

**IN THE FIRST DISTRICT COURT OF APPEAL  
OF THE STATE OF FLORIDA**

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**MAGGIE JO HILLIARD, ESQUIRE  
AND THE LAW OFFICE OF  
MAGGIE JO HILLIARD, P.A.,**  
Petitioner

v.

**STATE OF FLORIDA,**  
Respondent(s)

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First DCA Case No.:  
**1D13-0217**

Lower Tribunal Case Numbers:  
**162010CF003429AXXXMA**  
and  
**162008CF013699AXXXMA**

A Petition for Writ of Mandamus Petition  
Filed Pursuant to Fla. R. App. P. 9.100(f)

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**PETITION FOR WRIT OF MANDAMUS and  
MOTION TO STAY PROCEEDINGS SCHEDULED FOR JAN. 24, 2013**

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LAW OFFICE OF MAGGIE JO HILLIARD, P.A.

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## INTRODUCTION

Counsel seeks this Honorable Court's ruling in accordance with Harrison v. Johnson, 934 So.2d 563 (Fla. 1st DCA 2006) (stating that, to the extent a movant seeks to compel a ruling by the circuit court on his/her motion to reassign, mandamus is the proper remedy).

This petition presents the question of whether a trial court may deny case reassignment after failing to rule upon a properly served motion for judicial disqualification within 30 days as proscribed by Fla. R. Jud. Admin. 2.330(j) (2012).

Pursuant to Rule 9.100 of the Florida Rules of Appellate Procedure, Petitioner Maggie Jo Hilliard, Esq. submits this Petition for Writ of Mandamus to request this Honorable Court to **1) issue a stay upon the currently scheduled attorney fees hearing on January 24, 2013, 2) quash the void orders of the trial court issued after default disqualification under Fla. R. Jud. Admin. 2.330(j) 2012 and 3) mandate the lower court to order the Duval County Clerk of Court to reassign the case.**

Petitioner, Maggie Jo Hilliard, Esq., will be referenced as "Counsel".

## **JURISDICTIONAL STATEMENT**

The Petitioner invokes this Court's original jurisdiction pursuant to Fla. R. App. P. 9.100 (2012) which governs writs of mandamus regarding trial court pretrial proceedings.

## **STATEMENT OF THE FACTS**

On November 20, 2012, Maggie Jo Hilliard, Esq., appointed counsel to the indigent defendant Rashad Stewart Martinez, filed a Motion to Disqualify the trial court with regard to further proceedings pertaining to attorney fees. 1 App. The motion was facially sufficient and timely – it was filed within 10 days after the discovery of the facts constituting the grounds for the motion in accordance with Fla. R. Jud. Admin. 2.330(e) (2012); in accordance with Fla. R. Jud. Admin. 2.330(a) (2012), Honorable Chief Judge Donald Moran Jr. is a circuit judge within a division of the Florida Courts; Counsel is a party to the action in accordance with Fla. R. Jud. Admin. 2.330(b) (2012); the motion was in writing in accordance with Fla. R. Jud. Admin. 2.330(c)(1) (2012); it alleged specific facts, reasons and grounds relied upon to justify disqualification in compliance with Fla. R. Jud. Admin. 2.330(c)(2) (2012); it was sworn to, signed and notarized by Counsel in accordance with Fla. R. Jud. Admin. 2.330(c)(3) (2012); and it was filed in good faith as Counsel reasonably fears that she will not receive a fair trial or hearing because of specifically described prejudice or bias of Honorable Chief Judge Donald Moran Jr., as proscribed in Fla. R. Jud. Admin. 2.330 (d)(1)(2012) and Fla. Stat. 38.10 (2012). 1 App.

On November 20, 2012 at 10:56 a.m., Honorable Chief Judge Donald Moran Jr. was electronically served a Motion for Judicial Disqualification via an e-mail



sent to his staff (Rose D'Amour via “rosed@coj.net” and Caroline Carthage Emery via “Cemery@coj.net”). 2 App.

The Motion for Judicial Disqualification was also served upon Honorable Chief Judge Donald Moran Jr. individually on November 21, 2012 at 10:57 a.m. via traceable UPS delivery confirmation no. 1Z1F45R40219728717. 3 App.

No judicial acts were taken nor orders entered by the trial court between November 20, 2012 and January 2, 2013. 4 App.

Counsel filed and properly served on December 27, 2012, a Motion for Case Reassignment in accordance with Fla. R. Jud. Admin. 2.330(j). 5 App.

