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IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

ELIAS MAKERE, FSA, MAAA)

Plaintiff,)

)

vs.)

Case No (LT): 2021-CA-002763-XXXX

)

Division: CV-B

HON. E. GARY EARLY, ALJ)

Defendant,)

**PLAINTIFF'S MOTION TO DISQUALIFY
THE OFFICE OF THE ATTORNEY GENERAL
FROM ITS PURPORTED REPRESENTATION OF DEFENDANT**

Plaintiff, ELIAS MAKERE, on this 29th day of June 2021, hereby moves this Honorable Court - pursuant to Rule 1.010 Fla. R. Civ. P. - to disqualify Florida's Office of the Attorney General ("OAG") from attempting to represent Defendant, HON. E. GARY EARLY (ALJ), in this case.^{1/}

Key Points:

A.) Points unauthorized, conflict of interest

B.) Grounds rules of professional conduct, US Supreme Court

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First, the state takes stake in the defendant's defense. Then, the state takes stake in the defendant's offense.

Like pushing the gas and the brake the conflict is doomed for a break.

So, may this Court take away the state's first stake on the case.



Background: Defendant defaulted; OAG tried to rescue Defendant
Problem: OAG is not authorized to represent Defendant
Request: Court disqualifies OAG from this proceeding

Rule 4-1.6(a) | RRTFB | Confidentiality of Information

...A lawyer must not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent."

Rule 4-1.7(a) | RRTFB | Conflict of Interest; Current Clients

"...a lawyer must not represent a client if... there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."

Rule 4-1.8(b) | RRTFB | Conflict of Interest; Prohibited...

"...A lawyer is prohibited from using information relating to representation of a client to the disadvantage of the client unless the client gives informed consent..."

Rule 4-1.9 | RRTFB | Conflict of Interest; Former Client...

"A lawyer who has formerly represented a client in a matter must not afterwards... use information relating to the representation to the disadvantage of the former client"

Art. IV §4(b) | FL Constitution | Cabinet | (highlights added)

"the office of the attorney general... shall have the concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws..."

Precedence

- 2013-CA-007407-XXXX - CV-F (5/10/19)
 - 2018-CA-005019-XXXX - CV-F (4/6/20)
- Duval regularly grants motions to disqualify attorneys

Abbreviations

AG - Attorney General (includes Assistants, etc.)
DCA - District Court of Appeal
RRTFB - The Rules Regulating the Florida Bar

MOTION

I. Pertinent History

1. On May 14, 2021, Plaintiff sued Defendant - in Defendant's individual capacity - under state and federal law (§768 FS, 42 USC §1983, respectively).
 - a) The facts detailed Defendant's **demonstrable perjury** and **spoliation of evidence**; which abridged Plaintiff's **constitutional rights**.
 - b) The facts also explained that Defendant's conduct accrued in Duval County as well as Leon County.
2. On June 1, 2021, a process server duly served Defendant.
3. Twenty-two (22) days later - on June 23, 2021 - the Honorable Jody Phillips, Clerk of the Circuit Court, entered default against Defendant (Rule 1.500(a) Fla. R. Civ. P.) for Defendant's failure to appear/answer.
4. Hours after Default, a man named Charles Schreiber filed a *Notice of Appearance* (Dkt 13) in this case; citing Rule 2.505(e)(2)/(e)(5) Fla. R. Jud. Admin. Mr. Schreiber presented himself as a lawyer at OAG, and purported to be counsel for Defendant.

II. Analysis

5. Importantly, Plaintiff's *Motion for Default* (Dkt 10) and the *Default* (Dkt 11) itself confirmed that Defendant was being sued in his **individual capacity**.

6. In fact, OAG has known that Defendant was being sued in his individual capacity all along.

a) The first exhibit of the first document that it submitted to this Court (see Dkt 12) showed Plaintiff indicating that Defendant was being sued in his individual capacity only (see **Exhibit A**).

