

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

JUDY M. GUICE

PLAINTIFF

VS.

CIVIL ACTION NO. 1:06cv1-LTS-RHW

STATE FARM FIRE AND CASUALTY  
COMPANY, ET AL.

DEFENDANTS

**DEFENDANTS' MOTION TO DISQUALIFY**  
**(EXPEDITED CONSIDERATION REQUESTED)**

State Farm Fire and Casualty Company and State Farm Mutual Automobile Insurance Company (collectively "State Farm") respectfully seek the disqualification of Senior Judge L. T. Senter, Jr., from further participation in this civil action. In support, State Farm shows the following:

1. 28 U.S.C. § 455 sets forth the general standards for the disqualification of a justice, judge or magistrate judge. Among other circumstances, disqualification is required "in any proceeding in which [the judge's] impartiality might reasonably be questioned." *Id.* § 455(a). The test for determining whether a judge should disqualify himself under § 455(a) is whether a reasonable and objective person knowing all the facts would conclude that the judge's impartiality might reasonably be questioned. *See United States v. Jordan*, 49 F.3d 152, 155 (5<sup>th</sup> Cir. 1995) ; *accord Hepperle v. Johnston*, 590 F.2d 609, 614 (5<sup>th</sup> Cir. 1979); *Hall v. Small Business Admin.*, 695 F.2d 175, 179 (5<sup>th</sup> Cir. 1983). In other words, "a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street." *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1111 (5<sup>th</sup> Cir. 1980).

2. In this case, the Plaintiff has moved the Court to certify a non-opt-out Rule 23(b)(2) class of State Farm homeowner policyholders whose homes were “totally destroyed” by Hurricane Katrina [200].

3. The putative class, as defined by the Plaintiff, includes U. S. Chief Magistrate Judge John M. Roper, who is represented in his individual Katrina-related case against State Farm by Clyde H. Gunn, III, and his partners. The Plaintiff in this case has asked the Court to appoint Mr. Gunn as co-class counsel [200]. Chief Magistrate Judge Roper also is represented by D. Neil Harris and Associates. Two attorneys from that firm have appeared and filed affidavits advocating Chief Magistrate Judge Roper’s support for the Plaintiff’s pending motion to certify, see Ex. “A” and “B”, and they have notified the Court of their intention to participate in a related hearing/conference scheduled for February 28, 2007 [226].

4. In Chief Magistrate Judge Roper’s individual suit against State Farm, Judge Senter *sua sponte* recused himself in accordance with 28 U.S.C. § 455(a). See Exhibit “C.”

5. The putative class, as defined by the Plaintiff, also includes Terri Brown, a law clerk for U. S. District Judge Louis Guirola, Jr. See *Brown, et al. v. State Farm Fire and Casualty Co., et al.*, No. 1:06cv199BAF. Ms. Brown also is represented by Mr. Gunn and his partners, as well as D. Neil Harris and Associates. Through her attorneys, Ms. Brown also has advocated certification of the class proposed by the Plaintiff. See Ex. “A” and “B.”

6. In Ms. Brown’s individual suit against State Farm, Judge Senter *sua sponte* recused himself in accordance with 28 U.S.C. § 455(a).<sup>1</sup> See Ex. “D.”

7. In its current posture, this case presents the identical circumstance that led Judge

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<sup>1</sup> Judge Senter also *sua sponte* recused himself in Judge Guirola’s Katrina-related suit against Nationwide Mutual Insurance Company. See Ex. “E.”

Senter to recuse himself in Chief Magistrate Judge Roper's and Ms. Brown's<sup>2</sup> individual suits, *i.e.* Judge Senter will be required, perhaps as early as February 28, 2007, to make rulings affecting and to adjudicate the rights and claims of a fellow federal judicial officer and a judicial employee.<sup>3</sup> Accordingly, Judge Senter should recuse himself pursuant to 28 U.S.C. § 455(a), as before, to avoid even an appearance of partiality towards Chief Magistrate Judge Roper and/or Ms. Brown.<sup>4</sup>

8. State Farm also has filed a Motion to Disqualify Law Clerk in this [287] and certain other Katrina-related cases pending in this Court. If the Court grants this Motion, the Motion to Disqualify Law Clerk in this case presumably will be moot. If the Court denies this Motion or if granting this Motion does not moot the Motion to Disqualify Law Clerk, the Court is respectfully requested, in the alternative, to grant State Farm's Motion to Disqualify Law Clerk for the reasons stated therein and in State Farm's Memorandum of Law in support thereof [288].

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<sup>2</sup> Chief Magistrate Judge Roper and Ms. Brown are officials in the same division of the same federal district court and work in the same building as Judge Senter.

<sup>3</sup> The fact that the putative class has not been certified is not relevant to the § 455(a) inquiry, since Judge Senter could "advance the interests" of Chief Magistrate Judge Roper and Ms. Brown during the pre-certification proceedings. *See Tramonte v. Chrysler Corp.*, 136 F.3d 1025, 1030-31 (5<sup>th</sup> Cir. 1998).

<sup>4</sup> State Farm does not contend that Judge Senter is actually partial toward Magistrate Judge Roper or Ms. Brown. However, actual partiality is not a prerequisite to disqualification. *United States v. Bremers*, 195 F.3d 221, 226 (5<sup>th</sup> Cir. 1999) (citing *Hall*, 695 F.2d at 178). Instead, the "goal of section 455(a) is to avoid even the appearance of partiality." *Jordan*, 49 F.3d at 155. Even in close cases, a judge should "err on the side of caution and disqualify himself." *Potashnick*, 609 F.2d at 1112.

This the 22nd day of February, 2007.

Respectfully submitted,

s/William N. Reed  
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### **CERTIFICATE OF SERVICE**

I, William N. Reed, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day filed the foregoing document via the Court's ECF System and that I have also served a copy upon the following counsel for the parties in the manner shown below and via the Court's ECF System:

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This the 22<sup>nd</sup> day of February, 2007.

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