IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR.,
PLAINTIFF,

v.

ROBERT SULLIVANT, JR.,
DEFENDANT.

CASE NO. 2021-612(W)

ROBERT SULLIVANT JR.,
THIRD-PARTY PLAINTIFF,

v.

ROBERT SULLIVANT SR.,
and EVELYN STEVENS,
THIRD-PARTY DEFENDANTS.

DEFENDANT'S MOTION FOR RECUSAL

Comes now, defendant and third-party plaintiff Robert Sullivant Jr., ("JR") and hereby requests that the Honorable Judge Robert Q. Whitwell respectfully recuse himself from the above-referenced matter. As will be further detailed in JR's memorandum, it is his belief that Your Honor has demonstrated a considerable level of bias in favor counsel for Robert Sullivant Sr., ("SR") making it impossible for JR to receive a fair trial.

At multiple hearings in this matter, the court has testified on behalf of SR. The court also inappropriately took notice, on its own accord, and placed in the record, that Your Honor believes that JR does not love his father. A judgement that was based on untrue and disputed facts of the matter. The court has refused to hear a motion that criticizes Mr. Alford because "members of the public were present", allowed witnesses to be called by Alford with no notice to JR, misstated facts on the record, and testified as to disputed facts.

For these reasons, and the additional reasons outlined in JR's memorandum, recusal is appropriate in this matter.

I. BACKGROUND

The background in this matter has been well established. This is a matter related to the conservatorship of Robert Sullivant Sr, where SR sued JR for allegedly taking funds from an individual account that SR believed he did not have the authority to withdraw. SR filed this action alleging 13 different counts, including fraud, conversion, and accounting. JR responded with an Answer and Counterclaims, to which Mr. Alford filed a response to over a year later. The parties have conducted a deposition, discovery, and several motions have been heard and decided, including allowing SR to execute a will and placing him into a conservatorship with the clerk without a proper hearing.

Ms. Evelyn Stevens organized the hiring of attorney Swayze Alford on the behest of SR to represent him. It cannot be disputed that Mr. Alford is well-known, well liked, and has maintained somewhat of a celebrity status in this venue. However, this status should not play out as influence in a court of law against a *Pro Se* litigant, and Mr. Alford should be held to the same standards as all other litigants and not be provided preferential treatment by the court.

Mr. Alford, thus far, has been allowed to violate discovery rules, overtly violate this court's orders and the parties' stipulations, call witnesses at hearing without any notice to JR, and misappropriate the funds of the parties in this case to the point where JR had to draft a temporary restraining order before Mr. Alford would reconcile the funds. Since the Court never took action to discipline Mr. Alford for the above actions, JR attempted to address these matters through a motion to disqualify Mr. Alford. However, the court refused to hear this motion because it was concerned with Mr. Alford's reputation in the presence of members of the public. The court than determined that it would not hear JR's motion to disqualify until the Bar Association produced a report related to JR's complaint. There is no legal justification for JR's motion to disqualify to be in any way contingent on the Bar Association and their investigation. The court simply did not want to embarrass Mr. Alford in front of his colleagues that were in court that day. Finally, information that Your Honor and Mr. Alford have engaged in inappropriate ex-parte communications without the knowledge of JR is also evident. It does appear that this court had

knowledge of certain aspects of the case that it would have no way of knowing without speaking to Mr. Alford outside the presence of JR.

II. STANDARD OF REVIEW

According to the Code of Judicial Conduct, a judge must disqualify when that judge's "impartiality might be questioned by a reasonable person knowing all the circumstances . . . including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding." *Code of Judicial Conduct*, Canon 3(E)(1). The question to ask is, would a reasonable person, knowing all the circumstances, harbor doubts about the judge's impartiality? *Frierson v. State*, 606 So.2d 604, 606 (Miss. 1992). To overcome the presumption that a judge is qualified and unbiased, the evidence must produce a reasonable doubt about the validity of the presumption. *Turner v. State*, 573 So.2d 657, 678 (Miss. 1990).

