

IN THE CIRCUIT COURT FOR ST. LOUIS COUNTY  
STATE OF MISSOURI

BARBARA ALLEGREZZA, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	Cause No. 19SL-CC03421
v.	)	
	)	Division No. 1
MONSANTO COMPANY,	)	
	)	
Defendant.	)	

**PLAINTIFFS’ MOTION TO DISQUALIFY SPECIAL MASTER**

A special master in a case being tried by a lawyer who is both the special master’s personal attorney and the special master’s co-counsel in a pending case presents an appearance of impropriety such that the special master should be disqualified from the case.

Lawyer James Bennett, who was disclosed as lead trial lawyer for Monsanto in this case just a week ago, has a close relationship with special master Robert D. Blitz. Bennett and Blitz are co-counsel in a case pending in St. Charles County. Bennett represented Blitz personally and Blitz’s law firm when they were sued by clients. And, most famously, Bennett’s and Blitz’s law firms recently split a massive legal fee from the settlement of St. Louis’s case against the NFL and the Rams.

In short, Bennett is Blitz's personal and business lawyer, is his co-counsel in a pending case, and was recently his quasi-partner in a massive contingency-fee lawsuit. Their relationship creates a conflict of interest such that Blitz is not qualified to serve as special master in any case in which Bennett is trial counsel.

Plaintiffs therefore move that the court disqualify Blitz as special master on the ground that there is a conflict of interest creating an appearance of impropriety if Blitz continues to serve as special master.

#### **I. Facts.**

Robert D. Blitz has been special master since January 24, 2023. Just a week ago, on August 9, 2023, defendant Monsanto told plaintiffs that attorney James Bennett will be its lead trial counsel in this case. *Ex. 1 (email 8/9/23)*; *Ex. 2 (Jack Garvey affidavit)* at ¶ 3.

While Bennett is among the 44 lawyers who have appeared for Monsanto in this case, *Ex. 3 (list of lawyers)*, Bennett played no role here before August 9 — at least no role visible to plaintiffs. Bennett had not filed any papers other than his entry of appearance; he had not appeared at any depositions; he had not attended any hearings. *Ex. 2* at ¶ 3.

In short, until August 9, 2023, Bennett was at most a behind-the-scenes lawyer in this case and plaintiffs had no reason to believe that his relationship with Blitz would have any significance whatsoever to the case.

When Bennett's leading role in the case was announced a week ago, a check of court dockets quickly revealed at least part of the relationship between Bennett and Blitz:

**Bennett and Blitz are co-counsel for shared clients on at least one active case in federal court.** Bennett and Blitz jointly represent the City of St. Charles and St. Charles County in *City of St. Charles v. Union Electric Co.*, No. 4:23-cv-00846 (E.D. Mo.). *Ex. 4 (docket)* at 1-2. The docket indicates that their joint representation of both clients is ongoing.

**Bennett is or has been Blitz's personal attorney.** Bennett represented Blitz as his personal lawyer, and as a lawyer for his law firm, when Blitz and his law firm were sued by a group of clients. *Eager Road Assoc., LLC v. Blitz, Bardgett & Deutsch, L.C.*, No. 15SL-CC01543 (St. Louis County). This court knows that case well since Judge May was the judge in the *Eager Road* case. While the claims against Blitz individually were ultimately settled, Bennett continued to represent Blitz's law firm on

appeal, signing the respondent's brief for Blitz's law firm on February 19, 2019. *Ex. 5 (docket in Appeal No. ED106537)* at 4; *Ex. 6 (excerpt from respondent's brief)*. Bennett's representation of Blitz's law firm in *Eager Road* continued until at least March 2020, when all post-opinion proceedings were completed and the Court of Appeals' mandate issued. *Ex. 5* at 1.

