

IN THE SUPREME COURT OF FLORIDA

Case No. 76,153

FILED  
JAN 21 1977  
CLERK OF THE COURT  
MARIANNE W. HARRIS  
CLERK

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BARBARA J. NATHANSON,

Appellant,

versus

MARIA K. KORVICK,  
Circuit Court Judge of the  
Eleventh Judicial Circuit  
in and for Dade County, Florida

Appellee.

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**BRIEF OF APPELLANT**

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## Table of Contents

	<u>Page</u>
Index of Authorities	iii
Preliminary Statement	iv
Statement of the Case and Facts	1
Summary of the Argument	2
Point on Appeal	3-5
Conclusion	6
Certificate of Service	7

## Index of Authorities

	<u>Page</u>
Cases	
Barber vs. MacKenzie, 15 F.L.W. 1365, May 15, 1990, Fla. 3rd DCA.....	2, 5
Breakstone vs. MacKenzie, 14 F.L.W. 2223, Fla. 3rd DCA, September 14, 1989.....	2, 4
MacKenzie vs. Breakstone, Case No. 74-800...	1

### **Preliminary Statement**

For purposes of this Brief the parties, Appellant BARBARA J. NATHANSON and Appellee MARIA M. KORVICK will be referred to by their proper names.

References to the record-on-appeal will be designated by the symbol "R".

STATEMENT OF THE CASE AND FACTS

This case arises from post-dissolution of marriage proceedings in the Circuit Court in Dade County, Florida. Barbara Nathanson filed a petition for increase in alimony on July 5, 1988 (R. 7-8). In November of 1989, Barbara Nathanson filed a petition for disqualification of Judge Maria Korvick (R. 12-24). The motion for disqualification was based upon the fact that Marsha Elser, the attorney for Elias Nathanson, had contributed to Judge Maria Korvick's political campaign for the 1988 elections and had further served on Judge Korvick's campaign committee (R. 22 and 24). The name of Elias Nathanson's attorney, Marsha Elser, was listed on the letterhead of the Committee to Retain Maria Korvick Dade Circuit Court Judge for the solicitation mailings (R. 24).

After a hearing was held, the Hon. Maria Korvick entered an order denying Mrs. Nathanson's motion for disqualification stating that the motion for disqualification was insufficient on its face (R. 25). As a result of that order, Barbara Nathanson filed a petition for extraordinary writ in the District Court of Appeal for the Third District of Florida.

The Third District Court of Appeal certified the cause to the Supreme Court pursuant to Art. V, §3(b)(5) of the Florida Constitution. The District Court of Appeal further stated that they were of the view that the question presented is one of great public importance and will be controlled by the Supreme Court's decision in Mackenzie vs. Breakstone, Case No. 74-800.

SUMMARY OF THE ARGUMENT

A motion for disqualification is legally sufficient if the motion together with the affidavit filed in connection therewith recites facts and circumstances that would lead any normal person in the position of the movant to fear that he or she would not receive a fair trial. The Third District Court of Appeal has rendered opinions finding campaign contributions as sufficient grounds for recusal (Breakstone vs. MacKenzie, 14 F.L.W. 2223 Fla. 3rd DCA, September 14, 1989) and further finding that where opposing counsel is a member of a re-election committee is sufficient grounds for disqualification. Barber vs. MacKenzie, 15 F.L.W. 1365, May 15, 1990, Fla. 3rd DCA.

Based upon these authorities the motion for disqualification of Judge Maria Korvick was legally sufficient and should have been granted.

## ARGUMENT

IT WAS ERROR FOR THE LOWER COURT TO DENY BARBARA NATHANSON'S MOTION FOR DISQUALIFICATION WHERE OPPOSING COUNSEL HAD CONTRIBUTED MONEY TO JUDGE KORVICK'S JUDICIAL CAMPAIGN AND HAD FURTHER SERVED AS A MEMBER OF JUDGE KORVICK'S CAMPAIGN COMMITTEE.

Marsha Elser, the attorney for Elias Nathanson, had contributed funds to the re-election campaign of Judge Maria Korvick and had further served on Judge Korvick's committee for re-election. The trial judge, Maria Korvick, was campaigning for re-election at the time that the post-dissolution of marriage matters were filed with the court. Judge Korvick had not heard any prior matters in this cause. She had been named successor judge and Barbara Nathanson's petition for increase in alimony was the first matter filed after Judge Korvick's appointment.

