



**BEFORE THE FIRST DISTRICT COURT OF APPEAL
IN AND FOR THE STATE OF FLORIDA**

KEVIN EARL WOOD,)
)
 Petitioner/Appellant,)
)
)
 v.)
)
 PAM CHILDERS, CLERK OF COURT,)
 ESCAMBIA COUNTY, FLORIDA)
)
 Respondent/Appellee.)
 _____)

Case No. 1D13-2322
Lower Case No. 2013-CA-000877

**MOTION FOR REHEARING, REHEARING EN BANC, WRITTEN OPINION,
CLARIFICATION, AND CERTIFICATION TO THE FLORIDA SUPREME COURT
AND SUGGESTION FOR DISQUALIFICATION OF THE PANEL**

Appellant, KEVIN EARL WOOD, pro se, hereby moves this Court to (1) rehear this case, (2) rehear this case en banc, (3) issue a written opinion that is subject to further review, (4) clarify this Court's earlier per curiam decision, and (5) issue a certification to the Florida Supreme Court for review. Appellant also further, and importantly, suggests disqualification of this Court so that this case is transferred to another court of appeals in Florida or certified to the Florida Supreme Court. Appellant states the following in support thereof:

1. This Court has clearly dodged the novel and first impression issues in this case by the issuance of a per curiam decision and there is no excuse for that under the circumstances of this case and such conduct by this Court is an abuse of the per curiam process where the issuance of such process is by all appearances by this Court for the purposes of delay and evasion and avoidance by this Court of legal issues never before addressed in Florida.

2. While the historical study of per curiam decisions has led to the justifiable purpose that issues well settled should not be decided in courts and waste the court's time, this case absolutely

presents novel new issues that have never been settled by any Florida court. The issues are one of first impression and lack uniformity in their application throughout the State of Florida as applied to the various clerks of court, state attorneys, or other agencies that maintain administrative records of the Grand Jury. The issues are ripe for a written decision and review by the Florida Supreme Court, or the U.S. Supreme Court, in order to establish uniformity throughout the courts and 67 counties of Florida, as well as through the various states of this country.

3. Some counties in Florida allow citizens to (1) attend a Grand Jury selection and (2) to have access to the names of Grand Jurors, such as Dade County, Hillsborough County, etc. as briefed to this Court. Respondent Clerk of Court Pam Childers in Escambia County is hostile to this idea while other clerks throughout Florida are not.

4. Citizens need the names and addresses of Grand Jurors so that they can file confidential complaints of public corruption directly with the Grand Jury and not have those complaints “intercepted” by clerks of court, state attorneys, or others and particularly where the agency to be investigated by the Grand Jury may be the clerk’s office, the county over which the financial affairs of the county are monitored by the clerk in its ex officio capacity as clerk of the county commission, the courts, or even the office of the state attorney. Even judges have been investigated by Grand Juries, as briefed in this case to the Court, particularly Judge Robert Bonanno who was found to have engaged in improprieties delineated in a Presentment by the Hillsborough County Grand Jury entitled, “AN INVESTIGATION INTO JUDICIAL MISCONDUCT IN HILLSBOROUGH COUNTY.”

5. This Court's possible fear of being investigated by a Grand Jury should not contribute to this Court's ignorance of the statutory and constitutional issues that have been raised by the briefings in this action.

6. While the Grand Jury is usually perceived to be a tool of the criminal prosecutor to return, or not return, "criminal" indictments, it is also a tool of free citizens to investigate the "King" when the King refuses to investigate him or herself and his or her agencies. Even the judiciary, as seen above, is not immune from the investigative powers of the Grand Jury.

7. As the Florida Grand Jury instructions published by the Florida Supreme Court clearly provide for civil investigations:

3.1 The grand jury is not limited to investigation of criminal matters. It has broad powers to make inquiries into civil administration, regardless of whether criminal or irregular conduct is charged. It has power to investigate public offices to determine if they are being conducted according to law and good morals. It also has power to investigate the conduct of public affairs by public officials and employees, including the power to inquire whether those officials are incompetent or lax in the performance of their duties.

