Ave.
Trotwood, OH 45406

Attorney for Defendant,
Alan Gabel
P.O. Box 1423
Dayton, OH 45401

The Honorable James R. Rupert,
301 West Third Street
Dayton, OH 45402

Cc: Montgomery County Clerk Gregory Brush

William Hafer, Bailiff 225-4392

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003 SEP 12 P 1:34

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY
CIVIL DIVISION

STATE OF OHIO,

Plaintiff,

v.

LARRY E. EALY,

Defendant.

CASE NO. 2008-CV- 8977

08TRD3189
(Judge Barbara P. Gorman)

DECISION, ORDER, AND ENTRY
OVERRULING DEFENDANT'S
AFFIDAVIT OF DISQUALIFICATION
REGARDING VISITING JUDGE JAMES
R. RUPPERT

This matter is before the Court on the *Affidavit of Disqualification* filed on July 17, 2008 by Defendant Larry E. Ealy with respect to Visiting Judge James R. Ruppert, sitting for Judge John S. Pickrel in Dayton Municipal Court Case No. 08TRD3189. The *Response to Affidavit of Disqualification* was filed by Plaintiff on July 28, 2008. Judge James D. Ruppert filed a *Response to Affidavit of Disqualification* on August 8, 2008. This matter is properly before the Court.

I. FACTS

Defendant Larry Ealy ("Defendant") requests this Court to disqualify Visiting Judge James R. Ruppert as trial court judge in Dayton Municipal Court Case No. 08TRD3189. Defendant alleges that Judge Ruppert is prejudiced as to his case because Judge Ruppert (i) denied Defendant's motion for a change of venue in the instant matter, and (ii) found Defendant guilty in an unrelated

traffic matter. Defendant also alleged misconduct on the part of the court's bailiff, the traffic clerk's office and the assistant prosecutor in an unrelated case.

II. LAW & ANALYSIS

Under O.R.C. Section 2701.031(A), a person seeking to have a municipal court judge disqualified from presiding over a case must file an affidavit of disqualification with the clerk of courts in which the case is pending. The affidavit must comply with the requirements set forth in O.R.C. 2701.031(B), which provides:

(B) An affidavit of disqualification shall be filed under this section with the clerk of the court in which the proceeding is pending not less than seven calendar days before the day on which the next hearing in the proceeding is scheduled and shall include all of the following:

- (1) The specific allegations on which the claim of interest, bias, prejudice, or disqualification is based and the facts to support each of those allegations;
- (2) The jurat of a notary public or another person authorized to administer oaths or affirmations;
- (3) A certificate indicating that a copy of the affidavit has been served on the judge of the municipal or county court against whom the affidavit is filed and on all other parties or their counsel.
- (4) The date of the next scheduled hearing in the proceeding or, if there is no hearing scheduled, a statement that there is no hearing scheduled.

O.R.C. Section 2701.031.

In the case at bar, Defendant's affidavit of disqualification fails procedurally because Defendant did not include the date of the next hearing in the affidavit and failed to include Judge Ruppert on the certificate of service. Although Defendant is a pro se litigant, he is quite familiar with the judicial process. For example, since July 2002, Defendant has filed over twenty-eight civil cases on a pro se basis in the Montgomery County Common Pleas Court seeking damages ranging from \$25,000 to \$12.5 million. He has not prevailed on any cases that have been resolved. On December 5, 2006, Judge Steven Yarborough determined that Defendant was a vexatious litigator pursuant to O.R.C. Section 2323.52. *Ealy v. McIn*, Montgomery C.P. No. 2005-CV-6344, Final

and Appealable Decision, Order and Entry Sustaining Defendants' Motion for Summary Judgment. Defendant subsequently filed an affidavit of disqualification with the Ohio Supreme Court seeking to disqualify Judge Yarborough from acting on further proceedings. Defendant's affidavit of disqualification was denied by the Ohio Supreme Court, *Ealy v. McLin* (Jan.9, 2007), and the Second District Court of Appeals affirmed Judge Yarborough's judgment that Defendant is a vexatious litigator. *Ealy v. McLin*, Montgomery App.No. 21934, 2007-Ohio-4080.

In addition, Defendant filed for disqualification of Judge Daniel G. Gehres in Dayton Municipal Court case 2003 CRB 10516, which was denied by Judge John Kessler. *State v. Ealy*, Montgomery C.P. No. 2004-CV-1852. Defendant also sought to disqualify Judge Yarborough from a second case, as well as Montgomery County Common Pleas Judge Jeffrey Froelich in an unrelated case. Both affidavits were denied by the Ohio Supreme Court. Further, Defendant has demanded that the Second District Court of Appeals recuse itself from two cases, see CA 21750 and CA 22111, both of which were denied.

Based on the foregoing, this Court notes that Defendant has experience and knowledge far greater than the average pro se litigant with respect to the judicial system in general and the procedure to seek disqualification of a judge in particular. As a result, the Court finds that Defendant's pro se status does not excuse the procedural defects contained in his affidavit of disqualification. Accordingly, Defendant's affidavit of disqualification is improper and must be overruled.

Furthermore, even if the affidavit had been procedurally proper, Defendant's affidavit of disqualification would fail on the merits. Disqualification of a judge is an extraordinary remedy and may not be used in a frivolous manner. *Walton v. Old Republic Insurance Co., et al.*, (1988), 36 Ohio St. 3d 607, 608. In the case at bar, Defendant had made unsubstantiated allegations of misconduct on the part of the Court and its staff, as well as the clerk's office and the prosecutor.

With respect to Judge Ruppert, he alleges bias based on the Judge Ruppert's denial of his motion for a change of venue in the case at bar, and the Judge Ruppert's guilty finding in another case.

Absent from the Affidavit of Disqualification is any allegation of relationship between the judge and either party or counsel, any financial interest of the judge in the outcome of the case, any personal knowledge on the part of Judge Ruppert regarding the case or any statement that Judge Ruppert would be a likely witness. Without a showing of actual bias, a judge is not disqualified from presiding over a matter simply because he or she presided over previous matters involving a party. *State v. Herbert In re Aubrey* (2006), 117 Ohio St. 3d 1245, 1246. Further, dissatisfaction or disagreement with a judge's rulings are not a basis for a disqualification of a judge. Thus, the Court finds that the substantive allegations set forth in the *Affidavit of Disqualification* are not legitimate bases for the disqualification of Judge Ruppert in the instant case.

Based on the foregoing, the *Affidavit of Disqualification* is procedurally defective and thus must be OVERRULED by this Court. Further, the substantive allegations set forth in the *Affidavit of Disqualification* are not meritorious bases for the disqualification of Judge Ruppert.

II. CONCLUSION

Accordingly, the *Affidavit of Disqualification* filed on July 17, 2008 by Defendant Larry E. Ealy with respect to Visiting Judge James R. Ruppert is OVERRULED in its entirety.

SO ORDERED:


BARBARA P. GORMAN, JUDGE

Copies of this Decision, Order and Entry were sent to the following persons by regular mail

on the date hereof:

Attorney for Plaintiff,
Addie King
Assistant City Prosecutor
335 W. Third Street
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Dayton, OH 45402

Defendant,
Larry Ealy
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Trotwood, OH 45406

Attorney for Defendant,
Alan Gabel
P.O. Box 1423
Dayton, OH 45401

The Honorable James R. Rupert,
301 West Third Street
Dayton, OH 45402

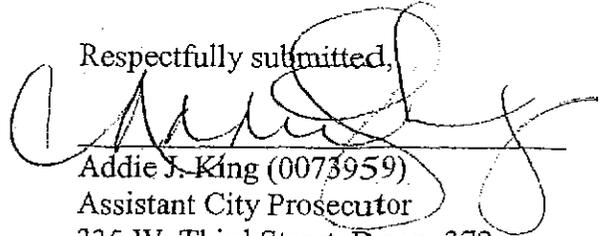
William Hafer, Bailiff 225-4392

IN THE MUNICIPAL COURT OF DAYTON, OHIO
TRAFFIC DIVISION

STATE OF OHIO, : Case No. 08 TRD 3189
Plaintiff, : Judge James R. Ruppert
vs. :
LARRY E. EALY, : RESPONSE TO AFFIDAVIT
Defendant. : OF DISQUALIFICATION

Now comes Plaintiff, State of Ohio, by and through Counsel, and hereby responds to Defendant Larry Ealy's affidavit of disqualification filed on July 17, 2008. In this affidavit, defendant is alleging that Visiting Judge James R. Ruppert, sitting for Judge John S. Pickrel, is biased and prejudiced based on his denial of defendant's change of venue motion, his previous guilty verdict on an unrelated case, and unsubstantiated and unproven allegations of misconduct on the behalf of the bailiff, the traffic clerk's office, and assistant prosecutor Stephanie Cook. Defendant has also failed to properly follow the statutory requirements for such an affidavit. For these reasons, the judge should not be disqualified, and defendant's request should be denied.

Respectfully submitted,



Addie J. King (0073959)
Assistant City Prosecutor
335 W. Third Street, Room 372
Dayton, Ohio 45402
(937) 333-4400
FAX (937) 333-4491

MEMORANDUM

Defendant has filed an affidavit of disqualification requesting that Visiting Judge James R. Ruppert be disqualified from presiding in the instant case. The affidavit itself is insufficient under O.R.C. § 2701.031. Defendant wishes Judge Ruppert to be disqualified from the pending case due to his denial of defendant's change of venue motion, a guilty verdict in an unrelated traffic case, and unproved and unsubstantiated allegations of misconduct on behalf of the court's bailiff, the traffic clerk's office and the assistant prosecutor in an unrelated traffic case. This allegation does not show bias or prejudice, or any other statutory or ethical concern that requires disqualification, nor is there any show of an appearance of impropriety on behalf of Judge Ruppert. For those reasons, the request for disqualification should be denied.

