

BEFORE THE FLORIDA  
JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE,  
THE HONORABLE MARNI A. BRYSON  
JQC NO 2019-351

No. SC 21-546

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**MOTION TO DISQUALIFY HEARING PANEL**

Pursuant to Rule 25 of the Florida Judicial Qualifications Commission Rules ("FJQCR"), Judge Marni Bryson respectfully submits this Motion to Disqualify the Hearing Panel and requests that the Executive Director of the Commission follow the procedure set forth in FJQCR 25(b) the object of which is to create a new panel not constituted of present or former JQC members. In support, Judge Bryson swears to the facts stated in the motion as required by Rule 25(a), FJQCR. The motion is timely made.

**Standard for Disqualification**

In order to justify disqualification under the Commission's rules, Judge Bryson need only allege facts that would place a reasonably prudent person in fear of not receiving a fair or impartial hearing. Rule 25(a)(1), FJQCR.

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The only legal and factual inquiry into disqualification is whether the facts are legally sufficient to create a reasonable fear of not receiving a fair and impartial hearing. Because the facts alleged by Judge Bryson are legally sufficient to create such a fear, the motion must be granted. *See Livingston v. State*, 441 So. 2d 1083 (Fla. 1981)(the question of disqualification focuses on those matters from which a litigant may reasonably question impartiality rather than the actual ability to act fairly and impartially).<sup>1</sup>

A fair and impartial Hearing Panel is an essential component of due process, to which a judge is entitled in JQC proceedings. Due process requires that the hearing be untainted by even the shadow of bias.

#### Relevant Facts and Procedure

On April 14, 2021 the Investigative Panel filed formal charges against Judge Bryson. Count 5 of the formal charges alleges that Judge Bryson failed to properly notify the Chief Judge of absences or keep adequate records of her leave between 2016 and 2019.

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<sup>1</sup> Similarly, the Canon 3E of the Florida Code of Judicial Conduct requires that judges disqualify themselves whenever their impartiality may “reasonably” be questioned.

The allegation puts the credibility of the Chief Judge of the 15<sup>th</sup> Judicial Circuit at issue. The Chief Judge, Krista Marx, is also a member of the JQC, was the Commission's Chair for the last several years, until recently, and has close personal and professional relationships with members of the Hearing Panel.

Judge Marx will be called as a witness at the hearing. Accordingly, her credibility will be at issue with respect to Count 5 of the formal charges and with regards to the other counts, as well.<sup>2</sup> The Hearing Panel, if not disqualified, will be forced into the untenable position of making substantive credibility findings with regards to another member of the JQC, who is also the Commission's former Chair and a friend of some of its members.

During the course of the investigation, Judge Bryson submitted to the Investigative Panel written evidence addressing the credibility of Judge Marx. Judge Bryson intends to examine Judge Marx and submit that evidence, and other evidence that bears on Judge Marx's credibility, at the Hearing. The evidence is a written statement of

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<sup>2</sup> For example, with respect to Counts 1-3, Judge Marx will be questioned about the specific circumstances of number of felony trials that Judge Bryson voluntarily handled for Judge Marx during the time period she is alleged to have not devoted full time to her judicial duties. Her credibility as to the circumstances surrounding that voluntary work will be at issue.

Judge Marx made during her overlapping tenure as Chair of the JQC and Chief Judge of the 15<sup>th</sup> Judicial Circuit<sup>3</sup>.

Judge Bryson has denied the allegations in each count of the charges, making an assessment by the Hearing Panel of Judge Marx's credibility relevant and potentially dispositive. Judge Bryson has a well-founded and reasonable fear that the Hearing Panel would automatically credit the testimony of their colleague or hesitate to make a finding that calls the credibility of another Commission member.

**DISQUALIFICATION OF THE ENTIRE HEARING PANEL IS  
REQUIRED AS A MATTER OF LAW**

The members of the JQC are professional colleagues who often travel and dine together. Upon information and belief, some have visited Judge Marx's home. However, even members of the Panel who do not enjoy a close personal friendship with Judge Marx must recuse or be disqualified as a matter of law.

Hearing Panel members cannot reasonably appear to be able to impartially assess the credibility of their fellow Commission member

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<sup>3</sup> The evidence is not being filed herewith, but can be made available, under seal, or as otherwise directed by the Hearing Panel.

and former Chair, whether or not she is considered a personal friend of an individual member. Importantly, whether or not individual members of the Panel believe they could be impartial is not a relevant factor. The focus is entirely on the reasonable belief of the Respondent. Disqualification is required as long as Judge Bryson has a reasonable fear of partiality or bias, even if there is in fact no partiality or bias. *The Law offices of Herssein and Herssein, P.A. v. United Automobile Services Association*, 229 So 3d 408 (3d DCA, 2017) (“Our review of the facts focuses on the ‘reasonable effect on the party seeking disqualification, not the subjective intent of the judge’”), *affirmed*, 271 So 3d 889 (Fla. 2018).

