

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY, FLORIDA

PROBATE DIVISION

IN RE: ESTATE OF

EDWIN C. BLISS,
Deceased.

Case No. 2016-5240 CP

Division: 02

IN RE:

LUCIA CAVA BLISS ELECTION TO
TAKE ELECTIVE SHARE.

**ADVERSARY
PROCEEDING**

LUCIA CAVA BLISS,

Petitioner,

v.

RICHARD R. TASCA,

Respondent.

IN RE:

PETITION FOR ADMINISTRATION
OF WILL DATED SEPTEMBER 21,
2015.

**ADVERSARY
PROCEEDING**

Case No. 2017-0169 CP 02

RICHARD R. TASCA,

Petitioner,

v.

LUCIA CAVA BLISS,

Respondent.

**LUCIA CAVA BLISS' MOTION TO
DISQUALIFY THE HONORABLE JORGE E. CUETO**

Lucia Cava Bliss respectfully requests that the Honorable Jorge E. Cueto recuse himself from this matter *sua sponte* pursuant to Canon 3(E)(1) of the Code of Judicial Conduct. In the alternative, Mrs. Bliss moves to disqualify Judge Cueto in accordance with Rule 2.330 of the Florida Rules of Judicial Administration and Florida Statute § 38.10, and states as follows:

1. At the present time the following two matters are being tried before Judge Cueto: [1] Mrs. Bliss' elective-share claim as a surviving widow, and [2] a will contest involving the will of her late husband, Edwin C. Bliss, dated September 21, 2015, and his subsequent will dated May 11, 2016. The party adverse to Mrs. Bliss in this trial is Mr. Ted Bliss, the son of Mrs. Bliss' husband from a prior marriage.

2. Fla. Stat. § 57.105(1) provides as follows:

Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial: (a) Was not supported by the material facts necessary to establish the claim or defense; or (b) Would not be supported by the application of then-existing law to those material facts.

3. On April 23, 2018, counsel for Mrs. Bliss called Mr. Eric Virgil as a fact witness in support of her claims. At the conclusion of Mr. Virgil's testimony, and before allowing a recess, Judge Cueto asked to meet with the attorneys for both parties without the presence of a court reporter. In that meeting Judge Cueto strongly urged the parties to settle. And then still in the presence of all attorneys, Judge Cueto went on to alert Mrs. Bliss' attorneys of the risk of Fla. Stat. § 57.105. *See* Affidavit of Lucia Cava Bliss at Ex. "A", ¶ 2.

4. This off-the-record exchange happened on the sixth day of a trial expected to last at least ten days, after Mrs. Bliss' fifth witness, and with at least eight more witnesses expected to testify in support of her claims

5. Based on the foregoing facts, Mrs. Bliss fears that Judge Cueto has prejudged her claims as being without basis and sanctionable, and as a result she fears that she will not receive

a fair trial because of the prejudice or bias of Judge Cueto. *See* Affidavit of Lucia Cava Bliss at Ex. “A”, ¶ 4.

6. Although Judge Cueto is undoubtedly an excellent jurist and well-qualified to preside over numerous civil cases, Mrs. Bliss is compelled to file this Motion to Disqualify in conformity with Rule 2.330 of the Florida Rules of Judicial Administration and Fla. Stat. § 38.10 because she has a reasonable fear that Judge Cueto may not be an independent jurist when it comes to her claims.

7. The fact that this motion is filed in good faith is supported by the signature of undersigned counsel and the affidavit Mrs. Bliss.

8. No motions for disqualification have been previously filed or granted.

MEMORANDUM OF LAW

Canon 3(E)(1) of the Code of Judicial Conduct states that “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned” Based upon the facts set forth above and the attached affidavit, there is no doubt that Judge Cueto’s impartiality might “reasonably be questioned” by Mrs. Bliss. *See Miami-Dade Expressway Authority v. Electronic Transaction Consultants Corporation*, 212 So. 3d 1059, 1060 (Fla. 3d DCA 2017); *Wolfson v. Wolfson*, 159 So.3d 394, 394 (Fla. 3d DCA 2015) (finding that disqualification is required where the trial judge’s comments suggested that she had prejudged the case); *Wade v. Wade*, 123 So.3d 697, 698 (Fla. 3d DCA 2013) (holding that disqualification is required where the trial court announced its ruling before hearing all of the evidence); *Cummings v. Montalvo*, 135 So.3d 389, 389 (Fla. 5th DCA 2014) (finding that disqualification was required because the judge’s statements reflected that she had prejudged a party’s credibility); *Amato v. Winn Dixie Stores/Sedgwick James*, 810 So.2d 979, 980–83 (Fla. 1st DCA 2002) (finding that disqualification was required where the trial court had issued an order on the merits before all of the evidence had been submitted, even though the trial court subsequently vacated the order).

Therefore, Mrs. Bliss respectfully requests that Judge Cueto recuse himself from proceeding further with the pending trial or any other pending matters related to her claims.

Rule 2.330 of the Florida Rules of Judicial Administration states that “[a]ny party ... may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by Code of Judicial Conduct.” Florida Statute § 38.10 provides in relevant part:

Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in a manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified.

And when a party seeks to disqualify a judge under Florida Statute § 38.10, the judge cannot pass on the truth of the statements of fact set forth in the affidavit. *See Gene D. Brown v. St. George Island, Ltd*, 561 So.2d 253, 255 (Fla. 1st DCA 1990) (citing *State v. Dewell*, 179 So. 695 (Fla. 1938)). The facts and reasons for the belief of prejudice must be taken as true, and the judge may only pass on the legal sufficiency of the motion and supporting affidavits to invoke the statute. *Id.* In other words, the court is to make a “bare determination of legal sufficiency of a motion for disqualification in order to prevent an adversarial atmosphere from developing between the judge and the litigant.” *Tabluea Fine Art Group, Inc. v. Jacoboni*, 853 So.2d 299, 301 (Fla. 2003).

