

**B. HUMBLE LAW**

BRIAN F. HUMBLE, ESQUIRE  
1313 Race Street  
Philadelphia, PA 19107

ATTORNEY FOR AKEAM GAMBLE

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COMMONWEALTH OF PENNSYLVANIA	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
	:	CRIMINAL DIVISION
V	:	
	:	CP-51-CR-008070-2017
	:	
AKEAM GAMBLE	:	

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**ORDER GRANTING HEARING**

**AND NOW**, on this \_\_\_\_\_ day of \_\_\_\_\_ 2019, upon application of Brian F. Humble, Esq., attorney for the above-named Petitioner, and in consideration of the attached Motion it is **HEREBY**,

**ORDERED** and **DECreed** that a hearing be held on the \_\_\_\_\_ day of \_\_\_\_\_, 2019 in Room \_\_\_\_\_, at \_\_\_\_:00 \_\_\_\_ of the Criminal Justice Center, Philadelphia, PA.

J. \_\_\_\_\_  
BY THE COURT

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**ORDER DENYING THE COMMONWEALTH'S MOTION TO DISQUALIFY JUDGE**

**DICLAUDIO**

AND NOW, on this \_\_\_\_\_ day of \_\_\_\_\_ 2019, upon application of Brian F. Humble, Esq., attorney for the above-named Petitioner, the Commonwealth's Motion is Denied.

BY THE COURT:

\_\_\_\_\_.  
\_\_\_\_\_.  
\_\_\_\_\_.

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**MOTION IN RESPONSE TO THE COMMONWEALTH'S MOTION TO**  
**DISQUALIFY JUDGE DICLAUDIO**

TO THE HONORABLE JUDGE(S) OF SAID COURT:

On application of the Petitioner, by his Attorney, Brian F. Humble, Esquire respectfully represents that:

1. On 4/9/19, this matter was scheduled for a consolidation under Rule 701 of the Pennsylvania Rules of Criminal Procedure in room 905 before the Honorable Judge DiClaudio with CP-51-CR-008070-2017.<sup>1</sup>
2. On 4/8/19, the Commonwealth filed a Motion to recuse Judge DiClaudio from this matter and all other cases that were scheduled on that very same day in room 905.<sup>2</sup>
3. As a result, all of Judge DiClaudio's cases were continued so that counsel for respective defendants, and the Judge could prepare a response.

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<sup>1</sup> This matter was originally scheduled for April 15, 2019 in room 1002 of the Criminal Justice Center. However, the matter was properly administratively relisted pursuant the defendant's procedural rights granted under Rule 701 of the Pennsylvania Rules of Criminal Procedure.

<sup>2</sup> Many citizens charged with crimes and their families were adversely affected by this frivolous filing that brushes a sweeping stroke by suggesting the court is not a fair in any criminal case in Philadelphia.

4. The Commonwealth argues, in short, that the Honorable Judge DiClaudio should recuse himself from all criminal cases in the county of Philadelphia because his impartiality might reasonably be questioned by an objectively reasonable person under Rule 2.11(A) of the Pa. Code of Judicial Conduct.
5. In support, the Commonwealth proposes the absurd conclusion that an “objectively reasonable person might reasonably question a Judge’s impartiality because said Judge is in a relationship with a former Assistant District Attorney who has sued the Office of the District Attorney for Wrongful Termination.<sup>3</sup>
6. The Commonwealth also makes unsubstantiated allegations in footnote 1 of their motion, which has no bearing on Rule 2.11(A), and serves only to slander and cause the same public concern that the Commonwealth fails to support in its motion.

7. **ARGUMENT**

The Commonwealth’s motion should be denied for failing to support their motion with evidence sufficient to prove that by that a reasonable person could reasonably conclude that Judge DiClaudio cannot be fair in every single criminal case in Philadelphia. Furthermore, the motion should be dismissed as frivolous for failing to acknowledge the Supreme Court of Pennsylvania’s ruling on this matter and misstating the law on the appropriate standard.

The party who asserts a trial judge must be disqualified bears the burden of producing evidence establishing bias, prejudice, or unfairness necessitating recusal, and the decision by a judge against whom a plea of prejudice is made will not be disturbed except upon an abuse of discretion. Commonwealth v. Darush, 501 Pa. 485,

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<sup>3</sup> This is alleged by the District Attorney.

