IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT

IN AND FOR LAKE COUNTY, FLORIDA

William M. Windsor,

Plaintiff,

Case No. 35-2020-CA-001438-AXXX-XX

vs.

Coach Houses at Leesburg Condominium Association, Inc., Omar Nuseibeh, Vicki Hedrick, Karen Bollinger, Shehneela Arshi, Isabel Campbell, Sergio Naumoff, Ed Broom, Jr., Marta Carbajo, Sue Yokley, Wendy Krauss, Howard Solow, Sentry Management, Inc., Charlie Ann Aldridge, Art Swanton, Brad Pomp, Clayton & McCulloh, P.A., Brian Hess, Neal McCulloh, Russell Klemm, Florida Department of Business and Professional Regulation, Mahlon C. Rhaney, Leah Simms, and Does 1-20,

Defendants.

NOTICE OF FILING MOTION FOR ISSUANCE OF A WRITTEN OPINION, REHEARING, AND FOR REHEARING EN BANC

COMES NOW the Plaintiff, William M. Windsor ("Windsor" or "Plaintiff") and files this NOTICE OF FILING MOTION FOR ISSUANCE OF A WRITTEN OPINION, REHEARING, AND FOR REHEARING EN BANC with the District Court of Appeal of the State of Florida Fifth District.

This 11th day of January, 2021.

William M. Windsor
100 East Oak Terrace Drive, Unit B3
Leesburg, Florida 34748
352-577-9988
billwindsor1@outlook.com - bill@billwindsor.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by email to:

Vicki Hedrick, Karen Bollinger, Shehneela Arshi, Ed Broom, Jr., Marta Carbajo, Sue Yokley, Wendy Krauss, Howard Solow, Omar Nuseibeh, Isabel Campbell, Sergio Naumoff, Coach Houses at Leesburg Condominium Association, Inc., Sentry Management, Inc., Art Swanton, Charlie Ann Aldridge, and Brad Pomp

c/o Christina Bredahl Gierke
COLE, SCOTT & KISSANE, P.A.
Counsel for Board Member Defendants
Tower Place, Suite 400, 1900 Summit Tower Boulevard, Orlando, Florida 32810
Telephone 321-972-0025, Facsimile 321-972-0099
christina.gierke@csklegal.com, allison.barkett@csklegal.com
kirbie.caruso@csklegal.com

Clayton & McCulloh, P.A., Brian Hess, Neal McCulloh, Russell Klemm

c/o Maura F. Krause
GOLDBERG SEGALLA, LLP
800 N. Magnolia Ave., Suite 450, Orlando, FL 32803
(407) 458-5600
mkrause@goldbergsegalla.com, jkovecses@goldbergsegalla.com
sherndon@goldbergsegalla.com, psouza@goldbergsegalla.com, pborges@goldbergsegalla.com

Florida Department of Business and Professional Regulation, Mahlon C. Rhaney, Leah Simms

c/o Office of the Attorney General
501 E. Kennedy Blvd., Suite 1100, Tampa, Florida 33602-5242
Telephone: 813-233-2880, Facsimile: 813-233-2886
David.Asti@MyFloridaLegal.com
Wendy.Estevez@MyFloridaLegal.com
Christina.Santacroce@MyFloridaLegal.com

This 11th day of January, 2021.

William M. Windsor

CASE NO. 5D21-0310

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

CASE NO. 2020-CA-001438

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

In re William M. Windsor

William M. Windsor,

Petitioner

v.

Coach Houses at Leesburg Condominium Association, Inc., Omar Nuseibeh, Vicki Hedrick, Karen Bollinger, Shehneela Arshi, Isabel Campbell, Sergio Naumoff, Ed Broom, Jr., Marta Carbajo, Sue Yokley, Wendy Krauss, Howard Solow, Sentry Management, Inc., Charlie Ann Aldridge, Art Swanton, Brad Pomp, Clayton & McCulloh, P.A., Brian Hess, Neal McCulloh, Russell Klemm, Florida Department of Business and Professional Regulation, Mahlon C. Rhaney, Leah Simms, and Does 1-20,

Respondents.

