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August 29, 2019

Sent via electronic mail to [REDACTED]

The Supreme Court of Ohio  
Office of Legal Resources  
65 South Front Street  
Columbus, OH 43215-3431

Re: Affidavit of Disqualification of Law Director Michael P. Lograsso  
Supreme Court of Ohio File No. 19-AP-102  
MoJo File Ref: 205-32900

Dear Master Commissioner Gale:

### **Introduction**

City of South Euclid Law Director Michael P. Lograsso filed an Affidavit of Disqualification on August 27, 2019, seeking to indefinitely disqualify the Municipal Court's sole judge, the Honorable Gayle Williams-Byers, from every misdemeanor (CRB), traffic (TRD), and felony (CRA) case on the Court's docket—until the final resolution of two lawsuits between the Court and the City that have been pending since June 26, 2019, and August 12, 2019, respectively.

For the reasons outlined in this response, there is no basis to disqualify Judge Williams-Byers, and this Court must deny the Affidavit of Disqualification.

### **General Background**

Judge Gayle Williams-Byers has been the sole judge of the South Euclid Municipal Court since January 2012. In that capacity, she is the Court's Administrative and Presiding Judge, which requires her to oversee all fiscal issues affecting the Court. These

responsibilities have included, among other things, providing proposed budgets to the City Finance Director, to be presented to City Council during its budget discussions; additionally, the Judge has voluntarily attended City Council meetings to answer Council's questions about the Court's proposed budgets in every year of her tenure except 2013 (when she was unable to attend, due to a family emergency).

As the Administrative Judge, Judge Williams-Byers also oversees the fiscal operations of the Court. This entails ensuring the proper administration of the amounts appropriated by City Council in the Court's annual budget; however, it also entails overseeing a variety of other categories of resources that go over and above these amounts. This includes, but is not limited to, any public or private grant dollars the Court obtains (such as the state dollars it receives from Ohio Mental Health and Addiction Services to administer its mental health docket); state dollars it receives by statute (such as the Indigent Drivers Interlock and Alcohol Monitoring (IDIAM) fund under R.C. 4511.191—to pay for immobilizing/disabling devices for indigent drivers); and dollars it receives from fines assessed to litigants that can be expended for various purposes specified in the statute (such as Special Projects Funds under R.C. 1901.26, and Court Computer Funds and Clerk of Court Computer Funds under R.C. 1901.261).

By law, the Court's funds are under its exclusive control, but under the City's exclusive custody—that is, Court is not permitted to establish bank accounts to maintain and expend its own funds. Instead, the City holds these funds on the Court's behalf, but it is only authorized by law to disburse those funds upon the authorization of the Court—and only in the amount of the actual cost of the item being purchased. The Judge has legal and ethical responsibility for these funds—she has a fiduciary obligation to ensure those funds' availability for the Court, and to ensure the proper retention and expenditure of those funds.

### **Factual Background Regarding the Matters at Issue in This Affidavit**

Mr. Lograsso's Affidavit of Bias and Prejudice attaches the two lawsuits currently pending between the Court (via Judge Williams-Byers and the Court's Clerk, Chardale Sumpter)—and various City entities and officials, arising out of their official duties:

- The Court Funding Litigation - *The State of Ohio, ex rel. Judge Gayle Williams-Byers, on Behalf of the South Euclid Municipal Court v. The City of South Euclid, et al.*, Supreme Court of Ohio Case No. 2019-0864 – Law Director Michael Lograsso is one of the attorneys appearing for Relators, the City of South Euclid and the members of City Council; and
- The Statutory Funds Litigation - *The State of Ohio, ex rel. Judge Gayle Williams-Byers, in her Official Capacity, as Administrative and Presiding Judge of the South Euclid Municipal Court v. The City of South Euclid, et al.*, Cuyahoga County Court of Common Pleas Case No. CV 19 919662 – Law Director Michael Lograsso has not yet entered an appearance in this matter, but, as statutory

counsel for the City, he will be appearing for one or more Relators (the City of South Euclid, the members of City Council, Mayor Georgine Welo, and/or Finance Director Brenda Wendt).

