

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**JIM SISNEY, an individual,** )  
 )  
**Plaintiff,** )  
 )  
**vs.** )  
 )  
**INDEPENDENT SCHOOL DISTRICT** )  
**NO. 3 OF TULSA COUNTY, a Political** )  
**Subdivision; and the BROKEN ARROW** )  
**SCHOOL BOARD,** )  
 )  
 )  
**Defendants.** )

**Case Number: 09-CV-253-TCK-PJC**

**PLAINTIFF’S MOTION FOR RECUSAL OF  
JUDGE TERRANCE C. KERN**

**COMES NOW** Plaintiff, Jim Sisney (“Plaintiff”), by and through his attorneys of record, Gary L. Richardson, Charles L. Richardson and David R. Keesling of Richardson Richardson Boudreaux, and submits a Motion for Recusal of Judge Terrence C. Kern, currently presiding over Case Number 09-CV-253-TCK-PJC, styled *Jim Sisney vs Independent School District No. 3 of Tulsa County, et.,al.* In support of this Motion, Plaintiff submits the following:

**PERTINENT FACTS**

1. Jim Sisney is the Plaintiff in the instant case.
2. Jim Sisney believes, based upon the advice of counsel, the rules delineate that Judge Terrence Kern has a conflict of interest in presiding over the instant case.
3. Jim Sisney states that this belief is founded upon the following:

**ARGUMENTS AND AUTHORITIES**

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. 28 U.S.C.A. §455(a).

He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it; (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy; (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his 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 substantially affected by the outcome of the proceeding; (5) He or his 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 a lawyer in the proceeding; (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; (iv) Is to the judge's knowledge likely to be a material witness in the proceeding (*Emphasis added*).

28 U.S.C.A. §455(b). A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household. 28 U.S.C.A. §455(c).

The Reporter for the American Bar Association Committee that drafted the Code of Judicial

Conduct explained:

“Any conduct that would lead a reasonable man knowing all the circumstances to the conclusion that the judge's “impartiality might reasonably be questioned” is a basis for the judge's disqualification. Thus, an impropriety or the appearance of impropriety in violation of Canon 2 that would reasonably lead one to question the judge's impartiality in a given proceeding clearly falls within the scope of the general standard, as does participation by the judge in the proceeding if he thereby creates the appearance of a lack of impartiality.”

*See id.* The courts have embraced this interpretation. In assessing recusal under § 455(a), then, the court asks whether a reasonable person, knowing all the circumstances, would believe that the judge's impartiality could be questioned. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 865, 108 S. Ct. 2194, 2205, 100 L. Ed. 2d 855 (1988).

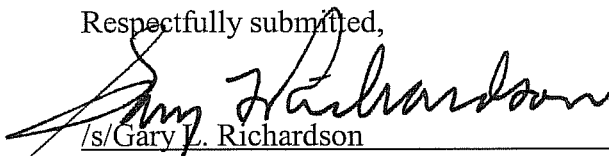
In the case at bar, any reasonable person, knowing all the circumstances, would believe that Judge Kern's impartiality could be questioned. *See id.* Judge Kern is first cousin to Shirleen Sisney, wife of Lee Sisney, Jim Sisney's brother. The fact that *any* relation exists between the Plaintiff and the presiding judge would cause a reasonable person to question the propriety of the judge's decisions and ability to remain impartial. Therefore, Judge Kern should recuse himself from presiding over the case. *See id.*

In addition, Judge Kern should disqualify himself because a person within the third degree of relation is known by Judge Kern to have an interest that could be substantially affected by the outcome of the proceeding. 28 U.S.C.A. §455(b).

### CONCLUSION

The Plaintiff truly believes that Judge Kern has a conflict of interest in presiding over this matter, due to familial relation, both under Oklahoma and Federal law. The Plaintiff, therefore requests that Judge Terrence Kern recuse himself as presiding judge in the instant case, and this case be assigned to a judge who does not have a conflict of interest, and any other relief this Court deems just and equitable.

Respectfully submitted,



/s/ Gary L. Richardson

Gary L. Richardson, OBA# 7547

Charles L. Richardson, OBA# 13388

David R. Keesling, OBA#17881

**RICHARDSON RICHARDSON BOUDREAU**

6450 S. Lewis, Suite 300

Tulsa, Oklahoma 74136

Tel: 918/492-7674

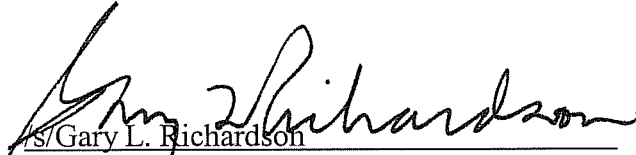
Fax: 918/493-1925

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 28<sup>th</sup> day of January, 2010, a true and correct copy of the foregoing instrument was properly transmitted to:

Kent B. Rainey  
**ROSENSTEIN, FIST & RINGOLD**  
525 South Main, Suite 700  
Tulsa, Oklahoma 74103  
*Attorneys for Defendants*

  
s/Gary L. Richardson  
**RICHARDSON RICHARDSON BOUDREAU**