

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. LD-2024-0014

IN THE MATTER OF
ANNA BARBARA HANTZ MARCONI, ESQUIRE

MOTION TO RECUSE CHIEF JUSTICE GORDON MACDONALD

Associate Justice Anna Barbara Hantz Marconi, through undersigned counsel, hereby moves for the recusal of Chief Justice Gordon MacDonald, for the reasons set forth below.

1. Anna Barbara Hantz Marconi is an Associate Justice of this Court.
2. Justice Hantz Marconi was placed on administrative leave by the Court on July 25, 2024.
3. On October 16, 2024, New Hampshire Attorney General John Formella obtained indictments against Justice Hantz Marconi from a Merrimack County Grand Jury, in *State of New Hampshire v. Anna Barbara Hantz Marconi*, no. 217-2024-CR-01167.
4. On October 17, 2024, this Court ordered that its “July 25, 2024 order concerning the period of Associate Justice Anna Barbara Hantz Marconi’s administrative leave is extended pending further developments in that case and any other proceedings related to the conduct at issue.”
5. Justice Hantz Marconi did not commit any crime. She is innocent. She denies the allegations in the indictments. However, during the pendency of the criminal case, she is not opposing the Attorney Discipline Office’s recommendation that her right to practice law be suspended.
6. However, because Supreme Court Rule 21A requires that the issue of recusal be raised promptly, Justice Hantz Marconi is required to file this motion.

7. Justice Hantz Marconi moves to recuse Chief Justice Gordon MacDonald because, upon review of the indictments, it is evident that Chief Justice MacDonald is a material witness in the criminal case.

8. Under Supreme Court Rule 21A, a motion for recusal must state the factual and legal basis for the motion, state when the moving party became aware of the grounds for the motion, be filed in a timely manner, and be verified by the moving party.

9. The grounds for recusal are that Chief Justice MacDonald is a material witness in the criminal case against Justice Hantz Marconi.

10. Justice Hantz Marconi is accused of meeting with Governor Christopher Sununu on June 6, 2024. In connection with that meeting, Attorney General John Formella claims that Justice Hantz Marconi committed the crimes of Attempt to Commit Improper Influence, Criminal Solicitation of Improper Influence, Official Oppression, Criminal Solicitation of Official Oppression, Obstructing Government Administration, and Criminal Solicitation of Misuse of Position.

11. Justice Hantz Marconi did meet with Governor Sununu on June 6, 2024. The meeting was entirely lawful and proper. One of the key facts demonstrating that the meeting was lawful and proper is that Justice Hantz Marconi communicated with Chief Justice MacDonald prior to meeting with Governor Sununu. Justice Hantz Marconi explained to Chief Justice MacDonald that she was considering requesting a meeting with the Governor. The Chief Justice's response was, "I think you can do that – You are a constituent and have concerns." Justice Hantz Marconi understood this comment to confirm her view that she had the right to seek to address the Governor, just as any other citizen would have that right. This is Justice Hantz Marconi's recollection. She verifies these facts by her attached affidavit.

12. The New Hampshire Constitution provides, in part, that it “is essential to the preservation of the rights of every individual, [her] life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice” and therefore that it “is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit.” N.H. Const. pt. I, art. 35. “The Code of Judicial Conduct reflects this guarantee.” *State v. Ayer*, 150 N.H. 14, 35 (2003).

13. A judge should recuse himself if he is interested in the case. *See Moses v. Julian*, 45 N.H. 52 (1863).

14. The New Hampshire “Code of Judicial Conduct requires disqualification of a judge in a proceeding in which the judge’s impartiality might reasonably be questioned and to avoid even the appearance of impropriety.” *State v. Whittey*, 149 N.H. 463, 465 (2003) (quoting *State v. Bader*, 148 N.H. 265, 268 (2002)). *See* Sup. Ct. R. 38, Canon 2.11.

15. Circumstances where a judge’s impartiality might reasonably be questioned and where a “judge shall disqualify himself” include a situation where the “judge knows that the judge...is...likely to be a material witness in the proceeding” or when the “judge...was a material witness concerning the matter.” Sup. Ct. R. 38, Canons 2.11(A)(2)(d), (A)(5)(c).