Moreover, the Panel and each of its members always have the affirmative obligation to assiduously avoid even the appearance of impropriety, regardless of their subjective intent to act impartially. *Goines v. State*, 708 So. 2d 656, 661 (Fla. 4th DCA 1998) (“The judicial system fails to present a plausible basis for respect when a judge’s impartiality can reasonably be questioned”).

Though the JQC’s own rules do not set forth the precise types of circumstances, connections or relationships that require recusal

or disqualification of a Hearing Panel member, the 4<sup>th</sup> District Court of Appeal has provided useful guidance as to judges:

The primary evil in having a judge whose impartiality might reasonably be questioned is not in the actual results of that judge's decision making. Rather, it is the intolerable appearance of unfairness that such a circumstance imposes on the system of justice. Public acceptance of judicial decision making turns on popular trust in judges as neutral magistrates. The judicial system fails to present a plausible basis for respect when a judge's impartiality can reasonably be questioned.

*Goines v. State*, 708 So. 2d 656, 661 (Fla. 4th DCA 1998). As the United States Supreme Court held, "justice must satisfy the appearance of justice." *In re Murchison*, 349 U.S. 133, 136 (1955). See also, Florida Judicial Canon 3E.

Here, because the role of a Hearing Panel is one of fact-finder, a Panel member is more analogous to a juror (or a judge in a bench trial) than to a judge presiding over a jury trial who has a relationship with one of the lawyers. Accordingly, the standards for recusal and disqualification must be even more strict than for a judge not sitting as a fact-finder. See, *Hill v. State*, 477 So.2d 553 (Fla. 1985), cert. denied, 485 U.S. 993, 108 S.Ct. 1302, 99 L.Ed.2d 512 (1988) ("If there is any basis for any reasonable doubt as to any juror's possessing

that state of mind that will enable him to render an impartial verdict . . . he should be excused ....”), quoting *Singer v. State*, 109 So.2d 7 (Fla 1959).

A JQC proceeding must at all times afford the Respondent the fundamental right to due process of law. *See In re Inquiry Concerning a Judge*, J.Q.C. No. 77-16, 357 So. 2d 172 (Fla. 1978).

Due process not only requires a fair hearing, it requires the “appearance” of fairness and impartiality. *In re Murchison*, 349 U.S. 133 (1955). A Hearing Panel cannot bear the appearance of fairness and impartiality if its members have a long standing professional and/or personal relationship with a material witness whose credibility may be dispositive of one or more formal charges, or where the outcome of the Panel’s credibility finding impacts the reputation of another Commission member, a former Chair and even the Commission itself. It would appear to a reasonable person that in such circumstances the Panel members would be incentivized to make findings that would protect the reputation of the other Commission member and the reputation of the Commission itself.

**MAYANNE DOWNS HAS A CLOSE PERSONAL FRIENDSHIP WITH  
A MATERIAL WITNESS THAT REQUIRES RECUSAL OR  
DISQUALIFICATION**

In addition to the grounds set forth above for disqualification or recusal of the entire Hearing Panel, Judge Marx and Panel Chair Maryanne Downs enjoy a particularly close personal friendship that also requires disqualification separate and apart from the grounds stated above. *Law Offices of Herssein and Herssein v. United Services Automobile Association*, 271 So. 3d 889 (FLA. 2018). (“Particular friendship relationships [between a judge and lawyer] may present such circumstances requiring disqualification”).

On November 12, 2020, the Palm Beach Justice Association presented an award to Judge Marx. During the presentation, videotaped messages from people, including Ms. Downs, were played. Upon information and belief, in her video message, Ms. Downs referred to Judge Marx as her “dear, dear friend”. Additionally, the program for the luncheon lists financial sponsors of the event for Judge Marx. Ms. Downs was individually named as a sponsor, next to the name of her law firm. No other individual was listed as a sponsor. See Exhibit 1. Finally, Judge Marx has described Ms. Downs to Judge Bryson as a “good friend”.



