

was also a defendant in that suit.

4. The Defendant requested that Judge Potter recuse himself due to the lawsuit prior to ruling on the issue of this order. Judge Potter refused to recuse himself which was a violation of the Judicial Cannon which requires a judge to recuse himself at any point where he may have even just the appearance of not being impartial.

Canon 3 (E)(1)(a) “A judge shall disqualify himself or herself in a proceeding in which the judges’ impartiality might reasonably be questioned, including but not limited to instances where: (a) The judge has a personal bias or prejudice concerning a party, ...

5. Judge Potter attempted to hide his misconduct by refusing to accept a proffer from the Defendant that was a copy of the Complaint filed in Federal Court. Refusing to accept a proffered document is more judicial misconduct by Mr. Potter.

6. Judge Potter later recused himself from entering the order, which makes no sense. If being sued by the Defendant is grounds for recusal he should have recused himself prior to making the ruling, if it wasn't grounds for recusal he should have entered the order on April 20th instead of recusing himself from that task. All Judge Sheridan did is rubber stamp the ruling made by Judge Potter, no more justice was afforded the Defendant than if Judge Potter had signed the order himself.

Failure To Remove Attorney

7. Given that Loretta Vardy, counsel for Cheri Smith, was also a Defendant in the Federal lawsuit she should have been removed from the case. Judge Potter refused to do so.

Failure to Recuse Judge Sheridan

8. Justice requires not only an impartial judge but one that appears impartial. Judge Sheridan during his career had earned himself a reputation for being biased against and discrimination against fathers. Given his reputation for gender bias Judge Sheridan should have recused himself and refused to hear a mother v father case.

9. Given that Judge Sheridan didn't have the integrity to recuse himself on his own motion the Defendant made an oral motion for him to recuse himself. Not only did Judge Sheridan violate the

rules by not complying he became enraged and berated the Defendant for presenting a legally appropriate motion.

10. Judge Sheridan appeared to have more than a bias against fathers, his conduct prior to the start of the hearing and during the hearing evidences a bias against the Defendant personally. Judge Sheridans conduct appeared be in retaliation for the Defendant filing a Civil Rights Complaint against other judges.

11. Judge Sheridan appeared to be looking for a reason to harass and/or imprison Mr. Smith. Judge Sheridan's had the bailiff, officer Crenshaw, threaten him for jail for not having his polo shirt tucked in. Mr. Smith was dressed exactly the same as he had for previous hearing with no complaints from the judges.

12. According to Officer Crenshaw, Judge Sheridan was not enforcing his 'shirt tucked in policy' against the women in the courtroom, only enforcing it against Mr. Smith. Thus Judge Sheridan violated Mr. Smiths 14 Amendment right to Equal Protection.

13. Judge Sheridan also ordered Officer Crenshaw to prevent Mr. Smith from entering the courtroom to attend his own hearing.

14. When Judge Sheridan said he was holding Mr. Smith in contempt, Mr. Smith asked if that was Civil or Criminal Contempt. Judge Sheridan replied in a smart-ass manner that Mr. Smith could think about that in jail. His smart-assed comment and refusal to state the legal grounds for the jail sentence are evidence of a personal bias against Mr. Smith.

15. Given his reputation for gender bias in general and his specific harassment of Mr. Smith in this case, the Canons of Judicial Conduct require Judge Sheridan to recuse himself. The test is not whether actual bias and prejudice exist, but **whether a reasonable person would doubt the impartiality of the court.**

Canon 3 (E)(1)(a) "A judge shall disqualify himself or herself in a proceeding in which the judges' **impartiality might reasonably be questioned**, including but not limited to instances where: (a) The judge has a **personal bias** or prejudice concerning

a party, ...

"Law requires not only impartial tribunal, but that tribunal **appears** to be impartial." 28 U.S.C.A. 455. In Re Tip-PaHands Enterprises, Inc., 27 B.R. 780 (U.S. Bankruptcy Ct.)

"a judge must diligently avoid not only impropriety but a reasonable **appearance** of impropriety as well." Davis v. Commonwealth, 21 Va. App. 587, 591, 466 S.E.2d 741, 743 (1996).

"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 the public confidence in the integrity of the judicial system is maintained." Buchanan v. Buchanan, 14 Va. App. 53, 55, 415 S.E.2d 237, 238 (1992).

"Judges are presumed to be aware of the provisions of Canon 3" Davis, supra. When a motion to recuse is presented, a "judge must be guided not only by the true state of his impartiality, but also by the public perception of his fairness, in order that public confidence in the integrity of the judiciary may be maintained." Stamper v. Commonwealth, 228 Va. 707, 714, 324 S.E.2d 682, 686 (1985).

Due Process Violations

16. Judge Sheridan ordering Officer Crenshaw to prevent Mr. Smith from entering the courtroom to attend his own hearing. This is a clear violation of Due Process as a person as a right to attend, to present evidence, question witnesses, etc. The actions of Judge Sheridan also prevented Mr. Smith from making a complete record of the hearing, which significantly impaired his ability to appeal the ruling. Judge Sheridan refused to rule on the Defendants motion, to remove attorneys, that was docketed for that hearing.

