

STATE OF LOUISIANA

16TH JUDICIAL DIST.

VERSUS

DOCKET NO. 18-1056

KERRY STOKES

PARISH OF IBERIA

STATE OF LOUISIANA

**MOTION TO RECUSE JUDGE LORI A. LANDRY AND
INCORPORATED MEMORANDUM IN SUPPORT**

NOW INTO COURT, through the undersigned District Attorney, comes the State of Louisiana, who suggests that:

Introduction

Recusation of Judges in Criminal Cases

1. Louisiana Code of Criminal Procedure Articles 671–679 addresses the recusation of judges in criminal cases. The grounds for recusation are contained in La.Code Crim.P. art. 671, which states, as relevant herein, that:

A. In a criminal case a judge of any court, trial or appellate, shall be recused when he:

(1) Is biased, prejudiced, or personally interested in the cause to such an extent that he would be unable to conduct a fair and impartial trial;

....

(6) Would be unable, for any other reason, to conduct a fair and impartial trial.

“These grounds are exclusive, not illustrative.” *State v. Williams*, 00-11 (La.App. 4 Cir. 5/9/01), 788 So.2d 515, 525. Further, there is a presumption that a judge is impartial. *State v. Anderson*, 96-1515 (La.App. 3 Cir. 4/29/98), 714 So.2d 766, writ denied, 98-1374 (La. 10/9/98), 726 So.2d 25.

2. Further, La.Code Crim.P. art. 674 provides for the procedure for the recusation of trial judges in criminal matters, stating:

A party desiring to recuse a trial judge shall file a written motion therefor assigning the ground for recusation. The motion shall be filed prior to commencement of the trial unless the party discovers the facts constituting the ground for recusation thereafter, in which event it shall be filed immediately after the facts are discovered, but prior to verdict or judgment. If a valid ground for recusation is set forth in the motion, the judge shall either recuse himself, or refer the motion for hearing to another judge or to a judge ad hoc, as provided in Article 675.

3. “The mere filing of a motion to recuse does not compel a judge to act on that motion. Only when there is a valid ground for recusation in the motion is a judge obligated to act.” *State v. Pitree*, 05-1513, p. 8 (La.App. 3 Cir. 5/3/06), 930 So.2d 265, 271, *writs denied*, 06-1897, 06-2138 (La. 3/23/07), 951 So.2d 1093, 1093 (quoting *State v. Maten*, 04-1718 (La.App. 1 Cir. 3/24/05), 899 So.2d 711, *writ denied*, 05-1570 (La. 1/27/06), 922 So.2d 544). Thus, the motion to recuse must set forth more than conclusory allegations—the motion must contain specific allegations of fact which constitute one of the statutory grounds for recusal before a judge is required to refer the motion to another judge for consideration. *Id.*

4. In this vein, it is within the judge’s discretion to determine whether a motion to recuse asserts a valid ground for recusation. *Williams*, 788 So.2d 515. Further, it is not error for the trial court to refuse to refer the motion to another judge for a hearing when the trial court concludes that the motion contains conclusory allegations. *Pitree*, 951 So.2d 1093.

5. However, if the motion provides “clear, fact-based allegations that the trial court is biased or prejudiced against” the moving party, the Third Circuit Court of Appeal has concluded that it was error to fail to refer to the motion to another judge for consideration. *State v. Frith*, 17-1004 (La.App. 3 Cir. 4/11/18), 243 So.3d 633.

6. With regard to bias or prejudice, the Louisiana Supreme Court has stated that:

The tantamount duty of a judge is to conduct fair and impartial proceedings. If he cannot conduct a fair and impartial proceeding because of bias or prejudice, he cannot hear the case. *In re: Cooks*, 96-1447, p. 17 (La.5/20/97), 694 So.2d 892, 903. In interpreting La.Code Civ. P. art. 151, the jurisprudence has held the article "requires a finding of actual bias or prejudice," which "must be of a substantial nature and based on more than conclusory allegations." *See, e.g., Southern Casing of Louisiana, Inc. v. Houma Avionics, Inc.*, 00-1930, 00-1931, p. 15 (La.App. 1st Cir.9/28/01), 809 So.2d 1040, 1050.

Covington v. McNeese State Univ., 10-250 (La. 4/5/10), 32 So. 3d 223, 224-25.¹ In that matter, the Supreme Court concluded that the Attorney General's Office had met its burden, noting that the "record is replete with instances in which [the trial judge] has accused the AG's office of various improprieties, both in connection with matters pending before him, as well as in its prosecution of his son's cases." *Id.* at 225.

7. With regard to ground (6), which provides that the judge would be unable, for any other reason, to conduct a fair and impartial trial, the comments to La.Code Crim.P. art. 671 indicate that it "is a catchall provision to include circumstances which clearly indicate that the judge would not be able to serve fairly and impartially, even though none of the specified grounds for recusal exist."

8. Accordingly, the Sixteenth Judicial District Attorney's Office submits that Judge Landry is biased or prejudiced against this Office such that she cannot be fair or impartial. In support of this, the District Attorney's Office submits that Judge Landry has:

- a. on numerous occasions, baselessly accused the District Attorney's Office of improprieties, including accusations that members of the

¹ In *Covington*, the Attorney General's Office moved for recusal of the trial judge on the basis of bias in several criminal and civil matters. Thus, the allegations encompassed both La.Code Crim.P. art. 671 and La.Code Civ.P. art. 151. The Supreme Court has noted that one of the distinctions between recusal in civil matters and recusal in criminal cases is that, if any of the grounds in La.Code Crim.P. art. 671 are established, recusal is mandatory and not permissive. *In re Lemoine*, 96-2116 (La. 1/14/97), 686 So.2d 837.

