

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO: 50-2011-CP-004003-XXXXNB
PROBATE DIVISION: IH

IN RE:

ESTATE OF VIOLET
K. LESUER,
DECEASED.

**VERIFIED SWORN PETITION AND
AFFIDAVIT OF PERSONAL REPRESENTATIVE
KYLE MACNENEY FOR IMMEDIATE
MANDATORY DISQUALIFICATION OF JUDGE
ROSEMARIE SCHER, RE-INSTATEMENT OF
THE PROBATE CASE AND RE-ASSIGNMENT TO
NEUTRAL INDEPENDENT JUDGE CONSISTENT
WITH US CONSTITUTIONAL DUE PROCESS
AND OTHER RELIEF**

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/

COMES NOW KYLE MACNENEY, Petitioner and Personal Representative of the Estate of Violet K. LeSuer and movant who files under information and belief this Verified Petition and Affidavit for Immediate Mandatory Disqualification of Judge Rosemarie Schere pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, who states in good faith and for the following grounds and reasons:

1. This rule applies to county and circuit judges in all matters in all divisions of Court.
2. I am the Petitioner Pro Se and the Personal Representative of the Estate of my mother Violet K. LeSuer and have always been the Personal Representative of the Estate from its inception.
3. Judge Rosemarie Scher is a Circuit judge in the 15th Judicial Circuit.
4. Petitioner, a party to the case, moves for mandatory disqualification and to otherwise disqualify Probate and Trial Judge Scher for mandatory grounds provided by the Florida rules, statutes, laws, Florida Code of Judicial Conduct and US Constitution and Florida Constitution.
5. The conduct complained of from Judge Scher occurred on or about October 26, 2017 to the present and 10 days from Oct. 26, 2017 being October 5, 2017 a Sunday and today being the first business day since, the motion is timely under the law.
6. The motion is therefore timely under the law.
7. The conduct of Judge Rosemarie Scher in “Administratively Closing” the Estate and terminating my Letters Testamentary was a knowing intentional act in violation of Due process and the Canons of Judicial conduct and in violation of lawful procedure.

8. Under these circumstances, I have a good faith reasonably objective basis to believe I can not receive a Fair Trial before Judge Scher who must now be mandatorily Disqualified.
9. I have attached as Exhibit 1 a print out of the last page of the Palm Beach County ECase view for this Probate Estate case which shows that there is no Document or Notice on File anywhere that former Judge Phillips was ever removed from the case nor any Notice that Judge Scher had ever been officially assigned.
10. I have never received any such notice by the Courts or Clerk of Palm Beach County to advise me that Judge Scher was in fact assigned to this case.
11. Judge Scher at all times knew and should have known that I was entitled to Due process Notice before such action was taken to “close” the case and dismiss my Letters.
12. This is a violation of Constitutional due process.
13. More importantly, Judge Scher knew or should have known the Florida Rules of Civil Procedure 1.420 Dismissal of Actions applied and under 1.420(e) it is undisputed that I never received the required statutory 5 Day Notice to show “good cause” prior to Dismissal and closing of the case.

14. Florida Rules of Civil Procedure 1.420(e) provides: (e) **Failure to Prosecute.** “In all actions in which it appears on the face of the record that no activity by filing of pleadings, order of court, or otherwise has occurred for a period of 10 months, and no order staying the action has been issued nor stipulation for stay approved by the court, any interested person, whether a party to the action or not, the court, or the clerk of the court may serve notice to all parties that no such activity has occurred. If no such record activity has occurred within the 10 months immediately preceding the service of such notice, and no record activity occurs within the 60 days immediately following the service of such notice, and if no stay was issued or approved prior to the expiration of such 60-day period, the action shall be dismissed by the court on its own motion or on the motion of any interested person, whether a party to the action or not, after reasonable notice to the parties, unless a party shows good cause in writing at least 5 days before the hearing on the motion why the action should remain pending. Mere inaction for a period of less than 1 year shall not be sufficient cause for dismissal for failure to prosecute.” (emphasis provided).