The Verified Complaints and Affidavits in support of both matters provide the most thorough overview of the facts at issue, but we provide a brief summary of both matters here:

### The Court Funding Litigation

On February 12, 2019, the Judge attended a City Council in which she answered 50 minutes of questions from Council, in anticipation of their appropriation decisions for that year's budget. The exchange was pleasant and without any adversarial tone. *See* full recording of that hearing at Exhibit B to the Court Funding Litigation (a copy will be e-mailed with this letter under separate cover)—this is the only face-to-face exchange the Judge has had with City Council this year.

On March 20, 2019, without engaging in any additional discussion with Council or having any further discussion about the Court's proposed budget, the Clerk of Council emailed the Judge to alert her to Council's decision to reduce her proposed budget by approximately \$296,190. In response, the Judge made immediate efforts to discuss the decision, to no avail; she therefore issued an Administrative Order to instruct Council to fund the Court's budget of \$920,385 that she had submitted in February 2019. However, on March 25, 2019, without further discussion with the Court, Council memorialized legislation that appropriated \$637,134 to the Court—representing a cut of \$283,251 to the Court's proposed budget.

Following an extensive series of discussions through the Government Conflict Resolution Service in May and June 2019—which occurred exclusively through their counsel—they reached an impasse on this issue, and the Court filed an original action in *mandamus* in the Supreme Court on June 26, 2019—*i.e.*, the Court Funding Litigation. *See also State v. The City of South Euclid, et al.*, Supreme Court of Ohio Case No. 2019-0864. That litigation seeks an order to compel the reasonable and necessary funding for the Court's operations.

The Judge had no substantive interaction with Council, the Mayor, the Finance Director, the Law Director, or any other representative of the City regarding this dispute beyond her attendance at the February 12 Council meeting.

### The Statutory Funds Litigation.

In the February 12, 2019, City Council meeting, members of Council asked Judge Williams-Byers to evaluate whether the Court could pay for any more of its proposed budget expenses from its discretionary funds, rather than having those funds come from the City. In the days following that meeting, the Judge (through her Clerk of Court) asked the City Finance Director to provide an exact balance in the Court's Special Projects Fund,

Court Computer Fund, and Clerk of Court Computer Fund—all to ascertain whether it could spare any more of its discretionary funds than it had already committed in the 2019 proposed budget. When the Court received those reports, the Judge and her Clerk believed the figures were grossly inaccurate; in response, they asked for “Audit Trail” reports—itemized lists of individual expenses from these accounts and others.

After reviewing the Audit Trail reports, the Court found a series of disbursements from these accounts that it didn’t recognize as having been authorized. The Judge issued an order halting further disbursements from these accounts without express authorization, and she engaged in email exchanges with the Mayor, the Finance Director, and the Law Director. She sought a meeting with the Mayor and Finance Director, but they never responded to her request.

The Judge met with City Council President Dennis Fiorelli and City Council Finance Committee Chair Joseph Frank on February 19, 2019 to discuss the missing funds—this was the only substantive meeting the Court had with any City representative regarding the missing funds. This meeting was professional and pleasant—in fact, these members of Council were the ones who suggested the Court contact the State Auditor to evaluate these discrepancies, which she did; the Auditor has been investigating this issue since that time.

The Court and the City did not engage in any further direct discussion of this issue—instead, they appeared for mediations with the Government Conflict Resolution Service (“GCRS”) in May and June 2019. Notably, the parties did not even have face-to-face interaction during those sessions; only their lawyers engaged in direct contact. When the GCRS efforts were unsuccessful, the Court brought the Court Funding Litigation, referenced above, and, shortly thereafter, the Statutory Funds Litigation.

The Statutory Funds litigation seeks to compel the return of all statutory funds the Finance Director disbursed from the Court’s funds without authorization. Additionally, regardless of whether the misappropriations from Court funds were deliberate or entirely accidental, Ohio R.C. 9.39 imposes strict liability upon public employees and officials who are responsible for those public funds that go missing—as well as for the appointing authorities who supervise them. The Court asserted these and other related claims.

At no point throughout this entire chronology had any representative of the City claimed that a basis for the Court’s recusal existed. That is, the Judge has been presiding over all City matters without objection from the first instance in February 2019 when the Court raised the wrongful disbursement of Court funds with City Council, the Mayor, the Finance Director, and the Law Director; throughout the time the parties were preparing for impending negotiations in March and April; during the parties’ mediations in May and June; after the Court Funding Litigation began on June 26; and after the Statutory Funds Litigation began on August 12, until the arrival of this Affidavit on August 27, 2019,

Mr. Lograsso’s Affidavit fails to allege any evidence of prejudice that would require Judge Williams-Byers’s disqualification.

