Garden State CLE presents:

Recusal Motions (with forms)

Lesson Plan

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Part I

Introduction

Rules, Statutes, Canons and Directives

a. NJSA 2A:15-49 (1903)

2A:15-49. What constitutes

No judge of any court shall sit on the trial of or argument of any matter in controversy in a cause pending in his court, when he:

a. Is related in the third degree to any of the parties to the action, which degree shall be computed as at common law; or

b. Has been attorney of record or counsel for a party to such action; or

c. Has given his opinion upon a matter in question in such action; or

d. Is interested in the event of such action.

This section shall not be construed to prevent a judge from sitting on such trial or argument because he has given his opinion in another action in which the same matter in controversy came in question or given his opinion on any question in controversy in the pending action in the course of previous proceedings therein, or because the board of chosen freeholders of a county or municipality in which he is a resident or liable to be taxed are or may be parties to the record or otherwise interested.

2A:15-50. Challenges; triors; determination

Challenges to a judge for any of the causes mentioned in section 2A:15-49 of this title shall be made before the trial or argument. The court may, in its discretion, try the challenges or appoint 3 disinterested persons as triors thereof. The finding of a majority of the triors shall be their determination.

b. State v. Deutsch, 34 NJ 190, 206 (1961)

It is vital that justice be administered not only with a balance that is clear and true but also with such eminently fair procedures that the litigants and the public will always have confidence that it is being so administered: "[J]ustice must satisfy the appearance of justice." To that end judges must refrain from engaging in any conduct which may be hurtful to the judicial system or from sitting in any causes where their objectivity and impartiality may fairly be brought into question. While the earlier common law cases in England took a narrower approach, the more recent English decisions have suggested that where the circumstances are such as to create in the mind of a reasonable man a suspicion of bias there may well be a basis for disqualification though 'in fact no bias exists. Similarly in the United States there is a significant trend, stimulated by high-minded judicial expressions as well as broad constitutional and statutory provisions, towards recognition of a basis for disqualification where, in the eyes of the litigants and the public, the circumstances call justly for the judge's withdrawal.

Resulted in the 1961 promulgation of modern-day Rule 1:12-1. and Rule 1:12-2

c. 1:12-1. Cause for Disqualification; On the Court's Motion

The judge of any court shall be disqualified on the court's own motion and shall not sit in any matter, if the judge

- (a) is by blood or marriage the second cousin of or is more closely related to any party to the action;
- (b) is by blood or marriage the first cousin of or is more closely related to any attorney in the action. This proscription shall extend to the partners, employers, employees or office associates of any such attorney except where the Chief Justice for good cause otherwise permits;
- (c) has been attorney of record or counsel in the action; or
- (d) has given an opinion upon a matter in question in the action; or
- (e) is interested in the event of the action; or
- (f) when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so.

Paragraphs (c), (d) and (e) shall not prevent a judge from sitting because of having given an opinion in another action in which the same matter in controversy came in question or given an opinion on any question in controversy in the pending action in the course of previous proceedings therein, or because the board of chosen freeholders of a county or the municipality in which the judge resides or is liable to be taxed are or may be parties to the record or otherwise interested.

d. 1:12-2. Disqualification on Party's Motion

Any party, on motion made to the judge before trial or argument and stating the reasons therefor, may seek that judge's disqualification.

e. Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

f. Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
B. A judge should not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position of influence. A judge shall not testify as a character witness.
C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

Commentary: Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of the office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford a judge a privilege against testifying as a witness as to evidentiary facts of which the judge has personal knowledge.

Organizations dedicated to the preservation of religious, spiritual, charitable, civic or cultural values, that do not stigmatize any excluded persons as inferior and therefore unworthy of membership are not considered to discriminate invidiously.

g. 3(c)(1). Disqualification. (see R. 1:12-1)

- **(1) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**
  - **(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer or has personal knowledge of disputed evidentiary facts concerning the proceeding;**
  - **(b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it;**
  - **(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child or any other member of the judge's family residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be affected by the outcome of the proceeding;**
  - **(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**
    - **(i) is a party to the proceeding, or an officer, director, or trustee of a party;**
    - **(ii) is acting as, or is in the employ of or associated in the practice of law with, a lawyer in the proceeding;**
    - **Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated of itself disqualifies the judge.**
    - **(iii) is known by the judge to have an interest that could be affected by the outcome of the proceeding;**
    - **(iv) is to the judge's knowledge likely to be a witness in the proceeding.**

