

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

JOHN PARSONS,

Plaintiff,

CASE NO. 16-2017-CA-001263-XXXX-MA
DIVISION CV-E

vs.

CITY OF JACKSONVILLE, FLORIDA,
a municipal corporation and political
subdivision of the State of Florida,

Defendant.

**PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION FOR DISQUALIFICATION OF TRIAL JUDGE**

Plaintiff, JOHN PARSONS, responds in opposition to Defendant's Motion for Disqualification of Trial Judge filed April 3, 2017 (Defendant's "Motion"). The Motion should be denied pursuant to Rule 2.330, Florida Rules of Judicial Administration, because, on its face, it is both legally insufficient and untimely.

PRELIMINARY STATEMENTS

1. As an initial matter, the Motion identifies no disqualifying relationship between Judge Soud and the Plaintiff, or between Judge Soud and any attorney for Plaintiff. Moreover, the Motion identifies no disqualifying relationship between Judge Soud and **any person** in connection with **the matter before the Court**, which is the validity of the HRO based on the process of its adoption by the Jacksonville City Council.¹

2. Instead, the Motion flounders about for rationale, ultimately betting on two relationships as ostensible grounds for disqualification:

¹ See Complaint for Declaratory and Temporary and Permanent Injunctive Relief (the "Complaint"), ¶ 1; Plaintiff's Motion for Summary Judgment, ¶ 1. Unless otherwise indicated, all capitalized terms used herein have the meanings ascribed to them in the Complaint.

- Judge Soud’s relationship with his mother, Ginger Soud; and
- Judge Soud’s relationship with his church, First Baptist Church of Jacksonville.

Neither of the identified relationships, however, are disqualifying, and the City engages in fact contortion and misrepresentation to make something out of nothing. Moreover, both relationships were known to the City when the Complaint was filed, leaving no excuse for filing the Motion **more than thirty days later**, and after the City’s Motion to Dismiss and Plaintiffs’ Motion for Summary Judgment had been filed and set for hearing.²

**THE MOTION IS LEGALLY INSUFFICIENT ON ITS FACE
BECAUSE THE ALLEGED RELATIONSHIPS ARE NOT DISQUALIFYING**

3. A legally sufficient motion to disqualify “must contain an actual factual foundation for the alleged fear of prejudice. A mere subjective fear of bias will not be legally sufficient; rather, the fear must be objectively reasonable.” *Kline v. JRD Mgmt. Corp.*, 165 So. 3d 812, 813 (Fla. 1st DCA 2015). The City’s Motion contains no sufficient factual foundation, and makes no objectively reasonable case for disqualification.

4. With respect to Judge Soud’s mother, the Motion falls far short of establishing any legally cognizable grounds for disqualification. The Motion shows no identifiable economic or legal interest of Ms. Soud that could be substantially affected by this case. The Motion does not contain a single allegation of involvement by Mrs. Soud with the Plaintiff, or in the filing or maintenance of the lawsuit, and does not contain any allegation that Mrs. Soud could receive or lose any remuneration, office, position, or other benefit depending on the outcome of the lawsuit. Rather, the Motion’s allegations and ostensibly supporting exhibits point only to Mrs. Soud’s advocacy against adoption of the HRO, as a private citizen, on public policy grounds, and outside

² The City’s assertion that the Motion “is being filed before any proceedings requiring a ruling from the presiding judge have occurred” (Mot., ¶ 3) is specious in light of the fact that it was filed ten days after two dispositive motions were filed and set for hearing.

the courts. Given that the issue before the Court is the validity of the HRO based on the process of its adoption by the City Council, Mrs. Soud's interest in this case is no different from the interest of every resident of the City in the Council's compliance with the legal procedures for adopting ordinances.

5. Because the Motion fails to show any disqualifying interest of Mrs. Soud in this case, any relationship shown between Mrs. Soud and the undersigned counsel is irrelevant. To be sure, the Motion pretends a "close relationship between Plaintiff's counsel and Judge Soud's mother on a matter that is pending before Judge Soud" (Mot., ¶ 7), but refutes itself by showing advocacy by Mrs. Soud only against adoption of the HRO, and not advocacy on the matter before the Court—the validity of the HRO as enacted. Furthermore, the relationship the City purports to allege in the Motion is discreditable on its face:

a. The City variously alleges a "close business relationship between Ginger Soud and Plaintiff's counsel Roger K. Gannam," "opposing counsel's business interests with Mrs. Soud," and, "the two were joint officers in a common business." (Mot., ¶ 30.) In support of these allegations, however, the City points only to two corporate filings, which contradict and negate the City's allegations, as they show only that Ginger Soud and the undersigned were both directors for a Christian nonprofit—not a business—and not more recently than 2014.³ (Mot., ¶ 7, Ex. D.)

