

IN THE SUPERIOR COURT OF COLQUITT COUNTY GEORGIA

NANCY B. CORMIER
Petitioner

Case Number 03-CVD-2211

v.

DENNY C. CORMIER
Respondent, *pro se*

**EXHIBIT A - AFFIDAVIT IN SUPPORT OF APPLICATION FOR
MOTION TO DISQUALIFY JUDGE**

State of Georgia, County of Colquitt

Denny C. Cormier, being first sworn, deposes and says:

1. He resides at 1000 Mallery Street, in the City of St. Simons Island, State of Georgia, and is the Respondent, *pro se*, in the proceeding case now pending in the Superior Court of Colquitt County, State of Georgia being cause No. 03-CVD-2211 of the court, entitled “Nancy B. Cormier, Petitioner, vs. Denny C. Cormier, Respondent.”
2. The nature of the proceeding is an action for alimony and divorce.
3. On July 5, 2005, Respondent in the proceeding case filed a Petition for a Writ of Mandamus in the Federal District Court, Middle District of Georgia, the Georgia Supreme Court and the Superior Court of Colquitt County to quash, rescind and

vacate the ultra vires motions, orders and proceedings of the Honorable Frank Horkan and Petitioner during the period between May 26, 2005 and July 11, 2005, when the state case had been removed to the Federal District Court.

4. Therefore the Honorable Frank Horkan and the Superior Court of Colquitt County lacked jurisdiction to proceed with a trial and to issue orders for contempt and payment of attorneys fees, including motions and orders issued ultra vires by the Honorable Frank and the state court on June 14, 2005 and July 7, 2005. Copies of the aforesaid orders have been attached, marked Exhibits 1 and 2 respectively, and incorporated by reference.

5. Furthermore, the Honorable Frank Horkan and the Superior Court of Colquitt County are without jurisdiction to proceed with the action or to entertain the action or as the case may be for the following reasons:

1. After proper removal to Federal Court on May 26, 2005 of *In Re Cormier v. Cormier*, Case Number 03-CVD-2211, from the Superior Court of Colquitt County to the United States District Court, Middle District of Georgia, the Honorable Frank Horkan sua sponte took ultra vires judicial action without jurisdiction thereto:

A. Ex parte ultra vires hearings were scheduled by the Honorable Frank Horkan for July 7, 2005 and August 1, 2005 in violation of 28 U.S.C. 1441(d), the Superior Court of Colquitt County on that date (Orders Attached).

B. The Honorable Frank Horkan also entered ex parte ultra vires orders on June 14, 2005 and July 7, 2005 granting attorney fees to Petitioner,

and pursuant to Petitioner's Motion for Contempt entered on June 15, 2005 (Motion Attached), all in violation of 28 U.S.C. 1441(d).

- C. The June 14, 2005 order of the Honorable Frank Horkan granting attorney fees was also in violation of Georgia Superior Court Rules §24.2. "Financial data required", prohibiting awards of attorney's fees unless a financial affidavit has been entered by both parties. This requirement has not yet been met. There has been no substantial evidence admitted to demonstrate need of the Petitioner for attorney fees and no finding of ability to pay by the Respondent. The court assumed ability to pay.
 - D. On July 7, 2005, another ultra vires order was issued by the Honorable Frank Horkan regarding rulings on motions and scheduling a pre-trial hearing for August 1, 2005.
2. On May 26, 2005, Removal of said Superior Court of Colquitt County, Case No. 03-CVD-2211, was effected with proper Notice of Removal and Notice of Filing Notice of Removal. (Notices in Court File)
 3. Such ultra vires conduct by the Petitioner and state court has resulted in a violation of Denny C. Cormier's Georgia Constitution civil rights, that if permitted will cause him irreparable harm, for which this Motion is the only remedy at law and for which this is proper under the Uniform Rules for the Georgia Superior Courts.
 4. The Honorable Frank Horkan threatened Respondent in open court on March 8, 2005 that he would jail Respondent should he exercise his

constitutional right of removal to Federal Court, whereupon Respondent exercised his right of removal and is therefore subject to immediate wrongful arrest and incarceration upon his appearance in this Court thereby prejudicing his case and denying him Due Process.

5. The Honorable Frank Horkan has been involved in a long-term business and law practice with counsel for the Petitioner without disclosure to the Respondent and therefore has a conflict of interest.
6. The Honorable Frank Horkan has awarded alimony to Petitioner, who is a deserting spouse, in violation of O.C.G.A 19-6-1(b), prohibiting alimony awards to a deserting spouse, despite a written statement by Petitioner to the effect that she was deserting Respondent.
7. The Honorable Frank Horkan was a named Respondent in a federal lawsuit against the Respondent. (Cormier v. Maria Green, Case No. 6:04-CV-19 (HL)).

Wherefore, for the above reasons, affiant petitions this court to disqualify the Honorable Frank Horkan, presiding judge, and to quash, rescind and vacate all motions, orders and proceedings between the period of May 26, 2005 and July 11, 2005 during which time the state case had been removed to the Federal District Court in the Middle District of Georgia, or in the alternative, the issuance or an order to show cause or an alternative writ, requiring Petitioner to show cause why said Motion to Disqualify Judge should not be granted.

Respectfully submitted,

DENNY C. CORMIER, pro se
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DATED this 26th day of July, 2005.