## **Analysis**

An affidavit of disqualification addresses the narrow issue of the possible bias or prejudice of a judge. A judge is presumed to follow the law and not to be biased, and an appearance of bias or prejudice must be compelling to overcome these presumptions. *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶5. See also *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, ¶ 7 (Judges enjoy a presumption of impartiality throughout all their proceedings).

The subparts to Code of Judicial Conduct Rule 2.11(A) identifies a non-exhaustive list of events that lead to the judge's impartiality being so reasonably questioned that it requires the disqualification of a judge. None is present here. Further, the "catch-all" provision of Rule 2.11(A) also compels the recusal of a judge when they have engaged in conduct that would cause a reasonable person to question their impartiality. The Rule's comments, Board of Professional Conduct Advisory Opinions, and case law provide additional reasons that may compel a judge's disqualification; however, none of those apply, either.

Here, Mr. Lograsso asserts that the Judge's initiation of complaints against the City demonstrates her prejudice. He doesn't reference any particular conduct between the Judge and any of the City defendants that would suggest the presence of bias or prejudice. Instead, he seeks to disqualify the Judge from any and all criminal matters that come before the Court based solely on the fact of this litigation. His affidavit provides that "after protracted and contentious interactions among the parties, Judge Williams-Byers has sued the City, its Mayor, Finance Director, and City Council Members in two separate proceedings...[that involve] the City's funding of the Court." However, this characterization suggests the existence of exchanges between the parties that simply aren't so—to characterize the Court's interactions with the City as "contentious" is only accurate to the extent that *any* litigation suggests unresolved disputes or contention.

There is simply no evidence to construct this narrative. The reason the Affidavit fails to attach any more specific examples of this alleged "contention" is that none exists: The parties have had very little interaction regarding these matters, and what little interaction that has occurred has been professional—further, it has all been memorialized in recordings or emails that demonstrate this reality.

Judge Williams-Byers and her Clerk have brought this litigation *in their official capacities* on behalf of the entities they represent—because in the absence of taking these steps, they believe they would be shirking their fiduciary obligations to the Court. If either claim persisted beyond the Judge's administration, her successor would automatically be substituted to continue the litigation in her place. While any litigation may feel "personal" to the individual being sued, this litigation pertains exclusively to ensuring the Court secures the adequate resources to fund this year's operations; to recover the funds the Judge maintains have been misappropriated from the Court's accounts; and to protect the parameters the General Assembly has established to ensure the Court can honor its legal, ethical, and fiduciary obligations regarding funds in its care.

The Judge brought the Court Funding Litigation to ensure the Court has the reasonable and necessary operating expenses to maintain its operations—that is all. In the absence of this effort, the Judge has asserted that the Court cannot effectively provide the minimum services it is required to ensure to the public.

Further, the Judge brought the Statutory Funds Litigation on the Court’s behalf because she has a fiduciary obligation to ensure the proper administration of those funds, especially as their use is expressly controlled by terms of state grants and statutory parameters that have not been followed—and because those funds were intended to remain available for the Court’s benefit (even beyond her administration), and they are no longer available to support its operations.

The only additional fact Mr. Lograsso cites to reach his conclusion that a bias or prejudice exists is that the Judge has (properly) asserted that, as the Law Director, he has a conflict of interest that precludes him from representing her in the Court Funding Litigation. This is clearly true under Ohio R. Prof. Cond. 1.7(a)(1): As the legal representative who appeared on behalf of the City Council in the GCRS mediation, he could not represent the Judge or the Court—as the representation of one client would be directly adverse to another current client. Further, this is a non-waiveable conflict under Rule 1.7(c)(2), as his representation involves the assertion of a claim by the Judge against the City—he cannot represent both sides in this dispute.