7. Of – perhaps – greater import is the fact that Plaintiff’s complaint described Defendant’s **criminal conduct**.

a) Defendant’s **perjury** falls under Chapter 837 FS; while his **spoliation of evidence** is captured by Chapter 918 FS.

b) Both chapters, of course, are crimes punishable by prison (under Chapter 775 FS)

8. On Wednesday, June 23, 2021, Defendant affirmed his guilt.

a) By virtue of Defendant’s default, he admitted the well-pled facts in Plaintiff’s complaint (highlights added):

“a party against whom a default judgment is entered admits all well-pleaded facts as true”

- Ellish v Richard, 622 So. 2d 1154 (Fla. 4th DCA 1993)

9. According to the state constitution (Art. IV §4), OAG is **required to prosecute criminal violations** which span multiple circuits:

“the office of the attorney general... shall have the concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits”

- Article IV §4 Florida Constitution

Duval County, of course, is in the 4th Judicial Circuit; while Leon is in the 2nd.

10. Thus, the state constitution mandates that OAG handle Defendant's criminal prosecution.

a) The keyword in Art. IV §4 FL Constitution was "shall". In Chaky v State, 651 So. 2d 1169 (Fla. 1995), Florida's Supreme Court established that "shall" means "mandatory/ministerial":

"We find that the use of the word "shall" in rule 3.390(b) makes that rule mandatory, while the use of the word "may" in rule 3.400 makes that rule discretionary."

- Chaky v State, 651 So.2d 1169 (Fla. 1995)

III. Arguments in Favor of OAG's Disqualification

11. OAG should be barred from representing Defendant in this action because (a) OAG is unauthorized; and (b) OAG has a conflict of interest on the matter.

Unauthorized

12. First, it is common knowledge that OAG is legally prohibited from representing (a) state officials sued in their individual capacities, and/or (b) private citizens (highlights added):

"The Lawyer Referral Service at the Florida Bar can assist you in contacting an attorney in Florida with expertise relevant to your situation. By law, the Office of the Attorney General may not represent private citizens in legal disputes."

- <http://MyFloridaLegal.com/Questions> | 6/24/21

13. Moreover, OAG has failed to identify any rule/statute/clause authorizing it to represent Defendant. So far, the only authorities it has pointed to have been the Fla. R. Jud. Admin. (see Dkt 13 at 1). However, as shown here, that proffer is fraught with error:

a) Rule 2.505(e)(2) Fla. R. Jud. Admin. makes no mention of OAG's power to litigate a private matter (such as this one).

b) Rule 2.505(e)(5) - which Mr. Schreiber also cited - does not even exist.

14. So, as a state agency, OAG's purported representation of Defendant is an improper use of taxpayer money; a breach of authority; and a dilatory tactic.

15. In Compania Int., the 11th Circuit held that it is **improper** to make taxpayers foot the bill for the government's private affairs:

"taxpayers at large should not be subjected to the cost of a judgment entered as a penalty against a government official which comes as a windfall to the individual litigant."

- Compania Int. v Compania Dom., 88 F.3d 948 (11th Cir. 1996)

16. Likewise, in Picchi, Florida's Supreme Court held that errant notices of appearance (ie, Dkt 13) **lack legitimacy** (highlights added):

*"In so doing, the district court recognized that it had previously condemned the practice of filing a notice of appearance because such practice was a **delaying tactic with no legitimate purpose.**"*

*"It is apparent that the notice of appearance here was **improperly interposed for delay.**"*

- Picchi v Barnett Bank, 521 So. 2d 1090 (Fla. 1988)

17. As such, OAG's self-injection into this matter is an unauthorized, unjust, expensive, and dilatory tactic. A ploy that this Honorable Court should bar (highlights added):

"These [rules of civil procedure] shall be construed to secure the just, speedy, and inexpensive determination of every action."

- Rule 1.010 Fla. R. Civ. P.

The 11th Circuit emphasized this point in Martin (highlights added):

"Courts have the inherent authority to control the proceedings before them"

- Martin v Automobili, 307 F. 3d 1332 (11th Cir. 2002)

In Hutto, the US Supreme Court focused this control on attorneys who delay/disrupt/hamper legal proceedings (highlights added):

"An equity court has the unquestioned power to [punish someone] who shows bad faith by delaying or disrupting the litigation or hampering enforcement of a court order."

- Hutto v Finney, 437 US 678 (1978)

Here, OAG is that *dilatory bad actor* which the US Supreme Court warned of; and Plaintiff's entitlement to a full recovery of defaulted damages is what OAG is trying to hamper. A hampering that has already **prejudiced Plaintiff**. Therefore, Plaintiff hereby asks this Honorable Court to disqualify OAG on this first ground.