Chicken Scratch Order

17. In keeping with the unprofessional manner in which he was running his kangaroo court, Judge Sheridan wrote 16 lines of handwritten largely illegible chicken scratch on the typed order. Some lines are written horizontally and some vertically.

18. The fact that the chicken scratch is largely illegible is a serious impediment to appealing that portion of the order. Does his handwriting say "I sentenced Mr. Smith to jail to protect my friends and because I'm an ass"? Or do they state any valid reason for the contempt charge? It would take a

handwriting expert to reach any definitive conclusion, and the court record shows that Mr. Smith can't afford one.

19. With the easy access to computers and typewriters it is inexcusable for any orders to be handwritten in this day and age. Leaving Mr. Smith with an order where the words in it are subject to debate impairs and appeal, impairs enforcement, and is a violation of Mr. Smith's right to Due Process.

Fraud By Judge Sheridan

20. Judge Sheridan did not give Mr. Smith an opportunity to read and sign the order he entered with his hand written comments on it, including the 1 day sentence for contempt. However what Judge Sheridan put in the court file is a document that appears that Mr. Smith signed the order after Judge Sheridan wrote on it which did not happen.

21. Mr. Smith had signed and objected to a proposed order that was to be submitted to Judge Potter on April 20th. Lortta Vardy had typed up a new proposed order for Judge Sheridan to enter. However rather than use that unsigned proposed order Judge Sheridan used the version that was signed several months prior. Judge Sheridan then proceeded to modify the order but did not give Mr. Smith any chance to read or sign it before filing it with the clerk.

22. Judge Sheridan failed to provide Mr. Smith an opportunity to sign and object to the ruling but submitted a document to the court that makes it appear that he did so. Such action is an act of fraud by Judge Sheridan.

Illegal Contempt Sentence

23. Judge Sheridan sentence of one day in jail for contempt was not only malicious and personally motivated but also illegal. In order to summarily punish for contempt a judge must comply with VA § 18.2-456 and Judge Sheridan did not do so.

§ 18.2-456. Cases in which courts and judges may punish summarily for contempt. The courts and judges may issue attachments for contempt, and punish them summarily, **only in the cases following:**

(1) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice;...(3) Vile, contemptuous or insulting language addressed to or published of a judge for or in respect of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding;

24. There is no justification in § 18.2-456 for the contempt sentence.

25. Its ludicrous to think that Mr. Smith's shirt not being tucked in obstructed or interrupted the administration of justice, especially since the same polo shirt had not obstructed previous hearings and that the opposing attorney's untucked shirt wasn't obstructing the administration of justice. It appears Judge Sheridan was just looking for a reason to harass Mr. Smith.

26. Mr. Smith made a valid argument about the gender bias of Judge Sheridan and his reputation. Making a good faith argument can hardly be described as "Vile, contemptuous, or insulting language". Mr. Smith simply repeated the same recusal argument he had previously made with other judges who did not indicate being upset or hold him in contempt for making the argument.

27. The argument Mr. Smith made was that in Virginia according to DCSE 96% of custodial parents are female and only 4% are male. This indicates significant gender bias by the judges. In this environment of anti-father bias Judge Sheridan by reputation has considered more anti father than other judges.

28. Clearly Judge Sheridan had no legal authority per § 18.2-456 to hold Mr. Smith in contempt. Judge Sheridan acted in retaliation for Mr. Smith acting as a whistle-blower exposing the misconduct of the other judges.

29. Mr. Sheridan refused to specify if the contempt was criminal or civil.

The trial judge must clearly articulate the criminal nature of the proceedings at the earliest possible moment. The purpose of this rule is to eliminate the confusion associated with the various types of contempt proceedings. It operates to ensure that the defendants are afforded all their constitutional rights and to inform the defendants what procedural and evidentiary rules will be followed and what standard of proof will be applied to the case. *Powell v. Ward*, 15 Va. App 553 (1993).

30. Judge Sheridan did not provide notice, failed to provide an attorney. Sheridan also did not

address the intent of Mr. Smith.

Notice requirements to comply with Due Process mandate that the show cause for contempt specifically set forth the details of his alleged offense. The defendant must have notice prior to the hearing that he is being charged with criminal contempt, and the defendant must be personally served. *Steinberg v. Steinberg*, 21 Va. App. 42 (1995).

Defendants in criminal contempt cases are **entitled to representation** by counsel. Unless waived, **counsel should be appointed for indigent defendants**. Compensation for appointed counsel is set forth in Va. Code Â§ 19.2-163. Counsel may be waived, but make sure the waiver is supported by the record. *Steinberg v. Steinberg*, 21 Va. App. 42 (1995)

Intent is a necessary element in criminal contempt, and no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it. *Carter v. Commonwealth*, 2 Va. App 392 (1986).

31. The record of the case does not support the contempt charge.

The record in such cases **must contain more than the bare conclusion that the defendant's conduct was insolent, insulting, boisterous or the like. The actual facts upon which the court based its final conclusion must be set out** The record must show facts to support proof that the contempt was committed willfully. *Carter v. Commonwealth*, 2 Va. App. 392, 397 (1986).

**Respectfully Submitted,
Wesley C. Smith**

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing motion was served to Loretta Vardy via U.S. mail, this 16th day of July 2007.