

IN THE SUPREME COURT OF FLORIDA

CAUSE NO. _____

Underlying Case No. 12-4330 GD (01)

IN THE GUARDIANSHIP OF HELEN STONE
BARBARA STONE, PETITIONER

**PETITION FOR WRIT OF PROHIBITION,
MANDAMUS AND HABEAS CORPUS**

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BARBARA STONE

I. **PETITION FOR WRIT OF PROHIBITION,**
MANDAMUS AND HABEAS CORPUS

1.1 This Petition for Writ of Mandamus, Prohibition and Habeas Corpus follows a timely filed MOTION TO DISQUALIFY (Exhibit A), refused by JUDGE MICHAEL A. GENDEN in violation of Florida Rule of Judicial Administration 2.330, Florida Statute 38, and Florida Code of Judicial Conduct, Canon 3(B)7 and E, all of which require that a judge disqualify himself once the Petitioner has established a reasonable fear that she will not obtain a fair hearing. *See Fla. R. Jud. Admin. 2.330; Fla. Stat. §§ 38.02, 38.10; Fla. Code Jud. Conduct, Canon 3-B(7).*

1.2 GENDEN abused his discretion in failing to disqualify on or before April 25, 2015 when Deborah Rochlin's affidavit was filed with STONE'S MOTION TO DISQUALIFY and after receiving notice of criminal and civil action taken against him relative to HELEN STONE's abuse, neglect and exploitation by STONE. PETITIONER'S APPLICATION FOR WRIT OF PROHIBITION, MANDAMUS AND HABEAS CORPUS should be granted because:

- 1.2.1 The affidavit of Deborah Rochlin causes Barbara Stone to fear prejudice and the inability to obtain a fair trial for herself or HELEN STONE'S well-being in his Court. *See Rochlin Affidavit – Exhibit B.*
- 1.2.2 Deborah Rochlin's affidavit causes Michael Genden to be a material in fact witness and to have an interest in the case that is adverse and

prejudicial to HELEN STONE AND BARBARA STONE;

1.2.3 This Affidavit constitutes fraud on, in and by the Court.

1.2.4 BARBARA STONE'S MOTION TO DISQUALIFY is legally sufficient;

1.2.5 MICHAEL A. GENDEN had a mandatory duty to disqualify independent of PETITIONER'S MOTION TO DISQUALIFY under the due process clause of the United States Constitution;

1.2.6 Barbara Stone has sued Michael Genden in Federal Court further causing him to be conflicted with Stone, in violation of judicial canons—
See Exhibit C)

1.2.7 Barbara Stone has filed a criminal complaint against Michael Genden with law enforcement (see Exhibit D)

1.2.8 Barbara Stone has filed a police complaint against Michael Genden for alleged extortion, threats and obstruction of justice (Police Case Number PD 150501-159980)

1.2.9 Barbara Stone has filed a whistleblower complaint exposing the alleged criminal activity and against Michael Genden with this Supreme Court seeking whistleblower protection (see Exhibit E)

1.2.10 The WRIT OF ATTACHMENT (Exhibit F)¹ AND RULE AND ORDER TO SHOW CAUSE (Exhibit G) were signed without jurisdiction ultra vires by MICHAEL A. GENDEN;

1.2.11 Due to the fraud on the Court, all orders must be voided *Village of Willowbrook*, 37 Ill. App. 3D 393(1962).

II. **BASIS FOR INVOKING JURISDICTION**

2.1 This is an Original Proceeding filed in the Florida Supreme Court pursuant to Florida Rule of Civil Procedure 9.100(b) and 9.030 for extraordinary writs.

2.2 Florida Rule of Appellate Procedure Provides:

2.2.1 **Original Jurisdiction.** The supreme court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction, and may issue writs of mandamus and quo warranto to state officers and state agencies. The supreme court or any justice may issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

2.3 This Court has jurisdiction to issue writs of mandamus, prohibition and any other writ within the exercise of its judicial authority. See *McFadden vs. Fourth Dist. Court of Appeal*, 682 So.2d 1068 (Fla. 1996). Florida Rule of Appellate procedure 9.100(h) provides:

Order to Show Cause. If the petition demonstrates a preliminary basis for relief, a departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal, or that review of final administrative action would not provide an

¹ Judge Genden has issued an unlawful “edict” denying Petitioner access to her own file (Exhibit H)

adequate remedy, the court may issue an order either directing the respondent to show cause, within the time set by the court, why relief should not be granted or directing the respondent to otherwise file, within the time set by the court, a response to the petition. In prohibition proceedings, the issuance of an order directing the respondent to show cause shall stay further proceedings in the lower tribunal.