District Attorney's Office deliberately incarcerate African-Americans more severely and at a higher rate than others, deliberately ignore their obligations pursuant to *Brady* and its progeny, and has suggested that members of the District Attorney's Office have improper motivations and engage in "trickery;"

- b. on numerous occasions, both in and out of court and on and off the record, has engaged in abusive, inappropriate and/or bullying behavior towards the District Attorney's Office, its staff, and other parties associated with the State such as victims and witnesses, including threatening to stab an Assistant District Attorney in the eardrum with a pen, physically intimidating an Assistant District Attorney for a perceived slight, blaming victims' families for "allowing" their children to be victimized, and repeatedly engaged in in-court behavior that seems calculated to humiliate members of the District Attorney's Office in public;
- c. has refused to fairly and impartially apply the law, and in fact has stated that she holds this Office to a higher standard than what is required by law; and
- d. her actions have had a deleterious effect on the District Attorney's Office's ability to prosecute its cases in a fair and orderly manner, and have caused actual, serious harm to the public on at least one occasion.

9. The basis for these allegations is Judge Landry's own conduct, and the District Attorney's Office submits the following *specific and clear factual allegations* in support of these contentions:

Judge Landry has Baselessly Accused the District Attorney's Office of Improprieties

10. Judge Landry has, on numerous occasions both on and off the record, in court and out of court, accused various members of the District Attorney's Office of improprieties without any basis therefor. She has insinuated that members of this office knew or should have known about misconduct committed by former members of the Iberia Parish Sheriff's Office who have subsequently been convicted of federal civil rights violations. She has accused members of this office of selectively using the habitual offender statute to harm African-Americans. She has chastised members of the District Attorney's Office for perceived racial bias in plea offers. She has intimated that members of the District Attorney's Office file frivolous motions for improper reasons and criticized the District Attorney's Office for seeking appellate review of her decisions.²

11. In *State v. Kenneth Gray*, Iberia Parish Docket No. 07-773, the defendant filed a Motion for New Trial on the basis that former deputies with the Iberia Parish Sheriff's Office Narcotics Division, who have subsequently been convicted of federal civil rights violations, were involved in his case and that he would not have pled guilty if he had known about those deputies' illicit activities and credibility problems. At the hearing on that matter on November 17, 2017, despite no evidence in the record to support her insinuations, Judge Landry suggested that the District Attorney's Office selectively and disproportionately institutes habitual offender proceedings in order to disproportionately incarcerate African-Americans. She stated:

There are lots of reasons why people plead guilty; some of them because they are, in fact, guilty, and some of them because they have to weigh their posture in a culture – and the culture that exists in the 16th JDC is the culture that I'm talking about; not only in the sheriff's

² At the risk of dignifying these allegations with a response, the District Attorney's Office feels that it must clearly state that the allegations of impropriety would be in contravention of the District Attorney's ethical and legal duties; as such, the District Attorney's Office vehemently disagrees with Judge Landry's conclusions.

department, but in a culture supported by law, certainly, that he had prior convictions. "If you go and lose, we're going to do the habitual offender. If you plead guilty, we'll take it off the table." Those – the law provides for that, but I think there can be an argument that how some people, individual ADAs or individual offices, use the habitual offender statute is not the reason it was intended. They use it selectively which disproportionately puts African Americans in more harm or risk than anyone else. They use it disproportionately so that the sufficiency of the evidence is not called into question[.]

Judge Landry also intimated that members of the District Attorney's Office, specifically Robert Vines and Robert Odinet,³ "knew or should have known" that those former deputies were involved in misbehavior, and that "it didn't take a rocket scientist." She also suggested that the District Attorney's Office was not complying with its obligations under *Brady* and its progeny with regards to cases in which those former deputies were involved, stating:

Also, I have to consider the culture that those officers caused for not just this defendant, hundreds. The DA's Office has said, "We have identified...." PDO has said, "We have sent it out for private screening," but they sent 200 cases – I know that because Ms. Bonin [the former head of the Public Defender's Office] told me – to some organization to review which ones they think had merit. And as I understand it, that organization says, "We're going over this with Mr. Duhe to see if we're going to do it all in one fell swoop." Well, my question to them when this was happening is, "How are you notifying defendants?" And the DA's Office, through Mr. Vines, primarily, said that, "We're sending letters to all defendants and PDO," and whatever. I said, "What about the private attorneys who practiced here one case at a time, not just the regular ones that come from Lafayette? But what time frame?" That was the information I went through every case – PDO was having their calamity about money – every case about these officers. This Court had to notify at arraignments throughout the whole year, "If your case involved – I can't say it, but you need to – so, this Court thought that the notices were insufficient – not necessarily insufficient, but that we can do more to be widescale. So, that is the unjustness and the unfairness."

³ Mr. Odinet is a former Assistant District Attorney who has since left the District Attorney's Office.

The District Attorney's Office notes that it sent out *Brady* notices to counsel of record⁴ in all relevant cases, reviewed a significant number of cases in light of the allegations concerning those former deputies, and, as a result, dismissed at least 90 pending prosecutions, and agreed to the vacation of at least 17 convictions.

