

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

Holly Sheldon Lee,)
)
 Plaintiff,)
)
 v.)
)
 BIRCH HORTON BITTNER, INC., an Alaska)
 Professional Corporation, David Karl Gross,)
 and Mara E. Michaletz,)
)
 Defendants.) Case No. 3PA-20-01219 CI
_____)

MOTION & MEMORANDUM FOR RECUSAL OF JUDGE FOR CAUSE

(AS 22.20.020(a); Canon 3(E)(1))

MOTION

Plaintiff Holly Sheldon Lee, appearing pro se, respectfully moves for recusal of the assigned judicial officer for cause pursuant to AS 22.20.020(a) and Canon 3(E)(1) of the Alaska Code of Judicial Conduct.

This motion is not an expression of dissatisfaction with an adverse ruling. It is compelled by the Alaska Supreme Court’s March 21, 2025 Opinion reversing this case on grounds that go directly to the trial court’s handling of evidence, evaluation of disputed facts, and summary judgment procedure. Because those same factual disputes remain central on remand, a reasonable person would question whether continued assignment preserves the appearance of impartiality required by law.

Recusal in this posture serves not as a reflection on the court's intentions, but as a procedural safeguard that preserves institutional confidence while allowing this matter to proceed on remand before a fact-finder unburdened by prior appellate correction.

A proposed order is lodged herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION: THIS MOTION IS ABOUT INSTITUTIONAL INTEGRITY

Recusal doctrine exists to protect public confidence in the judiciary—not to impugn personal motives. The standard is objective. The question is not whether the assigned judge believes she can be impartial, but whether a reasonable observer, informed by the record and the Supreme Court's findings, would reasonably question impartiality.

Here, the Supreme Court has already determined that the trial court prematurely resolved factual disputes, relied on unsupported assertions, excluded or disregarded record evidence, misapplied Rule 56, and abused its discretion. Those findings go to the heart of neutral adjudication. On remand, the court is again asked to evaluate the same factual terrain. Under these circumstances, reassignment is the prudent and required course.

II. THE SUPREME COURT IDENTIFIED ERRORS THAT GO DIRECTLY TO FACT-FINDING

In its published opinion, the Alaska Supreme Court held that the trial court failed to take Plaintiff's factual allegations as true, improperly resolved disputed facts, credited

unsupported assertions over admissible evidence, failed to rule on a Rule 56(f) request, rejected proffered evidence on reconsideration, and denied leave to amend resulting in abuse of discretion.

These are not peripheral or technical missteps. They are errors in the core judicial function: evaluating evidence and determining whether factual disputes must proceed to trial. Because those same disputes now return on remand, a reasonable observer would question whether the court can reassess them with the appearance of fresh neutrality required by Canon 3(E)(1).

III. THE RECORD REFLECTS A PATTERN OF DISREGARD FOR PRO SE EVIDENCE

The record demonstrates that Plaintiff repeatedly attempted to place admissible evidence before the court. Those efforts were met with motions declared “moot,” evidentiary submissions excluded without analysis, and defense characterizations incorporated into the court’s order despite lack of evidentiary support.

Alaska law requires courts to assist pro se litigants with procedural fairness so their claims may be heard on the merits. Even assuming no subjective intent, the cumulative effect of disregarding a pro se litigant’s sworn statements and documentary evidence—while crediting attorney assertions—creates an appearance of partiality incompatible with Canon 3(E)(1).

IV. A JUDGE SHOULD NOT SIT IN JUDGMENT OF ERRORS THE SUPREME COURT HAS IDENTIFIED

Structural bias arises when a judge is asked to re-decide issues that an appellate court has already held were mishandled. Human nature and institutional reality matter. Once a judge has committed—consciously or not—to a factual narrative later rejected on appeal, continued assignment creates the appearance of pre-commitment.

Due process does not require proof of actual bias. It requires avoidance of circumstances that present a serious risk of perceived bias. That risk exists here.

V. FACT-FINDING REQUIRES EPISTEMIC RELIABILITY

A judge's legitimacy depends on epistemic reliability: careful evaluation of evidence, resistance to narrative shortcuts, and disciplined adherence to record proof. Where a reviewing court documents reliance on unsupported premises, exclusion of contrary evidence, and premature fact resolution, public confidence is shaken.

This motion does not allege misconduct. It acknowledges an institutional problem documented by the Supreme Court's opinion. The appearance of compromised neutrality—however unintentional—requires reassignment to protect the integrity of further proceedings.

VI. APPEARANCE OF PARTIALITY UNDER CANON 3(E)(1)

Canon 3(E)(1) mandates disqualification whenever impartiality might reasonably be questioned. The standard is appearance-based and objective.

Here, the appearance arises from: (1) documented appellate reversal for factual and evidentiary mishandling; (2) incorporation of unsupported attorney assertions into

dispositive orders; (3) disregard of a pro se litigant's sworn clarifications; and (4) the necessity of re-adjudicating the same disputed facts on remand.

A reasonable observer would question impartiality under these circumstances. That alone satisfies the statutory and ethical standard for recusal.

VII. CONTEXTUAL CONSIDERATIONS REINFORCE THE NEED FOR REASSIGNMENT

Recent high-profile matters in this same court have underscored public sensitivity to discretionary judgment, risk assessment, and institutional consistency. This motion does not challenge those decisions, speculate as to motive, or draw character conclusions. It notes only that public confidence in judicial neutrality is especially fragile where discretion and fact-sensitive judgment are at issue.

Against that backdrop, continued assignment in a case already reversed for factual mishandling magnifies the appearance problem. Reassignment would reassure the parties and the public that this matter will be decided on a clean slate.

VIII. JUDICIAL ECONOMY AND FAIRNESS SUPPORT REASSIGNMENT

Another legal malpractice trial involving the same defendants is scheduled immediately after the trial in this case, before a judge already familiar with overlapping issues. Reassignment would promote efficiency, consistency, and fairness without prejudice to any party.

IX. CONCLUSION

Plaintiff does not speculate as to the subjective reasons underlying the errors

identified by the Alaska Supreme Court. Motive is irrelevant. What matters is the record, the reversal, and the perception of fairness.

Because the appearance of partiality has been established under AS 22.20.020(a) and Canon 3(E)(1), Plaintiff respectfully requests that this assigned judge recuse herself. If recusal is declined, Plaintiff requests referral to the Presiding Judge of the Third Judicial District and a stay of proceedings pending resolution of this motion.

Dated at Pahoia, HI this 18th day of December, 2025.

/S/ Holly Sheldon Lee
Holly Sheldon Lee, Pro Se
P.O. Box 1105
Pahoia, HI 96778

CERTIFICATE OF SERVICE

I certify that on December 18, 2025, a true and correct copy of the foregoing document was served via email on Chester D. Gilmore, attorney of record for the defendants.

/S/ Holly Sheldon Lee
Holly Sheldon Lee

VERIFICATION

*I, Holly Sheldon Lee, Plaintiff in the above action, hereby declare, certify, and verify under penalty of perjury, pursuant to 28 U.S.C. § 1746,1 that the facts set forth in the foregoing motion are true and correct to the best of my knowledge, information, and belief.
Executed on this 18th day of December, 2025.*

/S/ Holly Sheldon Lee
Holly Sheldon Lee

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