COURT OF APPEAL, SECOND CIRCUIT

STATE OF LOUISIANA

NO.:

STANLEY R. PALOWSKY, III
Plaintiff/Applicant

VERSUS

W. BRANDON CORK, ET AL.
Defendants/Respondents

And

IN RE: ALTERNATIVE ENVIRONMENTAL SOLUTIONS, INC.

APPLICATION FOR SUPERVISORY WRITS OF REVIEW

To review Orders
of the Honorable Carl V. Sharp, Judge, Division "G,"
4th Judicial District Court for the Parish of Ouachita, State of Louisiana
Signed on August 25, 2015, and September 3, 2015, in
Civil Docket Nos. 13-2059 and 13-2747

Respectfully submitted:

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EXHIBITS

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MAY IT PLEASE THE COURT:

STATEMENT OF JURISDICTION

This Application for Supervisory Writs of Review issues pursuant to Louisiana Code of Civil Procedure article 2201, which provides this Honorable Court's supervisory jurisdiction to review a Judgment of the Fourth Judicial District Court for the Parish of Ouachita, State of Louisiana, and pursuant to Rule 4 of the Uniform Rules of this Honorable Court.

CONCISE STATEMENT OF THE CASE

This litigation began on July 2, 2013, when Applicant, Stanley R. Palowsky, III, one of the 50-percent shareholders of Alternative Environmental Solutions, Inc.

("AESI"), filed a shareholder derivative suit[1] against Defendant W. Brandon Cork, the other 50-percent shareholder of AESI, and his co-conspirators after Palowsky discovered that Cork was engaged in a kickback scheme with subcontractors to skim monies from AESI invoices. Subsequently, Palowsky amended his petition to name other parties and to assert additional allegations of wrongdoing, including racketeering.[2] Palowsky then asked for leave of court to file an amended petition against Cork's counsel due to deposition testimony from Cork as to certain "direction[s]" his attorneys gave him, but because the trial court refused to rule on the motion for leave, Palowsky was forced to file a separate lawsuit against Cork's counsel, which has since been consolidated with his original suit.

In response to Palowsky's original petition, Cork filed a Petition for Dissolution of a Corporation Pursuant to La. R.S. 12:143(C)[3] on September 6, 2013. Palowsky and AESI then answered Cork's petition and filed exceptions of prematurity. That matter has essentially remained dormant since those exceptions were filed.

As discussed in more detail below, in July 2015, Palowsky filed a separate lawsuit against a Fourth Judicial District Court ("Fourth JDC") law clerk, Allyson Campbell, as well as Judge Carl V. Sharp and several other judges of the Fourth JDC due to actions taken in his shareholder/racketeering lawsuit.[4] As well it should have, the entire court voluntarily recused itself from that matter.[5]

At issue in the current Application are two motions to recuse the Fourth JDC *en banc* which Palowsky filed and which were denied by Judge Sharp.[6] On June

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[1] Fourth Judicial District Court's Docket No. 13-2059.
[2] Because of the illegal actions of Cork and his co-defendants, AESI lost its major client and sustained damages of tens of millions of dollars.
[3] Fourth Judicial District Court's Docket No. 13-2747.
[4] Exhibits 8 and 11 with Exhibit A, *Palowsky v. Campbell*, Docket No. 15-2179, attached thereto.
[5] Exhibits 8 and 11 with Exhibit D, *En Banc* Order of Recusal signed July 27, 2015, in Docket No. 15-2179, attached thereto.
[6] Because both motions to recuse involve identical facts and law, and for the sake of judicial economy and

12, 2015, Palowsky filed a Motion to Recuse *en Banc* and to Appoint *Ad Hoc* Judge in his shareholder/racketeering suit.[7] On June 19, 2015, Palowsky filed a Motion to Recuse *en Banc*[8] and a separate Motion to Appoint *Ad Hoc* Judge[9] in Cork's dissolution suit. On August 11, Palowsky filed a supplemental supporting memorandum in each suit setting forth recent developments which were germane to the motions to recuse.[10] Neither Defendants nor the trial court filed any written opposition to Palowsky's motions.

Due to uncertainty as to whether Judge Sharp was going to allow testimony at the hearing on the motions to recuse,[11] Palowsky decided, out of an abundance of caution, to issue subpoenas to multiple witnesses, including Judges Sharp, H. Stephens Winters, and Benjamin Jones, so they would be present in the event Judge Sharp allowed testimony. Prior to the hearings, though, Jon K. Guice, counsel for Judges Sharp, Winters, and Jones, filed a motion to quash Palowsky's subpoenas.[12] Despite Palowsky's opposition, Judge Sharp then granted his own attorney's motion and quashed **every subpoena**, even as to non-judge witnesses, that Palowsky had issued.[13]

Thereafter, on August 20, Judge Sharp, **who is a defendant in a related suit filed by Palowsky**, held a "hearing" on his motions to recuse. Due to Judge Sharp's quashing **all** Palowsky's subpoenas, there was no testimony taken or evidence submitted except for what was attached to the motions. There was no

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with the permission of the Clerk of this Court, Palowsky is filing one Application addressing the denials of both motions to recuse.