A municipal court judge may be disqualified from presiding in a pending case upon the filing of an affidavit of disqualification with the clerk of courts in which the case is pending. O.R.C. § 2701.031 (A). Such an affidavit must be filed not less than seven days prior to the next hearing, and must include ALL of the following: 1) the specific allegations of interest, bias, prejudice, or disqualification and the facts to support them; 2) the affidavit must be notarized; 3) there must be a certificate of service to the judge against whom the affidavit is filed and all other parties or counsel; and 4) the date of the next hearing must be included. Defendant in this case has failed to include the date of the next hearing, and has failed to include the judge that the affidavit seeks to

disqualify in his certificate of service. For these reasons, the affidavit is defective and should be denied as a matter of law.

As to the specific allegations in the affidavit, defendant has alleged that because of unsubstantiated and unproven allegations of misconduct on the part of the court's bailiff, the traffic clerk's office, and the assistant prosecutor in a previous, unrelated case, Judge Ruppert's denial of his motion for a change of venue in the instant case, and the same judge's guilty finding in a previous case that the judge should be disqualified. These are insufficient grounds to do so.

Ohio Judicial Canon 3 covers situations in which a judge should disqualify themselves from presiding in certain proceedings. Specifically, the canon cites personal bias or prejudice, personal knowledge of the facts, previous service as a lawyer in the controversy, relationships with legal counsel, the judge as a witness, or financial interest in the outcome of the proceedings. Ohio Jud. Canon 3.

In this affidavit there is no allegation of a relationship, past or present, between the judge and counsel for either party, financial interest in the outcome of the case, personal knowledge of the facts of the case, or indication that the judge is a likely witness in the case. Instead, the affidavit seeks to disqualify the judge on the basis of bias or prejudice.

The term "bias or prejudice" implies a hostile feeling or a spirit of ill-will or undue friendship or favoritism toward one party or one party's counsel, with the formation of a fixed anticipatory judgment on the part of the judge rather than an open

mind to decide each case based on the evidence. *State ex rel. Pratt v. Weygandt* (1956) 164 Ohio St. 463, 469. A judge is presumed to follow the law and not be biased, and the appearance of bias or prejudice must be overwhelming to overcome these presumptions. *In re Oliveto*, (1994) 74 Ohio St. 3d 1261, 1263.

It is worth noting that Defendant has filed for disqualification of Judge Daniel G. Gehres in Dayton Municipal Court case 2003 CRB 10516. That affidavit was denied by Judge John Kessler in Montgomery County Common Pleas Court Case No. 2004 CV 1852. In a civil lawsuit against the City of Dayton, he sought to disqualify Judge Steven Yarbrough from hearing his civil complaint in Common Pleas Court Case No. 2005 CV 6344, since Yarbrough had ruled him to be a vexatious litigator in another, unrelated, civil case. That affidavit was denied by Chief Justice Thomas Moyer of the Ohio Supreme Court. Yarbrough has since been appointed in the Montgomery County Common Pleas Court to hear a previous civil case (2006 DV 7514) against Judge Thomas Hanna from Kettering Municipal Court, after Judge Gregory Singer of the Montgomery County Common Pleas Court was internally disqualified. He has filed an affidavit for disqualification against Judge Jeffrey Froelich of the Montgomery County Common Pleas Court in case no. 2006 CV 10339 in an unrelated civil matter; that affidavit was denied by Chief Justice Thomas Moyer of the Ohio Supreme Court.

He has demanded that the Second District Court of Appeals recuse itself; see case numbers, CA 21750 and CA 22111. Those motions for both were also overruled. In all of these motions for recusal and affidavits for disqualification, it is interesting to note that

none have been granted, except by individual judges making a decision to disqualify themselves. Such repeated and baseless motions carry out the State's position that defendant seeks disqualification merely because he disagrees with a court's ruling, rather than any existing bias or prejudice.

Disqualification of a judge is an extraordinary remedy, not to be used in a frivolous manner. *In re Disqualification of Hunter, Walton v. Old Republic Insurance Company, et al.*, (1988) 36 Ohio St. 3d 607, 608. The statutes allowing for the procedure for the disqualification of a judge are intended to address the disqualification of the particular judge presiding over the instant case, and the filing of frivolous or repeated affidavits may be subject to sanctions. *In re Disqualification of Light*, (01988) 30 Ohio St. 3d 604. Such sanctions may include contempt charges, sanctions, attorneys fees, and expenses. *See, e.g., Ameritrust Co., N.A. v. O'Brien (In re Millard)* (1992) 74 Ohio St. 3d 1235, 1344 (where an attorney had filed 13 affidavits for disqualification over a period of several years, and none of them had been sustained); *In re Disqualification of Walker, Federal Bank Association v. Walton, et al.*, (1992) 74 Ohio St. 3d 1239 (19 affidavits filed in five years by the same affiant against six different judges, three against the instant judge, all found to be without merit).

Defendant constantly alleges misconduct against Dayton Municipal Court judges who have found him guilty, resulting in Visiting Judges being appointed to hear his cases. Any guilty finding results in an allegation of misconduct, even after a trial on the merits, including the case he references to show bias. That case, 2007 TRD 5411 from the

Dayton Municipal Court, has been appealed in Case No. 22635 in the Second District Court of Appeals. That decision has been stayed, pending defendant's interlocutory appeal to the Ohio Supreme Court. To this date, there have been no issues raised in that appeal dealing with the merits of the case under appeal. The issues raised have all dealt with unsubstantiated allegations of misconduct by other court personnel. None of the allegations involve Judge Ruppert himself.

Absent a showing of actual bias, merely presiding over previous proceedings involving the defendant is not disqualified in hearing a pending matter involving the defendant. *State v. Herbert (In re Aubry) (2006) 117 Ohio St. 3d 1245, 1246.*

Dissatisfaction or disagreements with a judge's rulings of law are legal issues subject to appeal, not a basis for a disqualification of the judge. *In re Disqualification of Murphy (1988) 36 Ohio St. 3d 605.* The simple fact of a bailiff's interests, and not the judge himself was related to one of the parties was not a sufficient reason to require disqualification of a judge. *Taylor v. Carr, (1989) 61 Ohio App. 3d 368.*

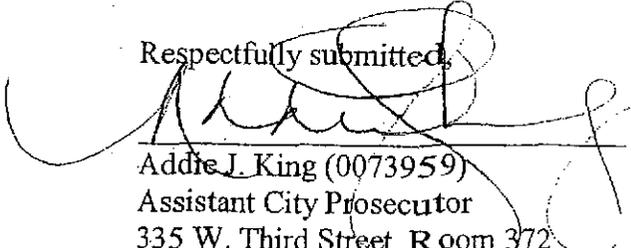
In this case, the affidavit seeks to impute bias and prejudice due to a previous ruling in a prior case and a disagreement on a previous ruling on a change of venue motion in the instant case, despite clear case law to the contrary in *Herbert* and *Murphy*. A bailiff's potential bias or interest is not imputed to the judge, and by extension, neither can any alleged and unsubstantiated misconduct by members of the clerk's office or the prosecutor's office, pursuant to *Taylor*. There is no evidence that such bias extends to the judge or that the judge had any part in the allegations from the previous case. In short,

defendant in this case has failed to show either a sufficient basis for overwhelming bias or prejudice as defined in *Pratt*, or an appearance of impropriety sufficient to overcome the presumption in *Oliveto* that judges are impartial absent an overwhelming bias or prejudice.

There are no facts indicating any personal bias or prejudice or any acts that could constitute an appearance of impropriety on the part of Judge Ruppert. The only activity undertaken by Judge Ruppert is the denial of a motion for a change of venue and a guilty finding in a previous case. The unsupported allegations of a file or an entry being confiscated are not imputed to Judge Ruppert by any part of defendant's affidavit, and cannot be imputed to him under any construction defendant's allegations. There is no evidence supporting any bias or prejudice or any appearance of impropriety by Judge Ruppert.

Defendant has failed to file an adequate affidavit under O.R.C. § 2701.031 and his affidavit does not state sufficient grounds for the disqualification of Judge Ruppert in the instant case. For these reasons, defendant's affidavit for disqualification should be DENIED and sanctions should be ordered.

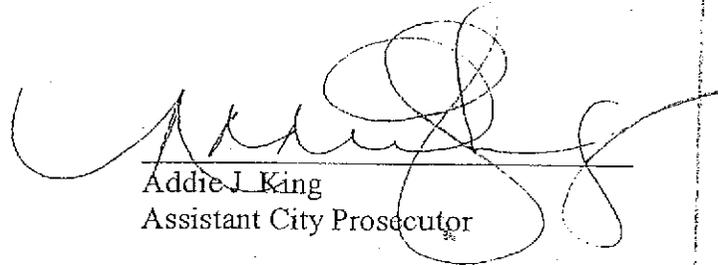
Respectfully submitted,



Addie J. King (0073959)
Assistant City Prosecutor
335 W. Third Street, Room 372
Dayton, Ohio 45402
(937) 333-4400
FAX (937) 333-4491

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon Larry Ealy, 4687 Marlin Ave., Trotwood, Ohio 45406; Alan Gabel, Attorney for Defendant, P.O. Box 1423, Dayton, Ohio 45401; and Judge James R. Ruppert, 301 W. Third St. Dayton, Ohio 45402 the same date of filing.



Addie J. King
Assistant City Prosecutor

IN THE DAYTON MUNICIPAL COURT

STATE OF OHIO
 Plaintiff.
 VS.
LARRY E. EALY, SR.
 Defendant.

Case No. 08 TRD 03189
PRAECIPE

To the Clerk, Dayton Municipal Court:

Please issue subpoena(s) to the person(s) at the addresses shown below:

KEEPER OF RECORDS - TRAFFIC
CITY OF DAYTON POLICE DEPARTMENT AND/OR
CITY DEPARTMENT WITH TRAFFIC RECORDS SHOWING
VIOLATIONS OF 71.31 - FAILURE TO SIGNAL
100!

to appear at Courtroom No. 3B, at 301 WEST THIRD STREET, Dayton, Ohio 45402 on
THURSDAY, 20 08, at 9:00 A. M. and bring with him/her the

following described documents:

ALL RECORDS OF VIOLATIONS OF 71.31A - FAILURE
TO SIGNAL 100' IN THE YEAR OF 2008

Attorney for Alan O. Kabele
LARRY E. EALY, SR.

