STATE OF SOUTH CAROLINA COUNTY OF HAMPTON	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Renee S. Beach, Phillip Beach, Robin Beach, Savannah Tuten, and Seth Tuten, Plaintiffs, v.	)	CASE NO.: 2021-CP-25-00392
Gregory M. Parker, Gregory M. Parker, Inc. d/b/a Parker's Corporation, Blake Greco, Jason D'Cruz, Max Fratoddi, Henry Rosado and Private Investigations Services Group, LLC, Defendants.	)	**PLAINTIFFS' MEMORANDUM IN SUPPORT OF REQUEST FOR RECUSAL**

At Your Honor's direction Plaintiffs Renee S. Beach, Phillip Beach, Robin Beach, Savannah Tuten, and Seth Tuten provide the following Memorandum in support of Plaintiffs' request and motion that Your Honor recuse himself from further involvement in this matter. The basis for this motion is that Your Honor's current law clerk, Adam Compton, was employed during the pendency of this matter with Deborah B. Barbier, who was and is counsel for the Defendants Gregory M. Parker, Gregory M. Parker, Inc. d/b/a Parker's Corporation ("the Parker Defendants") during the relevant period of time in this case. Mr. Compton's continued employment in Your Honor's chambers creates an appearance of impropriety requiring recusal pursuant to the South Carolina Code of Judicial Conduct.

DISCUSSION

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and

> collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

Preamble, Rule 501, SCACR.

To the public, judges embody the court system. *In the Matter of Reddin*, 111 A.3d 74, 75 (N.J. 2015). "[J]ustice must satisfy the appearance of justice." *Liteky v. United States*, 510 U.S. 540, 565 (1994) (Kennedy, J, concurring) (*citing Offutt v. United States*, 348 U.S. 11 (1954)); *In re Murchison*, 349 U.S. 133, 136 (1955) (same).This tenet must be followed even if the record is lacking of any actual bias or prejudice on the judge's part, and even though this stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weight the scales of justice equally between contending parties. *Bethesda Memorial Hospital v. Cassone*, 807 So.2d 142, 143 (Fla. 4th Dist. Ct. App. 2002). *See also Idaho State Appellate Public Defender v. Fourth Judicial District Court*, 540 P.3d 311, 329 (Idaho 2023) ("[i]n matters of judicial ethics, appearance and reality often converge as one."); *Ex Parte Lewis*, 688 S.W.3d 351, 352 (Tex. Crim Appeals 2024) ("Regardless of any actual bias, a judge may be disqualified due to an appearance of impropriety."); *Kielbania v. Jasberg*, 744 So.2d 1027, 1028 (Fla. 4th Dist. Ct. App. 1997) (appellate court granted writ of prohibition on challenge to judge's refusal to recuse, stating "even though there is no evidence of actual bias, we find that recusal is necessary to satisfy the appearance of justice.").

As the Supreme Court of the United States recently explained:

> An insistence on the appearance of neutrality is not some artificial attempt to mask imperfection in the judicial process, but rather an essential means of ensuring the reality of a fair adjudication. Both the appearance and reality of

> impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself.

Williams v. Pennsylvania, 579 U.S.1, 15-16 (2016). A majority of states, the District of Columbia, and the federal courts all consider whether reasonable minds would perceive that a judge has violated the judicial canons of ethics or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. *Matter of Reddin*, 111 A.3d at 79 (observing in 2015 that this objective standard is applied in 39 states or commonwealths, including South Carolina, federal courts, and the District of Columbia). The *Reddin* court described the test as follows: "Would a reasonable, fully informed person have doubts about the judge's impartiality?" Id., at 81.

As the Missouri Court of Appeals observed:

> [I]n order to promote public confidence in the impartiality of the judiciary, as required by Rule 2, Canon 2A, the Code requires a judge to err on the side of caution by favoring recusal to remove any reasonable doubt as to his or her impartiality. The proposition of erring on the side of caution by favoring recusal is further corroborated by the use of the word "might" in Rule 2, Canon 3 D(1) in the phrase "[a] judge should recuse in a proceeding in which the judge's impartiality *might* reasonably be questioned." [Emphasis by the Court]. As defined in WEBSTER'S NEW WORLD COLLEGE DICTIONARY 859 (3d Ed. 1997), "might" means "expressing esp. a shade of doubt or a lesser degree of possibility."

Robin Farms, Inc. v. Bartholome, 989 S.W.2d 238, 247 (Mo. App. 1999) (emphasis added).

