

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Jaime Hernandez,

Plaintiff

v.

Cook County Sheriff's Department, et al

Defendant

Case Number: 09 C 661

Judge: Aspen

RECEIVED
JUL - 9 2009
MICHAEL W. DOBBINS
CLERK OF COURT

NOTICE OF MOTION

TO: Clerk of the Court / US District Court
219 S. Dearborn St.
Chicago, IL 60604

PLEASE TAKE NOTICE that on July 16 2009 at 1030, or as soon thereafter as I may be heard, I shall appear before the Honorable Judge Aspen or any judge sitting in his or her stead in Courtroom 2568 of the U.S. District Court of the Northern District of Illinois, Eastern Division, 219 South Dearborn St., Chicago, Illinois and shall present the following motion attached hereto:

Motion for Substitution of Judge of course of supporting Affidavit
Inexpensive

CERTIFICATE OF SERVICE

I hereby certify that on _____, I provided service to the person or persons listed above by the following means: _____

Signature: _____ Date: _____

Name (Print): _____

Address: _____ Phone: _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

JAIME HERNANDEZ)	Case No. 09 C 661
Plaintiff,)	
)	The Honorable <u>Aspen</u>
v.)	Judge Presiding
)	
Cook County Sheriff Tom Dart, et al.)	
Defendants)	

**MOTION FOR SUBSTITUTION OF JUDGE OF CAUSE W/ SUPPORTING
AFFIDAVIT INCORPORATED**

COMES NOW, Plaintiff, Jaime Hernandez (hereinafter "Hernandez"), unrepresented and indigent, to move the court to grant his Motion for Substitution of Judge of Cause. Hernandez is respectfully requesting a substitution of judge of cause for Honorable Judge Marvin Aspen. See People v. Aldridge, 101 Ill. App. 3d 181, 56 Ill. Dec. 596, 427 N.E.2d 1001 (1 Dist. 1981) Hernandez believes that he will not receive a fair and impartial hearing or trial from Judge Aspen, reasons are set forth in his Supporting Affidavit which is incorporated into this motion. See 28 U.S.C. §§ 455(a) and 455(b) (1) (attached Attachment A).

Hernandez has incorporated a supporting affidavit stating why he is requesting a substitution of judge.

WHEREFORE, JAIME HERNANDEZ, for reasons clearly set forth herein, in good faith and for just cause, and warranted in law and fact, respectfully prays that an order will be granted for a substitution of judge and for any other relief that justice dictates would be just and proper.

AFFIDAVIT SUPPORTING MOTION FOR SUBSTITUTION OF JUDGE

I, Jaime Hernandez, first being duly sworn, on oath, states as follows:

1. That I am of legal age and competent. This affidavit is made on my personal knowledge of all matters set forth herein. If sworn and called as a witness in this case, I can and would testify competently as to each fact set forth herein.
2. That this motion and supporting affidavit is warranted in fact and law.
3. That my website, www.injusticeexposed.org contains information pertaining to the Shakman Decree, Eugene Wzorek, a man who was fired by the City of Chicago, sued and who won his Shakman Decree case but was cheated out of his award; my own fight and lawsuit against the City of Chicago which included a meeting with Noelle Brennan- the federal Shakman monitor for the City of Chicago, appointed by U.S Federal Judge Wayne Andersen as well as other information pertaining to injustices, fraud and corruption. My website is named in the complaint in the above named case under Part IIIA: Introduction, paragraph 4, page 3.
4. That I am an advocate against fraud and corruption.
5. That Judge Marvin Aspen in 1968 was the Head of Appeals and Review Division of the City of Chicago Corporation Counsel, when Michael Shakman's case was being argued in Illinois Appellate Court.
6. That Aspen left his position in Corporation Counsel in 1971, engaged in private practice briefly, then becoming a Cook County Circuit Court Judge (1971) and

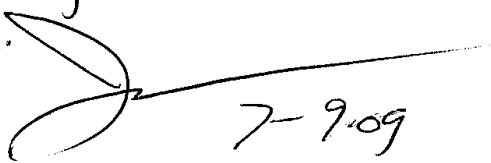
according to a credible and reliable source, and “assisted” Michael Shakman in settling his case in 1972, now known as “the Shakman Decree.”

