

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-K-394

STATE OF LOUISIANA

versus

LARRY EUGENE

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE FORTIETH JUDICIAL DISTRICT
COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 25,267, DIVISION "B"
HONORABLE NGHANA LEWIS, JUDGE PRESIDING

March 27, 2026

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Jude G. Gravois,
Stephen J. Windhorst, and Timothy S. Marcel

WRIT GRANTED; REMANDED

SJW
JGG
TSM

TRUE COPY



JALISA WALKER
DEPUTY CLERK

COUNSEL FOR DEFENDANT/RELATOR,
LARRY EUGENE

Barry S. Ranshi

Mark D. Plaisance

Marcus J. Plaisance

Fontella F. Baker

Remy V. Starns

WINDHORST, J.

Defendant/relator, Larry Eugene, seeks review of the trial court's denial of his motion to recuse. For the reasons stated herein, we grant this writ and remand with instructions that the trial judge order the Clerk of Court for the 40th JDC to randomly allot this case to another judge of the 40th JDC for hearing on defendant's motion to recuse pursuant to Louisiana Code of Criminal Procedure Articles 675 B.

FACTS and PROCEDURAL BACKGROUND

Defendant is charged in a two-count bill of information filed by the St. John the Baptist Parish District Attorney with committing aggravated flight from an officer in violation of Louisiana Revised Statute 14:108(C) (count one) and obstruction of justice in violation of Louisiana Revised Statute 14:130.1 (count two). It is alleged in the bill of information that the offenses occurred on June 27, 2025. The case was allotted to Division "B" of the 40th Judicial District Court. Exhibit D to defendant's writ application indicates that the arraignment hearing was scheduled for August 25, 2025.

On July 22, 2025, defense counsel filed a "Motion to Recuse Trial Judge [C.Cr.P. Art. 671 A(3) & (4), and 671 B]." In that motion, defense counsel stated that while in the private practice of law, the trial judge was retained by defendant's mother, Lorraine Sanders, a personal friend of the trial judge, to represent defendant in case 2014-CR-433 C, which, according to defendant, "resulted in a felony conviction."¹ She further stated that the court minutes from 2015 showed that the trial judge was present as counsel when defendant entered a guilty plea under La. C.Cr.P. art. 894, to misdemeanor theft under \$750 in violation of La. R.S. 14:67, after the State amended the bill of information. Defense counsel stated that defendant was sentenced to a six-month suspended sentence and probation for

¹ This was stated in defendant's motion to recuse twice, in paragraphs 1 & 5. As is shown by the minute entry exhibit, his two felony charges resulted in a single misdemeanor conviction, as a result of his plea deal.

twenty-four months, and that the State *nolle prossed* count one, monetary instrument abuse in violation of La. R.S. 14:72.2(A)(1).

Included in the motion is the allegation that the trial judge "...received confidential communications from the client, now defendant, concerning his social and criminal history, which cannot be expunged from memory and will likely impact the Trial Judge's handling of this case in a manner unfavorable to the defendant...." The motion also alleges that the trial judge will be unfavorably influenced against defendant based upon current or past friendship with defendant's family members. In paragraph 9 of the motion, citing Canon C of the Code of Judicial Conduct, defendant contends that the grounds set forth in his motion "...present a substantial and objective basis that would reasonably be expected to prevent the judge from conducting some aspect of the cause in a fair and impartial manner."

On July 24, 2025, the trial judge denied the motion to recuse and provided written reasons. She found that defendant's motion to recuse the trial judge alleged no facts within the provisions of La. C.Cr.P. art. 671, which constituted grounds for recusing the trial judge. She found that La. C.Cr.P. art. 671 A(3) did not apply because the trial court's prior representation of defendant was not in the instant case; rather, it was in a cause that was resolved over ten years ago. The trial judge stated that La. C.Cr.P. art. 671 A(4) did not apply because the trial judge is not, nor could she be, called as a witness to any aspect of the current proceeding or a habitual offender proceeding. She further noted that the minutes of 2014-CR-433 showed that defendant pled guilty to a misdemeanor, not to a felony offense. The trial judge maintained that although defendant asserted she was a personal friend of his family members, he provided no names or information on which he relied to make this conclusory claim.

In her written reasons, the trial judge also stated that until reviewing the motion to recuse and attached minutes, she had no independent recollection of having previously represented defendant over ten years ago when she was a practicing attorney. She asserted that she had practiced law for twelve years, represented thousands of persons, and filed thousands of pleadings.

The trial judge pointed out that she self-recused in the matter of State v. Errol Victor, 2010-CR-172, because she had previously represented Mr. Victor in that same case. She explained that in the instant case, unlike the Victor case, she never represented defendant in the instant cause. Further, the trial judge asserted that defendant's motion to recuse sets forth no basis in fact or law indicating that the trial court has a personal interest in the outcome of the case or is biased or prejudiced against defendant or the State. For the reasons stated, the trial judge denied the motion to recuse.

