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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In re AMERCO DERIVATIVE
LITIGATION

Case No. CV02-05602
Consolidated with:
(1) Case No. CV02-06331;
(2) Case No. CV03-02486; and
(3) Case No. CV03-02617

This Document Relates to:
ALL ACTIONS

Dept. No. B6

**PLAINTIFFS' MOTION TO DISQUALIFY THE
HONORABLE BRENT T. ADAMS FROM HEARING CASE
IN RE AMERCO DERIVATIVE LITIGATION, CASE NO. CV02-05602**

1 **I. INTRODUCTION**

2 In order to promote public confidence in the independence, integrity, and impartiality of the
3 judiciary, judges in the State of Nevada are required not only to avoid impropriety but the mere
4 *appearance* of impropriety. Disqualification of the Honorable Brent Adams from hearing further
5 matters in this case is necessary to avoid such an improper appearance.

6 In 2008, Judge Adams received \$36,000.00 in campaign contributions from several of the
7 Defendants (including \$10,000.00 from non-party U-Haul International, Inc., a subsidiary of one of
8 the Defendants). Despite Plaintiffs' previous request for reassignment to another judge, neither
9 Defendants nor Judge Adams disclosed these campaign donations to Plaintiffs. As evidenced by
10 Judge Adams' recent recusal in another matter involving significantly smaller campaign
11 contributions (both in absolute dollar amounts and as a percentage of total campaign contributions
12 received in that election cycle), such contributions by a party to this litigation create a sufficient
13 appearance of impropriety to necessitate Judge Adams' disqualification from further hearings in
14 this case.

15 Therefore, in the interest of justice and in order to preserve the public's faith in an impartial
16 judiciary, Plaintiffs respectfully request that Judge Adams be disqualified from further presiding
17 over this matter, and that the case be reassigned to another judge within the Second Judicial
18 District of the State of Nevada.

19 **II. FACTUAL BACKGROUND**

20 On April 7, 2008, Judge Adams issued an order dismissing this litigation for yet a second
21 time in the course of this litigation, this time on the grounds of the *Goldwasser* release and *in pari*
22 *delicto*. (See Affidavit of Christopher T. Heffelfinger In Support of Plaintiffs' Motion to
23 Disqualify the Honorable Brent Adams, dated March 28, 2012 (the "Heffelfinger Aff."), Exh. 4.)

24 Less than two weeks later, several of the Defendants began making significant
25 contributions to Judge Adams' reelection campaign. On April 18, 2008, AMERCO and John
26 Brogan donated \$10,000.00 and \$1,000.00, respectively. On April 22, 2008, John M. Dodds
27 (together with Barbara Edstrom-Dodds) donated \$1,000.00, Five SAC Self Storage Corp. donated
28 \$10,000.00, and E.J. Shoen donated \$1,000.00. On May 13, 2008, James Shoen donated

1 \$2,000.00, and on July 2, 2008, Richard Herrera donated \$1,000.00. (*Id.*, ¶ 6; Exh. 2.)
2 Additionally, non-party U-Haul International, Inc. (a subsidiary of AMERCO) donated \$10,000.00
3 on April 22, 2008. Thus, a total of \$36,000.00 was contributed by Defendants and related entities.

4 Following the donations described above, on June 9, 2008, Judge Adams issued an order
5 awarding costs to defendants and denying Plaintiffs Motion to Retax Costs. (*See Id.* ¶ 12; Exh. 5.)
6 In that order, Charles J. Bayer, John P. Grogan, John M. Dodds, James J. Grogan, Richard Herrera
7 and Aubrey Johnson were awarded costs in the amount of \$14,034.49; AMERCO was awarded
8 costs in the amount of \$27,531.11; the SAC Entities and Mark Shoen were awarded costs in the
9 amount of \$22,593.52; and William E. Carty, Edward J. Shoen and James P. Shoen were awarded
10 costs in the amount of \$30,872.97. (*Id.*)

11 On July 20, 2009, while still unaware of these campaign contributions, Plaintiffs filed their
12 Opening Appellate Brief which, among other things, requested that the matter be reassigned on
13 remand on the grounds that Judge Adams “has prejudged this case.” (*See Id.* at ¶ 13, Exh. 6 at 30.)
14 The Defendants opposed the request for reassignment, but none of the Defendants’ answering
15 briefs mentioned the campaign contributions to Judge Adams. (*Id.* at ¶ 13; Exhs. 7 and 8.)

16 On May 12, 2011, the Nevada Supreme Court reversed Judge Adams’ dismissal of this
17 action but denied Plaintiffs’ request for reassignment, stating: “[A]ppellants fail to cite any basis
18 for disqualification under the Nevada Code of Judicial Conduct, and thus, we conclude that
19 reassignment is not warranted.” (*See Id.* Exh. 9 at 39 n.13.)

