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No. 03-21-00053-CV

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AUSTIN, TEXAS
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JEFFREY D. KYLE
Clerk

In the Court of Appeals for the Third District of Texas at Austin

Mary Louise Serafine,
Appellant

v.

Karin Crump, Presiding Judge of the 250th Civil District Court of Travis County, in her individual and official capacities; Melissa Goodwin, Justice of the Third Court of Appeals, in her individual and official capacities; and David Puryear and Bob Pemberton, formerly justices of the Third Court of Appeals, in their individual and official capacities,
Appellees

From the 345th Judicial District Court of Travis County, Texas,
Hon. Todd A. Blomerth, presiding,
Cause No. D-1-GN-19-002601

APPELLANT'S VERIFIED MOTION FOR DISQUALIFICATION OR RECUSAL

TO THE HONORABLE THIRD COURT OF APPEALS:

Appellant Mary Louise Serafine respectfully asks that Chief Justice Byrne and Justices Goodwin, Triana, and Baker disqualify or recuse themselves from the above case. In addition, the Third Court as a whole is

disqualified, for the reasons below. Appellant invokes Texas Rule of Appellate Procedure 16.2(b).[1]

This motion is partly opposed and partly unopposed, to the extent described in the Certificate of Conference.

Simultaneously with this motion, Appellant files a motion to transfer this case from the Austin Court of Appeals to the Beaumont Court of Appeals.[2] That motion contains a detailed section entitled "Background," which is incorporated herein by reference, including Exhibits 3 and 4 described therein.

Grounds for disqualification or recusal are that individual justices sitting or recently sitting on the Third Court have an interest in the outcome of the appeal or are themselves parties to the appeal. In addition, certain justices should recuse to dispel the appearance of impropriety.

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[1] Tex. R. App. P. 16.2(b) provides:

> (b) Decision. Before any further proceeding in the case, the challenged justice or judge must either remove himself or herself from all participation in the case or certify the matter to the entire court, which will decide the motion by a majority of the remaining judges sitting en banc. The challenged justice or judge must not sit with the remainder of the court to consider the motion as to him or her.

[2] *See* Appellant's Verified Motion to Transfer Case No. 03-21-53-CV to the Beaumont Court of Appeals, filed March 1, 2021.

Timeliness of this motion

This motion is proper at this time because the critical events occurred recently, on or about December 30, 2020 and January 1 and January 8, 2021. This motion is filed before the due date of opening briefs in this case.

Verification

All facts stated in this document are verified by Appellant's attached declaration. Appellant maintains on file all relevant documents mentioned here or relevant to the matter, and will produce them on request of any court.

ARGUMENT

A judge is disqualified from sitting in judgment when the judge has an interest, including a personal interest, in the subject matter of the case, Tex. Const. art. V, §11, or when the judge is related to a party in the suit within the third degree. *Id.* "Every Texas Constitution has provided that 'No judge shall sit in any case wherein the judge may be interested....'" *Tesco American, Inc. v. Strong Industries, Inc.*, 221 S.W.3d 550, 551-52 (Tex. 2006) (Brister, J.). Certainly, if a judge is disqualified by being related to a party, a judge is also disqualified by *being* a party.

Moreover due process—under both the Texas Constitution and the U.S. Constitution—guarantees a party an impartial and disinterested tribunal in civil cases. *Metzger v. Sebek*, 892 S.W.2d 20, 37 (Tex. App.—Houston [1st Dist.] 1994, writ denied); *Gibson v. Berryhill*, 411 U.S. 564, 578-79 (1973) (noting that bias derives from either "prejudgment of the facts or personal interest....")

The following describes the specific disqualifications or recusals.

It should be noted that opposing counsel would not be opposed to a request by Appellant that Justices Triana, Baker or Goodwin not sit on the panel in this case.

Justice Melissa Goodwin is one of the justices who, in the prior appeal of the instant case, engaged in the malfeasance that made necessary Serafine's 1983 action against her and then-Justices Puryear and Pemberton. She is disqualified because she directly litigated against Serafine with the intent—successfully executed—to engineer a fraudulent "vexatious litigant" finding against Serafine during only the past few months—from October, 2020, culminating in the vexatiousness order of January, 2021. Goodwin then litigated in the trial court to keep the appeal of Serafine's alleged vexatiousness before Goodwin's own court. She worked to defeat

Serafine's motion to change venue to a neutral county and appellate district. Goodwin's briefs throughout the 1983 actions show overt *animus* toward Serafine in the form of written *ad hominem* attacks and false statements, at one point degenerating into name-calling ("sore loser Serafine...."). This conduct disqualifies her from anything having to do with Serafine, because Goodwin cannot possibly be impartial and would not appear impartial to a reasonable person. She is ***interested*** in the outcome of this case because she has litigated intensely to prevent it from providing the protection for due process that the history of *Serafine v. Blunt* shows was warranted. A party-movant cannot sit in judgment of her own motion.

