

IN THE MUNICIPAL COURT OF PHILADELPHIA

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ACTIVE CRIMINAL RECORDS
CRIMINAL MOTION COURT

COMMONWEALTH OF PENNSYLVANIA :

v. :

MC-51-CR-18485-2011

CHERELLE PARKER :

ORDER

AND NOW, this 15th day of November, 2011, it is ORDERED
that the Commonwealth's motion for reconsideration is ~~GRANTED~~ ^{DENIED} and this Court's November
1, 2011 ruling in the above-referenced case ~~is hereby VACATED. It is further ORDERED that~~ ^{STANDS}
~~the Commonwealth's motion for recusal is hereby GRANTED.~~

BY THE COURT:

Charles Hayden
J.

IN THE MUNICIPAL COURT OF PHILADELPHIA
& THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

VS. :

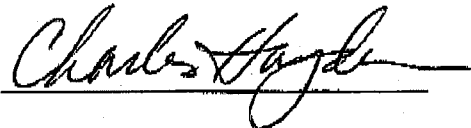
M.C. -51-CR-18485-2011

CHERELE PARKER :

ORDER

AND NOW, this 21st day of November 2011, the
Commonwealth, as the moving party, having failed to meet
its burden of producing evidence sufficient to establish
bias, prejudice or unfairness such that this Court must
recuse or disqualify itself, it is **ORDERED** that the
Commonwealth's motion for recusal is hereby Denied.

BY THE COURT,



Judge

**IN THE MUNICIPAL COURT OF PHILADELPHIA
IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA :

VS. :

M.C. -51-CR-18485-2011

CHEREL PARKER :

OPINION

The Court heard the pre-trial Motion to Suppress on September 20, 2011 and held it under advisement until November 1, 2011. On November 1, 2011, the Court granted the Motion to Suppress based on its Findings and Facts and Conclusions of Law. On November 14, the Commonwealth of Pennsylvania filed a Motion to Reconsider and New Matter which requested this Court to recuse itself. On November 15, 2011 the Motion to Reconsider was denied without rendering a decision on the Motion for Recusal. This Court now addresses the Commonwealth's Motion for Recusal.

The issue before this Court is whether without a showing of bias, prejudice or unfairness this Court should recuse itself solely because the Court and the Defendant have a "Facebook friendship" and because that "Facebook friendship" has been reported in the press.

It is well settled law in the Commonwealth of Pennsylvania that the decision denying or granting a motion to recuse will not be disturbed absent an abuse of discretion. Commonwealth v. Boyle, 498 Pa. 486, 447 A.2d 250 (1982). Courts uniformly recognize the presumed impartiality of the judge. In re Oxman, 496 Pa. 534, 437 A.2d 11 (1981), cert. denied, 456 U.S. 975 (1982). A judge should recuse himself or herself whenever he or she has any doubt as to his or her ability to preside impartially in a criminal case or whenever he or she believes her impartiality can reasonably be questioned. Commonwealth v. Boyle, 498 Pa. 486, 447 A.2d 250 (1982). A number of federal courts have concluded that the duty of a judge to sit where disqualification is not required is as strong as the duty to recuse oneself where disqualification is appropriate. Laird v. Tatum, 409 U.S. 824, 93 S. Ct. 7, 34 L. Ed. 2d 50 (1972).

The Commonwealth, as the moving party, bears the burden of producing sufficient evidence to establish bias, prejudice or unfairness such that a trial judge must recuse or disqualify him or herself. Commonwealth v. Berrigan, 509 Pa. 118, 401 A.2d 226 (1985) Commonwealth v. Council, 491 Pa. 434, 421 A.2d 623 (1980) Commonwealth v. Martin, 307 Pa. Super. 118, 452 A.2d 1066 (1982).

At paragraph 19 of its Motion to Reconsider and New Matter, the Commonwealth states that "[r]eports of [my] social networking connection have been widely disseminated in the media." In point of fact the article that "broke" the Facebook story was well written, balanced and informative raising a legitimate issue confronting the Courts. The Philadelphia Inquirer article, published on Saturday November 5, 2011, quoted Lynn A. Marks, Executive Director of Pennsylvanians for Modern Courts describing judges use of social media as a "cutting edge issue" and further recommending that "Judges should terminate social media campaign sites after elections." The article goes on to mention that "Superior Court Judge Anne Lazarus is heading committee appointed by the state Supreme Court to review the code of conduct, including the use of social media sites."¹ (See Court Exhibit A)

Having reviewed the submittal of the Commonwealth, the most compelling document that the Commonwealth presents in support of its Motion for Recusal is set forth at Exhibit E. It is an October 21, 2011, article entitled, "Cumberland County District Justice Thomas Placey recuses himself from

¹ Even where a judge is under investigation by the Judicial Conduct Board itself the mere fact that a judge is being investigated is not a basis for recusal. *Commonwealth v. Shaw*, 393 Pa. Super. 341, 580 A.2d 1379 (1990), *Commonwealth v. Weeks*, 381 Pa. Super. 411, 554 A.2d 68 (1989), *Commonwealth v. Hewett*, 380 Pa. Super. 334, 551 A.2d 1080 (1988)).

case on "Facebook flap." Notwithstanding the headline to the contrary, a thorough review of the facts set forth in the article is instructive:

1. Judge Placey (like many Judges and District Attorneys) had (and continues to have per the title) a Facebook account;
2. It became public that Judge Placey and Barry Horn, a defendant in his courtroom for which Judge Placey had continued a hearing, were "Facebook friends";
3. Judge Placey immediately "unfriended" Horn from his Facebook page after he realized that Horn was a defendant in a case before him;
4. In spite of online postings suggesting Judge Placey would be biased in favor of the defendant Horn, which occurred after the Facebook issue became public, Judge Placey said nothing publicly (pursuant to the Judicial Canons).
5. Judge Placey did not comment on why he agreed to defendant Horn's recusal request; however, it must be noted that Judge Placey had had the defendant Horn before him approximately thirty (30) days before for a road rage case (for which he held him over for trial) and the defendant was now back

before him for yet another serious charge this time
involving a standoff with police.

I submit that this article, which the Commonwealth presented in support of its Motion as Exhibit E, clearly illustrates as this Court's position that an allegation of "Facebook friendship" without additional evidence is not sufficient for a Judge to recuse him or herself. Not speaking for Judge Placey, or indicating in any way how I would rule in the future on any similar recusal matter, but analyzing the facts as submitted by the Commonwealth's own evidence in support of its Motion for Recusal; no, I am not surprised by the outcome. I would submit that on these facts Judge Placey, and many other judges, could easily find it appropriate to grant a defense request for a recusal given the level and nature of the prior charges and the short period between the cases. Most importantly, Judge Placey should have recused himself at his discretion with or without the publicity over his Facebook account.² Finally submitting this case as support for its position clearly reflects the Commonwealth's utter lack of understanding of recusal.

² District Attorney Seth Williams recused himself and his office from this case because he considers the defendant to be a friend. It was subsequently reported in the previously cited Philadelphia Inquirer article, published on Saturday, November 5, 2011, that he and the defendant are also "Facebook friends."

The standard that the Commonwealth seeks to have this Court adopt relies upon Judges making decisions on recusal based solely upon public opinion and the media rather than the facts, evidence and the law which flies in the face of both the history and traditions of Pennsylvania Courts as codified in Canon 3, Section A(1) of the Code of Judicial Conduct where it clearly states:

"Judges should be faithful to the law and maintain professional competence in it. They should be unswayed by partisan interests, public clamor or fear of criticism."

This Court stands on the record presented below and set forth and incorporated by reference in Commonwealth Exhibits A and B.

Additionally, it is absurd to imagine the unintended consequences of adopting the Commonwealth's position on Facebook where the sole test for recusal is ultimately "Facebook friendship." A real life case in point is Philadelphia District Attorney Seth Williams' Facebook account (his personal one and not his Fan account) which has as of today approximately 4,998 "friends" including myself. If the sole test for recusal was merely "Facebook friendship" none of them could be prosecuted presently by the Philadelphia District Attorney's Office. Further, it could mean that if anyone already has been convicted by

that office who was unknowingly a "Facebook friend" at the time of their conviction that person could be subject to getting their conviction overturned. Similarly, Judges like myself would now have to be recused from hearing any case involving any one of the 1,316 people on my Facebook Account : however many they may have. So where does it end?