2.4 PETITIONER seeks a WRIT OF PROHIBITION to prohibit the HONORABLE MICHAEL A. GENDEN (“GENDEN”) from:

- 2.4.1.1 Acting in excess of his lawful jurisdiction,
- 2.4.1.2 Attempting to enforce the May 8, 2015 WRIT OF ATTACHMENT or prior RULE AND/OR ORDER TO SHOW CAUSE AND/OR ANY OTHER ORDERS;
- 2.4.1.3 Taking any action in this matter other than vacating the WRIT OF ATTACHMENT and immediately disqualifying himself;

2.5 Prohibition is invoked for the protection of BARBARA STONE AND HELEN STONE, whose lives, safety and wellbeing are in danger if this WRIT is denied for lack of a legal remedy;

2.6 PETITIONER seeks a WRIT OF MANDAMUS, compelling the HONORABLE MICHAEL A. GENDEN to:

- 2.6.1 Abide by the laws of the State of Florida, Federal law and the United States

Constitution and cease acting beyond his jurisdiction immediately;

2.6.2 Set aside the WRIT OF ATTACHMENT as *void ab initio* immediately;

2.6.3 Set aside the RULE AND ORDER TO SHOW CAUSE as *void ab initio*

immediately;

2.6.4 Set aside all other Orders in his Court as *void ab initio*

immediately as they are the product of fraud on, in and by the court

immediately;

2.6.5 Immediately disqualify himself from this case and take no further action;

2.7 WRIT OF HABEAS CORPUS to invalidate the WRIT OF ATTACHMENT, constructively detaining BARBARA STONE in violation of her rights.

2.8 WRIT OF PROHIBITION is proper to prevent an inferior court or tribunal from improperly exercising jurisdiction over a controversy and if a petition for a writ of prohibition demonstrates a preliminary basis for entitlement to relief, the court can issue an order to show cause why relief should not be granted. Once a show cause order issues in prohibition, it automatically stays the lower court proceeding. Fla. R. App. P. 9.100(h).²⁷ The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. *Carroll v. Fla. State*

Hosp., 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge's order denying a motion to disqualify).

2.9 WRIT OF MANDAMUS is required to direct MICHAEL A. GENDEN to vacate his prior illegal RULE AND ORDER TO SHOW CAUSE AND WRIT OF ATTACHMENT AND ALL OTHER ORDERS. The writ of mandamus is appropriately used to require a government actor to perform a nondiscretionary duty or obligation that he or she has a clear legal duty to perform. *See Austin v. Crosby*, 866 So. 2d 742, 743 (Fla. 5th D.C.A. 2004) (holding that mandamus may only

be granted if there is a clear legal obligation to perform a duty in a prescribed manner). It applies to enforce a right already established. *Austin*, 866 So. 2d at 744. The writ of mandamus will issue to require a trial court to comply with the mandate of an appellate court. *Superior Garlic Int'l, Inc.*

v. E&A Produce Corp., 29 Fla. L. Weekly D2341 (Fla. 3d D.C.A. Oct. 20, 2004).

2.10 WRIT OF HABEAS CORPUS is sought to end the constructive unlawful detention of BARBARA STONE as a result of the WRIT OF ATTACHMENT for her wrongful arrest signed MAY 8, 2015. *Wright v. State*, 857 So. 2d 861 (Fla. 2003), cert. denied, 541 U.S. 961 (2004).

2.11 Florida Rule of Appellate Procedure 9.040 provides :

2.11.1 **Remedy.** If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought; provided that it shall not be

the responsibility of the court to seek the proper remedy.

III. STATEMENT OF FACTS

A. WHISTLEBLOWER PROTECTION

3.1 BARBARA STONE (“STONE”) files this *original proceeding* against the HONORABLE MICHAEL A. GENDEN, seeking an Emergency Writ of Prohibition, Writ of Mandamus, and Writ of Habeas Corpus to protect BARBARA AND HELEN STONE from imminent irreparable harm for which there is no adequate remedy at law and prays the Court immediately GRANT said relief to protect BARBARA STONE. *See Affidavit of Barbara Stone, attesting to the truth of all facts herein (Exhibit I).*

3.2 BARBARA STONE seeks Whistleblower Protection from the Supreme Court from retaliation of MICHAEL A. GENDEN for filing criminal complaints with the U.S. Attorney General, Local Police, F.B.I., State’s Attorney, the D.O.J., Federal Judges, Circuit Judges, the Governor, and District Attorney, among others, to report abuse, neglect and exploitation of ward, HELEN STONE. STONE also seeks protection in connection with pending civil lawsuits against MICHAEL A. GENDEN in federal and State court. *See Letter to Supreme Court requesting Whistleblower Protection (Exhibit E); Cause No. 15-61004; Barbara Stone vs. Michael Genden, et al; In the Southern District of Florida, Broward County*

Division (Exhibit C with exhibits); Cause No. 15-006431; In the Circuit Court of Broward County, Florida, Judge Sandra Perlman presiding (Exhibit J).