h. RPC 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral or Law Clerk

- **(a) Except as stated in paragraph (c), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator, mediator or other third-party neutral, or law clerk to such a person, unless all parties to the proceeding have given consent, confirmed in writing.**
- **(b) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:**
  (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
  (2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.
- **(c) A lawyer shall not negotiate for employment with any person who is involved as a party or as an attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, arbitrator, mediator, or other third-party neutral. A lawyer serving as law clerk to such a person may negotiate for employment with a party or attorney involved in a matter in which the law clerk is participating personally and substantially, but only after the lawyer has notified the person to whom the lawyer is serving as law clerk.**
- **(d) An arbitrator selected by a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.**

i. Directive 9/19/1983

Disqualification of Judges in Criminal Matters

September 19, 1983
Issued by: Robert D. Lipscher
Administrative Director

The Supreme Court has established the following guidelines concerning judicial disqualification in criminal cases, where the judge previously served as prosecutor, public defender, or as an assistant in one of those offices:

1. Except in extraordinary circumstances, a judge should disqualify himself or herself in a criminal matter which was pending in his or her office when he or she was the prosecutor or county public defender, whether or not he or she actively participated in the investigation, prosecution, or defense of the case, or had actual knowledge of it. The reason for this is that as the prior head of either office, the judge would have had the overall responsibility for the conduct of the case.

2. A judge should disqualify himself or herself from hearing a criminal matter involving a defendant who the judge, in his or her previous capacity, had personally prosecuted or defended, or had represented in a civil matter in the past. The reason for this is that the appearance of judicial impartiality must be preserved.

3. A judge need not disqualify himself or herself from hearing a criminal matter which was pending at the time when the judge served as an assistant prosecutor or assistant public defender, if the judge had no direct involvement with the matter. As an assistant, the judge would not have been charged with the overall responsibility for the conduct of the case; disqualification is therefore unnecessary absent direct involvement in the investigation, review or trial of the matter in question.

[See generally State v. McNamara, 212 NJ Super. 102 (App. Div. 1986)]

Part II

Recusal Required

The key issue:

“Would a reasonable, fully informed person have doubts about the judge's impartiality?”

DeNike v. Cupo, 196 *N.J.* 502, 517 (2008)

a. Post-Judicial Employment – DeNike v. Cupo, 196 NJ 502, 519-521 (2008)

1. To reiterate, under *RPC* 1.12(c), judges may not discuss or negotiate for employment with any parties or attorneys involved in a matter in which the judge is participating personally and substantially. Similarly, lawyers may not approach a judge to discuss post-retirement employment while such a matter is pending. If the subject is raised in any fashion, judges should put a halt to the conversation at once, rebuff any offer, and disclose what occurred on the record. The judge and all parties can then evaluate objectively whether any further relief is needed.

2. Judges who engage in retirement discussions while still on the bench —with attorneys who do not have a matter pending before them—must proceed in a way that minimizes the need for disqualification and upholds the integrity of the courts. Just as judges are required to manage their financial and business dealings to avoid conflicts and divest themselves of investments that "could reasonably ... require frequent disqualification," *Code of Judicial Conduct,* Canon 5(D)(3), they should proceed likewise with employment discussions. To that end, judges should delay starting any discussions until shortly before their planned retirement, and should discuss post-retirement employment opportunities with the fewest possible number of prospective employers. That approach would cause the least amount of disruption to litigants, other judges called upon to handle transferred cases, and the administration of the justice system. We encourage judges to consult with the Assignment Judge or other supervisory judicial officers in this regard.

3. To avoid raising reasonable questions about their impartiality, judges must disqualify themselves from matters involving parties or attorneys with whom they have discussed future employment. *See id.* Canon 3(C)(1); *Rule* 1:12–1(f). For the sake of public confidence, that rule applies with equal force when discussions lead to a future relationship *and* when they do not.

4. Judges should wait a reasonable period of time before discussing employment with an attorney or law firm that has appeared before the judge. As in other areas, what is "reasonable" depends on the circumstances. At one end of the spectrum, an uncontested matter resolved swiftly by entry of a default judgment would not call for a lengthy interval of time. Toward the other end, prolonged or particularly acrimonious litigation would caution in favor of a longer delay. Actions likely to result in continuing post-judgment matters would also warrant a lengthier intervening period of time.

b. Part-time municipal court judges (on-going litigation) – State v. McCabe, 201 NJ 34, 519-521 (2008)

Motions for recusal ordinarily require a case-by-case analysis of the particular facts presented. That said, it is difficult to conceive of a situation like this one in which disqualification would not be necessary. A bright-line rule in this area will offer guidance to municipal judges and litigants alike; it will also help ensure the confidence of the public in the judicial system. Accordingly, we hold that part-time municipal court judges must recuse themselves whenever the judge and a lawyer for a party are adversaries in some other open, unresolved matter.

