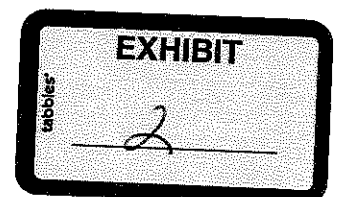


From: Larry Hlmelein
To: [REDACTED]
Date: 7/10/2007 10:35 AM
Subject: Re: Fwd: Message from the Chief Judge

Does anyone really think that banding together or lobbying together or doing anything together will have any effect on those people in Albany?? I remain convinced that the only weapon in our arsenal is recusal on all cases where a firm has a legislator or a relative of a legislator in a firm. However, that will take some stones on our part. Some of us may not want to poke our fingers in the eyes of the politicians (some of us, however, might like to do exactly that) but I firmly believe that is the only weapon we have that has any likelihood of making some of those clowns suffer for their actions. Does everyone realize that we have not even kept pace with inflation since the state took us over? Is there another state employee in NY in that boat?

Larry Hlmelein
Cattaraugus County Court



From: Larry Himelein
To: [REDACTED]
Date: 7/11/2007 9:05 AM
Subject: Re: Recusals

My feeling is that I would not be recusing because I could not be impartial. I would be recusing because it is mandatory. I view it this way: I made a contribution to a lawsuit where the legislature is a named defendant. I have a direct interest in the plaintiffs' success in the lawsuit, a direct financial interest. How could I not be recused from a lawsuit where a member of the same legislature is a member of one of the firms involved in my lawsuit? Back before they changed the rules I was asked (and agreed) to recuse myself in a criminal case where the defendant was accused of stealing from a company of which I owned a whopping 100 shares of stock. How can the legislature situation not be a mandatory recusal? Once the lawsuit is over, the reasons for the recusal are also over. It has nothing to do with whether I could be impartial.

I really believe this is the only weapon we have. We can form all the associations, etc we want but what makes anyone think the three men in a room will act any differently? If anyone really believes that, I want what they're smoking. As to Bruno not being a lawyer, there are enough lawyers in the senate who would be very unhappy if their cases could not be heard and their firms started letting them go. We either take serious action or we will forever be in the same position we are in today.

Larry Himelein

EXHIBIT

3

tabbies

From: Larry Himelein
To: [REDACTED]
Date: 9/21/2007 10:33 AM
Subject: Re: 16 TONS AND WHATYA GET

Amen. I am sending my check this weekend to support the litigation and will send a letter to all firms in our area that have a legislator affiliated with the firm recusing myself from their cases as long as the litigation is pending. I continue to view this as an automatic refusal. Not until these firms start letting their legislators go will we have any standing at all with those downs. Its time we stood up for ourselves - no one else is going to.

>>> [REDACTED] 9/21/2007 10:28 AM >>>

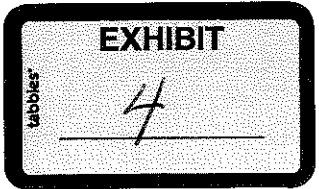
Unless you are prepared to do something other than whine about this stuff than you deserve exactly what you are receiving. Chief Judge Kaye has been absolutely useless throughout this entire debacle. I still think she should resign or at the very least keep her mouth shut about the lawsuit. Her legacy will clearly be the destruction of the judiciary in the state and its relegation to subservient status in our constitutional scheme. She has been more concerned about sucking up to the governor and the legislature to protect all of her politically correct and psycho-babbling programs and has been a total disgrace as a leader - she should go and take her OCA hind end kissing toadies with her.

The governor has lied to us and the legislature has lied to us. They are represented by the Attorney General's office- I am not handling any cases where the AG's office is involved because I could not be fair and impartial. WE are CONSTITUTIONAL officers and our power comes from the Constitution not OCA or the other two branches and inherent in that should be the right of self-preservation. These people are stealing from us and demeaning the integrity of our judicial positions and we do nothing! Thank God for the lawsuits although I am sure OCA will do what the Chief Judge has been doing -that is trying to undermine it every chance they get.

