

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ONONDAGA

Kelly Varano, as parent and natural guardian of infant Jeremy Bohn; Shannon Froio, as parent and natural Guardian of infant Shawn Darling; Brenda Fortino; as parent and natural guardian of infant Julie Fortino; Marie Martin, as parent and natural guardian of infant Kenneth Kenyon; Jenny Lynn Cowher, as parent and natural guardian of infant William Martin; Hollan Crippen, as parent and natural guardian of infant Devan Mathews; Jessica Recore, as parent and natural guardian of infant Samantha McLoughlin; Laurie and Dominick Rizzo, as legal custodians of infant Jacob McMahan; Jason Montanye, as parent and natural guardian of infant Kadem Montanye; and Frances Shellings, as parent and natural guardian of infant Rayne Shellings,

Plaintiffs,

-against-

FORBA Holdings, LLC n/k/a Church Street Health Management, LLC; FORBA N.Y., LLC; FORBA, LLC n/k/a LICSAAC, LLC; FORBA NY, LLC n/k/a LICSAAC NY, LLC; DD Marketing, Inc. DeRose Management, LLC; Small Smiles Dentistry of Syracuse, LLC; Daniel E. DeRose; Michael A. DeRose, D.D.S.; Edward J. DeRose, D.D.S.; Adolph R. Padula, D.D.S.; William A. Mueller, D.D.S.; Michael W. Routh; Naveed Aman, D.D.S.; Koury Bonds, D.D.S.; Tarek Elsafty, D.D.S.; Dimitri Filostrat, D.D.S.; Yaqoob Khan, D.D.S.; Delia Morales, D.D.S.; Janine Randazzo, D.D.S.; Loc Vin Vuu, D.D.S.; and Grace Yaghmai, D.D.S.,

Defendants.

MEMORANDUM OF LAW

Index No. 2011-2128

STATE OF NEW YORK
SUPREME COURT

COUNTY OF SCHENECTADY

Timothy Angus, as parent and natural guardian of infant Jacob Angus; Jessalynn Purcell, as parent and natural guardian of infant Isaiah Berg; Brian Carter, as parent and natural guardian of infant Briana Carter; April Ferguson, as parent and natural guardian of infant Joseph Ferguson; Sherain Rivera, as parent and natural guardian of infant Shadaya Gilmore; Tonya Potter, as parent and natural guardian of infant Desirae Hager; Nancy Ward, as legal custodian of infant Aalyiarose Labombard-Black; Nancy Ward, as legal custodian of infant Manuel Laborde Jr.; Jennifer Bacon, as parent and natural guardian of infant Ashley Parker; and Courtney Conrad, as parent and natural guardian of Zakary Wilson,

Plaintiffs,

-against-

Index No. 2011-562

FORBA Holdings, LLC n/k/a Church Street Health Management, LLC; FORBA N.Y., LLC; FORBA, LLC n/k/a LICSAAC, LLC; FORBA NY, LLC n/k/a LICSAAC NY, LLC; DD Marketing, Inc. DeRose Management, LLC; Small Smiles Dentistry of Albany, LLC; Albany Access Dentistry, PLLC; Daniel E. DeRose; Michael A. DeRose, D.D.S.; Edward J. DeRose, D.D.S.; Adolph R. Padula, D.D.S.; William A. Mueller, D.D.S.; Michael W. Roumph; Maziar Izadi, D.D.S.; Laura Kroner, D.D.S.; Judith Mori, D.D.S.; Lissette Bernal, D.D.S.; Edmise Forestal, D.D.S.; Evan Goldstein, D.D.S.; Keerthi Golla, D.D.S.; Nassef Lancen, D.D.S.; Wadia Hanna, D.D.S.; and Bernice Little-Mundle, D.D.S.,

Defendants.