Cases will be considered open through the 45-day period in which to file an appeal, *R.* 2:4-1, and while any appeal is pending. If the matter is reopened for good cause afterward, *R.* 1:13-7, a motion for recusal can be entertained at that time.

A more nuanced situation arises when the lawyer and the municipal court judge were former adversaries in a closed case. That fact alone does not compel recusal. In deciding whether disqualification is appropriate, judges should evaluate the factors in *Rule* 1:12-1. Other relevant considerations include any history of animosity between counsel, and how recently the judge and opposing counsel were adversaries, The timing of a motion for recusal may also be telling in certain instances. However, we reiterate that "it is improper for a court to recuse itself unless the factual bases for its disqualification are shown by the movant to be true or are already known by the court

c. Personal Animosity - Chandok v. Chandok, 406 N.J.Super. 595, 606 (App.Div. 2009).

In any event, the bottom line, irrespective of how the matter should have been raised, is that this judge should not have sat on this case. That is because the acrimonious relationship between counsel and the judge, including the prior litigation which included charges of assault and unethical conduct, gave rise to more than a reasonable belief by an objectively reasonable litigant that the judge could not be fair and impartial. As previously noted, it is not necessary to prove actual prejudice on the part of the court to establish an appearance of impropriety; an 'objectively reasonable' belief that the proceedings were unfair is sufficient."

See also State v. Utsch, 184 NJ Super. 575 (App. Div. 1982)
(Unwarranted personal attack made by defense attorney on lay judge)

d. Ethnic/Cultural Bias – State v. Perez, 356 NJ Super. 527, 532-533 (App. Div. 2003)

There was substantial evidence in this case that defendant understood and spoke English, even though it was not his first language. Nonetheless, the judge decided that defendant was entitled to an interpreter. The problem is that he did so in a manner that a reasonable person would take as reflecting bias. We note in particular these statements cited above: "When are we going to stop this." "These Spanish people coming in here and saying, I want an interpreter." "Somewhere this has got to stop." "You've got to give them credit. They just-" "Well, I guess I better do it. I'd have the ACLU and the people marching outside with signs and so forth."

Those comments were not addressed alone to whether defendant was himself misleading the court; rather, they lumped him *533 together with an identifiable minority against whom the judge was expressing anger, and they suggested that the judge's lack of belief in the validity of defendant's request was based, at least in part, on the supposed improper conduct of the minority group to which he belonged.

Our State Constitution provides, "No person shall be denied the enjoyment of any civil ... right, nor be discriminated against in the exercise of any civil ... right, ... because of ... race, color, ancestry or national origin." *N.J. Const.* art. 1, ¶ 5. Moreover, group libel, which includes defamation of a class of persons based on those constitutional categories, mars civil discourse, and certainly is reprehensible in the halls of justice. The circumstances of this case are analogous to those described in *Roberts, supra,* where there was doubt as to what the judge actually said. Here, we know precisely what the judge said, and as in *Roberts,* his remarks constituted an expression of bias toward a constitutionally protected minority group. We need not accept the Law Division judge's contrary finding because it is unsupported by the evidence. A trial *de novo* on the record, based on acceptance of the credibility determinations of a judge who ought to have recused himself, is inconsistent with due process. Therefore, we believe that the Law Division judge erred in denying defendant's request for a plenary trial.

e. Prior Representation – Search Warrant – State v. McCann, 391 NJ Super. 542 (App. Div. 2007)

Based on these precepts, we agree with the motion judge that the Municipal Court judge should have recused himself from this warrant application proceeding. We assume, as we must, that he carefully reviewed the Grisso affidavit that revealed defendant's involvement and that he knew or should have known that this was his former client. Under these circumstances, there was an appearance of impropriety under *R.* 1:12-1(f). The [Supreme] Court [has] made clear that while "the mere appearance of bias may require disqualification" pursuant to *R.* 1:12-1(f), "the belief that the proceedings were unfair must be objectively reasonable." Tested by that standard, we conclude that the appearance of partiality was objectively reasonable in this situation.

f. Trial Judge had represented defendant as a juvie. State v. Horton 199 NJ Super. 368 (App. Div. 1985)

Our determination that the less restrictive court rule would apply directly to this case does not end the matter, since subsection (f) of the rule, quoted above, still must be considered. The potential for invidious, though, we are sure, unfounded, suppositions as to the court's motive in trying and sentencing a former client causes us strongly to suggest that a trial judge faced with such situation should recuse himself and have another judge assigned to try the case. Since this matter is to be remanded for a retrial, we direct that the retrial be held before a different judge.

g. Trial Judge had presented two cases to the grand jury. State v. Tucker 264 NJ Super. 549, 555 (App. Div. 1993)

A judge should disqualify himself from hearing a criminal matter involving a defendant who the judge, in his previous capacity, had personally prosecuted or defended, or had represented in a civil matter in the past.