Barbara Nathanson filed a motion for disqualification of Judge Korvick together with an affidavit in support thereof (R. 12-24). The motion was based upon opposing counsel, Marsha Elser's, campaign contributions as well as her service on the campaign committee of the trial judge and suggested that Barbara Nathanson was fearful that she would not receive a fair determination of the issues before the Court because of the relationship between the trial judge and opposing counsel.

The Third District Court of Appeal has recently heard two

cases involving similar issues as those presented in the instant case and Barbara Nathanson relies on these cases in support of her argument. In Breakstone vs. MacKenzie, the Third District Court set forth the proposition that a contribution to the election campaign of the trial judge by opposing party's counsel is sufficient to warrant recusal. In Breakstone, the Third District Court of Appeal held that:

"Where the opposing litigant or opposing counsel has made such a contribution a reasonable person in the position of movants would fear that he would not receive a fair trial. The concern, from the standpoint of a reasonable person, is neither frivolous or fanciful."

It is reasonable to assume that a party would fear that he would not receive a fair trial where the opposing party's attorney had given money in the form of a campaign contributions to the trial judge. The Third District Court of Appeal has determined in MacKenzie that a \$500.00 contribution is legally sufficient to support such a motion. The Third District Court further stated that:

"The inquiry here is not one of policy, but rather the fundamental right to a fair trial in a fair tribunal. Under the statute, the code of judicial conduct, and the decisional law, the sole issue before us is whether the litigant has articulated a well founded, non-frivolous fear that he will not receive a fair trial."

Additionally, the Third District Court of Appeal has held that serving on a campaign committee without making a campaign contribution is sufficient grounds to warrant a disqualification.



In Barber vs. MacKenzie, 15 F.L.W. 1365, May 15, 1990, Fla. 3rd DCA, the Court held that there was a substantial and continuing relationship between the committee to re-elect a judge and the trial judge is a matter of great and immediate importance to the judge. The Court further stated that:

"There is a continuing affiliation in a joint project lasting a considerable period of time. It is the nature of the relationship which compels this result. We conclude that a reasonable litigant in the position of movant would fear that the trial court will be aware of the membership and activities of her own contemporaneously active campaign committee, and will entertain a bias in favor of the side represented by her committee members."

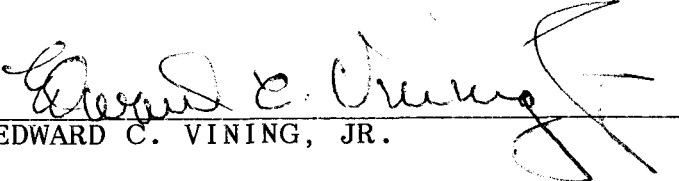
In the MacKenzie case, the Third District Court of Appeal has ruled that a campaign contribution of \$500.00 would warrant recusal. In the Barber case the Third District Court of Appeal has ruled that service on a campaign re-election committee by itself would warrant recusal. In the instant case, the attorney for Elias Nathanson contributed funds to the re-election campaign of the presiding judge and, additionally, served on the campaign committee for the judge.

Barbara Nathanson believes that both of these factors are sufficient to warrant recusal based upon her reasonable fear that she will not have the opportunity to present her case to a fair and impartial tribunal. Barbara Nathanson therefore requests this Court to reverse the trial court's order denying the motion for disqualification and remand with directions to enter an order granting the motion for disqualification.

CONCLUSION

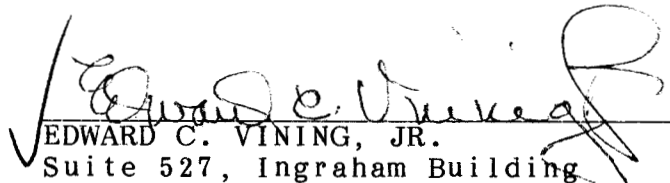
Based on the foregoing authorities, Appellant Barbara Nathanson respectfully requests that this Court reverse the trial court's order denying motion for disqualification and to direct the trial court to enter an order granting the motion so that this matter may be reassigned to a trial judge with no similar connections to counsel for the former husband.

Respectfully submitted,

  
EDWARD C. VINING, JR.

CERTIFICATE OF SERVICE

I CERTIFY that a copy has been mailed to Attorney for Elias Nathanson: Marsha B. Elser, Esq., 1575 Courthouse Tower, 44 West Flagler Street, Miami, Florida 33130 and to the Attorney for the Hon. Maria M. Korvick, Roy Wood, Assistant County Attorney, Suite 2810, Metro-Dade Center, 111 N.W. First Street, Miami, Florida 33128 and Michael J. Neimand, Esq., Asst. Attorney General, 401 N.W. Second Avenue, Suite N921, Miami, Florida 33128 on July 9, 1990.

  
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