

APR 24 2009

JAMES N. HATTEN, Clerk
By *JN Hatten* Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST)
CORPORATION)
and MAID OF THE MIST)
STEAMBOAT COMPANY, LTD.,)

Plaintiffs,)

v.)

ALCATRAZ MEDIA, LLC,)
ALCATRAZ MEDIA, INC. and)
WILLIAM M. WINDSOR,)

Defendants.)

CIVIL ACTION NO:

1:06-CV-0714-ODE

DEFENDANT WILLIAM M. WINDSOR'S
MOTION TO RECUSE JUDGE EVANS

Comes Now Defendant William M. Windsor, and asks that Judge Orinda D. Evans be recused from the above entitled matter under 28 U.S.C. SECTION 144, 28 U.S.C. SECTION 455 of the United State Code, Canons 1, 2, and 3 of the Code of Judicial Conduct, all other relevant statutory and state and federal case law, as well as the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and the Constitution of the State of Georgia. Windsor also requests an evidentiary hearing on the matter before another judge. Windsor shows the

Court as follows:

1. Judge Orinda D. Evans ("Judge Evans") has a personal bias in favor of the Plaintiffs and a prejudice against the Defendants. Judge Evans has withheld evidence from the Defendants. Judge Evans has not demonstrated the impartiality required of a judge, and this case needs to be transferred to another judge. Defendant William M. Windsor ("Windsor") files this Motion ("Motion to Recuse") contemporaneously with the filing of a Motion to Reopen the Case ("Motion to Reopen") under Rule 60(b). A copy of the Motion to Reopen and the exhibits thereto are incorporated herein for all purposes.

2. Windsor hereby gives Judge Evans notice that she will be called to testify.

3. In support of this Motion, Windsor relies on two sections of Title 28 of the United States Code (the Judicial Code) that provide standards for judicial disqualification or recusal. Section 455, a federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The same section also provides that a judge is disqualified "where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

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

“A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.”

“Disqualification is required if an objective observer would entertain reasonable questions about the judge’s impartiality...to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified.” [Emphasis added]. Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994).

“...an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge’s impartiality”. See Parker v. Connors Steel Co., 855 F.2d 1510 (11th Cir.) (1988) citing Potashnick v. Port City Const. Co., 609 F.2d 1101, 1111 (5th Cir.), cert. denied, 449 U.S. 820, 101 S.Ct. 78, 66 L.Ed. 2d 22 (1980).

5. 28 U.S.C. sec. 144, captioned "Bias or prejudice of judge," provides that under circumstances, when a party to a case in a United States District Court files a "timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of an adverse party," the case shall be transferred to another judge.

6. This Motion and the Second Declaration of Defendant William M. Windsor ("Windsor Dec #2"), attached as Exhibit A, will show grounds for recusal of Judge Evans who has behaved in a manner inconsistent with that which is

needed for a full, fair, impartial decision. Questions for an “objective observer” to ask are in Exhibit 1 to Windsor Dec #2.

7. 13 categories of judicial rights violations that Judge Evans committed against the Defendants are detailed herein.

8. A Judicial Misconduct Action filed by Windsor is pending Against Judge Evans with the Judicial Council of the 11th Circuit. Judge Evans will be called as a witness at the hearing on this Motion. [Windsor Dec #2, ¶ 8.]

CATEGORY # 1 – Judge Evans withheld evidence from the Defendants.

9. Judge Evans concealed relevant information from the Defendants when she ruled following an in camera inspection that two contracts included nothing relevant to the case and would not be provided to the Defendants. "The Court had by previous action required these documents to be turned over to the Court for in camera inspection. Production is not warranted." [Docket 209 - Page 9.] [Windsor Dec #2, ¶ 9.] The impartiality of Judge Evans must be questioned.

