

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
FAMILY LAW DIVISION

CARMEN E. PEREZ, n/k/a  
CARMEN E. DIGERLANDO,

Petitioner/Former Wife,

Case No. 08-DR-2175

v.

Division C

BERNARD R. PEREZ,

Respondent/ Former Husband.

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**MOTION TO DISQUALIFY JUDGE**

Garnishees, Margarita L. Whidden (“Whidden”), Don. J. Perez (“Perez”), and Perez & Perez, M.D., P.A. (“PA”), by and through their undersigned counsel and pursuant to Fla.R.Jud.Admin. 2.330, move this Court for entry of an Order disqualifying the Honorable Catherine M. Catlin (“the Judge”) from presiding as the Judge in this case, and would show:

1. The instant lawsuit began in 2008 as a divorce proceeding between Carmen E. Perez (“Wife”) and Bernard R. Perez (“Husband”). The divorce case is now in its post-judgment phase, as Wife is attempting to collect on a Money Judgment against Husband in the amount of \$443,386.93 by serving Writs of Garnishment on various non-parties to the divorce case, including Whidden, Perez, PA, and Magpie Islands, Inc. (“Magpie”).<sup>1</sup>

2. Whidden, Perez, PA, and Magpie are not indebted to Husband, have no property of Husband in their possession or control, and know of no person indebted to Husband or who may have property of Husband in their possession. As far as Whidden, Perez, PA and Magpie are concerned, these facts are not reasonably in dispute. Unfortunately, Wife disagrees and takes the position that Whidden, Perez, PA, and Magpie owe significant sums of money to Husband.

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<sup>1</sup> Magpie is currently in bankruptcy and has not joined in the filing of this motion.

3. Given this significant factual dispute, the pendency of the Writs of Garnishment, and the large amount in controversy, it seems inevitable that the Judge will be forced to adjudicate whether and to what extent Whidden, Perez, PA and Magpie are indebted to Husband.

4. The problem, of course, and what makes the Judge's continued role as judge so fundamentally unfair from the perspective of Whidden, Perez, and PA, is that she made a myriad of fact-findings adverse to Whidden, Perez, and PA on this very issue, during the pendency of the divorce, at a time when none of them were parties in this case, none of them had counsel, and none of them had the ability to subpoena witnesses or otherwise be heard on this issue. Specifically, the Judge ruled, in the Amended Final Judgment of Dissolution of Marriage in the divorce case, that PA owed Husband \$85,000; Whidden owed Husband \$119,000, and that Husband made a \$450,000 "investment" in Magpie, among other, similar findings.<sup>2</sup>

5. Perhaps worse yet, the Judge made numerous statements throughout the divorce case expressing her disdain for and distrust of Whidden, Perez, PA, and Magpie (apparently because Whidden and Perez are siblings of Husband and otherwise affiliated with him). The Judge made no attempt to hide her favoritism for Wife, as well as her ongoing and extreme disdain for Whidden and Perez, which is perhaps best reflected by her slanderous finding, in a written Order, that Husband "and his siblings [Whidden and Perez] are playing fast and loose with their finances..."

6. Whidden, Perez, PA, and Magpie strenuously and vociferously object to these findings and characterizations. Respectfully, these assertions are simply untrue. Husband does not owe PA or Whidden any money. Husband did not invest anything in Magpie. Whidden and Perez do not "play fast and loose with their finances."

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<sup>2</sup> These findings were made in the process of determining Husband's income and imputing income to him.

7. The point, however, at this stage of the process, is not to question the veracity of the findings made by the Judge in the divorce case. Those findings are what they are (subject to a pending appeal by Husband). The point is to say that the Judge cannot possibly be neutral and detached in the adjudication of the pending garnishment proceedings when she has already made numerous findings adverse to Whidden, Perez, PA and Magpie on the very issue to be litigated in the garnishment proceedings (at a time when they were not parties in the case, not represented by counsel, and did not have an opportunity to subpoena witnesses or be heard on the merits).