459 A.2d 727, 731 (1983). When a party questions the impartiality of a judge, the proper recourse is a motion for recusal, requesting that the judge make an independent, self-analysis of the ability to be impartial. Commonwealth v. Travaglia, 452 Pa. 108, 661 A.2d 352, 370 (1995). The Judge must then decide whether his or her continued involvement in the case (in this case, every case in Philadelphia), creates an appearance of impropriety and/or would undermine public confidence in the judiciary. Commonwealth v. Abu-Jamal, 553 Pa. 485, 720 A.2d 79, 89 (1998); Commonwealth v. Tharp. 574 Pa. 202, 830 A.2d 519, 534 (2003).

In this case, the Commonwealth has not offered any evidence to support recusal other than an alleged relationship with a former Assistant District Attorney. The Supreme Court of Pennsylvania has unequivocally ruled that a relationship with a party is irrelevant, and that the reasonable person standard is subject to the internal review of the Court being accused of unfairness. Infra.

Practically every source cited by the Commonwealth is either holdings that do not support its argument, Informal Advisory Opinions, or citations from other State jurisdictions that serve no precedential value. See e.g. Reilly by Reilly v. Se. Penn. Transp. Auth., 479 A.2d 973 (Pa. Super. 1984); Commonwealth v. Druce, 796 A.2d 321 (Pa.Super 2002); State v. Salazar, 898 P.2d 982 (Ariz. Ct. App. 1995); Czuprynski v. Bay Circuit Judge, 420 N.W.2d 141 (Mich. Ct. App. 1988); Brewton v. Kelly, 166 So.2d 834 (Fla. Dist. Ct. App. 1964); In re Braswell, 600 S.E.2d 849 (N.C. 2004); State v. Hahn, 660 N.E.2d 606 (Ind. Ct. App. 1996), etc.

For example in Reilly, a civil case, the Commonwealth fails to mention the

Supreme Court of Pennsylvania's holding in reviewing their cited case. The Supreme Court held with regard to the recusal issues, “ [...] SEPTA's contention as to the trial judge's personal bias and hostility toward its trial counsel had been waived and was, in any event, without merit. We agree. No allegation of bias or animosity of the judge to SEPTA was ever alleged. Any such animosity, standing alone, between a lawyer and judge is **irrelevant**. Reilly by Reilly v. Se. Penn. Transp. Auth., 507 Pa. 205, 213. The Supreme Court further held that a relationship in of itself does not disqualify a Judge. Id. at 227.

Like Reilly, in this case no specific allegation of animosity was alleged, any animosity between a lawyer and judge is irrelevant, and a relationship in of itself does not disqualify a judge.

Also in Druce, the Commonwealth's emphasis is misplaced. The Court in Druce ruled against recusal ruling on a presumption that “Judges of the Commonwealth are honorable, fair and competent, and when confronted with a recusal demand, have the ability to determine whether they can rule with impartiality and without prejudice. Druce citing Commonwealth v. White, 557 Pa. 408, 734 A.2d 374, 384 (1999).

In this case, the Commonwealth tries to boot strap the Court by purposely misrepresenting that Druce ruled on the reasonable person standard as a distinct analysis of Rule 2.11(A), as opposed to the subjective analysis of the Judge subject to the recusal who determines his own ability to be fair. This representation by the Commonwealth couldn't be further from the truth. Druce ruled in favor the Judge's own internal determination that he or she could be fair in that specific case, and ruled

further that a Judge's own ruling on disqualification cannot be disturbed except for abuse of discretion. Druce citing Commonwealth v. Darush, 501 Pa. 15, 459 A.2d 727, 731 (1983).

## 8. CONCLUSION

Because the Commonwealth filed a frivolous motion to recuse Judge DiClaudio of every single criminal case in Philadelphia without reference to supporting law, and the Commonwealth has failed to provide any evidence, the Commonwealth motion should be denied.

Respectfully Submitted,



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Brian F. Humble, Esquire  
Date: 4/10/19

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**VERIFICATION**

I, Brian F. Humble, Esquire, hereby state that I am the attorney for the Petitioner in this action, and verify that the facts and statements contained in the attached motion are true, and correct to the best of my knowledge, information, and belief. I understand that false statements are subject to penalties of 18 Pa.C.S. § 4909, related to unsworn falsification to authorities.



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Brian F. Humble, Esquire  
Date: 4/10/19

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, a true and correct copy of this Petition was served upon the following individuals and entities via electronic filing through the Clerk of the Quarter Sessions.

Philadelphia District Attorney's Office  
3 South Penn Square  
Philadelphia, PA 19107



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Brian F. Humble, Esquire  
Date: 4/10/19