10. These contracts were the lease between Maid of the Mist Steamboat Company Limited (Maid Canada) and The Niagara Parks Commission (“NPC”) (the “Canadian Lease”) and the license contract between Maid of the Mist Corporation (“Maid US”) and New York State Office of Parks, Recreation and

Historic Preservation (“OPRHP”) (the “New York License”). [Exhibits 2 and 3 to Windsor Dec #2.] [Windsor Dec #2, ¶ 10.]

11. The Canadian Lease and the New York License contain extremely relevant information as is explained in Windsor Dec #2. [Windsor Dec #2, ¶ 11.]

12. Among other things, these documents reveal the motive for why the Plaintiffs (“Maid”) lied and claimed pricing problems and complaints directed at Alcatraz Media (“Alcatraz”). The central issue in this case is the oral contract between the parties. The second most important issue is was there a different explanation for why Maid claimed Alcatraz had caused many customer complaints. Was there another reason why Maid terminated the Alcatraz contract before the 2005 season ended? If Maid lied, why did they lie? [Windsor Dec #2, ¶ 12.]

CATEGORY # 2 – Judge Evans made fact decisions in a jury trial case.

13. A jury was supposed to decide the facts. [Windsor Dec #2, ¶ 13.]

14. On the key issue in the case, Judge Evans ruled just the opposite of what the evidence before the Court clearly showed the facts to be. Judge Evans should not have been deciding the facts, and an outstanding example of the improper actions of Judge Evans and the necessity of her recusal is how she treated the most important issue in the case. [Windsor Dec #2, ¶ 14.]

15. The issue of the oral contract is material, actually central, to the outcome of the case that requires an interpretation of conflicting views on the factual circumstances surrounding the case. [Windsor Dec #2, ¶ 15.]

16. A careful examination of the record indicates that the evidence is overwhelming that there was an oral contract. Exhibit 4 to Windsor Dec #2 is a chart that Windsor prepared to visually display the evidence that was before Judge Evans on this issue. [Windsor Dec #2, ¶ 16.]

17. Maid presented no admissible evidence to indicate there was not an oral contract. [Windsor Dec #2, ¶ 17.]

18. Sandra Carlson ("Carlson") of Maid entered into the oral contract with Alcatraz on March 3, 2005. Carlson did not appear for a deposition, and Judge Evans ruled on February 2, 2007 that her testimony would not be allowed. Docket # 174 -- Page 62, Lines 4-5.] [Windsor Dec #2, ¶ 18.]

19. In the Summary Judgment Order, Judge Evans stated that she did not consider the Affidavit of Sandra Carlson that was submitted as part of the Plaintiffs' summary judgment filing. [Summary Judgment Order, Vol. 17, Docket # 251, p. 44.]

20. In the 30(b)(6) deposition of Timothy P. Ruddy, he stated that Carlson could not remember any conversations in March 2005. [Docket # 90 and 132 -- Page 206, Lines 15-17.]

21. So, Maid could not dispute that there was an oral contract.

22. Windsor testified in the Answer, in deposition testimony, and in declarations that there was an oral contract for the entire 2005 season. Windsor makes this even clearer in the declaration. [Windsor Dec #2, ¶ 22.]

23. Carolyn Ballard Bazzo testified that there was an oral contract for the 2005 season. [Docket # 269 -- Deposition of Carolyn Ballard Bazzo, P 93: 11-25, P 94: 1-7, P 96: 22-25, P 97: 1-25, P 98: 1-25, P 99: 1-25, P 100: 1-24 and Exhibit B-25.]

24. Yet Judge Evans wrote in the Summary Judgment Order that the only proof was that Alcatraz had an oral contract to buy and resell tickets "in the 2005 season." The Defendants never used the word "in," and Maid had no testimony whatsoever. Judge Evans created these words, and it demonstrates extreme bias. [Docket # 251 and 252 -- Page 37.] [Windsor Dec #2, ¶ 24.]

25. This is one of the most significant examples of the lack of impartiality of Judge Evans in this case. This was the issue upon which the entire case

centered. If there was an oral contract, the Defendants did nothing wrong. If there wasn't an oral contract, the Defendants were at fault. [Windsor Dec #2, ¶ 25.]