This Court does not recognize inconvenience as a factor to be considered when deciding a recusal motion. More than inconvenience must be shown in order to refuse a recusal motion where there is some doubt as to a judge's impartiality. A recusal decision is entirely dependent on the peculiarities of each case at bar. Recusal motions must be considered on their own circumstances. *Collins v. Joshi*, 611 So. 2d 898 (Miss. 1992).

If a ***reasonable person***, knowing all the circumstances, would doubt the judge's impartiality, the judge is ***required*** to recuse him or herself from the case. (*Id*) [emphasis added].

III. ARGUMENT

1. Your Honor Testified as a Character Witness Against JR at the Hearing on May 9, 2023, and the Summary Judgement hearing on January 25, 2023.

At the hearing on May 9th, 2023, Your Honor commented on what he allegedly witnessed at a prior hearing between JR and SR. Stating that he was present at the Summary Judgement hearing in Holly Springs, You Honor then says that the two parties never hugged or spoke to one another after the hearing was over. Your Honor than concluded that it means there is no love between the two and used his own testimony as a partial reason to deny JR his request for conservatorship. (*Bates No. 122*).

First, this is improper character testimony given by a Judge in violation of the Code of Judicial Conduct (CJC), Cannon 2B, which explicitly states that "Judges shall not testify voluntarily as a character witness." The commentary to the rule explains as follows: "A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies."

Your Honor's testimony was not only in strong favor of Mr. Alford, but it was also not true and needed serious clarification. However, JR, of course, could not cross-examine Your Honor. Moreover, this is testimony related to a disputed fact, was relied upon to resolve the issue of conservator, and there is no evidence on the record to support Your Honor's contentions. It is also highly prejudicial to JR going forward to have the Judge's unchallengeable and incorrect testimony, calling into question his love for his father, as part of the record.

The second instance of improper testimony, and quite frankly blatant discourteousness to a litigant, is found in the hearing conducted in this matter on January 12th, 2023, where Your Honor refers to JR as being a "hooligan sandbag". (*Bates No. 114*). Cannon 3(B)(4) states that "Judges shall be patient, dignified, and courteous to litigants." Ad hominem attacks on a litigant run afoul to the CJC and are demonstrative of bias and prejudice. "A judge is to act courteously to anyone in her courtroom and to expect the same behavior from others subject to her control." *Mississippi Comm'n on Jud. Perf. v. Sanders*, 749 So. 2d 1062, 1071 (Miss. 1999); and the courts have made it "quite clear that the power granted to judges does not license them to be disrespectful to the lawyers and citizens who appear in their courtrooms; and that judges must conduct themselves with appropriate judicial demeanor." *Miss. Comm'n on Judicial Performance v. Smith* , 78 So.3d 889, 893 (Miss. 2011).

The third instance of improper testimony was at the January 25th, 2023 Summary Judgment hearing when Your Honor stated that "You accuse Mr. Alford of a half-truth in some of your responses, and now you're telling me a half-one there". (*Bates No.127*). Your Honor testifies that the Defendant lied, when stating he did not go to Batesville to withdraw monies. Also, just earlier, Your Honor implies the Defendant is lying by stating "You're under oath Mr. Sullivant," (*Bates No.126*), after the Defendant testified that he did not go to Batesville. The allegation that the Defendant went to Batesville, is speculation at best, and disproven by Mississippi Code Title 87, Ch.3; §87-3-113 coupled with the Defendant's numerous affidavits stating that he did not go to

Batesville. There is no evidence to the contrary of the Defendant's affidavits nor to support the Plaintiff's speculation in the record.

The fourth instance of improper testimony was at the same Summary Judgement hearing when Your Honor stated while referring to SR's TD Ameritrade accounts "you put it in your name with your PIN – you put it in his name, but you had your PIN on it. He couldn't get into it because you kept the PIN to open the account." (*Bates Nos. 101-102*). Not only does Your Honor offer new and unknown testimony for the record to the Defendant's detriment, but the testimony is false, and not based upon anything stated in the record. Again, the Defendant was not able to cross-examine the witness of testimony against him.

