

IN THE

SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

KELLY MATHIS,

Respondent.

Case No. SC16-2186

Lower Tribunal No(s): 5D14-492
2013-CF-695AA

**MOTION FOR DISQUALIFICATION OF THE HONORABLE RICKY
POLSTON**

The Respondent, KELLY MATHIS, by and through undersigned counsel, moves for the disqualification of the Honorable Ricky Polston from this case, and alleges:

1. On December 6, 2016, the State filed a notice to invoke the discretionary jurisdiction of the Florida Supreme Court. The State is seeking review of the Fifth District Court of Appeal's decision reversing Mr. Mathis' convictions for allegedly participating in a gambling enterprise. *See Mathis v. State*, 41 Fla. L. Weekly D2333 (Fla. 5th DCA Oct. 14, 2016).

2. The investigation in this case was lead by Captain James "Sammy" Gibson of the Seminole County Sheriff's Department. To obtain a search warrant

for Mr. Mathis' law firm, which provided legal representation to those who were the targets of the investigation, Captain Gibson prepared an extremely lengthy search warrant affidavit purportedly identifying a massive gambling enterprise known as Allied Veterans. Captain Gibson and/or the Office of the Statewide Prosecutor sought to have the search warrant issued by a justice of the Florida Supreme Court.

3. On March 5, 2013, then Chief Justice Polston signed a search warrant for Mr. Mathis' law firm.

4. In his appellate practice treatise, former Judge Philip J. Padovano states the following:

It would be appropriate to file a motion to disqualify an appellate judge for any reason that would also serve as a ground for voluntary disqualification under the Code of Judicial Conduct. Canon 3E of the Code lists the circumstances in which both trial and appellate judges should disqualify themselves. The material part of the rule is quoted below:

E. Disqualification

(1) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

. . . .

(b) *the judge served as a lawyer or was the lower court judge in the matter in controversy*, or a lawyer with whom the judge previously practiced law served during

such association as a lawyer concerning the matter, or the judge has been a material witness concerning it

Philip J. Padovano, *Florida Appellate Practice* § 7.4 at pgs. 154-55 (2017 ed.) (emphasis added). By signing the search warrant in this case, Justice Polston was one of the “lower court judges in the matter in controversy.” Pursuant to former Judge Padovano’s treatise, it is therefore “appropriate to file a motion to disqualify” Justice Polston in this case.

5. Mr. Mathis’ affidavit is included in the appendix to this motion and the facts contained in the affidavit are incorporated by reference. The facts alleged in the affidavit would place a reasonably prudent person in fear that Justice Polston could not be fair and impartial after having been exposed to the statements set forth in the search warrant affidavit.

WHEREFORE, for the reasons set forth above, Mr. Mathis requests that Justice Polston disqualify himself from this case.

CERTIFICATE OF GOOD FAITH

Undersigned counsel certify that this motion is made in good faith.

/s/ Michael Ufferman

MICHAEL UFFERMAN

Michael Ufferman Law Firm, P.A.

2022-1 Raymond Diehl Road

Tallahassee, Florida 32308

(850) 386-2345/fax (850) 224-2340

FL Bar No. 114227

Email: ufferman@uffermanlaw.com

/s/ Peter D. Webster

PETER D. WEBSTER

Carlton Fields Jordan Burt, P.A.

215 South Monroe Street, Suite 500

Tallahassee, Florida 32301

(850) 224-1585/fax (850) 222-0398

FL Bar No. 185180

Email: pwebster@carltonfields.com

Counsel for Respondent **MATHIS**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this motion and the appendix have been furnished
to:

The Honorable Ricky Polston
The Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399-6556
Email: adkinst@flcourts.org

Assistant Attorney General Diana K. Bock
3507 East Frontage Road, Suite 350
Tampa, Florida 33607
Email: crimappdab@myfloridalegal.com
Diana.Bock@myfloridalegal.com

by email delivery this 16th day of December, 2016.

Respectfully submitted,

/s/ Michael Ufferman
MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

/s/ Peter D. Webster
PETER D. WEBSTER
Carlton Fields Jorden Burt, P.A.
215 South Monroe Street, Suite 500
Tallahassee, Florida 32301
(850) 224-1585/fax (850) 222-0398
FL Bar No. 185180
Email: pwebster@carltonfields.com

Counsel for Respondent **MATHIS**