26. When a reasonable person reviews the record in this case, the impartiality of Judge Evans must be doubted. [Windsor Dec #2, ¶ 26.]

27. Windsor has discovered new evidence that establishes that Carlson lied about what happened on March 3, 2005, and it proves that claims made by Maid in this regard were false. [Windsor Dec #2, ¶ 27.]

28. Judge Evans granted a summary judgment when there were other fact issues to be decided as well. [Windsor Dec #2, ¶ 28.]

CATEGORY # 3 – Judge Evans established a fixed view about substantive pending trial matters.

29. Judge Evans made several statements that make it clear that she pre-judged Windsor and the Defendants and decided the case before the Defendants ever presented any evidence. [Windsor Dec #2, ¶ 29.]

30. At the Preliminary Injunction Hearing, Judge Evans indicated she was inclined to grant the Preliminary Injunction though the Defendants prevailed on the causes of action presented for the hearing. [Docket # 37, Page 166, Lines 4 to 8.] [Windsor Dec #2, ¶ 30.]

31. In an Order dated January 19, 2007, Judge Evans said this was a "simple case." [Docket # 141, Page 2.] This statement clearly indicates bias as this was far from a simple case. It shows that she completely disregarded Alcatraz's counterclaim before she heard any evidence. [Windsor Dec #2, ¶31.]

32. Judge Evans spoke at the Preliminary Injunction with a clearly fixed view about substantive pending trial matters, so this must raise concerns about the "appearance of impropriety," a standard that must be safeguarded under applicable recusal law. [Windsor Dec #2, ¶ 32.]

See, Inre Murchison, 349 U.S. 133, 136, 755 S.Ct. 623, 99 L.Ed. 942 (1955); *Liljeberg v. Health Services. Acquisition Corp.*, 486 U.S. 847, 869-70 (1988); *Rice v. McKenzie*, 581 F.2d 1114, 1116-17 (4th Cir. 1978); *accord Withrow v. Larkin*, 421 U.S. 35, 47 (1975).

"The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law."

The above is applicable to this court by application of Article VI of the United States Constitution and Stone v Powell, 428 US 465, 483 n. 35, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976).

33. The United States Constitution guarantees an unbiased Judge who will always provide litigants with full protection of ALL RIGHTS. Therefore, Windsor respectfully demands that Judge Evans recuse herself in light of the evidence in the attached declaration detailing conduct which gives Windsor good

reason to believe that Judge Evans was not fair and cannot hear this case in a fair and impartial manner.

34. Judge Evans changed her reasoning when the Defendants proved key claims to be false. Judge Evans initially expressed that Alcatraz did not have a source for tickets. That was false; the Defendants produced proof; and Judge Evans changed to claiming that Alcatraz could not sell tickets if Maid didn't want them to. The law and common practice indicate just the opposite to be true. Then in Judge Evans' Order Granting Summary Judgment for the Plaintiffs, she states that there was never any proof offered to show that Alcatraz had obtained tickets. That simply isn't true. And furthermore, the issuance of tickets by Alcatraz was not the subject of any pleadings or motion before the District Court at any time. Maid sought to have the Defendants restrained from selling or attempting to sell Vouchers (defined as a document presented to Maid in lieu of payment) for tickets for Maid's services. [Windsor Dec #2, ¶ 34.]

35. Judge Evans stated in the Order Granting Preliminary Injunction that Windsor called Maid on April 11, 2006 to try to "trick" Maid. This is an outrageous statement for Judge Evans to make. Windsor called to prove a lie of Christopher Glynn ("Glynn"). [Windsor Dec #2, ¶ 35.]

36. Windsor has documentation that will prove many of the lies using the deposition testimony of Maid's managers. [Windsor Dec #2, ¶ 36.]

CATEGORY # 4 – Judge Evans denied discovery needed by the Defendants.