By the way whatever happened to her request, as absurd as it was, for opinions from the Comptroller and the AG? This was way back in April.

Lastly, our administrative judge refused to have a spring meeting last year and to date no fall meeting has been scheduled. Since this is my 22d year as a judge and the first time ever we have not had both a spring and a fall meeting I am just wondering if that order came from on high- you know those people so concerned with representing us properly.

How long are we going to take this crap from these people?????????



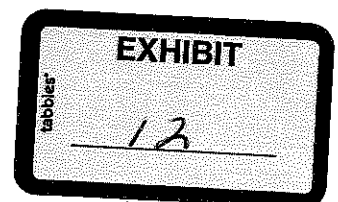
From: Larry Himelein
To: [REDACTED]
Date: 12/3/2007 10:02 AM
Subject: Re: Maron Decision attached

Given that decision, and assuming that we will get boned by the legislature again, is there anyone who still believes we shouldn't recuse?

Larry Himelein

>>> Hon. [REDACTED] 12/3/2007 8:38 AM >>>
I have been asked by many to forward a copy of the decision.

Hon. [REDACTED]



From: Larry Himelein
To: [REDACTED]
Date: 11/9/2007 4:22 PM
Subject: Re: A MODEST PROPOSAL

Absolutely!! Both of us in Cattaraugus County have recused ourselves (I even got a case from the speaker's firm from which I could gleefully recuse myself). Why doesn't every judge in the state immediately recuse? Grow some stones people. It will always be the only weapon we have. Use it or lose it!

>>> [REDACTED] 11/9/2007 4:13 PM >>>
Why not recuse ourselves since we are adversaries in litigation with them?

>>> [REDACTED] 11/9/2007 3:59 PM >>>
Why not adjourn their matters without date in the interests of "judicial economy"? That should get their attention.

>>> [REDACTED] 11/9/2007 3:50 PM >>>
Several months back, as part of her 2007 State of the Judiciary speech, Chief Judge Kaye suggested that one way to address our goal realizing fair judicial compensation was to inquire of the Comptroller and Attorney General of New York what our rights and her powers were. (A review of the memorandum of law submitted in Maron v. Silver demonstrates that given the proclaimed emergency nature of judicial compensation, the Chief Judge, based on Court of Appeals precedent, has the inherent power to resolve this issue by directing the Comptroller to issue payment of the moneys adopted by the Legislature and approved by the Governor in the 2006-7 budget.) This course was taken in lieu of seeking to adjudicate the rights of the beleaguered judges of New York.

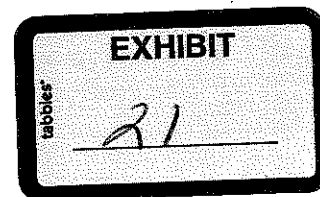
To date, no answer from either the Comptroller or the Attorney General has been forthcoming. Is anyone really surprised about that?

Now, the tables have turned. Governor Spitzer is moving to quash subpoenas served upon the Executive Branch by the State Senate Investigations Committee. The Legislature is suing to overturn the Governor's recently announced drivers license for illegal immigrants initiative. Both the Executive and Legislative Branches are turning to the Judicial Branch for relief. How ironic!

The truth is that they will receive far better treatment from us than we have from them.

I propose that the very same procedure adopted by the Chief Judge be employed by the Governor Spitzer, Senator Bruno and Speaker Silver. That is, have them submit their disputes to the Chief Judge or each other for an advisory opinion as to how to proceed on these issues rather than litigate them. After all, what is good for the goose...

I guess the Governor and Legislature understand that aggressive adjudication of their rights is important to their branches of government.



[REDACTED]

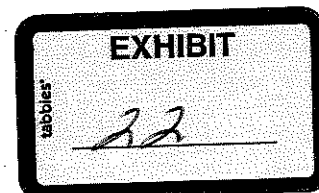
From: Larry Himelein
To: [REDACTED]
Date: 12/19/2007 3:23 PM
Subject: Re: Judge recusal

Amen, Amen, Amen. But it will take EVERY judge in the state to do it and even better if the chief judge mandated it!! How can any self respecting judge even consider sitting on a case with a legislator in a firm? When Shelley's firm can't get a divorce heard or will probated or a trial date, see if that doesn't spur some action. And maybe some of his contributors could ask for their money back. Any judge not willing to recuse has no right to complain.