20 At no time have Judge Adams or Defendants disclosed to Plaintiffs that the campaign
21 donations described above were made. It was not until March 20, 2012, when Peter Neumann, a
22 local attorney in Reno, brought the donations to the attention of Plaintiffs, that Plaintiffs and their
23 counsel learned of the facts underlying this Motion. (*Id.* at ¶¶ 2-3.)

24 **III. JUDGE ADAMS MUST RECUSE HIMSELF IN ORDER TO AVOID THE**
25 **APPEARANCE OF IMPROPRIETY AND IMPARTIALITY**

26 **A. Disqualification of a Nevada Judge, Generally**

27 Judges in Nevada have an affirmative duty to “promote[] public confidence in the
28 independence, integrity, and impartiality of the judiciary” and, thus, must “avoid impropriety and

1 the *appearance* of impropriety.” Nevada Code of Judicial Conduct (“NCJC”), Rule 1.2 (emphasis
2 added). The “appearance of impropriety” occurs whenever “the conduct would create in
3 reasonable minds a perception that the judge violated [the NCJC] or engaged in other conduct that
4 reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.”
5 *Id.* at Comment 5.

6 To further the public's confidence in the judiciary, Nevada judges are instructed to
7 disqualify themselves whenever their “impartiality might *reasonably be questioned*.” NCJC Rule
8 2.11(A) (emphasis added). This duty is a continuing one, such that a judge should recuse himself
9 “before, during, or, in some circumstances, after a proceeding, if the judge concludes that sufficient
10 factual grounds exist to cause an objective observer reasonably to question the judge’s
11 impartiality.” *United States v. Cooley*, 1 F.3d 985, 992-93 (10th Cir. 1993) (discussing federal
12 analog; cited approvingly by *People for the Ethical Treatment of Animals v. Bobby Berosini, Ltd.*,
13 111 Nev. 431, 436 (1995) (“*PETA*”), 111 Nev. 431, 437, 894 P.2d 337, 341 (1995) (overruled on
14 other grounds by *Towbin Dodge, L.L.C. v. Eighth Judicial Dist.*, 121 Nev. 251, 260-61, 112 P.3d
15 1063, 1069-70 (2005))).

16 Where a judge has not voluntarily disqualified himself or herself, a party may seek
17 disqualification “for actual or implied bias or prejudice” by filing an affidavit specifying the facts
18 upon which disqualification is sought, together with a certificate that such affidavit is filed in good
19 faith and not for delay. N.R.S. § 1.235(1). Normally, such a disqualification must be filed “[n]ot
20 less than 20 days before the date set for trial or hearing of the case” or “[n]ot less than 3 days
21 before the date set for the hearing of any pretrial matter.” *Id.*¹ Additionally, “an affidavit is
22 untimely if the challenged judge has already ruled on disputed issues.” *Towbin.*, 121 Nev. at 256.
23 Nevada, however, also permits a party to seek disqualification when the grounds underlying it are
24 not discovered or could not have reasonably been discovered until *after* the deadlines imposed by
25 Section 1.235. *Id.* at 260 (“[I]f new grounds for a judge’s disqualification are discovered after the

26
27 ¹¹ These two time limitations are read together, not in the disjunctive, such that the window of
28 opportunity is one or the other, whichever occurs first. *Vallares v. Second Judicial District In
and For County of Washoe*, 112 Nev. 79, 83-84, 910 P.2d 256, 259-60 (1996).

1 time limits in NRS 1.235(1) have passed, then a party may file a motion to disqualify based on
2 [Nevada Code of Judicial Conduct Canon 2] as soon as possible after becoming aware of the new
3 information.”)

4 Once a party has sought disqualification of a judge, the case must either be reassigned or
5 the judge has five judicial days to respond to the affidavit, whereupon another judge agreed upon
6 by the parties or appointed by the presiding judge of the judicial district will determine whether
7 disqualification is warranted. N.R.S. § 1.235(5).

8 The purpose of Section 1.235 of the Nevada Revised Statutes is to promote public
9 confidence in the judiciary and to encourage efficiency and finality in litigation. *Hogan v. Warden,*
10 *Ely State Prison*, 112 Nev. 553, 560, 916 P.2d 805, 809 (1996). Public confidence in the judiciary
11 is not only eroded by improper conduct, but also conduct that creates the mere *appearance of*
12 *impropriety*. NCJC, Rule 1.2, Comment 1. As discussed below, Plaintiffs believe that the sizeable
13 campaign contributions Defendants made to Judge Adams severely impair Judge Adams’ ability to
14 hear further matters in this litigation without also damaging public confidence in the impartiality of
15 the judiciary, thus necessitating Judge Adams’ disqualification.