3.2 The grand jury should investigate every offense affecting the morals, health, sanitation, and general welfare of the county. It should inquire into matters of governmental administration, including county institutions, buildings, offices, and officers, and, when appropriate, make presentment concerning the physical, sanitary, and general conditions.

8. The vast majority of the above complaints of government impropriety would come from private citizens or anonymous sources as complainants or witnesses and this Court, as well as all courts in Florida, are faced with resolving the question of, "how does a citizen file a complaint of public corruption with the Grand Jury unless you have an address of the Grand Jurors to mail the complaint to, at least the Grand Jury Foreperson or his or her alternate, or the Clerk of the Grand Jury?" This question has never been resolved in the courts of Florida to provide uniformity in all 67 counties.

9. There is, however, a pressing and notable reason for this Court to dodge the issue in retaliation against Appellant by the Chief Judge of this Court, Joseph Lewis Jr., and Clerk of Court of this Court, Jon Wheeler, against Appellant. Not only should Judge Lewis disqualify himself due to conflict of interest, but this entire Court should be disqualified and either assign this case to (1) another District Court of Appeal in Florida that does not possess the biases of this Court or (2) certify to the Florida Supreme Court issues in this case of great public importance and interest that have NEVER been resolved in this state in ANY appellate judicial jurisdiction.

10. Chief Judge Lewis is responsible, as is the Clerk of Court Jon Wheeler, by respondeat superior (<http://legal-dictionary.thefreedictionary.com/Respondeat+superior>), for the Clerk reportedly serves at the pleasure of the Court and the Chief Judge, for implementing policy within this Court and the unconstitutional current policy of this Court established and approved by Judge Lewis is that appellants are without any justifiable reason in this Court denied their constitutional and due process right of access to the names of the appellate judges that are assigned to the review of their cases.

11. Appellants have a constitutional and due process right of access to these names so that an appellant can file a motion to disqualify a judge in a case if disqualification bases are discovered to exist involving a certain judge or judges.

12. Simply put, how can an appellant be able to file a motion for disqualification if this Court violates the Sunshine provisions of the Florida Constitution by hiding behind closed doors the names of judges assigned to the appeal before a final decision?

13. As this Court and Clerk of Court Jon Wheeler are clearly aware, this “policy” problem has been escalated by Appellant to the Chief Judge of the Florida Supreme Court, where this Court has failed to act on, and address, the problem. There is no tenable reason why appellants

should be denied the names of the judges assigned to the appellate panel so that they can pursue motions or suggestions for disqualification where the case may arise.

14. This is not the first time that suggestions of disqualification of judges or the entire court have been made. See e.g. **Rawlis Leslie, et al. v. The St. Joe Company**, 1D04-5462 (on filing of PETITION FOR ALL WRITS RELIEF OR, ALTERNATIVELY, FOR LEAVE TO FILE WRIT OF CORAM NOBIS IN THE DISTRICT COURT with the Florida Supreme Court). In that case former Chief Judge Wolf was identified as having a conflict of interest as was Judge Paul Hawkes. According to this Court's website, "Paul M. Hawkes resigned from the First District Court of Appeal effective January 4, 2012."

15. Both former Chief Judge Wolf, and current Chief Judge Lewis, have been assigned to the panel in this case. These Chief Judges have been responsible for implementing, and/or enforcing, the hostile policy against appellants to deny them their right to have the names of judges assigned to the appellate panel.

16. Judge Wolf was involved, as was former Judge Paul Hawkes, in a scandal involving this Court. Judge Hawkes resigned over the scandal and upon voluntary dismissal of the case against Judge Hawkes, the Judicial Qualifications Commission documented, "The basis for the dismissal is Judge Hawkes' resignation prior to the trial before the Hearing Panel of the Commission. As has been stated by this Honorable Court, the object of judicial disciplinary proceedings is "not to inflict punishment, but to determine whether one who exercises judicial power is *unfit to hold judgeship*." In re Kelly, 238 So.2d 565, 569 (Fla. 1970). Given that Judge Hawkes no longer holds judicial office, no further action by the Commission is necessary. See In re Cycmanick, 718 So.2d 756 (Fla. 1998)."