12. In *State v. Henderson Wesley*, St. Mary Parish Docket No. 15-194738, Judge Landry presided over the second-degree murder trial of the defendant. After a jury trial, he was found guilty of that charge. The defendant filed a motion for new trial and, after a hearing Judge Landry granted that motion. At the hearing, Judge Landry spoke about a "systemic pattern going on in the Sixteenth JDC." In those comments, Judge Landry suggested that the defendant was "railroaded" and that the District Attorney's Office was "falling asleep on the job" when it came to adequately assessing the sufficiency of the evidence and the investigation in that case.

Judge Landry also suggested in that case that law enforcement was involved in improprieties and that there was a "climate" in the Sixteenth Judicial District about cases "tainted because of law enforcement and things that happen when you go to jail and things that happen to evidence or don't happen to evidence." Despite the fact that there is no suggestion, much less evidence of, police misconduct in this matter, Judge Landry referenced the "backdrop" of "police officers in the Sixteenth have been indicted, in jail for doing wrongs against people, including planting evidence. It hasn't happened in St. Mary yet. This is the only – we haven't heard about it in St. Mary yet. You can't isolate "I beat people when they're in jail. I planted evidence in this one particular case that's before the court" and act like it don't happen in more than one."

⁴ Ethics rules prohibit the District Attorney's Office from contacting represented defendants directly.

13. Similarly, in *State v. Frank Penny*, St. Martin Parish Docket No. 14-247459, at a hearing on a Motion to Suppress on October 8, 2015, Judge Landry granted the motion to suppress on the basis that, even though she “believed the testimony that at some point in time before we started the recording that you saw” the vehicle commit a traffic violation, the Louisiana State Trooper who conducted the traffic stop needed to “unthink that everybody we stop, particularly African-Americans, even though [the Trooper is] African-American, there is a reasonable suspicion to think they’re involved in something, out-of-state license plates and African-American drivers.” It was clear that Judge Landry was accusing the Trooper of racial profiling. It is worth noting that Judge Landry’s ruling suppressing the evidence was reversed.

14. In *State v. Melvin Williams*, St. Mary Parish Docket No. 16-197336, the defendant alleged that he was the subject of racial bias on the part of the District Attorney’s Office. At a hearing on February 13, 2017, Judge Landry made statements to the effect “I don’t believe Mr. Saleme is a racist. But, you never know. I wouldn’t doubt that there are prejudices and biases because there are in everyone.” Judge Landry went on to explain that she “monitors” plea offers made by individual assistant district attorneys for racial bias.

15. Later that month, Judge Landry was presiding over pre-trial conferences in St. Mary Parish. Assistant District Attorney Brady Holtzclaw was handling several matters on the docket. Judge Landry criticized one of Mr. Holtzclaw’s domestic abuse battery plea offers, brought up “potential biases” that Mr. Holtzclaw may have had, and referred to her earlier conversation with Mr. Saleme.

16. On April 9, 2018, Judge Landry was handling pre-trial conferences in St. Martin Parish. One of the cases on the docket that day was *State v. Jeroswaski*

Collette, St. Martin Parish Docket Number 14-247416. The defendant in that case also had two pending Iberia Parish cases, Iberia Parish Docket Numbers 16-522 and 17-1331. The charges in those cases included assault by drive by shooting, aggravated assault with a firearm, felon in possession of a firearm, and drug charges. Assistant District Attorneys Lynn Musumecche and Nicole Burke had extended a plea offer in that case of ten years at hard labor.

Assistant District Attorney Ashley Hammons was handling five cases on the docket that day involving a single defendant (*State v. Christopher Thomas*). Ms. Hammons was, at the time, a relatively new ADA and this was the first case in Judge Landry's section in which she had extended a plea offer. Judge Landry became agitated and asked Ms. Hammons repeatedly "what is the difference between Christopher Thomas and Jeroswaski Collette?" Judge Landry criticized the plea agreement extended to Mr. Thomas, indicating that he was receiving a benefit that Mr. Collette was not. It was clear to Ms. Hammons that Judge Landry was referring to the fact that Mr. Collette is black and Mr. Thomas is white. Further, Judge Landry advised Ms. Hammons that she should consult with other Assistant District Attorneys before extending plea offers so that our plea offers were not "inconsistent" and indicated that the District Attorney's Office has had this "problem" for a while.

17. On May 11, 2018, Judge Landry had a felony plea day in St. Martin Parish. Ms. Hammons was present in court on that day as well. Judge Landry insisted, incorrectly, that one defendant, Damien Fontenette, was being offered the maximum sentence on a plea and that another defendant, Eric Perkins, St. Martin Parish Docket No. 18-252571, was not. Judge Landry refused to accept the plea in Mr. Perkins' case unless the sentence was changed to the maximum sentence. Judge Landry questioned the difference between the two individuals, which ADA Hammons understood to be a reference to their races.

18. On May 14, 2018, Judge Landry presided over revocation hearings in St. Mary Parish. On the docket were two cases, *State v. Jaquincy Colbert*, St. Mary Parish Docket No. 14-193923, and *State v. George Geoffroy, Jr.*, St. Mary Parish Docket No. 16-198694. Judge Landry accused District Attorney Probation Officer Mandy Clement of allowing her “biases” to show up in her work. Ms. Clement’s perception was that Judge Landry was accusing her of being prejudiced towards Mr. Colbert and erroneously assuming that Ms. Clement had given Mr. Geoffroy preferential treatment. When Ms. Clement attempted to inform Assistant District Attorney Erica Rose that Judge Landry’s perception of the facts was incorrect, Judge Landry raised her voice and demanded to know why Ms. Clement was speaking to ADA Rose and “what was so important.”

