

2014 SEP -9 PM 4:24

Of Counsel:  
 Law Offices of Richard E. Wilson, LLC

RICHARD E. WILSON 5614  
 850 Richards Street, Suite 600  
 Honolulu, Hawaii 96813  
 Telephone (808) 545-1311  
 Facsimile (808) 545-1388

DANETTE FUJII  
 CLERK

Attorney for Plaintiff Michael G. Sheehan

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT  
 STATE OF HAWAII

MICHAEL G. SHEEHAN,  
  
 Plaintiffs,

vs.

MINA MORITA; LANCE LANEY;  
 COUNTY OF KAUAI; JOHN DOES 1-10;  
 JANE DOES 1-10; DOE GOVERNMENT  
 AGENCIES 1-10,  
  
 Defendants.


) Civil No: 14-1-0145 (KNAW)  
 ) (Other Civil Action)  
 )  
 ) PLAINTIFF'S MOTION TO RECUSE THE  
 ) HONORABLE KATHLEEN N.A.  
 ) WATANABE; MEMORANDUM IN SUPPORT  
 ) OF MOTION; DECLARATION OF RICHARD  
 ) E. WILSON and EXHIBITS "1"- "3";  
 ) DECLARATION OF MICHAEL G.  
 ) SHEEHAN; NOTICE OF HEARING and  
 ) CERTIFICATE OF SERVICE  
 )  
 ) **HEARING MOTION:**  
 ) HEARING DATE: Sept. 24, 2014  
 ) HEARING TIME: 1:00 PM  
 ) JUDGE: Honorable Kathleen N.A. Watanabe  
 )  
 )  
 )  
 )  
 )  
 )  
 )

PLAINTIFF'S MOTION TO RECUSE THE  
HONORABLE JUDGE KATHLEEN N.A. WATANABE

Plaintiff Michael G. Sheehan, by and through his attorney, Law Offices of Richard E. Wilson, LLC, hereby move this Honorable Court to recuse itself from sitting on the instant lawsuit.

The instant motion is brought pursuant to Haw.R.Civ.P. 7, and Rule 2.11 of the Hawaii Code of Judicial Conduct, and is further supported by the declaration of counsel and exhibits attached thereto, and the records and filed herein.

DATED: Honolulu, Hawaii September 4, 2014.

  
\_\_\_\_\_  
RICHARD E. WILSON  
Attorney for Plaintiff Michael G. Sheehan



It is with the utmost respect for the Court that Sheehan requests Your Honor to recuse yourself from sitting on this case.

## II. STANDARD FOR RECUSAL

Rule 2.11 of the Rules of Judicial Conduct articulated the appropriate standard against which a judge shall consider whether he or she **shall** disqualify himself or herself from sitting on a case. It states in pertinent part:

Subject to the rule of necessity, a judge **shall disqualify or recuse himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned,**<sup>2</sup> including but not limited to the following circumstances

(Emphasis added) The rule then lists several specific examples where recusal is warranted. Recusal is mandatory is where “[t]he judge:

served as a lawyer in the matter in controversy, or **was associated with a lawyer who participated substantially as a lawyer in the matter during such association[.]**”

Rule 2.11(6)(A). Indeed, “[u]nder th[e] Rule, a judge is disqualified or recused whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific provisions of Rule 2.11(a)(1) through (6) apply.”<sup>3</sup>

Therefore, if a judge’s impartiality “might be reasonably questioned,” the judge **shall** recuse himself or herself in the proceeding at hand. The decision is not discretionary, rather, recusal is mandatory and the standard for assessing a judge’s impartiality is an objective one based upon all of the facts.<sup>4</sup> The *Ross* Court favorably cited the approach adopted by the Second Circuit, to wit:

In deciding whether or not to affirm a judge’s denial of a recusal motion, a court of appeals must ask the following question: Would a reasonable person, knowing all the facts, conclude that the trial judge’s impartiality could reasonably be questioned? Or phrased differently, would an objective, disinterested observer fully informed of the underlying facts, entertain significant doubt that

---

<sup>2</sup> Or, as has been characterized by the Supreme Court in *State v. Brown*, 70 Hawaii 459 (1989), recusal is warranted where the circumstance may “reasonably cast suspicion on his impartiality[.]”