FILED
 18000
 COURT

IN THE DAYTON MUNICIPAL COURT

STATE OF OHIO

Plaintiff.

Case No. 08 TRD 03189

VS.

PRAECIPE

LARRY E. EALY, SR.

Defendant.

To the Clerk, Dayton Municipal Court:

Please issue subpoena(s) to the person(s) at the addresses shown below:

① BELINDA EALY
4687 MARLIN
TROTWOOD, OHIO 45416

② OFFICER NATHAN SPEELMAN
DAYTON POLICE DEPARTMENT
③ OFFICER MICHAEL SAYLOR
DAYTON POLICE DEPARTMENT

to appear at Courtroom No. 3B, at 301 WEST THIRD STREET, Dayton, Ohio 45402 on THURSDAY, 20 08, at 9:00 A. M. and bring with him/her the

following described documents: ANY AND ALL DOCUMENTS, REPORTS, MEMORANDUMS, VIDEO TAPES, CAMCORDER FOOTAGE, INCLUDING BUT NOT LIMITED TO THE STOP OF LARRY E. EALY ON FEBRUARY 13, 2008, ETC.
THAT YOU HAVE PERTAINING TO LARRY E. EALY.

Attorney for ALAN D. HABEL
LARRY E. EALY, SR.

IN THE DAYTON MUNICIPAL COURT

STATE OF OHIO
 Plaintiff.
 VS.
LARRY E EALY
 Defendant.

Case No. 08 TRD 03189
 PRAECIPE

To the Clerk, Dayton Municipal Court:

Please issue subpoena(s) to the person(s) at the addresses shown below:

① GREG JACKSON
 DAYTON POLICE DEPARTMENT

③ OFFICER STEVEN HEIBER
 DAYTON POLICE DEPARTMENT

② JODY LANE
 4687 MARLIN AVE.
 TROTWOOD OHIO 45416

to appear at Courtroom No. 3B, at 301 WEST THIRD STREET, Dayton, Ohio 45402 on
THURSDAY, 20 08, at 9:00 A. M. and bring with him/her the

following described documents:

ANY AND ALL DOCUMENTS, REPORTS, MEMORANDUMS, VIDEO TAPES, CAMCORDER FOOTAGE, INCLUDING BUT NOT LIMITED TO THE STOP OF LARRY E. EALY ON FEBRUARY 12, 2008, etc. THAT YOU HAVE PERTAINING TO LARRY E. EALY.

Alan S. Haber
 Attorney for LARRY E. EALY, SR.

AFFIDAVIT OF DISQUALIFICATION

OHIO CONSTITUTION ARTICLE IV § 5(C); REV. CODE [§ 2701.03.1]

Affidavit of Disqualification of Judge
because of Prejudiced'

IN THE DAYTON MUNICIPAL COURT, MONTGOMERY
COUNTY, OHIO

CRIMINAL/TRAFFIC DIVISION

STATE OF OHIO

Plaintiff,

vs.

LARRY E. EALY

Defendant.

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*
*
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CASE NO.: 08-TRD3189
Hon. James R. Ruppert

{Enbanc}
Judge Carl S. Henderson

Verified Affidavit Of
Disqualification With Attachments

FILED
DAYTON MUNICIPAL COURT
TRAFFIC DIVISION

2008 DEC 5 PM 3:53

MARK E. OWENS
CLERK

STATE OF OHIO
MONTGOMERY COUNTY

SS.: DEFENDANT, LARRY E. EALY

Now comes, Defendant, Larry E. Ealy, in this action, and, after being duly sworn, deposes and states:

Honorable Judge James R Ruppert visiting Judge of Dayton Municipal Court, Montgomery County, Ohio, in whose court his matter is pending, is prejudiced in this matter against the defendant, and is by reason of such prejudice disqualified to sit in the trial of this cause, for the following reasons:

There is no matter pending before the Court only that it is set for a final pretrial order on Friday December 5, 2008.

The Defendant previously filed a affidavit of disqualification on this Judge in which was denied by the Presiding the Judge of the Court of Common Pleas on August 12, 2008, in which violated defendant's right to a fair and impartial trial.

Judge Ruppert violated the code of ethics in that matter having committed Ex-parte communication when he filed a response to the first affidavit of disqualification along with Prosecutor Addie J. King on July 29, 2008. Citing *Burns v. Reed* 111S.Ct 1934(1999). Concerning ex-parte communication the facts rest upon the nature of the act, that is in question qualified immunity has evolved and it provides ample protection to all but the plainly incompetent as with Ruppert and King and those who knowingly violate the law have no absolute immunity. *Malley Supra* 475 U.S., AT 341, 106 S.Ct at 1096 see also *Mitchell*, 472 U.S., at 524, 105 S.Ct at 2814). Ruppert knew or should have known that his acts violated the statutory or constitutional rights of the Defendant within the laws of the land. *Harlow* 475 U.S. at, 819,, 102 S.Ct at (2738).

Justice White Delivered in *Burns*, 111S.Ct 1934, (1999). With the opinion here along with Rehnquist C,J and Stevens, O'Conner , Kennedy Souter, JJ joined Scalia J filed opinion concurring in the judgment in part and dissenting in part in which Blackmun, J., and in part III which Marshal J., joined,. It's erroneous to allow prosecutors to be absolute immune from liability for giving advice to the police and Judges. See *Reidy v. Deitsch*, 7 Ohio N.P.620, 10 Dec. 382, 1900 WL 1242(Super1900).

In Reidy its found that the Police Superintendent imputed by photo that the Plaintiff had committed some sort of crime, in State v. Ealy the Dayton Police have illegally generated the same type of photo of the Defendant to target him for denial of due process in the Court of Common Pleas and Dayton Municipal Court and City Streets since his 1990 assault and battery this act has caused the Defendant disgrace loss of, life, liberty and property and happiness.

The Photo was retrieved from Judge Mary Kay Huffman's office on May 4, 2007 on the tip from an prominent attorney and several citizens of Dayton the Defendant has or had no case before Judge Huffman a Judge of the County of Montgomery, Ohio indicating that she was in the clear absence of jurisdiction in violation with the Defendants Federal Civil Rights under Title 42Cusca 1983, 1985, 1986. Citing Rankin v. Howard 633F.2d 844(1980). {Reversed and Reversed},

In Rankin it's found that Judge Howard lacked jurisdiction over a party, then he lacks jurisdiction to adjudicate the parties rights whether or not the subject matter was properly before it.

In this matter Judge Dennis Langer had former Sheriff Dave Vore to generate the photo and it was distributed to all named State agents for denial of due process this was the agreed to conspiracy in advance that the Defendants rights are to be curtailed in light of the Fourteenth Amendment and due process of law.

According to the Court of Appeals Ninth Circuit in Rankin although a Court of general jurisdiction are not liable for judicial acts merely in access of there personnel jurisdiction even though maliciously or corruptly done. Stumps v. Sparkman, 435 U.S. 349, 98 SC.t 1099, 55 L.Ed. 2d. 231(1978).

When a Judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is not available.

The two prong test here is was the Judge and the prosecutor performing an act that usually performed by them in any given case in *Stumps* the Court identified two specific factors to be considered in determining whether an act is judicial "the nature of the act itself i. e., whether it's a function normally performed by a Judge.

Although the Supreme Court acknowledged in *Stumps* that the Judge committed grave procedural due process errors it did not explicitly consider whether or not he acted in the clear absence of personal jurisdiction or whether such action would be protected by judicial immunity. The question appears to be one of first impression.

The bench here must assume that a Court arguably having subject matter jurisdiction does not act in the clear absence of all jurisdiction., When the Supreme Court first formulated the clear absence standard , however it stated that the principal of immunity applied when there was jurisdiction of both subject and person *Bradley v. Fisher*, 80. U.S.(13 Wall.)335,352(1872), 20 L.ed. 646.

Absence of personnel jurisdiction may be said to destroy all jurisdiction because the requirements of subject matter and personnel jurisdiction are conjunctional. Both must be present before a Court can adjudicate the rights of a party to a dispute.

If a Court lacks jurisdiction over a party, then it lacks all jurisdiction to adjudicate the parties rights whether or not the subject matter is properly before it citing *Kulko v. Superior Court*, 436 U.S. 84, 91, 98 SC.t. 1690 , 1696, 56 L.Ed. 2d. 132 (1978).

It has been the rule that a valid judgment imposing a personal obligation or duty in favor of a Plaintiff may be entered only by a Court having jurisdiction over a person of the Defendant citing *In re Wellman*, 3 Kan. App. 100. 45 P. 726(1896)(ex parte guardianship proceeding would be a flagrant violation of due process rendering any judgment void and null.

The (1983), action against Judge Howard Trauscht was dismissed because Judge Zeller imposed immunity. The District Court relied on the decision in *Sykes v California*, 497 F.2d 197(9th Cir.1974) for the proposition that an immune state official coconspirators are derivatively immune because they donot act under the color of state law. But in later cases the Court acknowledged that the status of derivative immunity was unclear in this circuit *Aldabe. Aldabe*, 616 F.2d 1089,1092 n2(9thCir.1980). Citing *Briley v. California*, 564 F.2d 849, 858 n. (9thCir.1977).

The Supreme Court resolved this issue in *Dennis v. Sparks* U.S. 101 S.Ct. 183, 66 L.Ed. 2d. 185(1980). The Court held that an immune Judge's private Coconspirators donot enjoy derivative immunity. at 101 S.Ct. 183, 66 L.Ed. 2d. 186(1980).

The Court observed that the {i}mmunity does not change the Judges action or that of the Coconspirators. In deed, his immunity is dependent upon the challenged conduct being an official act within his statutory jurisdiction, broadly construed. at 101 S.Ct. 183, 66 L.Ed. 2d 186(1980).