Mr. Lograsso then asserts that “If [its Law Department has a conflict of interest with the Court] then the converse must be true—Judge Williams-Byers has a conflict of interest with City and its Law Department.” However, this argument confuses two very different ideas: His conflict of interest under Rule 1.7 has absolutely *no* relationship to the Judge’s ability to be a fair and impartial arbiter of traffic and criminal matters coming before her Court under Code of Judicial Conduct Rule 2.11. The standards for each of these are wildly different. Unlike Rule RPC 1.7(c)(2)—where we simply evaluate whether Mr. Lograsso would be able to represent both the City and the Judge in their ongoing litigation (which he clearly can’t)—to determine whether the Judge can preside over litigation involving the State as a party (as prosecuted by the City) under CJC Rule 2.11, we look only at whether there is evidence that demonstrates bias or prejudice against a defendant or counsel, or which would otherwise create an appearance of impropriety.

This Court has evaluated a series of similar fact patterns, and it has routinely determined that they fail to demonstrate a judge’s bias against an attorney appearing before him or her in litigation:

In a series of cases where judges presided over cases where their opponent was counsel of record, this Court’s typical response is to decline an affidavit of disqualification. *See In re Disqualification of Hurley*, 142 Ohio St.3d 1278, 2014-Ohio-5874, 33 N.E.3d 59, at ¶ 5 (“[I]t is well established that a judge ordinarily will not be disqualified based solely on the fact that a lawyer in a pending case was the judge’s election opponent.”); *In re Disqualification of Floyd*, 135 Ohio St.3d 1204, 2012-Ohio-6353, 985 N.E.2d 488, ¶ 7 (finding a judge’s supporters’ efforts to intimidate an opponent’s supporters; negative



publicity during the campaign; and a hotly contested election where the candidate makes “highly critical” public comments about the other fail to support a disqualification). *See also In re Disqualification of Osowick*, 117 Ohio St.3d 1237, 2006-Ohio-7224 (finding the affiant’s characterization of being “political enemies” with a judge is insufficient to warrant disqualification).

Additionally, this Court has denied affidavits to disqualify judges, merely because they have been adverse parties with someone appearing before them. *See In re Favreau*, 145 Ohio St.3d 1212, 2015-Ohio-5666, 47 N.E.3d 862, ¶ 5; *In re Disqualification of Betleski*, 113 Ohio St.3d 1229, 2006-Ohio-7232, 863 N.E.2d 631, ¶ 8. It has additionally declined to disqualify a judge who threatened to sue an attorney appearing before them when they were in private practice. *In re Disqualification of Markus*, 145 Ohio St.3d 1201, 2015-Ohio-5612, 47 N.E.3d 153, at ¶ 2. *See also* Board of Professional Conduct Advisory Op. 87-023 (judges have no obligation to recuse themselves from proceedings where their opponent represents one of the parties, unless the judge’s impartiality might reasonably be questioned). Notably, a judge will also not be disqualified when a litigant in a case currently pending before the judge brings litigation before that judge. *In re Disqualification of Pokorny*, 135 Ohio St.3d 1268, 2013-Ohio-915, 986 N.E.2d 993, ¶ 4; *In re: Disqualification of Park*, 136 Ohio St.3d 1214, 2013-Ohio-2734, ¶ 12.

In addition, while not expressly on point, it is especially instructive that this Court has repeatedly determined that a judge’s filing of a disciplinary grievance against an attorney does not cause that judge to be disqualified from the attorney’s cases. *See In re Disqualification of Lynch*, 135 Ohio St.3d 1277, 2013-Ohio-910, at ¶¶ 5-12 (Finding a Judge’s citation of Prof. Cond. R. 8.3(a) in grieving an attorney’s misconduct did not disqualify her from continuing to preside over a case involving that attorney: “[E]ven if Judge Lynch felt that Squire’s conduct...was dishonest or that he demonstrated a lack of fitness to practice law, judges are presumed to be capable of putting aside such preliminary influences and deciding cases based on the law and facts before them.”); *In re Disqualification of Park*, 138 Ohio St.3d 1216, 2013-Ohio-5914, 2013 Ohio LEXIS 3141, at ¶ 6; *In re Disqualification of Belskis*, 74 Ohio St.3d 1252, 657 N.E.2d 1355 (1993)(citing Board of Commissioners on Grievances and Discipline Op. No. 89-32, at 2 (Oct. 13, 1989)) (“the disqualification of a judge is not automatic when the judge has filed a disciplinary complaint against an attorney appearing in the judge’s courtroom”); *In re Disqualification of Maloney*, 88 Ohio St.3d 1215, 1215-16, 1999-Ohio-10, 723 N.E.2d 1102 (1999) (“The mere fact that a judge cooperates with appropriate officials in the investigation of alleged criminal and ethical misconduct on the part of an attorney will not result in disqualification of that judge from cases in which that attorney may be participating as counsel, a party, or otherwise.”) This is especially the case in light of judges’ ethical obligations to report violations pursuant to Prof. Cond.R. 8.3(a) and Code of Jud. Cond. 2.15(B). *In re Lynch*, at ¶ 9.