Conflict of Interest

18. Secondly, OAG has a conflict of interest in this case; one which precludes it from further involvement.

19. As analyzed earlier (§7-10), OAG must take jurisdiction over Defendant's criminal case (perjury, spoliation of evidence). Yet, in the instant case, OAG is attempting to act as Defendant's civil advocate (on those same matters).

20. In Commission v FOIC, 387 A.2d 533 (Conn. 1978), the Connecticut Supreme Court made it clear that attorney generals serve the public (highlights added):

"The attorney general of the state is in a unique position. He is indeed sui generis. As a member of the bar, he is, of course, held to a high standard of professional ethical conduct. As a constitutional executive officer of the state... he must, to the best of his ability, fulfill his "public duty, as Attorney - General, and his duty as a lawyer to protect the interest of his client, the people of the State." This special status of the attorney general - where the people of the state are his clients cannot be disregarded in considering the application of the provisions of the code of professional responsibility to the conduct of his office."

"..."

"As we have noted, the real client of the attorney general is the people of the state."

- Commission v FOIC, 387 A.2d 533 (Conn. 1978)

21. Thus, OAG - who purports to represent Defendant in the instant case - will be Plaintiff's **duty-bound prosecutor** in a nearly-identical criminal case (ie, 'The People vs Edward Gary Early').^{2/} This constitutes a **conflict of interest**.

22. In Moore, the Florida Supreme Court defined an attorney conflict of interest as serving two competing clients:

"We are of the opinion that a lawyer represents conflicting interests, within the meaning of the Canon, when it becomes his duty, on behalf of one client, to contend for that which his duty to another client would require him to oppose."

- The Florida Bar v Moore, 194 So.2d 264 (Fla. 1996)

23. The Supreme Court went on to say that conflicted attorneys should recuse themselves immediately:

"a serious question of conflict of interest arose that should have been resolved by the prompt withdrawal by [the attorney] from the representation of the [original clients] and by advising the [original clients] to secure other attorneys to represent them."

- The Florida Bar v Moore, 194 So.2d 264 (Fla. 1996)

24. Further in Moore, Florida's highest court stated that this type of withdrawal is **rigid** (highlights added):

"an attorney may not represent conflicting interests in the same general transaction, no matter how well-meaning his motive or however slight such adverse interest may be. The rule in this respect is rigid, because it is designed not only to prevent the dishonest practitioner from fraudulent conduct but also to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent."

- The Florida Bar v Moore, 194 So.2d 264 (Fla. 1996)

25. Furthermore, OAG is required to take this rigid consideration of how the people will be impacted by its actions (highlights added):

"[the Attorney General] has a common law duty to represent the public interest... Thus, when an agency head recommends a course of action, the Attorney General must consider the ramifications of that action on the interests of the Commonwealth and the public generally, as well as on the official himself and his agency. To fail to do so would be an abdication of official responsibility."

- Feeney v Commonwealth, 366 NE 2d 1262 (Mass. 1977)

26. Moore and Feeney thus confer upon OAG to disqualify itself from this case.

27. Of course, attorney disqualification on a conflict-of-interest is codified in Chapter 4 RRTFB (highlights added):

"...a lawyer must not represent a client if... there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."

- Rule 4-1.7(a) Rules Regulating the Florida Bar

The imminent criminal prosecution (crimes for which Defendant has hereby admitted - see ¶8 supra) is that "**substantial risk**" that RRTFB forewarned.

28. As such, appellate decisions, rules, and logic show that OAG should be disqualified from this case.

IV. Standard of Review on Attorney Disqualifications

29. In State Farm v KAW, 575 So. 2d (Fla. 1991), Florida's Supreme Court established a **two-prong test** for disqualifying attorneys:

"We next address the issue of the appropriate standard to apply to determine whether the Schlesinger firm should be disqualified. In conflict-of-interest cases such as this arising under the former Code of Professional Responsibility, one seeking to disqualify opposing counsel was required to show that (1) an attorney-client relationship existed, thereby giving rise to an irrefutable presumption that confidences were disclosed during the relationship, and (2) the matter in which the law firm subsequently represented the interest adverse to the former client was the same or substantially related to the matter in which it represented the former client."