It follows that a {p}rivate party who corruptly conspires with a Judge in connection with such conduct are... acting under color of state law with the meaning of 1983. at 101 S.Ct. 183, 66 L.Ed. 2d. 187(1980). Even if further proceeding show that Judge Ruppert is immune prosecuting attorney Addie J. King must be held liable for acting in the clear absence of all jurisdiction.

The Defendant sustained a conspiracy in case NO. 2005CRB6404 whereas Addie J. King had several domestic violence charges filed as back up charges to get the outcome she wanted as mentioned in this affidavit these to are acts not normally performed by a Prosecutor, King instructed Dayton Police Officers Krenztle and Raymond J. Dine on how to file the charges whereas Judge Susan Anderson dismissed each and every element of each charge after testimony of Raymond J. Dine was heard.

King now continued the reprisal and retaliation here getting Judge Ruppert involved. At 101, S.Ct. 183, 66 L.Ed. 2d 187(1980).

In any event the Defendant has proved a conspiracy to deprive seize search and escort whereas the memorandum with his photo has been out for quite sometime according to other sources where it has finally surfaced for judicial review and it states with clarity who generated and where it was discovered. *Aldabe . Aldabe* , 616 F.2d 1089,1092 n2(9th Cir.1980).

It is not sufficient that the Defendants carry out a judicial order. *Dennis v. Sparks* U.S. 101 S.Ct. 183, 66 L.Ed. 2d. 185(1980). The Plaintiff has proved that Judge Ruppert reached an agreement with Addie J. King to refute the allegations in the first affidavit of disqualification with an understanding that the Defendant was to be stopped on sight of a Dayton Police Officer then seize, detain, search, and curtail the rights of the Defendant without due process. *Adickes .v S.H. Kress& Co.* 398 U.S. 144, 152, 90 SC.t. 1598, 1605, 26 L.Ed. 2.d. 42(1970). at U.S. 101 S.Ct. 183, 66 L.Ed. 2d. 185(1980).

In *Ashelman .v Pope* 793 F.2d. 1072(1986). Its noted that prosecutor's immunity has developed along the lines as a Judges immunity. Immunity extends to protect a prosecutor who acts within her or his authority and in quasi-judicial capacity. *Imbler*, 424 U.S. at 430-31,96 S.Ct. at 994-96.

Where a prosecutor is the initiator of the states case they enjoy absolute immunity. In Rankin, 633 F.2d at 847, the Court held that a Judges prior agreement to decide in favor of a party was not judicial in nature giving rise to absolute immunity.

Judge Ruppert made the decision to refute the allegations about his prejudice and bias where as the City of Dayton current administration has a directive to stop the Defendant without probable cause which is was a violation of his Fourth Amendment Rights. Terry v. Ohio 392 U.S.1 (1968).

Actions taken without personnel jurisdiction are not to be protected by absolute immunity. Citing Rankin v. Howard 633F.2d 844-849(1980). Whereas its reasoned that a prior agreement is not a function normally taken by a Judge.

In Beard, 648 F.2d. at 1270, the Court held that a Judge could be liable for participating in a conspiracy if the Judges Acts where non judicial. Beard alleged that a state Judge conspired to incarcerate him as now alleged here.

The Court reasoned that {e}ven though the Judge's disposition of the proceeding remains a judicial act, under Rankin the prior agreement is deemed the essential cause of the Federally protected rights. Id at 1269. thus for the purposes of applying immunity the focus is on the Judge's ultimate acts which appeared to be judicial, but rather the underlying agreement to conspire which Rankin declared non judicial as did with Ruppert and King.

The underlying conspiracy the determinative act in deciding whether immunity should apply. Judge's immunity from civil liability should not be affected by motives with which their judicial acts are performed. Clevinger, 106 S.Ct. at 500 quoting Bradley, 80 U.S. (13 Wall.) 347.

In Adams 764 F. 2d at 297 n.1 (exceptions to immunity should be narrowly and technical distinctions should be avoided). To foreclose immunities upon allegations that a judicial and prosecutorial decisions were conditioned upon a conspiracy or bribery serves to defeat these policies See Gregory v. Thompson, 500 F.2d 59, 63 (9th Cir.1974).

(What constitutes conduct in this case falling within the scope of immunity must be determined in part by looking at the purposes underlying the doctrine of immunity).

In Ashelman the Court held that a conspiracy between the Judge and Prosecutor to predetermine the outcome of a judicial proceeding while clearly improper, nevertheless does not pierce the immunity extended to Judges and Prosecutors as long as the Judge's ultimate acts are judicial in nature and taken within the courts subject matter jurisdiction, immunity applies.

The Defendant realizes that doctrine of the Supreme Court, but to the extent that Rankin and Beard are contrary to the rule as is this matter concerning subject matter and personal jurisdiction to rule as they did.

In this matter the refutation to the Defendants affidavit of disqualification exceeded the Judge jurisdiction. Citing management Corp of America v. Grossman(1981), Florida App.D3)396 So 2d. 1169. See Bundy v. Rudd. 366 So 2d 440, 442 (Florida 1978). Dickens v. Parks 104 Florida 577 140(1932), Suarez. State 95 Florida 42 115 So 519 (1928) also see Theo Hirsch Co. v. McDonald Furniture Co. 94 Florida 185 114 So, 517 (1929).

When a Judge has looked beyond the mere legal sufficiency of a motion and attempts to refute the charges of partiality and bias, the Judge has exceeded the proper scope of inquiry the second affidavit of disqualification should prevent the Judge from retaining jurisdiction.

In the present case it's now confirmed that if a Judge goes beyond legal sufficiency in a matter an intolerable adversary atmosphere is created calling for automatic disqualification.

After the affidavit was challenged by the Judge he held the Defendant in contempt at the next hearing for being late showing bias for filing the first affidavit of disqualification where as he was required to recuse himself. See Brewer v. District Court of Seventh Judicial District. (1991, Colo), 811 P.2d 812.

In the first affidavit the Judge heard facts that the Defendant could not get a fair trial based on what happened in case NO. 2007TRD5411 tried before him where Court Bailiff John Thompson and Prosecuting Cynthia Cook conspired to intercept the Defendants appeals jacket now docketed CA-22635 and Sct. 1124.

In that case the traffic clerks office failed to prevent the circumventing of the rules of appellate procedures short-circuiting the movement of Judge Rupperts final judgment entry and the Defendants docket statement sheet to the Court of Appeals for docketing.

Other facts concerning the conspiracy here in Dayton Ohio to maliciously prosecute, a recent Dayton Daily news article issued October 25, 2008, shows the disparity of justice whereas certain Dayton Police are issuing false tickets to Ealy and several others in Dayton, but Officer Mike Brown has been ordering the concealing of evidence and shredding of legitimate traffic tickets before or after they get to the clerks office, the acts of corruption have been occurring for quite some time and are done for City employees, Brown has been discharged for racketeering thus showing the conspiracy against the citizens, if the citizens are too charged and tried then City and State employees must be tried for the same exact violations under O.R.C. 4510. (B), which is effective against agents or employees acting under the color of state law.

This is totally ludicrous of how the Courts, Police and Prosecutors can pick and choose who is to be charged and or tried.

NOTICE OF VIOATIONS OF PROCEDURAL DUE PROCESS APP. RULE 2.12 {NOTICE OF APPEAL}

According to Appellate rule 2.12 the clerk's office failed in the office because of the interference with the duty of the clerk, the trial clerk shall mail or forward to the Court of Appeals a copy of the notice of Appeal and docket statement sheet prescribed by Local rule 2.13.

Under local rule 2.13 the notice of appeal should be transmitted within 3 business days of the filing of it with the clerk's office in the trial Court effective November 15, 1992.

The prosecutor Cynthia Cook and Court Bailiff John Thompson in this matter intentionally interfered with the process of the trial Clerk of Courts, and Court of Appeals official business depriving the Defendant here of his substantive and procedural due process rights to Appeal his criminal conviction thus making any other trial impossible to beheld here.

APP. RULE 2.13 (B) {CRIMNAL APPEAL}

In each criminal appeal or cross -appeal filed in a trial Court in the Second Appellate District, counsel for the Appellant(s)(or Appellant(s) pro-se, if not represented by counsel) shall complete a criminal docket statement sheet on a form to be determined and prescribed by the Court. Simultaneously with the filing of the notice of Appeal, the Appellant shall file with the clerks of Court a completed docket statement.

The Defendant in case No. 2007 TRD 5411 followed the mandatory court proceedings to file his notice of Appeal that were made effective on November 15, 1992, and has was kept from executing his appeal of right consistent with this ordinance.

App. R. (7) {DUTIES OF THE CLERK} Under rule 7-(A) it states upon filing of a notice of appeal or an original action, the clerk's office in each County shall forward a copy of the notice of appeal and praecipe or a copy of the original action to the Second District Court of Appeals for Montgomery County, Ohio at 41 N. Perry Street, Dayton Ohio 45422.

The records reflect that the Dayton Municipal Court clerk's office for Court Room 1-B traffic division is in direct violation of the Defendants due process rights for failing to transmit the records according to the statute enforced effective on November 15, 1992.

The forwarding of a copy of the front time stamped title page of the transcript of the docket, (ect)... transcript of testimony, or brief will be considered in compliance with this rule.

A copy of the notice of appeal was never transmitted in that matter of Larry Ealy and he does not allege but has sustained the fact that the clerk's office failed to perform its duties as required by the law under **App. R. 7**.

The Defendant still has not adjudicated 2007 5411 and has not been afforded the right to brief his criminal conviction of the remaining charge with benefit of having the docket statement and the final entry of trial Judge based upon the due process of law as well as his rights having been violated according to Rule 7 of the Court of Appeals.

Rule 6.1 under the Court of Appeals states that a Court shall not extend the time for transmission of the record beyond 8 calendar days after the filing of the notice of appeal and the Court of Appeals will not recognize an order of the trial Court purporting to do so but, the Court of Appeals ordered that the Defendant in CA-22635 to write his brief on December 21, 2008 without the record having been completed by the clerk's office.