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

Shantel Johnson, as parent and natural guardian of infant Kevin Butler; Veronica Robinson, as parent and natural guardian of infant Ariana Flores; Demita Garrett, as parent and natural guardian of infant I'Yana Garcia Santos; Kathryn Justice, as parent and natural guardian of infant BreYonna Howard; Elizabeth Lorraine, as parent and natural guardian of infant Shiloh Lorraine Jr.; Laporsha Shaw, as parent and natural guardian of infant Alexis Parker; Robert Ralston, as parent and natural guardian of infant Brandie Ralston; Katrice Marshall, as parent and natural guardian of infant Lesana Ross; Tiffany Henton, as parent and natural guardian of infant Corey Smith; Janet Taber, as parent and natural guardian of infant Jon Taber,

Plaintiffs,

-against-

Index No. 2011-7100

FORBA Holdings, LLC n/k/ a Church Street Health Management, LLC; FORBA N.Y., LLC; FORBA LLC n/k/a LICSAAC, LLC; FORBA NY, LLC n/k/ a LICSAAC NY, LLC; DD Marketing, Inc.; DeRose Management, LLC; Small Smiles Dentistry of Rochester, LLC; Daniel E. DeRose; Michael A. DeRose, D.D.s.; Edward J. DeRose, D.D.s.; Adolph R. Padula, D.D.S.; William A. Mueller, D.D.S.; Michael W. Rounph; Shilpa Agadi, D.D.S.; Koury Bonds, D.D.S.; Ismatu Kamara, D.D.S.; Keivan Zoufan, D.D.S.; Kathleen Poleon, D.D.S.; Sonny Khanna, D.D.S.; Kim Pham, D.D.S.; Doug Gardner, D.D.S.; Gary Gusmerotti, D.D.s.; Ellen Nam, D.D.S. and Lawana Fuquay, D.D.S.,

Defendants.

ARGUMENT

DEFENDANTS' MOTION FOR RECUSAL SHOULD BE GRANTED

It is well-settled law that where there is no allegation that recusal is mandatory under Section 14 of the Judiciary Law the matter of recusal is addressed to the sound discretion and personal conscience of the judge whose recusal is sought. People v. Moreno, 70 NY2d 403, 405. “High standards of conduct must be observed by judicial officers so that integrity and independence of judiciary will be preserved. . .” Matter of Vaccaro, 409 NYS 2d 1099 [HN 2] (1977); see also, New Hope Missionary Baptist Church, Inc. v. 466 LaFayette, Ltd., 28 Misc.3d 1208(A) (2010), wherein the Judge recused himself where he knew another judge’s brother (a party) for approximately 30 years, served with the judge as members and officers of a community board and shared memberships in various other organizations. The Court stated in New Hope, that although he had no doubt that he could be fair and impartial, the best course of action was to recuse himself for the sole purpose of avoiding any potential appearance of impropriety, stating that “in the exercise of discretion, good conscience, and to avoid any speculation as to the rationale for any decisions, I recuse myself from this case;” See also Sun Trust Mortgage v. Byrd, 18 Misc.3d 1128 (A) (2010); Cummings v. Christensen, 439 NYS2d 825, 827 (1981) (the primary purpose of Judiciary Law § 14 is the preservation of the dignity of the judiciary); Corradino v. Corradino, 48 NY2d 894, 895 (1979); Ferlito v. Judges of the County Court, Suffolk County, 31 NY2d 416, 419 (1972) (“In the appraisal of judicial conduct it is recognized, of course, that the appearance of impropriety may sometimes be as devastating as the reality . . .”); Murray v. Murray, 73 AD2d 1015, 1016 (1980) (“No matter what the outcome of the case and the ultimate fairness of [the] judgment, the integrity of the court [is] called into question because of . . . [doubts] as to the judge’s impartiality”).

Here, given Your Honor's significant history of association with plaintiffs' law firm, Powers & Santola, and with Mr. Higgins in particular, and the amount of media attention that these matters have and will receive, it is respectfully requested that Your Honor recuse himself, if for no other reason than to avoid the appearance of impropriety. Your Honor (as a once prominent member of the plaintiff's bar in New York) had been co-counsel with Mr. Higgins and Powers & Santola on several occasions in high profile cases and collaborated with Mr. Powers in the formation of the New York State Academy of Trial Lawyers. While this motion is in no way meant to impugn the ability of this Court to maintain its impartiality in this or any other matter the strong potential for the appearance of impropriety exists, which could ultimately directly affect the parties to this litigation. Therefore, it is respectfully requested that Your Honor recuse himself from the position of coordinating justice with respect to these matters and remand this matter for the assignment of a new judge.

CONCLUSION

DEFENDANTS' MOTION FOR RECUSAL SHOULD BE GRANTED

DATED: October 19, 2011

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By: _____

THOMAS M. WITZ

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