37. Judge Evans denied the Defendants the ability to obtain needed discovery. [Windsor Dec #2, ¶ 37.]

38. The Defendants were denied the most basic discovery -- never even given the names and contact information for employees. [Windsor Dec #2, ¶ 38.]

39. Judge Evans repeatedly denied discovery requests that were essential to the Defendants' defense and in support of the Defendants' case. [Chart showing Discovery Motions and Orders -- Windsor Dec #2, ¶ 39 and Exhibit 5.]

40. Then Judge Evans used the testimony of people who never appeared for depositions after she indicated on February 2, 2007 that she would not allow affidavits or testimony at trial from those people. [Windsor Dec #2, ¶ 40.]

41. The discovery treatment of the Defendants demonstrates a SIGNIFICANT lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 41.]

42. Maid committed terrible discovery abuse over the production of documents.

43. Despite the Defendants' strong objections, Judge Evans closed discovery at the end of December 2006. [Windsor Dec #2, ¶ 42.]

44. The short discovery period in this case denied due process for the Defendants. [Windsor Dec #2, ¶ 43.]

45. The short discovery period was especially damaging in this case, because one of the Plaintiffs and many of the needed witnesses were in Canada. The need for Canadian depositions was disclosed to Judge Evans in the Joint Preliminary Report on May 26, 2006. [Docket #38.] If the Defendants had started that day, it was unlikely they could have deposed witnesses in time, and Maid's Attorneys refused to produce the witnesses or even provide contact information. [Windsor Dec #2, ¶ 44.]

46. The Defendants sought the assistance of the Court, but Judge Evans denied all of the Defendants' motions. Judge Evans ignored the time restraints for arranging Canadian depositions. Judge Evans ignored the abuses of Maid in discovery matters. Judge Evans even issued an order that blocked the Defendants from taking preservation of evidence depositions that were absolutely essential to the Defendants' case and would have disproven erroneous information included in the Court's Summary Judgment Order. [Windsor Dec #2, ¶ 45.]

47. Judge Evans denied Windsor the ability to take a 30(b)(6) deposition, a basic right of a party. [Docket # 174, P 59, L 15-21.] [Windsor Dec #2, ¶ 46.]

48. Seven hours for depositions was totally inadequate in this case. It was impossible to cover all of the issues in that time period from the perspective of one Defendant much less all. [Windsor Dec #2, ¶ 47.]

49. On January 19, 2007, after discovery had closed, Judge Evans issued an Order on 9 discovery issues, and all 9 issues went against the Defendants. [Docket # 141.]

CATEGORY # 5 – Judge Evans refused to allow the Defendants to depose Witnesses.

50. Judge Evans denied the ability of the Defendants to take deposition testimony of any of the Maid employees directly involved with customers. [Windsor Dec #2, ¶ 49.]

51. Judge Evans denied the Defendants the time needed to go through the Hague Convention to take the depositions of Canadian employees of the Maid who were important to the Defendants' case. [Windsor Dec #2, ¶ 50.]

52. The Court ordered the Defendants to refrain from taking preservation of testimony depositions with customers, and then Judge Evans stated in the Summary Judgment Order that there were many customer complaints. [Docket #

52.] There weren't, and the Defendants could have proven that with depositions.

The Defendants have affidavits from over 600 customers that disprove such claims and prove the Defendants' claims. [Windsor Dec #2, ¶ 51.]

53. Judge Evans completely compromised the position of the Defendants by denying depositions. [Windsor Dec #2, ¶ 52.]

54. The limit of 10 depositions for all Defendants denied due process for the Defendants. [Windsor Dec #2, ¶ 53.]

CATEGORY # 6 – Judge Evans ignored lies, perjury, false sworn pleadings, false statements of fact, and Rule 11 violations in the hundreds by the Plaintiffs.

55. There were lies, false sworn pleadings, false statements of fact, and Rule 11 violations in the hundreds in this case. The abuse of the legal system and the Defendants in this case is staggering. [Windsor Dec #2, ¶ 54.]

