

CAUSE NO. 199-596-97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

199TH JUDICIAL DISTRICT

**MOTION FOR DISQUALIFICATION**

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Article 5, Section 11 of the Texas Constitution, Evan Brown respectfully files this Motion for Disqualification of Judge Roach and, in support thereof, shows as follows.

**FACTS**

At the outset, Brown acknowledges that this Court instructed counsel for DSC to inform Brown that the Court owned stock in DSC. Brown acknowledges that DSC informed him of the Court's ownership and that the Court subsequently confirmed that fact at the hearing held on Brown's motion for protective order. Brown also acknowledges that he agreed that the Court could hear this case despite such ownership. However, as is often the case in accelerated proceedings where counsel does not have time to research all issues before the fact, subsequent research on this issue has revealed that the Court's ownership of stock in DSC disqualifies the Court from hearing any matter in the case and further makes all orders entered by the Court void. Further, the parties cannot waive the disqualification or cure the Court's lack of jurisdiction by agreement.

Disqualification is jurisdictional without regard to the fairness of the Court relating to the issues already determined or to be determined. If Brown did not bring this issue to the Court's attention at this time, the parties could waste additional time and effort with the prospect of the entirety of the proceedings being declared void. For this reason, Brown files the present motion to bring this matter to the Court's attention.

**I.**  
**Grounds for Constitutional Disqualification.**

The Texas Constitution sets forth three separate grounds for disqualification of trial judges:

No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when he shall have been counseled in the case.

TEX. CONST. Art. 5, § 11. Texas Rule of Civil Procedure 18(b)(1) more clearly defines the basis for constitutional disqualification of judges. Rule 18(b)(1)(b), which is pertinent here, states that: "Judges shall disqualify themselves from all proceedings in which ... they know that, individually or as a fiduciary, they have an interest in the subject matter in controversy." Although Texas Rule of Civil Procedure 18(a) provides that a motion for recusal or disqualification shall be filed at least ten days before the hearing, when the motion for disqualification is on constitutional grounds, it may be raised at any time. *McElwee v. McElwee*, 911 S.W.2d 182 (Tex. App.--Houston [1st Dist.] 1995, writ denied). Constitutional disqualification may be raised either before or after a judge's action and cannot be waived. *Sun Exploration & Production Co. v. Jackson*, 729 S.W.2d 310 (Tex. App.--Houston [1st Dist.] 1987, no writ). If a judge is, in fact, disqualified under the state constitution, he is without jurisdiction to hear the case, and therefore, any judgment or orders he enters are void as

a nullity. *McElwee*, 911 S.W.2d at 182; *Blanchard v. Kruger* (Tex. App.--Houston [1st Dist.] 1995, no writ).

## II.

### **Stock Ownership is Financial Interest Necessitating Disqualification.**

Disqualification of a judge is mandatory under state constitution if he has a direct interest, however small, in the result of the case presented. *Chastaine v. State*, 667 S.W.2d 791 (Tex. App.--Houston [14th Dist.] 1983, writ ref'd n.r.e.). Once pecuniary interest is shown to exist, the judge is constitutionally disqualified no matter how slight the interest. *Gulf Maritime Warehouse Co. v. Towers*, 858 S.W.2d 556 (Tex. App.--Beaumont 1993, writ denied). Where a doubt exists as to a judge's interest, that doubt should be resolved in favor of disqualification. *Id* at 559.

In *Gulf Maritime Warehouse Co. v. Towers*, the Beaumont Court of Appeals disqualified a trial judge because the judge's wife owned a 401K plan which owned stock in a party to the case. The *Gulf Maritime Warehouse Co.* case is merely an extension of a long-existing rule that when a judge is a stockholder in a corporation, he is constitutionally disqualified to sit in a trial where the corporation is a party. *See Tempelton v. Giddings*, 12 S.W. 851, 852 (Tex. 1889); *Pahl v. Whitt*, 304 S.W.2d 250, 252 (Tex. Civ. App.--El Paso 1957, no writ); *Salvern Camp, Woodman of the World v. Hale*, 120 S.W. 539, 540 (Tex. Civ. App.--Houston [1st Dist.] 1909, no writ); *Kilgurlin, Disqualification and Recusal of Judges*, 17 ST. MARY'S LJ 599, 625 (1986).

Although not controlling in this case, it should be noted that a judge's ownership of stock in a party in federal court is a ground for disqualification. 28 U.S.C.A. § 455(d)(4); *See Gladhill v. General Motors Corp.*, 743 F.2d 1049, 1051 (4th Cir. 1984). Further, stockholders of a party are disqualified to act as jurors in a Texas case. *Texas Power & Light v. Adams*, 404 S.W.2d 930, 943

(Tex. Civ. App.--Tyler 1966, no writ); *See* Tex. Govt. Code Ann. § 62.105(2) (Vernon Supp. 1996).

If the interest is sufficient to disqualify a juror, it is sufficient to constitute an interest, however small, of the judge which would require disqualification.

**III.  
Conclusion**

As noted on the court's docket sheet, the Court owns stock in DSC. (See the Court's Docket Sheet, on file herein). The Court's ownership of DSC stock is the type of direct financial interest in a case that requires disqualification of the Court. Further, the Court's orders up to this point are void. The Texas Constitution requires the Court to disqualify himself.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that a hearing be set on this motion and that the Court rule according to the Texas Constitution.

