

CAUSE NO. 25-00024

UDO BIRNBAUM
Plaintiff

VS.

CSD VAN ZANDT LLC
Defendant

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IN THE DISTRICT COURT

294TH JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

**DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION FOR RECUSAL OF
JUDGE CHRIS MARTIN**

COMES NOW, Defendant CSD Van Zandt LLC (“Defendant”) and files this, its Response in opposition to Plaintiff’s Motion for Recusal of Judge Chris Martin, and would respectfully show the Court as follows:

**I.
SUMMARY OF RESPONSE**

1. Plaintiff’s Motion for Recusal of Judge Chris Martin should be denied because the Motion is not properly verified, is based solely on Judge Martin’s unfavorable ruling in another case, and does not state with detail and particularity admissible facts that justify recusal or disqualification if proven. For these reasons, Plaintiff opposes Judge Martin’s recusal.

**II.
BACKGROUND**

2. The instant case concerns an already-decided ownership dispute over approximately 150 acres of real property in Eustace, Texas. On April 4, 2025, Plaintiff Udo Birnbaum (“Plaintiff”) filed a Motion for Recusal asking that Judge Chris Martin be removed from presiding over this suit. In his Motion, Plaintiff explains that he believes Judge Martin should be recused because in August and September 2023, Judge Martin “fraudulently” granted a traditional summary judgment motion and issued a writ of possession order both in Defendant’s favor in the prior litigation, entitled Cause No. 22-00105, *CSD Van Zandt LLC v. Udo Birnbaum*, in the 294th

Judicial District Court, Van Zandt County, Texas (hereinafter “Cause No. 22-00105”). **Plaintiff’s Motion for Recusal** at ¶2. For this reason, Plaintiff believes Judge Martin is an “indispensable witness” and has a “interest in the outcome” of this matter. **Plaintiff’s Motion for Recusal** at ¶¶1, 8.

3. Defendant incorporates herein by way of reference and would ask the Court to take notice of the historical pleadings in this cause of action, as well as in Cause No. 22-00105.

4. Importantly, Judge Martin’s ruling in Cause No. 22-00105 was appealed by Plaintiff to both the Twelfth Court of Appeals District in Tyler, Texas, and the Texas Supreme Court. All of Plaintiff’s appeals and requests for relief were denied. While this should have ended Plaintiff’s inquiries, it did not, and Plaintiff filed this bill of review petition case on February 6, 2025.

III. ARGUMENT & AUTHORITIES

5. Plaintiff’s Motion for Recusal should be denied for three reasons: (1) Plaintiff failed to properly verify the pleading, (2) Judge Martin’s ruling in Cause No. 22-00105 is not a legitimate reason for recusal, and (3) Plaintiff fails to describe admissible facts that would warrant recusal.

6. First, Defendant asserts that Plaintiff’s purported verification to his Motion is improper. A verification is often required to accompany certain pleadings to confirm that the affiant or movant swears to and substantiates under oath the contents of the pleading, which are based on personal knowledge. *See In re K.M.L.*, 443 S.W.3d 101, 111 (Tex. 2014). Motions requesting recusal must be verified. TEX. R. CIV. P. 18a(a)(1).

7. Plaintiff’s attempt at verification is improper. Plaintiff’s verification states: “All upon personal knowledge and investigation, all true and correct. Exhibits 1 to 4, true copies of the originals, all mark ups by me,” Plaintiff’s signature following. Beneath, a notary block states “SUBSCRIBED AND SWORN TO before me, the undersigned authority, by UDO BIRNBAUM,

on this 4 day of April, 2025, to certify which witness my hand and seal of office,” notary’s stamp and signature following. **Plaintiff’s Motion for Recusal** at 3. The verification is faulty because it fails to state what pleading or facts are being verified, merely stating “all” is true. Moreover, the notary failed to confirm that any oath was administered to Plaintiff or that Plaintiff swore under oath. “It is essential that one making an affidavit swear or affirm under oath that the facts stated are true.” *State v. LeBlanc, Inc.*, 399 S.W.2d 919, 922 (Tex. App.—Houston 1966, no writ); *see also Perkins v. Crittenden*, 462 S.W.2d 565, 566 (1970)(instrument not affidavit where notary did not attest to oath but merely certified signer executed document for purposes therein expressed); *Dixon v. Mayfield Bldg. Supply Co., Inc.*, 543 S.W.2d 5, 7 (Tex. App.—Fort Worth 1976, no writ)(verified denial failed where defendant did not make denial under oath). Plaintiff has failed to meet the requirements of Rule 18a(a)(1) and therefore the recusal of Judge Martin should be denied.