56. This was presented to Judge Evans in a hearing in chambers on February 2, 2007. Judge Evans did nothing. How can a judge hear that one party has lied hundreds of times and do nothing? Windsor told Judge Evans that he had prepared documentation to prove the lies. Judge Evans did nothing. She didn't even respond to Windsor. The lies, false sworn pleadings, false sworn affidavits, false court testimony, and false deposition testimony are detailed in William M. Windsor's Third Declaration in Support of Motion to Reopen Case which is

incorporated herein for all purposes. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 55.]

CATEGORY # 7 – Judge Evans favored the Plaintiffs in most rulings.

57. Judge Evans did many things to favor the Plaintiffs in this case. [Windsor Dec #2, ¶ 56.]

58. Judge Evans sided with Maid on just about every issue. Judge Evans perverted the entire legal process through her lack of impartiality. Exhibit 5 to Windsor Dec #2 is a chart that Windsor created to show the various motions filed in the District Court and the effect of the rulings of Judge Evans. This chart shows quite graphically how biased Judge Evans has been. [Windsor Dec #2, ¶ 57.]

59. Maid was late in filing their response to the Defendants' Motion for Summary Judgment. Maid did not have permission to file late, but Judge Evans allowed it. Maid failed to provide citations for a significant number of what they falsely claimed to be undisputed facts, but Judge Evans ignored it. The Defendants made a mistake and failed to file the Bazzo deposition though the testimony was cited in detail in the summary judgment response, yet Judge Evans would not allow it to be late filed. Out of 41 contested motions, Maid won 40. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 58.]

60. Judge Evans included alleged facts in her orders in favor of Maid that

were “facts” presented by neither Maid nor the Defendants. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 59.]

61. Maid deceived Judge Evans with complete, total fabrications that there were many customer problems caused by Alcatraz. Exhibit 7 to Windsor Dec #2 is a chart that Windsor created to show the evidence before the District Court on customer problems. [Windsor Dec #2, ¶ 60.]

62. The Defendants were not stubbornly litigious in this case and did not act in Bad Faith as Judge Evans falsely claimed. The Defendants merely defended themselves, and Alcatraz presented counterclaims that it felt were absolutely appropriate. [Windsor Dec #2, ¶ 61.]

63. Judge Evans was unfair in denying Alcatraz’s prompt request to amend its pleadings. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 62.]

64. It seemed to Windsor that Judge Evans showed bias to the Plaintiffs in the way she handled document submissions at the Preliminary Injunction Hearing. [Windsor Dec #2, ¶ 63.]

65. On January 24, 2007, Maid filed a Corrected Brief in Support of their Motion for Summary Judgment and Corrected Statement of Material Fact. [Docket # 151.]

66. The Plaintiffs made all kinds of mistakes in their summary judgment motion, and two days later, they tried to correct it. According to Windsor's reading of the Rules, it was too late. Judge Evans let Maid get away with it. [Windsor Dec #2, ¶ 65.]

67. On February 15, 2007, Maid filed its answer to Defendants' Joint Motion for Summary Judgment. It was filed late without permission. According to the Rules, the response should not have been allowed, and the Defendants should have been granted summary judgment against Maid's claim of tortious interference. Judge Evans let Maid get away with it. [Windsor Dec #2, ¶ 66.]

CATEGORY # 8 – Judge Evans considered testimony that was not to be considered.

68. Judge Evans considered testimony and proof from Maid that she said in her orders would not be considered. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 67.]

69. Judge Evans considered affidavits for Maid that should not have been considered. This demonstrates a lack of impartiality. [Windsor Dec #2, ¶ 68.]

70. In one instance, Judge Evans issued an order in favor of the Defendants stating that the motion to allow a late-filed affidavit to be considered regarding the Preliminary Injunction was denied. Yet in what proved to be a

pattern for Judge Evans, she then QUOTED FROM THE AFFIDAVIT in the Order Granting Preliminary Injunction. [Windsor Dec #2, ¶ 69.]