MOTION FOR ISSUANCE OF A WRITTEN OPINION, REHEARING, AND FOR REHEARING EN BANC

William M. Windsor, Petitioner
100 East Oak Terrace Drive, Unit B3, Leesburg, Florida 34748
352-577-9988 - billwindsor1@outlook.com - bill@billwindsor.com

Counsel for the Defendants:

Christina Bredahl Gierke
COLE, SCOTT & KISSANE, P.A.
Counsel for Board Member Defendants
Tower Place, Suite 400, 1900 Summit Tower Boulevard, Orlando, Florida 32810
Telephone 321-972-0025, Facsimile 321-972-0099
christina.gierke@csklegal.com
allison.barkett@csklegal.com, kirbie.caruso@csklegal.com

Maura F. Krause
GOLDBERG SEGALLA, LLP
800 N. Magnolia Ave., Suite 450, Orlando, FL 32803
407-458-5600
mkrause@goldbergsegalla.com, jkovecses@goldbergsegalla.com
sherndon@goldbergsegalla.com, psouza@goldbergsegalla.com, pborges@goldbergsegalla.com

Office of the Attorney General
501 E. Kennedy Blvd., Suite 1100, Tampa, Florida 33602-5242
Telephone: 813-233-2880, Facsimile: 813-233-2886
David.Asti@MyFloridaLegal.com
Wendy.Estevez@MyFloridaLegal.com
Christina.Santacroce@MyFloridaLegal.com

COMES NOW the Petitioner, and pursuant to Rules 9.330 and 9.331 of the Florida Rules of Appellate Procedure, who moves this Court for issuance of a written opinion and, separately, for Rehearing and for Rehearing En Banc in the above-styled cause. The Petitioner states that he believes, based on a reasoned and studied professional judgment, this case is of exceptional importance. As grounds for rehearing, the Petitioner states:

1. Judge Dan R. Mosley did not rule on the legal sufficiency of the Motion to Disqualify. His order simply stated: "The Plaintiff's Motion to Disqualify Circuit Court Judge Dan R. Mosley filed on January 28, 2021 is hereby **DENIED.**"

2. Most appellate court decisions on motions to disqualify address whether or not the ruling was correct about what the court ruled about the legal sufficiency of the Motion, Affidavit,

and Certificate. But in this case, Judge Dan R. Mosley failed to do the most fundamental requirement he had: He didn't say "boo" about the legal sufficiency of the Motion to Disqualify.

3. The Petitioner expresses a belief, based on a reasoned and studied professional judgment, that the case or issue is of exceptional importance. This Court's decision has far reaching implications regarding the rights of all citizens of the State of Florida to have a fair and impartial judge with statutes and rules established to protect that right.

4. The Petitioner also expresses a belief, based on a reasoned and studied professional judgment, that the Panel decision is contrary to the following decision(s) of this court and that a consideration by the full court is necessary to maintain uniformity of decisions in this court: *Robinson v. State*, 5D19-2372 (Fla.App. Dist.5 08/28/2019); *Scholz v. Hauser*, 657 So.2d 950, 20 Fla. L. Weekly D1633 (Fla.App. Dist.5 07/13/1995); *Lake v. Edwards*, 501 So.2d 759, 12 Fla. L. Weekly 444 (Fla.App. Dist.5 02/05/1987); *Rivera v. Bosque*, 5D15-3755 (Fla.App. Dist.5 11/24/2015); *Novo v. State*, 5D19-2290 (Fla.App. Dist.5 08/28/2019).)

5. The panel decision is contrary to decisions of every appellate district and the following decision(s) of the Florida Supreme Court, and a consideration by the full court is necessary to maintain uniformity of decisions in the courts of Florida: *Bundy v. Rudd,* 366 So.2d 440, 442 (Fla. 1978); *Brown v. St. George Island, Ltd.*, 561 So.2d 253, 15 Fla. L. Weekly S231 (Fla. 04/19/1990); *Escalona v. Wisotsky*, 781 So.2d 1063, 25 Fla. L. Weekly S1080 (Fla. 11/30/2000).

MOTION FOR ISSUANCE OF A WRITTEN OPINION

6. Fla. R. App. P. 9.330 provides that "[w]hen a decision is entered without opinion, and party believes that a written opinion would provide a legitimate basis for supreme court review, the party may request that the court issue a written opinion." Such is the case here.

