

STATE OF LOUISIANA

DOCKET #: 18-WFLN-024 DIVISION: B

VERSUS

20th JUDICIAL DISTRICT COURT

PARISH OF WEST FELICIANA

DAVID OPPERMAN

STATE OF LOUISIANA

MOTION TO RECUSE THE DISTRICT ATTORNEY

NOW INTO COURT, through undersigned counsel, comes defendant DAVID OPPERMAN who moves this Honorable Court pursuant to Louisiana Code of Criminal Procedure Article 680 to order the recusal of the District Attorney Sam D'Aquilla for the following reasons to wit:

1.

Under La. C. Cr. P. art. 680(1), a “district attorney shall be recused when he . . . has a personal interest in the cause . . . which is in conflict with fair and impartial administration of justice.” David Opperman was arrested on December 6, 2017 for molestation of a juvenile which allegedly occurred over 15 years ago. As will be explained further below, Mr. Opperman and the District Attorney have a long history of animosity towards each other such that Mr. D’ Aquilla’s personal interest will surely conflict with the fair and impartial admiration of justice in prosecuting Mr. Opperman.

2.

In the 2014 District Attorney Election where Mr. Opperman ran against the incumbent, Mr. D’Aquilla, an article published by The Advocate noted that, “[t]he campaign has turned into a tough, bitter battle¹.” Mr. Opperman was Mr. D’Aquilla’s only opponent, and the West Feliciana Parish Democratic Party endorsed Mr. Opperman over Mr. D’Aquilla². The Party noted on its endorsement of Opperman over D’Aquilla, “[w]e do not want a district attorney who will use his office for personal gain or one who will target his enemies for prosecution and let his political friends escape accountability³.” The reasoning of the Democratic Party is particularly relevant and applicable to the case at hand.

Reporter Chris Nakamoto with local news channel WBRZ shed light on the publicly known resentment between Mr. Opperman and Mr. D’Aquilla. In a caption to an article regarding Mr. Opperman’s arrest, Nakamoto states, “Opperman has been an outspoken critic of

¹ Exhibit 1, p. 1.

²Id. at p.3.

³ Id.

West Feliciana District Attorney Sam D'Aquila. Opperman ran for District Attorney against Sam D'Aquila, and also recently represented his wife in a divorce proceeding until they reconciled recently⁴.”

3.

In May of 2017, Mr. Opperman began representing Mr. D'Aquila's wife, Kelly, in the divorce proceedings against Mr. D'Aquila. When Mr. D'Aquila refused to cooperate with the property exchange between him and Kelly, Mr. Opperman filed a Motion to Collect Property with the court⁵.

4.

During Mr. Opperman's representation of Kelly D'Aquila, the two met with federal officials in an ongoing criminal investigation against Mr. D'Aquila, a fact that Mr. D'Aquila is aware of. In a letter to Kelly dated November 26, 2017, Mr. Opperman discusses going on a two hour visit to the FBI with Kelly to discuss Mr. D'Aquila's suspected destruction of criminal evidence in the cases he prosecutes as District Attorney⁶. The letter also points out other various incriminating or discrediting information such as D'Aquila's domestic abuse of Kelly, sexual affairs and planting of evidence⁷.

In addition, Mr. Opperman personally communicated with the FBI to provide information about D'Aquila. After Mr. Opperman was arrested for the current charge, he was told by the FBI agent whom he frequently communicated with that he can no longer be used as a source in the investigation of D'Aquila. D'Aquila's knowledge of Mr. Opperman's involvement in the federal investigation against him gives D'Aquila a personal interest in the arrest and prosecution of Mr. Opperman, since Mr. Opperman's criminal charges have prevented him from being a helpful source for the FBI in the criminal investigation against D'Aquila.

5.

Both Judge Carmicheal and Judge Jones of the 20th J.D.C. recused themselves on the Court's own motion in the divorce proceedings of Kelly and Sam D'Aquila⁸. The recusal was based on the fact that D'Aquila was a party in the case and that an appearance of impropriety may exist if either judge presided⁹. Enough animosity existed between D'Aquila and Opperman

⁴ Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ Id.

⁸ Exhibit 5.

⁹ Id.

that both judges thought they could not be impartial. D'Aquila, as the District Attorney, in the current proceeding would be subject to recusal because of this personal animosity between the two which is widely known and caused the recusal of all of the judges in the divorce proceedings.

6.

