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September 23. 2025

Hon. Robert A. Ballard, Jr.
Presiding Judge, Superior Court
Somerset County Courthouse
20 North Bridge Street, Floor 4
Somerville NJ 08876

Re: Morrisette v. Town of Phillipsburg Town Council,
Docket No. WRN-L-000378-24
Letter Brief in Support of Motion to Disqualify the Firm of Bob Smith & Associates, LLC
This Letter Brief in Reply to Opposition to the Motion to Disqualify

As this motion is opposed, plaintiffs request oral argument.

Dear Judge Ballard:

This firm represents the plaintiffs in this matter. Please accept this letter brief in lieu of a more formal brief in reply and further support of our motion to disqualify the law firm of Bob Smith & Associates LLC (Bob Smith firm) from representing the intervenor-defendant Peron Construction, Inc.

(Peron).[1] We reply to the arguments in opposition to our motion in the opposition brief filed by the Bob Smith firm. The opposition says nothing of any use.

Far more important is what the motion does not say.

Most importantly, Senator Smith does not in any way deny that he has absolute and unreviewable power to end Judge Allende's career on the bench. He can't deny it. As our Supreme Court has described it, "[i]n sum, the practice of senatorial courtesy allows a single senator to reject a nomination without regard to its merits, without disclosure of any reasons, without the conduct of any hearing, and without any action by the Senate as a whole." DeVesa v. Dorsey 134 N.J. 420, 427 (1993).

Senator Smith does not say that he will not consider exercising his power of senatorial courtesy if Judge Allende is renominated, which we must assume she will be. Plaintiffs acknowledge that any such statement

[1] Peron is wholly owned by Michael Perrucci, Esq., the name partner in the law firm of Florio Perrucci Steinhardt Cappelli & Tipton LLC. Douglas Steinhardt, Esq., is also a State Senator, and the former Chairman of the Republican State Committee and the current Chairman of the Warren County Republican Committee. At the inception of Peron's involvement in this case, the company was represented by the Florio Perrucci firm.

would in any event be unenforceable, but it would at least constitute an act of good faith.

The Bob Smith firm does not claim any particular experience or expertise in the Local Redevelopment And Housing Law (LRHL), the focus of this litigation. Plaintiffs have found nothing to indicate that the firm could make such a claim.[2]

The Bob Smith firm does not offer any reason for why it was substituted into this case, replacing the law firm of Michael Perrucci, Esq., which does have expertise and experience in the LRHL. No reason needs to be given in ordinary circumstances, but of course this case is anything but ordinary. The substitution was done a day after Judge Allende had taken the final step in granting plaintiffs' limited discovery, by signing a protective order sought by Peron. Peron had strenuously opposed two motions by plaintiffs to disqualify the Florio Perrucci firm. Peron offers no explanation for the substitution, either. Peron does not offer any claim or evidence to rebut the obvious inference that the Bob Smith firm was brought into the

[2] Perhaps unusually, the Bob Smith firm does not maintain a website.

case in a cynical ploy by Mr. Perrucci and Peron to intimidate the court or get rid of Judge Allende because of her adverse rulings on discovery.

We note here that by the terms of Judge Allende's case management order allowing plaintiff limited discovery from Peron and the Town, responses to plaintiffs' discovery requests were due not later than August 8, 2025. As of the date of this reply, neither defendant has provided any discovery at all. Plaintiffs will pursue their remedies once this motion is decided, to avoid having Judge Allende decide the issue while one litigant had the absolute power to end her career on the bench.

We turn to Peron's arguments.

1. Peron opens by describing the Constitution's judicial appointment process as "institutional and not adjudicative." This is utterly irrelevant. However one may characterize the Constitution's composition of the Legislature, senatorial courtesy is not mentioned in the Constitution. Peron's claim that the appointment process "does not vest adjudicative authority in any individual senator" is palpably incorrect.

2. Peron argues that there is no precedent directly on point. This is unhelpful; it merely states the obvious. There has never to our knowledge

(or apparently Peron's, see R.P.C. 3.3(a)(3)), been any situation in which a sitting judge awaiting renomination and reconfirmation presided over a case in which one litigant was represented by a Senator whose exercise of senatorial courtesy could end the judge's judicial career. Peron claims that our motion would disqualify Senators from appearing before judges that have been confirmed, but that is overblown. A judge who has tenure, and a judge in the initial seven year term presiding over a case in which a Senator from another district or county is involved are not threatened in their careers. There is no precedent on point because this situation is unprecedented.

In our motion brief, we cited to Piscitelli v. Garfield ZBA, 237 N.J. 333, 350 (2018) and Wyzykowski v. Rizas, 132 N.J. 509 (1993). Peron dismisses these cases because they involved the Local Government Ethics Law, which is half true. Piscitelli in particular emphasized that it was also applying common law principles, and noted that the statute was premised on common law principles. 237 N.J. at 523-25. We stand by that discussion.

Peron argues that we did not cite any R.P.C. Again, we doubt the authors of the rules ever anticipated a situation such as this. But we refer to

R.P.C. 3.5, "Impartiality and Decorum Of The Tribunal." In particular, subsection (c) says that a lawyer shall not "engage in conduct intended to disrupt a tribunal," and inserting a lawyer who can end the judge's career on the bench is certainly "disruptive" to the "impartiality and decorum" of the court. In addition, subsection (d) prohibits any discussion of post-judicial employment, and this certainly supports that introduction of threats to a judge's judicial career are also "disruptive" to the "impartiality and decorum" of this court.