7. First, if this Court affirmed the trial court's decision because the Panel concluded that the Petitioner did not have a right to a fair and impartial judge, then that decision conflicts with virtually every appellate court decision in America,

8. Second, if this Court affirmed the trial court's decision because the Panel concluded that Fla. Stat. §§ 38.02, 38.10, Florida Rules of Appellate Procedure ("FRAP") 2.330, Florida Statutes, and the Florida Code of Judicial Conduct, Florida Rules of Judicial Administration ("FRJA") 2.160, Florida Code of Judicial Conduct ("FCJC"), Canon 3-B (7) and E. 2 I.do not apply in the Fifth District, the Panel needs to explain why.

MOTION FOR REHEARING AND REHEARING EN BANC

9. The Order attached as EXHIBIT 2270 was issued on February 8, 2021. It merely says: "... denied on the merits. See *Topps v. State,* 865 So. 2d 1253 (Fla. 2004)." [EXHIBIT 2271.]

10. *Topps v. State* actually supports the Petitioner's Request. The *Topps* Court ordered: "We conclude that it is not unreasonable nor does it impose an unnecessary burden upon courts to require that we all enter orders that can be clearly understood in terms of scope and impact of the determination upon the parties and to be· uniform in our application of Florida law." Did this Panel even read the case they cited? The sentence above is the last sentence in the order - just above where it says "It is so ordered."

11. In *Corcoran v. Levenhagen,* 558 U.S. 1 (2009), the United States Supreme Court says orders must be explained.

12. Nothing can be understood about saying "denied on the merits," because the Petition was a slam dunk to be granted by honest appellate court judges. This Panel violated

the very order it cited in support of its outrageous order. This is a case where clerks for Judges Eisnaugle, Traver, and Nardella must have done this. It's sickening to believe that appellate court judges would issue something like this that violates every appellate court decision in history.

13. Judge Dan R. Mosley grossly violated the law in the case, and then he didn't even pretend to go by the law on disqualification. All applicable cases show that Judge Dan R. Mosley and Judges Eisnaugle, Traver, and Nardella violated every statute and applicable case law in the book.

14. From the Petitioner's experience, the only reason judges issue orders without explanation is because they are not complying with the law. This Panel is making it easy for judges like Judge Dan R. Mosley to inflict corruption on people like the Petitioner.

15. The Petitioner has shown that the Petition must be granted because Judge Dan R. Mosley violated the fundamental rule regarding motions to disqualify, among many other reasons. He obliterated the Petitioner's Constitutional rights.

16. Judge Dan R. Mosley ignored the law by failing to rule on the legal sufficiency of the motion, and now he is issuing orders without jurisdiction while ignoring every filing by the Petitioner. The Petitioner gets no response from Judge Dan R. Mosley or his Judicial Assistant, Andrea Coluccio, regarding requests for hearings and court action.

17. This Panel must explain this order. Extend the common courtesy of stating the facts and the law, and note that the Supreme Court of Florida says this is the law... since at least 2004. This Panel has violated Canons 1, 2, and 3 of the Florida Code of Judicial Conduct.

18. Rehearing En Banc is necessary to preserve the public's perception of the Court's ability to render meaningful justice. The Honorable Judge Sheppard instructs that a case is of exceptional importance to be considered en banc if the result "may reasonably and negatively influence the public's perception of the judiciary's ability to render meaningful justice." *University of Miami v. Wilson*, 948 So.2d 774, 791 (Fla. 3rd DCA 2006). Any institutional bias that unfairly favors the wealthy and powerful over the poor is unconstitutional, unethical, and unacceptable to those entrusted to guard our democracy at the level of an appellate court judge. Any bias that abuses pro se parties should be intolerable.

19. The United States Supreme Court has recognized the basic constitutional precept of a neutral, detached judiciary: The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision-making process. See *Carey v. Piphus*, 435 U.S. 247, 259-262, 266-267, 98 S.Ct. 1042, 1043, 1050-1052, 1053, 1054, 55 L.Ed.2d 252, (1978). It preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that justice has been done," *Joint AntiFascist Committee v. McGrath*, 341 U.S. 123, 172, 71 S.Ct. 624, 649, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). The Florida Supreme Court has made it clear a judge should disqualify himself or herself, even if not subjectively unfair, because the integrity of the judicial system requires the objective appearance of neutrality: This Court is committed to the

doctrine that every litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. The exercise of any other policy tends to discredit the judiciary and shadow the administration of justice. It is not enough for a judge to assert that he is free from prejudice. His mien and the reflex from his court room speak louder than he can declaim on this point. If he fails through these avenues to reflect justice and square dealing, his usefulness is destroyed. The attitude of the judge and the atmosphere of the court room should indeed be such that no matter what charge is lodged against a litigant or what cause he is called on to litigate, he can approach the bar with every assurance that he is in a forum where the judicial ermine is everything that it typifies, purity and justice. The guaranty of a fair and impartial trial can mean nothing less than this. *Crosby v. State*, 97 So. 2d 181, 184 (Fla. 1957). Respectfully, the Code of Judicial Conduct, Canon 3 E(1) states: "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . ." There is objectively reason to question whether this Honorable Court has a bias against pro se parties.

