IN THE CHANCERY COURT OF LEFLORE COUNTY, MISSISSIPPI

LEFLORE COUNTY BOARD OF SUPERVISORS — **PETITIONER**

VS. — **CAUSE NO.: 23-CV-90**

MARCUS BANKS, IN HIS CAPACITY AS COMMISSIONER OF GREENWOOD LEFLORE HOSPITAL BOARD OF COMMISSIONERS AND CITY OF GREENWOOD — **RESPONDENTS**

AMENDED ORDER DENYING MOTION FOR RECUSAL

This matter came before the Court upon Respondents' Motion To Recuse requesting this Court to recuse itself from all further proceedings, hearings, and trials of this cause and the Court having first considered this matter, finds as follows:

PROCEDURAL HISTORY AND FACTS

1. The Court has jurisdiction over the parties and subject matter in this case.
2. The Emergency Petition for Temporary Preliminary and Permanent Injunction was filed on December 4, 2023; and noticed for a hearing at 1:30p.m. on December 20, 2023.
3. On December 15, 2023, Motion to Recuse was filed by Respondents, Marcus Banks and the City of Greenwood. The Motion did not include the required affidavit setting forth the factual basis underlying the asserted grounds for recusal.
4. On December 15, 2023, Respondents, Marcus Banks and the City of Greenwood, filed their Motion To Continue the hearing set for the Emergency Petition for Temporary Preliminary and Permanent Injunction. The Court finding there was no good cause for the request for continuance and denied the same by Order entered on December 18, 2023.
5. The Memorandum of Law in Support of the Temporary Preliminary and Permanent Injunction was filed by Petitioner on December 17, 2023; and Respondents' Memorandum of Law in Opposition to Petitioner's Request for a Temporary Injunction was filed on December 18, 2023.

6. In their Motion To Recuse, the two (2) Respondents to this cause set forth several cases this Court served as attorney prior to being elected to the bench as follows:

    a. *McAdams v. Perkins*, 204 So. 3d 1257 (Miss. 2016)

    b. *Littleton v. McAdams*, 60 So.3d 169 (Miss. 2011)

    c. *Jordan v.* McAdams, 85 So.3d 932 (COA 2012); and

    d. *Perkins v. McAdams*, 234 So.3d 413 (Miss. 2017)

    Respondents makes a summary conclusion that due to the Court's involvement in these cases, the Court's impartiality is in issue toward Mayor Carolyn McAdams and that the above trials and subsequent appeals demonstrate a likelihood of personal bias and prejudice against Mayor McAdams. The Court will note from the outset the above cases ended within the periods of 6 years, 7 years, 11 years, and 12 years ago.

7. In *McAdams v. Perkins, supra*, I represented my wife, Sheriel Perkins, in a Bill of Exceptions she filed against the City of Greenwood, Mississippi, challenging the city's Resolution to employ Butler Snow, LLP, who represented Mayor McAdams in her election contest, to also represent the city's interest in upholding the validity of the election. The Circuit Judge ruled in favor of my wife and the Mississippi Supreme Court in a 7-2 En Banc Opinion reversed and rendered. This case ended on December 8, 2016, 7 years ago.

8. *Littleton v. McAdams, supra* and *Jordan et al v. McAdams, supra* both arose from the same lawsuit and similar facts. When Mayor McAdams' term began as Mayor of the City of Greenwood, Mississippi on July 6, 2009, she sought injunctive and declaratory relief against James K. Littleton[1], as the holdover city attorney and she sought the same relief against only the five African American city councilmen contending they hired Littleton as city attorney or allowed him to represent or advise the city council. She did not sue the two white city councilmen. Atty. Littleton was pro se counsel during the hearing and the chancellor ruled in favor of Mayor

[1] James K. Littleton now serves as Leflore County Judge and Youth Court Judge since January 2023.

McAdams and Atty. Littleton appealed to the Mississippi Supreme Court. I only represented Atty. Littleton on appeal and did not represent him during the hearing. His case was affirmed on appeal.

During the hearing, I represented the five African American city councilmen and the chancellor denied Mayor McAdams any relief against them. The claim of sanctions by the city councilmen were taken under advisement for over a year and it was later denied and appealed by the councilmen. I represented the five councilmen on appeal and the Court of Appeal rendered its decision on April 10, 2012, affirming the chancellor's ruling. The *Littleton supra* case ended on April 28, 2011, 12 years and 7 months ago; and the *Jordan supra* case ended 11 years and 7 months ago.

9. In *Perkins v. McAdams supra*, I represented my wife, Sheriel Perkins, in her 2013 mayoral election contest against Mayor McAdams. The Circuit Judge granted a directed verdict in favor of Mayor McAdams at the end of the jury trial case and the matter was declared moot on appeal due to expiration of term. The Supreme Court affirmed the trial Judge denial of the request for sanction against my wife and reversed and remanded an award of Rule 56 (h) attorney's fees in favor of Mrs. Sheriel Perkins. On remand, the attorney's fees issue was settled by the parties without a hearing. This case ended 6 years and 2 months ago.