<sup>3</sup> Comment 1 to Rule 2.11.

<sup>4</sup> [T]he test for disqualification due to the “appearance of impropriety” is an objective one, based not on the beliefs of the petitioner or the judge, but on the assessment of a reasonable impartial onlooker apprised of all the facts.” *State v. Ross*, 89 Hawaii 371, 380 (1998).

justice would be done absent recusal?

Ross, 89 Hawaii at 380, citing *U.S. v. Lovaglia*, 954 F.2d 811, 815 (2<sup>nd</sup> Cir. 1992).

### III. THE COURT SHOULD RECUSE ITSELF

Under the circumstances, the Court should voluntarily recuse itself. The objective facts are as follows:

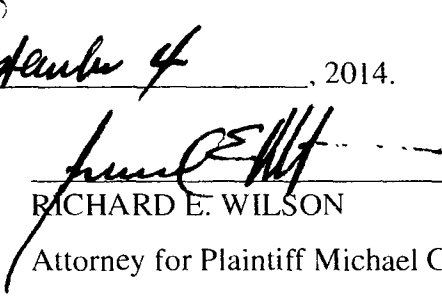
- Your Honor was the former County Attorney;
- While County Attorney, you prosecuted a highly contentious lawsuit against Sheehan;
- Sheehan accused Your Honor of ethical violations, including but not limited to violating his Constitutional rights, defaming him, interfering with his business operations, while you were County Attorney in connection with your prosecution of the case against him;
- The accusations were severe enough requiring your response in an affidavit (attached to the Wilson Declaration as Exhibit “1”);
- On November 13, 2012, Sheehan wrote to the Office of Disciplinary Counsel complaining that Your Honor had a conflict of interest and should not sit on his cases (Exhibit “2”); and
- Your former client, the County, is a defendant in this case.

In light of those facts spanning the last twenty years, a reasonably objective person could “conclude that [Your Honor’s] impartiality could reasonably be questioned. Indeed, said reasonable person would, under the circumstances (*e.g.*, being personally accused of unethical behavior and being sued), entertain significant doubt that justice would be done absent recusal.

### IV. CONCLUSION

Based upon the foregoing, Plaintiff requests that Your Honor recuse herself from sitting on this case.

DATED: Honolulu, Hawaii September 4, 2014.

  
RICHARD E. WILSON  
Attorney for Plaintiff Michael G. Sheehan

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT  
STATE OF HAWAII

COUNTY OF KAUAI,	)	Civil No: 11-1-0098
	)	(Condemnation)
Plaintiffs,	)	
	)	DECLARATION OF RICHARD E. WILSON
vs.	)	and EXHIBITS "1" - "3"
	)	
HANAIEI RIVER HOLDINGS, LTD, a	)	
Cook Islands corporation, et al.	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	

DECLARATION OF RICHARD E. WILSON and EXHIBITS "1" - "3"

I, Richard E. Wilson, declare under penalty of law that the following is true and correct to the best of my knowledge and belief:

1. I am an attorney licensed to practice law before this Court and I have represented Defendants Michael G. Sheehan as his counsel since 2001.
2. I have the utmost respect for this Court. This motion is not intended in any way to cast aspersions on the Court in any way, shape or form.
3. However, and putting all due and earned respect aside, I must respectfully request on behalf of Mr. Sheehan that Your Honor recuse herself from sitting on this case. There are simply so many factors, when taken together, which requires one to meaningfully question Your Honor's impartiality when it comes to Mr. Sheehan.
4. Attached hereto as Exhibit "1" is a true and correct copy of your affidavit which you submitted in response to Mr. Sheehan's complaints that you personally violated his Constitutional rights, defamed him and interfered with his business. Those are serious accusations, serious enough that you believed it necessary to formally respond via affidavit.
5. On November 13, 2012, Mr. Sheehan also wrote to the Office of Disciplinary Counsel. (Exhibit "2") Although the letter speaks for itself, the gist of his complaint is that you have a conflict of interest based upon your tenure as County Attorney in the 1990s. At this

juncture, taking all matters into consideration, I must agree with Mr. Sheehan that there is the appearance of a tangible conflict of interest.

