

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

Case No. SC16-2186

Lower Case No. 5D14-492

KELLY MATHIS,

Respondent.

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR  
DISQUALIFICATION OF THE HONORABLE RICKY POLSTON

COMES NOW Petitioner, STATE OF FLORIDA, by and through the undersigned Assistant Attorney General, and responds to Respondent's Motion For Disqualification Of The Honorable Ricky Polston, and in furtherance of same would state:

1. Respondent's Motion is legally insufficient;
2. Respondent cites as his sole basis to disqualify the Honorable Ricky Polston the fact that Justice Polston issued a search warrant presented by the Office of Statewide Prosecution for the purposes of searching for evidence at the law firm of Respondent during an on-going criminal investigation pursuant to his authority as a committing magistrate under Art. Five, Sec. 19 of the *Florida Constitution*.

3. This Honorable Court has "repeatedly held that a motion to disqualify a judge 'must be well-founded and contain facts germane to the judge's undue bias, prejudice, or sympathy.'" *Rivera v. State*, 717 So.2d 477, 480-481 (Fla. 1998), citing

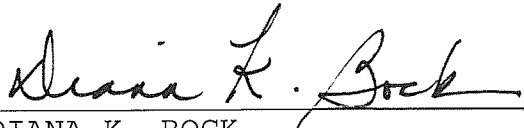
*Jackson v. State*, 599 So.2d 103, 107 (Fla. 1992); *Gilliam v. State*, 582 So.2d 610, 611 (Fla. 1991); *Dragovich v. State*, 492 So.2d 350, 352 (Fla. 1986). Even beyond the mere issuance of a search warrant, this Court found:

The fact that the judge has made adverse rulings in past against the defendant, or that the judge has previously heard the evidence, or "allegations that the trial judge had formed a fixed opinion of the defendant's guilt, even where it is alleged that [t]he judge discussed his opinion with others," are generally considered legally insufficient reasons to warrant the judge's disqualification.

*Jackson*, 599 So.2d at 107. In the instant case there is no allegation that Justice Polston did anything more than sign a search warrant within the scope of his judicial duties as a Justice of the Florida Supreme Court; as such Respondent's Motion is facially insufficient, failing to provide a legally cognizable basis for disqualification.

4. Absent additional circumstances Respondent's Motion is facially insufficient and should be denied. See generally *Cano v. State*, 884 So.2d 131 (Fla. 2<sup>nd</sup> DCA 2004); *Eubanks v. Gerwen*, 720 So.2d 1164 (Fla. 4<sup>th</sup> DCA 1998).

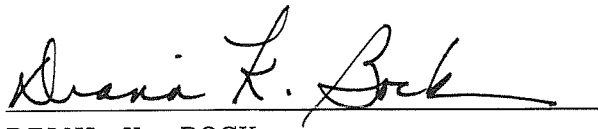
Respectfully submitted,  
PAMELA JO BONDI  
ATTORNEY GENERAL

  
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DIANA K. BOCK  
ASSISTANT ATTORNEY GENERAL  
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COUNSEL FOR PETITIONER

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a true and correct copy of the foregoing Response to Respondent's Motion For Disqualification Of The Honorable Ricky Polston was electronically filed through the eDCA on this 19<sup>th</sup> day of December, 2016, and a copy of same has been served by e-mail transmission upon: Attorneys for Respondent, Peter D. Webster, Esq., Carlton Fields Jordan Burt, P.A., P.O. Drawer 190, Tallahassee, Florida 32302 at pwebster@cfjblaw.com and Michael Ufferman, Esq., Michael Ufferman Law Firm, P.A., 2022-1 Raymond Diehl Road, Tallahassee, Florida 32308 at ufferman@uffermanlaw.com.

A handwritten signature in black ink, reading "Diana K. Bock", is written over a horizontal line.

DIANA K. BOCK  
ASSISTANT ATTORNEY GENERAL