"[T]he [1983] directive in question, embodying guidelines promulgated by the Supreme Court concerning judicial disqualifications in criminal cases, has the full force and effect of law.". While an assistant prosecutor who presents a case to a grand jury does not have the same degree of involvement with the defendant as one who actually tries a case, he is involved in "personally prosecuting" the defendant and thus would be included under this directive. The trial judge also indicated that he may have had personal responsibility for the prior prosecutions of the defendant, which meant that he may have participated in the plea bargaining process. We conclude that such involvement has the capacity to undermine public confidence in the impartiality of the judicial system.

We find under the circumstances of this case that the defendant's motion for recusal should have been granted. Therefore, the convictions must be reversed.

See also State v. Kettles, 345 NJ Super. 466 (App. Div. 2001)

h. Longstanding personal relationship with a trial witness. In re Perskie, 207 NJ 275 (2011)

Judge's conduct, failing to disqualify himself over civil matter in which a central witness was a person with whom judge had a longstanding and ongoing business relationship, violated canons of judicial conduct requiring judge to observe high standards of conduct to preserve integrity and independence of judiciary, requiring judge to conduct himself so as to promote public confidence in integrity and impartiality of judiciary, and requiring judge to disqualify himself where impartiality might reasonably be questioned, and court rule requiring judge to disqualify himself where a party might reasonably believe that judge could not be fair or unbiased; judge purchased homeowner's and automobile insurance through witness' insurance agency, witness had supported judge's efforts to obtain public office by donating personally to his campaigns, fundraising for him, and acting as his campaign treasurer, judge and witness worked together to bring legalized gambling to state, judge and witness had been partners in a failed business venture, and for several years had had a social relationship in which they played cards on a weekly basis. Code of Jud.Conduct, Canons 1, 2(A), 3(C); R. 1:12–1(f).

See also:
In re Samay, 166 NJ 25 (2001) [removal from judicial office]
In re Newman, 189 NJ 477 (2006) [Admonition]
In re Council, 202 NJ 37 (2010) [Admonition]

Part III

Recusal NOT Required

In General

The issue of when a judge should disqualify himself from hearing a matter is one which our courts have addressed on many occasions. It is within the sound discretion of the judge, in the first instance, whether he should disqualify himself. *State v. Flowers*, 109 *N.J.Super.* 309, 311-312, 263 *A.*2d 167 (App.Div.1970). [PCR applications]

Absent a showing of bias or prejudice, the participation of a judge in previous proceedings in the case before him is not a ground for disqualification. And the fact that a judgment resulting from previous proceedings is reversed on appeal is likewise not a sufficient ground for disqualification. [*State v. Walker*, 33 *N.J.* 580, 591, 166 *A.*2d 567 (1960).]

A judge who issued a search warrant is not disqualified from hearing a motion to suppress evidence, *State v. Smith*, 113 *N.J.Super.* 120, 273 *A.*2d 68 (App.Div.1971), certif. den. 59 *N.J.* 293, 281 *A.*2d 806 (1971).

a. Pretrial motions and rulings – State v. Medina, 349 NJ Super. 108, 130 (App. Div. 2002).

***Rule* 1:12-1(d) provides that a judge "shall be disqualified on the court's own motion ... if the judge has given an opinion upon a matter in question in the action." However, "the *Rule* contains an important qualification. A judicial statement of opinion in the course of the proceeding in the case ... or in another case in which the same issue is presented [does] not require disqualification. A judge [may] continue to participate in a case when [an] opinion which he has rendered ... was expressed in the course of [the] proceedings regarding the same controversy. The rule's prohibition is directed primarily at statements made outside of the declarant's role as a judge.**

Apart from *R.* 1:12-1(d), a judge must recuse himself "when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." *R.* 1:12-1(f). However, exposure to inadmissible evidence in the course of pretrial proceedings generally does not require disqualification of the judge even where the judge is to serve as the fact-finder. "A judge sitting as the fact-finder is certainly capable of sorting through admissible and inadmissible evidence without resultant detriment to the decision-making process.. Trained judges have the ability to exclude from their consideration irrelevant or improper evidence and materials which have come to their attention.