6. Attached hereto as Exhibit "3" is a true and correct copy of a news article while Your Honor was County Attorney. It confirms that Your Honor as well as other members of the County Attorney's Office were defendants in the boating and boatyard lawsuits. While the article states that you did not consider this to be a conflict, the ODC differed, concluding that "there was at least a potential for a conflict."

7. We do not believe that anything has substantially changed in the last 20 years. Mr. Sheehan has repeatedly accused you of unethical conduct, and has complained to the ODC. A reasonable person would have to question the Court's impartiality under the circumstances. Accordingly, we request that you recuse yourself.

DATED: Honolulu, Hawaii September 4, 2014.

  
\_\_\_\_\_  
RICHARD E. WILSON

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

MICHAEL G. SHEEHAN and  
PATRICIA WILCOX SHEEHAN,

Plaintiffs,

vs.

PLANNING DEPARTMENT OF THE  
COUNTY OF KAUAI; COUNTY  
OF KAUAI PLANNING COMMISSION;  
COUNTY OF KAUAI; JO ANN  
YUKIMURA, Individually and in  
her official capacity as Mayor  
of the County of Kauai;  
BARBARA ROBESON, Individually  
and in her official capacity  
as Planning Commissioner or  
former Planning Commissioner  
of the County of Kauai  
Planning Commission; HERMINA  
MORITA, Individually and in  
her official capacity as  
Planning Commissioner or  
former Planning Commissioner  
of the County of Kauai  
Planning Commission; MICHAEL  
MACHADO, In his official  
capacity as Planning  
Commissioner or former  
Planning Commissioner of the  
County of Kauai Planning  
Commission; JEFF LACY,  
Individually and in his  
official capacity as Planning  
Director of the Planning  
Department of the County of  
Kauai; TOM SHIGEMOTO,  
Individually and in his  
official capacity as Planning  
Director of the Planning  
Department of the County of  
Kauai; PETER NAKAMURA,  
Individually and in his  
official capacity as former  
Planning Director of the  
Planning Department of the

) CIVIL NO. 93-00911 DAE  
) (Other Civil Action)  
)

) AFFIDAVIT OF  
) KATHLEEN N. A. WATANABE  
)

EXHIBIT "1"



County of Kauai; and CAROL )  
WILCOX, Individually and in )  
her official capacity as )  
former Coastal Zone Planner, )  
Planning Department of the )  
County of Kauai Planning )  
Commission; PETER MORIMOTO, )  
Individually and in his )  
official capacity as Deputy )  
Kauai County Attorney, and )  
KATHLEEN WATANABE, In her )  
official capacity as Kauai )  
County Attorney, )  
) )  
Defendants. )  
\_\_\_\_\_ )

AFFIDAVIT OF KATHLEEN N. A. WATANABE

STATE OF HAWAII )  
) ) SS.  
COUNTY OF KAUAI )

KATHLEEN N. A. WATANABE (hereinafter referred to as "Affiant"), being first duly sworn upon oath, deposes and says that:

1. This affidavit is based upon Affiant's personal knowledge of the matters addressed below.

2. Affiant serves as the County Attorney for the County of Kauai.

3. On or about November 2, 1988, the Planning Department and Planning Commission filed a Complaint in Planning Commission of the County of Kauai, et al. v. Paradise Adventure Cruises, Inc., et al., Civil No. 880197, Circuit

Court of the Fifth Circuit, seeking a permanent injunction precluding tour boat activities in the Hanalei estuary.