**Bennett and Blitz were effectively economic partners in a high-profile contingency-fee case brought by St. Louis governmental entities against the NFL and the football Rams.** A \$790 million settlement was ultimately reached for the governmental plaintiffs Bennett and Blitz jointly represented in *St. Louis Regional Convention v. National Football League*, No. 1722-CC00976 (City of St. Louis). This was a contingency-fee case, making the two lawyers and their law firms economic partners. Their law firms split \$276.5 million in fees, equal to 35% of the \$790 million settlement. *Ex. 7 (St. Louis Record, Dec. 2, 2021)* at 2.

Plaintiffs learned about Bennett's new role as lead trial lawyer for Monsanto in this case just a week ago. *Exs. 1, 2* at ¶ 3. Since then, plaintiffs have learned at least initial facts about Blitz's and Bennett's close relationship. Plaintiffs approached Bennett and Blitz seeking an agree-

ment to have Blitz withdraw as special master in this case. *Ex. 2* at ¶¶ 4, 5, 7. Monsanto and Blitz declined to agree to this, however, *id.* at ¶¶ 6, 8, making this motion to disqualify Blitz as special master necessary.

## II. Law.

Like a judge, a special master must avoid even the appearance of impropriety.

The Missouri Code of Judicial Conduct, Supreme Court Rule 2 (“Rule 2”), applies to special masters. “All provisions of this code apply to all full-time judges, commissioners, and masters.” *Rule 2.04(I)(A)*.

An independent, fair and impartial judiciary is indispensable to our system of justice. ... Judges should ... avoid both impropriety and the appearance of impropriety. They should aspire to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

*Rule 2.01[1] & [2]*. “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” *Rule 2-1.2*. “A judge shall recuse himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned ...”

*Rule 2-2.11(A)*. See also *Smulls v. State*, 10 S.W.3d 497, 499 n.2 (Mo. 2000) (restating standard for disqualification).

All of the foregoing provisions apply to Blitz in his role as special master. *Rule 2.04(I)(A)*.

It is presumed that judges act with honesty and integrity, and will not undertake to preside in a trial in which they cannot be impartial. That presumption is overcome, and **disqualification** of a judge **is required**, however, **if a reasonable person**, giving due regard to that presumption, **would find an appearance of impropriety and doubt the impartiality of the Court**.

*State v. Kinder*, 942 S.W.2d 313, 321 (Mo. 1996) (citations omitted; emphasis added).

“The test is not whether actual bias and prejudice exist, but whether a reasonable person would have factual grounds to doubt the impartiality of the court.” *B.R.M. v. State*, 111 S.W.3d 460, 462 (Mo. App. S.D. 2003), citing *State ex rel. Wesolich v. Goeke*, 794 S.W.2d 692, 698 (Mo. App. E.D. 1990). “If, on the record, a reasonable person would find an appearance of impropriety, the canon compels recusal.” *State ex rel. Wesolich v. Goeke*, 794 S.W.2d 692, 698 (Mo. App. E.D. 1990) (issuing writ requiring trial judge to recuse self).

A judge's impartiality might reasonably be questioned if a reasonable person would have a factual basis to doubt the judge's impartiality. Although the court tries to make an external reference to a reasonable person, it is essential to hold in mind that these outside observers are less inclined to credit judges' impartiality and mental discipline than the judiciary itself will be.

*McPherson v. United States Physicians Mutual Risk Retention Group*, 99 S.W.3d 462, 488 (Mo. App. W.D. 2003) (citations and internal quotations omitted).

### **III. Application of the law to the facts.**

Plaintiffs point to three facts that cause them to reasonably question Blitz's ability to be impartial in a case where Bennett is trial counsel.

First, Bennett and Blitz are currently co-counsel in at least one pending case, the case where they jointly represent the City and County of St. Charles.<sup>1</sup> A co-counsel relationship is a close one. Once co-counsel engage in "joint preparation for litigation ... a rebuttable presumption arises that co-counsel shared confidential information ..." *Polish Roman*

---

<sup>1</sup> There may be additional pending cases in which Bennett is Blitz's co-counsel. Some, like the Rams case, might be contingency cases creating an economic partnership between them. Plaintiffs do not know if there are other cases because they have not conducted any discovery on the issue and have had only a limited time in which to conduct their investigation.

