

BAT WORLD SANCTUARY and
AMANDA LOLLAR,

Plaintiffs,

vs.

MARY CUMMINS,

Defendant Pro se

§ IN THE DISTRICT COURT

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TARRANT COUNTY, TEXAS

352nd JUDICIAL DISTRICT

DEFENDANT’S MOTION TO RECUSE JUDGE WILLIAM BRIGHAM

TO THE HONORABLE JUDGE OF SAID COURT,

Comes now Defendant, Mary Cummins, and files this motion for Judge William Brigham to disqualify or recuse himself from this case, and would show the following:

INTRODUCTION

Plaintiffs are Amanda Lollar and Bat World Sanctuary.

Plaintiffs sued Defendant for Breach of Contract and Defamation.

FACTS

Judge Bonnie Sudderth is the Judge for the 352nd District Court which heard this case.

Immediately before the May 4, 2011 temporary injunction hearing Plaintiffs’ attorney Randy Turner came up behind Defendant and told her “I’ve known this Judge for years. He’ll sign whatever I put in front of him” (Exhibit 1, Affidavit of Defendant Mary Cummins). Defendant had no idea there would be a different Judge.

Judge William Brigham was the visiting Judge for the May 4, 2011 temporary injunction hearing. Defendant was not notified that Judge William Brigham would be the Judge for that hearing. Defendant flew to Texas and did not know that Judge Brigham

1 was the Judge until he walked into the court room. Defendant was not given proper
2 legal notice and was therefore unable to timely file a motion to recuse Judge Brigham.

3 Judge William Brigham heard the temporary injunction hearing May 4, 2011. Judge
4 Brigham allowed Plaintiffs to submit exhibits in court instead of filing them at least 20
5 days before the hearing as per Texas Rules of Civil Procedure.

6 Defendant Cummins is from California. Defendant had no time to verify or investigate
7 the exhibits before they were submitted. Defendant objected to the exhibits for this
8 reason but was over ruled.

9 The exhibits contained links to Internet web pages and web pages Defendant had
10 never seen. Defendant did not write or post most of the items in the exhibit. Defendant
11 did not control those websites and had no ability to add or remove items to those
12 websites. Defendant stated this to the court to no avail.

13 Judge William Brigham ruled against Defendant. Plaintiffs' attorney Randy Turner
14 then presented to Judge Brigham a court order he'd previously written. Defendant was
15 not allowed to see the order before the Judge signed it. The order was quite a few
16 pages long. Defendant does not believe Judge Brigham read the order in its entirety.
17 Nonetheless Judge William Brigham signed the order (Exhibit 2).

18 The order read as follows:

19
20 "IT IS THEREFORE ORDERED that Mary Cummins immediately remove from the
21 internet all of the materials concerning Bat World Sanctuary and Amanda Lollar which
22 have been posted or placed on the internet at the following URL's and locations
23 (care2.com, trface.com, friendfeed.com, animalsuffering.com, topix.com, indybay.org,
24 blogspot.com, youtube.com, facebook.com, flickr.com, apnicommunity.com,
25 wittysparks.com, mufti.tv, wn.com, nature-talk.com, videowired.com, yidio.com,
fiveprine.org, mefeedia.com, myvido1.com, videomusicpopular.com,
onepakistan.com...).

IT IS FURTHER ORDERED that Mary Cummins is prohibited from posting anywhere on
the internet or publishing in any way any of the statements and photographs concerning

1 Bat World Sanctuary or Amanda Lollar that appear at the URL's and locations listed
2 above.

3 IT IS FURTHER ORDERED that Mary Cummins is prohibited from posting on the
4 internet or publishing in any way any videos or pictures or written text describing
5 procedures or techniques developed by Bat World Sanctuary, including holding
6 techniques, feeding techniques, rehabilitation procedures, episiotomies and births,
7 injection techniques, dental extractions, parasite removal, bathing, vaccinating and
8 treatments of injuries including wing repair and other routine procedures.

9 IT IS FURTHER ORDERED that Mary Cummins is prohibited from posting on the
10 internet or publishing in any way any videos or photographs or written text describing
11 rehabilitation set-ups developed by Bat World Sanctuary, including medical rooms,
12 feeding rooms, and both rehabilitation and permanent bag caging, housing and flight
13 areas.”

14 (1) The order did not include a bond rendering the order void.

15 (2) The order was against third parties. The order demands Defendant to remove
16 items she did not write or post on websites she does not control. An injunction cannot
17 be against third parties. According to Fed. R.Civ. P. 65 (d) enforcement of an injunction
18 against a non-party requires a showing that the non-party was "acting in concert or
19 legally identified (i.e., acting in the capacity of an agent, employee, officer, etc.) with the
20 enjoined party." Plaintiffs did not show that Defendant was acting in concert with others.
21 Defendant cannot possibly remove other people's websites.

22 (3) The order included prior restraint. The order stated Defendant was not allowed to
23 repost any of the items ordered removed. Defendant was further ordered not to post in
24 the future any photos of videos of Bat World Sanctuary or to describe any procedures.
25 According to the Supreme Court of the United States an "injunction cannot enjoin
someone from an expression before the expression actually takes place." Prior restraint
is unconstitutional.

(4) The order did not include a trial date.

Even though Defendant knew the injunction was void she removed all items she
controlled.

