

Fourth Judicial District Court
Judge Benjamin Jones
Court Administrator
(318) 361-2281

Coal,

I made some comments that respect your decision to allow the en banc motion to Recuse to stand. However, I think it is a mistake to allow that motion to stand and treat it as a motion to Recuse you individually. Why? Because all the awful allegations contained in that motion will be of record. The effect may be that a judge hearing the motion would see all the allegations that do not have anything to do with you and be influenced.

Honestly, I think that unauthorized motion should be dismissed. If they think they have grounds to Recuse you, they should file a more narrow motion.

Ben

Judge B. Jones, Court Administrator

STATE OF LOUISIANA *PARISH OF OUACHITA* FOURTH JUDICIAL DISTRICT COURT

STANLEY R. PALOWSKY, III

FILED: _____

VS. NO. 13-2059

W. BRANDON CORK, ET AL

BY: _____

DEPUTY CLERK OF COURT

ORDER

Petitioners filed a Motion captioned "XXXXXXXXXX" (hereinafter sometimes referred to as *En Banc Recusal Motion*) and it was duly set for hearing on August 20, 2015. In the interim, Petitioners filed a lawsuit against the trial judge; subpoenaed the trial judge to appear as a witness in the aforementioned hearing and subpoenaed other Judges of the Fourth Judicial District Court for the hearing, all without observing the prerequisites of Louisiana Code of Evidence Article 519. Petitioners also disregarded the provisions of Louisiana Code of Evidence Article 605.

At the August 20 hearing, this Court noted that Petitioners' attorneys are experienced and seasoned and expressed disbelief that the attorneys were unaware of the above cited codal articles. The Court also complained to the Petitioners' attorneys about the discourtesy and unprofessionalism shown to this Court by their actions. The Court had previously communicated with the parties and had advised them that it did not anticipate receiving any testimony in connection with the August 20 hearing. Nevertheless, and without attempting to communicate with the Court in any fashion whatsoever, the Petitioners issued the above referred to subpoenas only a few days before the scheduled hearing.¹

The Petitioners have filed a motion before this trial Judge or Section to recuse the entire Fourth Judicial Court bench. An examination of the Louisiana Code of Civil Procedure articles dealing with Recusation of Judges reveals that an *En Banc Recusal* is an action not ^{151 et seq.,} ~~contemplated~~ ^{authorized} by those codal articles. Briefly the Code provides that when a valid ground for recusation is stated, the Judge against whom the motion is filed shall either recuse himself or refer the motion to another Judge for action.² No such blanket "en banc" recusal of the entire Court is ^{authorized} ~~contemplated~~; only that of the Judge to whom the case is ^{assigned} ~~assigned~~. Such an "en banc" approach is problematic. The Fourth Judicial District Court does not sit "en banc". Cases are ^{allotted} ~~assigned~~ for handling to individual Judges, and the actions of the Judge assigned to a particular case are not subject to any sort of vote by other Judges assigned to this Court. Additionally, the opinion of and the facts pertaining to one Judge of this Court may not pertain to other Judges of this Court. Currently, no legal procedure or mechanism exists that empowers a Judge of one ^{Division} ~~Section~~ of this Court to recuse all other members of the Court based solely on that one Judge's opinion regarding the issue. Furthermore, the issue of recusal of any other Judge of this Court

¹ The Court quashed the subpoenas issued to Judges and Judicial Officers shortly before the scheduled hearing date.

2. However, if there are more than two judges sitting on a district court, the allotted judge shall send ^{the motion} to the clerk to be randomly allotted to another judge for hearing.

could not even be reached unless and until the Judge *currently assigned* to the case (this Judge) is himself recused. This has not been done.³

For the reasons stated above, this Court is of the opinion that the instant motion could be denied and dismissed as requesting an action unknown to the Louisiana Code of Civil Procedure and contrary to a procedure already provided for in that Code. However, since Petitioners have stated and have firmly indicated that they desire to pursue recusal, this Court is of the opinion that, in the interest of efficiency, the Petitioners' En Banc Recusal Motion should be treated as a motion to recuse the Judge currently assigned to the case. Since such a motion could be filed any time prior to trial, to require the Petitioners' to file another motion would put a wasteful and useless burden on them. They have indicated their intentions clearly enough. Therefore, this Court will consider that a demand for recusal has been lodged against the Judge currently assigned.

As noted above herein, the Petitioners have filed a separate lawsuit against this Judge; a lawsuit which was filed *after* the Motion for En Banc Recusal was filed and *after* said Motion was set for hearing and *after* this Court had advised the parties that it did not anticipate receiving any testimony at the said hearing. This Court notes that, initially, the Petitioners had urged the recusal of the entire Fourth Judicial District Court because the Chief Judge of the court had filed a suit for declaratory judgment against an entity who was *not* a party to this instant case and *did not* involve the same cause of action or controversy. With the filing of the lawsuit naming this Judge as a defendant, the Petitioners' effected a legal controversy directly involving the named plaintiff in this lawsuit against the Judge currently assigned to the case. Also, bizarrely, the Petitioners subpoenaed the trial Judge to appear as a witness in his own case, to wit: the hearing scheduled on August 20th.