3.3 MICHAEL GENDEN has been sued in his Individual and Official Capacity as a Co- Conspirator with ROY LUSTIG, BLAIRE LAPIDES, ALAN STONE, AND JACQUELINE HERTZ under the Klu Klux Klan Act, 42 U.S.C. 1983 and Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. 12101 et seq. GENDEN refuses to disqualify himself despite the Constitutional mandate that he do so—in favor of executing vengeance from the bench via a series of illegal ORDERS for BARBARA STONE’S arrest.

3.4 BARBARA STONE is in imminent danger of irreparable injury due to the HONORABLE MICHAEL A. GENDEN’S use of illegal ORDERS to exact revenge from the bench “under Color of State Law” via a series of illegal ORDERS, in retaliation for STONE filing civil and criminal complaints against him for neglect, abuse and exploitation of an elderly person. Denial of BARBARA STONE’S plea will place her life in substantial risk of danger for reporting criminal activity. **Harm is irreparable when a citizen is wrongfully arrested and/or prosecuted---with the mere opportunity to defend himself or herself without due process. See Hearing Transcript in Circuit Court (Exhibit K) and Affidavits of Barbara Stone (Exhibit I) and Eliot Bernstein (Exhibit M).**

3.5 STONE has met her burden of demonstrating that a reasonable person would

fear bias and the inability to decide matters in this case with impartiality. The reasonableness of STONE'S fear is supported by JUDGE SANDRA PERLMAN'S advice that STONE seek Whistleblower protection and include a Whistleblower count in Court filings. *See Transcript from Cause No. 15- 006431 In the Circuit Court of Broward County, Florida (Exhibit K).*

B. ILLEGAL RETALIATION

3.6 HELEN is held against her will and chemically restrained in violation of federal law at a restrictive security lock down facility in Miami where "aides" stand guard to ensure visitors are kept away, including BARBARA STONE, as opposed to prioritizing HELEN receiving legally mandated health care. *See Affidavit of HealthCare Volunteer (Exhibit M) and Barbara Stone (Exhibit I).* HELEN STONE has been hospitalized on emergency basis twice this year during a one week period of time where she was hastily removed by Hertz and Lapides without adequate and necessary medical care and thereafter emergency readmitted the very next day, she was emergency admitted to the hospital last year and Hertz and Lapides intentionally did not inform her daughter, BARBARA and she spent three weeks in critical care for over 23 undiagnosed and untreated health conditions—only just over a year ago, including malnutrition, dehydration, wasting, pneumonia, urinary tract infection and a 30 + pound weight loss. HELEN has not received appropriate therapies required by federal law in violation of

Section 504 of the Rehabilitation Act of 1973. The evidence of HELEN not receiving care is open and obvious—she has lost functioning in basic activities of daily living critical to self-care and is now completely dependent as she spirals down.

3.7 As HELEN STONE'S life hangs in the balance, JUDGE MICHAEL GENDEN takes no action to protect his own ward, but instead, issues punitive ORDERS against STONE for seeking emergency assistance for life-threatening abuse, neglect and exploitation of her mother, HELEN STONE. GENDEN'S response is to incarcerate STONE to teach her a lesson. *See RULE AND ORDER TO SHOW CAUSE (Exhibit H).* The very JUDGE charged with protecting HELEN STONE is exploiting and abusing her and blocking HELEN from access to her own daughter without cause—*violating federal law—under color of law abuse and the auspice of “protection.”*

3.8 Michael Genden unlawfully banned BARBARA from contact with her mother and unlawfully isolated an elderly woman from her daughter her because BARBARA objected to and complained about her mother being neglected and mistreated. BARBARA STONE complained that HELEN should not be given MiraLax, a dangerous laxative which is not suitable for the elderly and has been found by the FDA to cause heart and kidney failure, objected to her mother's stomach being cut open to insert a feeding tube for the convenience of their unqualified and incompetent “aides” who would not have the time to feed

her mother nourishing meals because Hertz and Lapides had deprived her mother of food causing her mother to become emaciated, and the failure to ensure HELEN did not decline in basic activities of daily living by the failure to afford HELEN with legally mandated therapies under Section 504 of the Rehabilitation Act of 1973 (“Section 504”).