CATEGORY # 9 – Judge Evans distorted the facts and the law to make the rulings in favor of Maid.

71. The Verified Complaint failed to state any cause of action or allege damages. It was not amended but Judge Evans accepted it. [Windsor Dec #2, ¶ 70.]

72. The Preliminary Injunction was improperly issued for many reasons. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 71.]

73. The Summary Judgment was totally improper but especially as to of Maid of the Mist Corporation, because this entity did not present any damages. Damages are required in a tortious interference claim. [Windsor Dec #2, ¶ 72.]

74. Judge Evans stated that she felt this was a “simple case” because she felt that Maid had the right to refuse to let Alcatraz sell its tickets. Judge Evans held to that misguided notion and ruled against the Defendants with no legal justification. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 73.]

75. The “competition privilege” should have provided a complete defense to Maid’s claim of intentional interference with prospective economic advantage, as Alcatraz did not commit an unlawful or illegitimate act. [Windsor Dec #2, ¶ 74.]

76. There was no bad faith by the Defendants, and the Defendants were not stubbornly litigious as Judge Evans so falsely claimed. [Windsor Dec #2, ¶ 75.]

77. The constitutional rights of the Defendants were violated repeatedly in this lawsuit. This demonstrates a lack of impartiality by Judge Evans. [Windsor Dec #2, ¶ 76.]

78. The Summary Judgment Order in this case could improperly establish a major number of precedents that change important laws in Georgia. Alcatraz already has one lawsuit filed against it claiming this case as the precedent. [Windsor Dec #2, ¶ 77.]

79. Judge Evans ruling on attorneys' fees in this case was overturned by the Court of Appeals. It was wrong. Judge Evans denied a hearing and ignored the law as she had done before in this proceeding. [Windsor Dec #2, ¶ 78.]

80. This demonstrates a lack of impartiality by Judge Evans.

81. Windsor feels that the Plaintiffs and Judge Evans cheated the Defendants at every turn. [Windsor Dec #2, ¶ 80.]

82. The Second Declaration of William M. Windsor states the facts and the reasons for the belief that bias or prejudice exists. This Declaration was not filed earlier because the Defendants have just received and studied the

Canadian Lease and the New York License, and this is good cause for failure to file this earlier. [Windsor Dec #2, ¶ 81.]

83. Judge Evans should disqualify herself because her impartiality may be reasonably questioned. [Windsor Dec #2, ¶ 82.]

CATEGORY # 10 – Judge Evans demonstrated bias and prejudice against Windsor, a pro se party and a male.

84. Judge Evans demonstrated that she did not like that Windsor was pro se, and she discriminated against Windsor. [Windsor Dec #2, ¶ 83.]

85. Judge Evans gave indication that she discriminated against Windsor because he was a male. [Windsor Dec #2, ¶ 84.]

CATEGORY # 11 – Judge Evans improperly considered hearsay as evidence.

86. Judge Evans has allowed significant hearsay. [Windsor Dec #2, ¶85.]

87. Anything relative to customers will be hearsay as none of the Maid deponents had customer dealings (except two customers that Ruddy spoke with). [Windsor Dec #2, ¶ 86.] Judge Evans created facts and issues about the BBB.

CATEGORY # 12 -- Judge Evans failed to provide due process and equal protection to the Defendants

88. Denying the Defendants access to important records is a violation of Equal Protection.

89. Judge Evans has violated the Defendants' civil and constitutional rights under color of law.

"The Due Process Clause serves two purposes...One is to produce, through the use of fair procedures to prevent the wrongful deprivation of interests; ...the other is a guarantee of basic fairness, i.e.: to make people feel that they have been treated fairly."

"[t]rial before an 'unbiased judge' is essential to due process." Johnson v. Mississippi, 403 U.S. 212, 216 (1971); accord Concrete Pipe & Prods. V. Constr. Laborers Pension Trust, 508 U.S. 602, 617 (1993) "due process requires a neutral and detached judge in the first instance." (citation omitted)

"justice must give the appearance of justice" Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United States, 348 U.S. 11, 14, 75 S. Ct. 11, 13 (1954).