19. On July 5, 2018, Judge Landry had a plea date in St. Martin Parish. ADA Hammons was in court. Isaiah Deleon, St. Martin Parish Docket No. 16-250813, was pleading guilty to attempted possession of a schedule II CDS and Felton Fontenette, St. Martin Parish Docket No. 18-252592, was pleading guilty to several charges including possession of a schedule II CDS. Judge Landry demanded that ADA Hammons contact the Assistant District Attorney assigned to Mr. Fontenette’s case and see if she would agree to amend the charges to attempted possession, as it was “only fair” since Mr. Deleon was pleading to an attempted possession. Judge Landry stated she was trying to keep “our office’s” pleas consistent and fair. ADA Hammons understood that, by her comments, Judge Landry was implying that the District Attorney’s Office was offering more favorable pleas to white defendants.

20. On August 27, 2018, a motion to reduce bond was set in *State v. Dartamian Landry*, St. Martin Parish Docket No. 18-253302. The allegations in that matter are that the defendant fled from the police at speeds reaching 99 miles per hour and ramming two law enforcement vehicles head on; both deputies were injured

and were transported by ambulance for treatment. There are also allegations that the defendant fired a weapon at the deputies; a gun, bullet fragment and spent cartridge casings were located at the scene.

Judge Landry conducted a pretrial conference on that hearing at which she insisted that the officers were not injured; that the defendant fled from the police because he was afraid because "African American men do not survive traffic stops with the police;" and that even good police officers are "turning bad." Bond had previously been set in the amount of \$51,200.00; Judge Landry initially reduced the bond to an unsecured personal surety bond for the defendant but, when the District Attorney's Office objected, set a bond in the amount of \$1,000.00.

21. Judge Landry has repeatedly suggested, in open court, that the District Attorney's Pre-trial Diversion program is "extortion." For instance, On June 11, 2018, at a pre-trial conference in St. Martin Parish, she called the Pre-Trial Diversion Program "highway robbery in the presence of several people." Similarly, on October 15, 2018, at a pre-trial conference in St. Martin Parish, she asserted that the District Attorney's Pre-trial Diversion program in St. Mary Parish was extortionate and "unbelievable" to her. Judge Landry's comments suggest that she believes that the District Attorney's Pre-Trial Diversion Program, which is authorized by statute and for which the District Attorney's Office has a set of policies consistent with the Louisiana District Attorney's Association model guidelines, is somehow unethical or improper.

22. On March 27, 2019, Judge Landry had a felony plea day in Iberia Parish. Assistant District Attorney Alister Charrier was handling *State v. Edward Bahwell*, Iberia Parish Docket Number 18-649. During a bench conference with Judge Landry and defense attorney Amanda Cannon, Judge Landry refused to accept the agreed plea and informed ADA Charrier that she had observed there is no

“consistency” in our office’s plea offers and that it appeared to her that the “good” offers tend to go to “white males.” Judge Landry instructed Ms. Cannon to pay attention and compare the plea offers she received from the District Attorney’s Office.

23. On May 29, 2019, Judge Landry had pre-trial conferences in Iberia Parish. Assistant District Attorney Aaron Brown was handling *State v. Tyler Ray Landry*, Iberia Parish Docket Number 18-1329. During the pre-trial conference, Judge Landry told ADA Aaron Brown that he needed to “check his bias” and that it was her responsibility to point those biases out to him. She accused ADA Aaron Brown of offering the defendant a “sweetheart deal” and that other people did not receive those plea opportunities. ADA Aaron Brown understood that Judge Landry was implying that he was giving the defendant a favorable plea offer because the defendant was white. Judge Landry demanded to review ADA Aaron Brown’s other cases, which all had vastly different charges and factual situations. Ultimately, Judge Landry accepted the plea agreement, stating that this defendant should not be punished because other people were not “checking their biases.”

24. On June 11, 2019, Judge Landry conducted a pre-trial hearing in *State v. Anthony Dugas*, Iberia Parish Docket No. 18-692. ADA Aaron Brown and defense attorney Richard Spears had agreed that trial of this matter should be continued in order to test certain evidence. Judge Landry initially refused to grant the joint continuance, stating that the reason for the continuance was “B.S.”—even though the jurisprudence suggests that it is error for a trial court to deny a joint continuance of trial. *See State v. Barnes*, 11-1186 (La.App. 4 Cir. 8/29/11), 72 So.3d 939.

Judge Landry also suggested that the State had an improper motive for joining in the continuance, stating that:

That's the whole State. They can do whatever they want to. They sit up here and – that's when you roll, and you know better than I know. The fact that the defense joined in the continuance don't mean nothing to because I know you're at risk, and sometimes they just sit on you and you wait because you've got the right to have this resolved timely. They wait and wait and wait and wait until you pick up another charge. That's what happens.

25. On June 21, 2019, in *State v. Chrystal Clues-Alexander*, St. Martin Parish Docket No. 14-247175, Judge Landry released her Reasons for Judgment granting the defendant's Motion to Recuse Judge Comeaux. Therein, she essentially accused the District Attorney's Office of some sort of conspiracy to prevent the introduction of minutes and a partial transcript of a hearing from 2005, stating:

Coincidental or not, the listed problems with securing minutes and a transcript of the same proceeding have, to a certain degree, called into question the integrity of the proceedings. The fact that the State of Louisiana, while adamantly opposing a motion to recuse the trial court, made only a cursory search for relevant minutes on March 27, 2019 (the day before testimony) and for the recording on April 23, 2019 (the day before testimony). It is no secret that the justice partners of the 16th JDC (clerks, judges, and attorneys) have the luxury of quick and ready access to each other, if desired. That ease of access is similar throughout the 16th JDC and is only limited by the procedure employed by the individual justice partners. Concerning the attempts to secure records in this matter, the state need only walk across the hall in New Iberia or across the street in St. Martinville to inquire about or secure the referenced material. The delayed request and cursory attempts to secure this information are notably inconsistent with familiar procedure.

The District Attorney's Office's reading of this portion of Judge Landry's ruling is that it suggests that the District Attorney's Office, as well as the clerk's office and Judge Comeaux and/or his court reporter, were involved in some kind of impropriety in order to deprive Judge Landry and the defense of the minutes and/or transcript of a 2005 hearing. These conspiratorial insinuations are completely without merit; the District Attorney's Office notes that the burden of proof was not on the District Attorney's Office at this hearing, and therefore the District Attorney's Office had no obligation to locate either the minutes or a transcript.

26. *State v. Kerry Stokes*, Iberia Parish Docket No. 18-1056, is currently certified as the number one case on the *Simpson* list and is set for a jury trial on Tuesday, September 17, 2019. The defendant is charged with Home Invasion and Stalking; the victim in this matter is the defendant's ex-wife. The defendant filed a Motion to Sever the charges on September 10, 2019. On September 11, 2019, at a pre-trial conference of the matter, Judge Landry indicated she was inclined to grant the Motion to Sever. On that basis and the belief that evidence of the defendant's other offenses against his ex-wife would be relevant and admissible evidence concerning the full context of the volatile nature of the defendant's relationship (or lack thereof) with the victim, and the continuing nature and pattern of domestic violence, and given the short timelines before trial, the District Attorney's Office prepared and filed Notice of Intent to Use Other Crimes Evidence Pursuant to La.Code Evid. Art. 412.4.

Given that Judge Landry had already indicated she was inclined to grant the defendant's motion, the District Attorney's Office also prepared a notice of intent to seek emergency writs to present to Judge Landry immediately after she ruled. Judge Landry ordered that the State could not use the other crimes evidence at trial. When the State presented Judge Landry with the notice of intent to seek emergency writs, she commented that the State had already prepared the notice of intent because "I guess y'all knew what the law was and how I was going to rule," implying that the State had improperly opposed the Motion to Sever with regard to the Stalking charge. Additionally, Judge Landry's comments gave the impression that the State's writ application would be frivolous and therefore that the State was improperly seeking supervisory review.

This impression and Judge Landry's bias against the District Attorney's Office is further confirmed in Judge Landry's *per curiam*, sent to the Louisiana Third

Circuit Court of Appeal on Monday, September 16, 2019, which states that “[t]he State’s last minute motion is without sound procedural footing and would serve only to retard this matter moving forward on the date they selected to certify this matter.”⁵ Judge Landry also criticized the District Attorney’s Office, but not the defense, for “untimely” filing a motion—even though the procedural history of this matter clearly indicates that the District Attorney’s Office’s actions were taken in response to the defendant’s late-filed motion.

Additionally, after the Third Circuit granted the State’s emergency writ application, on the morning of trial, Judge Landry brought up the Motion to Sever without prompting from the defense, sought additional evidence from the defense, and again granted the motion with less than an hour before the jury was due to arrive. Judge Landry denied a stay of that matter, essentially forcing the State to try the motion with no notice and denying the State the opportunity to seek review of her ruling. During the hearing on that matter, Judge Landry again made comments to the effect that the Third Circuit does not read the entirety of writ applications and relies solely on the arguments of counsel. The implication was clearly that the District Attorney’s Office intentionally mislead the Court of Appeal in its writ application.

Judge Landry Engages in Abusive, Inappropriate and/or Bullying Behavior Towards Assistant District Attorneys, Staff, and Parties Associated with the District Attorney’s Office

⁵ Clearly, the State’s opposition to the defendant’s motion to sever and writ application was not frivolous, nor a delaying tactic, as the Third Circuit has issued a decision on the State’s writ application reversing Judge Landry’s ruling on the motion to sever. As discussed further herein, this is not the first time that Judge Landry has openly criticized the District Attorney’s Office for exercising its right to appellate review of Judge Landry’s rulings.

27. As further evidence of her bias against this Office, the State submits the following incidents of behavior that the District Attorney's Office considers abusive, inappropriate, and/or bullying towards Assistant District Attorneys, District Attorney's Office staff, and other parties which are could be considered as associated with the District Attorney's Office, including law enforcement, expert witnesses, and victims.