2. Your Honor Failed to Act When put on Notice of Mr. Alford's Malfeasance, but Admonished JR in Court for a Completely Harmless Error. Your Honor Also Refused to Hear a Motion to Disqualify Mr. Alford on the Sole Basis of Public Presence.

The court in this matter has not treated the litigants equally. Due to the actions, ethical violations, and general malfeasance from Mr. Alford in this case, a Motion to Disqualify him from this case was filed by JR. This Motion was set to be heard on May 9th, 2023. However, Your Honor refused to hear the Motion on that day, citing public presence and the fact that the "Bar Association will deal with it". (*Bates No. 123*).

Cannon 3(B)(2) states that "A judge shall not be swayed by partisan interests, ***public clamor, or fear of criticism***." In this case, Your Honor refused to hear a motion related to the disqualification of counsel on the sole basis of *potential* "public clamor". A judge is to be faithful to the law and to ignore outside influences. *Mississippi Comm'n on Jud. Perf. v. Sanders,* 749 So. 2d 1062,1070 (Miss. 1999).

Salvaging the reputation of Mr. Alford is not only not a reason to deny a motion, but it is also strong evidence of bias in favor of Mr. Alford and shows that Your Honor has clearly taken a side and is not impartial. Your Honor has had no problem however, with accusing JR in open court of not loving his father, or admonishing him, again in open court and on the record, for filing an unsigned proposed order, which was a completely harmless error. (*Bates Nos. 111-113*).

While JR is getting admonished for a harmless error, Mr. Alford has been allowed, without any admonishment whatsoever, to misappropriate client funds, to not file an answer in this case for over a year, to intentionally withhold discovery, and to allow a third-party access to SR's bank

accounts and the parties joint funds. A $41,000 truck was purchased with these funds and Mr. Alford repeatedly failed to reconcile the accounts. In response, this court did nothing.

Mr. Alford has violated court orders and has been shown to be persistently dishonest with JR and the Court, and the Court does nothing. Cannon 3(D)(2) states that "A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action." This court has taken no action against Mr. Alford, not even an admonishment, yet has chastised JR on the record for a harmless error. Ironically, Mr. Alford's counsel in the Bar Complaint argues numerous times that his client could not have done anything unethical, because "the Judge has never admonished him."

Not only has the court failed to admonish Mr. Alford, but Your Honor has also provided excuses for his behavior and has stated on the record that "he didn't think Mr. Alford just moved those funds on a whim to some bank account." (*Bates No. 110*). However, this is exactly what Mr. Alford did and he admits to doing it. (*Bates Nos. 114-115*). In another instance, when Mr. Alford was asked to explain why he intentionally delayed a motion hearing for two months, Your Honor came to Mr. Alford's rescue by stating that "***I*** may not have been available." (*Bates No. 117*).

At the hearing on May 9th, 2023, the court allowed Mr. Alford to call two witnesses, Dr. Perkins and his client, whom he knew he was going to call in advance and had prepared them to testify. However, as another obvious bad faith tactic, Mr. Alford never disclosed these witnesses to JR prior to the hearing. Despite the fact that Mr. Alford knew he was going to call witnesses, had his client allegedly examined just before the hearing *at the courthouse*, and gave JR no warning, Your Honor allowed Mr. Alford to call these witnesses over JR's objections. (*Bates Nos 124-125*). Cannon 3(B)(3) states that "A judge shall require order and decorum in proceedings before the judge." Allowing two witness to be called without notice to the opposing party is not proper. These witnesses should have been disclosed prior to the hearing so JR could prepare to examine them rather than having to come up with an entire examination on the spot. This decision was calculated to prejudice JR and it worked. He unsurprisingly lost every motion heard that day.