Larry Himelein

>>> [REDACTED] 12/19/2007 2:52 PM >>>

The rules governing judicial conduct require a judge to avoid the appearance of impropriety and to act, at all times, in a manner that promotes public confidence in the integrity and the impartiality of the judiciary. If that is the ethical rule, how then does any judge allow Sliver and his office to appear in their court? This is actual impropriety. One day we are begging him for a pay rise, the next day he is requesting a ruling on behalf of a private client - - could it appear that one may affect the other? There are no words that I can express by e-mail how unethical this situation is - - the only way to deal with the situation is to make it cost him to continue to be a lawyer legislator. It has costs us everyday to be a judge - we can't practice or have outside income. If he wants to continue in the state legislature and continue to link judges pay raises to irrelevant political issues-- it should cost him to do so, just as it cost us judges. What ethical responsibility does he have? He should not be allowed to practice before the courts of this state so long as this pay raise is held hostage for purely political reason. If we, judges, continue to allow this illegal, unethical and immoral stand off to continue, we have no one to blame but ourselves. He and the members of the assembly should be ashamed of themselves!!!!

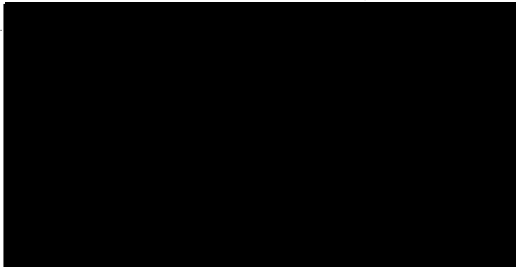


From: Larry Himelein
To: [REDACTED]
CC: [REDACTED]
Date: 12/20/2007 2:39 PM
Subject: Re: Recusal- It's All about Shelly

>>> [REDACTED] 12/20/2007 2:16 PM >>>

I would submit that recusal in those (Shelly) cases not only WOULD be the high road, but ethically the proper one. The conflict now seems obvious to me in the current milieu.

As for cases involving Senators & firms, their legal opponents & parties could certainly feel that we might be inclined to favor the Senator/firm b/c of their passage FOR us- also an appearance of conflict, and hence I am still recusing on those. The appearance is still there (probably even more strongly than before, actually).



>>> Larry Himelein 12/20/07 1:55 PM >>>

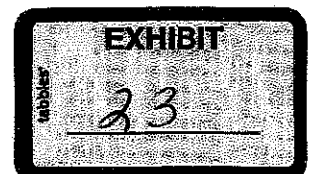
Amen Jeff. The problem is that most of the NYC judges are too gutless to recuse themselves from their firm's cases. I agree with you 100% that recusal is the best weapon we have but it requires every judge in this state in order to be successful. I would hope that Judge Kaye would simply mandate it.

Larry Himelein

>>> [REDACTED] 12/20/2007 1:42 PM >>>

Folks,

As people far more erudite than I have already stated, recusal is a personal matter.



From: Larry Himelstein
To: [REDACTED]
CC: [REDACTED]
Date: 12/20/2007 2:39 PM
Subject: Re: Recusal- It's All about Shelly

According to the court website, the speaker's firm has pending cases in these counties:

Albany (24)
Bronx (77)
Clinton (1)
Erie (5)
Kings (180)
Nassau (13)
New York (2082)
Oranges (1)
Oswego (1)
Rockland (1)
Schenectady (1)
St. Lawrence (23)
Stauben (3)
Suffolk (17)
Ulster (1)
Westchester (5)

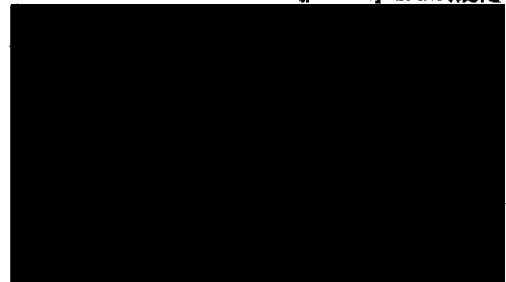
How about everyone recuses by 5:00 today???