Having said this, a judge should be sensitive to the perception of the litigants, counsel, or the informed public that his exposure to inflammatory material might irredeemably preclude him from serving as a neutral and impartial arbiter of the facts. We, nevertheless, perceive no abuse of the judge's discretion in this case.

b. Filing of a judicial misconduct complaint against a sitting judge where grievant is a party.

2:15-24. Disqualification of Judge

The filing of allegations concerning a judge shall not automatically require the judge's recusal from a matter involving the grievant.

DONINI & RAMSEY
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(609) 396-7979
ATTORNEY FOR DEFENDANT

STATE OF NEW JERSEY	**:**	**TRENTON MUNICIPAL COURT MERCER COUNTY**
Plaintiff	**:**	
		SUMMONS NO. 123456
vs.	**:**	
		QUASI-CRIMINAL ACTION
SCOTT BROWN	**:**	
		CERTIFICATION OF
Defendant	**:**	**ROBERT RAMSEY**

I, Robert Ramsey, do certify the following to be true:

1) I am an attorney at law in the State of New Jersey. I represent the defendant, Scott Brown.

2) On or about October 7, 2010, this Court sentenced Defendant to a three year term of probation with certain terms and conditions.

3) As revealed in the annexed transcript (page 3, lines 4-7), the Court told Defendant at his sentencing, "Mr. Brown, please understand if you violate any of the terms of your probation, I will put you in jail, so make sure you do everything you are supposed to because I will have no hesitation in sending you back to jail if you appear before me again".

4) On or about March 30, 2011, Defendant was charged with a probation violation arising from the Court's sentence of October 7, 2010. The matter is now set for hearing before this Court on June 8, 2011.

5) Based upon the Courts comments to Defendant at the time of sentencing, it is clear that the Court has already decided what the sentence

will be in the event that a probation violation is proved. The Court's prejudging of the case would foreclose the possibility of the defendant receiving additional probation or some sentence other than a jail term.

6) Based upon the Court's statement at sentencing, it appears that the Court will impose a jail term as a result of a probation violation regardless of the underlying facts and without a weighing of any aggravating or mitigating factors.

7) The comments of the Court entitle the defendant to seek recusal pursuant to Rule 1:12-1(f) in that the Court's comments provide evidence that will preclude a fair and unbiased hearing or which reasonably leads counsel and the defendant to so believe.

I certify that the foregoing statements made by me are true to the best of my knowledge. I am aware that if any of the foregoing statements make by me are willfully false, I am subject to punishment.

_____

Robert Ramsey
Attorney for Defendant

Dated: June 1, 2011

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ATTORNEY FOR DEFENDANT

STATE OF NEW JERSEY	**:**	**TRENTON MUNICIPAL COURT MERCER COUNTY**
Plaintiff	**:**	
vs.	**:**	**SUMMONS NO. 123456**
SCOTT BROWN	**:**	**QUASI-CRIMINAL ACTION**
Defendant	**:**	**ORDER**

THIS MATTER having been opened to the Court by Donini & Ramsey, Attorneys-at-Law, Robert Ramsey, Esquire, appearing, on behalf of Defendant, Scott Brown, and the Court having considered the arguments of counsel, the papers submitted and the Court having concluded pursuant to Rule 1:12-1(f) that valid reasons appear in the record which might lead counsel or the parties to believe that a fair hearing cannot take place before this Court, and other good cause having been shown;

IT IS ON THIS _____ DAY OF _____, 2012;

ORDERED that the Court will recuse itself in this matter; and

IT IS FURTHER ODERED that pursuant Rule 1:12-3(a), another judge of this Court will hear and decide all contested issues in the above captioned matter.

_____
J.M.C.

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ATTORNEY FOR DEFENDANT

STATE OF NEW JERSEY	**:**	**TRENTON MUNICIPAL COURT MERCER COUNTY**
Plaintiff	**:**	
		SUMMONS NO. 123456
vs.	**:**	
		QUASI-CRIMINAL ACTION
SCOTT BROWN	**:**	
	:	**Rule 1:12-2**
		NOTICE OF MOTION TO RECUSE
Defendant	**:**	**BASED ON DISQUALIFICATION**

PLEASE TAKE NOTICE that on a date to be set by the Court, pursuant to Rule 1:12-2, the undersigned, counsel for Defendant, Scott Brown, will move for a pretrial order requiring the recusal of the Court and the assignment of a new judge to hear the contested issues in above captioned matter.

In support of the within application, Defendant will rely upon the annexed Certification, memorandum of law, hearing transcript as well as oral argument.

DONINI & RAMSEY

ROBERT RAMSEY

Dated: June 1, 2011