

PRESENT: Engoron
J.S.C.SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORKPEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, Attorney General of the State of New
York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC
TRUMP, ALLEN WEISSELBERG, JEFFREY
MCCONNEY, THE DONALD J. TRUMP
REVOCABLE TRUST, THE TRUMP
ORGANIZATION, INC., TRUMP ORGANIZATION
LLC, DJT HOLDINGS LLC, DJT HOLDINGS
MANAGING MEMBER, TRUMP ENDEAVOR 12
LLC, 401 NORTH WABASH VENTURE LLC,
TRUMP OLD POST OFFICE LLC, 40 WALL STREET
LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022
Engoron, J.S.C.

ORDER TO SHOW CAUSE

MS #36

At I.A.S. Part 37 of the Supreme
Court of the State of New York, held in
and for the County of New York, at the
Courthouse located at 60 Centre Street,
New York, New York, on the 17
of November, 2023.

UPON reading and filing the annexed Affirmation of Clifford Robert, dated November 15, 2023 and the exhibits annexed thereto; the Affirmation of David Demarest, dated November 14, 2023 and the exhibits annexed thereto, and the Memorandum of Law in Support of a Mistrial, dated November 15, 2023; and upon all the pleadings and proceedings heretofore had herein, and sufficient cause having been shown,

LET Plaintiff People of the State of New York by Letitia James, Attorney General of the State of New York, by her attorneys, show cause before this Court on IAS Part 37, Room 418 of Supreme Court of the State of New York, County of New York, located at 60 Centre Street, New York, New York on the ____ day of ____ 2023, at ____ o'clock, or as soon thereafter as counsel may be heard, why an order should not be made and entered:

- (a) granting a mistrial pursuant to CPLR § 4402; and
- (b) granting such other and further relief as this Court deems just and proper.

Sufficient cause therefore appearing, it is

ORDERED that opposition papers, if any, are to be served on Defendants' counsel via e-filing on or before the ____ day of November 2023; and it is further

ORDERED that reply papers, if any, are to be served on Plaintiff's counsel via e-filing on or before the ____ day of November 2023; and it is further

ORDERED that service of a copy of this Order to Show Cause and the papers upon which it is based ^{upon Plaintiff} be made on or before November ____, 2023, by e-filing same shall be deemed good and sufficient service thereof.

Decline to sign for the reasons stated
in the order annexed hereto.

Ⓐ 11/17/2023

HON. ARTHUR F. ENGORON J.S.C. NOV 17 2023

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON

PART

37

Justice

-----X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP,
ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE
DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP
ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT
HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER,
TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH
VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40
WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

-----X

INDEX NO. 452564/2022
MOTION DATE 11/15/2023
MOTION SEQ. NO. 036

**ORDER DECLINING TO SIGN
DEFENDANTS' PROPOSED
ORDER TO SHOW CAUSE**

The following e-filed documents, listed by NYSCEF document number (Motion 036) 1633, 1634, 1635, 1636, 1637, 1638

were read on this application for

MISTRIAL

This Court declines to sign defendants' proposed order to show cause seeking permission to move, pursuant to CPLR 4402, for a mistrial.

CPLR 4402 provides that "[a]t any time during the trial, the court, on motion of any party, may order a continuance or a new trial in the interest of justice on such terms as may be just."

Defendants' supporting papers argue a mistrial is necessary because, essentially, the Court has exhibited bias: (1) directly, as I publish a high school alumni newsletter with links to articles referencing this case; and (2) indirectly, through my Principal Law Clerk, Allison Greenfield, whom they allege has violated 22 NYCRR 100.5(C)(2) by exceeding the permissible amount of political donations in a calendar year.

As an initial matter, to the extent that defendants' arguments rely on alleged "facts" based on editorial *opinions* that denounce plaintiff's case (NYSCEF Doc. No. 1634 at 4-5), such opinions are irrelevant and of no evidentiary value.

Equally irrelevant is the "expert affirmation" of yet another retired judge, David Demarest, who states that he was "retained as an expert" by defendants' counsel to opine on the legal basis for a mistrial. (NYSCEF Doc. No. 1635). As I explained in my September 26, 2023 Decision and

Order granting partial summary judgment, legal arguments are for counsel to make, and for judges to decide. Therefore, such expert affidavit is neither necessary nor permitted. “The rule prohibiting experts from providing their legal opinions or conclusions is ‘so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.’” *In re Initial Pub. Offering Sec. Litig.*, 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, *The Impropriety of Expert Witness Testimony on the Law*, 40 U Kan LRev 325, 352 (1992) (precluding “expert affidavits” on the law); accord, Note, *Expert Legal Testimony*, 97 Harv LRev 797, 797 (1984) (“it remains black-letter law that expert legal testimony is not permissible”). This Court has already cautioned defendants’ counsel against submitting “expert opinions” on purely legal issues. Moreover, as detailed herein, former Judge Demarest’s “expert opinion” incorrectly summarizes the relevant law and fails to address all applicable governing ethical guidelines.