28. Assistant District Attorney Shentell Brown handles juvenile matters in St. Martin Parish. On Monday, October 22, 2018, ADA Brown needed to schedule a continued custody hearing no later than Wednesday, October 24, 2018 to determine if a minor was to remain in the State's custody. Judge Landry was the only judge scheduled to be in St. Martin Parish at that time. ADA Brown was unable to reach Judge Landry or her law clerk on Monday, October 22, 2018, and ADA Brown was unavailable on Wednesday, October 24. However, the other attorneys involved in the case had no objection to a continuance until Thursday, October 25, 2018, when Judge Pitman was scheduled to be in St. Martin Parish. ADA Brown hand-delivered the continuance motion to Judge Landry's law clerk on Tuesday, October 23. Despite her efforts to find out if the continuance had been considered, ADA Brown was unable to determine the resolution of that motion until court on October 25, when the minute clerk informed her that Judge Landry had filed the continuance motion in the record with no indication as to whether it was granted or denied. On October 25, 2018, the continued custody hearing was heard before Judge Pitman. ADA Brown put the procedural history of the matter on the record.

The next week, ADA Brown had another matter that required her to go to Judge Landry's office. Judge Landry called ADA Brown into her office and yelled at her to the effect of "how dare [ADA Brown] put on the record that [Judge Landry] did not take care of her business" and accused ADA Brown of participating in some

sort of "trickery." Judge Landry approached ADA Brown while hitting her fist in the palm of her hand, accused ADA Brown of wanting the juvenile to be released and using Judge Landry to get it done, and threatened to report ADA Brown to the ethics board. Judge Landry would not allow ADA Brown to speak in her own defense. Judge Landry told ADA Brown that she was "done with this," went back to her desk, and turned her back to ADA Brown.

29. On August 27, 2018, Judge Landry held court in St. Martin Parish. During that session of court, Judge Landry advised one of the assistant district attorneys that one of her plea offers was "foolish," and that she was unsure if the 16th Judicial District's Drug Court Program even worked.

30. Assistant District Attorney Angelique Narcisse handles misdemeanor cases in Iberia Parish. On January 16, 2019, it was Judge Landry's first misdemeanor trial day in Iberia Parish after she had rotated into that section. Judge Landry made statements to the effect that a prosecutor should use discretion and have sense. ADA Narcisse understood that comment to mean that Judge Landry thought that ADA Narcisse had neither. Judge Landry prevented ADA Narcisse from speaking to District Attorney's Office staff during a trial and erroneously accused her of having a personal conversation. ADA Narcisse felt that Judge Landry repeatedly did and said things during court specifically to humiliate her in front of other attorneys, court staff, and the public.

31. Anne-Marie Napier is a misdemeanor secretary with the District Attorney's Office. On March 25, 2019, she was assisting ADA Narcisse in court with Judge Landry's misdemeanor trial date. Judge Landry wanted to know some information about *State v. Allen Alden*, Iberia Parish Docket Number 18-1102, and the minute clerk did not have the information immediately available. When Ms. Napier, who did have that information, attempted to provide it to the minute clerk,

Judge Landry referred to Ms. Napier as “little DA girl” and told her that she did not want to hear from Ms. Napier.

32. On January 22, 2019, sentencing was set in *State v. Brad Gates*, St. Martin Parish Docket No. 16-250649. The victim in that matter wanted to make a statement to Judge Landry and plea for leniency. Noting that the victim “did not want to be a victim in this matter,” Judge Landry chastised Assistant District Attorney Lynn Musumeche for the plea agreement. It goes without saying that the District Attorney’s Office is an active champion of victims’ rights. However, the District Attorney’s “first and principal client [is] the State of Louisiana.” *State v. Adkins*, 97-219 (La. App. 3 Cir. 10/29/97), 702 So. 2d 1115, 1120, writ denied, 97-3001 (La. 2/13/98), 706 So. 2d 998.

33. On June 10, 2019, Judge Landry had a misdemeanor arraignment date in Iberia Parish. Assistant District Attorney Claire Howington had previously sought supervisory writs in *State v. Tremain Jones*, Iberia Parish Docket Number 51-CR-6246. Judge Landry began questioning ADA Narcisse about the status of the writ application. ADA Narcisse asked ADA Howington to step in to court to update Judge Landry as to the status. For approximately twenty minutes, Judge Landry demanded to see paperwork from the writ application and repeatedly questioned ADA Howington as to representations that she had made in her writ application. ADA Howington’s impression was that Judge Landry was implying that ADA Howington had misled the Court of Appeal or that she had some sort of improper contact with that Court.

34. On June 11, 2019, Judge Landry had a plea date in Iberia Parish. Assistant District Attorney Nicole Burke and defense attorney Michael Daspit wished to speak with Judge Landry about *State v. Marquez Hurst*, Iberia Parish Docket No. 18-594, set for trial the week of June 24, 2019. At approximately 6:00

p.m., after almost nine hours of court, ADA Burke attempted to ask Judge Landry if they could speak with her about the case. In response, the following colloquy occurred:

THE COURT: If y'all don't quit talking to me, I'm going to take this pen, Ms. Burke. You and Mr. Daspit are going to get two pens, and I'll put one in your eardrum, and I'm going to put one in his eardrum. Ask me why the eardrum. Come on, ask.

MS. BURKE: Why the eardrum?

THE COURT: Because, girl, it hurts, but it doesn't kill you. It makes you suffer. See what I'm saying?

35. Ultimately Judge Landry did have a conference with ADA Burke and Mr. Daspit; before that conference she stated that she wanted the conference on the record because she did not trust the motivations of the District Attorney's Office.

