

IN THE CIRCUIT COURT OF POPE COUNTY, ARKANSAS  
FIRST DIVISION

STATE OF ARKANSAS

PLAINTIFF

vs.

Case No. 58CR-22-485  
58 CR-21-495

CHRISTOPHER BEWLEY

DEFENDANT

**MOTION FOR RECUSAL**

In support, Defendant states:

1. This matter is currently before the Honorable Judge James Dunham, Counsel was retained recently in this matter and has substituted counsel. This matter is currently set for status hearing on March 14, 2023 at 1:00 p.m. For the foregoing reasons, Bewley is asking the Court for an evidentiary hearing in support of this recusal request.

**I. FACTS IN SUPPORT**

2. The Defendant was arrested on or about 5/9/2022 for Rape. For a significant amount of this time, Defendant was in custody at the Pope County Detention Center awaiting both a jury trial for the new charges and a revocation for a previous charge that he was serving on probation. Counsel took over representation and received what was identified as the discovery previously provided in this matter by the State.

3. In preparation for this hearing, Counsel was advised by Mr. Bewley that prior to his release that Judge Dunham would not release him unless “he provided his passcode to his phone,” which was previously seized by law enforcement pursuant to a search warrant. This warrant was signed by Judge Dunham. Bewley stated this conversation was had between Judge Dunham and his then attorney, in the presence of Prosecuting Attorney Jeff Phillips. His attorney

then advised him to turn the passcode over “or else he would not be released.” The Defendant agreed to the condition requested by Judge Dunham and his passcode was provided.

## II. LAW IN SUPPORT OF RECUSAL

4. Pursuant to Amendment 80, § 12 of the Arkansas Constitution, judges must refrain from participating in any case in which he or she might be interested. Further, judges must avoid all appearance of bias or impropriety; *Patterson v. R. T.*, 301 Ark. 400, 784 S.W.2d 777 (1990). Judges must disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, including but not limited to such circumstances as personal bias or prejudice or an economic interest in a party to the proceeding; Arkansas Code of Judicial Conduct, Canon 2.11 (A).

5. Both federal and state constitutions’ guarantee that due process of law requires not only those judicial proceedings be fair, but that they appear to be fair. *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437 (1927); *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 129 S.Ct. 2252 (2009). Additionally, Numerous cases support the proposition that the appearance of impropriety or bias mandates recusal. *Huffman v. Arkansas Judicial Discipline and Disability Com’n*, 344 Ark. 274, 42 S.W.3d 386 (2001) (judge must recuse when his participation creates the appearance of impropriety); *Patterson v. R.T.*, 301 Ark. 400, 784 S.W.2d 777 (holding trial court erred in refusing to recuse based on the appearance of bias when the court was a member of an advocacy group which took positions contrary to one party when coupled with conduct and comments during pretrial proceedings and at trial); *City of Jacksonville v. Venhaus*, 302 Ark. 204, 788 S.W.2d 478 (1990) (holding trial court erred in refusing to recuse based on the appearance of bias given the trial court's identification with some of groups that would receive funds from the court's order coupled with its comments during the hearing).

### III. ARGUMENT IN SUPPORT OF RECUSAL

6. Judge Dunham’s refusal to release the Defendant without agreeing to the condition that he provide his passcode to law enforcement is a violation of his constitutional rights, including his Fourth, Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution.

7. The conditions for release on a reasonable bond are whether the Defendant is a flight risk and/or that his release will likely result in new charges or harm to others. The Court has no authority to condition someone’s release based upon them providing potential evidence against their interest as a condition. Here, the Court demanded that the Defendant provide his passcode or face further confinement. This is not a “condition of release” that the Court is authorized to demand. It is apparent that the judicial proceedings to this point have not been “fair,” nor do they appear to be fair under the circumstances.

### V. CONCLUSION

Bewley is entitled to an evidentiary hearing on this motion. After a hearing on this motion, Bewley prays that this motion be granted and that the Court recuse from in this matter.

WHEREFORE, the Defendant prays that his Motion for Recusal of Judge be granted; and for all other proper relief to which he is entitled.

Respectfully submitted,

/s/ Patrick Benca \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was sent to the Prosecuting Attorney on March 14, 2023, via fax.

/s/ Patrick Benca \_\_\_\_\_  
PATRICK J. BENCA