

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

v.

Case No. CRC98-20377-CFANO-S

CHURCH OF SCIENTOLOGY
FLAG SERVICE ORGANIZATION
SPN NO. 01980179

**CHURCH OF SCIENTOLOGY FLAG SERVICE ORGANIZATION'S
MOTION TO DISQUALIFY PRESIDING JUDGE**

Defendant Church of Scientology Flag Service Organization (the "Church"), by counsel and pursuant to section 38.10, Florida Statutes and Rule 2.160 of the Florida Rules of Judicial Administration, respectfully moves this Court to enter an order disqualifying the judge currently presiding over this cause. As grounds for this motion, the Church states as follows:

1. Section 38.10, Florida Statutes and Rule 2.160 of the Florida Rules of Judicial Administration require that a circuit judge presiding over a criminal proceeding disqualify him or herself if a party thereto fears that he, she, or it will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.

2. Procedurally, a party seeking to disqualify a trial judge must do so by a motion which is either verified or supported by a sworn affidavit. Florida Rule of Judicial Administration 2.160(c). Such an affidavit may include, and the Court must consider, hearsay allegations in support of the request for disqualification. *Barnett v. Barnett*, 727 So.2d 311, 312 n. 2 (Fla. 2d DCA 1999). Additionally, a certificate of good faith from counsel is required in support of the motion. Counsel for the Church has today filed such a certificate of good faith. "[A] judge faced with a motion for recusal should first resolve that motion before making any

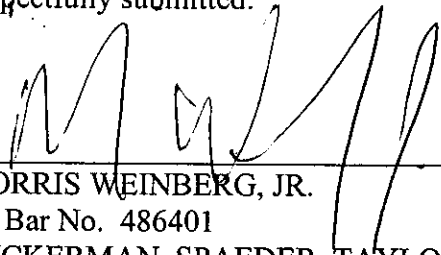
other ruling in a case.” *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332, 1339-1340 (Fla. 1990) (emphasis in original).

3. A court’s discretion is extremely limited when considering a motion for disqualification. The judge against whom a motion to disqualify is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts supporting the motion for disqualification. Florida Rule of Judicial Administration 2.160(f). “In order to decide whether the motion is legally sufficient, ‘[a] determination must be made as to whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial.’” *MacKenzie*, 565 So.2d at 1335-36, (quoting *Livingston v. State*, 441 So.2d 1083, 1087 (Fla. 1983)); *see, also, Barnett*, 727 So.2d at 312 (finding the requisite prejudice to disqualify a Pinellas County trial judge as a result of the suggestion she made at the close of evidence but before closing argument in a child custody proceeding that the wife negotiate for better visitation than the court was prepared to order); *Nunez v. Backman*, 645 So.2d 1063, 1064 (Fla. 4th DCA 1994). Obviously, this threshold is extraordinarily low.

4. The Church has recently discovered facts that reasonably cause it to fear that it will not receive fair treatment before the judge currently presiding over this cause because of his prejudice or bias against the Church of Scientology as well as its religious beliefs relating to mental health treatment, which beliefs are central to the allegations and defenses in this case. The relevant facts and the reasonable fear of prejudice engendered by them are specifically described in the Affidavit of Mary Story, a representative of the Church, which is attached to this motion and incorporated herein by reference.

WHEREFORE, The Church of Scientology Flag Service Organization respectfully requests that the Court enter an order disqualifying the judge presiding over this cause and providing for the reassignment of the case to another judge of this Court, all in accordance with section 38.10, Florida Statutes and Rule 2.160 of the Florida Rules of Judicial Administration.

Respectfully submitted:



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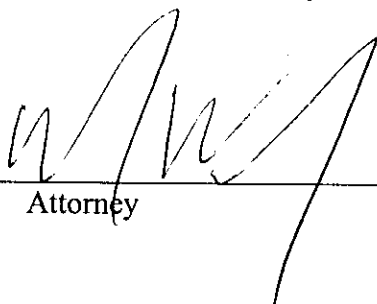
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery this 2nd day of March, 2000 to Douglas E. Crow, Assistant State Attorney, Post Office Box 5028, Clearwater, FL 33758.



Attorney