

IN THE IOWA DISTRICT COURT FOR MARION COUNTY

<p>BILLY DEAN CARTER, BILL G. CARTER AND ESTATE OF SHIRLEY CARTER by and through BILL G. CARTER, Executor, Plaintiffs/Respondents, vs. JASON CARTER, Defendant/Petitioner.</p>	<p>Law No. LACV095809 MOTION FOR RECUSAL OF HON. MARTHA MERTZ</p>
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Jason Carter requests that the Honorable Martha Mertz recuse herself from the pending Motion to Vacate, and from all other proceedings in this matter, and in support states:

1. With all due respect to the Honorable Martha Mertz, extrajudicial evidence has come to light showing that she is improperly and obviously biased against the Defendant and Petitioner, Jason Carter, and that she should recuse herself from further proceedings in this case.

2. Attorney Deborah Johnson states in her attached affidavit that shortly after the criminal acquittal of Jason Carter, she had a conversation with Judge Mertz in the Jasper County Courthouse. Ex. A ¶ 6.

3. In the course of this conversation, Ms. Johnson inquired about the Carter civil wrongful death trial. *Id.*

4. Judge Mertz told Ms. Johnson that Jason Carter was “guilty as sin.” *Id.* ¶ 7.

5. At the time Judge Mertz made the comment that Jason Carter was “guilty as sin,” she had before her Jason Carter’s pending Motion to Enlarge or Amend pursuant to Iowa R. of Civ. P. 1.904(2). *Compare* Motion for Ruling to Enlarge or Amend, filed 2/6/19, with Order filed 6/07/2019.

6. Scott Pace attended portions of the civil trial and witnessed Judge Mertz having *ex parte* communications with Ed Bull (the prosecutor who ultimately charged Jason Carter with

murder and sat in the courtroom during the civil trial taking notes) and Bill Carter's attorneys. Ex. B ¶ 4. Mr. Pace also noted that Jason Carter's attorneys were not in the room during this *ex parte* conversation. *Id.* ¶ 5. This occurred during the civil trial in December 2017.

7. A judicial officer is disqualified from acting in a proceeding if the officer "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." Iowa Code § 602.1606(1).

8. If a judge's impartiality might reasonably be questioned because of such bias or extrajudicial knowledge, the judge should recuse him or herself. *State v. Haskins*, 573 N.W.2d 39, 44 (Iowa 1997); *State v. Rhode*, 503 N.W.2d 27, 36 (Iowa App. 1993) (citing Iowa Code of Judicial Conduct Canon 3(D)(1)(a) ("[A] judge *should* disqualify himself in a proceeding in which his impartiality might reasonably be questioned . . ." (emphasis added))).

9. The Iowa Supreme Court relies on the language of 28 U.S.C. § 455(a) in analyzing Canon 3(D)(1). *State v. Mann*, 512 N.W.2d 528, 532 (Iowa 1994). That statute provides:

Any justice, judge, or magistrate of the United States *shall* disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. § 455(a) (emphasis added).

10. The test is whether a reasonable person would question the judge's impartiality. *Haskins*, 573 N.W.2d at 44; *see also McKinley v. Iowa Dist. Court*, 542 N.W.2d 822, 827 (Iowa 1996); *Mann*, 512 N.W.2d at 532 ("In other words, the test is not whether the judge self-questions his own impartiality, but whether a reasonable person would question it.").

11. To be a disqualifying factor, the bias or prejudice must stem from an extrajudicial source and "result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *State v. Smith*, 282 N.W.2d 138, 142 (Iowa 1979) (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966)).

12. “A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases.” *In re Marriage of Ricklefs*, 726 N.W.2d 359, 362 (Iowa 2007) (citation omitted); *see also Mann*, 512 N.W.2d at 532 (Iowa 1994) (“There is a constitutional right to have a neutral and detached judge.”).

13. Further guidance can be found in the Iowa Code of Judicial Conduct, which sets forth the following principles in its preamble:

[1] An independent, fair, and impartial judiciary is indispensable to our system of justice Inherent in all the rules contained in the Iowa Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the judicial system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives.