Applications to the Court of Appeals for extensions of time shall be made by hand written motions, supported by an affidavit or affidavits based on personnel knowledge which set forth facts demonstrating good cause for the extension.

In that matter no affidavit or an extension was even filed the Defendant had to find Judy Deputy Clerk for the Court of Appeals to get the notice of Appeal from John Thompson then she entered the 11-b notice in the Court of Appeals on February 11, 2008 when the notice of Appeal was filed in the lower Court on October 19, 2007 some 4 months earlier.

The Defendant had to perform the duties of the lower Court clerk's office for Court room 1-B after Thompson refused to turn over the documents Judy had to psychically walk over from the Court of Common Pleas Clerks Office to the traffic division and inform BJ the supervisor of that office of what Thompson had done whereas the appeals jacket was retrieved from him at that point.

According to records and reliable sources John Thompson had the documents in his file cabinet since October 19, of 2007 on the date of filing.

During the seizing of the records Court misconduct began occurring between the BMV, Court bailiff and prosecutors office and is still ongoing at this time showing fraud, conspiracy to tamper with evidence and obstruction of justice.

The Dayton News article of Major Mike Brown, I the Defendant whom has been in Dayton Ohio for 45 years has never seen a City employee stand trial for anything as far as a traffic violation of law and the acts of Brown and several unknown others can constitute why a City Official has never been brought to bar to date, but its fair to say that the life has been sucked out of the citizens by the Courts' both financially, emotionally, and psychically for traffic stops.

Attachment (1) Photo of the Defendant for stops and seizers by the Dayton Police;

Attachment (2) Dayton Daily news article of Dayton Police Major Mike Brown having been fired for directing evidence concealed and having traffic tickets shredded by other Dayton cops for city hall workers who have been stopped. Attachment (3) response of Judge Ruppert;

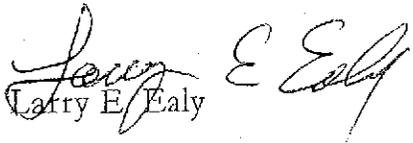
Attachment (4) response of prosecutor Addie J. King;

Respectfully Submitted

Larry E. Ealy

CERTIFICATE OF SERVICE

The Defendant hereby certifies that a copy of this affidavit will be served to the Judge and prosecutors office and copy will be forwarded to the Ohio Supreme Court on the day of filing.


Larry E. Ealy

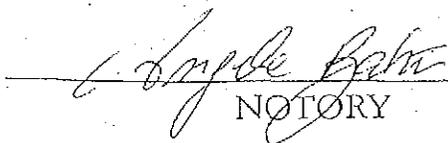
4687 Marlin Ave Trotwood Ohio 45416

(Signature of affiant)



Larry E. Ealy

Sworn to and subscribed before me a notary public in and for the County of Montgomery, State of Ohio/by Larry E. Ealy, identified before me on this 5th day of December, 2008.


NOTARY

SEAL



ANGELA BAKER, Notary Public
In and for the State of Ohio
My Commission Expires June 3, 2012

IN THE DAYTON MUNICIPAL COURT, MONTGOMERY COUNTY,
OHIO

CRIMINAL/TRAFFIC DIVISION

STATE OF OHIO

Plaintiff,

Vs.

LARRY E. EALY

Defendant.

* CASE NO.: 08-TRD3189

Hon. James R. Ruppert

*

*

{Enbanc}

Judge Carl S. Henderson

*

Supplement To The Affidavit Of
Disqualification With Attachments

*

FILED
DAYTON MUNICIPAL COURT
TRAFFIC DIVISION

08 DEC -9 PM 3:20

MARK E. OWENS
CLERK

Now come Defendant Larry E. Ealy and supplements the record adding attachments to the second affidavit of disqualification filed on December 5, 2008.

STATEMENT OF FACT

The affidavit should be granted citing American v. Grossman.

In this matter the refutation to the Defendants affidavit of disqualification exceeded the Judge jurisdiction. Citing management Corp of America v. Grossman(1981), Florida App.D3)396 So 2d. 1169. See Bundy v. Rudd 366 So 2d 440, 442 (Florida 1978). Dickens v Parks 104 Florida 577 140(1932), Suarez. State 95 Florida 42 115 So 519 (1928) also see Theo Hirsch Co. v. McDonald Furniture Co. 94 Florida 185 114 So, 517 (1929).

When a Judge has looked beyond the mere legal sufficiency of a motion and attempts to refute the charges of partiality and bias, the Judge has exceeded the proper scope of inquiry the second affidavit of disqualification should prevent the Judge from retaining jurisdiction.

In the present case it's now confirmed that if a Judge goes beyond legal sufficiency in a matter an intolerable adversary atmosphere is created calling for automatic disqualification.

After the affidavit was challenged by the Judge he held the Defendant in contempt at the next hearing for being late showing bias for filing the first affidavit of disqualification where as he was required to recuse himself. See Brewer v. District Court of Seventh Judicial District. (1991, Colo), 811 P.2d 812.

In the first affidavit the Judge heard facts that the Defendant could not get a fair trial based on what happened in case NO. 2007TRD5411 App.CA-22635 tried before him where Court Bailiff John Thompson and Prosecuting Cynthia Cook conspired to intercept the Defendants appeals jacket now docketed Sct. 1124.

In that case the traffic clerks office failed to prevent the circumventing of the rules of appellate procedures short-circuiting the movement of Judge Rupperts final judgment entry and the Defendants docket statement sheet to the Court of Appeals for docketing.

The trial Judge must now be removed based on the facts of the pretrial held December 5, 2008 as mentioned before the trial Judge refused to recuse himself refuting the claims of bias.

During the pretrial conference held on December 5, 2008 prosecuting attorney Addie King affirmed that the stop made concerning the case NO. 2008TRD3189 she confirmed the video of the stop has been destroyed and would not be available for trial on the 18, of December 2008.

This is conspiracy to maliciously prosecute Judge Ruppert is a part of the corruption calling for his immediate disqualification and sanctions being handed down from the disciplinary counsel.

Officer Nathan Speelman stated at the suppression hearing that Officer Steve Heiber was not present at the stop on February 15, 2008 Heiber was the one who conducted the illegal search and seizer after Spellman called him and 5 other Dayton Police. Prior to this case Hieber arrested and searched Ealy on March 3, 2007 but never turned in the ticket the search and seizer occurred at the car wash on Salem and Gettysburg Ave where Hieber has harassed several African Americans in that area.

Concerning case NO. 022032 ,Heiber stalked Larry L. Ealy on March 25, 2007, Heiber conspired with the Good Samaritan Police to arrest Larry L. Ealy after he was released from involuntary confinement from Twin Valley Hospital on February 24 2007, the Good Samaritan Police and the Dayton Police thought they kidnapped Larry Ealy Senior but took Larry L. Ealy by mistake on January 29, 2007 establishing R.I.C.O.

If this Court doesn't act in this matter it shows the engagement of malicious prosecution and denial of due process the evidence on the tape will show the perjury of Speelman, Officer Heiber was a coconspirator, Heiber was the one who showed Speelman how to write the ticket.

Speelman lied while under oath and stated Heiber was not there, the tape is not destroyed that's a flat out lie of Addie J. King she has conspired to the Withholding of states evidence and has committed Ex-parte communication. As mentioned before in the affidavit of disqualification filed on December 5, 2008 prosecuting attorney Addie J. King conspired with Officers Kreantzel and Dine in case NO. 2005 CRB6404 to maliciously prosecute and arrest and this act is an extension of malicious conduct in the City of Dayton Ohio.

Several Dayton Cops have been tampering with evidence falsifying tickets and shredding tickets for Judges, Prosecutors, and City Hall employees this is corruption! And intentional infliction of emotional distress by arbitrary agents practicing under the color of State law.

Officers Speelman, Michael Saylor Steve Heiber and several other Dayton Cops of the Fifth District have a memorandum of the Defendant and have conspired to stop him on sight but, conspire to get rid of legitimate tickets for their co-workers.

In cae NO. 2007TRD 5411 the entire bench has not decided whether they are going to bring criminal charges against John Thompson for obstruction of official business when he took the Defendants appeals jacket violating pp. R 1.12 and 2.13.

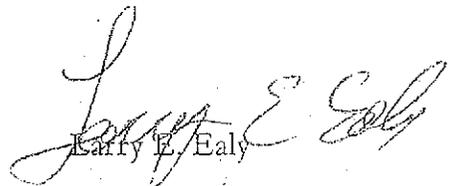
In 5411 the Defendant has filed a second request to suspend the 11-b notice due to the fact that Judge Rupperts, the Judge who is in question here where Thompson took the final judgment entry and docket statement sheet thus voiding the entire case.

The Ohio Supreme Court in 08-1124 has stayed any regulation of the BMV, the records have been tapered with here in this matter as well and the Defendant should be afforded justice in the matter.

The Defendant requests the removal of the visiting judge for denial of due process and for attempting to refute the claims of bias.

CERTIFICATE OF SERVICE

The Defendant hereby certifies that a copy of this supplemented motion will be served to the Judge and prosecutor's office and copy will be forwarded to the Ohio Supreme Court and the U.S. Court for the Eastern District in Columbus Ohio and Western Division in Dayton on the day of filing.


Larry E. Ealy

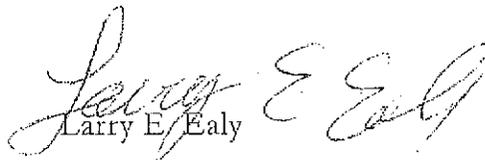
ATTACHMENT (1) Judge Rupperts response to the affidavit of disqualification.

ATTACHMENT (2) Addie J. Kings response to the affidavit of disqualification.

ATTACHMENT (3) Addie J. King's charges falsely filed in case N0.6404

ATTACHMENT (4) Dayton Daily news article of Dayton Cops shredding evidence/tickets for City employees.