Ms. Down's words (and Judge Marx's words) objectively convey the impression of a personal friendship and therefore create a reasonable fear of bias in favor of inherently finding a close friend credible, protecting her reputation, and protecting the reputation of the Commission itself. Accordingly, Ms. Downs' relationship to Judge Marx creates additional grounds for disqualification as a matter of law. *Id.*

For the same reason a prospective juror would be stricken for cause if he or she were "dear friends" with a witness in the case, Ms. Downs must recuse or be disqualified from acting as a fact-finder here. A close relationship between a fact finder and a witness creates an incurable appearance of impropriety. *See, Moore v. State*, 525 So.2d 870, 872 (Fla. 1988); *Hill v. State*, 477 So.2d 553 (Fla. 1985), cert. denied, 485 U.S. 993, 108 S.Ct. 1302, 99 L.Ed.2d 512 (1988). Here, Ms. Downs is not merely Facebook friends with a lawyer whose credibility is not at issue in the proceeding. *Law Offices of Herssein and Herssein, supra*, at 15 (distinguishing between Facebook friends and "close or intimate relationship" between Judge and lawyer). Ms. Downs is a professional colleague and close personal friend of a witness, whose credibility is in dispute and at issue.

WHEREFORE, for the reasons set forth above, Judge Bryson respectfully requests that each member of the Hearing Panel comply with their individual obligation to recuse his or herself, or alternatively, if all Panel members do not recuse, that the entire Hearing Panel be disqualified, and that the Executive Director of the Commission follow the procedure outlined in FJQCR 25(b) and that a new panel not constituted of present or former JQC members be established.

Respectfully submitted,

By: (s) Scott N. Richardson

Scott N. Richardson  
Law Office of Scott N. Richardson, P.A.  
1401 Forum Way, Suite 720  
West Palm Beach, FL 33401  
(561) 471-9600  
[snr@scottnrichardsonlaw.com](mailto:snr@scottnrichardsonlaw.com)  
Fla. Bar No. 266515

By: (s) Andrew C. Lourie

Andrew C. Lourie, Esq.  
201 S. Biscayne Blvd, Suite 1900  
Miami, FL 33131  
(917) 667-5238  
Fla. Bar No. 887772

*Counsel for Hon Marni A. Bryson*

Dated May 3, 2021.

## AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared, Marni A. Bryson, who, after first being duly sworn, deposes and states under penalty of perjury:

1. My name is Marni A. Bryson, I am the Respondent in this proceeding, and I make this Affidavit based on personal knowledge.
2. Judge Krista Marx has stated in the past that she is "good friends" with Mayanne Downs.
3. I believe that I will not receive a fair and impartial hearing in this proceeding if the Panel is comprised of current or former members of the JQC, because of bias and potential bias as set forth in more detail in the preceding Motion. I adopt by reference the grounds and factual assertions supporting the Motion.

  
Marni A. Bryson

SWORN TO AND SUBSCRIBED before me, by means of ✓ physical presence or \_\_\_ online notarization, this 3rd day of May 2021, by Marni A. Bryson, who is personally known to me or who has produced Florida DL as identification.

My Commission Expires: 6-28-2024

Printed Name Jennifer Bissey  
Notary Public of Florida

[Affix Notarial Seal]



CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the Florida Courts E-Filing Portal and served upon all interested parties via electronic service generated by the e-Portal system on this 3rd day of May, 2021 to:

Mayanne Downs, Esq.  
FJQC HEARING PANEL CHAIR  
301 East Pine Street, Suite 1400  
Orlando, FL 32801  
Mayanne.Downs@gray-robinson.com

Laurie Waldman Ross, Esq.  
COUNSEL TO THE HEARING PANEL OF THE FLORIDA JUDICIAL  
QUALIFICATIONS COMMISSION  
ROSS & GIRTEN  
9130 S. Dadeland Blvd., Suite 1701  
Miami, FL 33156  
RossGirten@Laurilaw.com

Blan L. Teagle, Executive Director  
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
P.O. Box 14106  
Tallahassee, FL 32317  
bteagle@floridajqc.com

Alexander J. Williams, General Counsel  
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
P.O. Box 14106  
Tallahassee, FL 32317  
awilliams@floridajqc.com

Henry M. Coxe, III, Esq., Special Counsel  
Brian T. Coughlin, Esq.  
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
Bedell, Dittmar, DeVault, Pillans & Coxe, P.A.  
101 East Adams Street  
Jacksonville, FL 32202  
hmc@bedellfirm.com  
btc@bedellfirm.com

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**YOU'RE  
INVITED!**

**PBCJA 2020 JURIST  
OF THE YEAR**

**HONORING  
CHIEF JUDGE  
KRISTA MARX**

FOR EXEMPLARY JUDICIAL  
LEADERSHIP

**Thursday, November  
12th, 2020  
12:00-2:00pm**

Please be our guest for our 2020 Jurist of the Year event honoring Chief Judge Krista Marx for Exemplary Judicial Leadership. Due to Covid-19, this year's event will take place via Zoom, however we will be making special arrangements for Judges to join in-person at the Court House.

Please click the link below to join the webinar:

EXHIBIT  
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