7. That when I first filed the above captioned case on February 2, 2009 at the Dirksen Federal, along with my application to proceed Informa Pauperis, my case was assigned to Magistrate Judge Maria Valdez and Judge Blanche M. Manning.
8. That on or around 3/26/09, I received a response on my application from Judge Marvin Aspen, which he denied.
9. That on 4/23/09 after viewing the docket in my case, I discovered that Judge Blanche M. Manning had recused herself.
10. That there was nothing listed as to why Magistrate Judge Maria Valdez was not still assigned to my case.
11. That after my application to proceed Informa Pauperis was denied, I completed second application and filed a combined motion for extension of time and clarification of order of the 3/23/09. I filed this on 4/6/09 and received a return date of 4/23/09 at 10:30 am (Courtroom 2568).
12. That on 4/23/09, I and others arrived on time, the courtroom was locked and there was no one in the courtroom. I went to the room near the courtroom and inquired to the lady there that I had a motion up before Judge Aspen. She informed me that Aspen was out of town, and that “they should have not given you that date, they knew that he was not going to be in town.” She went on to say that, “It was posted on the website that Judge Aspen was not going to be in town.” It was not. She then told me that I would have to re-motion my motion for the 28th (4/28/09).
13. That I went to the clerk’s office and had my motion re-motined for the 28th (4/28/09).

14. That on 4/27/09 at 1:44 pm, a lady by the name of Gladys Lugo (Courtroom Deputy) called me and told me that Judge Aspen had to review my motion and for me to check the minute entry and that I did not have to appear the next day.
15. That sometime after that I learned that Judge Aspen had ruled on my motion: that it was "moot." And that my second application to proceed Informa Pauperis was taken under "advisement" and that the Court would rule by mail.
16. That on approximately 6/19/09, I received a memorandum opinion and order from Judge Aspen, stating that four of the counts listed in my case (09C661) were dismissed. I had no idea that my complaint was decided before ever going in front of the judge. My application to proceed Informa Pauperis had been granted.
17. That a status hearing is set for 7/16/09 at 10:30 am before Judge Aspen.
18. That it has also come to my attention that according to the Illinois Attorney Disciplinary and Registration that Judge Marvin E. Aspen is voluntarily inactive and not authorized to practice law and is on court ordered inactive status. (*See Attachments B, C and D [Attachments C and D are for example to show that judges are registered and listed with the Illinois ARDC]).*
19. That I strongly believe that I will not receive a fair and impartial hearing and trial if Judge Marvin E. Aspen remains on my case.

20. Further affiant sayeth naught.

Pursuant to the provisions of 28 USC 1746, I aver to the veracity of all factual averments contained herein in regard to which I possess percipient knowledge.


7-9-09

§ 455. Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) 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.

(c) 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.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