ALL APPLICABLE RULES AND STATUTES WERE IGNORED BY THE PANEL

20. The Petition was premised on Florida Rules of Appellate Procedure ("FRAP") 2.330, Florida Statutes, and the Florida Code of Judicial Conduct, all of which require that a judge disqualify himself once a party has established a reasonable fear that he will not obtain a fair hearing. See Florida Rules of Judicial Administration ("FRJA") 2.160; Fla. Stat. §§ 38.02, 38.10; Florida Code of Judicial Conduct ("FCJC"), Canon 3-B (7) and E. 2 I.

21. Windsor's Affidavit of Prejudice attached to the Motion to Disqualify stated very clearly the facts and reasons for the belief that bias and prejudice exists. Dates, times, places, circumstances, and statements are itemized. The reasons for the belief are material and stated with particularity. [PETITION FOR WRIT OF PROHIBITION APPENDIX 9.] A Certificate that the Motion to Disqualify was made in Good Faith was filed. [PETITION FOR WRIT OF PROHIBITION APPENDIX 10.]

22. An objective observer, lay observer, and/or disinterested observer must entertain significant doubt of the impartiality of Judge Dan R. Mosley. A reasonably prudent person will be in fear of not receiving a fair and impartial trial.

23. Judge Dan R. Mosley's Order denying the Motion to Disqualify fails to address the legal sufficiency of the Motion. This mandates granting this Petition.

24. Decisions of Judge Dan R. Mosley issued on 1/28/2021 and 1/29/2021 demonstrate significant prejudice and bias, and he has ignored the law and the rules. Judge Dan R. Mosley has made it clear; he is moving forward as the purported judge.

25. Judge Dan R. Mosley established a clearly fixed view about substantive pending trial matters, so this must raise concerns about the "appearance of impropriety," a standard that must be safeguarded under applicable recusal law.

26. Judge Dan R. Mosley has effectively denied Windsor's rights of the equal protection under the law under Article VI of the Constitution.

27. Judge Dan R. Mosley's actions prove that he has exercised his power in this civil action for his own personal purposes rather than the will of the law.

28. Windsor has not received fair and impartial treatment with Judge Dan R. Mosley. He is prejudiced against Windsor.

29. All Windsor wants is to have someone fair and impartial with an open mind to listen to the facts and review as much of the evidence as is needed to prove each of his claims. It is obvious to Windsor that Judge Dan R. Mosley doesn't care about the facts and doesn't want to apply the law. He has one mission: screw Windsor.

30. The United States Constitution guarantees an unbiased judge who will always provide litigants with full protection of ALL RIGHTS. Judge Dan R. Mosley is biased against Windsor. He demonstrated this repeatedly in hearings on 1/27/2021 and 2/10/2021.

31. Windsor's motion, affidavit, certificates of good faith, and memorandum of authorities meet the requirements for a motion to disqualify. [PETITION FOR WRIT OF PROHIBITION APPENDIX 6, 9, 10.]

32. Windsor has a well-grounded fear that he will not receive a fair trial. He hasn't received a fair trial.

33. Judge Dan R. Mosley established a clearly fixed view about substantive pending trial matters, so this must raise concerns about the "appearance of impropriety," a standard that must be safeguarded under applicable recusal law.

34. The test to be used by the trial court in reviewing a motion for disqualification has been determined by the Florida Supreme Court. In *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332 (Fla.1990), the Supreme Court held that the facts alleged in a motion to disqualify need only show a movant's well-grounded fear that the movant will not receive a fair trial. The test to be utilized is whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial. *MacKenzie*, 565 So.2d at 1335; see also *Fischer v. Knuck*, 497 So.2d 240 (Fla.1986).