Larry Himelstein

>>> Hon [REDACTED] 12/20/2007 2:16 PM >>>

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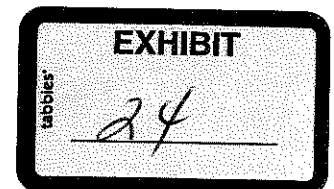
>>> Larry Himelstein 12/20/07 1:55 PM >>>

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Larry Himelstein

>>> [REDACTED] 12/20/2007 1:42 PM >>>
Folks,

As people far more erudite than I have already stated, recusal is a personal matter.



From: Larry Himelein
To: JUDGES2-ALL; OCA-Broadcast
Date: 1/4/2008 11:31 AM
Subject: Re: Salary Update

So is this just another wait for those ethical people in Albany to do the right thing? I'm sorry but I think we've done that enough. You keep thinking you are dealing with honorable or ethical people and nothing could be farther from the truth. The ONLY way anything will happen is if you exercise some leadership and commence a lawsuit and MANDATE that all judges in the state recuse themselves from any civil cases where a law firm has any connection to a legislator or any member of a legislator's family. If you don't mandate it, the wimp judges in the city won't recuse. I have asked the leaders of the judicial associations to raise this issue with you. If you're not willing to do so, we simply wait and gather whatever crumbs the legislature throws our way.

Larry Himelein

>>> Hon. Judith S. Kaye and Hon. Ann Pfau
(OCA-Broadcast) 1/4/2008 9:59 AM >>>

We began the New Year by submitting to the Legislature a slightly modified version of the judicial salary bill that the Senate passed in December. We submitted the modification in order to make two important changes in the Senate bill.

The first is to ensure continued salary parity between Federal District Court Judges and State Supreme Court Justices. Effective January 1, 2008, Federal Judges received a cost of living adjustment, increasing the \$165,200 salary of a Federal District Court Judge by approximately 2.5% (although the exact dollar amount is not yet determined). Under our bill, the increased Federal District Court Judge's salary would be included as the new, higher, salary of a State Supreme Court Justice as of January 1, 2008.

The second change would advance to January 1, 2009 (from April 1, 2009) the date of the initial salary adjustment under the proposed bipartisan quadrennial commission. We want to be sure that the adjustment can include any additional raises that Federal Judges may receive this year.

In all other respects, the bill is the same as that passed by the Senate. Most importantly, we want to keep the focus and momentum on judicial salaries as the legislative session begins.

EXHIBIT

tabbies

25

From: Larry Himelein
To: [REDACTED]
Date: 4/1/2008 11:20 AM
Subject: Re: LAST CALL - Judge Kaye's Press Conference

No No No it should NOT be personal. It should be mandated in all cases. If its personal, its useless.

Larry Himelein

>>> [REDACTED] 4/1/2008 11:17 AM >>>

I agree fully. The key is the city of NY. When Weitz and Luxemburg can no longer find a judge in NYC because of Sheldon Silver's relationship to their firm maybe he will "understand" the problem. But it must be remembered recusal is personal.

>>> Larry Himelein 4/1/2008 11:04 AM >>>

The problem as it has always been is that not all judges will recuse. Our brethren in the city generally won't and certain judges will only recuse for one branch or the other based on some nonsensical political beliefs. I have written to Judge Kaye and asked her to mandate recusal when she files her lawsuit. That is the only way it will occur. We upstate judges can recuse all we want but it will take everyone to mean anything. I don't see how the judiciary can sue the state or the legislature and let firms with legislators in them appear in front of us; again, however, it will take every judge in the state to mean anything. Furthermore, it should be permanent.

Larry Himelein

>>> [REDACTED] 4/1/2008 10:57 AM >>>

Does anybody want the list?