ATTACHMENT (5) Photo of the Defendant targeting him for stops and illegal search and seizer.


Larry E. Ealy

4687 Marlin Ave. Trotwood Ohio 45416

MUNICIPAL COURT
CLERK

2008 AUG -8 PM 12:40

MARK E. OWENS
CLERK

IN THE DAYTON MUNICIPAL COURT, DAYTON, OHIO
TRAFFIC DIVISION.

STATE OF OHIO)	
)	CASE NO. 08TRD3189
PLAINTIFF,)	
)	
LARRY E. EALY)	RESPONSE TO AFFIDAVIT
)	OF DISQUALIFICATION
DEFENDANT.)	

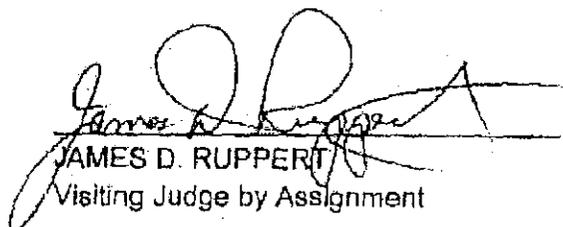
The Defendant herein filed an Affidavit of Disqualification on July 17th, 2008, alleging prejudice of the undersigned, James D. Ruppert, assigned by the Ohio Supreme Court as Visiting Judge, as a result of the Court's overruling of a Motion for Change of Venue. The Defendant's Motion was filed April 17th, 2008. By Entry dated April 28, 2008, the Court scheduled a hearing on said Motion for May 21st, 2008.

The hearing on the Motion for Change of Venue proceeded as scheduled to afford the Defendant the opportunity to present any evidence in support of said Motion. At the conclusion of the hearing, the Court held that there was no evidence before the Court which would indicate that a fair and impartial trial could not be held in this Court, nor was any evidence presented that said Motion should be granted for the convenience of the parties and in the interest of justice. Accordingly, the Court forwarded its Entry overruling the Motion for Change of Venue for filing on June 3rd, 2008.

The undersigned also presided as Visiting Judge in Case No. 2007TRD5411 wherein the Defendant was charged with No Operator's License, Failure to Signal, and a Seatbelt Violation. That cause proceeded to trial on September 19, 2008, at

which time the State withdrew the charge of No Operator's License and a hearing was held on the charge of Failure to Signal and a Seatbelt Violation. The Court entered a finding of guilty on the Failure to Signal, imposing a fine of \$25 plus Court costs, and not guilty on the Seatbelt Violation. Although the Defendant alleges that certain obstructions and misconduct on the part of some Court personnel occurred, those issues were not before the Court on the minor misdemeanor trial in that cause. The undersigned, as Trial Judge, had no bias or prejudice, no personal knowledge of the facts, and knows of no other basis for disqualification. Although the Defendant feels personally aggrieved, his Constitutional rights have somehow been violated, the undersigned has no hostile feeling or spirit of ill will or favoritism toward either party and will decide the cause before him based on the evidence and the law.

August 7, 2008


JAMES D. RUPPERT
Visiting Judge by Assignment

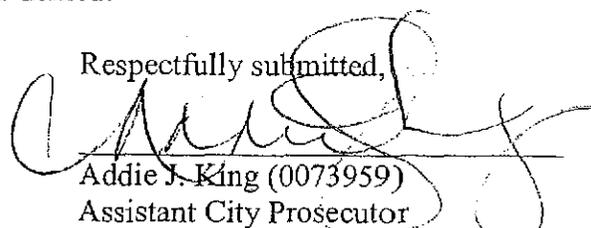
Copies to: Prosecutor's Office
Larry E. Ealy, Sr., 4687 Marlin Ave., Dayton, OH 45416
Alan Gabel, Attorney for Defendant, P. O. Box 1423, Dayton, OH 45401

**IN THE MUNICIPAL COURT OF DAYTON, OHIO
TRAFFIC DIVISION**

STATE OF OHIO,	:	Case No. 08 TRD 3189
Plaintiff,	:	Judge James R. Ruppert
vs.	:	
LARRY E. EALY,	:	<u>RESPONSE TO AFFIDAVIT</u>
Defendant.	:	<u>OF DISQUALIFICATION</u>

Now comes Plaintiff, State of Ohio, by and through Counsel, and hereby responds to Defendant Larry Ealy's affidavit of disqualification filed on July 17, 2008. In this affidavit, defendant is alleging that Visiting Judge James R. Ruppert, sitting for Judge John S. Pickrel, is biased and prejudiced based on his denial of defendant's change of venue motion, his previous guilty verdict on an unrelated case, and unsubstantiated and unproven allegations of misconduct on the behalf of the bailiff, the traffic clerk's office, and assistant prosecutor Stephanie Cook. Defendant has also failed to properly follow the statutory requirements for such an affidavit. For these reasons, the judge should not be disqualified, and defendant's request should be denied.

Respectfully submitted,



Addie J. King (0073959)
Assistant City Prosecutor
335 W. Third Street, Room 372
Dayton, Ohio 45402
(937) 333-4400
FAX (937) 333-4491

MEMORANDUM

Defendant has filed an affidavit of disqualification requesting that Visiting Judge James R. Ruppert be disqualified from presiding in the instant case. The affidavit itself is insufficient under O.R.C. § 2701.031. Defendant wishes Judge Ruppert to be disqualified from the pending case due to his denial of defendant's change of venue motion, a guilty verdict in an unrelated traffic case, and unproved and unsubstantiated allegations of misconduct on behalf of the court's bailiff, the traffic clerk's office and the assistant prosecutor in an unrelated traffic case. This allegation does not show bias or prejudice, or any other statutory or ethical concern that requires disqualification, nor is there any show of an appearance of impropriety on behalf of Judge Ruppert. For those reasons, the request for disqualification should be denied.

A municipal court judge may be disqualified from presiding in a pending case upon the filing of an affidavit of disqualification with the clerk of courts in which the case is pending. O.R.C. § 2701.031 (A). Such an affidavit must be filed not less than seven days prior to the next hearing, and must include ALL of the following: 1) the specific allegations of interest, bias, prejudice, or disqualification and the facts to support them; 2) the affidavit must be notarized; 3) there must be a certificate of service to the judge against whom the affidavit is filed and all other parties or counsel; and 4) the date of the next hearing must be included. Defendant in this case has failed to include the date of the next hearing, and has failed to include the judge that the affidavit seeks to

disqualify in his certificate of service. For these reasons, the affidavit is defective and should be denied as a matter of law.

As to the specific allegations in the affidavit, defendant has alleged that because of unsubstantiated and unproven allegations of misconduct on the part of the court's bailiff, the traffic clerk's office, and the assistant prosecutor in a previous, unrelated case, Judge Ruppert's denial of his motion for a change of venue in the instant case, and the same judge's guilty finding in a previous case that the judge should be disqualified. These are insufficient grounds to do so.

Ohio Judicial Canon 3 covers situations in which a judge should disqualify themselves from presiding in certain proceedings. Specifically, the canon cites personal bias or prejudice, personal knowledge of the facts, previous service as a lawyer in the controversy, relationships with legal counsel, the judge as a witness, or financial interest in the outcome of the proceedings. Ohio Jud. Canon 3.

In this affidavit there is no allegation of a relationship, past or present, between the judge and counsel for either party, financial interest in the outcome of the case, personal knowledge of the facts of the case, or indication that the judge is a likely witness in the case. Instead, the affidavit seeks to disqualify the judge on the basis of bias or prejudice.

The term "bias or prejudice" implies a hostile feeling or a spirit of ill-will or undue friendship or favoritism toward one party or one party's counsel, with the formation of a fixed anticipatory judgment on the part of the judge rather than an open

mind to decide each case based on the evidence. *State ex rel. Pratt v. Weygandt* (1956) 164 Ohio St. 463, 469. A judge is presumed to follow the law and not be biased, and the appearance of bias or prejudice must be overwhelming to overcome these presumptions. *In re Oliveto*, (1994) 74 Ohio St. 3d 1261, 1263.

It is worth noting that Defendant has filed for disqualification of Judge Daniel G. Gehres in Dayton Municipal Court case 2003 CRB 10516. That affidavit was denied by Judge John Kessler in Montgomery County Common Pleas Court Case No. 2004 CV 1852. In a civil lawsuit against the City of Dayton, he sought to disqualify Judge Steven Yarbrough from hearing his civil complaint in Common Pleas Court Case No. 2005 CV 6344, since Yarbrough had ruled him to be a vexatious litigator in another, unrelated, civil case. That affidavit was denied by Chief Justice Thomas Moyer of the Ohio Supreme Court. Yarbrough has since been appointed in the Montgomery County Common Pleas Court to hear a previous civil case (2006 DV 7514) against Judge Thomas Hanna from Kettering Municipal Court, after Judge Gregory Singer of the Montgomery County Common Pleas Court was internally disqualified. He has filed an affidavit for disqualification against Judge Jeffrey Froelich of the Montgomery County Common Pleas Court in case no. 2006 CV 10339 in an unrelated civil matter; that affidavit was denied by Chief Justice Thomas Moyer of the Ohio Supreme Court.

He has demanded that the Second District Court of Appeals recuse itself; see case numbers, CA 21750 and CA 22111. Those motions for both were also overruled. In all of these motions for recusal and affidavits for disqualification, it is interesting to note that

none have been granted, except by individual judges making a decision to disqualify themselves. Such repeated and baseless motions carry out the State's position that defendant seeks disqualification merely because he disagrees with a court's ruling, rather than any existing bias or prejudice.