16 **B. Judge Adams’ Impartiality Can Be Reasonably Questioned Due to His**
17 **Receipt of Significant Campaign Donations From Defendants And His**
18 **Failure to Disclose Such Donations On The Record**

19 The facts concerning Defendants’ contributions to Judge Adams’ campaign create an
20 appearance of impropriety and impartiality that necessitates Judge Adam’s recusal. Whether a
21 judge’s impartiality can reasonably be questioned is an objective inquiry that the Court reviews as
22 a question of law using its independent judgment of the facts. *City of Las Vegas Downtown*
23 *Redevelopment Agency v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 116 Nev.
24 640, 644, 5 P.3d 1059, 1062 (2000). The judge’s actual impartiality, as well as the judge’s
25 subjective beliefs concerning his ability to proceed impartially, is of no concern. *See PETA*, 111
26 Nev. at 4386 (overruled on other grounds by *Towbin*, 121 Nev. at 260-61). Instead, the Court must
27 ultimately decide “whether a reasonable person, knowing all the facts, would harbor reasonable
28 doubts about [the judge’s] impartiality.” *Id.* at 438. A reasonable person, upon learning that Judge

1 Adams received \$36,000.00 from the Defendants for his reelection campaign—comprising 13.38%
2 of his total campaign fund—would harbor not only reasonable, but serious doubts about Judge
3 Adams’ impartiality. Further, the campaign contributions were given in a coordinated fashion,
4 apparently to ensure that Judge Adams would know who was responsible for such large donations.

5 Judge Adams himself has acknowledged that campaign contributions of significantly lesser
6 amounts creates the appearance of impartiality. In *Whittemore Peterson Institute for Neuro-*
7 *Immune Disease v. Mikovits* (“*Whittemore*”), Judge Adams disqualified himself where people with
8 ties to one of the parties had donated \$10,000.00 to his reelection campaign. (See Heffelfinger
9 Aff., ¶¶ 9, 16; Exhs. 2, 10.) During a hearing on the matter, Judge Adams stated on the record that
10 he had previously testified before a commission on the adoption of the model code of judicial
11 conduct “that receipt of significant campaign contributions from a lawyer or party in a case should
12 be a ground for disqualification.” (See *Id.*, Exh. 11 at 10:16 - 20.) He also said that he “very
13 strongly believe[s] that that’s the standard that should be applied.” (*Id.*, Exh. 11 at 11:1-2.)
14 Consistent with those statements, Judge Adams held in his Order of Recusal in *Whittemore* that, in
15 light of the fact that the Defendant was an employee of a company which financially contributed to
16 his reelection campaign in 2008, he “believe[s] that [his] further participation in [that] case creates
17 the appearance of impropriety.” (See *Id.*, Exh. 10.)

18 Judge Adams’ reasoning in the *Whittemore* litigation leading to his recusal applies even
19 more so here. (*Id.*) Defendants in the instant matter donated far more funds to Judge Adams’
20 campaign than the amount donated in *Whittemore*. It would be inherently contradictory if Judge
21 Adams felt that disqualification was necessary in that case but not in the instant one.

22 Moreover, Judge Adams’ decision to disqualify himself in *Whittemore* is consistent with
23 recent United States Supreme Court precedent. In *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.
24 Ct. 2252 (2009), the Supreme Court held that a judge who continues to preside over a case
25 involving a party that had made significant campaign contributions to that judge’s election
26 campaign created not only the appearance of impropriety, but “a serious, objective risk of actual
27 bias” requiring that judge’s recusal, and that the denial of a motion seeking recusal of that judge
28 constituted a violation of the Due Process Clause of the Fourteenth Amendment. *Id.* at 2263-65.

1 While some prior decisions of the Nevada Supreme Court have held that campaign
2 contributions to a judge do not necessarily require disqualification, those decisions both pre-date
3 the Supreme Court’s decision in *Caperton* and involved donations from persons other than a party
4 itself. *See Matter of Dunleavy*, 104 Nev. 784, 789-91, 769 P.2d 1271, 1774-76 (1988) (finding no
5 legally cognizable grounds for disqualification where counsel for a party, not the party himself,
6 made contribution to judge’s campaign); *O’Brien v. State Bar of Nevada*, 114 Nev. 71, 76-77, 952
7 P.2d 952, 955-56 (1998) (stating in dicta that an attorney’s prior donations to a judge do not
8 require recusal in a non-judicial decision regarding the attorney, such as the appointment of the
9 attorney to a commission); *accord* State of Nevada Commission on Judicial Discipline, Standing
10 Committee on Judicial Ethics and Election Practices, Opinion: JE02-001, March 14, 2002
11 (providing non-binding advisory opinion that “[a] judge is not necessarily required to recuse
12 himself or herself from hearing matters involving an *attorney* who has supported the judge’s
13 election campaign”) (emphasis added).