b. The City also variously alleges the undersigned's "previously being a legal advisor to Mrs. Soud," and, "it appears that Mr. Gannam has personally served as a legal expert for Mrs. Soud." (Mot., ¶ 30.) In support of these allegations, however, the City

³ Omitted from the City's Motion is the narrative-killing fact that the nonprofit was dissolved in 2015, a fact which would have been obvious to the City on its first visit to the Florida Department of State, Division of Corporations Sunbiz.org website, where the City obtained the corporate filings for its Motion Exhibit D.

points to a single, June 2012 press release by the Florida Family Policy Council (FFPC) (Mot., ¶ 6, Exs. B, C), which upon examination contradicts and negates the City’s allegations, revealing how contrived the City’s position is. Contrary to the personal legal relationship alleged by the City, the article merely reports a press conference at which both Ginger Soud and the undersigned spoke:

- “Today FFPC President and General Counsel John Stemberger stood with former Jacksonville City Council President Ginger Soud, legal expert Roger Gannam, Attorney Joey Vaughn and other leaders”
- “Ginger Soud was President of the Jacksonville City Council from 1999 to 2000. John Stemberger is an attorney in Orlando and the President of the Florida Family Policy Council. Roger K. Gannam is a partner with Lindell & Farson, P.A.

(Mot., Ex. C.) Neither their speaking together at a 2012 press conference, nor serving together on a nonprofit board in 2014, evidences a relationship even close to approaching grounds for disqualifying Judge Soud from a case in which Ginger Soud is not a party, and has not been shown to have any legal or economic interest.

6. With respect to First Baptist Church, the Motion likewise falls far short of establishing any legally cognizable grounds for disqualification. First, it is unreasonable to suggest that membership in one of the largest churches in Jacksonville, if not in Florida, disqualifies a judge from hearing a case—not because the church or a church member is a party, but because the case touches the subject matter of one of the church’s moral and Biblical positions. Second, contrary to the City’s bare allegation in the Motion, the invalidation of the HRO **as enacted** is not “an outcome highly and very publicly sought by First Baptist Church and its members.” (Mot., ¶ 31.) Rather, First Baptist Church’s advocacy, as shown on the face of the Motion and its exhibits, has been limited to opposing the enactment of the HRO on public policy grounds. Third, the Motion shows that Judge Soud held the position of Trustee just one time since taking the bench in

2009, and not at any time more recently than 2014.⁴ (Mot., ¶ 11, Ex. H.) Finally, the Motion shows no identifiable economic or legal interest of First Baptist Church that could be substantially affected by this case. The Motion does not contain a single allegation of involvement by First Baptist Church with the Plaintiff, or in the filing or maintenance of the lawsuit, and it does not contain any allegation that First Baptist Church could receive or lose any remuneration or other benefit depending on the outcome of the lawsuit. Rather, the Motion’s allegations and ostensibly supporting exhibits point to First Baptist Church’s advocacy against adoption of the HRO, on policy grounds, as a church, and outside the courts.

THE MOTION IS UNTIMELY ON ITS FACE

7. The Motion is untimely on its face under Rule 2.330(e), which requires a motion for disqualification to be filed “within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion.” This “general rule of timeliness for judicial disqualifications **requires action at the first opportunity to do so** in a proceeding before that judge. [The First DCA has] stated the rule as **requiring action as soon as practicable.**” *Jackson v. Leon County Elections Canvassing Bd.*, No. 1D16–520541, Fla. L. Weekly D2645, 2016 WL 6901444, *1 (Fla. 1st DCA Nov. 23, 2016) (emphasis added) (internal quotation marks and citations omitted). Even where a motion is otherwise legally sufficient, Florida courts have no discretion to grant a disqualification motion that is not timely filed. *See State v. Oliu*, 183 So. 3d 1161, 1163 (Fla. 3d DCA 2016) (“While these allegations give rise to an objectively reasonable fear of bias or prejudice requiring disqualification of the trial judge, **we are compelled to deny** the petition for writ of prohibition **because the motion to disqualify the trial judge was not timely filed.**” (emphasis added)).