3.9 Unable to get GENDEN to intervene to ensure HELEN’S safety, health and life were not in danger, STONE filed lawsuits in Federal and State Court, desperate for help. GENDEN will not disqualify or recuse himself in his fervor to teach BARBARA a lesson. BARBARA is facing imminent unlawful arrest by virtue of GENDEN’S illegal WRIT OF ATTACHMENT—issued after a sham SHOW CAUSE hearing in which STONE was denied basic Constitutional rights of due process and equal protection of the law, the right to counsel, the right to access the Courts under the Open Courts provision of the Constitution and the right to speak on her own behalf in her defense. At a minimum, GENDEN lost jurisdiction to proceed further and had a mandatory duty to disqualify when Deborah Rochlin’s affidavit was filed with STONE’S MOTION TO DISQUALIFY. *See Affidavit of Deborah Rochlin (Exhibit B).*

C. LACK OF JURISDICTION

3.10 GENDEN did not have jurisdiction to proceed with the sham SHOW CAUSE hearing or to issue the void WRIT OF ATTACHMENT for STONE’S

unlawful arrest, but nevertheless GENDEN signed a WRIT OF ATTACHMENT on May 8, 2015 *See Writ of Attachment and Transcript of Show Cause Hearing May 4, 2015.* The Supreme Court **must intervene** immediately to protect BARBARA STONE, and HELEN STONE, from further acts of aggression of JUDGE MICHAEL GENDEN, who is now exacting revenge from the bench “under color of State law.”

3.11 Despite the lack of jurisdiction to proceed with the SHOW CAUSE hearing, STONE nevertheless complied with the void underlying ORDER by retaining Florida Bar Member, Deborah Rochlin to represent her mother and her—at which time GENDEN threatened Rochlin’s license to practice law. *See Affidavit of Deborah Rochlin.*

3.12 GENDEN’S threats had the intended effect, with Rochlin withdrawing from representation for fear of retaliation. *Id.* This required STONE get an attorney outside of Florida, and also locate a Florida Bar Member to serve as local counsel—a feat impossible to accomplish before the SHOW CAUSE HEARING on CONTEMPT that should never have proceeded because underlying order (Exhibit L) and the Rule and Order to Show Cause were rife with fraud and because GENDEN had a duty to disqualify himself.

3.13 Not only did Genden have no jurisdiction to hold a show cause hearing, it was an abuse of power for him to issue the Rule and Order to Show Cause as they

were the product of fraud on, in and by the court and there were no grounds for the issuance thereof. As set forth in Paragraph of the Federal Complaint filed against Michael Genden (Exhibit C), his Rule to Show Cause was an effort to unlawfully suppress Barbara Stone from reporting crimes against her mother to law enforcement and from reporting wrongdoing by Roy Lustig and Michael Genden as she is so mandated as a member of the Florida Bar pursuant to Florida Bar Rule 4-8.3. Further, as indicated in Paragraph 3.22 of the Federal Complaint, Barbara Stone was wrongfully accused by Michael Genden in his Rule to Show Cause of filing documents in his court but that was not the case -she filed a petition with the administrative judge as she was so instructed by Judge Bailey, the administrative judge of the Dade County Circuit Court. With regard to the false allegations in the Order to Show Cause, they were based on an unsworn hearsay statement of Blaire Lapidés, the very person who is depriving HELEN STONE of federally protected rights. ROY LUSTIG is protecting BLAIRE LAPIDES and protecting the conspiracy, not HELEN STONE. LUSTIG has been found guilty of fraud on the court, perjury and repeatedly lying under oath by the 3rd DCA in the case of *Leo's Gulf Liquor vs. Chandresh Lakhani*, 3D00-130 LOWER TRIBUNAL NO. 96-21267; (3RD DIST FLA. 2001) (Exhibit O) wherein the Court stated:

“We conclude that the trial judge's thoughtful and complete analysis of the facts

presented in support of defendants' motion to dismiss for fraud upon the court is amply supported by the record and does not constitute an abuse of discretion. conclusion is inescapable that Lustig, agents of the corporate plaintiff, repeatedly lied under oath concerning issues material to the prosecution of plaintiff's claim and defendants' affirmative defenses, in an effort to conceal the truth and have consequently, forfeited plaintiff's right to proceed with this action."

The Court further stated:

"In *Metropolitan Dade County v. Martinsen*, 736 So. 2d 794, 795 (Fla. 3d DCA 1999), this Court restated the well-settled principle "that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends." *Hanono v. Murphy*, 723 So. 2d 892, 895 (Fla. 3d DCA 1998) (citing *Carter v. Carter*, 88 So. 2d 153, 157 (Fla. 1956)".

This is the exact same divisive and devious conduct exhibited herein – these state actors are employing the very institution they have subverted to achieve their ends.

3.14 MICHAEL GENDEN continues to issue ultra vires ORDERS—outside the confines of his lawful judicial authority against PLAINTIFF in retaliation for exercising federally protected rights advocating for the dire health care needs of HELEN STONE, a protected person under the Americans with Disabilities Act (“ADA”) in violation of 42 U.S.C. § 1983 and 42 U.S.C. 12101 et. Seq.

GENDEN'S actions constitute "official oppression" and violate 18 U.S.C. 241, 242, and 42 U.S.C. 1983 for intentional and/or knowing violation of privileges and immunities protected by the Bill of Rights under "Color of State law." U.S. Constit. Amend I, V, VI, VII, and XIV.

3.15 MICHAEL GENDEN is a former criminal judge—*committing crimes*² against STONE for making filing charges against him and suing him³ for the neglect, exploitation and abuse of her mother, HELEN. STONE has no adequate remedy under the law to protect her from these illegal punitive ORDERS short of Writ of Prohibition, Writ of Mandamus and Writ of Habeas Corpus.

D.SHAM APPEARANCE OF DUE PROCESS

3.16 GENDEN intentionally seeks to deprive BARBARA AND HELEN of privileges and immunities guaranteed citizens of the United States by the Constitution in violation of 18 U.S.C. 241 ("conspiracy against rights"), 242 ("deprivation of rights under color of State law), and 42 U.S.C. 1983 (civil deprivation of rights under color of State law) –constituting official oppression. GENDEN intentionally deprived STONE of First, Fifth, Sixth, Seventh, and Fourteenth Amendment rights to freedom of speech, freedom of association, due process, equal protection of the law, and the right to effective assistance of counsel—as reflected in the transcript of the May 4, 2015 SHOW CAUSE HEARING. *See Transcript of SHOW CAUSE HEARING May 4, 2015, attached*

2 “A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure that right.

(c) Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the State for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.

hereto (Exhibit P).

18 U.S.C. 242 provides as follows:

“Whoever, under color of any law, ordinance, statute, ordinance, regulation, or custom, willfully subjects any person in any State...to the deprivation of rights, privileges, or immunities secured or protected by the Constitution of the laws of the United States, or to different punishments, pains or penalties...than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year; or both... and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap...shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.”⁴

3.18 Michael Genden violated STONE’S due process rights in his fervor to retaliate and incarcerate BARBARA STONE illegally. GENDEN violated the OPEN COURTS provision of the U.S. and Florida Constitution, due process and equal protection clause via the following scheme: (a) Issuance of an illegal ORDER prohibiting pro se representation wrongfully with no legal basis to prevent her from representing herself , (b) Mandating that STONE appear only by counsel, a member of the Florida Bar; (c) Threatening her Florida lawyer against

representing her (at which time she withdrew); (d) prohibiting Texas counsel from appearing

⁴ 18 U.S.C. 241 contains similar language but applies to two or more people conspiring to deprive a citizen of rights and privileges under the Constitution. .

on an emergency basis pro hac vice; and (e) refusing to allow STONE to speak on her own behalf at the sham SHOW CAUSE hearing held MAY 4, 2015.

3.19 GENDEN refused to permit BARBARA STONE to appear and defend herself when she appeared with counsel by phone, refused to disqualify himself, refused to allow her attorney to appear pro hac vice (or reschedule to complete paperwork), had the bailiff escort STONE'S witnesses from the Courtroom, telling

them to leave the building (while BLAIRE LAPIDES AND ROY LUSTIG remained), and failed to even put evidence on the record before stating that he was issuing a WRIT OF ATTACHMENT for STONE to be arrested. The hearing was summarily concluded as GENDEN raged in his hostile court, comparing the case to a trip "Through the Looking Glass." *See Transcript.*

IV. NATURE OF RELIEF SOUGHT

4.1 PETITIONER seeks a WRIT OF PROHIBITION to prohibit the HONORABLE MICHAEL A. GENDEN ("GENDEN") from:

4.1.1.1 Acting in excess of his lawful jurisdiction,

4.1.1.2 Attempting to enforce the May 8, 2015 WRIT OF ATTACHMENT or prior ORDER TO SHOW CAUSE;

4.1.1.3 Taking any action in this matter other than vacating the WRIT OF

ATTACHMENT and immediately disqualifying himself;

4.2 Prohibition is invoked for the protection of BARBARA STONE AND HELEN STONE, whose lives, safety and wellbeing are in danger if this WRIT is denied for lack of a legal remedy;

4.3 PETITIONER seeks a WRIT OF MANDAMUS, compelling the HONORABLE MICHAEL A. GENDEN to:

4.3.1 Abide by the laws of the State of Florida, Federal law and the United States Constitution and cease acting beyond his jurisdiction immediately;

4.3.2 Set aside the WRIT OF ATTACHMENT as *void* immediately;

4.3.3 Set aside the ORDER TO SHOW CAUSE as *void* immediately;

4.3.4 Immediately disqualify himself from this case and take no further action;

4.4 WRIT OF HABEAS CORPUS to invalidate the WRIT OF ATTACHMENT, constructively detaining BARBARA STONE in violation of her rights.