D'Aquila presided over the prosecution of Johnny D. Brown. Brown was charged with four various sexual offenses against minors, ranging from molestation to simple rape. Brown entered into plea bargains for all four offenses on the same day and received only a 3 year sentence¹⁰.

There has long been a notoriously known belief that Johnny Brown was Sam D'Aquila's half-brother in that they shared the same father, Billy D'Aquila. One of the booking reports for Johnny Brown mentions that his DNA was collected¹¹. Attached is a certified order from the clerk of court which notes that the exhibits in the Johnny Brown file are sealed¹². Since the exhibits are sealed, it is unknown what the public lacks access to. However, Brown's DNA records are not in the unsealed portion of the record. D'aquila recently destroyed the file.

Opperman knew of the alleged sibling relationship between D'Aquila and Brown, and he even viewed some of the records in Brown's case. A clerk noticed Opperman viewing the Brown files and made D'Aquila aware of Opperman's investigation into the matter. D'Aquila's knowledge of Opperman's investigation into a possible sibling relationship that led to a biased plea deal gives D'Aquila a serious personal interest in the prosecution of Opperman.

7.

Mr. Opperman represented Raymond Nicholas in a criminal case against D'Aquila at the 20th J.D.C. Laura DeJohn, as the former Coroner for East Feliciana, was a state witness in Nicholas' case. During DeJohn's testimony under oath, Mr. Opperman attempted to obtain records that would normally be kept by Ms. DeJohn, but she repeatedly would not produce such records¹³. At a later date, Mr. Opperman issued a subpoena duces tecum for the records, and again, Ms. DeJohn showed up to the hearing without the records¹⁴.

DeJohn has since been arrested for malfeasance in office, injuring public records and

¹⁰ Exhibits 6-9.

¹¹ Exhibit 7.

¹² Exhibit 10.

¹³ Exhibit 11 pp. 5-6, 9-12, 14-17.

¹⁴ Exhibit 12 pp. 3-8, 12.

criminal conspiracy for creating false documents and not following the State's record retention laws¹⁵. When DeJohn vacated the office, she did not turn over a single piece of paper to the new coroner, Dr. Michael Cramer¹⁶. As such, it is likely that DeJohn was committing perjury when she stated under oath that she did not have the records Mr. Opperman was looking for.

D'Aquila admitted to Kelly that he had a sexual relationship with DeJohn in the past, and Kelly disclosed such to Mr. Opperman¹⁷. After the Nicholas hearing, DeJohn left the courthouse "flanked by the District Attorney Sam D'Aquila¹⁸." WBRZ footage from the encounter shows D'Aquila protectively escorting DeJohn to her car away from the reporters¹⁹.

D'Aquila did not disclose his sexual relationship to opposing counsel, even though she was a witness for the prosecution in the Nicholas case. Not only did D'Aquila not disclose the material and relevant sexual relationship, if there is any possibility that he was aware of the existence of the coroner's records sought by Mr. Opperman he would also be suborning perjury.

Mr. Opperman is aware of DeJohn and D'Aquila's sexual relationship, and that the relationship led to the cover up of evidence in Mr. Opperman's case. In addition, Mr. Opperman currently represents the new coroner, Dr. Cramer, making it more likely that Mr. Opperman has knowledge of the extent of the schemes and crimes of the former coroner, DeJohn. D'Aquila has a personal interest in prosecuting Mr. Opperman by seeing to it that he does not investigate the DeJohn matter more to discover D'Aquila's possible involvement in suborning of perjury and covering up evidence in a criminal case. All of this was disclosed to the FBI, by Opperman.

8.

Mr. D'Aquila was made known of the current sex crime allegations against Mr. Opperman when they first surfaced over ten years ago. Mr. Opperman personally went to Mr. D'Aquila ten years ago to disclose and deny the allegations in an abundance of caution. Mr. D'Aquila chose not to take any action at all until after learning of all of the above allegations and realizing Mr. Opperman's involvement in the federal investigation against him.

Mr. Opperman sent the letter to Kelly D'Aquila which was full of incriminating evidence against Sam on November 26, 2017. Only 10 days later, Mr. Opperman was arrested for molestation of a juvenile and now the DA has filed a bill of information against Opperman.

¹⁵ Exhibit 13.

¹⁶ Exhibit 14.

¹⁷ Exhibit 15.

¹⁸ Exhibit 14

¹⁹ <http://www.wbrz.com/news/investigative-unit-former-efp-coroner-refuses-to-answer-questions-about-missing-records/>

9.

