

January 30, 2015

Judge John Adams
John F. Seiberling Federal Building and U.S. Courthouse
Two South Main Street, Room 510, Akron, Ohio 44308

Judge Adams,

It has been obvious to many in this community that you have repeatedly demonstrated your personal negative bias towards me, and more significantly the City of Akron, for more than a decade. While you have a right to your personal opinions of my continuous efforts to improve this City, your actions have hurt the citizens of Akron for too long – from imposing additional and extraordinary costs on our citizens to endangering the actual safety of our firefighters and residents. Therefore, on behalf of the nearly 200,000 citizens I represent, I am calling on you to recuse yourself from making any decisions or hearing any case in which the City of Akron is a party.

In the *Howe* case, your actions on the bench *led* the jury to find against the City of Akron. Attorneys described your demeanor as “searing judicial temperament against the City.” You continuously used inflections in your voice and negative facial expressions to portray to the jury your obvious disdain for the City as we defended against the Plaintiffs’ unwarranted claims. (It is interesting to note that the certified professional test provider has *never* been successfully sued anywhere else in this country, and continues to receive high praise for his professional testing in Cleveland and many other cities.)

But worse than you leading the jury, your continued meddling in the fire department has prevented legitimate promotions through additional tests, resulting in your remedy of promoting without additional civil service tests which is contrary to our own Charter. When we finally reached an Agreement, and after *your* court-appointed monitor favorably ruled, you still continue to delay the decision that is vital to the safety of our firefighters and our citizens.

The single most startling result, and evidence of the irrationality of the remedy you have imposed on the Akron Fire Department, is that you ordered white firefighters *who have not passed a test* to be promoted over other white and African American *firefighters who did pass the promotional test*. I can’t imagine that this could happen anywhere else in the country in the name of justice.

In the EPA/CSO case, you elected to ignore a joint settlement that was fairly reached between the parties, and opted instead to over-reach, in a decision that is not only harsh, but completely inconsistent with similar cases in cities around the country. You attacked my affidavit *on the record* that the “tenor” of my “declaration . . . demonstrates how unlikely it will be that an agreement will ever be reached . . .” This is evidence of your negative bias against me, and also demonstrates that you were absolutely wrong. Agreements have been reached *two times* under my direction - the first, when I *personally* reached an Agreement with Ohio EPA Director Chris Jones in 2002, and again with the U.S. EPA in 2009 (the Joint Agreement on our Long Term Control Plan that *you* rejected.) By rejecting one of the *most stringent* Long Term

Control Plans in the country, and demanding levels of attainment unheard of in any other community, your bias against the City was made obvious. Your callous disregard of the people of Akron will cost rate-payers *millions* of additional dollars.

It is a fact that when I became Mayor in 1987, I inherited a sewer system that had way over 100 violations the previous year. Under my direction and before even being sued, the City spent over \$200 million dollars to improve its sewer system, including millions of dollars on engineering studies of the sewer system and the receiving streams to meet EPA requirements, and upgrades to Akron's wastewater treatment plant. Since our investment, we have received top awards for having zero (0) violations in 2005, 2006, and 2012. Yet, contrary to the evidence, you inappropriately continue to complain that I am the one preventing a sensible resolution from being reached in this case.

Also, you outwardly criticized me for taking trips to Washington D.C. to meet with officials of the Department of Justice and U.S. E.P.A – travels I took to move this case forward and to reach an agreeable conclusion. You have criticized, rejected, and contradicted my statement that the City will have to hike fees or taxes to fund the sewer project. Instead, you state *your opinion that you believe* that there are other methods for paying for the improvements. One comment you made on the record is outrageous. You said the City should “use grants or loans” to pay for the improvements. This completely ignores the well known fact that Congress eliminated grant funding for water infrastructure in 1987, and eliminated earmarks several years ago. And, before a city can take out loans, it has to have the revenue sources to repay the loans. A loan is not a revenue source, and the City cannot foot the enormous bill based on your misguided beliefs. You have no legal or factual basis to interject your personal thoughts about how to run a municipality based solely on your opinion of the City's finances. It is a fact that virtually every city, with very few exceptions, has had to raise sewer fees to almost unconscionable levels (especially for lower and middle income residents).

Also, you continue to wrongfully believe, and portray to our community, that the City's overflows are the major source of contaminant of our waterways. Every single study shows that over 80% of the contamination of our waterways *nationwide* is from non-point sources, run off from agriculture, highways, and other non-specific locations. The Cuyahoga River is contaminated from those run-offs before it enters Akron and, even if Akron completes your mandated, overly expensive Long Term Control Plan, which is the most stringent in the country, the river will still not come even close to meeting water quality standards.

Since 1979, when I was first appointed to the Energy, Environment and Natural Resources Steering Committee of the National League of Cities, I have worked with environmental and engineering groups studying this exact issue. Akron began addressing the CSO issue early – even before the rules were first published by the EPA.

You also have interjected yourself in City business that is non-case related and more properly handled by others that are experts, specifically the General Services Administration (GSA). Approximately eight years ago, as the City attempted to create more jobs by building a parking deck for one of our largest employers, FirstEnergy, on a piece of property that has been for sale since before I was in high school, you intervened personally – despite assurances from

the GSA that a 10 ft concrete wall between the proposed deck and the federal building *would be much safer* than the existing open parking lot. You led an effort to convince our citizens that I did not care about their safety.

Worse, you were clearly outside of normal judicial conduct when you approached the Akron Bar Association on at least two occasions to badger local attorneys (including some who regularly appear before you) to try and stop the parking deck and new office building which was ultimately proposed to be built on top of the deck. While the Bar Association did not respond to your pressure – the delays caused by your unethical personal intervention resulted in Akron losing over 200 jobs to Jacksonville, Florida. We need all the jobs we can keep and attract -- those taxes pay for needed services for *all* of us.

When I met with at least four other federal judges who seemed very sincere about reaching a consensus, there was an agreement for an end-of-the-year deadline for a safe development plan to be approved by GSA and federal judges --- and you said nothing in that meeting. Yet, you have managed still, to this day, to delay any development on this valuable site.

Your bias towards me *personally* was evident on occasions when you were trying to please the Summit County chair of the Republican party. During a meeting in your office, while you were Common Pleas Judge, you tried to persuade a top law enforcement official to go after me and my wife because you thought I influenced someone to give my wife a job at the Oriana House. That job paid only \$19,000/year, and one she sought *on her own* after attending classes at the University of Akron and receiving her first level certification for drug and alcohol counseling. The job entitled her to do the mundane - cleaning soiled bed sheets of patients; and the meaningful – helping people with addictions.

You need to remove yourself from these cases now. Nobody benefits when everyone (the parties, the media, the public, and citizens) believe that there is bias, prejudice, unfairness, or unreasonableness with respect to court decisions – and you have displayed all of the above. You have created an atmosphere where nobody believes that you are ruling on these cases based on the law, but rather, on your obvious bias towards me and the City.

Should it become necessary, I will direct an attorney to file a motion on the record requesting your recusal.

Sincerely,



Donald L. Plusquellic