What if we happened to belong to the same mega church and we attended different services and it was discovered after the Motion to Suppress? I submit that this is not a new issue. The underlying issues are the same as they have been from the beginning of our courts. We just have to use our critical thinking skills and common sense instead of getting hung up in the technology. How well do you know the person? Do you interact with them often? Do you consider them a friend? I submit that the Facebook friend issue alone is not sufficient to warrant recusal. Consequently, this Court finds that the Commonwealth, as the moving party, has failed to meet its burden of producing evidence sufficient to establish bias, prejudice or unfairness such that this Court must recuse or disqualify itself.

EXHIBIT A

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Posted: Sat, Nov. 5, 2011, 3:00 AM

Facebook friendship of judge, politician an issue in drunken driving case

By Miriam Hill and
Inquirer Staff Writer
Bert Moran

Is there any room for friendship between a judge and a defendant?

That question arises in a recent case against State Rep. Cherelle L. Parker in which the judge also happened to be her Facebook friend.

On Tuesday, Municipal Judge Charles Hayden dismissed the evidence presented from Parker's April 30 arrest. That evidence included a Breathalyzer test that measured her blood alcohol level at 0.16.

Hayden suppressed a defense for Parker's nonjury trial, saying he doubted the testimony of the two arresting officers.

Parker, a former aide to City Councilwoman Marian B. Tasco, is a well-known politician who was first elected to the House in a special election in 2005. She represents the 200th District, which includes Mount Airy, Chestnut Hill, Roxborough, and Andorra.

To avoid a conflict of interest, District Attorney Seth Williams, who is friends with Parker (on Facebook and off), turned the case over to the State Attorney General's Office.

On Thursday, Nils Fredrikson, a spokesman for the attorney general, would not say whether the office was aware of the Facebook friendship. He did say the office "is reviewing all options regarding possible appeal."

It's hard to know what the Facebook friendship between Parker and Hayden amounts to.

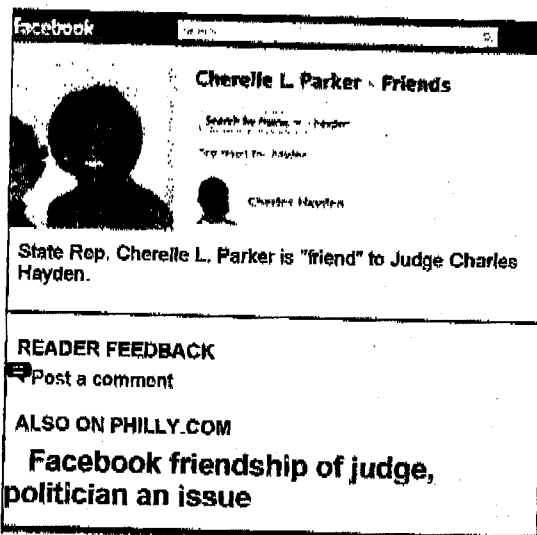
Hayden did not return calls seeking comment. Parker referred questions to her lawyer, Joseph Kelly, who did not return messages.

On the social media site, Parker has more than 4,500 friends and Hayden more than 1,300, many of them politicians and Philadelphia, and including journalists.

Lynn A. Marks, executive director of Pennsylvanians for Modern Courts, a nonpartisan nonprofit, said judges use of social media was a "cultural issue."

It makes sense for judges to use sites such as Facebook for campaigns, Marks said, for the free exposure.

"But it also can have trouble consequences," she said. "When they become a judge, there are certain things - by law - that they shouldn't probably do."



of judge, politician an issue in drunken driving case

Judges probably sh~~ould~~ terminate social media campaign sites after elections, she said.

Superior Court Judge John J. Conboy is heading a committee appointed by the state Supreme Court to review the code of judicial conduct, including the use of social media sites.

In May, Williams ordered a review of drunken driving convictions of cases between September 2009 and November 2010 based on faulty breathalyzer calibrations discovered by the Philadelphia Police Department.

Contact staff writer Miriam Hill at 215-854-5520, hillmb@phillynews.com, or @miriamhill on Twitter.

Find this article at: http://www.philly.com/philly/stories/politics/city/20111105_Facebook_friendship_of_judge_politician_an_issue_in_drunk_driving_case.html

☐ Check the box to include the list of links referenced in the article.

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