35. In reviewing the legal sufficiency of a motion for disqualification, i.e. whether the movant has alleged facts giving rise to a well-founded fear that the movant will not receive a fair trial, the facts must be taken as true and must be viewed from the movant's perspective. See *Livingston*, 441 So.2d 1083 ("The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of the judge's ability to act fairly and impartially.").

36. In order to decide whether the motion is legally sufficient, Windsor must only show: 'a well-grounded fear that he will not receive a fair [hearing] at the hands of the judge. It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling.' *State ex rel. Brown v. Dewell*, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). See also *Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981). The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially. *State v. Livingston*, 441 So. 2d 1083, 1086 (Fla. 1983)

37. The prejudice of a judge is a delicate question for a litigant to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge in question should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned. *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932); State ex rel. *Aguiar v. Chappell*, 344 So.2d 925 (Fla. 3d DCA 1977). *State v. Steele*, 348 So. 2d 398, 401 (Fla. 3rd DCA 1977).

38. The United States Supreme Court has explained that in deciding whether a particular judge cannot preside over a litigant's trial: the inquiry must be not only whether there was actual bias on respondent's part, but also whether there was 'such a likelihood of bias or an

appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused.' *Ungar v. Sarafite*, 376 U.S. 575, 588 (1964). 'Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties,' but due process of law requires no less. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). *Taylor v. Hayes*, 418 U.S. 488, 501 (1974) (emphasis added).

39. The appearance of impropriety violates state and federal constitutional rights to due process. A fair hearing before an impartial tribunal is a basic requirement of due process. See *In re Murchison*, 349 U.S. 133 (1955). "Every litigant[] is entitled to nothing less than the cold neutrality of an impartial judge." *State ex rel. Mickle v. Rowe*, 131 So. 331, 332 (Fla. 1930). Absent a fair tribunal, there can be no full and fair hearing.

40. Once again, the test for determining the legal sufficiency of a motion for disqualification is an objective one which asks whether the facts alleged in the motion would place a reasonably prudent person in fear of not receiving a fair and impartial hearing. See *Livingston v. State*, at 1087. "When the judge enters into the proceedings and becomes a participant, a shadow is cast upon judicial neutrality so that disqualification [of the circuit] is required." *Chastine v. Broome*, at 295.

A. WINDSOR SHOWED THAT ANY REASONABLY PRUDENT PERSON WOULD BE IN FEAR OF NOT RECEIVING A FAIR TRIAL.

41. There are a host of reasons why any reasonable prudent person would be in fear of not receiving a fair trial in the case. The evidence in this case is overwhelming, and the only evidence is Windsor's evidence.

42. Hundreds of pages of affidavits sworn under penalty of perjury before a notary are within the four corners as well as 2,000 exhibits. ALL of this evidence is for the Petitioner. The Respondents don't have a single document, not even an affidavit.

43. A reasonably prudent person would be in fear of receiving a fair trial. Make that terror.

B. JUDGE DAN R. MOSLEY DID NOT MAKE THE REQUIRED FINDING ON THE LEGAL SUFFICIENCY OF THE MOTION.

44. Judge Dan R. Mosley gave no explanation [PETITION FOR WRIT OF PROHIBITION APPENDIX 1 -- ORDER, P. 1.] It will be simple for this Court to determine that Judge Dan R. Mosley was simply inflicting his bias and prejudice yet again.

45. Judge Dan R. Mosley made this Court's job easy. He violated Disqualification Rule 1. Massive case law support the statutes and provide that Judge Mosley must be sent packing.

46. A Motion to Disqualify is governed by Florida Statute 38.10 and FRJA 2.330, and Windsor met all requirements. [PETITION FOR WRIT OF PROHIBITION APPENDIX 11 and 12.]

47. Florida Statute 38.10 provides:

> "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."

> "A motion to disqualify is governed substantively by section 38.10, Florida Statutes . . . and procedurally by Florida Rule of Judicial Administration 2.330." *Gregory v. State*, 118 So.3d 770, 778 (Fla. 2013) (quoting *Gore v. State*, 964 So.2d 1257, 1268 (Fla. 2007)). "The statute requires that the moving party file an affidavit in good faith 'stating fear that he or she will not receive a fair trial . . . on account of the prejudice of the judge' as well as 'the facts and the reasons for the belief that any such bias or prejudice

exists.'" *Peterson v. State*, 221 So.3d 571, 581 (Fla. 2017) (quoting § 38.10, Fla. Stat. (2014)).