In the federal system, under 28 U.S.C. § 455(a), a judge shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. *U.S. v. Rechnitz*, 75 F.4th 131, 142 (2d Cir. 2023). The Courts evaluate partiality under § 455(a) on an objective basis, so that what matters is not the reality of bias or prejudice but its appearance. *Id.* In making this objective analysis, the Court considers whether a reasonable person, knowing all the facts, would conclude that the trial judge's impartiality could reasonably be questioned. *Id.*, at 142-143. "*In*

close cases, the balance tips in favor of recusal." *Id.*, at 143 (emphasis added). As then District Court Judge J. Michelle Childs noted:

> The Fourth Circuit has recognized that "there is as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is." *Nakell v. Attorney Gen. of N.C.*, 15 F.3d 319, 325 (4th Cir.1994) (citations and quotations omitted); *see also* Code of Judicial Conduct, Canon 3A(2) ("A judge should hear and decide matters assigned, unless disqualified...."). It is clear from this general proposition that a judge may not sit in cases in which his "impartiality might reasonably be questioned." 28 U.S.C. § 455(a); *see also id.* § 455(b) (enumerating circumstances requiring recusal). We are as bound to recuse ourselves when the law and facts require as we are to hear cases when there is no reasonable factual basis for recusal. *See Clemens v. U.S. Dist. Ct.*, 428 F.3d 1175, 1179 (9th Cir. 2005); *Nichols v. Alley*, 71 F.3d 347, 352 (10th Cir. 1995). *If it is a close case, the balance tips in favor of recusal.* Recusal of federal judges is generally governed by 28 U.S.C. § 455. That statute provides that "[a]ny justice, judge, or magistrate 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 the Fourth Circuit, this standard is analyzed objectively by considering whether a person with knowledge of the relevant facts and circumstances might reasonably question the judge's impartiality. *United States v. Cherry*, 330 F.3d 658, 665 (4th Cir. 2003). *For purposes of this statute, the hypothetical "reasonable person" is not a judge, because judges, who are trained to regard matters impartially and are keenly aware of that obligation, "may regard asserted conflicts to be more innocuous than an outsider would*." *United States v. DeTemple*, 162 F.3d 279, 287 (4th Cir.1998). Section 455(a) does not require recusal "simply because of unsupported, irrational or highly tenuous speculation," or because a judge "possesses some tangential relationship to the proceedings." *Cherry*, 330 F.3d at 665 (internal quotation omitted). The Fourth Circuit recognizes that overly cautious recusal would improperly allow litigants to exercise a "negative veto" over the assignment of judges simply by hinting at impropriety. *DeTemple*, 162 F.3d at 287. Recusal decisions under 28 U.S.C. § 455(a) are "fact-driven and may turn on subtleties in the particular case." *Holland*, 519 F.3d at 912. The statute provides a list of specific instances where a federal judge's recusal is mandated, regardless of the perception of a reasonable observer. 28 U.S.C. § 455(b).

Smith v. McMaster, C.A. No. 3:15-cv-0217-JMC, 2015 Westlaw 5178507 (D.S.C. 2015), slip at 2, n. 1 (emphasis added).

The facts in this case demonstrate that Mr. Compton worked in Ms. Barbier's office during the summer of 2023. Ms. Barbier has one other lawyer (Valerie McDonald of Piedmont, South Carolina) and one paralegal who has been with her for five years. https://www.deborahbarbier.com/staff/ During the summer of 2023, Mr. Compton worked in the Columbia office with Ms. Barbier. At the same time, Ms. Barbier represented the Parker Defendants in this matter as well as the substantially related matter in front of Judge Daniel Hall involving the boat wreck in which Mallory Beach died. It strains credulity to believe that Mr. Compton had no contact with any portion of either case while employed with Ms. Barbier. Even so, the appearance to the public is that someone who worked with counsel for the other side is now employed in the judge's chambers.

Further compounding this appearance is the fact that an email was sent to all counsel in this matter under Mr. Compton's signature. While his predecessor may have crafted the email, the appearance of impropriety (sending an email under another person's name) exists. Alternatively, the email contained Mr. Compton's mobile number, which is not something judicial branch IT division usually includes in the auto-generated signature. At bottom, these facts give the appearance to a reasonable third-party observer of a violation of Code of Conduct for Staff Attorneys and Law Clerks, which provides:

> A staff attorney or law clerk *shall disqualify himself* in a matter in which his impartiality might reasonably be questioned, including but not limited to instances where:
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> * * *
>
> (2) * * * a lawyer with whom he previously was associated in private practice, either as lawyer or law clerk, served during such association as a lawyer concerning the matter....