V. LEGAL AUTHORITIES

MANDATORY SUA SPONTE DISQUALIFICATION

5.1 GENDEN had a statutory duty and was mandated by judicial canons to disqualify himself *Sua Sponte* well before April 25, 2015 when STONE filed a MOTION TO DISQUALIFY attaching the affidavit of DEBORAH ROCHLIN.

See Affidavit of Deborah Rochlin. Fla. Stat.

38.10 and Fla. Rules Jud. Admin 2.330. Rochlin's affidavit establishes a *prima facie* irreconcilable conflict of interest which deprived GENDEN of jurisdiction to issue any further ORDERS in this matter.

5.2 The Florida Code of Judicial Conduct Canon 3 provides states: "A Judge SHALL 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 the party or a party's lawyers."

5.3 Disqualification is mandatory under Florida Rule of Judicial Administration Rule 2.330 and Florida Statute 38.10. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994). Positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988); *Levine v. United States*, 362 U.S. 610 (1960);

5.4 Should a judge not disqualify himself, the judge is in violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on

section 144, but on the Due Process Clause.") "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);

5.5 The issue before this Court is the **legal sufficiency** of the motion to disqualify. In order to demonstrate legal sufficiency, STONE need only show:

‘a well grounded fear that he will not receive a fair [hearing] at the hands of the judge. **It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling.**’

State ex rel. Brown v. Dewell, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). *See also Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981). **The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially.**

5.6 *State v. Livingston*, 441 So. 2d 1083, 1086 (Fla. 1983) (emphasis added). In a case where the PETITIONER'S liberty is at stake, the court “should be especially sensitive to the basis for the fear.” *Chastine v. Broome*, 629 So. 2d 293, 294 (Fla. 4th DCA 1993). The circumstances of this case are of such a nature that they are “sufficient to warrant fear on STONE'S part] that [s]he would not receive a fair hearing by the assigned judge.” *Suarez v. Dugger*, 527 So. 2d 191, 192 (Fla. 1988).

5.7 STONE is entitled to a full and fair proceeding, including a fair

determination of the issues by a neutral, detached judge. *Holland v. State*, 503 So. 2d 1354 (Fla. 1987); *Easter v. Endell*, 37 F.3d 1343 (8th Cir. 1994). Due process guarantees the right to a neutral, detached judiciary in order “to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests.” *Carey v. Piphus*, 435 U.S. 247, 262 (1978). Principles of due process demands that this case be heard by another judge and for GENDEN to disqualify himself:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See *Carey v. Piphus*, 435 U.S. 247, 259-262, 266- 267 (1978). 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. See *Matthews v. Eldridge*, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, ‘generating the feeling, so important to a popular government, that justice has been done,’ *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, (1951) (Frankfurter, J., concurring), 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. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242(1980).

5.8 The disqualification rules require judges to avoid even the appearance of impropriety and Deborah Rochlin’s affidavit establishes a *prima facie* case of

appearance of impropriety:

It is the established law of this State that every litigant...is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the court to scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any manner where his qualification to do so is seriously brought into question. The exercise of any other policy tends to discredit and place the judiciary in a compromising attitude which is bad for the administration of justice. *Crosby v. State*, 97 So.2d 181 (Fla. 1957); *State ex rel. Davis v. Parks*, 141 Fla. 516, 194 So. 613 (1939); *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932); *State ex rel. Mickle v. Rowe*, 100 Fla. 1382, 131 So. 3331 (1930).

* * *

The prejudice of a judge is a delicate question for a litigant to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge in question should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned. *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932); *State ex rel. Aguiar v. Chappell*, 344 So.2d 925 (Fla. 3d DCA 1977).

The United States Supreme Court has explained:

the inquiry must be not only whether there was actual bias on respondent's part, but also whether there was 'such a likelihood of bias or **an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused.**' *Ungar v. Sarafite*, 376 U.S. 575, 588 (1964). 'Such a stringent rule may sometimes bar trial by

judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties,’ but due process of law requires no less. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). *Taylor v. Hayes*, 418 U.S 488, 501 (1974)(emphasis added).