15. It is undisputed that Judge Scher took direct action “on her own motion” in violation of the Statutory procedure of 5 days notice and in total denial of Notice and due process and must be disqualified.

16. The Florida Supreme Court has ruled on similar issues and has stated the Obligations of the Judge in managing the Docket.

17. Under Florida Rule of Judicial Administration **RULE 2.085. TIME STANDARDS FOR TRIAL AND APPELLATE COURTS, (b), Case**

Control. *The trial judge shall take charge of all cases at an early stage in the litigation and shall control the progress of the case thereafter until the case is determined. The trial judge shall take specific steps to monitor and control the pace of litigation, including the following:*

(1) assuming early and continuous control of the court calendar;

(2) identifying priority cases as assigned by statute, rule of

procedure, case law, or otherwise;

(3) implementing such docket control policies as may be necessary

to advance priority cases to ensure prompt resolution;

(4) identifying cases subject to alternative dispute resolution processes;

(5) developing rational and effective trial setting policies; and

(6) advancing the trial setting of priority cases, older cases, and cases of greater urgency.

18. In this probate case, Judge Scher totally disregarded all such duties and obligations creating a reasonably objective fear that a fair trial can not be had and thus mandatory disqualification is required.

19. This is all action or failure to act within 10 days of today and thus this motion is timely and legally sufficient.

20. The circumstances become more egregious when a look at my Amended Petition and Motion in Opposition occurs which I have attached as Exhibits 2 and 3, with the Amended Petition filed June 13, 2016 under Docket No. 114, Filing # 42650827 E-Filed 06/13/2016 12:02:09 PM and my Objection and Motion for Extension of Time to Respond to a Motion to Strike filed on August 17, 2016 under Docket No. 119, Filing # 45362118 E-Filed 08/17/2016 05:00:14 PM.

21. In paragraph 13 of my Amended Petition it was pointed out from a County Audit that, “According to the County’s Integrity Unit Audit itself, “In our opinion, Catholic Charities, as guardian of the ward, may be in violation of elements of Florida Statute that govern conflict of interest.”. See Exhibit 2.

22. Par. 24 of this Amended Petition showed over \$200,000 in Fees taken by politically connected Attorney Brian O'Connell that were whitewashed by then Judge Diana Lewis with no opportunity for me to be heard or obtain a proper Accounting consistent with my duties as PR alleging "Records further show that 4 consecutive Withdrawals of including three for \$50,000.00 and one for \$55,000,.00 totalling approximately \$205,000.00 were taken from the Reverse Mortgage Funds by the O'Connell law office Ciklin law firm PRIOR to Court Approval and prior to Petitioning for Court approval."

23. The entire time I was waiting for the Court to issue a Notice of Assignment to a new Judge and exercise proper Judicial management over the case, upon information and belief, Judge Rosemarie Scher was "delaying" other "Accounting proceedings" involving Brian O'Connell in the Estate of Simon Bernstein where fraud is alleged to have occurred and fraud alleged to be proven also implicating former Judge Diana Lewis acting in that case who was acting in my case and Brian O'Connell being square in the center. See, Estate of Simon Bernstein CASE NUMBER:
50-2012-CP-004391-XXXX-NB.

24. Upon information and belief, multiple Docket Entries in the Simon Bernstein case reflect allegations of misconduct, breach of fiduciary duty and failure to account, almost identical to claims in my case where other allegations implicate Diana Lewis in fraud upon the Court. See Simon Bernstein case.

25. Upon information and belief, the FBI and US Dept of Justice has been specifically contacted during this time about the conduct of Judge Scher who now rushed in to “Close” my mother’s Estate case and “hide” the allegations against Brian O’Connell and Catholic Charities and the need for full and proper accounting which got so bad that Anthony Palmeri’s office had become involved.