[7] Exhibit 7. As discussed below, Judge J. Wilson Rambo previously recused himself after Palowsky filed a motion to recuse, and Judge C. Wendell Manning previously recused himself on his own motion.

[8] Exhibit 9.

[9] Exhibit 10.

[10] Exhibits 8 and 11.

[11] Exhibits 8 and 11 with Exhibit H, July 23, 2015 facsimile from Judge Carl Sharp.

[12] Exhibit 12.

[13] Exhibit 4, p. 50, ln 1 – 4.

real argument made by counsel, either. There was, however, plenty of activity that took place, including the following:

- Judge Sharp threatened multiple times to sanction undersigned counsel;[14]
- Judge Sharp got into an argument with Judge Sharon I. Marchman, the one judge who did **not** file a motion to quash Palowsky's subpoena and who was willing to testify, and accused her of "misremembering" when she stated that he had told her the day before that his order did **not** quash the subpoena to her;[15] and
- Judge Sharp's own attorney, Jon Guice (who does not represent any party in the matters that were being heard) interrupted proceedings to **advise Judge Sharp while he was on the bench.**[16]

After all the commotion, Judge Sharp discussed the fact that there had been no separate motion filed to recuse him, and he concluded it would be a waste of time for one to be filed. He stated:

> But I could deny your motion, if there's not a motion to recuse me, then I could deny your motion for en banc recusal of court by saying you haven't complied with the revisions of Article 151 et seq. But, shoot, you can just turn around and file a motion to recuse. I don't want to do that. I won't want to waste your time. I don't want to do that. So let's try it my way.[17]

He went on to rule in open court that he was staying Palowsky's litigation over his corporation pending the outcome of his lawsuit against Campbell and the judges.[18]

Thereafter, on August 25 at 12:16 p.m., Jon Guice filed, on behalf of Judge Sharp and his fellow defendant judges, a motion to stay discovery in the Campbell

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[14] Exhibit 4, pp. 20 – 21, 24, 33, and 44.
[15] Exhibit 4, p. 49, ln. 23 – p. 51, ln. 31. Note that Judge Sharp's credibility was called into question when the Louisiana Supreme Court cited his "dishonesty" as a factor in its decision to suspend Judge Sharp for 60 days without pay for his repeated failure to rule on matters in a timely fashion. *In re Van Sharp*, 2003-2256 (La.10/29/03), 856 So. 2d 1213, 1215 (2003).
[16] Exhibit 4, p. 51, ln. 32 – p. 52, ln. 5.
[17] Exhibit 4, p. 49, ln. 2 – 7.
[18] Exhibit 4, p. 49, ln. 7 - 11.

litigation.[19] Not even two hours later, at 2:06 p.m., despite the fact that Judge Sharp had stated in open court that he was staying the underlying lawsuits, and despite the fact that he stated that he would not require Palowsky to file a separate motion to recuse him as that would be a waste of time, Judge Sharp arbitrarily did a 180-degree turn and issued an order denying Palowsky's motions to recuse **because he had not filed a motion to recuse Judge Sharp first.**[20] He based his puzzling ruling strictly on his interpretation of the Code of Civil Procedure articles governing recusals. He concluded, based on his "examination" of the articles, that a motion to recuse *en banc* "is not authorized by" same.[21]

Palowsky then timely filed notices of his intention to ask this Court to exercise its supervisory jurisdiction with respect to the trial court's denial of his motions to recuse.[22] The trial court set October 7, 2015, as the return date for the writs.[23] As discussed in detail below, Applicant now respectfully submits that the trial court's denials of his motions to recuse *en banc* were erroneous, and he is asking this Court to exercise its supervisory jurisdiction and correct these rulings.

ISSUES AND QUESTIONS OF LAW FOR REVIEW

1. Whether the trial court erred in denying Plaintiff's motions to recuse *en banc* because, according to the trial court, an *en banc* recusal is not authorized by the Code of Civil Procedure.

2. Whether the trial court erred in denying Plaintiff's motions to recuse *en banc* because, according to the trial court, the judge currently assigned to the case would have to be recused before a recusal *en banc* could be considered.

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[19] *Ad Hoc* Judge Jerome J. Barbera, III, granted that motion to stay discovery on September 4, 2015.
[20] Exhibit 1.
[21] *Id.* Judge Sharp signed an identical order on September 3, 2015, in Docket No. 13-2747. Exhibit 2.
[22] Exhibits 5 and 6.
[23] Coincidentally, Judge Barbera also set October 7 as the return date for Palowsky's writ application on the granting of the defendant judges' motion to stay discovery.