- State Farm v KAW, 575 So. 2d (Fla. 1991)

30. In short, Plaintiff must show that:

- a) OAG has an attorney-client relationship with Defendant; and
- b) this matter is substantially similar to a forthcoming criminal proceeding.

Attorney-Client Relationship

31. For starters, OAG's first submission ("*Notice of Appearance of Counsel Charles Schreiber Jr. for Edward Early*"; Dkt 13) states that it has established an attorney-client relationship with Defendant.

"PLEASE TAKE NOTICE that... Charles J. F. Schreiber, Jr., Senior Assistant Attorney General... appears specially as counsel of record on behalf of Defendant"

- Florida Office of Attorney General | 6/23/21 | 2021-CA-002763

32. Thus, it is uncontroverted that OAG has created an **attorney-client relationship** with Defendant; albeit, without requisite authority.

Prong one satisfied.

Substantially-Related Matters

33. Also, as previously detailed (§7-10, *supra*), Defendant has admitted to perjury and spoliation of evidence. Both are crimes.

34. Criminal prosecution on Defendant's transgressions will be focused on those same events (*ie, hiding transcripts; authoring a demonstrable lie of material fact outside of his constituted authority*); and stemming from the same legal dispute.

35. In Young v Achenbauch, 136 So. 3d 575 (Fla. 2014), Florida's Supreme Court affirmed that matters are "substantially related" if they involve the same transaction (highlights added):

"In this case, as the trial court found, the petition against FAMRI, the individual progeny suits, and the original class action are substantially related because they involve the same transaction or legal dispute."

- Young v Achenbauch, 136 So. 3d 575 (Fla. 2014)

36. Thus, the instant case and the forthcoming criminal case are "**substantially similar**".

Prong two satisfied.

37. With all prongs clinched in the standard of review for attorney disqualification, this Honorable Court should preclude OAG from attempting to represent Defendant in this action. Especially since Plaintiff has standing to request such exclusion.

Standing

38. Art. II §8 FL Const. states that *the people* (ie, OAG's clients) have a

right to protect the public trust from abuse:

"A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse."

- Article II §8 Florida Constitution

39. Since '*the people*' includes Plaintiff, he has standing to request OAG's disqualification.

Supreme Decision

40. Perhaps, the best summary of the foregoing comes from the United States Supreme Court in Halderman; which established that state officers cannot ask the state to defend their crimes:

"Besides, neither a State nor an individual can confer upon an agent authority to commit a tort so as to excuse the perpetrator. In such cases, the law of agency has no application -- the wrongdoer is treated as a principal and individually liable for the damages inflicted and subject to injunction against the commission of acts causing irreparable injury."

- Pennhurst State Sch. V Halderman, 465 US 89 (1984)

41. OAG, in the instant case, is attempting to excuse Defendant for his crimes. Excuses it is not authorized to conjure; and crimes it is conflicted to defend.

42. So, all in all, this Honorable Court should disqualify OAG from this case.

CONFERRAL

For the past six (6) days, Plaintiff has pleaded with OAG to identify what rule/statute/clause could authorize it to represent Defendant. He even explained which rules & official policy statements prohibited OAG from doing so. OAG, however, failed to cite even one provision.

Notwithstanding, on June 28, 2021, OAG still told Plaintiff (via email/phone) that it stood in opposition to this motion.

Given that OAG has not cited any applicable authority to represent defendant in the matter, Plaintiff believes the foregoing presents a compelling (ie, *supreme court decisions*) and important (ie, *unauthorized, conflict of interest*) reason for obtaining the requested relief.

!

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Honorable Court to enter an Order which disqualifies Florida's Office of the Attorney General from representing Defendant in this action.

Dated this 29th day of June 2021.

Respectfully submitted,
/s/ Elias Makere
ELIAS MAKERE, FSA, MAAA, Plaintiff
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Jacksonville, FL 32224
P: (904) 294-0026
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CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Courier New 12-point Font (contents); thus complying with the font requirements of Rule 9.210(a)(2) Fla. R. App. P.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June 2021, I electronically filed the foregoing by using the Florida Courts E-filing Portal which will send a notice of filing to the attached service list.