26. During this same period of time while Judge Scher was “delaying” Accounting hearings in the Bernstein case, the Palm Beach Post and John Pacenti was breaking out a series of articles of Probate and Guardianship problems in Palm Beach County leading to massive judicial shakeup and more. See, John Pacenti, “Guardianships, A Broken Trust” and related articles. <http://www.mypalmbeachpost.com/guardianships-colin-savitt/>

27. During this same period of time while Judge Scher was “delaying” Accounting hearings in the Bernstein case and taking no action in my case

where O'Connell's action are front and center for large amounts of monies in the hundreds of thousands, quietly under the radar screen a Federal civil case was moving against Brian O'Connell and the politically connected Ciklin firm where a former partner was Chief Judge of the 4th District Court of Appeals during all relevant times, where breaches of fiduciary duties and similar allegations resulted in what the Palm Beach Post called a "Landmark" \$14 Million Jury verdict against Brian O'Connell and the defendants.

28. In fact, upon information and belief, at a time when Brian O'Connell and others were rushing to obtain a "private settlement" in the Landmark verdict above, Judge Scher went as far as "advancing the Schedule" in the Bernstein case and moving up the hearing to approve a major settlement without setting due process procedures and without indispensable parties on notice showing a pattern of due process violations designed to protect Brian O'Connell, Diana Lewis and potentially others but both of whom are directly in my case where Judge Scher comes in a week later and specifically denies due process and proper statutory Notice to "silence" my case and the proper Accounting for the Estate from Brian O'Connell and Catholic

Charities and others. See Docket Entries No. 719,722 and related filings in the Bernstein case.

29. Thus, I have a reasonable fear that I can not receive a fair trial from Judge Scher based upon her conduct on Oct. 26, 2017 and to the present in denying

due process and lawful statutory procedure to protect and silence claims against Brian O'Connell and others.

30. Upon information and belief, the US Dept. of Justice has just issued a public press statement involving indictments and an ongoing Grand Jury in West Palm Beach that implicates the Online operations and legitimate operations of the Palm Beach County court system of which Judge Scher is a part. See,

[https://www.justice.gov/opa/pr/three-real-estate-investors-indicted-bid-rigging-florida-online-foreclosure-auctions.](https://www.justice.gov/opa/pr/three-real-estate-investors-indicted-bid-rigging-florida-online-foreclosure-auctions)

31. The Florida Supreme Court said in Francisco FUSTER-ESCALONA, Petitioner, v Steven J. WISOTSKY, et al., Respondents, 781 So.2d 1063 (2000) "*The trial judge is the manager of the docket and has the ultimate responsibility to rule on pleadings that are properly pled before the court,* in accord with applicable rules of procedure and court precedent. See Toney v. Freeman, 600 So.2d 1099, 1100 (Fla.1992) ("*Trial judges should be*

encouraged to take an active role in keeping themselves informed of the cases assigned to them."); Lukowsky v. Hauser & Metsch, P.A., 677 So.2d 1383, 1384 (Fla. 3d DCA 1996) ("[W]henever a dispositive motion is pending before the court, and the parties are awaiting the court's ruling on that motion, the duty to proceed rests squarely upon the court.").

32. "The focus on the movant's "failure" to request a hearing on the motion to disqualify is unavailing. Clearly, it would have been better practice for the movant to request a hearing date in order to ensure that the trial court would address his motion."
33. Thus, it was the Court's obligation to control the calendar and provide me some Notice of Assignment of the case to a new Judge and to manage the docket where motions were pending and filed and waiting to be heard.
34. Denial of these motions pending with no notice and no hearing is a Summary denial of due process under the 4th DCA's own standards, See JOELLE SAWAYA, Appellant, v. MORRIS KENT THOMPSON, Appellee. No. 4D15-841 [November 30, 2016]
35. My conduct is not at issue as I had a reasonable good faith belief that the Court system would act to notify me that the Judges had changed and been re-assigned and would take action to manage the Pending motions including