ASSIGNMENTS OF ERROR

1. The trial court erred in denying Plaintiff's motions to recuse *en banc* based on its finding that a motion to recuse *en banc* is not authorized by the Code of Civil Procedure.

2. The trial court erred in denying Plaintiff's motions to recuse *en banc* based on its finding that the current sitting judge would have to be recused before a recusal of any other judges could be sought.

MEMORANDUM IN SUPPORT

I. Exercise of Supervisory Jurisdiction

Applicant recognizes that as a general rule, an appellate court will not exercise its supervisory jurisdiction "absent a showing of irreparable injury or unless an ordinary appeal does not afford an adequate remedy." *Duet v. Lucky,* 93-1116 (La. App. 4 Cir. 6/30/93), 621 So. 2d 168, 170. However, an appellate court can grant applications "when the action is dictated by considerations of efficient judicial administration and fundamental fairness to litigants." *Mangin v. Auter*, 360 So. 2d 577, 578 (La. App. 4th Cir. 1978).

Certainly considerations of judicial economy and fundamental fairness call for this Court to exercise its supervisory jurisdiction at this time. If the Court does not do so, then Palowsky will be required to try the underlying cases in front of a judge who should later be recused on appeal, and then his cases would have to be remanded for a new trial in front of an unbiased judge. In other words, the effect of the trial court's denial of his motions to recuse cannot be corrected on appeal without an enormous waste of judicial economy.

Moreover, it would be fundamentally unfair to all the parties involved to have to try the cases at issue in front of a judge who should have been recused, and then to have to re-try the cases after an appeal. It would also be fundamentally unfair for Palowsky to have his lawsuits tried **by a judge he has sued** in a related case. Quite frankly, under no conceivable fact scenario would it be appropriate for a judge who is a defendant in one lawsuit to preside over another lawsuit involving the person who sued him. Accordingly, given the considerations of not only fundamental fairness, but also of judicial economy and efficiency, this Court should intervene to correct the trial court's denial of Palowsky's motions to recuse before his lawsuits proceed any further.

II. Standard of Review

Normally, a ruling on a motion to recuse involves factual findings and is thus "subject to the 'manifest error' or 'clearly wrong' standard of review." *Radcliffe 10, L.L.C. v. Zip Tube Sys. of Louisiana, Inc.*, 2007-1801 (La. App. 1 Cir. 8/29/08), 998 So. 2d 107, 114, *amended on reh'g*, 2007-1801 (La. App. 1 Cir. 12/3/08), 22 So. 3d 178, and *writ denied,* 2009-0011 (La. 3/13/09), 5 So. 3d 119 and *writ denied,* 2009-0024 (La. 3/13/09), 5 So. 3d 120. However, when the ruling at issue involves the interpretation of code articles, "it is a question of law, and reviewed . . . under a *de novo* standard of review." *Broussard v. Hilcorp Energy Co.*, 2009-0449, p. 3 (La. 10/20/09), 24 So. 3d 813, 816 (citations omitted). Accordingly, this Court should "render judgment on the record, without deference to the legal conclusions of the tribunal[] below." *Id.* (citations omitted).

The orders at issue herein were issued based solely on the trial court's interpretation of the procedural articles governing recusals. Specifically, Judge Sharp ruled as follows:

> An examination of the Louisiana Code of Civil Procedure articles [151 *et seq.*] dealing with Recusation of Judges reveals that an *En Banc Recusal* is an action not authorized by those codal articles.[24]

Judge Sharp went on to rule that there was "no legal procedure or mechanism" which empowered one judge to recuse the others, and that the recusal of the other judges of the Fourth JDC could not be reached until he was recused.[25] The trial judge made no **factual** findings whatsoever as to whether he or any of the other judges of the Fourth JDC should be recused. Accordingly, this Court should conduct a *de novo* review of the trial court's rulings while affording same no deference.

III. Applicable Law

Louisiana Code of Civil Procedure article 151 addresses the grounds for the recusal of trial judges, and it provides in pertinent part as follows:

> A. A judge of any court, trial or appellate, **shall** be recused when he: . . .
>
> (4) Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings. . . .

(emphasis added). Additionally, Canon 3(C) of the Code of Judicial Conduct provides in part that a judge

> should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and **shall** disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. . . .

(emphasis added). As this Court is certainly aware, the primary purpose of the Code of Judicial Conduct is to protect the public. *In re Morvant*, 2009-0747, p. 11 (La. 6/26/09), 15 So. 3d 74, 81. As stated by the Supreme Court,

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[24] Exhibits 1 and 2 (footnote omitted).
[25] *Id.*

> Judges hold a unique position of administering justice. They symbolize the law, and, accordingly, their actions reflect favorably or unfavorably on the judicial system. For this reason, it is important that judges comply with the laws and rules governing their conduct in a manner which promotes public confidence.