On January 2, 2013, the trial court denied reassignment, filing an “Order on Motion for Case Reassignment, And Motion for Judicial Disqualification” stating that after having considered the facts alleged, the motion for disqualification was facially insufficient and denied both the disqualification and reassignment motions filed by Counsel. 6 App. In his order, Honorable Chief Judge Donald Moran Jr. specifically acknowledged receipt of the service, stating that “[b]efore the Court is the Motion for Case Reassignment, served on December 27, 2013 and the Motion for Disqualification served on November 19, 2012...” 6 App.

On January 10, 2013, Counsel filed a Motion for Reconsideration, Reassignment and Continuance. 7 App. On January 16, 2013, Honorable Chief Judge Moran denied it. 8 App. Counsel now appeals.

## **NATURE OF RELIEF SOUGHT**

Petitioner seeks an order of this Court to stay the attorney fees hearing scheduled for January 24, 2013, quash the void orders issued by the trial court after default disqualification and mandate Honorable Chief Judge Donald Moran Jr. deemed disqualified and order him to reassign the case in accordance with Fla. R. Jud. Admin. 2.330(j) (2012). See, Harrison v. Johnson, 934 So.2d 563 (Fla. 1st DCA 2006) (stating that, to the extent a movant seeks to compel a ruling by the circuit court on his motion to reassign, mandamus is the proper remedy).

Petitioner requests the respondent to show cause why relief should not be granted.

## ARGUMENT

### **CASE LAW AND THE PLAIN LANGUAGE OF FLA. R. JUD. ADMIN. 2.330(j) (2012) REQUIRES THE LOWER COURT TO REASSIGN THIS CASE UPON THE PASSING OF 30-DAYS FROM A PROPERLY SERVED MOTION FOR JUDICIAL DISQUALIFICATION AND DEMAND FOR CASE REASSIGNMENT.**

Fla. R. Jud. Admin. 2.330(j) (2012) states:

“Time for Determination. The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.”

The rule initiated with a certification of conflict between the Third and Fifth District Courts of Appeal in Tarrant v. Jacoboni, 780 So.2d 344 (Fla. 3d DCA 2001) and Anderson v. Glass, 727 So.2d 1147 (Fla. 5th DCA 1999). The conflict was resolved by the Florida Supreme Court in Tableau Fine Art Group, Inc. v. Jacoboni, 853 So.2d 299 (Fla. 2003), and, in order to effectively codify the Court’s ruling, on October 7, 2004, the Florida Supreme Court amended the Rules of Judicial Administration, stating:

“In response to Tableau Fine Art Group, new subdivision (j) provides that a trial judge "shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c)." The new subdivision also provides that if the trial judge

does not rule on the motion to disqualify within 30 days, "the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case. Accordingly, we amend the Florida Rules of Judicial Administration... The amendments shall become effective January 1, 2005, at 12:01 a.m."

Since the ruling in Tableau Fine Art Group in 2003, the relevant case law discussing the 30-day rule with regard to judicial disqualification has consistently held firm that, absent improper service or service by U.S. Mail, the 30-day rule applies regardless of any other circumstances, factual, legal or otherwise. See, Tableau Fine Art Group, Inc. v. Jacoboni, 853 So.2d 299 (Fla. 2003), Lightsey v. State, 53 So.3d 1093 (Fla. 1st DCA 2011), Johnson v. State, 968 So.2d 61 (Fla. 4th DCA 2007) (holding that a judge must issue an order directing the clerk to reassign the case if he/she failed to rule within 30 days), Overcash v. Overcash, 91 So.3d 254 (Fla. 5th DCA 2012), and Schisler v. State, 958 So.2d 503 (Fla. 3d DCA 2007) (Court granted a mandamus petition to direct the trial judge to quash his order denying a motion to disqualify the judge, where the judge did not rule within thirty days after service of the motion, even though the ruling was only one day late and petitioner's counsel acquiesced in setting a hearing on the motion outside the thirty-day time frame).

Honorable Chief Judge Donald Moran Jr. may only excuse delay in addressing a judicial disqualification motion when actual service upon the trial

judge is at issue. See, Tobkin v. State, 889 So.2d 120 (Fla. 4th DCA 2004) (holding that trial judge's failure to rule on recusal motion within thirty days after it was filed did not require judge's automatic recusal, where court clerk's office mistakenly failed to forward motion to judge, the movant had mailed judge's copy of motion to wrong courthouse, and judge ruled on motion within six days after becoming aware of motion, and one day after receiving it) and Chrispen v. State, 954 So.2d 1155 (Fla. 4th DCA Jan. 29, 2007) (denying prohibition petition, by unpublished order, stating “[b]ecause the petitioner did not serve a copy of the motion for disqualification on the trial judge, the court's order of denial was not untimely under Florida Rule of Judicial Administration 2.330(j)”).