8. Similarly, Chief Justice Blacklock of the Supreme Court of Texas recently ordered that Plaintiff’s purported verification of his motion seeking recusal of The Honorable Alfonso Charles, which had near identical verification language, was insufficient. *See Order Summarily Denying Motion to Recuse Presiding Judge Alfonso Charles*. The same conclusion can be reached in relation to Plaintiff’s attempt at verification here.

9. Plaintiff’s Motion should also be denied because Plaintiff has failed to plead legitimate grounds for recusal or disqualification of Judge Martin. Grounds for recusal and disqualification are defined by statute. *See generally* TEX. R. CIV. P. 18b. A reasonable person standard is applied in determining whether a recusal motion should be granted. *See Woodruff v. Wright*, 51 S.W.3d 727, 736 (Tex. App.—Texarkana 2001, pet. denied). Recusal is not required merely because a trial judge knows a party to the action. *Id.* at 738.

10. Here, Plaintiff's cited reasons for requesting recusal fail to meet any cognizable disqualification under Rule 18b. Plaintiff has pled no facts to show that Judge Martin's impartiality might reasonably be questioned or that he has personal bias or prejudice. Plaintiff has pled no facts to show that Judge Martin has personal knowledge of disputed evidentiary facts, or that he was a material witness in a related proceeding. Plaintiff has pled no facts showing Judge Martin acted as an attorney in government service related to this controversy, or that he or someone he knows has a financial or other type of interest in the subject matter at issue. Finally, Plaintiff has pled no facts showing that he holds any improper relationship ties relevant to this proceeding. At most, Plaintiff lodges an accusation that Judge Martin denied Plaintiff a jury trial and ruled against him in Cause No. 22-00105 because Judge Martin was a "participant" in a "scam" to deprive Plaintiff of his land. **Plaintiff's Motion for Recusal** at ¶4. Plaintiff goes on to say Judge Martin must be "interested" in this case now because Judge Martin wants to maintain his public "perception" or risk his "livelihood" as a judge. **Plaintiff's Motion for Recusal** at ¶8. Simply put, these are unsubstantiated conspiracy theories lodged by Plaintiff because Judge Martin ruled in Defendant's favor years ago on summary judgment. Judge Martin's rulings in Cause No. 22-00105 have been scrutinized through two appeals processes and were upheld. Certainly, Judge Martin's role as presiding judge in Cause No. 22-00105 is not a valid reason to dismiss him now.

11. No other reasons are given in Plaintiff's Motion for the requested recusal other than pointing to Judge Martin's involvement in Cause No. 22-00105. But the courts enjoy a "presumption of judicial impartiality" as neutral decisionmakers, which burden-holders like Plaintiff cannot overcome through making "conclusory statements, conjecture, or mere assertions of bias." *Gregg v. State*, No. 12-24-00132-CR, 2025 WL 52483, at *2 (Tex. App.—Tyler Jan. 8, 2025, pet. ref'd)(citing *Abdygapparova v. State*, 243 S.W.3d 191, 198 (Tex. App.—San Antonio

2007, pet. ref'd). Recusal is therefore only warranted where the movant provides facts demonstrating the presence of bias or partiality of such a nature and extent as to deny the movant due process of law or a fair trial. *See Drake v. Walker*, 529 S.W.3d 516, 528 (Tex. App.—Dallas 2017, no pet.). Nothing in Plaintiff's Motion claims Judge Martin has extrajudicial information, nor that a bias stemming from in-court proceedings in Cause No. 22-00105 is so deep-seated in favoritism or antagonism that it would make a fair judgment impossible in the instant litigation. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 240 (Tex. 2001). Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion, because appeal is the remedy for unfair judicial rulings—a remedy Plaintiff has already exhausted. *See Traylor-Harris v. State*, No. 12-22-00321-CR, 2023 WL 8461679, at *6 (Tex. App.—Tyler Dec. 6, 2023, pet. ref'd). This rule should be applied to these circumstances herein.

IV. **REQUEST FOR SANCTIONS AGAINST PLAINTIFF**

12. Sanctions are appropriate against a movant seeking recusal where the movant makes his filing in bad faith, for purposes of harassment, or to unnecessarily delay proceedings without sufficient cause. TEX. R. CIV. P. 18a(h); *see Laza v. City of Palestine*, No. 06-18-00051-CV, 2022 WL 17420805, at *1 (Tex. App.—Texarkana Dec. 5, 2022, no pet.)(finding sanctions necessary where movant makes factually unsupported and disrespectful comments regarding the court). Defendant requests that this Court issue sanctions against Plaintiff in the form of reasonable attorney's fees and expenses in Defendant's favor, proven up by affidavit attached hereto. *See Exhibit 1*. Plaintiff's filing was made in bad faith without support. Moreover, Plaintiff's habit has been to harass Defendant through entangling Defendant in continuous lawsuits and pleadings on the already-determined issue of certain real property ownership. Defendant asks that this Court help put a stop to Plaintiff's meritless behavior through use of the Court's sanction power.

V.
CONCLUSION & PRAYER

13. Defendant files this Response in opposition to Plaintiff's Motion seeking recusal of Judge Chris Martin, because Plaintiff's Motion is deficient in both form and substance under the Texas Rules of Civil Procedure, and Plaintiff has failed to meet his burden to show that Judge Martin should be recused or disqualified. Further, because Plaintiff's Motion sought recusal in bad faith, for purposes of delay, and/or for purposes of harassment, Defendant asks that sanctions be issued against Plaintiff in the form of Defendant's attorney's fees and expenses.

WHEREFORE, PREMISES CONSIDERED, Defendant CSD Van Zandt LLC requests that this Response to Plaintiff's Motion for Recusal of Judge Chris Martin is considered prior to any ruling on same, that Plaintiff's Motion be denied in all things, that Defendant be awarded reasonable and necessary attorney's fees and costs in pursuing this Response, and that Defendant be granted any other and further relief, at law or in equity, to which Defendant may be justly entitled.

Respectfully submitted,

/s/ Nicole Feragen
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Southlake, Texas 76092
Telephone: (469) 702-0099
Facsimile: (817) 601-1850

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that on June 24, 2025, a true and correct copy of the foregoing document was served electronically through the E-file system to all parties and/or counsel of record.

/s/ Nicole Feragen
Nicole Feragen

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IN THE DISTRICT COURT

294TH JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

ATTORNEY'S FEES AFFIDAVIT

Before me, the undersigned notary, on this day personally appeared Nicole Feragen, the affiant, who, being personally known to me or first properly identified to me, and being duly sworn, deposed and stated:

1. “My name is Nicole Feragen. I am over 21 years of age, I have never been convicted of a crime, I am of sound mind, and I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am an attorney and have been licensed to practice law in the State of Texas since October 25, 2019. I have over five years of experience in civil litigation.

3. I, along with other attorneys with Sullivan Law Offices, have been employed by Defendant CSD Van Zandt LLC in the above-referenced lawsuit. I have personal knowledge of this case and the work performed, including but not limited to: correspondence with the client; review of documentation; review of the opposing party's pleadings; legal research; drafting and filing of various pleadings; drafting of, researching for, and filing the instant Defendant's Response to Plaintiff's Motion for Recusal of Judge Chris Martin (the “Response”); and preparation for hearing on same.

4. I am familiar with the fees customarily charged by practicing attorneys in Texas counties such as Van Zandt County in matters like these. The rates charged for my time and the

time of the other attorneys working on this matter are reasonable for the above-described services performed in this case.

5. Attorney's fees and costs for services performed by Nicole Feragen as of the date of this affidavit amount to at least \$1,852.50. I anticipate an additional \$1,300.00 in attorneys' fees will be required to supplement the Response or related pleadings, and/or prepare for and attend a hearing on Plaintiff's Motion and Defendant's Response. At this time, the total of reasonable and necessary attorneys' fees that Defendant is entitled to is \$3,152.50.

6. In the event an appeal is made to the court of appeals from the judgment reached on Plaintiff's Motion and Defendant's Response, I anticipate at least an additional \$3,250.00 in attorneys' fees and expenses will be expended by Defendant CSD Van Zandt LLC. In the event petition for review is made to the Supreme Court of Texas, I anticipate at least an additional \$4,875.00 in attorneys' fees and expenses will be expended by Defendant CSD Van Zandt LLC.

7. Based upon my knowledge and experience in matters of this sort, it is my opinion and belief that all of the services provided by Sullivan Law Offices were and are reasonable and necessary in order to protect the interests of Defendant CSD Van Zandt LLC in this matter. It is my further opinion that the attorneys' fees and expenses incurred to date are a fair and reasonable sum for the representation of Defendant CSD Van Zandt LLC in this matter. In determining the attorneys' fees to be charged, the following factors have been considered:

- a. the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;
- b. the likelihood that the acceptance of the particular employment would preclude other employment by the attorneys;
- c. the fees customarily charged in the locality or for the circumstances;

- d. the amount involved and the results obtained;
- e. the time limitations imposed by the client or by the circumstances;
- f. the nature and length of the professional relationship with the client;
- g. the experience, reputation, and ability of the attorneys performing the services;
- h. that the fee is fixed by the relevant hourly rates; and
- i. the amount in controversy, the nature of this case, and the amount of time spent in this cause.

8. A request for sanctions in the form of attorney's fees for the non-movant may be included in relation to a motion requesting recusal pursuant to Tex. R. Civ. P. 18a(h). The Court can take judicial notice of the usual and customary attorney fees and the contents of the case file without receiving any further evidence. Tex. Civ. Prac. & Rem. Code § 38.004.

9. The attached billing statements reflect accurate time entries and hourly rate charges for the reasonable and necessary legal services provided by Sullivan Law Offices. All the services were reasonable and necessary in the prosecution or defense of claims or defenses for which attorney's fees are properly awarded to the prevailing party."

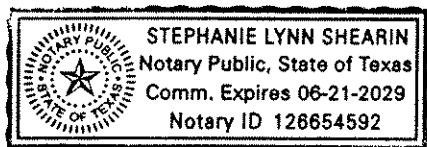
FURTHER AFFIANT SAYETH NOT.

SIGNED this 24 day of June 2025.


Nicole Feragen

SUBSCRIBED AND SWORN TO before me, the undersigned notary, on the 24th day of June 2025 by Nicole Feragen.


Notary Public, State of Texas



Activities Export

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
05/06/2025		Begin research and drafting of response to plaintiff's motion to recuse judges.	00732-Dow CSD VAN ZANDT LLC	Nicole Feragen	1.30h	\$325.00	-	\$422.50
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
04/25/2025		Strategy conference with atty CK to discuss [REDACTED] motion to recuse, [REDACTED] Billed invoice	00732-Dow CSD VAN ZANDT LLC	Nicole Feragen	0.40h	\$325.00	-	\$130.00
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
05/08/2025		Continue investigating standards of review for judge recusal to incorporate in motion. Billed invoice	00732-Dow CSD VAN ZANDT LLC	Nicole Feragen	0.50h	\$325.00	-	\$162.50
05/12/2025		Strategy conference with atty CK	00732-Dow	Nicole	0.10h	\$325.00	-	\$32.50
								[REDACTED]

Activities Export

06/24/2025
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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
on [REDACTED] motion for recusal hearing, timing of reply and related items. Billed invoice								
05/13/2025		Review/respond to court administrator on issue of recusal motions, cannot move forward with other items until heard. Billed invoice	00732-Dow CSD VAN ZANDT LLC	Nicole Feragen	0.10h	\$325.00	-	\$32.50
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
							[REDACTED]	[REDACTED]

Activities Export

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
06/24/2025		Strategy call with atty CK on status of recusal requests, need for response/attendance at hearing;	00732-Dow CSD VAN ZANDT LLC	Nicole Feragen	0.20h	\$325.00	-	\$65.00
		Unbilled						
06/24/2025		Communicate with client on upcoming hearing on recusal of Judge Martin,	00732-Dow CSD VAN ZANDT LLC	Nicole Feragen	0.10h	\$325.00	-	\$32.50
		Unbilled						
06/24/2025		Finish researching applicable caselaw, and drafting opposition reply to recusal of Judge Martin	00732-Dow CSD VAN ZANDT LLC	Nicole Feragen	3.60h	\$325.00	-	\$1,170.00
		Unbilled						