Justice Thomas Baker *and* ***Justice Gisela Triana*** of the Third Court are disqualified for the same reason as Justice Goodwin, notwithstanding that Justices Baker and Triana were movants against Serafine only in their official capacity and by operation of law.[3] *See* Fed. R. Civ. P. 25(d); Fed. R. App. P. 43(c)(2); Tex. R. App. P. 7.2(a). There is no allegation that they directly litigated against Serafine. These rules operate for the policy reason that government should not escape accountability by an official's personal

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[3] Neither Justice Puryear (leaving the Third Court in January, 2019), nor Justice Pemberton (leaving the Third Court around September or October, 2018) have made any attempt on that basis to be dismissed from the suit.

movements in and out of office. Counsel for Defendants Puryear and Pemberton are apprised of this issue, but Puryear and Pemberton have remained in charge of the litigation. Thus, Justices Baker and Triana are ***interested*** in the appeal because they are movant/appellants in their official capacity.

Chief Justice Darlene Byrne just became chief justice of the Third Court on January 1, 2021. Serafine did not name her as a defendant in Serafine's 1983 case. But while on the Travis County bench, then-Judge Byrne acted jointly with Judge Crump, in the original *Serafine v. Blunt* case, to deny due process to Serafine. Her purpose was not merely to shield one of Serafine's party-opponents—a local company—but also to shield her spouse (then the company's outside counsel or former counsel) from any suggestion of being implicated in his clients' activities. Then-Judge Byrne's involvement is briefly described in the trial court petition filed in this case.[4] An abbreviated explanation is given here.

The company in question and its owners were defendants in Serafine's original suit, *Serafine v. Blunt*, the case in which judicial malfeasance

[4] The 1983 petition is attached here as Exhibits 3 and 4. *See* Ex. 3, Original Petition at ¶27(d). *See also* Ex. 4, Supplement to Petition at ¶¶23, 24, 26, 29.

occurred that Serafine attempted to correct with the instant 1983 action.[5] At deposition, the company's employees testified, in Serafine's view, to a three-tiered scheme of independent contractor fraud. Low level workers were IC's of other employees, who were IC's of other employees, who were IC's of the company, which paid all of them. Such arrangements are a type of tax fraud—often marketed by lawyers as tax shelters—but were relevant in the instant case to the issue of who was liable for Serafine's damages.

To protect itself from further discovery by Serafine, the company proceeded to file a motion that no one would file in a fair court: *A year before trial, contrary to the scheduling order that had already been signed by another judge, the motion asked that Serafine be barred entirely from taking further discovery; but the company's discovery would be unlimited.* There was no suggestion of abuse of witnesses or impropriety by Serafine; it was a bald termination of discovery a year before trial. This motion was set before Judge Byrne. The judge's spouse, Dan Byrne, and his firm, were outside counsel to the company, or at least former counsel, as Serafine then knew. Significant circumstantial evidence suggested that Judge Byrne had

[5] Serafine sued the company, Viking, in Cause No. D-1-GN-13-4023, which was consolidated into the main case, the trial court case underlying this appeal, Cause No. D-1-GN-12-1270.

been contacted *ex parte* before the hearing and was intending to grant the motion. She opened the hearing by suggesting no reporter be present. Serafine refused, so the reporter took down the transcript. The outcome of the hearing and its aftermath are less important than the circumstantial evidence that (1) the judge had been contacted *ex parte;* and (2) the outcome had been predetermined to be a grant of the motion.[6] Serafine was prevented from raising objection to these events, because evidence that any hearing had taken place before Judge Byrne completely disappeared. The court administrator did not have any. The notice of hearing did not mention Judge Byrne. The reporter emailed Serafine that no transcript existed. Years later it would develop that the transcript had been taken down and in fact was in existence the entire time. Serafine is in possession of it today.

To Serafine's surprise, the final judgment by *Judge Crump* included an order sanctioning Serafine $10,000 for raising the independent contractor issue in her amended petition—*after* the company's deposition testimony had proved it. Tellingly, Judge Crump's sanctions order discoursed at length about independent contractors in order to accomplish its real purpose:

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[6] Eventually another judge, not Byrne, effectively granted the company's relief, still without reason.

to exonerate the company (again, Dan Byrne's client) of possible independent contractor fraud and to mitigate the deposition evidence of it in the record. The order proclaimed that "hiring of independent contractors is commonplace and a legally approved business practice in Texas."[7] Therefore, the order mandated, Serafine was sanctioned for making IC-related allegations in her amended petition. On appeal, Justices Goodwin, Puryear, and Pemberton affirmed the sanction by employing false statements, by making vague claims that they found "ample" evidence in the record to support Crump's findings, and with doctrinal gymnastics. In reality, there was no evidence in the record—anywhere, as computer analyses showed—that supported Crump's purported findings.