Disqualification of a judge is an extraordinary remedy, not to be used in a frivolous manner. *In re Disqualification of Hunter, Walton v. Old Republic Insurance Company, et al.*, (1988) 36 Ohio St. 3d 607, 608. The statutes allowing for the procedure for the disqualification of a judge are intended to address the disqualification of the particular judge presiding over the instant case, and the filing of frivolous or repeated affidavits may be subject to sanctions. *In re Disqualification of Light*, (01988) 30 Ohio St. 3d 604. Such sanctions may include contempt charges, sanctions, attorneys fees, and expenses. *See, e.g., Ameritrust Co., N.A. v. O'Brien (In re Millard)* (1992) 74 Ohio St. 3d 1235, 1344 (where an attorney had filed 13 affidavits for disqualification over a period of several years, and none of them had been sustained); *In re Disqualification of Walker, Federal Bank Association v. Walton, et al.*, (1992) 74 Ohio St. 3d 1239 (19 affidavits filed in five years by the same affiant against six different judges, three against the instant judge, all found to be without merit).

Defendant constantly alleges misconduct against Dayton Municipal Court judges who have found him guilty, resulting in Visiting Judges being appointed to hear his cases. Any guilty finding results in an allegation of misconduct, even after a trial on the merits, including the case he references to show bias. That case, 2007 TRD 5411 from the

Dayton Municipal Court, has been appealed in Case No. 22635 in the Second District Court of Appeals. That decision has been stayed, pending defendant's interlocutory appeal to the Ohio Supreme Court. To this date, there have been no issues raised in that appeal dealing with the merits of the case under appeal. The issues raised have all dealt with unsubstantiated allegations of misconduct by other court personnel. None of the allegations involve Judge Ruppert himself.

Absent a showing of actual bias, merely presiding over previous proceedings involving the defendant is not disqualified in hearing a pending matter involving the defendant. *State v. Herbert (In re Aubry) (2006) 117 Ohio St. 3d 1245, 1246.* Dissatisfaction or disagreements with a judge's rulings of law are legal issues subject to appeal, not a basis for a disqualification of the judge. *In re Disqualification of Murphy (1988) 36 Ohio St. 3d 605.* The simple fact of a bailiff's interests, and not the judge himself was related to one of the parties was not a sufficient reason to require disqualification of a judge. *Taylor v. Carr, (1989) 61 Ohio App. 3d 368.*

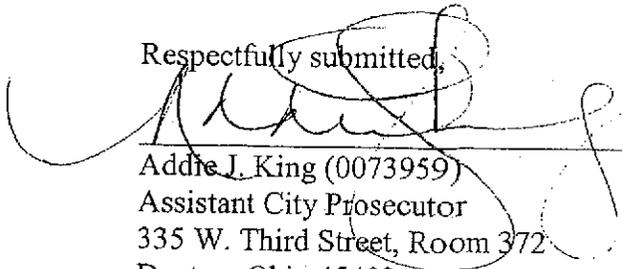
In this case, the affidavit seeks to impute bias and prejudice due to a previous ruling in a prior case and a disagreement on a previous ruling on a change of venue motion in the instant case, despite clear case law to the contrary in *Herbert* and *Murphy*. A bailiff's potential bias or interest is not imputed to the judge, and by extension, neither can any alleged and unsubstantiated misconduct by members of the clerk's office or the prosecutor's office, pursuant to *Taylor*. There is no evidence that such bias extends to the judge or that the judge had any part in the allegations from the previous case. In short,

defendant in this case has failed to show either a sufficient basis for overwhelming bias or prejudice as defined in *Pratt*, or an appearance of impropriety sufficient to overcome the presumption in *Oliveto* that judges are impartial absent an overwhelming bias or prejudice.

There are no facts indicating any personal bias or prejudice or any acts that could constitute an appearance of impropriety on the part of Judge Ruppert. The only activity undertaken by Judge Ruppert is the denial of a motion for a change of venue and a guilty finding in a previous case. The unsupported allegations of a file or an entry being confiscated are not imputed to Judge Ruppert by any part of defendant's affidavit, and cannot be imputed to him under any construction defendant's allegations. There is no evidence supporting any bias or prejudice or any appearance of impropriety by Judge Ruppert.

Defendant has failed to file an adequate affidavit under O.R.C. § 2701.031 and his affidavit does not state sufficient grounds for the disqualification of Judge Ruppert in the instant case. For these reasons, defendant's affidavit for disqualification should be DENIED and sanctions should be ordered.

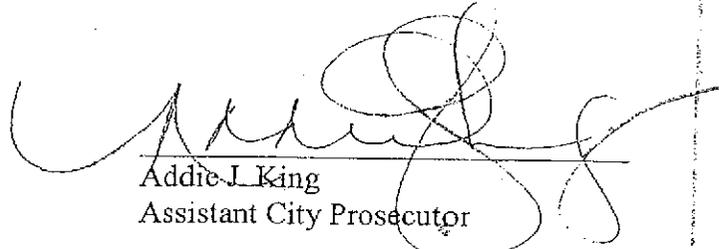
Respectfully submitted,



Addie J. King (0073959)
Assistant City Prosecutor
335 W. Third Street, Room 372
Dayton, Ohio 45402
(937) 333-4400
FAX (937) 333-4491

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon Larry Ealy, 4687 Marlin Ave., Trotwood, Ohio 45406; Alan Gabel, Attorney for Defendant, P.O. Box 1423, Dayton, Ohio 45401; and Judge James R. Ruppert, 301 W. Third St. Dayton, Ohio 45402 the same date of filing.



Addie J. King
Assistant City Prosecutor

DAYTON MUNICIPAL COURT - CRIMINAL DIVISION

301 W THIRD ST, DAYTON, OH 45402

STATE OF OHIO

PLAINTIFF *

CASE NO. 05CRB06404

- VS -

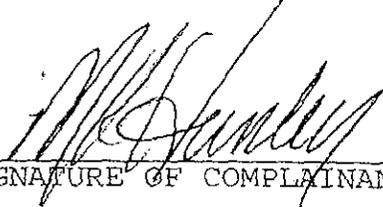
CRIMINAL COMPLAINT

LARRY E EALY

DEFENDANT *

ADDRESS: 625 ROCKFORD AVE, DAYTON, OH 45405

BASED UPON A PERSONAL REVIEW OF THE OFFICIAL REPORT POLICE OFFICE
RAYMOND J DINE, KNOWN TO THE COMPLAINANT AS A RELIABLE SOURCE,
MALIA HUNLEY (COMPLAINANT), BEING DULY SWORN STATES
LARRY E EALY (DEFENDANT), IN DAYTON, MONTGOMERY
COUNTY, OHIO, ON OR ABOUT MAY 14 2005, DID COMMIT THE OFFENSE OF
AGGRAVATED MENACING IN VIOLATION OF SECTION 2903.21.M1,
OHIO REVISED CODE
IN THAT LARRY E EALY DID UNLAWFULLY AND KNOWINGLY CAUSE NADA WHITE TO
BELIEVE THAT HE WOULD CAUSE SERIOUS PHYSICAL HARM TO HER PERSON OR
PROPERTY.


(SIGNATURE OF COMPLAINANT)

TO AND SIGNED BEFORE ME ON

5.18.05
(DATE)

MARK E. OWENS, CLERK OF COURTS

BY


(DEPUTY CLERK)

MARK E. OWENS, CLERK
05 MAY 18 AM 10:59
DAYTON MUNICIPAL COURT
CRIMINAL DIVISION

A.H. (4)

DAYTON MUNICIPAL COURT - CRIMINAL DIVISION

301 W THIRD ST, DAYTON, OH 45402

STATE OF OHIO

PLAINTIFF *

CASE NO. 05CRB06404

- VS -

CRIMINAL COMPLAINT

LARRY E EALY

DEFENDANT *

ADDRESS: 625 ROCKFORD AVE, DAYTON, OH 45405

BASED UPON A PERSONAL REVIEW OF THE OFFICIAL REPORT POLICE OFFICE
 RAYMOND J DINE, KNOWN TO THE COMPLAINANT AS A RELIABLE SOURCE,
 MALIA HUNLEY (COMPLAINANT), BEING DULY SWORN STATES
 LARRY E EALY (DEFENDANT), IN DAYTON, MONTGOMERY
 COUNTY, OHIO, ON OR ABOUT MAY 14 2005, DID COMMIT THE OFFENSE OF
 DISORDERLY CONDUCT IN VIOLATION OF SECTION 2917.11A1.M4,
 OHIO REVISED CODE
 IN THAT LARRY E EALY DID UNLAWFULLY AND RECKLESSLY CAUSE INCONVENIENCE
 , ANNOYANCE OR ALARM TO ANOTHER, BY ENGAGING IN FIGHTING, IN
 THREATENING HARM TO PERSONS OR PROPERTY, OR IN VIOLENT OR TURBULENT
 BEHAVIOR AFTER REASONABLE WARNING OR REQUEST TO DESIST, OR IF THE
 OFFENDER IS WITHIN ONE THOUSAND FEET OF THE BOUNDARIES OF ANY SCHOOL,
 SCHOOL PREMISES, OR SCHOOL BUILDING.