⁴ The City’s allegation in paragraph 11 of the Motion that Judge Soud “held executive positions within First Baptist Church” is directly contradicted by the remaining allegations of that paragraph, and by Exhibits H and I.

8. On its face, the Motion shows that the City knew at the commencement of this case (more than thirty days before the disqualification Motion) of Ginger Soud’s public opposition to the HRO, even her appearance “at a press conference on the steps of City Hall shortly before the passage of the 2017 HRO Ordinance.” (Mot., ¶ 4.) The City also knew at the commencement of the case “that Judge Soud and his family are active members of First Baptist Church of Jacksonville, Inc. (“First Baptist Church”), . . . which, along with Mrs. Soud, individually, has consistently opposed the City Council’s efforts to enact the HRO Ordinance and legislation similar to the HRO Ordinance.” (Mot., ¶ 9.) According to the Motion, however, even though these are the very relationships upon which the City ultimately bases its arguments, the City sat on its knowledge until around March 23, remarkably not undertaking to look into the matter until after the filing and setting for hearing of its Motion to Dismiss and Plaintiffs’ Motion for Summary Judgment, twenty-two days after the case was commenced. (Mot., ¶¶ 6-8, 10, 11.) In any event, given what the City admits it knew when the Complaint was filed, the Motion was not filed “at the first opportunity to do so,” or “as soon as practicable,” or otherwise “within a reasonable time.”

9. To be sure, even a cursory examination of the Motion strains credulity as the City overtly attempts to avoid the timeliness issue by feigning to parse what the City admittedly knew when the lawsuit was filed, and what it “discovered” later. But close examination reveals the City overplayed its hand, with a latent but flagrant misrepresentation to the Court. Specifically, the City admits to being “generally aware” of Judge Soud’s relationship with First Baptist Church, and the Church’s consistent opposition to the HRO. (Mot., ¶ 9.⁵) The misrepresentation: “Of note,

⁵ In an obvious typographical error, the City cites to “Exhibit G” in support of its Motion paragraph 9, but Exhibit G is the petition described in the subsequent paragraph 10. (*See infra*, note 6.) Exhibit F, not cited in any other paragraph of the Motion, was apparently intended to support paragraph 9, as it contains three articles pointing to the involvement of First Baptist Church and Ginger Soud in opposing the HRO (including two articles printed on March 20, 2017, fourteen days before the Motion was filed).

undersigned counsel learned for the first time **after March 24, 2017** that First Baptist Church specifically called upon its members to petition the City Council to oppose the HRO Ordinance in an attempt to lobby the City Council against the legislation.” (Mot., ¶ 10 (emphasis added).) Though not obvious on its face, the misrepresentation comes into sharp focus when the City’s own exhibit containing the referenced First Baptist Church petition is examined, for it was printed by the City on its computers **on March 20, 2017—at least five days before the City’s attorney claims to have first become aware of it.** This excerpt from the first page of the City’s Exhibit G⁶ shows the phenomenon of the time-travelling petition:

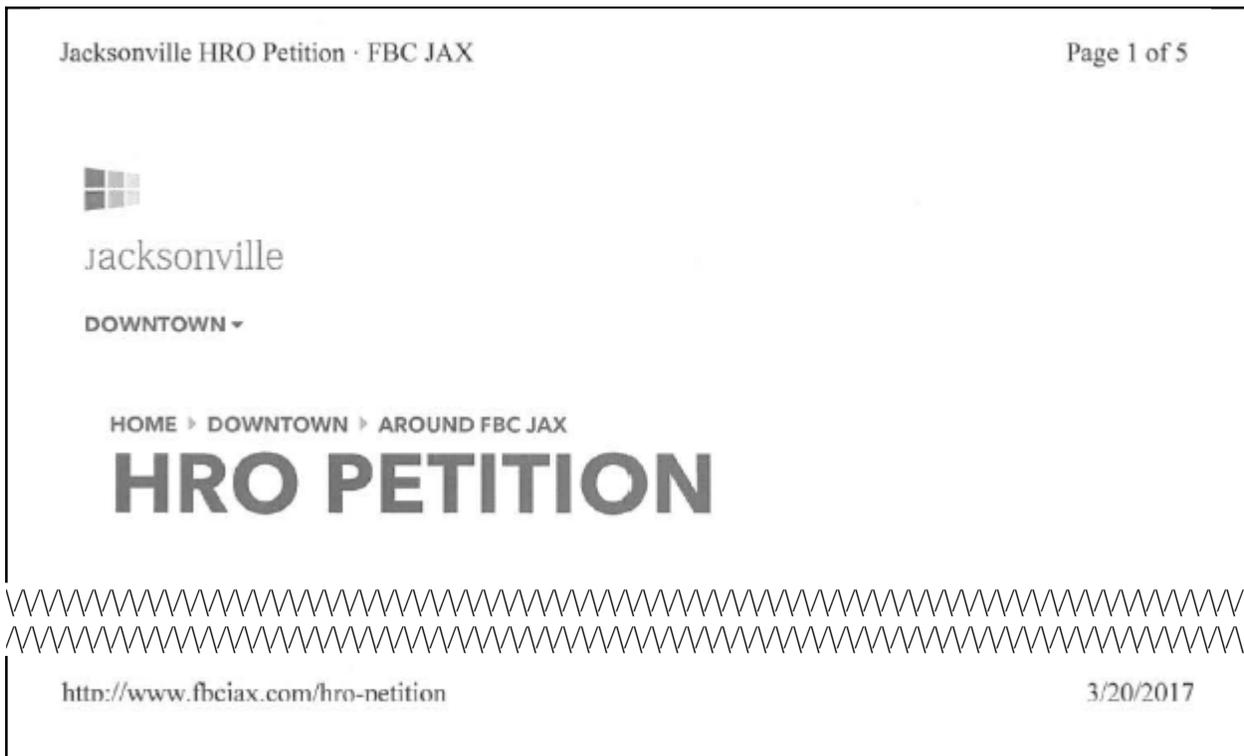


Exhibit G

⁶ In a second obvious typographical error, the City cites “Exhibit H” for the petition described in paragraph 10 of its Motion, but the petition is clearly marked as “Exhibit G” in the attachments to the Motion. Exhibit H, containing various corporate filings of First Baptist Church, is cited, apparently correctly, in support of Motion paragraph 11, though that paragraph also cites to “Exhibits L and M” which are not attached to the Motion.

While the Motion is facially untimely apart from the City's flagrant misrepresentation, the misrepresentation calls into question the veracity of every aspect of the Motion.⁷

10. A trial court possesses the inherent authority to impose the sanction of attorney's fees against a litigant's attorney for bad faith conduct. *See Moakley v. Smallwood*, 826 So. 2d 221, 226 (Fla. 2002). The City's counsel's misrepresentation on a central issue in the Motion easily warrants this sanction.

CONCLUSION

11. For all of the foregoing reasons, the Court should: (a) deny the Motion as untimely on its face, regardless of whether it could otherwise be deemed legally sufficient; (b) deny the Motion as legally insufficient on its face, the Motion having failed to show any sufficient factual foundation, and having failed to state objectively reasonable grounds for disqualification; (c) pursuant to its inherent authority to sanction the bad faith conduct of counsel, sanction the City's counsel for the flagrant misrepresentation in the Motion, including by awarding Plaintiff the reasonable attorneys' fees and costs incurred in responding to, and defending against, the Motion.

⁷ Although the HRO opposition activities of the undersigned counsel for Plaintiff outside this lawsuit have no relevance whatsoever to the City's disqualification effort, the City even misrepresents its knowledge of those activities. In paragraph 8 of the Motion, the City alleges, "Subsequent to March 24, 2017, the undersigned counsel discovered that Plaintiff's counsel Roger K. Gannam has personally published articles and rendered legal opinions against the HRO." The City cites Motion Exhibit E in support, which includes a memorandum dated February 20, 2017, authored by Plaintiff's undersigned counsel, purportedly "discovered" by the City's counsel after March 24, 2017. But the identical memorandum is already in the evidentiary record in this case, having been sent to the City's General Counsel on February 22, 2017, and filed in support of Plaintiff's Motion for Summary Judgment. (See Pl. Mot. Summ. J., MSJ Ex. B, ¶ 3 & Ex. 1.) While it is possible that the City's counsel, who is in the same General Counsel's office, did not misrepresent having "discovered" the memorandum only after March 24, and was simply unaware that the memorandum had been in the office of the General Counsel for over a month, the City cannot avoid knowledge of the memorandum as a matter of law, especially given the City's position in its Motion that the knowledge of attorney representatives in the General Counsel's office constitutes knowledge of the City for purposes of the Motion. (Mot., ¶ 25.)

DATED this April 4, 2017.

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of this document has been filed electronically through the Florida Courts eFiling Portal this April 4, 2017, and that the following will receive electronic service of the document:

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