Canon 3E.(2), Rule 506, SCACR (emphasis added). This rule is a mandate – there is no discretion, nor is there a remittal process such as the process found in the Code of Judicial Conduct. *See* Canon 3F., Rule 501. The *appearance* here is that when Judge Morgan hired Mr. Compton, Judge Morgan had his resume and was aware of his past employment experience working with Ms. Barbier. Despite that fact, Mr. Compton was permitted to be actively involved in this case, even if only to send and receive emails related to the matter.

There may be reasonable explanations for all of this, but as set forth above, public confidence in the judiciary demands more. Even in the absence of any evidence of actual bias (and Plaintiffs do not allege such), this creates a case in which the "balance tips in favor of recusal." *E.g. U.S. v. Rechnitz*, 75 F.4th at 143.

The Parker Defendants referenced two cases in the prior hearing. Each is distinct from this case in meaningful ways. In *Simpson v. Simpson*, 377 S.C. 519, 660 S.E.2d 274 (Ct. App. 2008), the accusation was that family court judge Frances Segars-Andrews should have recused herself in a matter in which a partner in Judge Andrews' husband's law firm became a witness. The Court of Appeals concluded the record supported Judge Segars-Andrews' factual findings so as to belie the suggestion of judicial prejudice or actual bias. Here, the appearance of impropriety derives not from some assertion of actual bias evidenced by unsupported factual findings; rather, the appearance derives from Mr. Compton's employment in Your Honor's chambers and *apparent* involvement in this case despite the mandate of Rule 506.

The second case is *Doe v. Howe*, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2005), *cert. denied*. Unlike this case, that case involved an existing law clerk who had an employment application pending with the law firm representing the defendant. Rule 506 does not address this situation. And, as Judge Goolsby explained, "we are not aware of any decision recognizing the

emotional fragility of a litigant as a ground for mandatory disqualification of a trial judge." *Id.*, at 440, 626 S.E.2d at 29. This case does not advance the inquiry before Your Honor.

The issue was raised by Your Honor on the evening of August 14, 2024, when your Honor disclosed to all counsel of record that your new law clerk, Mr. Compton, who started work earlier that day, previously clerked in Debbie Barbier's small law firm last summer when Mrs. Barbier was counsel for the Parker Defendants in the boat crash case and this case. This significant detail was a surprise to the Plaintiffs, although obviously, the Parker Defendants were aware.

Your Honor rightfully brought this issue to light when you inquired from our clients whether they felt comfortable with your Honor continuing this case. Our clients do not feel comfortable and have entertained Your Honor's invitation for your Honor to be recused.

Two hours prior to Your Honor's email advising of the conflict, counsel received an email from what appeared to be Mr. Compton commenting on accessing certain documents in this matter. In the hearing on August 20, 2024, Your Honor informed counsel that you believed your new law clerk did not send the email in question and that it probably came from your previous law clerk. If this email did in fact come from Mr. Compton, as appears by his name and mobile phone number in the signature line, it was a violation of Rule 506. Cannon 3E.(2) Rule 506.

Plaintiffs' initial concerns regarding the appearance of impropriety were centered on the fact that your current law clerk, who is disqualified from this matter under Rule 506, would apparently continue to work in and be present in your chambers throughout this case despite having a clear conflict. The fact that someone other than your current law clerk has access to his

email and your former law clerk has apparently corresponded about this case under your current law clerk's name has created further concerns with the Plaintiffs.

Further raising the appearance of impropriety is the fact that this is not the first time in this case that relationships between a law clerk and defense counsel have been brought into question. Prior to Your Honor's involvement, Rhett Ricard, Esq., as counsel for the Parker Defendants, privately messaged Judge Price's law clerk on Instagram about the appeal in this case. The private communication was not disclosed by Mr. Ricard but luckily it was disclosed to the parties by Judge Price's law clerk, resulting in Judge Price admonishing counsel. The headline on FitsNews read "Parker's Attorney DMs Judge's Clerk Over Instagram About Mallory Beach Case." Against that past indiscretion, known to the Plaintiffs, the current situation shakes their confidence in the judiciary.

Because Your Honor raised this matter *sua sponte*, Plaintiffs were hopeful that a filed motion or memorandum would not be necessary because they believe such a filing detailing these issues will further corrode the public confidence in the integrity and impartiality of South Carolina's legal system.