10. Near the end of the hearing, attorney for Respondents presented an Order of Recusal and for Reassignment filed on December 9, 2021, signed by me in the divorce case Deborah Banks v. Marcus Banks in cause no. 2012-cv-129 before this Court. The Order was marked as "Exhibit A" and admitted at the hearing. The Order of Recusal entered in the matter had nothing to do with Mr. Marcus Banks. It was entered due to prior legal consultation of his wife. The Court finds that this is not a valid cause for its recusal in this case. A recusal is done on a case-by-case basis. In this case, Mr. Banks' ex-wife is not a party or person of interest. The facts and circumstances involved with a divorce proceeding is wholly different than facts in this case wherein the County is claiming Mr. Banks is an improper holdover officer.

DISCUSSION AND LEGAL AUTHORITIES

Respondents seek recusal of this Court pursuant to Canon 3(E)(1) and 3(E)(1)(a) of the Mississippi Code of Judicial Conduct. It provides in pertinent parts as follows:

> Judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all of the circumstances or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; …

They contend the Court has personal bias or prejudice concerning Mayor McAdams who is not a named Respondent in this lawsuit. Despite Respondents seeking this Motion under Canon 3(E)(1) and 3(E)(1)(a), they must still comply with Rule 1.11 of the Uniform Chancery Court Rules (UCCR).

Rule 1.11of the UCCR governs motions for recusal of Judges. Rule 1.11 provides as follows:

> Any party may move for the recusal of a judge of the chancery court if it appears that the judge's impartiality might be questioned by a reasonable person knowing all the circumstances, or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law. A motion seeking recusal shall be filed with an affidavit of the party or party's attorney setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true. Such motion shall, in the first instance, be filed with the judge who is the subject of the motion within 30 days following notification to the parties of the name of the judge assigned to the case; or, if it is based upon facts which could not reasonably have been known to the filing party within such time, it shall be filed within 30 days after the filing party could reasonably discover the facts underlying the grounds asserted. The subject judge shall consider and rule on the motion within 30 days of the filing of the motion, with hearing if necessary. If a hearing is held, it shall be on the record in open court. The denial of a motion to recuse is subject to review by the Supreme Court on motion of the party filing the motion as provided in M.R.A.P. 48B.

Under Rule 1.11 a motion seeking recusal shall be filed with an affidavit of the party or the party's attorney setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true. As noted earlier, Respondents failed to file an affidavit with their Motion to Recuse.

Rule 1.11 of Mississippi Uniform Chancery Court mandates that a Motion for Recusal shall be filed with an Affidavit on the ground for recusal. See *Jackson v. Mullins*, 341 So.3d 1041, (Miss. Ct. App. 2022); *Balius v. Gaines*, 95 So.3d 730 (Miss. Ct. App. 2012); and *Sullivan v. Maddox*, 122 So.3d 75 (Miss. Ct. App. 2013). In *Sullivan*, the Mississippi Court of Appeals states that it is mandatory that an

Affidavit is filed with a Motion for Recusal. Since Respondents have failed to meet the mandatory requirement of the Rule, their Motion to Recuse is hereby denied and dismissed.

Although this matter is dismissed for a failure to comply with the mandatory requirement of Rule 1.11, the Court will address contentions made by Respondents in their Motion to Recuse.

In the Motion to Recuse, Respondents argue in effect that it appears that the Court's impartiality might be questioned by a reasonable person knowing all the circumstances. Mississippi law presumes '"that a judge, sworn to administer impartial justice, is qualified and unbiased"' *Brooks v. Pennington*, 995 So. 2D 733, 741 (Miss. Ct. App. 2007) (quoting *King v. State*, 821 So. 2d 864, 868 (Miss. Ct. App. 2002)). The challenger bears the burden of overcoming this presumption "by evidence which produces a reasonable doubt about the validity of the presumption. *Brooks*, 995 So.2d at 741. Respondents have failed to meet their burden to overcome this presumption. Their asserted grounds for recusal stem from Canon 3(E)(1) of the Mississippi Code of Judicial Conduct, which provides that "[j]udges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances" such as when "the judge has a personal bias or prejudice concerning a party ...." Mississippi Code of Judicial Conduct, Canon 3(E)(1)(a). When constitutional or statutory provisions do not otherwise disqualify a judge from a particular matter, "the decision is left up to each individual judge and is subject to review only in case of manifest abuse of discretion." *Ford v. State*, 121 So. 3d 325, 327 (Miss. Ct. App. 2013) (quotation marks and citation omitted) (emphasis added). Accordingly, whether a judge should recuse himself is addressed pursuant to a reasonableness standard: "[w]ould a reasonable person, knowing all of the circumstances, harbors doubt about the judge's impartiality?" *Hill v. Mills*, 26 So. 3d 322, 334 (Miss. 2010) (quoting *Copeland v. Copeland*, 904 So. 2d 1066, 1071 (Miss. 2004)). Respondents attempt to meet their burden by relying upon four cases represented by the Court prior to taking the bench which involved Mrs. Sheriel Perkins and Mayor Carolyn McAdams as either a named party or a person of interest. The cases involved a 2013 election contest between Mrs. Perkins and Mayor McAdams; a suit by McAdams seeking declaratory or injunctive relief against five African American city councilmen; and against the holdover city attorney (James K.