17. It is apparent that the last thing this Court desires, considering its history of impropriety, is to allow a citizen to petition a Grand Jury to investigate the unconstitutional and/or illegal conduct of this Court.

18. It is Appellant's position that Judge Lewis is "unfit to hold judgeship", as is Judge Wolf, because they have allowed their bias as Chief Judge, or former Chief Judge, to interfere in the proper review of the instant case and have failed to address the unconstitutional policy of this Court to bar appellants from having access to the names of judges assigned to a panel so that a motion to disqualify can be served upon the Court and the judges who have conflicts of interest.

19. Appellant believes in good conscience that he has no chance before this Court of obtaining fair treatment because of this Court's hostility against Appellant for challenging the unconstitutional policies of this Court, and further for Appellant raising this unconstitutional policy issue to the Chief Justice of the Florida Supreme Court.

20. This Court issuing a per curiam disposition of this case is clearly in retaliation for Appellant challenging the unconstitutional policy of this Court regarding the names of judges assigned to Appellant's panel.

21. Furthermore, on November 15, 2013, Clerk of Court Jon Wheeler sent a nasty letter to Appellant chastising Appellant for bringing the unconstitutional policy matter to the attention of the judges of this Court for review and to the clerk. It was of no surprise that within the week this Court issued a per curiam disposition without opinion on November 21, 2013, with the clear appearance of retaliation against Appellant for raising the unconstitutional policy matter not only to the judges of this Court, but to the Chief Justice of the Florida Supreme Court.

22. This Court has the power to review and amend its unconstitutional policy brought to its attention by Appellant. Instead of doing so, this Court chose a path of retaliation against Appellant by issuing the per curiam decision.

23. As a further matter of disqualification, Appellant learned today from a public records request to the Florida Attorney General that Judge Joseph Lewis is a former attorney for the Florida Attorney General in the “Civil Litigation” section of the Attorney General. Appellant fears additionally that he cannot get a fair hearing before Judge Lewis because of his allegiance to his former employer, the Florida Attorney General.

24. This Court has directed in a previous order to Appellant that the Florida Attorney General be included as an interested party in this case.

25. At heart to this case the opinions of the attorney general are on review before this Court. Included is an AGO Informal Opinion to State Attorney Steve Alexander that opined that, “In sum, the names and addresses of grand jurors are privileged as part of the record of the grand jury proceedings and, therefore, are not subject to disclosure pursuant to section 119.07(1), Florida Statutes.” Appellant challenges this opinion in this case as, again, the heart of this case.

26. Furthermore, Appellant has previously challenged in Bay County, Florida, the illegal policy of the Clerk of Court to black out the name of a Grand Juror on a criminal indictment that has been made public. Appellant succeeded after the Clerk of Court in Bay County, then Harold Bazzel, asked for an opinion from the Attorney General. AG Opinion AGO 99-09 was issued and it was opined by the AG that, “The Clerk of Court is not authorized to redact the name of a grand jury foreperson or the acting foreperson from an indictment after it has been made public.”

27. Judge Lewis, on his own sua sponte motion, should disqualify himself from the instant case.

28. Appellant moves that the following questions should be certified to the Florida Supreme Court for resolution and uniformity in Florida as questions of great public importance and interest:

QUESTION 1: Do citizens in the State of Florida have the right to file confidential complaints of public corruption and/or other government improprieties directly with the various Grand Juries in the 67 counties of Florida?

QUESTION 2: Do citizens in the State of Florida have the right to have access to contact information of selected Grand Jurors so that a confidential complaint of public corruption and/or other government improprieties can be assured to be sent/mailed directly to the Grand Jury Foreperson or other Grand Jurors without interception by other government agencies?