4. A true and correct copy of the Complaint filed in Civil No. 880197 is attached to Defendants' Motion for Summary Judgment as Exhibit "P".

5. A Preliminary Injunction was entered on December 21, 1988, a true and correct copy of which is attached to Defendants' Motion for Summary Judgment as Exhibit "Q".

6. On or about April 5, 1989, a second preliminary injunction was issued against all defendants, including their employees, agents, contractors, and subcontractors, prohibiting them from engaging in tour boat activities until further order of the court, a true and correct copy of which is attached to Defendants' Motion for Summary Judgment as Exhibit "R".

7. Further hearings in Civil No. 880197 were held in March 1994, and a final decision by the Honorable George M. Masuoka is pending.

8. On or about December 10, 1993, Plaintiffs filed an Ex Parte Motion for Temporary Restraining Order, entitled Michael G. Sheehan, et al. v. County of Kauai, et al., S.P. No. 93-0070, in the Circuit Court of the Fifth Circuit, State of Hawaii. The motion sought to enjoin the County of Kauai from proceeding to revoke, modify or amend the SMA permit issued to Plaintiffs.

9. The motion was heard on December 14, 1993, and was denied by the Honorable George M. Masuoka by order entered on December 15, 1993, a true and correct certified copy of which is attached to Defendants' Motion for Summary Judgment as Exhibit "V".

10. Affiant does not believe that she has made any defamatory statements regarding Plaintiffs or their business operations.

11. Affiant believes that her actions relating to Plaintiffs and their boat baseyard were taken in good faith and complied with the Rules and Procedures of the Planning Commission, the SMA Rules and Regulations, and Chapter 205A of the Hawaii Revised Statutes.

12. Affiant does not believe that she violated any of Plaintiffs' constitutional rights.

13. Affiant did not intend to violate Plaintiffs' constitutional rights.

14. Affiant did not violate any clearly established statutory or constitutional rights of Plaintiffs which a reasonable person would have known.

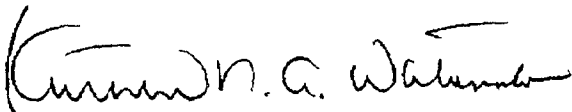
15. Affiant neither induced nor intended to induce any third party to breach any contract with Michael Sheehan and/or Patricia Wilcox Sheehan.

16. Affiant neither disrupted nor intended to disrupt the economic relationship between Michael Sheehan and/or Patricia Wilcox Sheehan, and any third party.

17. Affiant was not involved in the consideration or review of Plaintiffs Michael G. Sheehan and Patricia Wilcox Sheehan's application for an SMA permit, or in the issuance of the SMA permit dated June 24, 1987.

18. Affiant believes that her involvement in the matter of Plaintiffs' boat baseyard was reasonably related to the objectives of the CZMA, the SMA Rules and Regulations, and other rules, regulations, statutes and laws. These objectives included but were not limited to preserving, protecting, and where possible, restoring the natural resources of the coastal zone of Hawaii, as well as to the interests of public health and safety.

Further, Affiant sayeth naught.

  
KATHLEEN N. A. WATANABE

Subscribed and sworn to before me,  
this 2<sup>nd</sup> day of June, 1994.

*69*  
  
Notary Public, State of Hawaii

My commission expires: 6-21-96.

Michael Guard Sheehan Sr.  
4113 Nuuanu Pali Drive  
Honolulu, Hawaii, 96817

November 13, 2012

Office Of Disciplinary Council  
1132 Bishop Street  
Honolulu, Hawaii, 96813

Gentlemen:

Judge Kathleen Watanabe recently affirmed the actions of the Kauai Planning Commission and The Office of The County Attorney in revoking my Commercial Operating Permits for my boatyard along the Hanalei River on Kauai. I obtained these permits in 1987, twenty-five years ago.

I have appealed these permit revocations both to The Intermediate Court of Appeals, and have filed a Federal District Court lawsuit regarding this attempt to revoke my permits, presently pending.