Respectfully submitted,



---

**STEVEN E. ALDOUS**  
State Bar No. 00982100  
**ERIC D. PEARSON**  
State Bar No. 15690472  
**SAYLES & LIDJI, P.C.**  
1201 Elm Street  
4400 Renaissance Tower  
Dallas, Texas 75270  
(214) 939-8700  
Fax: (214) 939-8787


ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause in accordance with Rule 21a, Texas Rules of Civil Procedure, on this 15th day of May, 1997.

John Stooksberry, Esq.  
Boyd Veigel  
P.O. Box 1179  
McKinney, Texas 75070

Eric W. Pinker, Esq.  
Lynn Stodghill Melsheimer & Tillotson, L.L.P.  
750 N. St. Paul Street  
Suite 1400  
Dallas, Texas 75201



---

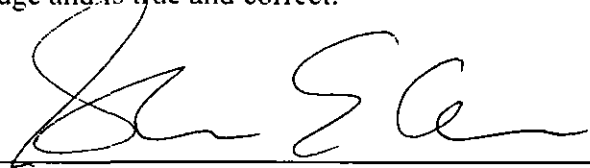
STEVEN E. ALDOUS

STATE OF TEXAS

§  
§  
§

COUNTY OF COLLIN

BEFORE ME, the undersigned authority, on this day personally appeared STEVEN E. ALDOUS, who being duly sworn by me, upon his oath stated that the facts contained in Motion for Disqualification is within his personal knowledge and is true and correct.

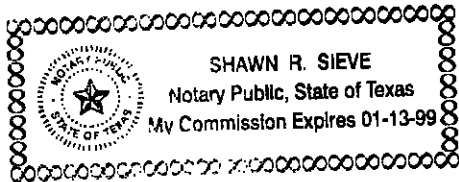


STEVEN E. ALDOUS

SUBSCRIBED AND SWORN TO BEFORE ME on this the 15th day of May, 1997, to certify which witness my hand and official seal of office.



Notary Public in and for  
the State of Texas



HANNAH KUNKLE  
 DISTRICT CLERK - COLLIN COUNTY  
 P. O. BOX 578  
 MCKINNEY, TEXAS 75069  
 FAX NO. (972) 548-4697

Att: E. PEARSON

TO: S Aldous  
Sayles & Lidji

DATE: 5-16-97

CAUSE NO. 199.596.97

STYLE: DSC

FAX NO. 214.939.8787

Evans Brown

( ) DOCUMENTS TRANSMITTED VIA FAX HAVE BEEN RECEIVED AND ACCEPTED FOR FILING IN THE CAUSE NUMBER AND COURT INDICATED ABOVE AND AS PER YOUR INSTRUCTIONS:

( ) Citation issued and delivered to \_\_\_\_\_

( ) Other writ issued and delivered to \_\_\_\_\_

Other: 1<sup>st</sup> page Filed Marked

( ) WE ARE UNABLE TO ACCEPT FOR FILING THE DOCUMENTS TRANSMITTED DUE TO:

( ) Incomplete transmission

( ) No charge authorization given for court costs, etc.

( ) Sender not identified

( ) Other: \_\_\_\_\_

\* IF ALL PAGES ARE NOT RECEIVED, PLEASE CALL (972) 424-1460 EXT. 4312 OR (972) 548-4312

COST RECEIPT

NO. 140274

PURSUANT TO YOUR REQUEST FOR FILING VIA FAX AND SIGNED AUTHORIZATION FOR CHARGES, A TOTAL COST OF \$ 1.00 HAS BEEN CHARGED TO YOUR:

( ) ESCROW ACCOUNT AS FOLLOWS:

Court Cost \$ \_\_\_\_\_  
 Fax Fee \$ \_\_\_\_\_  
 Fax Copy Fee \$ 1.00  
 (@ \$1 per page)  
 TOTAL \$ 1.00

HANNAH KUNKLE  
 DISTRICT CLERK  
 COLLIN COUNTY, TEXAS

BY [Signature]  
 Deputy

CAUSE NO. 199-596-97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

199TH JUDICIAL DISTRICT

MOTION FOR DISQUALIFICATION

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Article 5, Section 11 of the Texas Constitution, Evan Brown respectfully files this Motion for Disqualification of Judge Roach and, in support thereof, shows as follows.

**FACTS**

At the outset, Brown acknowledges that this Court instructed counsel for DSC to inform Brown that the Court owned stock in DSC. Brown acknowledges that DSC informed him of the Court's ownership and that the Court subsequently confirmed that fact at the hearing held on Brown's motion for protective order. Brown also acknowledges that he agreed that the Court could hear this case despite such ownership. However, as is often the case in accelerated proceedings where counsel does not have time to research all issues before the fact, subsequent research on this issue has revealed that the Court's ownership of stock in DSC disqualifies the Court from hearing any matter in the case and further makes all orders entered by the Court void. Further, the parties cannot waive the disqualification or cure the Court's lack of jurisdiction by agreement.

**FILED**  
1997 MAY 16 AM 9:13  
DISTRICT COURT  
COLLIN COUNTY, TEXAS  
BY *Mehmet* DEPUTY