



The Municipal Court is created by the Athens-Clarke County government, and the Judge thereof is nominated by the Mayor and confirmed by the Commission, for a two year term.<sup>1</sup> The Judge's salary is fixed by the Mayor and Commission.<sup>2</sup> The same applies for the position of Administrative Hearing Officer, except that the salary for that position is fixed by the Mayor.<sup>3</sup>

As Judge of the Municipal Court, Judge Giese has jurisdiction over all cases involving alleged violations of Athens-Clarke County ordinances, including the Noise Ordinance under challenge here.<sup>4</sup> Judge Giese is a senior officer of the Unified Government of Athens-Clarke County, Georgia, serving at a level directly below the Mayor and Commission, on the same level as the Manager, Attorney, and Auditor.<sup>5</sup> Judge Giese "serves as department director and is responsible for all aspects of the Court,"<sup>6</sup> and also holds supervisory authority over Court staff.<sup>7</sup>

### Points and Authorities

Georgia law enumerates grounds for judicial recusal both by statute and by Canon 3E of the Code of Judicial Conduct.<sup>8</sup> Section 1 of the Canon requires a Judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned, including where:

"the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person or any other member of the judge's family residing in the judge's household:

(i) is a party to the proceeding, or an officer, director, or trustee of a party ..."<sup>9</sup>

---

<sup>1</sup> Code of Athens-Clarke County, Georgia, § 1-4-17(a), (c)

<sup>2</sup> Id.

<sup>3</sup> Code of Athens-Clarke County, Georgia, § 1-5-1(1)

<sup>4</sup> Code of Athens-Clarke County, Georgia, § 1-4-16(d); Exhibit A: Affidavit, ¶ 8

<sup>5</sup> Exhibit B: Organization Chart of the Unified Government of Athens-Clarke County; Exhibit A, ¶ 11

<sup>6</sup> Exhibit C: Review of Athens-Clarke County Municipal Court Operations, page 5

<sup>7</sup> See Id. ("Administrative Assistant – Reports to the Municipal Court Judge"); see also Exhibit C at page 4, Figure 1 (organization chart showing Municipal Court Judge as head above all Municipal Court staff)

<sup>8</sup> See Gillis v. City of Waycross, 247 Ga. App. 119 (2000)

<sup>9</sup> Code of Judicial Conduct, canon 3E(1)(c)

It is sufficient, for recusal purposes, that a judge's impartiality might reasonably be questioned – no actual impropriety need be shown.<sup>10</sup>

Here, the facts yield to no other conclusion but that Judge Giese is an officer of the Defendant, the Unified Government of Athens-Clarke County, Georgia. The Municipal Court over which Judge Giese presides is established and maintained by the Defendant.<sup>11</sup> Judge Giese is appointed by the Defendant's governing authority<sup>12</sup> and serves at the pleasure of the Defendant's governing authority, which fixes her compensation.<sup>13</sup>

Though her judgments may not be directly subject to reversal through this proceeding, the Plaintiffs here are asking this Court to declare the ordinance under which Judge Giese has rendered convictions and sentences to be unconstitutional. Further, Plaintiffs are requesting injunctive relief – both interlocutory<sup>14</sup> and final – against enforcement of the ordinance. An injunction is binding not only upon the Defendant, but also upon its “officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice of the order by personal service or otherwise.”<sup>15</sup>

Plaintiffs are asking the Court to order Judge Giese, among other officials, to cease enforcing the Noise Ordinance, which would presumably include ceasing to render convictions for Noise Ordinance violations. Being asked to judicially forbid his wife – under threat of contempt – must be an extremely uncomfortable position for Judge Sweat. It is certainly a position that would cause a reasonable person to question judicial integrity. As one Court

---

<sup>10</sup> See King v. State, 246 Ga. 386, 390 (1980)

<sup>11</sup> O.C.G.A. § 36-32-1(a); Code of Athens-Clarke County, Georgia, § 1-4-16(a)

<sup>12</sup> Code of Athens-Clarke County, Georgia, § 1-4-17(c)

<sup>13</sup> O.C.G.A. § 36-32-2(a)

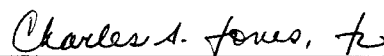
<sup>14</sup> A Motion for Interlocutory Injunction will be filed with this Court in short order.

<sup>15</sup> O.C.G.A. § 9-11-65(d)

artfully observed, “[t]he judicial system must be kept, like Caesar’s wife, above reproach.”<sup>16</sup>

Judge Sweat would surely use painstaking care to ensure that his conduct of this case be immaculate from any *actual* impropriety, but the *appearance* of impropriety – the reasonable person’s question of his impartiality where his wife is an officer of the Defendant – cannot be avoided. To avoid this reasonable question, and to avoid being in the uncomfortable position of commanding his wife, Judge Sweat should voluntarily recuse himself from this case, or, in the alternative, should be respectfully disqualified.

It is respectfully submitted on the Eighteenth day of February, 2008, by:



---

Charles A. Jones, Jr.  
State Bar of Georgia No. 280102  
Attorney for Plaintiffs Manlove and Hoffman

The Law Offices of Charles A. Jones, Jr.  
1720 Epps Bridge Parkway, Suite 108-319  
Athens, GA 30606  
Telephone: (706) 202-5548  
E-mail: [charles@attorneycjones.com](mailto:charles@attorneycjones.com)

---

<sup>16</sup> Pennsylvania ex rel. Armor v. Armor, 398 A.2d 173, 174 (Pa. Super. Ct. 1978)