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1998 Survey of Rhode Island Law: Cases: Administrative Law

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Administrative Law. *In re Marjorie R. Yashar*, 713 A.2d 787 (R.I. 1998). All requests by an attorney asking that he and the members of his firm be excused from ever appearing before a certain Administrative Adjudication Court judge due to an alleged bias, must first be made to the judge in question before or at trial. Additionally, requests to be excused from appearing before a judge may only be made with respect to a pending action since no "party to the cause" against whom any personal prejudice could be alleged exists if specific cases are not pending.

In *In re Marjorie R. Yashar*,¹ the Rhode Island Supreme Court quashed an order by the Administrative Adjudication Court's Chief Judge excusing Attorney Richard S. Humphrey "and members and associates of his law firm from appearing before [Judge Marjorie Yashar] at any hearings, trials and other matters' at the AAC"² and remanded the case back to the Administrative Adjudication Court.³ The court held that the order was inappropriate since it was not a mere scheduling or administrative directive⁴ but rather a disputed judicial question which should have been addressed by Judge Yashar.⁵

FACTS AND TRAVEL

On October 6, 1997, Attorney Richard Humphrey wrote to Chief Judge Pallozzi requesting that he issue an order excusing both Humphrey and members of his firm from ever appearing before Judge Yashar.⁶ Humphrey initiated this request in response to "the unsettling rulings issued during trial by Judge Yashar in the case styled *State of Rhode Island ex rel. Town of Scituate v. Frank Finn . . .*"⁷ In *Finn*, Mr. Humphrey represented the defendant who was charged with illegally refusing to submit to a breathalyzer test in violation of Rhode Island General Laws sec-

1. 713 A.2d 787 (R.I. 1998).

2. *Id.* at 789 (quoting the order signed by Chief Judge Pallozzi of the Administrative Adjudication Court on December 29, 1997).

3. *See id.* at 791.

4. *See id.*

5. *See id.* at 791.

6. *See id.* at 788.

7. *Id.* (quoting to the text of the letter written by Attorney Richard Humphrey to Chief Judge Pallozzi on October 6, 1997).

tion 31-27-2.1.⁸ At the trial there was an evidentiary inconsistency as to when the alleged violation occurred.⁹ Despite the inconsistency, the judge found the defendant in violation of the statute.¹⁰ On appeal, a panel of three Administrative Adjudication Court judges reversed the lower court's decision holding that "Judge Yashar had acted arbitrarily in rejecting a police officer's testimony concerning the date of the incident . . . 'without offering reasons for rejecting the testimony.'"¹¹ Based on this prior ruling, Mr. Humphrey indicated that he thought it would be best if he did not have to represent any more clients in front of Judge Yashar.¹² In response to this letter, Chief Judge Pallozzi conferred with Judge Yashar.¹³

On December 19, 1997, Judge Yashar responded to the request in writing by asserting her position that Chief Judge Pallozzi should not grant a blanket recusal.¹⁴ Rather, any assertions of bias can and should be raised on a case-by-case basis in the form of a recusal motion before or during trial.¹⁵

On December 29, 1997, Chief Judge Pallozzi informed Judge Yashar that effective immediately he was issuing an order excusing Mr. Humphrey and members of his firm from appearing before her in the Administrative Adjudication Court.¹⁶ In response to this order, Judge Yashar petitioned the Rhode Island Supreme Court for certiorari.¹⁷

BACKGROUND

All requests to recuse a judge because of his/her alleged bias towards an attorney ought to be brought to the attention of the judge in question either before or at trial.¹⁸ Additionally, such re-

8. *See id.* at 789.

9. *See id.* (noting that the arresting officer testified that the violation occurred on May 6, 1997 and the Law Enforcement Report and the Rights for Use at the Station form contrarily stated that the violation occurred on May 5, 1997).

10. *See id.*

11. *Id.* (quoting appeals panel statement).

12. *See id.*

13. *See id.*

14. *See id.*

15. *See id.*

16. *See id.*

17. *See id.*

18. *See id.* at 790 (citing *State v. Nidever*, 390 A.2d 368, 369-70 (R.I. 1978) (holding that "[t]he customary manner in which one raises the issue of prejudice is

quests need to be in relation to a specific case and they cannot be phrased as a blanket motion requesting that a judge be prohibited from presiding over all cases involving a particular attorney or his associates.¹⁹

Motions to disqualify a judge will be granted if (1) a judge harps extraordinary bias against an attorney or (2) a judge is biased "for or against a party to the cause."²⁰ The burden rests on the moving party to prove "the actions of the trial justice were affected by facts and events which were not pertinent nor before the court."²¹ A moving party cannot satisfy this burden of proof merely by establishing that a judge had previously "ruled adversely against a litigant"²² or that a judge harbors animosity towards an attorney.²³

ANALYSIS AND HOLDING

The *Yashar* court addressed the issue of whether Chief Judge Pallozzi erred by issuing a blanket order which prohibited Judge Yashar from presiding over any litigation involving Attorney Humphrey and his associates.²⁴ The court held that the order was improper for two reasons. First, the court held the order invalid since Humphrey was unable to prove either that (1) Judge Yashar held an "extraordinary bias" against him or that (2) Judge Yashar harbored a personal bias "for or against a party to the cause."²⁵ Specifically, the court held that Humphrey could not prove that the judge was biased against him solely on the fact that she had previously decided a case against one of his clients.²⁶ Additionally, the order was quashed since Humphrey was unable to prove that the judge harbored a personal bias against a party to the cause.²⁷ The

by appropriate motion at trial, a motion for mistrial or for disqualification of the justice presiding").

19. *See id.*

20. *Id.* (quoting *State v. Storms*, 311 A.2d 567, 569 (R.I. 1973)).

21. *Id.* (quoting *Nidever*, 390 A.2d at 370).

22. *Id.* (citing *In re Antonio*, 612 A.2d 650, 654 (R.I. 1992) (stating that adverse rulings by a judge are not sufficient grounds for recusal)).

23. *See id.* (citing *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1314 (2d Cir. 1988) (holding that "bias against a lawyer, even if found to exist, without more is not bias against his client")).

24. *Id.* at 789-91.

25. *Id.* at 790.

26. *See id.*

27. *See id.*

court held that since Humphrey's request to be excused from appearing before Judge Yashar was not related to any pending litigation, "no 'party to the cause' against whom any personal prejudice could be alleged, much less proven" existed.²⁸

Second, the court held that even if Humphrey could have established bias, the order was still invalid since it was inappropriate for Chief Judge Palozzi to issue the order without first referring the request to Judge Yashar.²⁹ Specifically, since the request was essentially a petition to disqualify Judge Yashar because of her alleged bias, the request should have been posed to her as a judicial question.³⁰ For these reasons, the court quashed the order and remanded the case back to the Administrative Adjudication Court.³¹

CONCLUSION

In *In re Yashar*, the Rhode Island Supreme Court held that it was impermissible for the Chief Judge of the Administrative Adjudication Court to excuse Attorney Humphrey from appearing before Judge Yashar in all future litigation.³² Rather, such petitions to disqualify a judge ought to be addressed on a case-by-case basis so that one can fully assess the alleged bias on the "party to the cause."³³ Additionally, such recusal requests must first be addressed by the judge in question.³⁴

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28. *Id.*

29. *See id.* at 790-91.

30. *See id.* at 791.

31. *See id.*

32. *See id.*

33. *Id.* at 790.

34. *See id.* at 790-91.