48. **MOTION AND AFFIDAVIT:** The Motion to Disqualify was in writing. Windsor filed an Affidavit of Prejudice stating his fear that he would not receive a fair trial due to the prejudice of Judge Mosley. It provided the facts and the reasons for the belief that such bias and prejudice exist. This Motion was signed under oath. A Certificate of Good Faith was also filed [PETITION FOR WRIT OF PROHIBITION APPENDIX 10]. The Motion to Disqualify was filed with the Clerk, and a copy was sent by email to Judge Dan R. Mosley c/o his assistant, Andrea Coluccio. [PETITION FOR WRIT OF PROHIBITION APPENDIX 7.] (On the evening of 1/27/2021, Windsor also sent Ms. Andrea Coluccio an email asking her to advise Judge Dan R. Mosley that the Motion to Disqualify would be sent as soon as Windsor could obtain a notary.) [PETITION FOR WRIT OF PROHIBITION APPENDIX 8.]

49. **GROUNDS:** The Motion to Disqualify showed that the Petitioner fears he will not receive a fair trial because of specifically described prejudice or bias of Judge Dan R. Mosley. The Petitioner feels quite certain that the unrestrained actions of Judge Dan R. Mosley will send Windsor to an early grave.

50. **TIME:** The Motion to Disqualify was filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the Motion and was promptly presented to the Court for an immediate ruling. It was filed within 1 day.

51. FRJA 2.330 (f) Determination — Initial Motion requires:

> "**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" [**emphasis added**.]

52. Judge Dan R. Mosley violated Rule 2.330 despite the fact that Windsor's Motion told him what the law and rules require. [PETITION FOR WRIT OF PROHIBITION APPENDIX 12.]

C. **JUDGE DAN R. MOSLEY IGNORED THE RULES AND HIS ORDERS IN FAVOR OF THE DEFENDANTS**

53. Judge Dan R. Mosley has a propensity for ignoring the Rules, ignoring the law, and ignoring the facts.

> "The motion is legally sufficient if it shows the party's well-grounded fear that the party will not receive a fair trial. See *Livingston v. State*, 441 So.2d 1083, 1087 (Fla.1983). In other words, would the facts (which must be taken as true in a motion to disqualify) prompt a reasonably prudent person to fear that he could not get a fair and impartial trial. See e.g., *Peterson v. Asklipious*, 833 So. 2d 262 (Fla. 4th DCA 2002)."

> "The facts alleged in the motion need only show that "the party making it has a well grounded fear that he will not receive a fair trial at the hands of the judge." *Dewell*, 131 Fla. at 573, 179 So. at 697. "If the attested facts supporting the suggestion are reasonably sufficient to create such a fear, it is not for the trial judge to say that it is not there." *Parks*, 141 Fla. at 518, 194 So. at 614. Further, "it is a question of what feeling resides in the affiant's mind and the basis for such feeling." *Dewell*, 131 Fla. at 573, 179 So. at 697-98. (*Livingston v. State*, 441 So.2d 1083 (Fla. 10/27/1983).)"

54. In determining the legal sufficiency of a motion to disqualify, a court looks to see whether the facts alleged would place a reasonably prudent person in fear of not receiving fair and impartial treatment from the trial judge. *See, e.g., Johnson v. State,* 769 So. 2d 990 (Fla. 2000). In the instant case, a reasonably prudent person, would be in fear that Judge Dan R. Mosley, because of his prejudice or bias, deprived him of fair and impartial treatment. A prudent person would KNOW he or she is (pardon the French) screwed.

55. Judge Dan R. Mosley was obligated to accept the truth of Windsor's statements, and he was obligated only to pass on the sufficiency of the motion. He failed to do so.

> "When a party seeks to disqualify a judge under section 38.10, the judge cannot pass on the truth of the statements of fact set forth in the affidavit. *State v. Dewell*, 131 Fla.

566, 179 So. 695 (1938). The facts and reasons for the belief of prejudice must be taken as true, and **the judge may only pass on the legal sufficiency of the motion and supporting affidavits to invoke the statute**. *Raybon v. Burnette*, 135 So.2d 228 (Fla. 2d DCA 1961). Section 38.10 creates a substantive right to seek the disqualification of a trial judge, but the process of the disqualification is procedural. *Livingston v. State*, 441 So.2d 1083 (Fla.1983)." [**emphasis added**.]