Littleton); and a Bill of Exception concerning city councilmen's Resolution to hire McAdams' election contest attorney to also represent the interest of the city in her election contest case with my wife.

Respondents have assumed without any proof that personal bias or prejudice automatically flows from this Court's involvement in prior cases wherein Mayor McAdams may have been a party or person of interest. Other than the normal course of litigation, Respondents provide no evidence of conflict or bias or prejudice. Further, Respondents failed to prove that any asserted bias or prejudice by this Court against Mayor McAdams somehow translate to any party before this Court. The mere citing of some cases this Court has participated in during the past does not satisfy the burden Respondents must meet. The cases relied upon by Respondents are more than 6 years ago and are considered to be past history. Respondents are requesting this Court to draw an inference or summary conclusion from the prior history of litigation with this Court's spouse with Mayor McAdams. This Court declines to travel that road.

The vague, general and conclusory allegations made in this case for recusal fall short of those made in Bennett, *infra.* In *Bennett v. Highland Park Apartment, LLC*, 170 So.3d 522 (Ct. App. 2014) where the trial Judge Weil had frictional encounter with tenant's counsel, James Ashley Ogden, due to their campaign for the same seat, and where Judge Weil had made according to the Motion for Recusal a "pattern of negative actions" in the case, the Court of Appeals affirmed Judge Weil's denial for the Motion For Recusal finding no abuse of his discretion. Unlike the facts in Bennett, supra, Respondents are unable to show a "pattern of negative actions."

In Evans v. State, 725 so. 2d 613 (Miss. 1997) the Mississippi Supreme Court held that the fact Defendant, in a criminal case, filed a civil rights lawsuit against the assigned judge did not require recusal absent evidence of judge's bias. There is no evidence to support the allegations that the Court has been or will be bias or unfair or prejudice against Mayor McAdams or any party before this Court.

It takes more than mere barebone allegations for a recusal of a Judge. In *McDonald v. McDonald*, 850 So.2d 1182, (COA, 2002) Presiding Judge Southwick stated:

> "Mr. McDonald also asserts that the special judge was personally involved and biased, thereby preventing McDonald from receiving a fair trial on contempt. We find no

> evidence in the record of such bias. "A presumption of impartiality exists that a judge, sworn to administer impartial justice, is qualified and unbiased. To overcome the presumption, the evidence must produce a 'reasonable doubt.'" *Wal-Mart Stores, Inc. v. Frierson*, 818 So.2d 1135, 1141 (Miss. 2002). We find that Mr. McDonald has produced nothing more than mere allegations."
> 850 So.2d at 1193.

In *Jones v. State*, 841 So.2d 115 (2003), wherein Circuit Court Judge Ashley Hines denied a motion for recusal, Justice Diaz wrote as follows:

> Jones also asserts as evidence of bias Judge Hines's refusal to recuse himself after Jones subpoenaed him as a possible witness for having conducted Jones's initial appearance. Jones asserts that Judge Hines should have recused himself because "there were facts arising out of that initial appearance and warrants issued by him which might cause him to be called as a witness." Jones offers no further support for this allegation of bias. He does not describe what facts from the initial appearance might cause the judge to be a necessary witness, nor does he describe what warrants he is referring to. Therefore, this Court is not under any obligation to review the issue.
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> See *Zimmerman v. Three Rivers Planning & Dev. Dist.*, 747 So.2d 853, 861 (Miss. App. 1999) ("[T]he issue is precluded from review by this Court because of Zimmerman's complete failure to present any citation of authority or meaningful argument....")
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> In this Court's opinion, Jones's bare assertion that Judge Hines's should have recused himself simply because he presided over his initial appearance lacks common sense as well as authority. If Judge Hines became a potential witness merely by presiding over Jones's initial appearance, why then would he not be a witness for presiding over the suppression hearing or the other motions filed by Jones? In any event, because his argument is merely a bare assertion, unsupported by authority in law or in the record, this assignment of bias is not a proper subject of review by this Court.
> 841 So.2d at 137-138
>
> (my emphasis added)

The Motion To Recuse is denied because Respondents failed to comply with the mandatory requirement of Rule 1.11, Uniform Chancery Court Rules, by filing an affidavit with their motion setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true. Also, the Motion To Recuse is denied because Respondents failed to meet their burden by a reasonable doubt to overcome the "presumption of impartiality exists that a judge, sworn to administer impartial justice, is qualified and unbiased."

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion To Recuse is denied because the Respondents failed to comply with the mandatory requirement of Rule 1.11, Uniform Chancery Court Rules, by filing an affidavit with their motion setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Motion To Recuse is denied because Respondents failed to meet their burden by a reasonable doubt to overcome the "presumption of impartiality exists that a judge, sworn to administer impartial justice, is qualified and unbiased."

SO ORDERED, ADJUDGED, AND DECREED this 22nd day of December 2023, nunc pro tunc December 20, 2023.

CHANCELLOR

RECEIVED
DEC 22 2023
JOHNNY L. GARY, JR., CHANCERY CLERK
BY D.C.