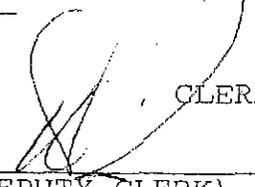

 (SIGNATURE OF COMPLAINANT)

RETURN TO AND SIGNED BEFORE ME ON

5-18-05
(DATE)

MARK E. OWENS, CLERK OF COURTS

BY


(DEPUTY CLERK)

MARK E. OWENS, CLERK

05 MAY 18 AM 11:00

DAYTON MUNICIPAL COURT
CRIMINAL DIVISION

DAYTON MUNICIPAL COURT - CRIMINAL DIVISION

301 W THIRD ST, DAYTON, OH 45402

STATE OF OHIO

PLAINTIFF *

CASE NO. 05CRB06404

- VS -

CRIMINAL COMPLAINT

LARRY E EALY

DEFENDANT *

ADDRESS: 625 ROCKFORD AVE, DAYTON, OH 45405

BASED UPON A PERSONAL REVIEW OF THE OFFICIAL REPORT POLICE OFFICE
 RAYMOND J DINE, KNOWN TO THE COMPLAINANT AS A RELIABLE SOURCE,
 MALIA HUNLEY (COMPLAINANT), BEING DULY SWORN STATES
 LARRY E EALY (DEFENDANT), IN DAYTON, MONTGOMERY
 COUNTY, OHIO, ON OR ABOUT MAY 14 2005, DID COMMIT THE OFFENSE OF
 DOMESTIC VIOLENCE IN VIOLATION OF SECTION 2919.25A1.M1,
 OHIO REVISED CODE
 IN THAT LARRY E EALY DID UNLAWFULLY AND KNOWINGLY CAUSE OR ATTEMPT TO
 CAUSE PHYSICAL HARM TO A FAMILY OR HOUSEHOLD MEMBER TO WIT: NADA WHITE



(SIGNATURE OF COMPLAINANT)

5.18.05

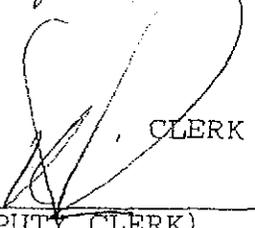
(DATE)

RETURN TO AND SIGNED BEFORE ME ON

MARK E. OWENS

, CLERK OF COURTS

BY



(DEPUTY CLERK)

MARK E. OWENS, CLERK
 05 MAY 18 AM 11:00
 DAYTON MUNICIPAL COURT
 CRIMINAL DIVISION

DAYTON MUNICIPAL COURT - CRIMINAL DIVISION

301 W THIRD ST, DAYTON, OH 45402

STATE OF OHIO

PLAINTIFF *

CASE NO. 05CRB06404

- VS -

CRIMINAL COMPLAINT

LARRY E EALY

DEFENDANT *

ADDRESS: 625 ROCKFORD AVE, DAYTON, OH 45405

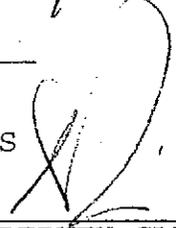
BASED UPON A PERSONAL REVIEW OF THE OFFICIAL REPORT POLICE OFFICE RAYMOND J DINE, KNOWN TO THE COMPLAINANT AS A RELIABLE SOURCE, MALIA HUNLEY (COMPLAINANT), BEING DULY SWORN STATES LARRY E EALY (DEFENDANT), IN DAYTON, MONTGOMERY COUNTY, OHIO, ON OR ABOUT MAY 14 2005, DID COMMIT THE OFFENSE OF ASSAULT IN VIOLATION OF SECTION 2903.13A.M1, OHIO REVISED CODE IN THAT LARRY E EALY DID UNLAWFULLY AND KNOWINGLY CAUSE OR ATTEMPT TO CAUSE PHYSICAL HARM TO ANOTHER OR TO ANOTHER'S UNBORN TO WIT:NADA WHITE BY SHOVING HER AND PULLING HER HAIR



(SIGNATURE OF COMPLAINANT)

SWORN TO AND SIGNED BEFORE ME ON 5.18.05
(DATE)

MARK E. OWENS, CLERK OF COURTS

BY 
(DEPUTY CLERK)

MARK E. OWENS, CLERK
05 MAY 18 AM 10:59
DAYTON MUNICIPAL COURT
CRIMINAL DIVISION

Dayton Daily News

DaytonDailyNews.com: Your #1 source for breaking news

National City customers won't see changes in '08

PNC buys bank hurt in mortgage meltdown

By John Nolan
Staff Writer

PNC Financial Services Group Inc. said Friday, Oct. 24, that it has signed a deal to buy National City Corp., with the help of a \$7.7 billion investment from the U.S. Department of the Treasury. PNC will become the fifth-largest U.S. bank by deposits — with a core deposit base of \$180 billion — and the fourth-largest in branch offices, with operations from the Midwest to the Mid-Atlantic. PNC already has a major presence in the Cincinnati area, and will enter the Dayton market for the first time.

The deal

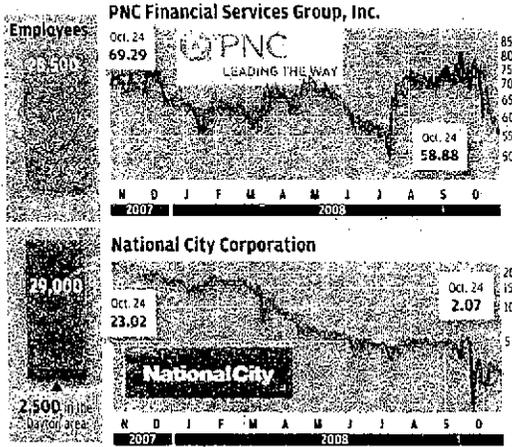
PNC is buying National City Corp., the largest Ohio-based lender, for \$5.58 billion. The sale is to close by Dec. 31.

The combination will double PNC's work force and is good news for National City, whose stock sank after it sustained multimillion-dollar losses because of problems with subprime mortgage loans.

PNC became the first regional bank to take advantage of the federal government's recently created Troubled Asset Relief Program Capital Purchase Program. The taxpayer-funded program allows the Treasury to acquire shares of troubled banks in exchange for providing money to lift the sagging bank industry.

About PNC

The Pittsburgh-based com-



2.9 million consumer and small-business customers from Indiana to Washington, D.C.

What it means to ...

► **Banking and mortgage customers:** PNC and National City officials said there will be no changes or new signs by year's end. PNC said it will send information to customers about what to expect in 2009.

► **Employees:** PNC said that, in past acquisitions, it has kept the employees that customers see. Some back-office and administrative employees could lose jobs as PNC absorbs National City and eliminates duplication.

► **Investors:** A stronger bank will arise, particularly with

What analysts say

PNC has 44 branches in Ohio, while National City has 422 (including 40 in the Dayton area), so there may not be much overlap. And PNC saw a good opportunity to buy, in light of the federal investment and National City's low share price, said Bart Narter, senior vice president of the banking group at Celent, a Boston-based financial research and consulting firm.

"Buying a bank really cheap will take care of a lot of bad mortgages," Narter said.

Contact this reporter at (937) 225-2242 or jnolan@DaytonDailyNews.com.

► **UD prof sees the deal as 'good news'** Article on A9.

Officer got back pay, raise to retire

Maj. Mike Brown had been suspended for shredding a traffic ticket.

By Lucas Sullivan
Staff Writer

DAYTON — A Dayton police officer suspended for shredding a ticket issued to a City Hall worker was paid \$56,000 for unused time off, received a retroactive 4 percent wage increase and was allowed to look for a new job on city time as part of his negotiated retirement from the force.

The city also agreed to pay Maj. Mike Brown for the 10 days he was suspended in June, according to city documents.

On Oct. 1, two days before Brown retired, the city offered buyouts to 554 employees to help reduce a projected \$13 million deficit in 2009.

Brown, a 26-year veteran who oversaw patrol operations, was placed on paid leave April 18 after allegations surfaced he helped hide details of a Dec. 12 traffic stop of Larry Miller Jr., an aide at City Hall.

Brown's attorney, Steve Dankof, said in April the officers who stopped Miller called Brown after learning Miller worked at City Hall. They asked Brown what they should do, Dankof said. Brown shredded the ticket, according to the retirement

Dankof agreed Brown would be suspended for 10 days before returning to active duty June 18. Once reinstated, Brown was not required to show up to work. Instead, he was allowed to search for a new job until he retired Oct. 3, according to the agreement.

The agreement also included a 4 percent raise retroactive to Jan. 1, boosting Brown's final salary to \$48.21 an hour, or \$100,276 a year, based on a 40-hour work week. It also meant Brown would receive at least \$30,000 in salary during the 15 weeks he was allowed to search for new work and \$56,000 for unused vacation, compensation and sick time.

City spokesman Tom Biedenharn said Friday, Oct. 24, the agreement "was approved as being in the best interest" of the city.



Mike Brown

#H. 10

High school football

Centerville	41
Fairmont	13
Brookville	27
Valley View	20
Springboro	42
Fairborn	0

- **Coverage** in Sports, B1
- **Game photos online** at DaytonDailyNews.com
- **Playoff pairings** are to be announced at 2 p.m. Sunday. Check them at DaytonDailyNews.com

SpeedRead

YOUR SATURDAY BRIEFING

McCain to attend rally in Kettering on Monday



John McCain

John McCain is making a campaign stop Monday in Kettering. The Republican presidential candidate is

holding a "Road to Victory Rally" at Trent Arena, 3301 Sirooyer Road. Doors open at 10:30 a.m., with the starting time to be determined.

Ticket information on A3



Montgomery County
Sheriff's Office
Court Services

MEMORANDUM

TO: Court Detail

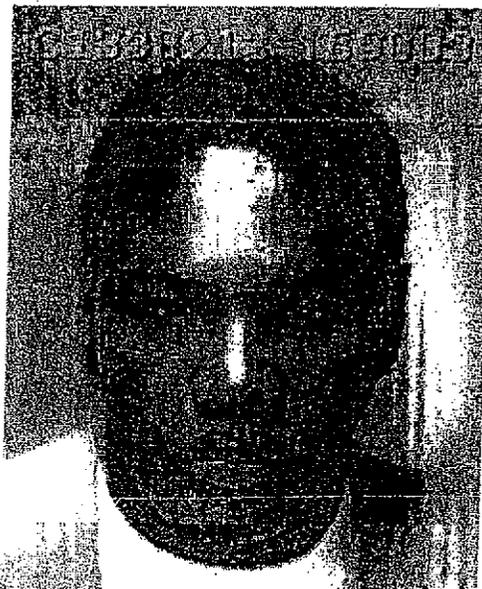
FROM: Sergeant Jeremy Roy

DATE: December 6, 2006

SUBJECT: Larry Ealy (1/5/63, 5'7", 220 lbs.)

Court Detail Deputies,

If Mr. Ealy enters the CPC/DMCC Complex or is located any where on the property, you will verify that he is here for official business and he is to be ~~ESCORTED~~ at all times while inside the Court Complex without exception.
MONITORED



AH (S)