56. So says the Florida Supreme Court:

"When a party seeks to disqualify a judge under section 38.10, the judge cannot pass on the truth of the statements of fact set forth in the affidavit. *State v. Dewell*, 131 Fla. 566, 179 So. 695 (1938). The facts and reasons for the belief of prejudice must be taken as true, and the judge may only pass on the legal sufficiency of the motion and supporting affidavits to invoke the statute. *Raybon v. Burnette*, 135 So.2d 228 (Fla. 2d DCA 1961). Section 38.10 creates a substantive right to seek the disqualification of a trial judge, but the process of the disqualification is procedural. *Livingston v. State*, 441 So.2d 1083 (Fla.1983)." (*Brown v. St. George Island, Ltd.*, 561 So.2d 253, 15 Fla. L. Weekly S231 (Fla. 04/19/1990).)

(See also *Rogers v. State*, 630 So.2d 513, 18 Fla. L. Weekly S413 (Fla. 07/01/1993).)

(From the 5th DCA, see *Novo v. State*, 5D19-2290 (Fla.App. Dist.5 08/28/2019); *Dura-Stress, Inc. v. Law*, 634 So.2d 769, 19 Fla. L. Weekly D729 (Fla.App. Dist.5 03/31/1994); *Scholz v. Hauser*, 657 So.2d 950, 20 Fla. L. Weekly D1633 (Fla.App. Dist.5 07/13/1995); *Robinson v. State*, 5D19-2372 (Fla.App. Dist.5 08/28/2019); *Lake v. Edwards*, 501 So.2d 759, 12 Fla. L. Weekly 444 (Fla.App. Dist.5 02/05/1987).)

57. On 1/27/2021, Judge Dan R. Mosley allowed 17 Defendants to violate his Order, without justification. [PETITION FOR WRIT OF PROHIBITION APPENDIX 13]. The Defendants had received as many as 25 notices from Judge Mosley's Judicial Assistant, Andrea Coluccio, identifying this Order. [PETITION FOR WRIT OF PROHIBITION APPENDIX 14.] Judge Dan R. Mosley refused to indicate why he was allowing the Defendants to thumb their noses at his order. It was interesting to note that four of the Defendants did comply; one (Attorney Joseph Kovecses) did so after Windsor raised this issue on the first round of motions to dismiss. He also SIGNED his motion to dismiss after Windsor called out the 17 Defendants for failure to comply with this most fundamental requirement of Rule 2.515 of the Florida Rules of Judicial Administration. Windsor's motions to strike all of the improperly filed motions on

these issues were denied without explanation or justification. Judge Dan R. Mosley doesn't even respect or comply with his own orders when it meets his biased efforts to do otherwise. PETITION FOR WRIT OF PROHIBITION APPENDIX 15 is one of these motions.

D. THE IMPARTIALITY OF JUDGE DAN R. MOSLEY MUST BE QUESTIONED.

58. An objective observer, lay observer, and/or disinterested observer must entertain significant doubt of the impartiality of Judge Dan R. Mosley.

59. The Code of Judicial Conduct required that Judge Dan R. Mosley disqualify himself.

> The Code of Judicial Conduct sets forth basic principles of how judges should conduct themselves in carrying out their judicial duties. Canon 3-C(1) states that "[a] judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned ...." This is totally consistent with the case law of this Court, which holds that a party seeking to disqualify a judge need only show "a well grounded fear that he will not receive a fair trial at the hands of the judge. It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling." *State ex rel. Brown v. Dewell,* 131 Fla. 566, 573, 179 So. 695, 697-98 (1938). See also *Hayslip v. Douglas,* 400 So.2d 553 (Fla. 4th DCA 1981). The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially.

E. JUDGE DAN R. MOSLEY FAILED TO ADDRESS ALL OF THE LEGAL GROUNDS FOR DISQUALIFICATION.

60. The Motion to Disqualify [PETITION FOR WRIT OF PROHIBITION APPENDIX 6, Page 1] asked:

> "...that Judge Mosley be disqualified from the above entitled matter under Florida Statute 38.10, Florida Rule of Judicial Administration 2.330, the Code of Judicial Conduct, all other relevant statutory and state and federal case law, as well as the U.S. Constitution and the Constitution of the State of Florida."

61. Judge Dan R. Mosley did not identify if he considered any of the legal grounds. [PETITION FOR WRIT OF PROHIBITION APPENDIX 1, P.1.]