In 1989 when Kathleen Watanabe became County Attorney under the administration of Mayor Joanne Yukimura, the Office of The County Attorney filed the initial Order to Show Cause (OSC) attempting to revoke my permits.

In response I filed the first Federal Court suit 93-0911 DAE, and named Kathleen Watanabe in her official capacity in this suit. Judge Ezra ruled my takings claim "Not Ripe" as the County of Kauai had not actually "taken" my commercial permits.

EXHIBIT "2"

In 2005 before Federal Judge Helen Gilmore (05-0425 HG/BMK) I again sued the County of Kauai . The County Affirmed that I had all my permits and there were no concerns or questions,

I started my boatyard up again with original clients.

The County Attorney's Office and the Planning Commission then began creating a program to revoke my permits under the most curious reasons.

The Planning Commission recently revoked my permits, without questions, and without regard to my objections.

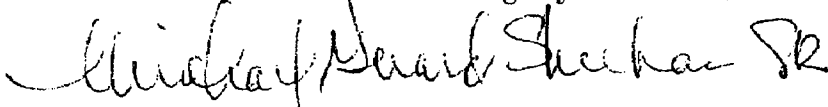
I appealed the revocation, and Judge Watanabe affirmed these actions that she and her office initiated in 1989. through the original OSC.

Judge Kathleen Watanabe has a conflict of interest in this Commercial Tour Boat Controversy.

The Office of the County Attorney has recently filed an action in Eminent Domain to also acquire the lands and improvements of the Boatyard that they recently took away the Commercial Operating Permits from.

I believe it highly inappropriate to expect Judge Watanabe to appear to the public to not have a conflict of interest in ruling on any future legal actions, claims, or appeals therefrom, and think it reasonable that she recuse herself, appoint a retired judge or judge's to resolve this matter, due to her and Judge Valenciano's declared conflict, to maintain the Public Trust in the Judicial System and Process.

Thank you for considering my concerns;



Michael Guard Sheehan Sr.

with enclosures

# County hires O'ahu firm for boating suit

By CATHERINE VALENTI Staff Writer

LEHUE—The Kana'i County Council has authorized an appropriation of up to \$45,000 to hire an outside law firm to defend the county and individual county employees named as defendants in four lawsuits arising out of the North Shore commercial tour boating controversy.

The county has retained the Honolulu firm of Goodstill, Anderson, Quinn and Stifel to represent all of the defendants in the lawsuits, which allege malicious prosecution and abuse of process in connection with the administrative fine hearings conducted by the Planning Commission against the boaters for operating without SMA permits.

The lawsuits were filed earlier

this year on behalf of Clarence and Clancy Greif, Fadelia Teixeira and Na Pali Kana'i Boat Charters, Inc., Oda Hamalei Sea Tours against the mayor, the Planning Commission and the individual commissioners, the county attorneys' office and certain individual present and former county attorneys, including Kathleen Watanabe, and former Planning Director Peter Nakamura.

The suits name the individuals in their personal, as well as official, capacities.

According to County Attorney Kathleen Watanabe, the primary reason for retaining outside counsel was the potential for a conflict of interest. Watanabe said that even though there does not appear to be a conflict at this time, the fact that the county attorneys' office has been sued, along with herself and deputy county attorney Michael

## At a glance

□ The County Council has authorized \$45,000 to hire an outside law firm to represent the county in a suit filed on behalf of north shore boaters.

Greenberg, presents the potential for a conflict.

Watanabe said that her office, which for the first time in the boating litigation has been named as a defendant, sought an opinion from the Office of Disciplinary Counsel regarding the need for outside counsel. ODC thought that there was at least a potential for a conflict.

Several of the planning commissioners have also hired their own

attorneys to represent them. Attorney Harold Bronstein has filed an answer on behalf of commissioners Barbara Robeson and Mina Morita. Mike Machado is being represented by Honolulu attorney Herb Takahashi. Takahashi has also filed a cross-complaint for indemnity against the county on Machado's behalf.

