

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

OATES FOOD SERVICES II, LLC,
a Virginia limited liability company,

and

OATES ENTERPRISES II, LLC,
a Virginia limited liability company,

Petitioners/Plaintiffs,

v.

Case No. CL22014414-00

CITY COUNCIL OF THE CITY OF NORFOLK, VIRGINIA,

and

CITY OF NORFOLK, VIRGINIA,

Respondents/Defendants.

MOTION TO DISQUALIFY/MOTION FOR RECUSAL

NOW COMES Petitioner/Plaintiff Oates Food Services II, LLC (“Scotty Quixx”), by counsel, and moves this Court for an Order disqualifying and/or recusing all Norfolk Circuit Court judges from this matter and asking a substitute judge be appointed to preside over the case. In support of the Motion, Scotty Quixx states as follows:

BACKGROUND

This case is largely about City Council’s actions in revoking a special exception held by Scotty Quixx. Among other things, Plaintiffs have argued that the City and City Council’s actions were arbitrary, unreasonable, and capricious and not fairly debatable. Plaintiffs allege that Defendants were motivated by animus towards Downtown Norfolk area nightlife bars and restaurants and their clientele.

The Complaint and Petition for Appeal alleges that one of the members of City Council who voted for the revocation was Councilwoman Courtney Doyle.

In addition to being one of the councilmembers whose decision is being challenged, the Complaint and Petition for Appeal expressly references (and includes a video of) statements made by Councilwoman Doyle as an example of this animus being expressed. The Complaint and Petition for appeal alleges that on March 22, 2022, following a shooting in the Downtown Norfolk area outside of Chicho's Backstage, Councilwoman Courtney Doyle stated in a City Council work session that "we need to focus on our Downtown right now we have a big issue Downtown and we need to take Downtown back. We don't have control of our Downtown." She suggested an emergency injunction requiring bars, restaurants and nightclubs to close at midnight. She suggested examining the conditional use permits of all Downtown bars and restaurants and opined that if they were not compliant with the conditions stated therein "we need to shut them down." She also suggested suspending additional applications for bars, restaurants, and nightclubs. She said that she had received complaints about the "incompatibility" of the "nightclub, bar, restaurant scene with the Downtown residents." Complaint and Petition for Appeal ¶ 18.

Given her vote and these statements, Councilwoman Doyle will likely be a significant witness in this case.

As the Court is likely aware, Councilwoman Doyle is married to Honorable John R. Doyle of the Norfolk Circuit Court. Judge Doyle is one of eight judges that serve on the Norfolk Circuit Court.

ARGUMENT

Scotty Quixx contends that all judges of the Norfolk Circuit Court should recuse themselves because of the likely involvement of Councilwoman Doyle in this case.

“A trial judge must exercise reasonable discretion to determine whether he possesses such a bias or prejudice as would deny a party a fair trial.” *Buchanan v. Buchanan*, 14 Va. App. 53, 55 (1992) (citing *Stamper v. Commonwealth*, 228 Va. 707, 714 (1985)). “In exercising such discretion, a judge must not only consider his or her true state of impartiality, but also the public’s perception of his or her fairness, so that public confidence in the integrity of the judicial system is maintained.” *Buchanan*, 14 Va. App. at 55 (citing *Stamper*, 228 Va. at 714); *see also Davis v. Commonwealth*, 21 Va. App. 587, 591 (1996) (“[A] judge must diligently avoid not only impropriety but a reasonable appearance of impropriety as well.”); *Commonwealth v. Prieto*, No. FE-2005-1764, 84 Va. Cir. 567, 2010 WL 9457799, *3 (Fairfax Cnty., Mar. 8, 2010) (“A judge ‘must possess neither actual nor apparent bias against a party’”). “This reflects the recognition that it is not sufficient for a proceeding to be just; it must also appear to be just. As Justice Frankfurter said in *Offutt v. United States*: ‘[J]ustice must satisfy the appearance of justice.’ 348 U.S. 11, 14 (1954).” *Prieto*, 2010 WL 9457799, at *3.

Canon 1 of the Canons of Judicial Conduct for the Commonwealth of Virginia is helpful in this analysis. Va. R. Sup. Ct. Pt. 6 § 3 CJC Canon 1. The Canon reads, in part, as follows:

D. Recusal or Disqualification

1. A judge must recuse himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge is cognizant of a personal bias or prejudice concerning an issue, a party or a party’s lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;[or]

....

(g) the judge, a member of the judge’s family, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

....

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

Id.

This case involves a highly publicized issue in the City of Norfolk—the City and City Council's actions against Downtown Norfolk area nightlife bars and restaurants. As the Court may be aware, the legal proceedings involving Legacy Lounge and California Burrito have garnered significant media attention, so this trial will also likely be intensely publicized and publicly scrutinized. Thus, Scotty Quixx submits that the Court should be especially cognizant of any issues that could cause the public to question the impartiality of this proceeding.

Not only does the Complaint and Petition for Appeal challenge a decision made by City Council, which includes Councilwoman Doyle, but it specifically refers to statements made by Councilwoman Courtney Doyle. Councilwoman Doyle is likely to be a testifying witness.

Any potential danger of public questioning of partiality imputes to all judges on this Court, not just Judge Doyle. The circuit court judges share office space and interact frequently. Further, it could be a public perception that all members of the Court know Councilwoman Doyle socially as the spouse of a colleague. These facts could create a public perception that the proceedings are unfair if a Norfolk Circuit Court judge presides over a case in which the spouse of one of their colleagues plays a key role.

Thus, out of an abundance of caution, Scotty Quixx respectfully requests that the judges of the Norfolk Circuit Court disqualify and/or recuse themselves from hearing this matter.

CONCLUSION

WHEREFORE, in consideration of the foregoing, Scotty Quixx respectfully requests that this Court enter an order disqualifying and/or recusing the Norfolk Circuit Court judges from hearing this matter and asking that a substitute judge is appointed to preside over the case.

In light of the pending motion for preliminary injunctive relief, Scotty Quixx respectfully requests an expedited hearing and decision from this Court and, if granted, the Supreme Court of Virginia, in appointing a substitute judge.

Respectfully submitted,
OATES FOOD SERVICES II, LLC,
a Virginia limited liability company,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing pleading was sent via first class mail to the following on October 31, 2022:

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