3. Peron argues that "the mere fact of legislative participation in judicial appointments" should not disqualify any senator-lawyer or his or her firm from appearing before any confirmed judge. Plaintiffs agree, but that is not the situation here.

We turn to the remedy we seek, disqualification of the Bob Smith firm. Obviously, the status quo is unsustainable, and the question is whether the case should be assigned to another judge, which Peron is obviously seeking because it is dissatisfied with Judge Allende's orders, or the Bob Smith firm should be disqualified.

Judge Allende did not create this problem. Plaintiffs did not create

this problem. We are here because Peron and its sole owner, Michael Perrucci, Esq., substituted a law firm whose only salient attribute is the partner's unreviewable power to terminate Judge Allende's career on the bench. The court should not tolerate or reward this tactic.

A decision to disqualify a lawyer is an issue of law. Mauer v. State, 481 N.J. Super. 254, 262 (App. Div. 2025). "Disqualification of counsel is a harsh discretionary remedy which must be used sparingly." Mauer, 481 N.J. Super. at 262 (quoting Dental A-2754-24 8 Health Assocs. of S. Jersey, P.A. v. RRI Gibbsboro, LLC, 471 N.J. Super. 184, 192 (App. Div. 2022)). A motion to disqualify is "viewed skeptically in light of [its] potential abuse to secure tactical advantage." Escobar, 460 N.J. Super., 520, 526 (App. Div.), certif. leave to appeal denied, 240 N.J. 129 (2019)(lawyer as witness). In this case, the motion to disqualify is to deny a "tactical advantage" to Peron.

In reviewing a motion to disqualify counsel, this court must "balance competing interests, weighing the need to maintain the highest standards of the profession against a client's right freely to choose his [or her] counsel." Twenty-First Century Rail Corp. v. N.J. Transit Corp., 210 N.J. 264, 273-74 (2012) (quoting Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 218

(1988)). "[T]o strike that balance fairly[,]" courts are required "to recognize and to consider that 'a person's right to retain counsel of his or her choice is limited in that there is no right to demand to be represented by an attorney disqualified because of an ethical requirement.'" Mauer, 481 N.J. Super. at 262-63.

As this situation is unprecedented, the court may rightfully rely on its inherent authority. In State v. Abbati, 99 N.J. 418, 423-430 (1985), the Court engaged in a lengthy discussion of inherent authority. Although it was a criminal case involving authority to dismiss an indictment, the discussion is equally applicable to civil cases. We quote at length:

> This analysis requires an examination of the scope and nature of the judicial power. The New Jersey Constitution vests judicial power in the Supreme Court and all inferior courts. *See N.J. Const.* (1947) art. VI, § 1, para. 1. The constitutional judicial power embraces ancillary inherent powers. The inherent powers of our courts are not defined by the judicial article, and any exhaustive definition of these powers is practically impossible. It is "the imperfection of human institutions which gives rise to our notion of inherent power. It is simply impossible for a judge to do nothing but judge; the Legislature to do nothing but legislate; a governor to do nothing but execute the laws." *In re Court Reorganization Plan of Hudson County*, 161 *N.J. Super.* 483, 491 (App.Div. 1978); aff'd 78 *N.J.* 498 (1979) (mem.); *see Knight v. Margate*, 86 *N.J.* 374, 389-91 (1981) (legislation prohibiting conflicts of interest and its application to full-time municipal court judges does not encroach on constitutional

> judicial power of the courts).
> Despite the exiguity of the judicial article, an unbroken conceptual thread running throughout our decisions applying that article is that the judicial power imports the power to fashion needed and appropriate remedies. The judicial article reposes in our courts the power to create, mold and apply remedies once jurisdiction is invoked. *See generally Robinson v. Cahill*, 70 *N.J.* 155 (1976), injunction dissolved, 70 *N.J.* 464 (1976) (mem.).
> [State v. Abbati, 99 N.J. at 427-428]

A similar discussion is in Kearny Leasing Corp. v. Kearny, 6 N.J. Tax 363, 379-380 (1984) (owner of large complex of commercial retail buildings sought review of property tax assessments as discriminatory). See also Segal v. Lynch, 211 N.J. 230, 255 (2012) (citing Dziubek v. Schumann, 275 N.J. Super. 428. 439-40 (App. Div. 1994)). The court's inherent power may be exercised "to sanction a party for behavior that is vexatious, burdensome and harassing. See, e.g., Brundage v. Estate of Carambio, 195 N.J. 575, 610 (2008) (recognizing inherent power of courts to sanction parties as means of enforcing ordinary rules of practice)." Segal, 211 N.J. at 255.

Thus, this court has the inherent authority in this unprecedented case to mold the remedy most closely aligned with the creation of the problem. Peron created this unsustainable situation by substituting the Bob Smith firm, and the remedy is to disqualify that firm.

CONCLUSION

For the reasons set forth in our motion briefs, plaintiffs respectfully request that this court disqualify the law firm of Bob Smith & Associates LLC from any further participation in this case.

Respectfully submitted,
The Law Offices of Peter Dickson
/s/ Peter Dickson
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Attorney for the Plaintiffs