QUESTION 3: Do citizens, and/or the press, have the right to attend Grand Jury selection in the State of Florida as they do in petit jury selection?

QUESTION 4: And most importantly, does the Section 905.01(1) Florida Statutes provision that, "The law governing the qualifications, disqualifications, excusals, drawing, summoning, supplying deficiencies, compensation, and procurement of petit jurors apply to grand jurors" require that (1) Grand Jury Selection is open to the public and/or the press as is petit juror selection in Florida and nationwide and, (2) that the names and/or administrative records of selected Grand Jurors be made public as are the names and/or administrative records of petit jurors under the law?

29. This Court has clearly evaded and/or avoided, or, with all due respect, ignored these questions of first impression in Florida by issuing a per curiam disposition without an opinion. No other appellate court in Florida has addressed these issues. This Court is responsible for assuring that these questions are answered to create established law in Florida and to create uniformity throughout the various 67 counties of Florida. Certification to the Florida Supreme Court and the issuance of a written opinion will assure this uniformity and establishment of new law throughout Florida to provide guidance to the various clerks of court, state attorneys, and other agencies.

30. The Florida Constitution, Article V, Section 3, expressly provides in pertinent part:

(b) JURISDICTION.—The supreme court:

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

(4) May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

31. In this case the Florida Constitution, Article I, Section 24, guarantees the right of citizens to have access to inspect and/or copy records of the judicial branch and the offices other state officers.

SECTION 24. Access to public records and meetings.—

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. ***This section specifically includes*** the legislative, executive, and ***judicial branches*** of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(Emphasis added)

32. This Court has ignored that provision and has implicitly declared this portion of the Florida Constitution invalid by issuing a per curiam disposition. This Court should explain in a written opinion why Florida citizens no longer have this right when applied to the administrative records of the Grand Jury maintained by the clerks of court in Florida, or by the state attorneys or other agencies who maintain these records.

33. This Court is aware by the briefs in this case that there is no exemption under the Florida Constitution or Florida law promulgated by the Florida legislature that exempts the

administrative records related to the Grand Jury maintained by the clerks of court, state attorneys, or whomever. That is why other clerks of court and state attorneys in Florida provide access to these records, other than Respondent Clerk of Court Pam Childers who his hostile to this idea.

34. This is not a case where the Court has overlooked or misapprehended the law, it is a case where this Court has simply ignored the law in retaliation for Appellant challenging unconstitutional policies of this Court related to the names of judges assigned to this case.

35. This Court should be accountable to not only the Florida Supreme Court, but the U.S. Supreme Court, and should issue a written opinion to further this review by these superior courts and not hide behind a per curiam brick wall and roadblock.

36. Lastly, Appellant is very concerned that this Court, particularly Chief Judge Lewis, has authorized their Clerk of Court, Jon Wheeler, to rule on motions filed with this Court in this case without review, concurrence or objection by a judge of this Court as to whether or not Mr. Wheeler properly ruled.

37. WHEREFORE, Appellant respectfully moves this Court to (1) rehear this case, (2) rehear this case en banc, (3) issue a written opinion that is subject to further review, (4) clarify this Court's earlier per curiam decision, (5) issue a certification to the Florida Supreme Court for review of the questions presented above, and (6) state for the record that a disqualification exists and that this case should be referred to another district court of appeal that does not have a conflict of interest.

Respectfully submitted this 6th day of December, 2013,

(signed)
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Certificate of Service

Petitioner hereby certifies that he has provided by electronic mail a true and exact copy of the foregoing, and all attachments if any, to the following this 6th Day of December, 2013 with the original PDF filed with this Court.

Hon. Susan Woolf (swoolf@escambiaclerk.com)
Hon. Chief Judge Terry Terrell (judge.terrell@flcourts1.gov)
Hon. Administrative Judge Joey Boles (judge.boles@flcourts1.gov)
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