a dispositive motion as held by the 3rd DCA Rebecca LUKOWSKY, Appellant, v. HAUSER & METSCH, P.A., et al., Appellees. 677 So.2d 1383 (1996) and upheld by the Florida Supreme Court. "Appellant's failure to proceed "in reliance upon anticipated rulings by the court on these motions was sufficient demonstration of good cause, we think, to preclude the dismissal of [this action]." Air Line Pilots 1384*1384 Ass'n v. Schneemilch, 674 So.2d 782, 783 (Fla. 3d DCA 1996). See, 677 So.2d 1383 (1996) an 36. "We emphasize that our holdings in this case and in Air Line Pilots establish a bright-line rule: whenever a dispositive motion is pending before the court, and the parties are awaiting the court's ruling on that motion, the duty to proceed rests squarely upon the court. During that period of the court's deliberation, the cause cannot be dismissed for lack of record activity."

37. Thus, had I been afforded due process and statutory 5 day Notice, I would have been able to show Good cause and the case should never have been Closed and under these circumstances Judge Scher must be Disqualified and the case assigned to a new and neutral Judge.

38. Moreover, the Order of Judge Scher on Oct. 26, 2017 within 10 days of today shows a serious "Alteration" and "manipulation" of the Official Title

and Records of the case including the Online Docket by falsely claiming my brother Michael Macneney is the Title PR of the case which has never been true.

39. This creates further reasonable belief of bias and tampering and reasonable fear a fair trial can not be had.

40. Judge Scher actually knew at all times that the pending serious motions for Accounting and serious objections filed were all alive at the time of her wrongful acts showing bias, prejudice and failure to follow the law.

41. Rule 2.330, Florida Rules of Judicial Administration, provides in relevant part: “The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.”

42. Judge Scher has violated the following Judicial Canons, including but not limited to, Canon one- A judge Shall Uphold the integrity and independence of the Judiciary Canon two- A Judge Shall avoid Impropriety and the Appearance of Impropriety In all of the Judge's Activities. Canon three- A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently .

CANON 3E(1) - ...A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.

CANON 3E(1)(a) - ...the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.

43. This motion and petition is legally sufficient and timely.

44. Rule 2.330 Grounds.

(f) Determination - Initial Motion.

The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally

insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

45. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Jeffrey Gillen has to mandatorily disqualify under Judicial Canons, Attorney Conduct Codes and Law as stated herein.

Florida Statutes 38.10

Disqualification of judge for prejudice; application; affidavits; etc.— Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and

shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

46. This motion for mandatory disqualification is made in good faith.

47. Petitioner states this motion is made in good faith and seeks that upon mandatory Disqualification of Judge Sasser, that the Clerk Re-Assign this case to an independent and neutral Judge consistent with the US Constitutional requirements for Due Process and that all factual or legal rulings be vacated by the successor judge due to alleged US and State Constitutional violations, due process violations, criminal acts and civil torts against Petitioner.

WHEREFORE, it is respectfully prayed for the mandatory Disqualification of Judge Scher and the Reinstatement of the Probate Estate case and re-instatement of Letters Testamentary and Re-Assignment of the case to an Independent and neutral Judge consistent with US Constitutional due process standards and for such other and further relief as may be just and proper.

“Under penalties of perjury, I declare that I have read the foregoing ‘VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT OF Kyle C. Macneney FOR IMMEDIATE MANDATORY DISQUALIFICATION OF JUDGE SCHER

and that the facts stated in it are true to the best of my knowledge and belief and made in good faith."

Respectfully submitted,

/s /Kyle C. MacNeney

Petitioner, Pro Se

5526 49th Ave

Vero Beach, Fl 32967

561-339-1475

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served via Electronic mail on this 6th day of November, 2017 to Brian O'Connell at the following address:

Brian M. O'Connell, Partner
Ciklin, Lubitz, Martens, & O'Connell
515 Flagler Drive
20th Floor
West Palm Beach, Fl 33401
boconnell@ciklinlubitz.com
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Dated: Nov. 6, 2017

/s /Kyle C. MacNeney

Petitioner and Personal Representative , Pro Se

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