In re Wimbish, 1998-2882 (La. 4/13/99), 733 So. 2d 1183, 1187.

Once a motion to recuse has been filed, the judge who is sought to be recused has no power to act pending resolution of the motion. La. C.C.P. art. 153. Further, when a judge is confronted with valid grounds for recusal, he or she is obligated to either order recusal or refer the case to another judge for a hearing on the motion to recuse. La. C.C.P. art. 154; *Disaster Restoration Dry Cleaning, L.L.C. v. Pellerin Laundry Machinery Sales Co., Inc.*, 2005-0715, p. 11 (La. 4/17/06), 927 So. 2d 1094, 1100. In districts with more than one judge, the recusal is simply referred to another judge in the district. La. C.C.P. art. 155. In districts with a single judge, an *ad hoc* judge should be appointed to decide the motion. La. C.C.P. art. 156.

IV. Argument and Analysis

A. Motions to Recuse en Banc Are Procedurally Proper.

The trial court's sole reason for denying Applicant's motions to recuse *en banc* was that such motions are not "authorized" by the Code of Civil Procedure. Even without reviewing all the facts underlying the motions, this Court should be able to easily conclude that the trial court's rulings were incorrect because while the code articles might not specifically address *en banc* recusals, a review of jurisprudence shows that same certainly are procedurally proper.

In the analogous case of *Florida Parishes Juvenile Justice Comm. v. Hannis T. Bourgeois, L.L.P.*, 2012-1003 (La. App. 1 Cir. 9/6/12), 102 So. 3d 860, *writ denied*, 2012-2188 (La. 12/14/12), 104 So. 3d 442, which Palowsky discussed at length in his motions, the entire 21st Judicial District Court was recused because of

the likelihood that its judges would be biased. Therein, the plaintiff filed suit against its accountants for failing to catch $2,000,000 worth of theft by a commission employee. The defendants then **filed a motion seeking to recuse every member of the court** based on bias. As noted by the First Circuit,

> HTB's argument centers on the fact that two of the members of the Commission were appointed by the judges of the 21st JDC. According to HTB, the actions of those two commission members . . . are at issue in this civil suit. . . . The fact that these two people were appointed to the Commission by the judges of the 21st JDC directly affects how their credibility will be viewed during the trial. HTB also argues the Commission has an on-going relationship with the judges of the 21st JDC due to regular meetings with the judges in order to provide updates on the administration of the District. HTB argues such circumstances will impact the impartiality of the judges in this matter.

Id. at 861.

Although an *ad hoc* judge denied the motion, the First Circuit reversed and held that the 21st JDC judges should be recused due to a likelihood of bias. The court, relying on United States Supreme Court jurisprudence, explained as follows:

> Although there may not have been evidence of actual bias in this case, the United States Supreme Court has recognized objective standards requiring recusal when "the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable." *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 877, 129 S.Ct. 2252, 2259, 173 L.Ed.2d 1208 (2009). . . . As the court in *Caperton* noted, sometimes an inquiry asks not whether the judge is actually biased, but whether the average judge in his position is **likely to be neutral or whether there is an unconstitutional "potential for bias."** *Caperton*, 556 U.S. at 881, 129 S.Ct. at 2262.

Id. (emphasis added).

The court went on to state that because the 21st JDC had appointed two of the commission members and had an on-going relationship with the commission, there was "clearly . . . a potential for bias." *Id.* In its decision, the court referenced the Louisiana Supreme Court's decision in *Tolmas v. Jefferson*, 2012–0555 (La. 4/27/12), 87 So. 3d 855 (*per curiam*), and it noted that the standard for

mandatory recusal had been modified by same. Therein, not only did the Supreme Court recuse a Fifth Circuit appellate court judge because of bias, but it also transferred the case to the Second Circuit "to avoid even the appearance of impropriety." *Id.* at 862 (quoting *Tolmas*, 87 So. 3d at 855). Thus, the First Circuit found as follows:

> [I]t is logical to conclude that the judges of the 21st JDC would be biased in favor of witnesses whom they appointed to the Commission, and whose actions are now at issue in the present case. The on-going relationship with the Commission and the judges of the 21st JDC also leads to the logical conclusion that the judges would be biased in favor of the Commission. . . .
>
> More importantly, as the *Tolmas* opinion noted, the desire to avoid **even the appearance of impropriety** was a valid cause to warrant the transfer of the matter to another jurisdiction. Given the relationship between the judges of the 21st JDC and the members of the Commission, we find that it is paramount to avoid the appearance of impropriety, thus the district court's ruling denying the Motion to Recuse *En Banc* is hereby reversed.

Id. (emphasis added).