It was also pointed out when Mr. Alford called Dr. Perkins, that Dr. Perkins had been previously evading communications from JR and being very uncooperative. The court seems to have no problem with this and in fact perpetuates Dr. Perkins' flouting of JR's right to depose him by offering the excuse that the witness was hired by Mr. Alford, and so it is completely acceptable for the ***court appointed*** expert witness in this matter, (according to Your Honor), to communicate

solely with one party and ignore the other. (*Id*.) This violates Cannon 3(C)(2), stating that "A judge shall require staff, court officials and ***others subject to the judge's direction and control*** to observe the standards of fidelity and diligence that apply to the judge and to ***refrain from manifesting bias or prejudice in the performance of their official duties***." Dr. Perkins has an overt and undeniable bias in favor of Mr. Alford and this court has nurtured and facilitated it.

4. Your Honor Has Demonstrated Overt Bias in Favor of Mr. Alford by Either Willfully or Negligently Misinterpreting the Law in the Plaintiff's Favor.

The Plaintiff's entire case in this matter is premised on Mississippi Code Title 87, Ch.3; §87-3-113, reads as follows:

> As to acts undertaken in good faith reliance thereon, **an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the non-revocation or nontermination of the power at that time.**

JR has submitted numerous affidavits to the court stating exactly this, yet Your Honor continues to ignore this law and the language that said affidavits are "***conclusive proof***"; by arguing on behalf of the Plaintiff in a way that misapplies the law in a manner favorable to Mr. Alford. First, he condescendingly asks JR, whom he knows is a 20 plus year CPA who has been handling finances for decades, if JR knows what a joint account is. (*Bates No. 106*).

Your Honor than proceeds to state that the plaintiff "had the power of attorney revoked." This is entirely not true. By law, he did not revoke the POA, yet Your Honor refuses to apply this law, likely because doing so would be fatal to Mr. Alford's case. Ignoring black-letter law and statutory mandates is the exact type of disregard for state law that the CJC works to prevent and address… "A sitting judge is charged with knowing and carrying out the law of the state in which she sits. This disregard of state law, whether done intentionally or mistakenly, most certainly brings the integrity and independence of the office into question." *Mississippi Comm'n on Jud.Perf. v. Sanders,* 749 So. 2d 1062, 1071 (Miss. 1999).

Second, Your Honor unequivocally states that the plaintiff "had someone do a revocation of his power of attorney", and that "[plaintiff] had an absolute right as a joint tenant to withdraw [money]." (*Bates No. 118*). Here, Your Honor has essentially decided the case on an unknown

basis, and certainly not any within Mississippi law. JR has no chance at a fair trial when concrete evidence and well-settled state law is being ignored in favor of pure, and not even reasonable, speculation.

5. Your Honor and Mr. Alford Have Engaged in Prejudicial Ex-Parte Communications.

On the hearing conducted on January 23rd, 2023, Your Honor, on his own fruition, raised an issue related to JR placing a personal PIN on the TD Ameritrade account in question. He then accuses of JR of keeping a PIN on the account to prevent the plaintiff from accessing it without any evidence to support the accusation. (*Bates Nos. 101-102*). This line of questioning from Your Honor had to have come directly from Mr. Alford during an ex-parte communication, else Your Honor pulled this allegation from thin air. There is no mention anywhere in the parties' briefings on a PIN number.

Such ex parte communications with a litigant are clearly prohibited by Canon 3B(7), and such conduct has been found by this Court to constitute misconduct. *Mississippi Comm'n on Judicial Performance v. Bradford*, 18 So. 3d 251, 254 (Miss. 2009).

6. Your Honor Would Not Allow a Proper Cross-Examination of Dr. Frank Perkins, and Allowed His Testimony With No Notice to JR.