Defendants correctly assert that 22 NYCRR 100.5(C)(2) generally limits to \$500 the political contributions that members of a judge’s staff may make annually. However, defendants, and their “legal expert,” fail to cite the applicable unambiguous ethical guidelines for *candidates for judicial office*, found in Judicial Ethics Opinion 98-19.¹ Since 2020, my Principal Law Clerk has been pursuing elected judicial office, as the governing ethical guidelines for New York State law clerks expressly contemplate and permit. *Id.* Indeed, Judicial Ethics Opinion 98-19 clearly states: “the \$500 limitation on political contributions does ‘not apply to an appointee’s contributions to his or her own campaign.’ Nor would there be such a monetary restriction on the purchasing of tickets to political functions.” *Id.*

When deducting the price of tickets to political functions that my Principal Law Clerk attended from all the contributions to which defendants cite, the remainder is still well below the ethical and legal permissible annual limit. Defendants further attempt to argue that since my Principal Law Clerk attended events sponsored by certain organizations, also legally and ethically permitted, each and every separate action and position by those organizations should be imputed to her, and by proxy, to me. Such arguments are nonsensical; and in any event, they are a red herring, as my Principal Law Clerk does not make rulings or issue orders – I do.

As I have explained on the record in open court, I have, pursuant to 22 NYCRR 100.3(B)(6)(c) and Advisory Opinion 07-04,² an absolute unfettered right to consult with my law clerks in any way, shape, or form I choose. 22 NYCRR 100.3(B)(6)(c) (“A judge may consult with court personnel whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities or with other judges”).

¹ Judicial Ethics Opinion 98-19, available at <https://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/98-19.htm>.

² “The relationship between a judge and his/her law clerk is one of particular trust and confidence. Although a judge and his/her law clerk are of course not ‘partners,’ the two engage in the kind of professional interchange that might be found between long-time colleagues in a law firm.” *Advisory Opinion 07-04*, available at <https://www.nycourts.gov/ip/judicialethicsopinions/07-04.htm>.

However, as I have made clear over the course of this trial, my rulings are mine, and mine alone. There is absolutely no “co-judging” at play. That I may consult on the trial record, the law, and the facts, before issuing any respective ruling is within my absolute discretion and is in no way evidence that the final decisions are anyone’s but mine. Accordingly, there is no factual or legal basis for a mistrial based on these allegations against my Principal Law Clerk.

To the extent defendants argue that I have exhibited bias by stating in Court that “I’m not here to hear what [Donald Trump] has to say,” such argument is disingenuous and made in bad faith, as defendants omitted what I said immediately after that sentence, which is “I’m here to hear him answer questions.” NYSCEF Doc. No. 1637 at 3510. Indeed, those are precisely the roles of the witness and the finder of fact.

Defendants also take issue with my publishing my high school alumni association newsletter, alleging that it was inappropriate to include links to articles referencing this case, as it creates an appearance of impropriety.

In 2007, I co-founded The Wheatley School Alumni Association³ and began publishing the Association Newsletter. All issues are free of charge, reach approximately 4,700 email addresses, and contain no advertising. They contain news about the school, its faculty, and primarily, its graduates. When an online publication mentions a graduate, including myself, I include an excerpt and/or a link, usually both. Consequently, I have been the subject of entries concerning this case due to its undeniable newsworthiness.

In fact, because of my job, I have been the subject of a fair amount of news coverage over approximately the past decade. However, I neither wrote nor contributed to any of the articles on which defendants focus, and no reasonable reader could possibly think otherwise.

Many years ago, a legal ethics lecturer told a group of jurists, of which I was one, that “judges do not lose their individual identities or personalities just because they are judges.” A significant part of my personality and identity is as a graduate of an institution that I admire, who has taken on the time-consuming but gratifying task of keeping its alumni connected and informed. None of this has anything to do with, much less does it interfere with, my presiding fairly, impartially, and professionally over the instant dispute, which I have now been doing for more than three years, and which I intend to do until its conclusion.

Plaintiff has advocated for a full briefing schedule, emphasizing that although it believes defendants’ motion is without merit, it also believes briefing would economize the timing and effects of any appeal. However, in good conscience, I cannot sign a proposed order to show cause that is utterly without merit, and upon which subsequent briefing would therefore be futile.

The Court has considered defendants’ remaining arguments, including, but not limited to defendants’ assertions that the Court’s evidentiary rulings are per se evidence of bias as they allege there are more rulings in favor of plaintiffs than defendants, and finds them to be similarly without merit and/or non-dispositive. I stand by each and every ruling, and they speak for

³ The Wheatley School, founded in 1956, is an esteemed public school in Old Westbury, New York.

themselves. Finally, as I have made abundantly clear, the basis for overruling objections to allegedly "time-barred evidence" is legally sound, as there is a statute of limitations on claims, not evidence.

Accordingly, this Court hereby declines to sign defendants' proposed order to show cause seeking permission to move, pursuant to CPLR 4402, for a mistrial.

NOV 17 2023 HON. ARTHUR F. ENGORON



11/17/2023

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

☐

OTHER

APPLICATION:

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SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE