

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

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|-------------------------------|---|---------------------------|
| (1) CHRISTOIPHER BARNETT |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. 18-CV-64-TCK-FHM |
| v. |) | |
| |) | |
| (1) HALL ESTILL |) | |
| GABLE, GOLDEN & NELSON, P.C.; |) | |
| |) | |
| (2) J. PATRICK CREMIN; |) | |
| |) | |
| (3) JOHNATHAN L. ROGERS, |) | |
| |) | |
| and |) | |
| |) | |
| (4) UNIVERSITY OF TULSA, |) | |
| A PRIVATE UNIVERSITY, |) | |
| |) | |
| Defendants. |) | |

PLAINTIFF’S MOTION TO RECUSE

COMES NOW, the Plaintiff Christopher Barnett and hereby submits his motion to recuse. In support thereof, Plaintiff asserts the following:

1. That this is a civil action wherein Tulsa University (TU) is a Defendant.
2. That in the case of Ross v. University of Tulsa, OKND case 14-CV-484 the Plaintiff therein requested recusal against TU. See Ross [Doc. 332], attached hereto as Exhibit 1.
3. The reason for the recusal request in Ross was the apparent large donation in the name of this Court and his wife between \$100,000 and \$499,000. See Ex. 1.

4. On March 17th 2017, this Court in the Ross matter entered an Opinion and Order. See Opinion and Order of March 17th 2017, attached hereto as Exhibit 2. The Court denied the recusal request on jurisdictional grounds but clarified the specifics surrounding the recusal request. Id. The Court explained: "In 2011, my wife made a gift to TU, her alma mater, in the form of a single-payment life insurance policy. She purchased the life insurance policy for approximately \$16,000, and it is payable to TU in the amount of \$100,000 upon her death. My wife purchased the policy with her separate funds, and the gift does not appear on my personal tax return." Id. at p. 2.
5. That in addition to the donation in the name of Judge Kern and his wife, the Chapman Legacy Society has announced the "Jeanette Headington Kern Endowed Scholarship for Student-Athletes." See Exhibit 3. In the announcement of the endowed scholarship, TU described Jeanette Kern and "her husband, Terry C. Kern, have generously supported both academics and athletes at TU...." Id. Additionally, TU announced that "TU has acknowledged the extraordinary and inspired philanthropy of Jeanette and Terry Kern...." Id.
6. In addition to the above, TU has filed a motion for protective order herein. [Doc. 14]. Attached as exhibits were disparaging statements made by Plaintiff as to both Judge Dowdell and this Court. Obviously, Plaintiff making the statements is an issue created by him and ordinarily a party

cannot create his own recusal. However, the problem is not him speaking it as it is highly unlikely the Court would have perused Plaintiff's Facebook or Website. The problem is TU bringing it to the attention of the Court in the form of a request for a gag order and also poisoning the well. There was no reason to bring the statements made by Plaintiff to the Court's attention other than to besmirch Plaintiff to the Court. The Undersigned does not share the opinions made by Plaintiff regarding this Court or the Honorable Judge Dowdell.

7. That the undersigned has been an attorney since 1999 and has been practicing in this district since 2003 and has had numerous cases with this Court and has never perceived this Court to be biased or prejudicial in any respect. This request is made based on the appearance to a reasonable person and not based on any actual bias.

BRIEF IN SUPPORT

RECUSAL IS APPROPRIATE IN THIS CASE

Plaintiff is seeking recusal under 28 U.S.C. § 455. This section provides in part: Any ... Judge ... of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). In Nichols v. Alley, 71 F. 3d 347 (10th Cir. 1995) the Court stated:

"In order to 'promote public confidence in the integrity of the judicial process,' the statute was broadened in 1974 by replacing the subjective standard with an

objective test. [citing Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 858 n. 7 1988.]. Nichols 71 F. 3d at 350. The issue is whether “a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality.” Id. [Internal citations omitted]. Thus, if a reasonable person would question the Judge’s impartiality, recusal is proper. See Franks v. Nimmo, 796 F 2d 1230, 1234 (10th Cir. 1986). The appearance of bias, not actual bias is the relevant inquiry. See Uleky v. United States, 510 U.S. 540, 548 (1994).

In this case, the donations as described by TU create the appearance of bias. Specifically, the documents prepared by TU announced the donation from both this Court and his wife and, although misleading, appears to be a large in-time donation rather than a life insurance policy. Plaintiff is not questioning the Court’s explanation but rather the description given by TU. Further, the endowment announcement describes the donation, again appearing as if a large transfer already occurred, to be extraordinary and inspiring. This combined with the disclosure by TU of disparaging remarks made by Plaintiff creates in the mind of a reasonable person the appearance of partiality. Therefore, recusal is appropriate.

Wherefore, for all the foregoing reasons Plaintiff submits his motion for recusal.

s/ Brendan M. McHugh
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CERTIFICATE OF ELECTRONIC FILING

This is to certify that a correct copy of the above document has been sent via the Court's ECF notification system this 15th day of February 2018 to:

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s/ Brendan M. McHugh

Brendan M. McHugh