County Council Chair Ron Kouchi said that in addition to the \$45,000 appropriated for the defense, \$9,000 had already been appropriated so that the Goodstill firm could review the files and interview the named defendants to evaluate the cases.

Kouchi also said that while he has not been supportive of having the issues regarding commercial boating on the North Shore

(See Boating suit on Page 2)

## Boating suit (Continued from Page 1)

resolved in the courts, but instead has always advocated that the matter be addressed legislatively, he does feel an obligation to provide a defense.

"I have not wanted to appropriate any money for the litigation," he said. "However, we've had former commissioners, planning directors and county attorneys, as well as the current ones, who are now being charged and I feel an

obligation to provide a defense. But at some time it's going to stop."

Kouchi acknowledged that the litigation could end up costing more than \$45,000, and said that the council would consider appropriating more money if necessary. He added that there would have to be a limit, however, but had no dollar figure in mind at this time.

EXHIBIT "3"

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT  
STATE OF HAWAII

COUNTY OF KAUAI,	) Civil No: 11-1-0098
	) (Condemnation)
Plaintiffs,	)
	) DECLARATION OF MICHAEL G.
vs.	) SHEEHAN
	)
HANAIEI RIVER HOLDINGS, LTD, a	)
Cook Islands corporation, et al.	)
	)
Defendants.	)
	)
	)
	)
	)
	)
	)

DECLARATION OF MICHAEL G. SHEEHAN

I, MICHAEL G. SHEEHAN, swear under penalty of law that the following is true and correct to the best of my knowledge and belief:

1. There is no reason why Your Honor should not recuse yourself in this case. Over the 20 years you have been an ardent detractor of mine and an adversary. I have written to ODC to complain about you and I have demanding that you recuse yourself. I have accused you of violating my civil and constitutional rights.

2. I cannot, for the life of me, understand why you insist on sitting on my cases. It is a well-known belief that you have it in for me.

3. Your bias against me is clear from the record. I demand that you recuse yourself from sitting on this case.

DATED: Hanalei, Hawaii September 4, 2014.

  
MICHAEL G. SHEEHAN



IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

COUNTY OF KAUAI,

) Civil No: 11-1-0098

) (Condemnation)

Plaintiffs,

)

) NOTICE OF HEARING

vs.

)

HANAIEI RIVER HOLDINGS, LTD, a )

Cook Islands corporation, et al. )

)

Defendants. )

)

)

)

)

)

)

)

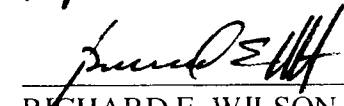
NOTICE OF HEARING

To: Ian Jung, Esq.  
Office of the County Attorney  
4444 Rice Street, Ste. 220  
Lihue, HI 96766

Harold Bronstein, Esq.  
PO Box 3064  
Lihue, Hawaii 96766

NOTICE IS HEREBY GIVEN that the above-entitled Motion is scheduled to come for hearing before the Honorable **KATHLEEN N.A. WATANABE**, Judge of the above-entitled Court, in his courtroom at 3970 Kaana St., Lihue, Hawaii 96766, at 1:00p.m., Sept. 24, 2014, 2014, or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawaii, September 4, 2014.

  
\_\_\_\_\_  
RICHARD E. WILSON  
Attorney for Michael G. Sheehan

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served via deposit in the US Mail, on the following:

To: Ian Jung, Esq.  
Office of the County Attorney  
4444 Rice Street, Ste. 220  
Lihue, HI 96766  
Attorney for the County of Kauai

Harold Bronstein, Esq.  
PO Box 3064  
Lihue, Hawaii 96766  
Attorney for Defendants Mina Morita and Lance Laney

DATED: Honolulu, Hawaii, September 4, 2014.

  
\_\_\_\_\_  
RICHARD E. WILSON

Attorney for Michael G. Sheehan