/s/ Elias Makere

Endnotes:

^{1/} a text-searchable, electronic copy of this document can be found here:

http://TextBookDiscrimination.com/Files/Duval/21002763_GMOT_20210629_191724.pdf

^{2/} Of course, Plaintiff does know that criminal prosecutions are taken up by the state.

SERVICE LIST

Charles Schreiber, Jr., Esquire (0843075)
John Bennett

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E: John.Bennett@MyFloridaLegal.com
P: 850.414.3300
F: 850.488.4872

Office of the Attorney General
The Capitol PL-01
Tallahassee, FL 32399-1050

EXHIBIT A

Document

Showing Plaintiff Declare 'Individual Capacity'
as the only manner in which he was suing Defendant

Florida

In the Circuit Court, 4th Judicial Circuit, Duval County

16-2021-CA-002763-XXXX-MA

Makere v Early

§768 FS, 42 USC §1983

Dkt 12

31st Page Only

Filer: Office of the Attorney General

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

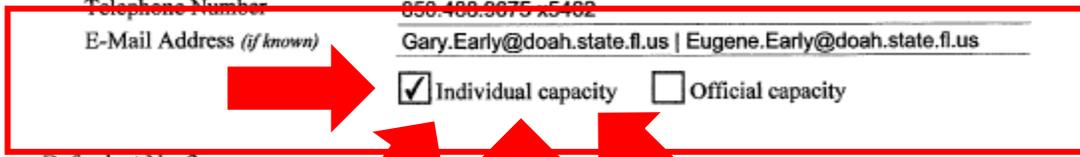
Name	Elias Makere, FSA, MAAA		
Address	3709 San Pablo Rd S #701		
	Jacksonville	FL	32224
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	Duval		
Telephone Number	904.294.0026		
E-Mail Address	Justice.Actuarial@gmail.com		

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name	Hon. E. Gary Early, ALJ		
Job or Title (if known)	Administrative Law Judge (Florida's Division of Administrative Hearings)		
Address	1230 Apalachee Pkwy		
	Tallahassee	FL	32399
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	Leon		
Telephone Number	850.488.8875 x5402		
E-Mail Address (if known)	Gary.Early@doah.state.fl.us Eugene.Early@doah.state.fl.us		



Individual capacity Official capacity

Defendant No. 2

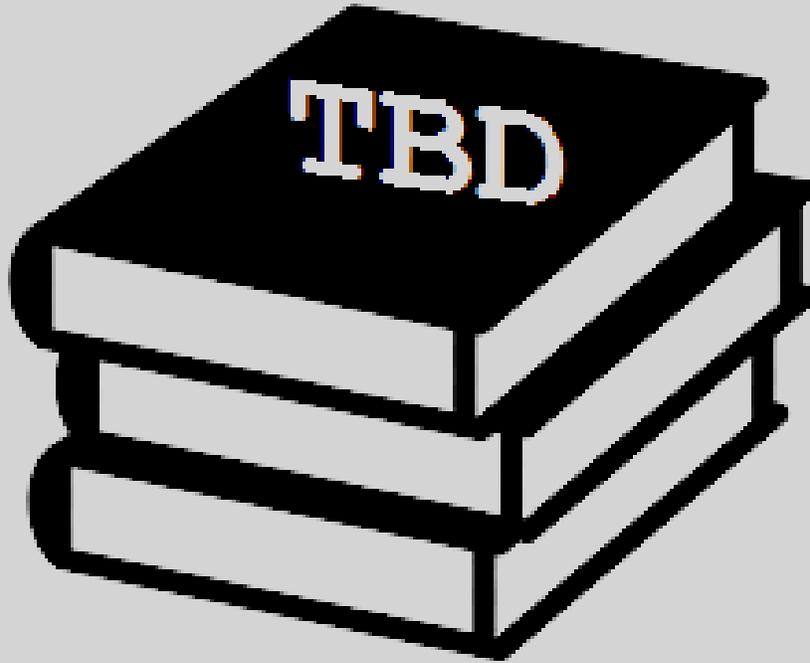
Name	_____		
Job or Title (if known)	_____		
Address	_____		
	_____	_____	_____
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	_____		
Telephone Number	_____		
E-Mail Address (if known)	_____		

Individual capacity Official capacity

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