16. Beyond the specific situations described in Canon 2.11, appearances of impropriety also require a judge’s disqualification. *Whittey*, 149 N.H. at 465. *See also Bader*, 148 N.H. at 268. An appearance of impropriety “is determined under an objective standard, *i.e.*, would a reasonable person, not the judge herself, question the impartiality of the court.” *Blevens v. Town of Bow*, 146 N.H. 67, 69 (2001) (quoting *Taylor-Boren v. Isaac*, 143 N.H. 261, 268 (1998)). “The test for an appearance of partiality is an objective one, that is, whether an objective, disinterested observer, fully informed of the facts, would entertain significant doubt that

justice would be done in the case.” *Id* (quoting *Taylor-Boren*, 143 N.H. at 268).

17. Chief Justice MacDonald is likely to be called as a witness by either Justice Hantz Marconi or Attorney General Formella in the criminal case or in related matters, including matters before this Court.

18. Justice Hantz Marconi raises the issue of recusal in a timely manner. Until the proceeding initiated by the Attorney Discipline Office yesterday, October 22, 2024, there was no matter docketed at this Court in which Justice Hantz Marconi was a litigant. In addition, Attorney General Formella’s indictments were not returned until October 16, 2024. Justice Hantz Marconi and counsel are immediately notifying this Court, today, October 23, 2024, of the grounds for recusal of Chief Justice MacDonald. Justice Hantz Marconi certifies that she had no opportunity to notify the Court of the recusal issue prior to now. In short, this motion is timely.

19. Justice Hantz Marconi verifies the facts in this motion by her attached affidavit.

20. Considering these circumstances, Chief Justice MacDonald is required to recuse himself from this and related matters.

21. General Counsel Brian Moushegian of the Attorney Discipline Office states that he takes no position on this motion.

WHEREFORE, Justice Anna Barbara Hantz Marconi respectfully requests that Chief Justice Gordon MacDonald be recused from this and all related matters.

October 23, 2024.

Respectfully submitted by
Counsel for Justice Anna Barbara
Hantz Marconi

/s/ Richard Guerriero
Richard Guerriero
N.H. Bar # 10530
Lothstein Guerriero, PLLC
Chamberlain Block Building
39 Central Square, Suite 202
Keene, NH 03431
(603) 352-5000
richard@nhdefender.com

Oliver Bloom
N.H. Bar #277555
Lothstein Guerriero, PLLC
39 Central Square, Suite 202
Keene, NH 03431
(603) 352-5000
oliver@nhdefender.com

CERTIFICATE OF SERVICE

General Counsel Brian Moushegian of the Attorney Discipline
Office is a registered e-filer in this matter and will receive a copy of this
motion through the e-file system.

October 23, 2024.

/s/ Richard Guerriero
Richard Guerriero

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

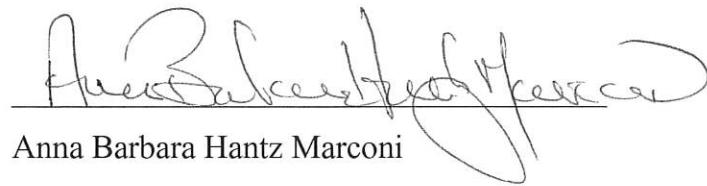
No. LD-2024-0014

IN THE MATTER OF
ANNA BARBARA HANTZ MARCONI, ESQUIRE

AFFIDAVIT OF ANNA BARBARA HANTZ MARCONI

Anna Barbara Hantz Marconi, known to me or proven to be the same, personally appeared before me and affirmed under penalty of perjury that the facts stated in the foregoing motion are true and correct to the best of her knowledge, information, and belief.

October 23, 2024, at Exeter, New Hampshire.



Anna Barbara Hantz Marconi

Norma Jean Moreau
Justice of the Peace/Notary Public

My Comm. Expires: 11-2-2025