5.9 The appearance of impropriety violates state and federal constitutional rights to due process. A fair hearing before an impartial tribunal is a basic requirement of due process. See *In re Murchison*, 349 U.S. 133 (1955). “Every litigant[] is entitled to nothing less than the cold neutrality of an impartial judge.” *State ex rel. Mickle v. Rowe*, 131 So. 331, 332 (Fla. 1930). Absent a fair tribunal, there can be no full and fair hearing.

5.10 The only issue before this Court is the question of legal sufficiency of the motion; there is no deference owed to the lower court. *Smith v. Santa Rosa Island Authority*, 729 So. 2d 944, 946 (Fla. 1st DCA 1998). The test for determining the legal sufficiency of a motion for disqualification is an objective one which asks whether the facts alleged in the motion would place a reasonably prudent person in fear of not receiving a fair and impartial hearing. See *Livingston v. State*, at 1087. The affidavit of Deborah Rochlin casts “a shadow...upon judicial neutrality so that disqualification [of the circuit] is required.” *Chastine v. Broome*, at 295.

5.11 In *Partin v Solange et al*, 2015 WL 2089081 (Fla.App. 4 Dist., 2015), the court granted the petition to disqualify stating the lower court judge cut-off petitioners' counsel and expressed his prejudgment of the matter and in another

hearing, the lower court judge made acerbic comments about petitioners and exhibited overall hostility toward both petitioners and their counsel. Not only did Genden engage in this conduct, his disqualification is mandated because he is similarly hostile and not dispassionate and cannot rule unbiased.

5.12 The Due Process Clause serves to protect use of fair procedures to prevent the wrongful deprivation of interests and is a guarantee of basic fairness. *Johnson v. Mississippi*, 403 U.S. 212, 216 (1971); *Peters v. Kiff*, 407, U.S. 493, 502 (1972). "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); Denying access to important records, evidence, and witnesses and mistreating Stone as a *pro se* party are violations of Equal Protection and due process of law. *Pro se* parties are a distinct minority class in judicial proceedings.

5.13 Where a judge fails to disqualify, there is no jurisdiction to act and any order issued is illegal and void. *Kilbourn v. Thompson*, 103 U.S. 168 (1881). In *Kilbourn*, the Sergeant-at-Arms of the United States House of Representatives was held not to have immunity for ordering that the PLAINTIFF be arrested under a warrant issued by the House for refusing to testify because they lacked jurisdiction to issue such an order. Id, The court held that the House *did not have jurisdiction* to conduct the particular investigation. The Sergeant at Arms was liable for false arrest

and could not assert the issuance of the warrant as a defense. Id. An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See *Pennoyer v. Neff* (1877) 95 US 714; *Windsor v. McVeigh* (1876) 93 US 274; A void judgment is no judgment at all and "a court must vacate any judgment entered in excess of its jurisdiction." *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972). *Kalb v. Feuerstein* (1940) 308 US 433.

5.14 "A void judgment does not create any binding obligation. *Kalb v. Feuerstein* (1940) 308 US 433. If a court grants relief, which, under the circumstances, it hasn't any authority to grant, its judgment is to that extent void." An illegal order is forever void. A void order is *void ab initio* and does not have to be declared void by a judge. The law is established by the *U.S. Supreme Court in Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, (1920) as well as other state courts, in *People v. Miller*. "Courts are constituted by authority and they cannot go beyond that powerdelegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities.." *Valley v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348.

5.15 An order is void if it was procured by fraud upon the court," *In re Village of Willowbrook*, 37 Ill. App. 3D 393(1962)

5.16 A void judgment is one that has been procured by extrinsic or collateral fraud,

or entered by court that did not have jurisdiction over subject matter or the parties, *Rook v. Rook*, 353 S.E. 2d 756 (Va. 1987).

5.17 A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999)

VI. CONCLUSION AND PRAYER

6.1 PETITIONER seeks a WRIT OF PROHIBITION to prohibit the HONORABLE MICHAEL

A. GENDEN (“GENDEN”) from:

6.1.1 Acting in excess of his lawful jurisdiction,

6.1.2 Attempting to enforce the May 8, 2015 WRIT OF ATTACHMENT or prior RULE AND/OR ORDER TO SHOW CAUSE AND/OR ANY OTHER ORDER.