In a motion to recuse the district attorney pursuant to Louisiana Code of Criminal Procedure Article 680, the defendant bears the burden of showing by a preponderance of the evidence that the district attorney has a personal interest in the cause or grand jury proceeding which is in conflict with the fair and impartial administration of justice. *State v. King*, 956 So.2d 562, 565 (La. 2007). A district attorney should be recused even if his ability to conduct a fair and impartial trial could be unconsciously impaired by his personal animosity. *State v. Snyder*, 237 So.2d 392, 395 (La. 1970). Having ‘a personal interest in the cause’ could include evidence of personal animosity towards the defendant, See e.g. *State v. Snyder*, 237 So.2d 392 (La. 1970), however most cases of successful motions to recuse involve the prosecution of a local official or political rival of the district attorney. See *State v. King*, 956 So.2d 562 (La. 2007); *State v. Snyder*, 237 So.2d 392 (La. 1970). La. C.Cr.P. article 680 “employs an objective decision as to whether a reasonable person would believe the facts at issue regarding the district attorney’s personal interest in the cause would impair his ability to act fairly and impartially in conducting defendant’s prosecution.” *King*, 956 So.2d at 567.

10.

Snyder, involved a heated political campaign in which the district attorney supported the defendant’s opponent. 237 So.2d 392 at 393. After the campaign, the district attorney prosecuted the defendant for defamation *Id.* The district attorney testified that his personal animosity had eroded after the election, and that he had no hostility towards the defendant. *Id.* at 395. The court however noted that, “where such deep-seated hatred has once evinced itself, the district attorney might, even though unconsciously, have impaired his power to conduct relator’s trial fairly and impartially.” *Id.*

Similar to *Snyder*, the case at hand involves a heated political campaign; however, in this case, Mr. D’Aquila was not just a supporter of Mr. Opperman’s opponent, he was Mr. Opperman’s opponent. Clearly, despite any assertion by the District Attorney that he is not prejudiced, his position as a political opponent against Mr. Opperman during a bitter and heated political campaign would render him incapable of conducting a trial fairly and impartially.

11.

D’Aquila’s relationship with Mr. Opperman, even without the political campaign, is full of personal animosity as required for a recusal by *Snyder*. As detailed thoroughly above Mr.

Opperman was aware of and working with federal officials to investigate D'Aquilla's:

- destruction of evidence in the cases he prosecuted;
- physical and emotional abuse of his wife, Kelly;
- possible sibling, Johnny Brown, who got an enormously generous plea deal in a case D'Aquilla prosecuted;
- sexual relationship with the former coroner who is being prosecuted for malfeasance in office; and, but not limited to
- possible cover up of evidence and non-disclosure of the above relationship in Mr. Opperman's case which D'Aquilla was prosecuting.

D'Aquilla was aware of Mr. Opperman's investigation and knowledge of the litany of incriminating evidence against him. Billing Mr. Opperman for an alleged crime that occurred over 15 years ago was the most convenient way for D'Aquilla to get Mr. Opperman to stop cooperating with the federal officials in the ongoing criminal investigation against him, and it worked.

12.

At Opperman's initial appearance D'Aquilla refused to give defense counsel copies of discovery or a police report and has, despite repeated requests, refused to provide any evidence about this case to counsel.

13.

Counsel asked D'Aquilla to voluntarily recuse and he declined, claiming he knows of no reason to recuse. Perhaps after reading this motion he will voluntarily recuse and if not, the court should have a hearing after which D'Aquilla should be recused.

WHEREFORE, for the reasons set forth herein, the defendant, David Opperman, prays that this court set a hearing in this matter and, after due proceedings, grant his motion to recuse District Attorney D'Aquilla from Mr. Opperman's case.

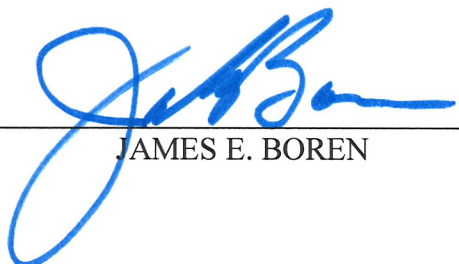
RESPECTFULLY SUBMITTED:



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CERTIFICATE

I hereby certify that a copy of the foregoing Motion to Recuse the District Attorney has been served on Mr. Sam D'Aquila, District Attorney, by hand delivery to the District Attorney's mailbox at the Clerk of Court's office for the 20th J.D.C. located at 4785 Prosperity Street, St. Francisville, LA 70775, on this the 2nd of July. 2018



JAMES E. BOREN