36. On Friday, September 13, 2019, ADA Narcisse was representing the State during misdemeanor trials in front of Judge Landry. In open court, Judge Landry began berating ADA Narcisse for having a "sour face" and stating "that" was the entire District Attorney's Office's attitude towards Judge Landry. Judge Landry told ADA Narcisse that she was "salty." ADA Narcisse had done nothing to merit being chastised in a courtroom full of people.

Later that day, Judge Landry called ADA Narcisse and Heather Duhon, a defense attorney, to the bench. When ADA Narcisse indicated that she would like the court reporter to come to the bench as well, Judge Landry raised her voice and told ADA Narcisse that she was not allowed to call Judge Landry's court reporter to the bench. The District Attorney's Office notes that La.Code Crim.P. art. 843 requires that "on motion of the court, the state, or the defendant in other misdemeanor cases tried in a district, parish, or city court, the clerk or court stenographer shall record all of the proceedings[.]" The District Attorney's Office further notes that, as a result of Judge Landry's abusive or otherwise improper

comments, it has recently instituted a policy that its employees are not to engage in unrecorded bench conferences with Judge Landry.

37. Judge Landry has repeatedly disparaged the victims of criminal offenses and repeatedly suggested that they are somehow responsible for the fact that they are the victims of crimes.

38. On January 11, 2017, a probation revocation was held in *State v. Cameron Batiste*, St. Martin Parish Docket No. 13-245616. Judge Landry suggested that one of the victims, was “very materialistic” and that she would not require the defendant to pay that victim restitution. That victim was owed \$3,449.00 at the time of the probation revocation. After concluding that the defendant could not afford to pay restitution, Judge Landry terminated the defendant’s probation satisfactorily on February 2, 2018.

39. In *State v. Henderson Wesley*, St. Mary Parish Docket No. 15-194738, Judge Landry presided over the second-degree murder trial of the defendant. After a jury trial, he was found guilty of that charge. The defendant filed a motion for new trial and, after a hearing Judge Landry granted that motion. At the hearing, Judge Landry made comments that suggest that the victim’s family was responsible in some sense for the victim’s death. Although she attempted to attribute her criticism to “the system,” her words are clearly directed at the victims in that case. She said:

We have ongoing criminal behavior by our own children, y’all, and we want the world to be safer, but not when it comes to our child. We want the world to be safer, we want the drugs off the street, we want the violence off the street, but the exception is when it comes to my child. . . . And that doesn’t mean Mr. Ronald Chillis, Jr., should have been shot down, but that comes with this system of allowing criminal behavior to go on under our own eyes and then want the system to work when it’s somebody else’s child. I would be remiss if I did not say that. And then we come to court saying, and in the sense that you have a child that is dead, you are the victim, but what role did we play and our children being in the situation to where they’re going to be shot down?

We’ve got to take our responsibility.

At the next hearing on that matter, Judge Landry apologized if the victims had heard “anything in talking to these attorneys during these last two hearings that indicates to y’all that I have anything personal, that I minimized the lost [sic] to you, I apologize to you.”

40. Similarly, in *State v. Robbie Ray Frith*, St. Martin Parish Docket No. 11-241841, the defendant was convicted of five counts of aggravated incest involving his step-grandchildren. At a sentencing hearing on that matter, Judge Landry suggested that the children’s parents let the grandparents babysit the children too often, and that they had made “decisions they should be paying attention to.” Judge Landry’s intimation was clearly that the children’s parents were somehow responsible for the defendant’s actions.

Judge Landry has Indicated that She Holds the State to a Standard Higher than What is Required by Law

41. Judge Landry’s accusations and insinuations and mistreatment certainly indicate that Judge Landry harbors such bias or prejudice against the District Attorney’s Office that she cannot be fair and impartial. However, in addition to all of these incidents, Judge Landry herself has SAID that she does not follow the law in ruling on matters involving the District Attorney’s Office. On March 19, 2019, during a hearing in *State v. Terrance Adkins*, 99-CR-516058, Judge Landry made a statement to the effect that she holds the State to a higher standard than the law requires.⁶ The State can conceive of no other reason for that statement other than to indicate that Judge Landry requires the State to meet a higher burden than what is required by law. This is direct evidence of actual bias.

⁶ The State has requested a transcript of this hearing. This portion of the hearing was not transcribed.

42. In this vein, Judge Landry refuses to permit the District Attorney's Office to offer relevant evidence or make its case, in contravention of the State's right to a fair trial. *See, e.g., State v. Tensley*, 41,726 (La.App. 2 Cir. 4/4/07), 955 So.2d 227, *writ denied*, 07-1185 (La. 12/7/07), 969 So.2d 629. For instance, on December 13, 2018, in *State v. Jaquaine Frederick*, Iberia Parish Docket No. 16-864, when the District Attorney's attempted to offer evidence of the defendant's new criminal charges, Judge Landry stated that she was "not hearing those things. I told y'all once before that I'm not hearing testimony for my revocation hearings to revoke, testimony on cases on new charges." Judge Landry's refusal to hear the State's evidence was on the basis that the State could prove the new charges beyond a reasonable doubt at trial and that the State "takes the lesser road sometimes because the burden is not beyond a reasonable doubt." Additionally, Judge Landry insisted that the District Attorney's Office was not the proper authority to prosecute probation revocations, but that the Department of Corrections should be prosecuting those matters.