Obviously then, the trial court herein was mistaken when it stated that there is no such procedural vehicle as a motion to recuse *en banc* and thus denied Applicant's motions to recuse. Therefore, Palowsky's Application should be granted on that basis alone. Out of an abundance of caution, however, Palowsky will discuss additional legal and factual reasons why the trial court erred in its handling of and ruling on his motions to recuse.

B. Judge Sharp Should Not Have Conducted the Hearing on Applicant's Motions to Recuse en Banc.

Ironically, the trial court correctly noted in its order denying Palowsky's motions that "no legal procedure or mechanism exists that empowers a Judge of one Division of this Court to recuse all other members of the Court . . . ."[26] Because Palowsky was asking that the trial court be recused *en banc*, then an *ad*

[26] *Id.*

***hoc* judge** should have been appointed to hear the motions as was done in the *Florida Parishes* case. Judge Sharp certainly should not have been the one to hear the motions.

Under Code of Civil Procedure article 154, if a motion to recuse sets forth a valid ground for recusal, the judge "**shall** either recuse himself, or **refer the motion to another judge or a judge ad hoc**, as provided in Articles 155 and 156, for a hearing." (emphasis added). Clearly then, a judge who is faced with a motion to recuse which sets forth valid grounds for recusal has only two options: voluntarily step aside or have another judge hear the motion.

Under Code of Civil Procedure article 155(B), in a district court "having more than two judges, the motion to recuse shall be referred to another judge of the district court for trial through the random process of assignment . . . ." However, because Palowsky was asking for every judge in the Fourth JDC to be recused, article 155(B) was not applicable. Instead, the more appropriate article to follow was 156 which addresses district courts with a single judge and provides in pertinent part as follows: "When a ground assigned for the recusation of the judge of a district court having a single judge is his interest in the cause, the judge **shall** appoint a district judge of an adjoining district to try the motion to recuse. . . ." (emphasis added).

Thus, under the articles governing recusal, there is simply no doubt that a judge who is the subject of a recusal motion cannot be the one to rule on same (unless he is voluntarily agreeing to recuse himself). As stated by the Louisiana Supreme Court in *In re Cooks*, 96-1447 (La. 5/20/97), 694 So. 2d 892, 903 (1997), it would "defy common sense and logic" to give a judge discretion to hear a case in which he has a bias or interest. Likewise, it would defy common sense and logic to allow a judge who has had a motion to recuse filed against him to rule on same.

Accordingly, under Code of Civil Procedure articles 154 and 156, Judge Sharp should never have conducted the hearings, and instead, an *ad hoc* judge should have been appointed to hear Palowsky's *en banc* motions to recuse.

C. Judge Sharp Should Not Have Ruled on the Motion to Quash That His Own Attorney Filed on His Behalf.

After the motions to recuse had been filed and prior to the hearings on same, Palowsky issued subpoenas to certain individuals to testify and produce documents at the hearings. Several judges, **including Judge Sharp,** were among those who were subpoenaed. Prior to the hearings, the judges, through their counsel of record, Jon Guice, filed a motion to quash the subpoenas, and Judge Sharp granted same.[27]

Per article 153 of the Code of Civil Procedure, when a motion to recuse has been filed, the judge who is the subject of the motion has no power to act pending resolution of the motion. Notably, Judge Sharp recognized this rule because he referenced it when he explained why he would not sanction Palowsky's counsel just yet for the issuance of subpoenas to judges.[28] For some reason, though, he still found it proper to quash subpoenas issued to him and his fellow judges.

In *Judson v. Davis,* 2004-1699 (La. App. 1 Cir. 6/29/05), 916 So. 2d 1106, the plaintiff complained that the trial court set a protective order for hearing between the time she filed a motion to recuse the court and the time it was heard.

> Ms. Judson asserts in her appeal brief that the trial judge to whom this matter was allotted, Judge Free, was deprived of authority to sign an order on February 19, 2003, fixing a motion for protective order for hearing, by reason of her motion to recuse him, filed on January 27, 2003, and not heard until February 20, 2003.

Id. at 1121, n. 11 (citing La. C.C.P. art. 153; *State v. Price*, 274 So. 2d 194, 197 (La.1973)). The appeals court agreed that the plaintiff was "correct" that the trial

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[27] Exhibits 12 and 13; *see also* Exhibit 4, p. 32, ln. 25 – 28.
[28] Exhibit 4, p. 33, ln. 16 – 22.

judge had no authority to sign any orders **between the time the motion to recuse was filed and the time it was decided.** *Id.*

Likewise, Judge Sharp had no power to rule on the motion to quash which was filed between the time the motions to recuse were filed and the time they were decided. Thus, Judge Sharp certainly erred in granting the motion to quash the subpoenas issued to him and his fellow judges. Not only did the trial court improperly take it upon itself to conduct the hearings on Palowsky's motions to recuse *en banc,* but the trial court deprived him of the right to present testimony or documents from any of the Fourth JDC judges. Again, these should be reasons enough for this Court to step in and exercise its supervisory jurisdiction.

