

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA**

STATE OF FLORIDA,  
*Plaintiff*

Case No: 98-05739CF-10A

V.

ERNESTO BEHRENS,  
*Defendant.*

**DEFENDANT'S MOTION TO RECUSE**

COMES NOW, the Defendant, Ernesto Behrens, pro se, and respectfully moves pursuant to § 38.10, Fla. Stat. and Rule 2.330 of the Florida Rules of Judicial Administration, to recuse Judge Andrew L. Siegel from proceeding further in this action. As grounds for this Motion, the Defendant alleges:

**GROUND IN SUPPORT OF THE MOTION<sup>1</sup>**

1. The disqualification of a Judge is not a reflection on the personal ethics, It is a Motion directed only to the appropriateness of the Judge serving on a particular case. Because of the facts and circumstances involved in this case, it must be reassigned to another Judge.
2. This is a case against Ernesto Behrens, the Defendant in the above-styled case number, arising out of multiple sexual battery cases the State filed against him between 1993 and 1997.<sup>2</sup> It is specifically alleged that the sole inculpatory evidence in this case is a single stain of seminal fluid found on a bedsheet allegedly containing the Defendant's DNA profile.<sup>3</sup> It is worth mentioning

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<sup>1</sup> See: Clerk of the Court Docket Case Number: 98-5739CF10A for a full view of all of the events herein alleged, including the Motions herein described.

<sup>2</sup> It should be noted that the Defendant was acquitted on all the other cases except the case sub-judice.

<sup>3</sup> Despite the unambiguous accusations of mishandling DNA evidence by the Broward Sheriff's Office (BSO) Crime Laboratory in the last years, and the firm claim of actual innocence raised by the Defendant. He has not been allowed to review and/or retest his inculpatory evidence.

also that all the cases that were pending against the Defendant, were directly charged by criminal information, sworn by and prosecuted during jury trials by former Assistant State Attorney, Dennis E. Siegel.

3. The Defendant's former Assistant State Attorney, Dennis E. Siegel, has been a critical participant in the establishment and use of the "criminal charges" against the Defendant and he is both the attorney who represented the State during the multiple trials and a potential witness in this case. He is the author of each one of the multiple criminal informations that were filed against the Defendant. It is expected that during the course of this litigation Mr. Siegel will continue to be used by the State to serve as a critical witness.

4. Dennis E. Siegel also has a familial relationship (by consanguinity or affinity within the third-degree) with Judge Andrew L. Siegel. This information was disclosed to the Defense by the office of Herman Law Firm on June 26, 2020.<sup>4</sup> Thus, Mr. Siegel, no doubt, has a personal interest in the outcome of this case currently being presided by one of his relatives.

5. Mr. Siegel not only prosecuted multiple cases against the Defendant, he has personal knowledge of many of the material facts in the case and the Defendant plans to call Mr. Siegel as a witness, probably an adverse witness, during any of the expected postconviction proceedings of this case. In that event Judge Siegel would be required to rule on the credibility of the testimony of a former Assistant State Attorney to whom he is consanguinity related to. The Defendant reasonably fears that, no matter how much the judge attempts to be completely fair and neutral in resolving all issues in this case, it is clear from human experience that it is virtually impossible for a person to set aside and erase a natural bias or prejudice in favor of the credibility of a witness with whom that person has or has had a close familial and personal or professional relationship.

6. The law recognizes this concern: The test is whether, on the facts alleged, a reasonably prudent person would fear that he or she would not get a fair and impartial trial or hearing. *Rogers v. State*, 630 So. 2d 503 (Fla. 1994); *Livingston v. State*, 441 So. 2d 1083 (Fla. 1983); *Crosby v. State*, 97 So. 2d 181 (Fla. 1957). The basic tenet for disqualification is the appearance of justice, even if the

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<sup>4</sup> Mr. Siegel worked for this Law Firm back in 2013.

record lacks proof of actual bias or prejudice on the part of the judge. *Hewitt v. State*, 839 So. 2d 763 (Fla. 4th DCA 2003).

7. Assistant State Attorney Dennis E. Siegel's familial ties with Judge Andrew L. Siegel is alone a valid ground for disqualification.

