

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER NO. 91-53

CASE NO. 89-2185-Civ-Moreno

FIL.
NORTHWESTERN NATIONAL LIFE
INSURANCE COMPANY,

Plaintiff,
v.

WALTER HERNANDEZ,

Defendant.

**ORDER DENYING DEFENDANT'S
MOTION TO SEAL AND MOTION
FOR DISQUALIFICATION**

_____ /

The defendant seeks recusal of The Honorable Federico A. Moreno upon the grounds that Judge Moreno in 1988 presided over another judicial proceeding involving the defendant, Walter Hernandez. Defendant cites this familiarity with the prior case as grounds for recusal. Defendant's research apparently did not reach the level of United States v. Phillips, 664 F.2d 971 (5th Cir. Unit B, Dec. 1981). Judge Johnson's opinion, on this issue, stands for the proposition that those matters coming to the attention of a judicial officer in his or her official capacity are not grounds for recusal. In the unlikely event that a judge learns of acts or conduct of a party before him through unofficial or ex parte communication, he then should recuse. Matters brought to his attention in official proceedings can never be the basis for recusal of the judge. To rule otherwise would be to permit litigants to determine which judge would hear their case through the simple expedient of standing up in a hearing and telling a judge something that would be considered prejudicial to that litigant.

Turning to consideration of the motion to seal, no grounds are asserted that could conceivably be a valid reason to prevent the litigants on both sides of this matter from knowing of this communication by the defendant, Walter Hernandez, to the court. None of the traditional reasons for sealing a motion are suggested. This is simply the desire of the defendant not to tell his opponent that he is communicating with the judge ex parte.

For the foregoing reasons, it is ORDERED, ADJUDGED and DECREED that the motion to consider the matter as filed under seal is DENIED and the motion for disqualification be, and the same is hereby, DENIED.

DONE AND ORDERED in chambers at the United States Courthouse, Federal Courthouse Square, Miami, Florida, this 11th day of July 1991.



JAMES LAWRENCE KING
CHIEF U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: Hon. Federico A. Moreno
Pamela J. Reynolds, Esq.
Laurie A. Beloff, Esq.
Mr. Walter Hernandez
All Southern District Judges