D. Judge Sharp Should Not Have Stayed the Underlying Lawsuits Pending the Outcome of the Litigation against Allyson Campbell, Judge Sharp, and His Fellow Judges.

During the hearing on Palowsky's motions to recuse, Judge Sharp, who again should not have even conducted the hearing and who had no authority to make any rulings, announced that he was going to stay Palowsky's shareholder/racketeering suit and the petition to dissolve AESI pending the outcome of the lawsuit Palowsky filed against Allyson Campbell, him, and other judges of the Fourth JDC. Thereafter, though, Judge Sharp issued the orders denying Palowsky's motions, and no mention was made of the stay, so it is unclear whether the underlying cases are actually stayed. If they are, though, it should be obvious that the trial court overstepped its boundaries by making such a ruling when it had no legal authority to do so, not to mention the fact that **no party** had requested a stay.

E. Based on the Relevant Underlying Facts, the Motions to Recuse en Banc Should Have Been Granted.

Although the trial court made no factual findings when it denied Palowsky's motions, out of an abundance of caution and since this Court should do a *de novo* review of this matter, Applicant will set forth the facts which prove the necessity of an *en banc* recusal. It should be clear to this Court after reviewing the details and history set forth below that no member of the Fourth JDC should be ruling on any matter involving Palowsky.

1. Judge Sharp Was Already Biased and Interested in Applicant's Shareholder/Racketeering Lawsuit before He Was Sued by Palowsky.

Nearly one year ago, on October 23, 2014, Palowsky filed a motion to recuse Judge J. Wilson Rambo from his shareholder/racketeering suit due to his unnecessary delays in ruling on several matters and due to the bias against him and in favor of Cork's counsel which had been exhibited not only by the judge, but also by his law clerk, Allyson Campbell.[29] For example, in a weekly newspaper column which she co-wrote for some time, Campbell often paid compliments to Cork's lawyer, Thomas M. Hayes, III, as well as her "first boss" Judge Milton Moore of this Court.[30]

More importantly, though, in his motion to recuse Judge Rambo, Palowsky questioned Campbell's role with respect to pleadings of his which were missing from the trial court's record and which were inexplicably not sent to this Court when the record was submitted for consideration of a writ application filed by

[29] Exhibits 7 and 9 with Exhibit A, Motion to Recuse, attached thereto.

[30] *Id.* In one such article, Campbell named both Hayes and Judge Moore as two of the best dressed "gents" in Monroe. She also talked about a Young Lawyer's Society happy hour involving cocktails and "gossip – lots and lots of gossip." She noted how she had "the best time catching up with [her] first boss Judge Milton Moore who looked debonair in his snappy new hat." In another column, Campbell wrote about how both Hayes and Judge Moore have the "IT" factor, which she defined as "a somewhat undefinable quality that makes you and everyone else around stand taller when they enter the room, listen a little more closely, encourage you to take fashion or life risks, make each occasion a little more fun, and generally inspire you to aim to achieve that 'IT' factor for yourself."

Cork.[31] Less than one week after Palowsky filed his motion to recuse, Judge Rambo recused himself, and Judge Sharp took over the litigation.

Thereafter, though, in February 2015, Johnny Gunter, a reporter for a local newspaper, *The Ouachita Citizen*, began investigating and reporting on the actions of Campbell. Mr. Gunter sent public records requests to the trial court asking for certain documents from Campbell's personnel file, but the trial court, apparently in an effort to protect its long-time employee, declined to produce all the requested records. When Mr. Gunter reported on the trial court's refusal to hand over the documents, he not only referenced this litigation, but he quoted from Palowsky's motion to recuse Judge Rambo. Subsequently, on March 20, 2015, Mr. Gunter filed a criminal complaint[32] against the trial court, and on the same day, the trial court filed a Petition for Declaratory Judgment, Docket No. 15-0770,[33] against the publisher of the newspaper in which it sought a ruling that it did not have to release certain documents regarding Campbell under Louisiana's Public Records Act. Campbell then intervened in the litigation.[34]

According to pleadings filed by the newspaper publisher, part of its reporter's impetus in investigating and reporting on Campbell's activities was Palowsky's motion to recuse Judge Rambo.[35] In fact, undersigned counsel who filed the motion on behalf of Palowsky was listed as one of the "*dramatis personae*" in the newspaper's dispute with the trial court.[36] Moreover, in its pre-trial memorandum, the newspaper quoted heavily from Palowsky's motion to

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[31] *Id.* Said writ application was this Court's Docket No. 49,515-CW.
[32] Exhibits 7 and 9 with Exhibit B, Formal Criminal Complaint, attached thereto.
[33] Exhibits 7 and 9 with Exhibit C, Petition for Declaratory Judgment, Docket No. 15-0770, attached thereto.
[34] Exhibits 7 and 9 with Exhibit D, Petition of Intervention, Docket No. 15-0770, attached thereto.
[35] Exhibits 7 and 9 with Exhibit E, Pre-Trial Memorandum filed by Hanna Media, Inc., d/b/a *The Ouachita Citizen*, in Docket No. 15-0770, pp. 3 – 4, attached thereto.
[36] *Id.* at 2.

recuse. Neither Palowsky nor his counsel invited the press to become involved in this matter, but nevertheless it did.