8. However there is more. Judge Siegel's unchanged demeanor toward this case clearly reflects bias in favor of the State and against the Defendant so as to affect the Judge's objectivity in reviewing the Defendant's pending postconviction Motions. See: *Lages v. State*, 685 So. 2d 968 (Fla. 2nd DCA 1996). See: Pertinent background in this case:

- a. The Defendant has two Motions for Postconviction relief currently pending in front of this Judge and under the above-styled Case Number.
- b. This Judge has timely issued multiple "Show Cause Orders" on each Motion requesting the State to respond to the Defendant's Motions within sixty (60) days from the date of this Court's Orders. Specifically, these Orders were first issued on March 26, 2019 and April 16, 2019 respectively.
- c. The State failed to comply with this Judge's Order and the State also failed to timely request from this Judge any type of leave for an extension of time.
- d. The Defendant timely filed a "Notice to the Court" calling this Judge's attention to the State's failure to timely respond. Additionally, the Defendant requested this Judge to rule on the pending Motions. However, this Judge did not acknowledge this Notice nor the Judge has taken any action.
- e. On September 11, 2019 three months after the State's due date to respond, the State again filed "Motion for Extension of Time to File Response" in which requested an additional ninety (90) days. The State's Motion states in pertinent part: "[T]he undersigned counsel has ordered and received the records necessary to respond to the defendant's allegations."
- f. This Judge, on the same day September 11, 2019, granted the State's Motion for Extension of Time, giving the State ninety (90) additional days to respond.
- g. Although the State's due date to respond expired on December 11, 2019. The State again failed to comply with this Judge's Orders and to timely request this Judge's permission for additional extension of time.
- h. After the State's ongoing reckless disregard for this Judge's Orders to respond to the Defendant's Motions. The Defendant filed on January 22, 2020, his "Motion to Oppose any

Further Extensions of Time to be Given to the State." Despite the clear statement of prejudice expressed by the Defendant's Motion, stating in pertinent part: "**First**, the Defendant's pro bono DNA consultant, Tiffany Roy, is becoming frustrated with the unnecessary delay and could withdraw for her desires to assist in this case; **Second**, the Defendant is indigent and has no way to pay for DNA experts on his behalf. Therefore, without the immediate release of the requested DNA testing previously performed by the BSO Crime Laboratory to Ms. Roy, the Defendant would not be able to demonstrate his innocence; and **Third**, the Defendant's continued illegal incarceration, aside from unconstitutionally preventing him of his liberty, places him in continuous, unwarranted and needless physical danger... "

- i. Nevertheless, this Judge has completely disregarded the Defendant's Motion and has never addressed the merits of such Motion.
- j. Despite the Defendant's Motion to oppose any more extensions of time being filed by the State and, contrary to the Defendant's expressed request. On February 14, 2020, the State moved the Judge for another ninety (90) days extension of time to file its response. Once again, without hesitation and without acknowledging the Defendant's unambiguous opposition to any further extensions of time. On February 17, 2020, this Judge granted the State's Motion for extension of time, allowing the State its additional requested ninety (90) days.
- k. On the same day February 17, 2020, however, Franziska Kaltenbach, a friend of the Defendant and a loyal supporter of this cause, wrote a letter, on behalf of the Defendant to the Honorable Ron DeSantis (Florida Governor), complaining about the actions and inactions taken in this specific case by this Judge. This letter was also mailed to this Judge. The letter was answered by the Governor's Office on February 20, 2020, with instructions on how to file complaints against a judge with The Judicial Qualification Commission (JQC) and/or how to move for judges' disqualification.
- l. On March 9, 2020, the Defendant filed his "Motion To Preserve Any And All Evidence Introduced At Trial Containing DNA, As Well As, All Fingerprints And Palm Prints Collected At The Point Of Entry And Exit Which Are Currently In The Custody Of The Clerk Of The Court's Evidence Room." As to the day of this Motion being filed, this Judge has not acknowledged the filing of this pending Motion. Nor does this Judge have shown any signs of ruling on these Motions anytime soon, even though the Defendant relies solely and exclusively on this currently existing evidence to prove his actual innocence claim.
- m. On May 14, 2020, the State again filed another "Motion for Extension of Time" requesting thirty (30) additional days to file its response. And of course, as expected, on May 15, 2020 this Judge granted the additional thirty (30) days extension of time requested by the State.
- n. As to the day of the writing of this Motion, fifteen (15) days after the expiration of the last thirty (30) days extension of time granted by this Judge and four (4) days after learning that Judge Andrew Siegel and former Assistant State Attorney Dennise Siegel have familial ties. No Response or Motion for Leave for additional time to respond has been filed by the



State. And of course, this Judge has not moved the State to comply with his previous Orders. Furthermore, this Judge has not ruled on the merits of neither one of the Defendant's two currently pending Motions.

