

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

CASE NO: PCA 89-30351 LC

ALBERTA DAVISON,

Plaintiff,

-vs-

THE BOARD OF TRUSTEES OF
PENSACOLA JUNIOR COLLEGE,
FLORIDA,

Defendant.

_____ /

AMENDED
MOTION FOR RECUSAL, MEMORANDUM OF LAW
AND CERTIFICATE OF COMPLIANCE

COMES NOW the Plaintiff, by and through her undersigned attorney, and requests the present Judge, Lacy Collier, recuse himself from this case and states the following in support thereof:

1. Pursuant to 28 U.S. Code, Section 455, any Justice, Judge or Magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. In this case and based on the attached Affidavit, the impartiality of Your Honor may reasonably be questioned based on the facts stated in the Affidavit. Further, case law indicates

that no actual partiality need be established so long as the appearance of partiality is established. Liljeberg -v-Health Services Acquisition Corp., 486 U.S. 847 (1988); U.S. -v- Kelly, 888 F.2d 732 (11 Cir.1989).

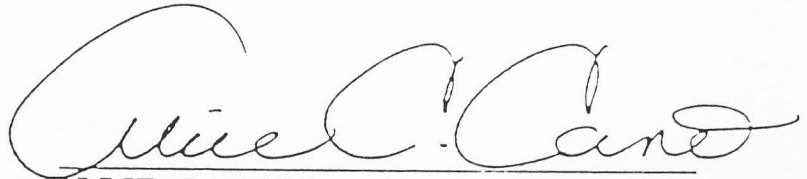
Further, the test of impartiality is one of reasonableness; that is, whether a reasonable person knowing all of the surrounding circumstances would consider the Judge to be impartial. U.S. -v- Norton, 700 F.2d 1072 (C.A. Tenn. 1983), cert. denied 461 U.S. 910. Here based on the Affidavit a reasonable person knowing all the surrounding circumstances could not consider the Judge impartial.

Finally, based on the facts established in the Affidavit , being that this Judge gave advice to the Plaintiff through a mutual friend, the Judge may be subject to disqualification pursuant to 28 U.S.C.Sec. 455(b)1 which states that a Judge shall disqualify himself where he has personal knowledge of disputed evidentiary facts concerning the proceeding.

The undersigned hereby certifies that she will consult with Defendant's counsel in an attempt to determine whether the issues raised by this Motion may be resolved informally.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by regular U.S. Mail on this 20TH day of MARCH, 1992, to D. LLOYD MONROE, IV, esquire, P. O. Box 1739, Tallahassee, Florida 32302, and M.J. MENGE, ESQUIRE, P. O. Box 1831, Pensacola, Florida 32598-1831.

A handwritten signature in cursive script, reading "Alice C. Cano". The signature is written in black ink and is positioned above a horizontal line.

ALICE C. CANO
P. O. Box 1419
Santa Rosa Beach, FL 32459
(904) 267-1100
Florida Bar No. 0749575
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

ALBERTA DAVISON,
Plaintiff,

vs. Case No: PCA 89-30351-LC

THE BOARD OF TRUSTEES OF
PENSACOLA JUNIOR COLLEGE,
FLORIDA,

Defendant.

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF WALTON

BEFORE ME personally appeared Alberta Davison and stated the following:

1. Attorney M. J. Menge is co-counsel for the defendant on this case. He has been the chief counsel for the defendant for many years. In fact, his identity or reputation arguably is synonymous with that of the defendant. Mr. Menge has made his strong negative views regarding the plaintiff

known both to the plaintiff and the general public through his actions in connection with this case and through his disparaging remarks made about the plaintiff in the media.

2. Mr. Menge is a very influential individual in the Pensacola area. By most accounts, he is considered a part of the Pensacola "establishment." Representatives of the Pensacola establishment have already given the plaintiff cause for concern. In April of 1988, Mr. Menge, long-time legal counsel for the defendant, served as the hearing officer on a case which involved the dismissal of one of the defendant's employees by the defendant's president (the First District Court of Appeals would later rule that Mr. Menge did not serve as the hearing officer, even though witnesses present at the hearing observed the contrary). The case involved the dismissal of the late Dr. Conrad P. Cotter, a white tenured professor. Dr. Cotter became a confidant and an important supporter of the plaintiff shortly before his hearing commenced. At the request of Dr. Cotter's legal counsel, plaintiff assisted counsel at one session of Dr. Cotter's administrative hearing. At the conclusion of this session, Dr. Cotter was approached by Dr. Tom Gilliam, husband of sitting circuit court Judge Nancy Gilliam, and given a message characterized by Dr. Cotter as an offer of bribery. According to Dr. Cotter, Dr. Gilliam informed him that he had been sent by prominent members of the Pensacola establishment to deliver the message. Dr. Gilliam's message to Dr. Cotter, in essence,

stated that the Pensacola establishment was prepared to make it possible for Dr. Cotter to keep his teaching position at the college in return for his severing all of his relations with the plaintiff, "that black woman." This offer was made to Dr. Cotter, even though Dr. Cotter's case was highly controversial and college officials had publicly expressed several negative opinions with regard to his teaching effectiveness and his classroom demeanor. Dr. Cotter promptly notified the plaintiff of the offer, in spite of Dr. Gilliam's instructions to the contrary. He also confidentially informed certain officials in the Pensacola community of the offer. Plaintiff believes that this improper overture, made toward Dr. Cotter long before she filed her lawsuit against the defendant and even prior to her receiving any of her three favorable EEOC findings, attests to the lengths Mr. Menge and other prominent individuals associated with the defendant are prepared to go in order to prevent the plaintiff, a black female, from receiving justice in this case.

← 3. What is particularly disturbing to the plaintiff, with respect to Mr. Menge and this case, is the role Mr. Menge played in your Honor's appointment process. He was the representative from Northwest Florida who served on the nominating or selection committee which recently recommended your Honor for appointment to the federal bench. Plaintiff believes Mr. Menge's role as co-counsel for the defendant on this case, which is presided over by your Honor, and the role he played

This is all I knew at the time about the relationship between the judge and Mr. Menge.

in your Honor's appointment process clearly establish a conflict of interest that could be prejudicial to the plaintiff. Plaintiff's concern with respect to this apparent conflict of interest is heightened by the fact that she is aware of Mr. Menge's role in unrelated matters involving conflicts of interest.

← 4. Finally, plaintiff believes that there exists a second conflict of interest in this case. Several months ^{was} prior to your Honor being appointed to the federal bench, your Honor gave the plaintiff legal advice on her case through a mutual friend. Although plaintiff's friend may have omitted the plaintiff's name in seeking legal advice from your Honor on behalf of the plaintiff, plaintiff believes the rare circumstances previously revealed to your Honor by her friend leave little, if any, doubt now that the advice sought by plaintiff's friend specifically pertained to the plaintiff's case. The circumstances had to do with the fact that the plaintiff was without counsel as a result of her counsel having been sent to the Persian Gulf to serve his country in Operation Desert Storm. The circumstances also had to do with the fact that then presiding Judge Roger Vinson had recused himself after being requested to do so by the plaintiff. Prior to recusing himself, however, Judge Vinson denied plaintiff's motion to quash the defendant's scheduled depositions, thereby granting the defendant permission to proceed with depositions. Even though the plaintiff had filed a

motion for reconsideration in response to the Judge's ruling, Judge Vinson recused himself without ruling on the motion. No further instructions or directions were issued by the court. The defendant, therefore, was scheduled to continue the proceedings in this case the following morning after Judge Vinson had recused himself, even though the plaintiff was without counsel and the case was without a presiding judge. Under such highly unusual circumstances, plaintiff sought advice on how she should proceed. Your Honor provided this advice to plaintiff through the plaintiff's friend.

FURTHER affiant sayeth not.


Alberta Davison


NOTARY PUBLIC
STATE OF FLORIDA AT LARGE

MY COMMISSION EXPIRES:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES AUGUST 12, 1995
FORDED THRU HUCKLEBERRY & ASSOCIATES