8. In other words, the Judge has already pre-judged the issue that will be heard *vis a vis* the Writs of Garnishment and cannot possibly be a fair and impartial Judge when she has already adjudicated these issues adverse to Whidden, Perez, PA and Magpie. To illustrate, no matter what evidence Whidden, Perez, PA and Magpie may present that they are not indebted to Husband, the Judge will know that she already ruled on that issue previously and will undoubtedly be disinclined to rule differently (or, essentially, overrule herself), the second time around. Undoubtedly, Wife and her counsel are trying to take advantage of this fact by bringing this dispute before the Judge in the manner they have (as opposed to some other forum).

9. The Judge cannot possibly be a neutral and detached judge when she went out of her way to make written fact-findings about Whidden and Perez (“playing fast and loose”) even though they were not parties and their conduct was, candidly, irrelevant to the issue before her. Unfortunately, the Judge saw fit to slander them anyway, reflecting her clear bias against them.

10. Numerous Florida courts have prohibited a judge from presiding on a case where the judge has announced her pre-disposition to rule against a party. In Marvin v. State, for instance, the Fourth District ruled:

A trial judge’s announced intention before a scheduled hearing to make a specific ruling, regardless of any evidence or argument to the contrary, is the paradigm of

judicial bias and prejudice. We could not imagine a more telling basis for a party to fear that he will not receive a fair hearing.

804 So. 2d 360, 363 (Fla. 4th DCA 2001) (quoting Gonzalez v. Goldstein, 633 So. 2d 1183 (Fla. 4th DCA 1994)); see also Barnett v. Barnett, 727 So. 2d 311 (Fla. 2d DCA 1999) (requiring judicial disqualification where the judge's comments during trial created the impression that he had prejudged the case); Wargo v. Wargo, 669 So. 2d 1123 (Fla. 4th DCA 1996) (Writ of Prohibition issued where the judge began to rule without giving a party a chance to be heard).

11. Here, this is the precise problem facing the Judge, and it is simply impossible to avoid. The Judge has already announced her intention to rule against Whidden, Perez, PA, and Magpie. In fact, the Judge has already ruled against them. It is eminently reasonable for these parties to fear the Judge will not give them a fair shake, or be neutral and detached, when she has already ruled against them on the precise issue being litigated.

12. Respectfully, Whidden, Perez, and PA should be entitled to a new judge, one whose opinion is not biased by prior events which took place in a proceeding at which Whidden, Perez, and PA were not parties. Whidden, Perez, and PA are not asking for any special treatment. They are merely asking for a level playing field; one that is not skewed by a judge who has already made numerous findings adverse to them (at a time when they could not participate as parties). Given the amount at stake (\$443,386.93), starting out with a new judge, one whose views are not tainted by past events, is an eminently reasonable request.<sup>3</sup> Proceeding with the current judge, who has already ruled on the issue to be adjudicated, is simply unfair.

13. Under the above-cited authorities, the instant motion contains sufficient facts to

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<sup>3</sup> Whidden, Perez, and PA learned that the Judge would be presiding over and adjudicating the issue of their alleged indebtedness to Husband on February 21, 2011. As such, the instant motion is timely.

require the Judge's disqualification. This Court should rule accordingly.

WHEREFORE Whidden, Perez, and PA respectfully request that the Honorable Catherine M. Catlin enter an Order disqualifying herself from presiding as judge in this cause.

**VERIFICATION**

I HEREBY CERTIFY under penalty of perjury that I have read the foregoing and the facts stated herein are true and correct.

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Margarita Whidden

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Don J. Perez, individually and on behalf of  
Perez & Perez, M.D., P.A.

**CERTIFICATE OF GOOD FAITH**

I HEREBY CERTIFY that the instant motion and the statements contained herein have been made in good faith.

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Mark P. Stopa, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Mark S. Howard, Esq., 4830 W. Kennedy Blvd., Suite 300, Tampa, FL 33609 on this 28th day of February, 2011.

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Mark P. Stopa, Esquire  
FBN: 550507  
**STOPA LAW FIRM**  
3650 Fifth Ave. N.  
St. Petersburg, FL 33713  
Telephone: (727) 667-4808  
Scheduling: (727) 667-3413  
ATTORNEY FOR WHIDDEN, PEREZ, PA