On July 28, 2025, at a probation or reduction of bond hearing, defense counsel brought up the motion to recuse. The trial judge reiterated her written reasons for denying the motion to recuse on the record. She also added that she could be fair and impartial. Afterward, on that same date, defense counsel filed a Notice of Intent to Seek a Writ and Request for Stay. The trial judge set a return date and denied the request for a stay. This timely writ application was filed.

In this writ application, defense counsel argues that the trial judge erred by refusing to recuse herself despite her prior representation of the defendant, that she is a potential witness, and an allegation that the trial judge is or has been personal friends with defendant's family. He contends that these constitute grounds under La. C.Cr.P. art. 671 A (3) & (4). Additionally, he contends that these circumstances amount to a substantial and objective basis that would reasonably be expected to prevent the judge from conducting any aspect of the cause in a fair and impartial manner under La. C.Cr.P. art. 671 B. He further argues that the trial judge erred by

refusing to refer the matter to another judge for hearing in violation of La. C.Cr.P. art. 674. We agree.

LAW and ANALYSIS

La. C.Cr.P. art. 674 B provides “If the motion to recuse sets forth facts constituting a ground for recusal under Article 671, ... the judge shall either recuse himself or refer the motion for hearing to another judge or to an ad hoc judge as provided in Article 675.” In deciding whether the judge whose recusal is sought must refer the motion to an *ad hoc* judge for hearing, the facts alleged by the mover as grounds for recusal must be taken as true. If the trial court finds that the grounds for recusal as alleged in the motion² are not valid, then the trial court can deny the motion without referring it to another judge. La. C.Cr.P. art. 674 C.

Defendant filed his motion to recuse the trial judge alleging grounds under La. C.Cr.P. art. 671 A(3) and (4), and La. C.Cr.P. art. 671 B, and argues in sum, that the trial judge should have recused herself because she previously represented defendant, that she could be called as a witness, and that she is or was friends with his family members.

The trial judge acknowledges that she represented defendant in a case ten years prior in which he pled guilty to a misdemeanor, but it was unrelated to the present case. La. C.Cr.P. art. 671 A(3) requires recusal of a judge who “has been employed or consulted as an attorney in the cause, or has been associated with an attorney during the latter’s employment in the cause.” By “the cause” is meant the proceeding(s) from which the judge’s recusal is sought. Here, the trial judge is not alleged to have represented defendant in “the cause,” *i.e.*, in this case. Thus, defendant has not stated a valid ground under this narrow provision.

² “[A]s alleged in the motion” is the statutory basis for the requirement that the factual allegations in the motion must be taken as true, but only for the purpose of deciding whether an *ad hoc* judge must be appointed.

In paragraph 4 of his motion, defendant further refers to the judge as a “potential witness” against him under La. C.Cr.P. art. 671 A(4), but he alleges no facts which realistically support this ground. Speculative allegations are insufficient to state a valid ground for recusal.

In addition to the grounds alleged under C.Cr.P. art. 671 A(3) & (4), defendant contends that the fact that the trial judge was his attorney in an *unrelated* criminal case, and other related circumstances, constitute grounds for mandatory recusal under La. C.Cr.P. art. 671 B, which provides:

B. In a criminal cause, a judge of any trial or appellate court shall also be recused when there exists a **substantial** and **objective basis** that would **reasonably be expected** to prevent the judge from conducting any aspect of the cause in a fair and impartial manner. [Emphasis added.]

It is clear from the entirety of La. C.Cr.P. art. 671 that the separate provisions of article 671 B create a distinct, additional ground for mandatory recusal. Article 671 B is independent of the several specific grounds enumerated in article 671 A, and requires an independent analysis to determine whether the facts alleged, if true, constitute a “substantial and objective basis that would reasonably be expected to prevent the judge from conducting any aspect of the cause in a fair and impartial manner.”

The operative language of La. C.Cr.P. art. 671 B is the same as that of its civil companion, La. C.C.P. art. 151 B. In Anderson v. Dean, 22-233 (La. App. 5 Cir. 7/25/22), 346 So.3d 356, this court conducted an analysis of the terminology of La. C.C.P. art. 151 B. “**Substantial**” means something of substance, material, real, and not imaginary. Black's Law Dictionary (11th ed. 2019). This may be understood as requiring the mover to support his motion to recuse with material evidence, and not mere allegations. “**Objective**” means something externally verifiable, as opposed to the feelings of one individual. “**Basis**” means some foundation or starting point on which something may rest. Anderson, 346 So.3d at 369.

Finally, the phrase “**reasonably expected**” recognizes that there may be substantial and objective bases claimed that a neutral observer would not expect to prevent the judge from trying the cause in a fair and impartial manner. Id.

Application of La. C.Cr.P. art. 671 B

In the context of La. C.Cr.P. art. 671B, what constitutes an “objective basis” is not limited to the grounds enumerated in article 671A. Otherwise, article 671B would serve no purpose. Nonetheless, any objective basis alleged pursuant to article 671 B, like the grounds in article 671 A, must be supported by specific allegations of fact. Mere conclusory or speculative allegations are insufficient. See State v. Galliano, 05-962 (La. App. 5 Cir. 8/29/06), 945 So.2d 701, 727-728, writ denied, 06-2367 (La. 4/27/07), 955 So.2d 682; State v. Gatewood, 12-281 (La. App. 5 Cir. 10/30/12), 103 So.3d 627, 637; State v. Davis, 00-1753 (La. App. 5 Cir. 4/24/01), 786 So.2d 834, 843, writ denied, 01-1467 (La. 4/26/02), 816 So.2d 846.

Recusal is required when, ***objectively*** speaking, “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.” [Emphasis added.] State v. Bartie, 20-1021 (La. 11/4/20), 303 So.3d 628, *citing* Rippo v. Baker, 580 U.S. 285, 287, 137 S.Ct. 905, 907, 197 L.Ed.2d 167 (2017); State v. LaCaze, 16-234 (La. 3/13/18), 239 So.3d 807, 813.

Although La. C.Cr.P. art. 671 B was specifically raised as a ground for recusal in the motion to recuse, and supported by factual allegations, the trial court did not address it in its reasons for denying the motion to recuse. While abuse of discretion is the applicable standard of review for the denial of a motion to recuse, we find the failure to apply article 671 B to be legal error requiring *de novo* review of the trial court’s ruling. See State v. Wells, 08-2262 (La. 7/6/10), 45 So.3d 577, 580–581; Avrie v. Washington, 23-563 (La. App. 3 Cir. 5/1/24), 388 So.3d 441, 451, writ denied, 24-696 (La. 10/1/24), 393 So.3d 867.

Determinations of whether the facts alleged in a motion to recuse facially state a “substantial and objective basis that would reasonably be expected to prevent the judge from conducting any aspect of the cause in a fair and impartial manner” are made on a case-by-case basis, and vary with the circumstances of each case. Applying Article 671 B to the contents of the motion to recuse filed in *this* case, we find that defendant has alleged facts on the face of the motion which could satisfy the standard for mandatory recusal under La. C.Cr.P. art. 671 B. The trial judge previously served as defendant’s defense attorney in a past criminal case in which he pled guilty to theft. Now, the trial judge has been assigned to preside over a new criminal case involving her former client. When the trial judge denied defendant’s motion, the trial judge had no recollection of the representation. However, defendant, the trial judge’s former client, is so concerned over the potential bias formed from that representation that he is seeking her recusal from this cause.

The cloak of privilege and confidentiality in an attorney-client relationship encourages the client to disclose information of a personal or private nature without fear of revelation. The client has a right to expect and be assured of confidentiality. The attorney-client privilege and the client’s expectation of confidentiality extends to the presiding judge, with whom privileged matters may not be shared without consent of the client. The privilege is not maintained if the attorney and the judge are the same person, even if not simultaneously. The fact that supports the “objective basis” here is that the attorney-client privilege existed.

While this cause is unrelated to the case in which defendant was represented by the trial judge, it is foreseeable that, should the defendant choose to testify in this cause, the trial court will be required to weigh the credibility of his testimony. This fact alone warrants that another judge determine if a substantial and objective basis exists that would reasonably be expected to prevent the trial judge in this case from conducting any aspect of this cause in a fair and impartial manner.

CONCLUSION

Considering the foregoing, we find that the trial judge erred by denying the motion to recuse and by not referring the motion to another judge. Accordingly, this writ application is granted, the denial of the motion to recuse is vacated, and the matter is remanded with instructions that the trial judge order the Clerk of Court for the 40th JDC to randomly allot this case to another judge of the 40th JDC for hearing on defendant's motion to recuse, pursuant to Louisiana Code of Criminal Procedure Articles 674 and 675 B.

WRIT GRANTED; REMANDED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **MARCH 27, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-K-394

E-NOTIFIED

40TH DISTRICT COURT (CLERK)

HONORABLE NGHANA LEWIS (DISTRICT JUDGE)

BRIDGET A. DINVAUT (RESPONDENT)

FONTELLA F. BAKER (RELATOR)

GEOFFREY M. MICHEL (RESPONDENT)

MARK D. PLAISANCE (RELATOR)

BARRY S. RANSHI (RELATOR)

MAILED

REMY V. STARNES (RELATOR)

ATTORNEY AT LAW

301 MAIN STREET

SUITE 700

BATON ROUGE, LA 70825

MARCUS J. PLAISANCE (RELATOR)

ATTORNEY AT LAW

POST OFFICE BOX 1123

PRAIRIEVILLE, LA 70769