14. To that end, Rule 51:2.11(A)(1) states:

A judge shall disqualify him or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer . . .

See also Iowa Code of Judicial Conduct 51:1.2 (“A judge shall act at all times in a impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”); 51:2.2 (“A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”); 51:2.3(A) (“A judge shall perform the duties of judicial office . . . without bias or prejudice.”).

15. Stating that Jason Carter is “guilty as sin” to an attorney is unambiguous evidence of bias against Jason Carter. Iowa Code § 602.1606(1). Judge Mertz’s statements would undoubtedly cause a reasonable person, and do cause the undersigned, to question her impartiality,

especially when she is about to preside over a hearing in which Jason Carter is demanding that the civil judgment be vacated and an opportunity for a new trial be given because of new evidence that resulted in a criminal acquittal. *Haskins*, 573 N.W.2d at 44; *Rhode*, 503 N.W.2d at 36; Iowa Code of Judicial Conduct Canon 3(D)(1)(a). It is also especially relevant because Judge Mertz made those statements while Jason Carter had a pending motion before her, which motion she later denied. *See* Order, 6/07/2019.

16. It does not matter whether Judge Mertz herself questions her impartiality, but whether a reasonable person would question it. *McKinley*, 542 N.W.2d at 827.

17. The Iowa Code of Judicial Conduct clearly states that judges should maintain the dignity of their office at all times and “avoid both impropriety and the appearance of impropriety in their personal and professional lives.” Iowa Code of Judicial Conduct Preamble [2]; Iowa Code of Judicial Conduct 51:1.2.

18. Although it is *de facto* improper for a judge to state that a civil Defendant is “guilty as sin” when that judge is presiding over pending posttrial motions from the same Defendant, it also clearly *appears* to be improper, the standard set forth in the Iowa Code of Judicial Conduct.

19. Further, Judge Mertz speaking privately in a group comprised of Ed Bull (the prosecutor who ultimately charged Defendant with murder) and Bill Carter’s attorneys, without the presence of Jason Carter’s attorneys, is both clearly improper and has the appearance of impropriety. Clearly, people noticed it, as evidenced by Scott Pace’s affidavit.

20. With all due respect to Judge Mertz, Jason Carter has a constitutional right to a fair trial. *In re Ricklefs*, 726 N.W.2d at 362; *Mann*, 512 N.W.2d at 532.

21. It is evident, given Judge Mertz’s statements to people uninvolved in the civil trial, that she is biased against Jason Carter, having determined personally that he is “guilty as sin” and

making public statements stating as such, and would be unable to render judgment fairly in this matter. It is also evident that the statements she made have the appearance of impropriety, as well as being actually improper.

22. It is further evident, given Judge Mertz's private discussions with the prosecutor and Bill Carter's attorneys outside the presence of Jason Carter's counsel, which others witnessed, that she acted improperly in so doing, and that her behavior also appears to be improper.

Jason Carter respectfully requests that the Honorable Martha Mertz recuse herself from this matter and that a new judge be appointed.

Respectfully submitted,

/s/ Alison F. Kanne

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ATTORNEYS FOR DEFENDANT/
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties to this action on February 14, 2020, by CM/ECF.

/s/ Alison F. Kanne

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AFFIDAVIT OF DEBORAH L. JOHNSON

1. My name is Deborah L. Johnson and I am an attorney licensed to practice in the State of Iowa.
2. I have been licensed to practice in Iowa since September of 2004.
3. Soon after the March 21, 2019 acquittal of Jason Carter by a jury sitting in Pottawattamie County, I was in the Jasper County Courthouse for a hearing.
4. The Honorable Martha Mertz was the presiding judge that day.
5. I remember seeing the recent news coverage of Carter's acquittal and recalling seeing news coverage that Judge Mertz presided over Carter's civil wrongful death trial.
6. While conversing with Judge Mertz, I asked her about the Carter matter.
7. Judge Mertz told me that "Jason Carter was guilty as sin."
8. The above statements are true and correct to the best of my ability.



 Deborah L. Johnson

2-12-2020

 Date

Subscribed and sworn to before me this 12 day of Feb, 2020.



 NOTARY PUBLIC-STATE OF IOWA