Serafine self-reported this sanction to the bar disciplinary committees of New York, California, and the District of Columbia, where she is a member. (Texas would not take a self report.) Each of the three investigated independently of the others, including review of record documents—a process that altogether took three years. None of the bars found wrong-doing by Serafine or took discipline against Serafine in any

[7] The public record shows that the company's principal, Dan Byrne's client, had settled an insider trading suit with the SEC only a few years before, so probably could ill afford to leave his employees' testimony uncontroverted.

way.

Crump's sanctions against Serafine entered with no notice, no motion, and no hearing. This was necessary to their purpose of exonerating the company because if there *had* been a hearing, Serafine would have called the deponents and proved up the scheme. But the order by Crump—and the published opinion of Justices Goodwin, Puryear, and Pemberton—falsely conveyed that a motion and/or hearing *had* been held. This is triple malfeasance. They conveyed that there was a motion or hearing when they knew there was not; the purpose of the sanction was to provide cover for a party related to a judge, Judge Byrne; and a $10,000 sanction was baselessly imposed on an innocent lawyer, which must be reported on any bar or *pro hoc* application in the future.

These events are only one reason why Serafine brought the 1983 action for denials of due process against jurists Crump, Goodwin, Puryear, and Pemberton. Later in that 1983 litigation, *Judge Crump* filed motions repeatedly to prevent *Judge Byrne's* court reporter from being deposed. The aim of shielding the reporter was to prevent proof of the connection between the baseless, IC-related sanction exonerating the company, and then-Judge Byrne.

Chief Justice Byrne contributed to the troubled, problematic history of the *Serafine v. Blunt* case underlying this 1983 action. She is disqualified from ruling on anything related to Serafine or this case.

The Third Court of Appeals is disqualified because a suit under section 1983 against a judge in his official capacity "is not a suit against the official but rather is a suit against the official's office." *Heckman v. Williamson County*, 369 S.W.3d 137, 158 (Tex. 2012). The "office" here is the Third Court. If the 1983 action were successful, the relief would be binding on the Third Court as a whole. Thus the Third Court is disqualified.

CONCLUSION

For the above reasons, the Third Court of Appeals and the aforementioned justices are disqualified or should recuse in the instant case.

Respectfully submitted,

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Attorneys for Plaintiff

CERTIFICATE OF CONFERENCE

On March 1, 2021, I conferred by email with opposing counsel for all parties. Although Ms. Corbello believes that this motion is unnecessary or premature before the panel is designated, she would not be opposed to a request by Appellant that Justices Triana, Baker or Goodwin not sit on the panel hearing this case. She is, however, opposed to an attempt to remove Chief Justice Byrne from hearing the appeal. Mr. Nelson defers to Ms. Corbello on these issues. Both counsel oppose a transfer to a different court.

CERTIFICATE OF SERVICE

I certify that on March 2, 2021, I served the foregoing document on the parties below through the Court's electronic filing system.

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/s/ Mary Lou Serafine
Mary Louise Serafine, State Bar No. 24048301

DECLARATION OF MARY LOUISE SERAFINE

STATE OF TEXAS §
COUNTY OF TRAVIS §

1. My name is Mary Louise Serafine. I am over 18 years of age. My date of birth is [available but redacted for public dissemination].

2. I live in Austin, Texas, in Travis County. My office address is Mary Louise Serafine, Attorney & Counselor at Law, P.O. Box 4342, Austin, Texas 78765. My residential address is [available but redacted for public dissemination].

3. I am the plaintiff in *Serafine v. Crump et al.*, Cause No. D-1-GN-19-002601, in Travis County District Court. I also act as co-counsel with Mr. John W. Vinson representing the plaintiff.

4. This case arose out of malfeasance that occurred in an earlier case where I am the counter-defendant, appellant, and cross-appellee. That case is *Serafine v. Blunt et al.*, Cause No. D-1-GN-12-001270 in the trial court, case No. 03-20-294-CV in the court of appeals.

5. In the aforementioned *Blunt* case, Rob Hargrove of Hays & Owen was initially my attorney in the trial court case. Ray Bass was my attorney from 2012 until his illness and passing in 2016. Thereafter I was advised by paid consulting counsel.

6. I have carefully read and reviewed the foregoing document, I have carefully read and reviewed the foregoing document, including its footnotes.

7. All of the factual statements in the document are known to me, based on my direct, personal knowledge, and are true and correct.

8. Where I have stated a generalization or conclusion, it is based on evidence in my possession or significant circumstantial evidence known to me.

9. Where I have stated a belief, it is clear from the context, and in such cases the statement is my genuine belief.
10. I am personally familiar with the prior events and related cases mentioned in this document, because I was directly involved.

11. I am an experienced attorney admitted to state and federal courts in California (licensed since 1992 but voluntarily inactive at this time) and Texas (licensed since 2005). I am also licensed in New York and the District of Columbia.

12. The bulk of my legal experience has been in California. I graduated from Yale Law School and hold the Cullen Prize from that school.

I declare under penalty of perjury that the foregoing facts are true and correct.

Executed in Travis County, State of Texas on March 1, 2021.

Mary Louise Serafine

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Status as of 3/3/2021 10:11 AM CST

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