6.1.3 Taking any action in this matter other than vacating the WRIT OF ATTACHMENT and immediately disqualifying himself;

6.1.4 Prohibition is invoked for the protection of BARBARA STONE, whose safety and wellbeing are in danger if this WRIT is denied for lack of a legal remedy;

6.2 PETITIONER seeks a WRIT OF MANDAMUS, compelling the HONORABLE MICHAEL

A. GENDEN to:

6.2.1 Abide by the laws of the State of Florida, Federal law and the United States Constitution and cease acting beyond his jurisdiction immediately;

6.2.2 Set aside the WRIT OF ATTACHMENT as *void ab initio* immediately;

6.2.3 Set aside the RULE AND ORDER TO SHOW CAUSE as *void ab initio*

immediately;

6.2.4 Set aside all other Orders in his Court as *void ab initio* immediately as they are the product of fraud on, in and by the court.

6.2.5 Immediately disqualify himself from this case and take no further action;

6.3 PETITIONER seeks a WRIT OF HABEAS CORPUS to invalidate the WRIT OF ATTACHMENT, constructively detaining BARBARA STONE in violation of her rights.

Respectfully submitted,

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I hereby certify that a true and correct copy of the foregoing was furnished by e-filing to Roy Lustig, Esq. and Mark Raymond, Esq. on this 20th day of MAY, 2015.

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I hereby certify that this brief complies with the font standards, i.e. Times New Roman 14 point font as set forth in Florida Rule of Appellate Procedure 9.210

SCHWAGER LAW FIRM

Candice Leonard Schwager

IN THE SUPREME COURT OF FLORIDA

CAUSE NO. _____

Underlying Case No.: 12-4330 GD (01)

IN THE GUARDIANSHIP OF HELEN STONE

BARBARA STONE, PETITIONER

APPENDIX

**TO PETITION FOR WRIT OF PROHIBITION,
MANDAMUS AND HABEAS CORPUS**

INDEX AND EXHIBITS

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URL'S ARE FULLY INCORPORATED HEREIN.

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B	April 15, 2015 Affidavit of Deborah Rochlin http://www.iviewit.tv/Barbara/counter/Affidavit%20Rochlin.pdf
C	Broward Federal Lawsuit Against Michael Genden et al http://www.iviewit.tv/Barbara/Stone%20Federal%20Whistleblower/20150513_StoneFederalComplaint.pdf
D	March 2, 2015 Complaint filed by Petitioner with law enforcement of Criminal Activities of Michael Genden and others involved in the abusive guardianship of Petitioner's mother http://www.iviewit.tv/Barbara/counter/Criminal%20Complaint%20March%202,%202015.pdf
E	April 12, 2015 letter from Petitioner to Florida Supreme Court Justices seeking whistleblower protection http://www.iviewit.tv/Barbara/counter/Florida%20Attorney%20blows%20whistle%20on%20corrupt%20courts,%20judges,%20lawyers,%20prosecutors%20and%20guardians%20and%20covered%20up%20by%20Florida%20Bar.pdf
F	May 8, 2015 Writ of Attachment http://www.iviewit.tv/Barbara/Stone%20Federal%20Whistleblower/Civil,%20Family%20and%20Probat..writ%20of%20attachment.pdf
G	Rule and Order to Show Cause http://www.iviewit.tv/Barbara/Stone%20Federal%20Whistleblower/order%20to%20show%20cause.pdf

H	“Edict” from Michael Genden preventing Barbara Stone access to her court file http://www.iviewit.tv/Barbara/counter/Full%20page%20photo.pdf
I	Affidavit of Barbara Stone http://www.iviewit.tv/Barbara/Stone%20Federal%20Whistleblower/Barbara%20Stone%20Affidavit%20%283%29.pdf
J	Declaratory Judgment Complaint filed with Judge Sandra Perlman http://www.iviewit.tv/Barbara/Motion%20for%20Declaratory%20Relief%20April%202015.pdf
K	Transcript of Hearing before Broward County Circuit Honorable Judge, Sandra Perlman who advised Petitioner seek whistleblower protection http://www.iviewit.tv/Barbara/counter/4-21-15%20EXPEDITE%20Hrg%20Barbara%20Stone%20Jdge%20Pearlman.pdf
L	Underlying Order http://www.iviewit.tv/Barbara/Stone%20Federal%20Whistleblower/Order%20prohibiting%20Barbara%20Stone%20access%20to%20the%20court.pdf
M	Confidential Affidavit
N	Affidavit of Eliot Bernstein http://www.iviewit.tv/Barbara/Stone%20Federal%20Whistleblower/20150509%20Eliot%20Bernstein%20Affidavit.pdf
O	Opinion of 3 rd DCA finding Roy Lustig guilty of Fraud on the Court, repeatedly lying under oath and perjury http://www.iviewit.tv/Barbara/counter/Roy%20Lustig%20-%20fraud%20on%20the%20court.pdf
P	Transcript of Genden Show Cause Contempt Hearing www.iviewit.tv/Barbara/Mandamus/20150504TranscriptGendenHearing.pdf

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