1 Defendant filed a motion to void the temporary injunction which Judge Bonnie
2 Sudderth heard. Defendant told Judge Sudderth what Randy Turner said to her before
3 the temporary injunction hearing. Judge Sudderth stated that she would not force
4 Defendant to remove items she did not write or did not post on other people's websites.
5 Judge Sudderth stated she did not want to rule on an order written by another Judge.
6 Judge Sudderth never ruled on Defendant's motion to void injunction or Plaintiffs'
7 motions to amend injunction.

8 Defendant flew to Texas for trial starting June 11, 2012. Defendant was not notified
9 that Judge William Brigham would be the Judge for the trial. Had Defendant been given
10 notice, she would have filed a motion to recuse Judge Brigham based on the temporary
11 injunction hearing and the bias as evidenced by what attorney Randy Turner had told
12 her about their "relationship."

13 Judge ruled for Plaintiffs in the trial. Defendant filed a motion for new trial and
14 objections to the court order. Defendant stated in her motion that there was a conflict of
15 interest between Judge Brigham and Randy Turner. Judge Brigham also did not rule
16 according to the evidence presented or the law. Defendant requested a new Judge in
17 her motion for new trial.

18 Judge Brigham instructed Randy Turner to write the court order and send it to the
19 court. Turner wrote the order then mailed it to Judge Brigham's home address (Exhibit
20 3). Defendant believes that Turner and Brigham have a "relationship" as evidenced by
21 (a) Turner mailing the order to the Judge's private residence, (b) Turner telling
22 Defendant that they have a "relationship," and (c) Judge Brigham signing the overly
23 broad, void and unconstitutional temporary injunction.

24 Defendant was just notified July 13, 2012 that Judge Brigham would hear
25 Defendant's motion for new trial and objections to the court order. There is clearly a

1 bias. Defendant files this motion to ask Judge Brigham to recuse himself. Defendant will
2 not receive justice if Judge Brigham presides over her motion for new trial and
3 objections to court order.

4 ARGUMENTS AND AUTHORITIES

5 The due process clauses of both the Texas and the United States Constitutions
6 guarantees a party an impartial and disinterested tribunal in civil cases. Marshall v.
7 Jerrico, Inc., 446 U.S. 238, 242, 100 S.Ct. 1610, 1613 (1980); Metzger v. Sebek, 892
8 S.W.2d 20, 37 (Tex. App. Houston [1st Dist.] 1994, writ denied).

9 In this case, the personal interest and bias of the judge of the court has deprived
10 Defendant of a fair trial in violation of the due process clauses of both the Texas and the
11 United States Constitutions and in violation of Texas Rule of Civil Procedure 18b
12 because the judge's impartiality might reasonably be questioned. Tex. R. Civ. P. 18b(2)
13 (a); Dunn v. County of Dallas, 794 S.W.2d 560, 562 (Tex. App. Dallas 1990, no writ). In
14 this case, it is reasonable to question the impartiality of Judge William Brigham because
15 of the facts stated herein.

16 Defendant is entitled to this objection because the presiding judge did not give timely
17 notice of the assignment of this case to the visiting judge. See Tex. Gov't Code §74.053
18 (a); Tivoli Corp. v. Jewelers Mut. Ins. Co., 932 S.W.2d 704, 709 (Tex. App. – San
19 Antonio 1996, writ denied). It is reasonable and practical for the presiding judge to give
20 notice to give Defendant the opportunity to check the qualifications of the visiting judge.
21 Had Defendant known that Judge William Brigham would have overseen the trial,
22 Defendant would have been able to object and file a motion to recuse the Judge within
23 the ten day limit before trial. Defendant's rights were denied.

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1 In support of the allegations set forth in this motion, Movant would direct the Court's
2 attention to the Affidavit of Defendant Mary Cummins attached to this motion and
3 incorporated by reference.

4 **CONCLUSION**

5 Judge William Brigham has demonstrated prejudice against Defendant and must be
6 removed from this case. Judge William Brigham's orders must be ruled void and a new
7 trial ordered, otherwise the court will deprive Defendant of a fair trial in violation of the
8 due process clauses of both the Texas and the United States Constitutions and in
9 violation of Texas Rule of Civil Procedure 18b.

10 **PRAYER**

11 WHEREFORE, the Defendant prays that the Judge of this Court immediately
12 request the Presiding Judge of this administrative district to assign another judge to
13 hear this motion, and that upon such hearing Judge William Brigham be disqualified or
14 recuse himself from presiding in this case.

15 Respectfully submitted,

16
17 Mary Cummins, Defendant Pro se
18 645 W 9th St, #110-140
19 Los Angeles, CA 90015-1640
20 Phone 310-877-4770
21 Email: mmmaryinla@aol.com

22 By: _____
23 Mary Cummins, Defendant Pro Se
24
25

1 **CERTIFICATE OF SERVICE**

2 I, Mary Cummins, hereby certify that a TRUE COPY of the above **DEFENDANT'S**
3 **MOTION TO RESCUE JUDGE WILLIAM BRIGHAM** was served on the Plaintiffs'
4 Attorney of record by FAX and by FIRST CLASS MAIL at

5 Randy Turner
6 Bailey & Galyen
7 1901 W. Airport Freeway
8 Bedford, TX 76021
9 Fax: 817-545-3677
10 this 13th Day of July, 2012

11 _____
12 Mary Cummins, Defendant Pro se
13 645 W 9th St, #110-140
14 Los Angeles, CA 90015-1640
15 Phone 310-877-4770
16 Email: mmmaryinla@aol.com