Service may also be at issue when a motion for disqualification is sent via regular U.S. Mail. See, Hatfield v. State, 46 So.3d 654 (Fla. 2d DCA 2010) (holding that “[w]hen a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon that party and the notice or paper is served upon that party by mail, 5 days shall be added to the prescribed period” in accordance with Fla. R. Civ. P. 1.090(e)).

Honorable Chief Judge Donald Moran Jr. was properly served the Motion for Disqualification and such was acknowledged in his January 2, 2013 order denying disqualification and case reassignment. 6 App. See, Tobkin v. State, 889

So.2d 120, 122 (Fla. 4th DCA 2004) (holding that Fla. R. Civ. Pro 1.080 applies regarding Fla. R. Jud Admin. 2.330(c) and merely “requires service in a manner designed to notify the judge of the existence of the motion”).

Service is not at the issue in this case as the trial court was served by electronic mail to two staff members with validation of receipt and via traceable UPS confirmed delivery on November 21, 2012. Furthermore, the trial court acknowledged having received the motion in a timely fashion in its January 2, 2013 order. Absent issues regarding service/notice, Counsel need only file a motion for case reassignment to effectuate disqualification and reassignment.

Florida law requires that, in order to effectuate case reassignment on the basis of a trial court’s failure to rule within 30 days under Fla. R. Jud. Admin. Rule 2.330(j), a motion for case reassignment is required. See, Rowe v. Duetche Bank Nat. Trust Co., 49 So.3d 1285 (Fla. 1st DCA 2010) (holding that counsel must file a motion for case reassignment in order to effectuate reassignment following judicial disqualification under Fla. R. Jud. Admin 2.330(j)), KKP Holdings, LLC v. Russell, 1 So.3d 1287 (Fla. 1st DCA 2009) and Harrison v. Johnson, 934 So.2d 563 (Fla. 1st DCA 2006) (denying mandamus relief where petitioner had failed to bring motion for reassignment before the trial court in order to obtain a ruling).

In this case, Counsel properly filed a Motion for Case Reassignment on December 27, 2012 and such was acknowledged as having been received by Honorable Chief Judge Donald Moran Jr. in his January 2, 2013 order.

All prerequisites for case reassignment were met (i.e. proper service and request for reassignment). Therefore, case reassignment on the basis of the trial court's failure to rule regarding disqualification within 30 days is warranted and orders subsequent to the passing of 30 days should be deemed void.

The trial court's January 2, 2013 order should be quashed as disqualification was warranted following the expiration of 30-days from the date of service of Counsel's Motion for Disqualification. See, Berube v. State, 978 So.2d 893 (Fla. 2d DCA 2008) (holding that the trial court had no authority to deny defendant's motion for post-conviction relief after defendant's motion seeking disqualification of judge assigned to case was deemed granted; disqualification motion was not ruled on within 30 days and was thus granted under rule governing disqualification motions) and Dream Inn, Inc. v. Hester, 691 So.2d 555, 556 (Fla. 5th DCA 1997) (explaining that any order a judge enters simultaneously with the order of recusal, as well as after his recusal, is void). See also, Goolsby v. State, 914 So.2d 494, 496 (Fla. 5th DCA 2005), Jenkins v. Motorola, Inc., 911 So.2d 196, 197 (Fla. 3d DCA 2005), Davis v. State, 849 So.2d 1137, 1138 (Fla. 1st DCA 2003); Haverty v.

State, 830 So.2d 264 (Fla. 5th DCA 2002); Thomas v. State, 756 So.2d 217 (Fla. 4th DCA 2000).



## CONCLUSION

For the foregoing reasons, this Court should issue a writ staying the current proceedings, quash orders filed by Honorable Chief Judge Donald Moran Jr. as void following the disqualification by default under Fla. R. Jud. Admin. 2.330 (j) (2012) and mandate the trial court to issue an order directing the clerk to reassign the case.

Respectfully submitted this 16<sup>th</sup> Day of January, 2013.

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*Petitioner's Court-Appointed Counsel*

**CERTIFICATE OF SERVICE**

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following persons via United States Postal Service Mail and Electronic Mail this 17<sup>th</sup> day of January, 2013.

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**Honorable Chief Judge Donald Moran**

*Presiding Judge of Issue of Fees*

[pursuant to Fla. R. App. P. 9.100(e)(2)]

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.100(I), Florida Rules of Appellate Procedure.



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