- o. Based on this Judge's clear lack of acknowledgment on the Defendant's timely filed Motions. This year alone, the Defendant's family and friends had contacted this Judge's judicial Assistance by phone calls and left messages on behalf of the Defendant, way over 100 times. However, not even once a call was returned. Thus, there is a pattern shown by this Judge which clearly indicates that only the State's file Motions are worthy of acknowledgment and expeditious rulings. Therefore, It is obviously clear to the Defendant that this Judge's demonstration of ill will or, conversely, favouritism toward one of the parties involved in this action (the State), is another valid ground in support to this Judge's disqualification.

9. As clearly stated above, the facts alleged by the Defendant demonstrate that he has a well-grounded fear that he will not receive a fair hearing at the hands of this judge. *Correll v. State*, 698 So. 2d 522 (Fla. 1997).

10. Equally important is the fact that this Judge has a precedent case law describing his favoritism and/or expressed friendship for prosecutors and/or State representatives. See: *Domville v. State*, 103 So. 3d 184 (Fla. 4th DCA 2013). Additionally, in this case Judge Siegel has already been accused by a newspaper reporter, Brittany Shammas (on June 26, 2017 from the Miami New Times newspaper), of not letting the Defendant challenge bad DNA evidence and denying him a hearing. The newspaper article states in pertinent part:

"Late last year, as he served a life sentence in prison, Ernesto Behrens received a notice informing him of problems discovered at the crime lab that had examined DNA in his case. Behrens, who was convicted of armed sexual battery in Broward County in 2000, immediately filed a flurry of motions asking for the evidence to be reviewed. But Judge Andrew Siegel quickly denied the motion without even granting a hearing... Months after hundreds of cases were thrown into question over improper DNA interpretation at the Broward Sheriff's Office Crime Laboratory, Behrens' case has become a point of contention between prosecutors and public defenders. 'The State Attorney's Office should also be looking at justice, and if there's one person sitting in jail or one person that was wrongly convicted based on faulty DNA, they should also be looking to right that conviction,' Assistant Public Defender Gordon Weekes says..."

11. Now three (3) years later, the Defendant is still trying to obtain permission from this Judge to have his pro bono expert, Tiffany Roy, reviewing and retesting the sole inculpatory stain evidence

in this case. However, this Judge refuses to compel the State into complying with his previous Orders to respond to the Defendant's pending Motions and/or to enter a final ruling on the merits of these Motions.

12. The Defendant fears that for these stated reasons he would not receive a fair hearing, in that Judge Siegel has a recognized bias and prejudice against him and in favor of the State. Any reasonable person faced with these circumstances would experience a well-grounded fear that he or she would not receive a fair hearing in front of a judge with these relationships and predisposed demeanor toward the case, reflecting bias in favor of the State.

13. There have been no previously filed motions to disqualify.

14. A copy of this Motion is being immediately served by US mail, as set forth in Rule 1.080, upon Judge Andrew L. Siegel.

15. This Motion is filed within ten (10) days after discovery of the facts disclosed by the Herman Law Firm on June 26, 2020, that Judge Andrew L. Siegel and Assistant State Attorney Dennis E. Siegel are consanguinity related within the third degree.

16. The Motion itself contains the undersigned Defendant's separate certification, that the Motion and its statements are made in good faith.

17. Pursuant to Rule 2.330(f), "The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged." If this Motion is deemed legally sufficient, the Court shall immediately enter an order granting disqualification and proceed no further in the action. *Cave v. State*, 660 So. 2d (Fla. 1994).

18. A motion is legally sufficient if the facts alleged demonstrate that the moving party had a well-grounded fear that he or she will not receive a fair trial or hearing at the hands of the judge. *Correll v. State*, 698 So. 2d 522 (Fla. 1997).