At first blush, the facts would appear to dispose of the issue of whether the Judge currently assigned to this cause should be recused: Louisiana Code of Civil Procedure Article 151 provides that a recusal is mandatory when a Judge "is a witness in the cause". And the fact that the Judge assigned to a case is in a personal legal dispute with one of the parties (the other lawsuit) would appear, without any more analysis, to settle the issue. But other facts are obvious also.

The Petitioners' actions in subpoenaing the trial Judge and other Judges of the Fourth District Court to the August 20th hearing is puzzling. Surely, the Petitioners did not expect the *trial Judge* to testify at his own hearing, and the failure of the Petitioners to give even lip service to the procedures set forth in law as a prerequisite to such an action makes no sense.⁴ It almost seems to be a deliberate affront to the Court, a "thumbing of the nose" so to speak.⁵ But

³ At the August 20 hearing, counsel for Petitioners asserted that a Motion to Recuse the individual Judge assigned to this case (this Judge) had been filed simultaneously with the En Banc Recusal Motion. A search of the record of this case reveals that Counsel was apparently mistaken. No such motion has been filed in this case.

⁴ As indicated earlier, Petitioners' counsel is both an able and experienced litigator, this Court have personally observed same over the decades. Petitioners' counsel has over 35 years of legal experience.

⁵ The trial Judge takes no personal affront, but the subpoena of both himself and other Judges of the Court posed some practical issues. For example, one Judge began to take steps to request a replacement Judge to cover his duties should he have to appear. Other problems will not be mentioned here but may be pertinent should this Court seek to sanction Petitioners' counsel.

this Court, having personally observed the ability and acumen of Petitioners' counsel over the years has difficulty ascribing such pernicious motives to counsel. Other motives come to mind.

At the August 20th hearing, Counsel for Petitioner described his dismay when this Court advised all counsel that it did not anticipate receiving any testimony on the hearing date. Counsel indicated he expected, once the motion in question was filed, that the entire Court would either recuse itself, *en banc*, or would immediately refer the matter to another Judge for hearing. When neither happened; when the matter was routinely set for hearing, and when this Court courteously advised the parties that it did not anticipate taking any testimony on that hearing date, a sort of panic seems to have set in. A lawsuit, having been filed after the filing of the En Banc Motion to Recuse was amended to add this Judge as a Defendant and the Petitioners issued a subpoena to the trial Judge, seeking to make him a witness in his own case. To this Court, it appears that the Petitioners were attempting to generate grounds for recusal. This is improper.

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other
judges,

NEED SOME LAW HERE. WHY is IT IMPROPER?

Louisiana Code of Civil Procedure Article 154 provides, in pertinent part:

A party desiring to recuse a judge of a district court shall file a written motion therefor assigning the ground for recusation...

If a valid ground for recusation is set forth in the motion, the judge shall either recuse himself, or refer the motion to another judge.... (emphasis supplied).

Note that the codal article articulates that a *valid ground* for recusation is necessary to be set forth. Has a valid ground been set forth here? This Court intends to find out.

Petitioner's counsel indicated at the August 20th hearing that the factual allegations which support their En Banc Recusal Motion are the identical factual allegations in the *Palowsky v. Campbell* lawsuit. Because that lawsuit is filed against an employee of the Court, all of the Judges of the Fourth Judicial District Court have recused themselves. That lawsuit will play out and the factual issues will presumably be resolved. Because this Court strongly suspects that the *Campbell* lawsuit (or at least the action of the Petitioner in adding, as defendant parties, several Judges of this Court) is part of the the Petitioners' stratagem to achieve the desired recusal, the Court is of the opinion that further action in this case should be stayed until the *Campbell* other lawsuit is resolved.

Note that this action is not a denial of the Petitioners' motion, but rather an attempt to find out if the Petitioners have abused our legal process by attempting to manufacture grounds for recusal, or if they, in fact, have stated valid grounds for recusal.

Therefore this Court:

1. Notes for the record that it regards Petitioners' conduct (through counsel), previously articulated, as possibly contemptuous and unprofessional and notifies them of possible sanctions. Because a recusal motion has been filed, however, this Court is of the

opinion that it can perform no substantive action in this case while the motion is being considered.

2. Is of the opinion that an *En Banc Recusal Motion* is something not contemplated by the Louisiana Code of Civil Procedure inasmuch as the Code sets out a detailed procedure for recusal not compatible with the actions urged by the Petitioners.

3. Is of the opinion that this Section of the Court does not have the power to disqualify the entire Court, for reasons stated herein.

4. Will consider the *En Banc Recusal Motion* as a Motion to Recuse this Judge, or this Section of the Court, without the Petitioners being required to file additional Motions to effect same.

5. For the reasons stated herein, hereby STAYS any further substantive proceedings in this instant case pending further proceedings in the *Campbell* litigation.

MONROE, LA XXX

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⁶ This Court contemplates staying these proceedings until the *Campbell* litigation comes to a conclusion. However, should those proceedings become protracted or interminable, this Court welcomes any party's request for relief.