The only exceptions to these universally applied rules exists where evidence of extraordinary circumstances exist that demonstrate a judge’s particular hostility toward an attorney, or a “unique combination of factors,” that would lead the reasonable person to determine that, regardless of the judge’s presumption of fairness, he or she cannot be

fair: For instance, this Court has disqualified a judge after engaging in courtroom conduct that displayed overt hostility toward an attorney or litigant. *In re Disqualification of Cleary*, 88 Ohio St.3d 1220, 2000-Ohio-279. Additionally, this Court disqualified a judge where she was the respondent in a pending disciplinary case initiated by the attorney, and where the judge publicly expressed her disgust with the attorney’s allegedly political motives for grieving her. *In re Disqualification of O’Neill*, 100 Ohio St.3d 1225, 2002-Ohio-7476, 798 N.E.2d 12, at ¶¶ 3-5. Similarly, this Court disqualified a judge who faced an impending disciplinary hearing where the attorney-affiant would be called as a witness against him, only recently after opposing him in an election. *In re Disqualification of Maschari*, 88 Ohio St.3d 1212, 1999-Ohio-8, 723 N.E.2d 1101 (1999)). Absent these “unique combination of factors,” this Court has determined that a judge’s litigation with a party or attorney, his or her election campaign against an attorney, or even his or her referral of conduct to Disciplinary Counsel about an attorney fails to require that judge’s disqualification.

No such “unique combination of factors” exists here. Judge Williams-Byers has raised an official capacity claim against City officials that she raises on behalf of the entity—not on her own behalf. This litigation pursues what she asserts is the minimally sufficient funding to operate the Court, and the return of money that belongs to the Court. In a long and robust series of comparable cases, this Court has consistently determined that facts like these fail to demonstrate judicial bias.

There have obviously been scores of lawsuits between judges and their funding authorities, yet we have found no example in case law to show that this merits the disqualification of that Judge. If this were the case, every budget dispute would serve to create the burdensome reality the City is advocating should occur here—that a visiting or acting judge be assigned to literally every case on the Court’s docket for months, if not years, on end. This would essentially convert a one-judge court into a perpetual two-judge court.

Judge Williams-Byers has had very little interaction with any of the City parties or counsel in this matter—especially given that they all work in the same municipal complex, it is telling that she has not even seen most of the parties for months on end, let alone interact with them. Judge Williams-Byers has no personal relationship with the parties or Mr. Lograsso; she has had extremely limited, but professional, dynamics with them throughout this dispute; and there is no evidence of bias or prejudice that would merit her disqualification.

## **Conclusion**

To prevail on an Affidavit of Disqualification, an affiant must demonstrate clearly the existence of bias, prejudice, or other disqualifying interest that requires a judge’s removal. *In re Disqualification of Synenberg*, 2009-Ohio-7206, 127 Ohio St.3d 1220, 937 N.E.2d 1011; *see also In re Disqualification of Crow*, 91 Ohio St. 3d 1209, 741 N.E.2d 137 (2000). “The statutory right to seek disqualification of a judge is an extraordinary remedy.” *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. Mr.



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Lograsso has failed to produce any evidence to overcome these strong presumptions of Judge Williams-Byers's impartiality, or to compel the extraordinary remedy of her disqualification.

For the foregoing reasons, we respectfully request the Court dismiss and deny the affidavit of disqualification.

Sincerely,  
MONTGOMERY JONSON LLP

*Kim Riley*

KIMBERLY VANOVER RILEY

cc: Michael P. Lograsso, Esq. (via email at [mlograsso@seuclid.com](mailto:mlograsso@seuclid.com))