*Catholic St. Stanislaus Par. v. Hettenbach*, 303 S.W.3d 591, 604 (Mo. App. E.D. 2010) (motion to disqualify a lawyer). *See also People ex rel. Dep't of Corps. v. SpeeDee Oil Change Sys., Inc.*, 20 Cal. 4th 1135, 1154 (1999) (close working relationship between lawyers can lead to them being treated as a single, *de facto* law firm for purposes of imputed disqualification). This is especially true as to a co-counsel relationship that is not past but is still active.

If a co-counsel relationship is close enough to require imputed disqualification *for lawyers*, then it should be considered close enough to require disqualification of *a special master*. The public interest in the appearance of no impropriety on the part of a judicial officer like a special master is stronger than the public interest in a private lawyer.

A co-counsel relationship is also a business relationship. Federal cases, applying an essentially identical federal rule, have held, “Where the judge in a proceeding has a business relationship with counsel for a party to the proceeding, the judge’s impartiality is reasonably questionable ...” *U.S. v. Bobo*, 395 F. Supp. 2d 1116, 1123 (N.D. Ala. 2004), citing *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1110-1113 (11th Cir. 1980).



Second, the relationship between Bennett and Blitz as lawyer and client is one recognized in the law as especially close:

The attorney-client relationship is one of special trust and confidence. ... This reliance requires that the client have complete confidence in the integrity and ability of the attorney and that absolute fairness and candor characterize all dealings between them.

*Plaza Shoe Store, Inc. v. Hermel, Inc.*, 636 S.W.2d 53, 57 (Mo. 1982) (citation and internal quotations omitted) (client's right to terminate lawyer's employment and what right, if any, terminated lawyer has to a fee in a contingency case if terminated).

Such a close relationship, even if it formally ended just over three years ago, is close enough to allow a party outside of that relationship, like plaintiffs here, to have a reasonable basis to believe that the person with the power — here, the special master Blitz — might favor the party with whom he has that close relationship, lawyer Bennett. It at least gives rise to the reasonable perception of potential bias by the decision maker in favor of the party with whom he is in the close relationship — and this reasonable perception of potential bias creates the appearance of impropriety requiring Blitz to recuse himself or be disqualified.

Third, the relationship between Bennett and Blitz arising out of their hard-fought success in the Rams case, although no longer a live case, seems likely to be a durable relationship. One would expect to develop a strong feeling of fellowship with a co-counsel with whom one has overcome huge hurdles to bring in a fee of over a quarter-billion dollars. Certainly reasonable people like plaintiffs would see it as a relationship likely to be strong and durable and to have the potential to disadvantage opposing parties outside of the charmed circle.

This is true even if Blitz in his heart is not actually biased in favor of Bennett. Plaintiffs are entitled to not just the reality of a fair process but also the appearance of a fair process.

### **CONCLUSION**

Monsanto's lead trial lawyer James Bennett and special master Robert Blitz have a close relationship that give an appearance of a conflict of interest that would lead reasonable persons in plaintiffs' position to question the impartiality of Blitz's decision making as special master.

The court should therefore disqualify Blitz as special master in this case.

Should the court believe that it needs more information before it can disqualify Blitz as special master, then plaintiffs ask for leave to take limited discovery, including the depositions of Bennett and Blitz, to explore the full dimensions of their relationships as co-counsel and as attorney and client.

JACOBSON PRESS P.C.

By: /s/ Joe D. Jacobson  
Joe D. Jacobson #33715  
222 South Central Ave., Suite 550  
Clayton, Missouri 63105  
Direct: (314) 899-9790  
Fax: (314) 899-9790  
Office General: (314) 899-9789  
Jacobson@ArchCityLawyers.com

Co-counsel for plaintiffs

### **CERTIFICATE OF SERVICE**

The filing attorney certifies that on August 17, 2023, the foregoing and the attached exhibits 1 to 7 were filed electronically with the Clerk of the Court to be served by operation of the Court's electronic case filing system upon all participants in the Court's electronic case filing system.