Attachment B

ARDC ATTORNEY REGISTRATION AND PUBLIC DISCIPLINARY RECORD															
WEBSITE INFORMATION SEARCH SITE HOME															
Lawyer Search	<p>LAWYER SEARCH: ATTORNEY'S REGISTRATION AND PUBLIC DISCIPLINARY RECORD</p> <hr/> <p>ARDC Individual Attorney Record of Public Registration and Public Disciplinary and Disability Information as of June 30, 2009 at 10:35:57 AM:</p> <table border="1"> <tr> <td>Full Licensed Name:</td> <td>Marvin Edward Aspen</td> </tr> <tr> <td>Full Former name(s):</td> <td>None</td> </tr> <tr> <td>Date of Admission as Lawyer by Illinois Supreme Court:</td> <td>November 20, 1958</td> </tr> <tr> <td>Registered Business Address:</td> <td>Not available online</td> </tr> <tr> <td>Registered Business Phone:</td> <td>Not available online</td> </tr> <tr> <td>Illinois Registration Status:</td> <td>Voluntarily inactive and not authorized to practice law</td> </tr> <tr> <td>Malpractice Insurance: (Current as of date of registration; consult attorney for further information)</td> <td>No malpractice report required as attorney is on court ordered inactive status.</td> </tr> </table> <p>Public Record of Discipline and Pending Proceedings: None</p> <p>Check carefully to be sure that you have selected the correct lawyer. At times, lawyers have similar names. The disciplinary results displayed above include information related to any and all public discipline, court-ordered disability inactive status, reinstatement and restoration dispositions, and pending public proceedings. Investigations are confidential and information related to the existence or status of any investigation is not available. For additional information regarding data on this website, contact ARDC at (312) 565-2600 or, within Illinois, at (800) 826-8625.</p> <p>ARDC makes every effort to maintain the currency and accuracy of Lawyer Search. If you find any typographical errors in the Lawyer Search information, please email lawyersearch@iardc.org. For substantive changes to registration information, including status, address, telephone or employer information, we require that the attorney submit a Change of Registration to insure the validity of the registration process. Consult our Change of Attorney's Registration page for details. Name changes require the filing of a</p>	Full Licensed Name:	Marvin Edward Aspen	Full Former name(s):	None	Date of Admission as Lawyer by Illinois Supreme Court:	November 20, 1958	Registered Business Address:	Not available online	Registered Business Phone:	Not available online	Illinois Registration Status:	Voluntarily inactive and not authorized to practice law	Malpractice Insurance: (Current as of date of registration; consult attorney for further information)	No malpractice report required as attorney is on court ordered inactive status.
Full Licensed Name:		Marvin Edward Aspen													
Full Former name(s):		None													
Date of Admission as Lawyer by Illinois Supreme Court:		November 20, 1958													
Registered Business Address:		Not available online													
Registered Business Phone:		Not available online													
Illinois Registration Status:		Voluntarily inactive and not authorized to practice law													
Malpractice Insurance: (Current as of date of registration; consult attorney for further information)		No malpractice report required as attorney is on court ordered inactive status.													
Lawyer Registration															
How to Submit a Request For Investigation															
Rules and Decisions															
Ethics Inquiry Program															
Publications															
New Filings, Hearing Schedules and Clerk's Office															
Client Protection Program															
Resources & Links															
ARDC Organizational Information															

LAWYER SEARCH: ATTORNEY'S REGISTRATION AND PUBLIC DISCIPLINARY RECORD

ARDC Individual Attorney Record of Public Registration and Public Disciplinary and Disability Information as of June 30, 2009 at 10:35:57 AM:

Full Licensed Name:	Marvin Edward Aspen
Full Former name(s):	None
Date of Admission as Lawyer by Illinois Supreme Court:	November 20, 1958
Registered Business Address:	Not available online
Registered Business Phone:	Not available online
Illinois Registration Status:	Voluntarily inactive and not authorized to practice law
Malpractice Insurance: (Current as of date of registration; consult attorney for further information)	No malpractice report required as attorney is on court ordered inactive status.

Public Record of Discipline and Pending Proceedings: None

Check carefully to be sure that you have selected the correct lawyer. At times, lawyers have similar names. The disciplinary results displayed above include information related to any and all public discipline, court-ordered disability inactive status, reinstatement and restoration dispositions, and pending public proceedings. Investigations are confidential and information related to the existence or status of any investigation is not available. For additional information regarding data on this website, contact ARDC at (312) 565-2600 or, within Illinois, at (800) 826-8625.

ARDC makes every effort to maintain the currency and accuracy of Lawyer Search. If you find any typographical errors in the Lawyer Search information, please email lawyersearch@iardc.org. For substantive changes to registration information, including status, address, telephone or employer information, we require that the attorney submit a Change of Registration to insure the validity of the registration process. Consult our Change of Attorney's Registration page for details. Name changes require the filing of a