>>> Larry Himelein 4/1/2008 10:30 AM >>>

Let me agree completely with Kevin on the issue of recusal. As long as the legislature controls our salaries, the conflict is obvious. Judges have to give up their practices; legislators should have to do the same.

Larry Himelein

>>> [REDACTED] 4/1/2008 10:27 AM >>>

Dear

The lawsuit must be commenced immediately, with 100% recusal on all litigation/proceedings involving state agencies, including the A.G.'s office and state legislator/law firms. The conflict is obvious.

Respectfully,

>>> [REDACTED] 4/1/2008 9:33 AM >>>

Dear Judges in New York: I would like to suggest that at 11 am this morning or tomorrow we WALK Out of Courtroom in recess for a 30 minute period and allow the public to understand what waiting means as there are those who have waited 10 years and have not received a raise. All 3000 +/- Judges must agree. In order for change to occur there must be a crisis. Whether it was ROSA on the bus, or RUBY going to school, or MLK at the white only lunch counter or my great grandmother going to jail for fighting for voting rights for women, the public must be made aware of our struggle and they need to feel our anger and our pain.

EXHIBIT

tabbles

26

From: Larry Himelein
To: [REDACTED]
Date: 4/3/2008 9:06 AM
Subject: Re: How to Get Our Salary Adjustment

I could not agree more. However, we would need the chief judge to mandate recusal. If left to the individual judges, too many wouldn't do it. Some would recuse only for one house or the other and the lackies in the city would be afraid to offend the powers that be.

Larry Himelein

>>> [REDACTED] 4/2/2008 4:34 PM >>>

Everyone,

We are playing patty cake while they use sledgehammers. What does the lawsuit accomplish w/o MANDATORY recusal? Nothing. How could we enforce any potential judgment? We have to beat them using tactics they understand and "respect". Forget marches, speeches, walk outs, etc.

I suggest the following is the only way to accomplish our goals:

- File the lawsuit immediately after the budget is finalized,
- Alert the Gov, Silver and Bruno that the lawsuit will mean mandatory recusal, effective the day of the filing (which can't be cured by Silver leaving his firm). This recusal will extend to all state agencies, including the Attorney General's office, and
- Notify them that if the salary adjustment isn't passed within 30 days, J. Kaye will convene a mandatory judicial convention for every one of us. There would be coverage for Arraignments and OTSC actions ONLY. The convention will last until the bill is passed.

We judges crave control...but on this issue we have totally abdicated it. Let's take it back in a manner that they understand. Every delay in action gives them more power and control. Our leaders mean well and we all know that they want this done...but the means they've employed simply haven't worked. Let's stop being a pawn in this "game" and take decisive measures to accomplish our goal.

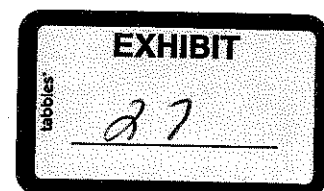
Respectfully submitted,

[REDACTED]

>>> [REDACTED] 4/2/2008 3:15 PM >>>

A good point raised but to me this looks like a "lead, follow or get out of the way." situation.

Come senators, congressmen
Please heed the call
Don't stand in the doorway



>>> Larry Himelein 4/23/2008 4:21 PM >>>

That's because most of the judges in the city are absolute wusses. I sent a check to support the litigation and I think that requires recusal and I have recused for nearly a year. Who was the guy who recently wrote that HE wouldn't recuse - sure, he's probably appointed and owes someone. I tried to file a complaint with the commission on judicial conduct against any judge who sat on a case involving a legislator because of the obvious conflict but they didn't have the stones for it either. I now know why so many upstaters would like NYC to become a separate state. The upstaters would get a raise and the ones in the city could stay being toadies for the politicians.

Larry Himelein

>>> [REDACTED] 4/23/2008 4:11 PM >>>

I've been called by a reporter about the Recusal situation. I don't know of any judges in NYC who are recusing themselves on legislator law firm cases (there can never be unanimity here, and one recusal makes no difference - case will just go to the next judge). Are any of you who are recusing yourselves available to speak to a reporter? If so, please stand up and be counted and let me know if you wish to hear from this reporter. [REDACTED]