See Mathews v. Eldridge, 424 U.S. 319, 344 (1976)..., by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him."

"even if there is now showing of actual bias", "due process is denied by circumstances that create the likelihood or the appearance of bias" Peters v. Kiff, 407, U.S. 493, 502 (1972)

90. Windsor has just cause to believe that the Defendants have not been given a fair trial and cannot have a fair trial due to the issues alleged. [Windsor Dec #2, ¶ 89.]

CATEGORY # 13 – Judge Evans will be a witness in this matter, and a Judicial Misconduct Complaint is pending against her regarding this case.

91. Judge Evans should recuse herself because Windsor has filed a Judicial Misconduct Complaint against her with the Judicial Council of the 11th Circuit. [Windsor Dec #2, ¶ 90.]

92. This is not a case where one person has told one lie, but a case where a group of people have gotten together to perpetrate a massive fraud on the Defendants and this Court. [Windsor Dec #2, ¶ 91.]

93. Windsor submits that Maid's Attorneys have committed a number of violations of the Federal Rules of Civil Procedure as well as violations of the Georgia Rules of Professional Conduct. [Windsor Dec #2, ¶ 92.]

94. The standard of review in asking a judge to recuse is defined by Canon 3(C) which states:

"A judge should recuse in a proceeding in which the judge's impartiality might reasonably be questioned..." This includes when a judge has "displayed deep-seated and unequivocal antagonism that would render fair judgment impossible." The test under the canon is whether a reasonable person would have a factual basis to doubt the judge's impartiality. It is vital to public confidence in the legal system that decisions of the court are not only fair, but also appear fair. The standard of review should be liberal construction in favor of the right to disqualify. Thus, whether the disqualification of a judge hinges on a statute or on a rule, the Court should adhere to the liberal construction of that statute or rule in favor of the right to disqualify. A liberal construction is necessary if we wish to promote and maintain public confidence in the judicial system.

95. In addition, the Code of Judicial Conduct provides that:

"...judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances" specified in the rule. Thus, the canon is broader than the statute. First, the four subparagraphs of Rule 2, Canon 3C(1), which set forth the circumstances for disqualification, are a clear directive to disqualify. *Berry*, 654 S.W.2d at 163 (Dixon, J., concurring). When one of these causes to recuse appears, a judge must do so. *Id.* Moreover, the phrase, "including but not limited," signifies that a judge's duty to disqualify is not confined to the factors listed in the subparagraphs, but is much broader. Second, Rule 2, Canon 3C(1) commands the disqualification of a judge if "his impartiality might reasonably be questioned." See *Grant v. State*, 700 S.W.2d 170, 171 (Mo. App. 1985). Thus, under the canon, the test is not whether actual bias and prejudice exist, but whether a reasonable person would have factual grounds to doubt the impartiality of the court. *Berry*, 654 S.W.2d at 164 (Dixon, J., concurring). If, on the record, a reasonable person would find an appearance of impropriety, the canon compels recusal. *Id.*

The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, might reasonably question his impartiality on the basis of all the circumstances.

When a party seeks to disqualify a judge for cause, the judge should adhere to the following procedures. First, the challenged judge should determine if the motion is procedurally adequate. Next, the judge should determine whether the petition is substantively adequate: Does the petition allege facts which warrant disqualification for cause pursuant to the statutes? If the motion is procedurally and substantively sufficient, the judge is faced with two options: either to grant the motion; or, if the facts in the motion are to be controverted, to hold a hearing on the record, whether requested or not, to determine the disqualification issue. If the challenged judge is to testify, the hearing must be held before another judge. These minimal procedures are necessary because, in the face of a proper application for a change of judge because the judge lacks jurisdiction to proceed in the action in which his impartiality is questioned.