The Florida Supreme Court explained the “legal sufficiency” standard to be as follows:

[A] party seeking to disqualify a judge need only show “a well grounded fear that he will not receive a fair trial at the hands of the judge. It is not a question of how the judge feels; it is a question of what feeling resides in the affiant’s mind and the basis for such feeling.” [citations omitted] The question of disqualification focuses on those matters from which a litigant may reasonably question a judge’s impartiality rather than the judge’s perception of his ability to act fairly and impartially.

Livingston v. State, 441 So.2d 1083, 1086 (Fla. 1983). “If the attested facts supporting the suggestion are reasonably sufficient to create such a fear, it is not for the judge to say that [the fear] is not there.” *Id.* at 1087. More clearly, the question of disqualification focuses on those matters from which a litigant may reasonably question a judge’s impartiality rather than the judge’s perception of his ability to act fairly and impartially. *Id.* at 1086; *see also Mackenzie v. Superkids Bargain Store, Inc.*, 565 So. 2d 1332, 1336 (Fla. 1990) (“The appearance of impropriety or bias is of special concern where the branch of government involved is that charged with the duty of remaining impartial, i.e., the judiciary.”).

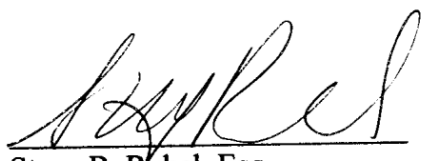
Whether the motion is legally sufficient requires a determination as to whether the alleged facts would create in a reasonably prudent person a well-grounded fear of not receiving a

fair and impartial trial. *See Rodriguez v. State*, 919 So.2d 1252, 1274 (Fla. 2005). In other words, legal sufficiency is governed by the reasonable person standard: the sole consideration is whether the litigant requesting disqualification can reasonably fear it will not receive an impartial or fair trial. *Breakstone v. Mackenzie*, 561 So.2d 1164, 1167 (Fla. 1990). Based upon the facts set forth above and the attached affidavit, there is no doubt that Judge Cueto's impartiality might "reasonably be questioned" by Mrs. Bliss.

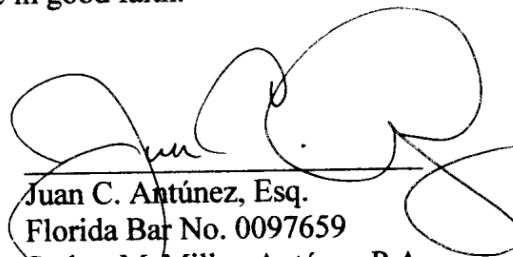
WHEREFORE, based upon the foregoing, Mrs. Bliss respectfully requests that Judge Cueto voluntarily recuse himself from this matter *sua sponte*. In the alternative, Mrs. Bliss moves to disqualify Judge Cueto from presiding in this matter.

CERTIFICATE OF GOOD FAITH

The undersigned counsel do hereby certify that the foregoing motion and their client's statements contained in the attached affidavit are made in good faith.



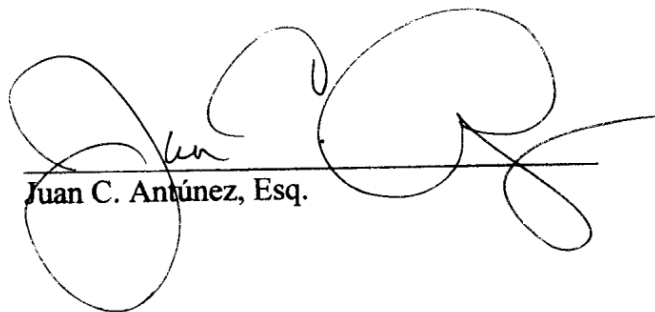
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on 4/24, 2018 via email to the E-service recipients selected for service on the Florida Court's E-Filing Portal for this case.



Juan C. Antúnez, Esq.


EXHIBIT "A"

AFFIDAVIT OF LUCIA CAVA BLISS

1. My name is Lucia Cava Bliss. I am over the age of 18, and I am competent to testify to the matters stated herein.
2. On April 23, 2018, my attorneys called Mr. Eric Virgil as a fact witness in support of my claims. At the conclusion of Mr. Virgil's testimony, and before allowing a recess, the Honorable Jorge E. Cueto asked to meet with the attorneys for both parties without the presence of a court reporter. In that meeting Judge Cueto strongly urged the parties to settle. And then still in the presence of all attorneys, Judge Cueto went on to alert my attorneys of the risk of Fla. Stat. § 57.105
3. My attorneys explained to me the significance of the reference to Fla. Stat. § 57.105. It is an evaluation of my claims as being without basis, and it carries with it exposure to attorney's fees as a sanction.
4. Based on the foregoing facts, I fear that Judge Cueto has prejudged my claims as being without basis, and as a result I fear I will not receive a fair trial because of the prejudice or bias of Judge Cueto.

FURTHER AFFIANT SAYETH NAUGHT.

**UNDER PENALTIES OF PERJURY, I
DECLARE THAT I HAVE READ THE
FOREGOING AFFIDAVIT AND THAT
THE FACTS STATED IN IT ARE TRUE.**



Lucia Cava Bliss