

BEFORE THE FLORIDA  
JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE,  
THE HONORABLE MARNI A. BRYSON  
JQC No. 2019-201

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SC21-546

**SPECIAL COUNSEL RESPONSE TO MOTION  
TO DISQUALIFY HEARING PANEL**

The Respondent has moved to disqualify all members of the Hearing Panel.

Relevant authority includes:

Rule 25, Judicial Qualifications Commission Rules

(a)(1) Grounds. A motion to disqualify shall show facts which would place a reasonably prudent person in fear of not receiving a fair and impartial hearing if the Hearing Panel member participates.

(3) Determination. The Hearing Panel shall determine whether the facts alleged are sufficient to support a motion to disqualify. The matter of disqualification shall be by a majority vote of the panel.

Rule 2.330, Rules of Judicial Administration

(d) Grounds. A motion to disqualify shall show: (1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge; or (2) that the judge before whom the case is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto or is interested in the result thereof, or that said judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to the cause.

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(f) Determination — Initial Motion. The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

#### Section 38.10, Florida Statutes

Disqualification of judge for prejudice; application; affidavits; etc.— Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. However, when any party to any action has suggested the disqualification of a trial judge and an order has been made admitting the disqualification of such judge and another judge has been assigned and transferred to act in lieu of the judge so held to be disqualified, the judge so assigned and transferred is not disqualified on account of alleged prejudice against the party making the suggestion in the first instance, or in favor of the adverse party, unless such judge admits and holds that it is then a fact that he or she does not stand fair and impartial between the parties. If such judge holds, rules, and adjudges that he or she does stand fair and impartial as between the parties and their respective interests, he or she shall cause such ruling to be entered on the minutes of the court and shall proceed to preside as judge in the pending cause. The ruling of such judge may be assigned as error and may be reviewed as are other rulings of the trial court.

The Respondent has alleged Hearing Panel Chair Mayanne Downs has a friendship with JQC commissioner and potential hearing witness Judge Krista Marx, and that they have described each other as friends. The Respondent contended that Ms. Downs and her law firm, Gray Robinson, along with other law firms, sponsored a luncheon in November 2020 hosted by the Palm Beach County Justice Association. The Justice Association honored Judge Marx for her leadership during COVID-19. The Respondent alleges “upon information and belief,” that Ms. Downs and others submitted a pre-recorded video message for Judge Marx.

The viability of the case against the Respondent does not depend on the testimony of Judge Marx. Special Counsel will introduce data reflecting that the Respondent was often absent from her designated court facility. The data will be supported by testimony of other witnesses who are familiar with the Respondent’s work habits both inside and outside court facilities. Judge Marx has limited relevant testimony as to Counts 1 through 4, and is not an essential witness. Special Counsel acknowledges that the Respondent volunteered to handle certain felony trials for Judge Marx.

With regard to Count 5, Special Counsel expects the evidence will be undisputed that Judge Bryson did not notify Judge Marx of many of her absences.

Special Counsel submits that Judge Marx's credibility should not become a feature of the hearing.

Ms. Downs role is currently one of six commissioners on the Hearing Panel who will recommend findings and conclusions of law to the Florida Supreme Court. Rulings by the Chair of a Hearing Panel are subject to review by the entire Hearing Panel, and the Hearing Panel must determine guilt by at least a two-thirds vote per Rule 19, Judicial Qualifications Commission Rules. Then, ultimately, if the Panel finds the Respondent guilty of any charge, it will submit a recommendation that the Supreme Court will review *de novo*.

The Hearing Panel may gain guidance from *In re Estate of Carlton*, 378 So. 2d 1212 (Fla. 1979). In *Carlton*, the Florida Supreme Court concluded that a judge's friendship with a lawyer whose law firm represented a party, but was not counsel of record, did not by itself require disqualification. "If friendship alone with a lawyer or member of a firm is a basis for disqualification, then most judges in rural and semi-rural areas and many in metropolitan areas would be subject to disqualification in a large number of cases." *Id.* at 1220. Although more specific allegations of fact have been made with respect to Ms. Downs than with respect to the other Hearing Panel members, the undersigned respectfully defers to the

judgment of the Hearing Panel commissioners and Rule 25(3)'s majority requirement.

The Respondent's motion fails to provide a basis for disqualification of the other commissioners on the Hearing Panel. The Respondent has alleged that a prudent person could not reasonably expect impartiality because Judge Marx, a potential witness, is also on the JQC.<sup>1</sup> The Respondent's motion does not allege a particular relationship between the potential witness and any of the other five Hearing Panel members other than the possibility of professional collegiality and joint JQC service.

In *Inquiry Concerning a Judge, Steven P. Shea*, 759 So. 2d 631 (Fla. 2000), Judge Shea moved to disqualify the chair of the hearing panel because the commissioner may have communicated with two judges at Florida Judicial College who filed JQC complaints against Judge Shea.

Such an allegation is insufficient to support a motion for recusal. To determine if a motion is sufficient this Court looks to see whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial. *See Correll v. State*, 698 So. 2d 522 (Fla.1997). Allegations that Judge Kaney may have communicated with parties involved

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<sup>1</sup> Judge Marx's term on the JQC will end July 31, 2021. Her term will expire contemporaneously with her retirement from the Circuit Court. The formal hearing has yet to be scheduled. It is unlikely that Judge Marx will be a commissioner at the time of the formal hearing.

in Judge Shea's case do not meet this threshold. Judge Shea's motion for recusal was properly denied.

*Id.* at 638. The Respondent did not allege a special relationship between the commissioners of the Panel and Judge Marx, but only a generalized claim that, "upon information and belief," commissioners may be friends with the witness. The argument put forth by the Respondent, that the witness and the commissioners pose a basis for disqualification, is analogous to an argument that a judge could not preside over any trial in which another judge would be a witness.

Judge Marx has been the Chief Judge of the 15th Judicial Circuit where the Respondent has been a county judge for many years. The JQC has conducted investigative hearings with respect to whether the Respondent had provided notification of absences to the Chief Judge, whether the Chief Judge was aware of the absences, and whether the Chief Judge communicated concern about absences to the Respondent. This information has been known to the Respondent for at least 18 months. The Respondent never initiated any effort to disqualify the Investigative Panel, who themselves are commissioner colleagues of the witness and who presumably have had essentially the same interactions.<sup>2</sup>

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<sup>2</sup> As her Third Affirmative Defense, the Respondent now seeks to disqualify the Investigative Panel.

The Respondent has not alleged that any commissioner is related to the witness. The Respondent has not alleged that any commissioner has expressed any opinions regarding the facts or merits of this matter.

Respectfully submitted this 10<sup>th</sup> day of May, 2021.

BEDELL, DITTMAR, DeVAULT, PILLANS & COXE  
Professional Association

By: /s/Henry M. Coxe III

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of May 2021, a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court by utilizing the Florida Courts E-Filing Portal, which will send a notice of electronic filing to:

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