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

97. Windsor contends that the average reasonable person, knowing all the facts, would easily conclude that Judge Evans' impartiality could be questioned. Windsor contends that any reasonable person would conclude that Judge Evans cannot possibly give the Defendants a fair and impartial hearing and that she should be removed and replaced by an impartial judge. [Windsor Dec #2, ¶ 96.]

("The probability of actual bias on the part of the judge . . . is too high to be constitutionally tolerable"); *Berger v. United States*, 255 U.S. 22, 33-34 (1921); *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980) ("Any question of a judge's impartiality threatens the purity of the judicial process and its institutions"); *King v. State*, 246 Ga. 386, 389-90, 271 S.E.2d 630 (1980); *Hall v. Small Bus. Admin.*, 695 F.2d 175, 179 (5th Cir. 1983) (disqualification of a judge required "if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality"); *United States v. Columbia Broad. Sys., Inc.*, 497 F.2d 107, 109 (5th Cir. 1974) ("The protection of the integrity and dignity of the judicial process from any hint or appearance of bias is the palladium of our judicial system"); *Stephens v. Stephens*, 249 Ga. 700, 702, 292 S.E.2d 689, 691 (1982). ("All parties before the court have the right to an impartial judicial officer."); *Isaacs v. State*, 257 Ga. 126, 127, 355 S.E.2d 644 (1987) ("The fact that a judge's impartiality might reasonably be questioned is sufficient for disqualification."; a judge may not be so personally involved in a controversy "that his objectivity could reasonably be questioned.").

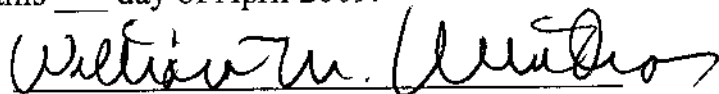
98. Judge Evans has demonstrated prejudice against the Defendants and must be removed from this case. Judge Evans' orders must be ruled void and a new

trial ordered, otherwise the Court will deprive the Defendants of a fair trial in violation of the due process clauses of both the Georgia and the United States Constitutions and in violation of Federal Rules of Civil Procedure and the Federal Rules of Judicial Procedure.

WHEREFORE, having now filed this Motion and sworn declarations, Defendant Windsor respectfully requests as follows:

- (1) that the presiding judge of this administrative judicial district assign another judge to this case or refer this Motion to the presiding judge of this administrative district for a hearing;
- (2) that the Court grant DEFENDANT WILLIAM M. WINDSOR'S MOTION TO RECUSE JUDGE EVANS;
- (3) that the orders of Judge Evans be declared void;
- (4) that the Court issue an order recusing Judge Evans;
- (5) that the Court issue an order requiring a new judge to hear Defendant Windsor's Motion to Reopen the Case;
- (6) that the Court grant such other and further relief as justice requires in association with this Motion.

Respectfully submitted, this 24 day of April 2009.



William M. Windsor

Pro Se

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MAID OF THE MIST)
CORPORATION)
and MAID OF THE MIST)
STEAMBOAT COMPANY, LTD.,)
)
Plaintiffs,)
)
v.)
)
ALCATRAZ MEDIA, LLC,)
ALCATRAZ MEDIA, INC. and)
WILLIAM M. WINDSOR,)
)
Defendants.)
_____)

CIVIL ACTION NO:
1:06-CV-071-ODE

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2009 I served **DEFENDANT WILLIAM M. WINDSOR'S MOTION TO RECUSE JUDGE EVANS** by ^{Courier} certified mail return receipt to the following attorneys of record:

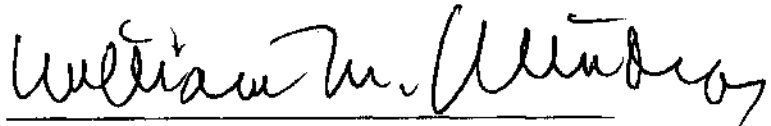
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This 24 day of April, 2009.



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