14 In *City of Las Vegas Downtown Redevelopment Agency*, 116 Nev. at 642-43, Judge Denton
15 informed the parties that he had received campaign contributions, not from any of the parties
16 themselves, but from four casinos that nonetheless stood to benefit from the outcome of the case.
17 One of the parties then moved to disqualify Judge Denton, who chose to recuse himself “[g]iven
18 the proffered ‘appearance of impropriety,’ and the need to avoid the actual appearance of
19 impropriety.” *Id.* After Judge Denton’s self-recusal, however, several other judges also recused
20 themselves due to their also having received campaign donations, triggering “a chain reaction” that
21 prompted the other party to petition the Nevada Supreme Court to reinstate Judge Denton. *Id.*
22 While the Nevada Supreme Court did in fact reinstate Judge Denton, the instant case is easily
23 distinguishable.

24 First, the Defendants do not appear to have contributed to any other judicial officers in this
25 District. (*See* Heffelfinger Aff. at ¶ 5.) Thus, the “chain reaction” which occurred in *City of Las*
26 *Vegas* and threatened to disqualify all judges capable of hearing the case is not likely to occur here.
27 Second, the court in *City of Las Vegas Downtown Redevelopment Agency* relied in large part on a
28 comment to Canon 3 of the NCJC stating, “The mere receipt of a campaign contribution from a

1 witness, litigant or lawyer involved with a proceeding is not grounds for disqualification.” *City of*
2 *Las Vegas*, 116 Nev. at 645. This comment, however, does not appear in the most recent version
3 of the Nevada Code of Judicial Conduct. *See* NCJC (2011).²

4 Underlying many of these cases is the concern that a rule preventing a party or an attorney
5 from making campaign contributions to judges “would ‘severely and intolerably’ obstruct the
6 conduct of judicial business in a state like Nevada where judicial officers must run for election and
7 consequently seek campaign contributions.” *Id.* at 644. But this concern is not as applicable
8 where, as here, many of the donations at issue come not from attorneys or local residents, but
9 defendants whose only connection to Nevada is this litigation. (*See* Heffelfinger Aff., Exh. 2
10 (identifying John M. Dodds as residing in Florida, Five SAC Self Storage in Arizona, E.J. Shoen in
11 Arizona, John Brogan in Massachusetts, and Richard Herrera in Colorado).

12 Lastly, as discussed above, judges in Nevada are required to affirmatively “disclose on the
13 record information that the judge believes the parties or their lawyers might reasonably consider
14 relevant to a possible motion for disqualification, even if the judge believes there is no basis for
15 disqualification.” NCJC Rule 2.11, Comment 5. Neither Judge Adams nor the Defendants made
16 any disclosures regarding the contributions made to Judge Adams’ campaign. (*See* Heffelfinger
17 Aff. ¶¶ 10, 13.) While not necessarily a separate basis for disqualifying Judge Adams, the failure
18 to disclose these campaign donations—even if a mere oversight—contributes to the appearance of
19 impropriety that Plaintiffs seek to remedy by reassignment to another judge.

20 In sum, even assuming that Judge Adams could remain impartial, allowing Judge Adams to
21 continue hearing matters in this case would undoubtedly compromise the public’s confidence in
22 the judiciary as it exhibits an appearance of impropriety that reflects negatively on Judge Adams’
23 ability to be impartial. *See* NCJC Rule 1.2 (instructing judges to avoid even the *appearance* of
24 impropriety); *id.* at Comment 5 (stating that the “appearance of impropriety” occurs, *inter alia*,
25 whenever the conduct creates the perception that the judge engaged in conduct that reflects

26 ² Furthermore, Judge Adams himself has stated on the record in *Whittemore* that he disagrees
27 with the outcome of *City of Las Vegas Downtown Redevelopment Agency*. (*See* Heffelfinger
28 Aff., Exh. 10 at 13:17 – 14:1.)

1 adversely on the judge's impartiality). Therefore, in order to promote the public's confidence in an
2 independent and impartial judiciary, it is necessary to disqualify Judge Adams from continuing to
3 hear matters in this litigation.

4 **IV. CONCLUSION**

5 For the reasons set forth above, Plaintiffs respectfully request this Court disqualify Judge
6 Adams from hearing any further matters in the above-captioned case, and that the case be
7 reassigned to another judge in the Second Judicial District of the State of Nevada, or some other
8 appropriate venue as the Court deems appropriate.

9
10 **AFFIRMATION**
(Pursuant to NRS 239B.030)

11 The undersigned does hereby affirm that the preceding document filed in the above
12 referenced matter does not contain the social security number of any person.

13
14 Dated: March 28, 2012

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15
16 By: 

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