

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR KENT COUNTY**

|  |   |                            |
|--|---|----------------------------|
| <b>JERRY LEE ALSTON,</b>               | : |                            |
|  | : |                            |
| <b>Plaintiff,</b>                      | : | <b>C.A. No. 01C-07-039</b> |
|  | : |                            |
| <b>v.</b>                              | : |                            |
|  | : |                            |
| <b>DELAWARE GOVERNOR RUTH ANN</b>      | : |                            |
| <b>MINNER; DELAWARE ATTORNEY</b>       | : |                            |
| <b>GENERAL M. JANE BRADY;</b>          | : |                            |
| <b>DELAWARE STATE POLICE AS AN</b>     | : |                            |
| <b>ENTITY; CITY OF DOVER POLICE</b>    | : |                            |
| <b>DEPT. AS AN ENTITY; PROBATION</b>   | : |                            |
| <b>AND PAROLE AS AN ENTITY; QUASI</b>  | : |                            |
| <b>POLICE AGENCIES; STATE OF DELA-</b> | : |                            |
| <b>WARE HUMAN RELATIONS COMMIS-</b>    | : |                            |
| <b>SION; and BAYHEALTH MEDICAL,</b>    | : |                            |
|  | : |                            |
| <b>Defendants.</b>                     | : |                            |

**ORDER**

**This 19th day of October, 2001, after consideration of Plaintiff's motion and argument, it appears that:**

**FACTS**

- 1. The pertinent facts are as follows. On August 16, 2001, the Plaintiff in the above-captioned matter filed a Motion to Recuse the Assigned Judge for Cause.<sup>1</sup>**
- 2. Plaintiff alleges that the assigned trial Judge should recuse himself because a cause of action has been filed by the Plaintiff in the 3<sup>rd</sup> Circuit Court of Appeals. That Federal cause of action purportedly includes a charge against this**

---

<sup>1</sup> Subsequently, Plaintiff filed a Second Motion to Recuse which was stricken by Order of this Court dated September 27, 2001, under Superior Court Civil Rule 12(f) for matters redundant, immaterial, impertinent or scandalous. In that second motion, Mr. Alston submitted material which was not authorized to be filed before this Court.

Judge for “wrongful actions,” decisions related to an earlier unrelated proceeding instituted in Superior Court by the Plaintiff. This Judge presided over the previous State court matter which was decided adversely against Plaintiff. For these reasons, Plaintiff requests “to be heard before a trier of fact and law who has not demonstrated bias and indiscretion against Plaintiff.”

3. Although not specifically stated in Plaintiff’s motion, the apparent basis for recusal is Delaware Judges’ Code of Judicial Conduct Canon 3(C).

#### DISCUSSION

4. A brief discussion may be appropriate. Canon 3(C) of the Delaware Judges’ Code of Judicial Conduct provides that judges must be free from personal bias, and must be disqualified in a proceeding in which the judge’s impartiality might reasonably be questioned.<sup>2</sup>

---

<sup>2</sup> Canon 3(C) of the Delaware Judges’ Code of Judicial Conduct provides in pertinent part:

(1) A judge should disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned,

---

**including but not limited to instances where:**

**(a) The judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;**

**\* \* \***

**(e) . . . or has expressed an opinion concerning the merits of the particular case in controversy.**

**\* \* \***

5. In *Los v. Los*, the Delaware Supreme Court set out a two-prong test to insure against personal bias, or the appearance of bias, under Canon 3(C).<sup>3</sup> First, the Judge must, as a matter of subjective belief, be satisfied that he or she is free of bias or prejudice concerning the Plaintiff. Second, the Court must ensure that there is not an objective appearance of bias that is sufficient to cast doubt upon the Court's impartiality.

6. In applying the analysis set forth in *Los* to the instant case, I find that Plaintiff's Motion to Recuse must be denied.

7. Here, the Court is satisfied that the first prong of the *Los* test is met. This Court, as a matter of subjective belief, determines that it is able to adjudicate the issues before it in a disinterested manner with no bias or prejudice toward any of the parties—regardless of the Federal action or prior rulings in the Superior Court related to this Plaintiff in any other matters before this Court that may have been filed previous or subsequent to the filing of the instant litigation.

---

<sup>3</sup> Del. Supr., 595 A.2d 381, 384-385 (1991).

8. The second *Los* prong is also satisfied. This Court has performed an objective analysis to insure that there is no appearance of bias under Delaware law. Plaintiff suggests that this Court cannot appear unbiased because Plaintiff has made allegations against this Judge in another action, or in an action filed subsequent to the instant case. “[T]here is a compelling policy reason for the Judge not to disqualify himself at the behest of a party who initiates litigation against a judge. In the absence of genuine bias, a litigant should not be permitted to ‘judge shop’ through the disqualification process.”<sup>4</sup> Certainly, it may be viewed that once a party asks for recusal, then files an action against the Judge (apart from the case at hand) such can be viewed as judge shopping, and the Court does view it as such in this case.

9. Moreover, simply because this Judge may have decided adversely against Plaintiff in a prior action, does not create sufficient appearance of bias to require recusal by this Judge in the present suit.<sup>5</sup>

10. For example, in *Weber v. State*, the criminal defendant was charged with various crimes including kidnaping, theft and assault. The judge assigned to his current trial had presided over the defendant’s previous trial for second degree murder. In that case the defendant had been convicted in the previous trial. For this reason, the defendant wanted the judge recused because he “would feel ‘more comfortable’ if another judge presided.”<sup>6</sup> The Delaware Supreme Court

---

<sup>4</sup> *Id.* at 385.

<sup>5</sup> *Weber v. State*, Del. Supr., 547 A.2d 948, 951 (1988).

<sup>6</sup> *Id.*

stated:

the bias envisioned by Canon 3C(1) is not created merely because the trial judge has learned facts or made adverse rulings during the course of [another] trial.<sup>7</sup>

\* \* \*

There is no general rule that a judge is disqualified *per se* because of an adverse decision in a former case involving entirely different and unrelated . . . charges [but involving] the same party.<sup>8</sup>

This reasoning is equally persuasive with respect to the civil plaintiff in this case.

11. Therefore, for the reasons set forth above, Plaintiff's Motion to Recuse the Assigned Judge for Cause Stated is denied.

**IT IS SO ORDERED.**

---

**J.**

WLW/dmh

---

<sup>7</sup> *Id.* at 952 (citations omitted).

<sup>8</sup> *Id.*

*Jerry Lee Alston v. Gov. Ruth Ann Minner, et al.*  
**Civil Action No. 01C-07-039**  
**Page 7**

**oc: Prothonotary**  
**xc: Mr. Jerry Lee Alston**  
**Mason E. Turner, Jr., Esquire**  
**Richard W. Hubbard, Esquire**  
**William W. Pepper, Sr., Esquire**  
**Order Distribution**