Prior the hearing on May 9th, 2023, no witnesses had been disclosed by either party that they intended to call. However, Mr. Alford had Dr. Perkins drive nearly three hours to the hearing, evaluate Mr. Alford's client in the hallway of the courthouse (*Bates No. 137*), and then present his "findings" through testimony that again, was never disclosed to JR, nor was Dr. Perkins' courthouse medical examination of the plaintiff disclosed to JR prior. The majority of information testified to by Dr. Perkins was unknown to JR prior to that moment as it involved a courthouse medical examination literally moments before Dr. Perkins was called to testify.

Despite this and over the multiple objections and confusion of JR, Your Honor allowed Dr. Perkins to testify. During Mr. Alford's direct examination, Your Honor did not interrupt a single time. However, during JR's cross-examination, Your Honor interrupted him multiple times, and even began testifying on behalf of the witness (*Bates Nos. 143 & 150*).

Mississippi Rules of Evidence 611 and 616 both allow JR to cross-examine the witness "without limitation" (Rule 611(b)), and the advisory committee notes state that "Subdivision (b)

permits a wide-open cross-examination." Rule 616 relates to witness bias, stating that "Evidence of a witness's bias, prejudice, or interest – for or against any party – is admissible to attack the witness's credibility."

When JR began to probe Dr. Perkins about his bias in refusing to communicate with JR and only responding to communication from the opposing party, Your Honor promptly shut down this line of questioning without justification and antithetical to the Rules of Evidence. (*Bates No.150*). Not only did Your Honor not allow this questioning, but he also offered multiple excuses for Dr. Perkins' behavior in ignoring one party over another. Dr. Perkins should have been admonished, not excused. Your Honor than blames JR of all people for Dr. Perkins' behavior, stating that "if you were having trouble with Mr. Alford getting a date, you would come to me and file a motion to require it if you wanted a deposition, and he wasn't cooperative." (*Id.*)

Despite the fact that both parties who were actively illicitly stonewalling JR's legal right to depose Dr. Perkins were present, Your Honor admonished JR instead and directed him to file a motion, despite previously refusing to even hear a motion that criticized Mr. Alford due to "public presence".

Further, JR should not have to file a motion to compel a court-appointed expert witness deposition which was reasonably noticed and lawfully subpoenaed, and to an expert witness who admitted under oath to completely ignoring JR and only communicating with Mr. Alford. Dr. Perkins explicitly tells the court that his policy is to only communicate "with the party that retained him". (*Bates No. 149*). Rather than reminding Dr. Perkins that he is a **court-appointed** expert witness and was not retained by Mr. Alford, Your Honor instead supports Dr. Perkins' facially incorrect position and makes excuses for his behavior.

Finally, if Dr. Perkins was in fact "retained" by Mr. Alford as he testified to, and was and is being paid by him, then that is a significant issue that must be addressed, as it indicates the bribery of a witness pursuant to MS Code § 97-9-109. [1] Dr. Perkins' compensation in this matter

[1] MS Code § 97-9-109: (1) A person commits the crime of bribing a witness if he intentionally or knowingly offers, confers or agrees to confer any benefit upon a witness or a person he believes will be called as a witness in any official proceeding with intent to:
(a) Influence the testimony of that person;
(b) Induce that person to avoid legal process summoning him to testify; or
(c) Induce that person to absent himself from an official proceeding to which he has been legally summoned.
(2) Bribing a witness is a Class 1 felony.

is governed by MRE 706(c), which clearly states that is the court who both sets and collects the fees of a court appointed expert witness. Any monies paid directly from Mr. Alford to Dr. Perkins would be highly improper bordering on criminal.

7. The "Appearance of Impropriety" is Clearly Present, and a Reasonable Person *Might* Harbor Doubts' About Your Honor's Impartiality.

Judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law, including but not limited to instances where:

> (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. (*Mize v. Westbrook Constr. Co. of Oxford, LLC*, 146 So. 3d 352 (Miss. Ct. App. 2014).

Here, Your Honor has both the foregoing personal bias ***and*** personal knowledge of disputed evidentiary facts. Your Honor testified that he personally witnessed JR not approach or hug his father, the plaintiff, after a hearing in Holly Springs. This directly inserts Your Honor into this case as a witness, as JR disputes not only Your Honor's version of events, but also the conclusion that he inferred from it and his subsequent ruling against JR which he rendered immediately following his testimony.