It is now clear that Palowsky's litigation is certainly associated with the widespread publicity the trial court and Campbell have received over the last several months. More importantly, though, it is clear that Palowsky's suit is heavily associated with, if not directly connected with, litigation filed by **the trial court** in an effort to protect the alleged privacy rights of its long-time employee, Campbell. Indeed, by filing suit, all the judges of the trial court became "interested" in this case.

2. Judge Sharp and Other Members of the Fourth JDC Bench Were Sued by Palowsky due to Criminal Activity in His Shareholder/Racketeering Suit.

Perhaps more significantly, though, after Palowsky filed his motions to recuse *en banc,* he filed suit number 15-2179 against Fourth JDC law clerk Allyson Campbell over certain acts she committed in this litigation.[37] Then on July 31, Palowsky amended his suit against Campbell to add Judge Sharp, Chief Judge H. Stephens Winters, Judge Frederic C. Amman, Judge J. Wilson Rambo, and the current court administrator, Judge Benjamin Jones, as additional defendants due to their aiding and abetting Campbell by concealing her wrongdoings in **this matter.**[38]

Thereafter, on August 5, 2015, Judge Sharon I. Marchman, who was not named as a party in the Campbell litigation, filed an order recusing herself.[39] Also on August 5, 2015, **an *en banc* recusal order** was filed in the Campbell suit stating that it had come to the judges' attention that Campbell was an employee of

[37] Exhibits 8 and 11 with Exhibit A, Petition for Damages in *Palowsky v. Campbell,* Docket No. 15-2179, attached thereto.
[38] Exhibits 8 and 11 with Exhibit B, First Supplemental, Amended, and Restated Petition for Damages in Docket No. 15-2179, attached thereto.
[39] Exhibits 8 and 11 with Exhibit C, Order of Recusal signed August 4, 2015, in Docket No. 15-2179, attached thereto.

the court.[40] Citing Canons 2 and 3 of the Code of Judicial Conduct, the judges noted that they "wish[ed] to avoid the appearance of impropriety,"[41] so they recused themselves.

Significantly, this order was signed all members of the trial court **except for Judge Sharp,** who filed his own "Statement of Division G to Be Attached to *En Banc Recusal Order*" wherein he stated that he while he was not necessarily opposed to an *en banc* recusal, he would "decline" to sign the order at that time for the following reasons:

> I have not carefully considered this matter; which careful consideration would entail an examination and review of the facts and occurrences in litigated cases other than this one. Such a review would take time and I understand why the majority of the Fourth District Court Judges would not want to entertain such a delay.[42]

In other words, Judge Sharp filed this "statement" saying essentially that he had to study whether he should be recused from the Campbell matter even though he had been served on July 31[43] with the amended petition **naming him as a party therein**. He later filed a second statement wherein he noted that his reluctance to sign the original order had caused some "head scratching," and he said that "of course" he would have to be recused from a matter in which he had been named as a defendant.[44]

Judge Sharp's reluctance to recuse himself in the Campbell matter as well as his refusal to grant Palowsky's motions to recuse *en banc* should be compared to the actions of Chief Judge Winters, who recused himself on August 5 from **completely unrelated litigation** in which Sedric E. Banks, one of Palowsky's

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[40] Exhibits 8 and 11 with Exhibit D, *En Banc* Order of Recusal signed July 27, 2015, in Docket No. 15-2179, attached thereto.
[41] *Id.*
[42] Exhibits 8 and 11 with Exhibit E, Statement of Division G to Be Attached to En Banc Recusal Order signed August 4, 2015, in Docket No. 15-2179, attached thereto.
[43] Exhibits 8 and 11 with Exhibit F, Sheriff's Return of Service on Judge Sharp dated July 31, 2015, attached thereto.
[44] Exhibit 13, Second Statement of Division G to be Attached to *En Banc Recusal Order* filed August 17, 2015.

attorneys in the Campbell litigation, is lead counsel **because he had been named as a defendant in the Campbell litigation.**[45] Judge Winters stated that he should be recused "in order to avoid any appearance of impropriety and/or bias against any party on the part of the Judge . . . ."[46]