Attachment C



Lawyer Search

Lawyer Registration

How to Submit a Request
For Investigation

Rules and Decisions

Ethics Inquiry Program

Publications

New Filings, Hearing
Schedules and Clerk's Office

Client Protection Program

Resources & Links

ARDC Organizational
Information

LAWYER SEARCH: ATTORNEY'S REGISTRATION AND PUBLIC DISCIPLINARY RECORD

ARDC Individual Attorney Record of Public Registration and Public
Disciplinary and Disability Information as of June 30, 2009 at 10:35:57 AM:

Full Licensed Name:	Maria G. Valdez
Full Former name (s):	None
Date of Admission as Lawyer by Illinois Supreme Court:	November 5, 1992
Registered Business Address:	(312) 435-5690
Registered Business Phone:	(312) 435-5690
Illinois Registration Status:	Active and on Judicial Status - Last Registered Year: 2009
Malpractice Insurance: (Current as of date of registration; consult attorney for further information)	As the attorney serves in the office of justice, judge, associate judge or magistrate, the attorney is not required to report whether he/she carries malpractice insurance.

**Public Record of Discipline
and Pending Proceedings:** None

Check carefully to be sure that you have selected the correct lawyer. At times, lawyers have similar names. The disciplinary results displayed above include information related to any and all public discipline, court-ordered disability inactive status, reinstatement and restoration dispositions, and pending public proceedings. Investigations are confidential and information related to the existence or status of any investigation is not available. For additional information regarding data on this website, contact ARDC at (312) 565-2600 or, within Illinois, at (800) 826-8625.

ARDC makes every effort to maintain the currency and accuracy of Lawyer

Attachment D

ARDC ATTORNEY REGISTRATION AND DISCIPLINARY INFORMATION															
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Lawyer Search	<p>LAWYER SEARCH: ATTORNEY'S REGISTRATION AND PUBLIC DISCIPLINARY RECORD</p> <hr/> <p>ARDC Individual Attorney Record of Public Registration and Public Disciplinary and Disability Information as of June 30, 2009 at 10:35:57 AM:</p> <table border="1"> <tr> <td>Full Licensed Name:</td> <td>Blanche Marie Manning</td> </tr> <tr> <td>Full Former name (s):</td> <td>None</td> </tr> <tr> <td>Date of Admission as Lawyer by Illinois Supreme Court:</td> <td>November 29, 1967</td> </tr> <tr> <td>Registered Business Address:</td> <td>District Judge 2156 United States Courthouse 219 South Dearborn Street Chicago, IL 60604</td> </tr> <tr> <td>Registered Business Phone:</td> <td>(312) 435-7608</td> </tr> <tr> <td>Illinois Registration Status:</td> <td>Active and on Judicial Status - Last Registered Year: 2009</td> </tr> <tr> <td>Malpractice Insurance: (Current as of date of registration; consult attorney for further information)</td> <td>As the attorney serves in the office of justice, judge, associate judge or magistrate, the attorney is not required to report whether he/she carries malpractice insurance.</td> </tr> </table> <p>Public Record of Discipline and Pending Proceedings: None</p> <p>Check carefully to be sure that you have selected the correct lawyer. At times, lawyers have similar names. The disciplinary results displayed above include information related to any and all public discipline, court-ordered disability inactive status, reinstatement and restoration dispositions, and pending public proceedings. Investigations are confidential and information related to the existence or status of any investigation is not available. For additional information regarding data on this website, contact ARDC at (312) 565-2600 or, within Illinois, at (800) 826-8625.</p>	Full Licensed Name:	Blanche Marie Manning	Full Former name (s):	None	Date of Admission as Lawyer by Illinois Supreme Court:	November 29, 1967	Registered Business Address:	District Judge 2156 United States Courthouse 219 South Dearborn Street Chicago, IL 60604	Registered Business Phone:	(312) 435-7608	Illinois Registration Status:	Active and on Judicial Status - Last Registered Year: 2009	Malpractice Insurance: (Current as of date of registration; consult attorney for further information)	As the attorney serves in the office of justice, judge, associate judge or magistrate, the attorney is not required to report whether he/she carries malpractice insurance.
Full Licensed Name:		Blanche Marie Manning													
Full Former name (s):		None													
Date of Admission as Lawyer by Illinois Supreme Court:		November 29, 1967													
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