43. Judge Landry routinely and improperly excludes the District Attorney's Office from bench conferences, further giving the impression that she disfavors the District Attorney's Office, and, in cases where the District Attorney's Office has recused itself, improperly excludes any member of the District Attorney's Office from being present in open court when those matters are being heard. For instance, in *State v. Marquez Hurst*, on June 13, 2019, Judge Landry held an *ex parte* bench conference with the defendant and the defendant's attorney at which she apparently discussed the defendant's attorney's representation of the defendant. Similarly, in *State v. Anthony Grogan*, Iberia Parish Docket No. 15-1412, Judge Landry held an *ex parte* bench conference with the defendant's attorneys on May 20, 2019. *See*

also, e.g., *State v. Luke Romero* (January 16, 2019); *State v. Norman J. Hebert, II*, Iberia Parish Docket No. 18-1142 (February 14, 2019).

Judge Landry's Actions have Caused Actual Harm to those Matters and to the Public

44. Judge Landry's conduct has not only resulted in substantial prejudice to the State in its efforts to ensure the fair and impartial administration of justice, but on at least one occasion has resulted in actual harm to the public.

45. In *State v. Aries Antoine*, Iberia Parish Docket Numbers 14-917, 15-748, and 16-0526, the defendant was on probation for convictions including illegal possession of a stolen firearm, unauthorized entry of an inhabited dwelling, and simple criminal damage to property. The defendant's probation was being revoked because the defendant had picked up new charges including assault by drive-by shooting, aggravated criminal damage to property, and simple battery.

On October 22, 2018, the State was prepared to go forward with a hearing to prove Ms. Antoine's new charges, to the extent of having witnesses ready to testify. However, Judge Landry found that Ms. Antoine was in "substantial compliance" with her probation and refused to hear the evidence of the new charges. When Assistant District Attorney Craig Colwart objected, Judge Landry criticized the District Attorney's Office for her perception that she "[didn't] believe that the State has put on evidence by way of proving up new charges in years, and if they do its because I said bring the probation officer. But the State felt like today they were going to prove this one up, that's fine, and I wouldn't have said it, but I'll note that what I did was within my discretion for the record."

Aries Antoine was arrested on December 26, 2018, approximately two months after the revocation hearing, for aggravated assault and attempted second-degree murder. The allegations in that case are that she shot a fifteen-year-old boy, after previously threatening him because he was associating with someone who allegedly

stole her friend's dog. Ms. Antoine has been charged with those offenses in Iberia Parish Docket No. 19-382; trial is set in those matters on October 14, 2019.

Conclusion

Filing a motion to recuse a judge on the grounds of bias is always a step to be taken with great deliberation. All that the District Attorney's Office wants is what it is entitled to—a judge who fairly and impartially applies the law to the facts before her and who treats attorneys, staff, witnesses, victims, defendants, and the public with respect. As public servants, attorneys, officers of the court, and ministers of justice, the District Attorney's Office takes its constitutional and ethical oaths and obligations seriously. However, no matter what efforts the District Attorney's Office makes, it does not satisfy Judge Landry because of her stated perception that this Office engages in improprieties and that this Office intentionally incarcerates African Americans more severely and at a higher rate than others. She continues to act inappropriately and/or abusively towards attorneys, staff, victims, and other parties that can be considered as aligned with the District Attorney's Office. Concerningly, Judge Landry's accusations and mistreatment have been escalating in frequency and seriousness. In fact, there have been three incidents within the last week.

Accordingly, the State submits that it has met its burden of alleging bias or prejudice on the part of Judge Landry by clear, fact-based allegations of a substantial nature and that this Motion to Recuse must be randomly allotted to another judge for consideration. The State prays that Judge Landry be recused from this matter and for any and all other relief to which it may be entitled.

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Respectfully submitted,
M. BOFILL DUHÉ
DISTRICT ATTORNEY
BY:

A handwritten signature in black ink, appearing to read "R. Vines", written over a horizontal line.

ROBERT C. VINES
(La. Bar. No. 21932)
First Assistant District Attorney
16th Judicial District
300 Iberia St., Ste. 200
New Iberia, LA 70560

STATE OF LOUISIANA

16TH JUDICIAL DIST.

VERSUS

DOCKET NO. 18-1056

KERRY STOKES

PARISH OF IBERIA

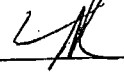
STATE OF LOUISIANA

**ORDER ON
MOTION TO RECUSE JUDGE LORI A. LANDRY AND
INCORPORATED MEMORANDUM IN SUPPORT**


Having considered above referenced Motion;

_____ **IT IS ORDERED** that the Hon. Lori A. Landry is hereby recused from the above referenced matter and that this matter be re-allotted to another judge.

OR

 **IT IS ORDERED** that this matter be referred to a hearing before a randomly-allotted judge; thus —

_____ **IT IS ORDERED** that a hearing on the State's Motion to Recuse Judge Landry is hereby set for a hearing before the Hon. Gregory Auer on October 11, 2019 at 9:00 o'clock, AM / PM.

 9/17/19 2:53
The Hon. Lori A. Landry
16th Judicial District Court Judge

Please notify:

District Attorney

Harold Register
P.O. Box 2473
Lafayette LA 70502

FILED
2019 SEP 17 PM 1:38
CLERK OF COURT
PARISH OF IBERIA, LA