Interestingly, the Fourth JDC also recused itself *en banc* in the matter of *Pitts v. Monroe City School Board,* Docket No. 13-0369, because "one of the litigating attorneys, Jon Guice, is a legal advisor and counsel to the Fourth Judicial District Court."[47] Every judge except for Judge Sharp signed the *En Banc* Order of Recusal "in order to avoid any appearance of impropriety . . . ."[48] Instead of signing the order, Judge Sharp wrote to the attorneys in the litigation and told them that "a simple request will result in a voluntary recusal by the undersigned."[49] Two weeks later, Judge Sharp recused himself.[50]

Back to the matter at hand, though, certain members of the Fourth JDC have now been sued by Palowsky due to administrative actions, not judicial actions, they took in the present litigation. The Fourth JDC also chose to sue a newspaper to protect personnel records of Allyson Campbell, and that litigation arguably arose from Palowsky's underlying shareholder/racketeering suit. Under these facts, Palowsky submits that the Fourth JDC judges cannot be unbiased, and Code of Civil Procedure article 151(A)(4) calls for mandatory recusal. As stated by the Louisiana Supreme Court, if a judge "cannot conduct a fair and impartial proceeding because of bias or prejudice, he cannot hear the case." *Covington v. McNeese State University*, 2010-0250 (La. 4/5/10), 32 So. 3d 223, 224.

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[45] Exhibits 8 and 11 with Exhibit G, Recusation Order signed August 5, 2015, in Docket Nos. 10-4412 and 11-0429, attached thereto.
[46] *Id.*
[47] Exhibit 14 *in globo.*
[48] *Id.*
[49] *Id.*
[50] *Id.*

Moreover, even if the judges of the Fourth JDC could somehow deny that they are biased against Applicant, then Palowsky submits that they had an obligation under Canon 3(C) to recuse themselves since their impartiality is "reasonably" in question. After all, the "primary purpose of the Code of Judicial Conduct is 'to protect the public rather than to discipline judges.'" *In re Benge*, 2009-1617 (La. 11/6/09), 24 So. 3d 822, 844 (citations omitted).

To be clear, Palowsky is not asking that the Fourth JDC be recused *en banc* as some sort of punishment. Instead, he is trying to ensure that he is protected from having a biased judge handle the litigation with the co-owner of his corporation. Under no conceivable circumstances should a judge who has been sued by a party be allowed to proceed over any other related litigation involving that party.

CONCLUSION AND PRAYER FOR RELIEF

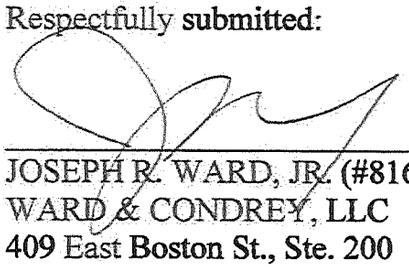
The entire Fourth JDC has been involved in litigation over law clerk Allyson Campbell's personnel records which arguably arose from Palowsky's shareholder/racketeering litigation. Moreover, certain members of the Fourth JDC have now been sued due to actions they took in that suit. These facts should have warranted an immediate and voluntary *en banc* recusal from said litigation. Nevertheless, Palowsky was forced to file motions to recuse the entire Fourth JDC from the lawsuits at issue herein.

Subsequently, not only did Judge Sharp refuse to appoint an *ad hoc* judge to hear Palowsky's motions, he then denied them because, per his "examination" of the procedure articles, a motion to recuse *en banc* is not "authorized" by the Code of Civil Procedure. Palowsky respectfully states, though, that Judge Sharp was mistaken in his interpretation of the articles governing recusals. A review of

jurisprudence proves that a motion to recuse *en banc* is certainly allowed by the Code of Civil Procedure.

Accordingly, Palowsky now prays that this Court grant his Application for Supervisory Writs of Review, conduct a *de novo* review of the law and facts, and grant his motions to recuse *en banc*. Alternatively, Palowsky prays that this Court grant his Application and order the trial court to appoint an *ad hoc* judge to conduct a proper hearing on his motions to recuse *en banc*.

Respectfully submitted:



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RULE 4-5 VERIFICATION

STATE OF LOUISIANA

PARISH OF ST. TAMMANY

BEFORE ME, the undersigned authority, Notary Public, duly commissioned and qualified in and for the aforementioned Parish and State, personally came and appeared JOSEPH R. WARD, JR., who, after being duly sworn, did depose and state that:

He is the Attorney for Applicant, Stanley R. Palowsky, III, in these proceedings; that all of the facts and allegations contained therein are true and correct to the best of his information, knowledge, and belief as related to Affiant by the Applicant; and that this Application is being mailed via Federal Express this 6th day of October, 2015, to the parties and respondent judge as follows:

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SWORN TO AND SUBSCRIBED
BEFORE ME THIS 6th DAY OF
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NOTARY PUBLIC

STACY R. PALOWSKY
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My Commission is Issued For Life