Canon 3.E., Rule 501, SCACR provides that a judge must disqualify himself where the judge's impartiality might reasonably be questioned. The key word is "reasonably." Your Honor discussed this issue in your "Sworn Statement" as part of your application process before the Judicial Merit Selection Commission:

> Question:
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> If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?
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> Response:

> I believe you have to give deference to the party requesting recusal. My opinion on this issue is that the analysis is an objective one, not a subjective one. In other words, would a reasonable person, after hearing the circumstances, perceive that situation as unfair, thereby necessitating recusal[?] Not whether you personally feel you could be impartial and fair. However, the request must have a reasonable basis and cannot nor should not be a ploy to simply remove me by making up unreasonable and unfounded issues. But before making the decision, you must explain clearly to all of the parties and attorneys the nature of the potential bias and require the attorneys to consult with their respective clients outside your presence. And if you are on the bench, you must leave the bench and the courtroom to allow them to consult. It would not be proper, in my opinion, to remain on the bench in the courtroom while they consult at counsel table. And they must be given as much time as they need and not be rushed. It is an important issue. I feel that if the Judge remains in the courtroom, or gives a time parameter, it is not proper. If, after consultation, all parties and attorneys consent, I would then proceed. However, if there is no consent, then I would recuse myself and grant the motion.

Morgan Sworn Statement, p. 2, ¶ 6. Your Honor did as promised: You disclosed by email that your new law clerk previously worked with Ms. Barbier, and you instructed the parties to "[p]lease advise if anyone has issues or concerns with me going forward with the case." As stated previously, Plaintiffs' counsel consulted with Plaintiffs, who related that they perceive the situation as unfair to them; accordingly, they have instructed counsel not to consent to remittal. This recusal issue which Your Honor raised is not a ploy invented by Plaintiffs to simply remove Your Honor "by making up unreasonable and unfounded issues" as you cited in your Sworn Statement. Instead, the Plaintiffs are "reasonable people" who "perceive the situation as unfair, thereby necessitating recusal," particularly against the backdrop of Mr. Rikard's prior inappropriate communication with Judge Price's law clerk. It is not whether Your Honor "personally feel[s] you could be impartial and fair." Your Honor raised the concern because of the appearance of impropriety, and failing to recuse yourself will further raise an appearance of impropriety.

Canons 1 and 2 under Rule 501, SCACR, highlight the importance of judges promoting public confidence in the integrity and independence of judges. While these Canons were written many years ago, there has never been a more important time in the history of the South Carolina legal system to apply these Canons to protect the legal system from further harm and criticism. Revelations that have come to light over the past five years have caused widespread disillusionment and raised serious concerns about the integrity, fairness, and accountability of the state's legal system. Alex Murdaugh's ability to engage in illegal activities, including stealing millions of dollars from clients, staging his own shooting, and later being convicted of murdering his wife and son, has fueled suspicions that he used his family's power and connections to evade scrutiny for decades. This led to concerns (whether founded or not) that the legal system might protect powerful individuals at the expense of ordinary citizens.

The 2019 boat crash in which Mallory Beach died brought attention to how law enforcement has at times been lenient toward those with money, power, and connections. As addressed in multiple documentaries, Alex Murdaugh and his father, Solicitor Randolph Murdaugh, both interfered in the investigation to protect Paul Murdaugh, the boat's intoxicated driver; conflicts of interest within law enforcement were ignored, and evidence was mishandled and even lost or destroyed, all leading to damaged trust in the system. This is the public perception that serves as a backdrop in this matter.

It is important for the Court to note that this is the reason the Beach family sought counsel in the first place. During the search for Mallory Beach's body, her family asked law enforcement if the family could proceed to the actual spot where the boat came to rest. Law enforcement denied them access and told the family that the scene was secured. Yet Paul Murdaugh's mother and grandfather were allowed unfettered access to the scene. At that point,

the Beach family began to question the integrity of the investigation and the justice system, and for good reason.

The facts that have come to light over the past five years have led to deeper questions about the transparency and accountability within the legal system. Alex Murdaugh's perceived connections to judges, solicitors, and other legal professionals have raised reasonable concerns with the public that powerful individuals receive preferential treatment in the courts.

The Murdaugh case exemplifies the perception that wealth and privilege can skew the legal system in favor of those who hold power. Many South Carolinians and Americans believe that Alex Murdaugh, because of his family's status and connections, was able to get away with his illegal activities that would have led to swift and severe consequences for less privileged individuals. The case has prompted debates about whether South Carolina's legal system operates on a "two-tiered" basis—one for the wealthy and well-connected, and another for everyone else.

Beyond the deaths and crimes directly connected to Alex Murdaugh, his case highlighted the plight of other victims who suffered due to the actions of others within the legal community and the many lives affected by the alleged cover-ups. The lack of immediate justice and the sense that victims were not treated fairly by the system, has deeply shaken public trust in the ability of the legal system to deliver fair outcomes for all citizens.