> A judge must disqualify when that judge's "impartiality might be questioned by a reasonable person knowing all the circumstances . . . including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party." Code of Judicial Conduct, Canon 3(E)(1). The question to ask is, would a reasonable person, knowing all the circumstances, harbor doubts about the judge's impartiality? *Frierson v. State*, 606 So.2d 604, 606 (Miss. 1992). To overcome the presumption that a judge is qualified and unbiased, the evidence must produce a reasonable doubt about the validity of the presumption. *Turner v. State,* 573 So.2d 657, 678 (Miss. 1990).

There is more than sufficient evidence to raise reasonable doubt as to Your Honor's impartiality. The facts contained in this Motion show that Your Honor has admonished JR for harmless error while allowing Mr. Alford to flout the rules of procedure and basic court decorum

without taking any action. Your Honor allowed Mr. Alford to violate court orders and misappropriate client funds without taking any action, allowed Mr. Alford to call witnesses at a hearing with no notice provided to JR, inferred on the record that JR does not love his father and is not close to him, and continuously ignores Mississippi Code Title 87, Ch.3; §87-3-113, which, if applied, would essentially foreclose on Mr. Alford's claims and effectively end this case. He accuses JR of illicitly taking money from a joint account he had with the plaintiff but justifies the plaintiff doing the *exact same thing*. (*Bates No. 106*… "Well, [SR] had ***just as much a right*** to write it out as you did").

Your Honor has testified in favor of Mr. Alford to facts not in evidence and which are disputed, and his allegations related to JR placing a PIN on the account in question raise serious questions as to ex-parte communications in this matter as this allegation must have come directly from Mr. Alford. Your Honor also pulled from experience as a US Attorney and compared to JR to other people he had criminally prosecuted for financially defrauding the State, which is clearly not parallel to this case. You Honor then seemed to decide the case almost entirely by stating "**you committed the offense** before it happened." (*Bates No.103*). Your Honor does not cite how he concluded that JR was guilty of committing an offense, and this comment is highly prejudicial and indicative of bias.

Your Honor has also held that the court appointed expert witness does not have to communicate with JR, but only with Mr. Alford. (*Bates No. 125*). He relied on his own disputed testimony to rule on a conservatorship and ruled on the conservatorship without a formal hearing, which violates the Mississippi GAP Act requiring that a hearing specifically on the matter of conservator be held prior to the appointment. "The chancery court shall conduct a hearing to determine whether a conservator is needed." (Miss. Code Ann. § 93-13-255); (*Campbell v. Conservatorship of Campbell*, 5 So. 3d 470, 473 (Miss. Ct. App. 2008)).

To overcome the presumption that a Judge is qualified and unbiased, the party must produce evidence of a reasonable doubt about the validity of the presumption. The test of whether a reasonable person would harbor doubt is objective (*Kinney v. S. Mississippi Planning & Dev. Dist., Inc.*, 202 So. 3d 187, 194 (Miss. 2016). The issue is not any wrongdoing on the part of the trial judge, but how this situation appears to the general public and the litigants whose cause comes before this judge. Every litigant is entitled to nothing less than the ***cold neutrality*** of an impartial judge, who must possess ***the disinterestedness of a total stranger*** to the interest of the parties

involved in the litigation. . . .” (*Jenkins v. Forrest County Gen. Hosp*., 542 So. 2d 1180, 1181-82 (Miss. 1988)). A reasonable person, considering the totality of the circumstances, would certainly harbor doubts as to the bias and impartiality of Your Honor in this matter.

WHEREFORE, judicial recusal is appropriate in this matter, and Mr. Sullivant Jr respectfully requests that Your Honor recuse himself from this case.

Dated: June__, 2023.

/s/_____

Robert Sullivant Jr.
Defendant/Third-Party Plaintiff Pro Se