19. The Florida Code of Judicial Conduct, Cannon 3 (E)(1) provides that, "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

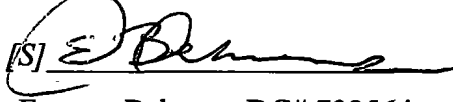
(a) The moving party fears he or she will not receive a fair trial or hearing because of (specific) prejudice or bias of the judge, *or* (b) A family relationship (by consanguinity or affinity within the third-degree) exists between the judge and litigants, Attorneys or interested persons..."

20. The judge is required to rule immediately on a Motion to disqualify. Fla. R. Jud. Admin. 2.160 (e); *Fuster-Escalona v. Wisotsky*, 781 So. 2d 1063 (Fla. 2000). Until the Motion is resolved, the judge cannot proceed further in the case. *Id.* If the court affords a hearing on the Motion, the hearing must be expedited. *D'Ambrosio v. State*, 746 So. 2d 508 (Fla. 5th DCA 1999).

21. In this case, the reasonably questioned impartiality is a three fold impartiality which relates to: **First**, the Defendant's former Assistant State Attorney, Dennis E. Siegel, having a familial ties of the third degree with Judge Andrew L. Siegel and the family relationship he, his wife and kids appear to have with the Defendant's former Assistant State Attorney and future witness in this cause; **Second**, the clear combination of Judge Siegel's unchanged demeanor toward the case, reflecting bias in favor of the State and against the Defendant, together with the Judge's lack of objectivity in reviewing the Defendant's currently pending postconviction Motions; and **Third**, the existing and damaging newspaper articles criticizing Judge Siegel's unfair rulings against the Defendant--on the very same Motions currently pending in the Court, and of course, the third party letter written to Governor DeSantis requesting sanctions upon Judge Siegel for the way he has been handling this case. The law is clear, because this is the first time the right has been invoked, the Defendant is entitled to the entry of an order disqualifying Judge Andrew L. Siegel from proceeding further in this case and directing the Clerk to reassign this case.

**WHEREFORE**, the Defendant respectfully requests the entry of an order of disqualification of the Honorable Andrew L. Siegel and reassignment to another Circuit Court Judge.

Respectfully Submitted,

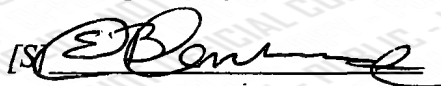
[S]

Ernesto Behrens, DC# 732564

### OATH

**UNDER PENALTIES OF PERJURY** and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this Motion is found to be frivolous or made in bad faith. I certify that I understand the contents of the foregoing Motion, that the facts contained in the Motion are true and correct, and that I have a reasonable belief that the Motion is timely filed. I certify that this Motion does not duplicate previous motions that have been disposed of by the court. I certify that I understand English and have read the forgoing Motion or had the Motion read to me. **I further certify that this Motion and its statements are made in good faith.**

Respectfully Submitted,

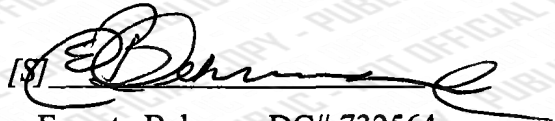
[S]

Ernesto Behrens, DC# 732564  
Martin Correctional Institution  
1150 S.W. Allapattah Road  
Indiantown, Florida 34956

### CERTIFICATE OF SERVICE

**I HEREBY CERTIFY**, that a true and correct copy of the foregoing Motion was sent via U.S. first class mail to: State Attorney's Office, Michael J. Satz, Postconviction Unit, 201 S.E. Sixth Street. Fort Lauderdale, Florida 33301; to the Honorable Chief Judge Jack Tuter and to the subject Judge Andrew L. Siegel's Chamber at Broward County Main Courthouse, 201 S.E. Sixth Street. Fort Lauderdale, Florida 33301 (*in compliance with Florida Rule of Civil Procedure 1.080*). On this 29 day of June, 2020.

Respectfully Submitted,

[S]

Ernesto Behrens, DC# 732564  
Martin Correctional Institution  
1150 S.W. Allapattah Road  
Indiantown, Florida 34956



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