In recent years, there have been calls for reforms to South Carolina's legal and judicial system. These include demands for stronger oversight of attorneys, more transparency in judicial appointments and decisions, and improved accountability mechanisms for solicitors and judges. Majority Leader Thomas Pope (R-York) held numerous public hearings in 2023 and 2024 aimed at judicial reform, including reforms in the manner in which judges are elected in South

Carolina. The cases described above have galvanized public discussion about the need to address perceived corruption and conflicts of interest within South Carolina's legal institutions.

In addition to regional and statewide media writing countless stories, almost every single national media outlet has covered this story. It has been subject to several documentaries on Lifetime, Dateline, 48 Hours, HBO, Netflix, 20/20, Fox, NBC, and ABC, to name just a few. Multiple books have been written and countless podcasts created. Two local reporters have started two different podcasts, both of which rose to the top of podcast charts and were ranked #1 above all other podcasts. A common theme amongst all of these media outlets in the reporting that has been done is scrutinizing the legal system in South Carolina and shining a light on real and perceived injustices, all reducing the public confidence in the integrity and impartiality of not only the judiciary, but the legal system as a whole.

It is interesting that the Parker Defendants do not agree with the Plaintiffs and are requesting your Honor to continue with this matter, given Defendant Greg Parker's stealth campaign and stance on exposing purported corruption and backroom connections in the South Carolina legal system. Mr. Parker, in an interview with Craig Melvin for a Dateline episode, stated that one of his goals was "puttin' a spotlight on the corruption of South Carolina…"

The Wall Street Journal wrote a front page story on August 13, 2022 titled "A Convenience-Store Magnate, Teen Drinking and a Fatal Boat Crash: The Legal Case Shaking South Carolina." According to the article's author, the Wall Street Journal covered this story at Mr. Parker's request to someone high up at the Wall Street Journal, or as the author put it, the person was "buttonholed at the bar by CEO of Parkers Convenience Stores, Greg Parker…" (Sheheen, Vincent and Lourie, Joel, *"Valerie Bauerlein, Southern Dynasties and the Murdaugh*

Murders", Bourbon In The Back Room, August 29th 2024, bourboninthebackroom.buzzsprouts.com) The article included a noteworthy account from the interview with Mr. Parker, stating "Mr. Parker said he hired people he described as investigative journalists because he was shocked at the incestuousness of the South Carolina legal system, including the scope of the Murdaugh family's influence."

It is important to note that one of the "investigative journalist" working on behalf of Mr. Parker, Gregg Roman, co-produced the Discovery+ documentary "Murdaugh Murders: Deadly Dynasty," in which alleged corruption in the South Carolina legal system is a focus. Mr. Roman also wrote an article titled "Death and Justice: The Murdaugh Family Murders," in which he focused on alleged, or perceived, corruption in the South Carolina legal system, specifically the judiciary as well. Mr. Roman did all of this behind the scenes, without revealing that he was secretly working on behalf of Mr. Parker.

Mr. Parker's significant wealth and influence in this state is important to note. Mr. Parker, even after criticizing our legal system as corrupt and incestuous, hired the most powerful lawyer legislator in our state to try to influence the proceedings and donated significant sums to get legislators to propose laws that benefit Mr. Parker. The impact of his influence cannot be overstated. And the public is watching all of this.

There has never been a more important time for Judges in this state to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and specifically, as stated in the commentary of Canon 2 under Rule 501, SCACR "a judge must avoid all impropriety and appearance of impropriety."

The Murdaugh case, and the fallout from it, has become a symbol of perceived corruption, privilege, and unchecked power within South Carolina's legal system. It has led many residents to question whether the system operates fairly for all, or whether it disproportionately benefits the wealthy and influential. The case has prompted broad calls for reform and a re-examination of how power and accountability function within the state's legal and judicial institutions.

CONCLUSION

Justice must satisfy the appearance of justice, "even if the record is lacking of any actual bias or prejudice on the judge's part, and even though this stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weight the scales of justice equally between contending parties." *Bethesda Memorial Hospital v. Cassone*, 807 So.2d at 143. The request for recusal is not fanciful nor lacking in any basis: It is based upon the appearance of impropriety to reasonable third parties of a law clerk, who previously worked for defense counsel, working in the chambers of the judge assigned to the case, and the appearance that the clerk actually performed work on this case. Both the Code of Judicial Conduct and the Code of Conduct for Law Clerks and Staff Attorney require recusal to serve the public's confidence in the judiciary.

Respectfully submitted,

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