62. Judge Dan R. Mosley did not consider Canon 2, other sections of Canon 3 of the Code of Judicial Conduct, other relevant statutory and state and federal case law, as well as the First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution, the Due Process Clause of the Fifth Amendment to the Constitution, the Constitution of the State of Florida, and the Court's inherent powers.

63. Canon 2 of the Code of Conduct for United States Judges tells judges to "avoid impropriety and the appearance of impropriety in all activities, on the bench and off." Judge Dan R. Mosley has demonstrated his prejudice by violating Canon 2.

F. WINDSOR IS ENTITLED TO THE COLD NEUTRALITY OF AN IMPARTIAL JUDGE.

64. Windsor is entitled to an impartial judge, and that isn't Judge Dan R. Mosley. On 1/27/2021, Windsor had to pinch himself to realize he wasn't dreaming or being punked. Sadly, Allen Funt was nowhere to be found on Zoom.

> "Every litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. *Hayslip v. Douglas,* 400 So.2d at 557 (quoting *State ex rel. Davis v. Parks,* 141 Fla. 516, 194 So. 613, 615 (1939)).
>
> "We find that the motion and supporting affidavits were legally sufficient, and the proper procedure, in light of the serious allegation of bias, was for the judge to grant the motion. (*James v. Theobald*, 557 So.2d 591, 15 Fla. L. Weekly D215 (Fla.App. Dist.3 01/16/1990).)
>
> "Where there is any legally sufficient basis, whether factually accurate or not, for a founded fear of possible prejudice to exist in the mind of a defendant, recusal is mandated." *See, e.g., Management Corporation of America, Inc. v. Grossman*, 396 So.2d 1169 (Fla. 3rd DCA 1981).

G. JUDGE DAN R. MOSLEY FAILED TO PROVIDE DUE PROCESS AND EQUAL PROTECTION TO WINDSOR.

65. Judge Dan R. Mosley has violated Windsor's civil and constitutional rights under

color of law.

> "...[t]rial before an 'unbiased judge' is essential to due process." *Johnson v. Mississippi*, 403 U.S. 212, 216 (1971); accord *Concrete Pipe & Prods. V. Constr. Laborers Pension Trust*, 508 U.S. 602, 617 (1993) (citation omitted). (See also *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S. Ct. 11, 13 (1954); *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976); *Peters v. Kiff*, 407, U.S. 493, 502 (1972)

66. Windsor has just cause to believe that he cannot been given a fair trial. That's as polite as Windsor can ACT as he bites a hole in his lip.

67. The due process clauses of both the Florida and the United States Constitutions guarantee a party an impartial and disinterested tribunal in civil cases. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610, 1613 (1980).

> Partiality in favor of the government may raise a defendant's due process concerns." *In re United States of America*, 441 F.3d at 66 (citing *In re Murchison*, 349 U.S. 133 (1955).
>
> 28 U.S.C. 155 may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties, but due process of law requires no less." *Taylor v. Hayes*, 418 U.S. 488, 501 (1974) (citations and quotation marks omitted). See also *Murchison*, 349 U.S. at 136.

68. Judge Dan R. Mosley has effectively denied Windsor's rights of the equal protection under the law under Article VI of the Constitution.

H. JUDGE DAN R. MOSLEY VIOLATED THE CONSTITUTIONAL RIGHTS OF WINDSOR.

69. Judge Dan R. Mosley has violated Windsor's Constitutional rights.

70. The Sixth Amendment provides the Constitutional right to self-representation. That right should be enjoyed without fear of harassment or judicial prejudice. Furthermore, no law, regulation, or policy should exist to abridge or surreptitiously extinguish that right. *Pro Se* Litigants allegedly have no less of a right to effective due process as those who utilize an attorney. The Petitioner is sorry to report that's a myth.

71. The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision-making process. See *Carey v. Piphus*, 435 U.S. 247, 259-262, 266-267 (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. See *Matthews v. Eldridge*, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, 'generating the feeling, so important to a popular government, that justice has been done,' *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

72. Canon 3E, Fla. Code Jud. Conduct, and Rule 2.160, Fla. R. Jud. Admin., mandate that a judge disqualify himself in a proceeding "in which the judge's impartiality might reasonably be questioned." The disqualification rules require judges to avoid even the appearance of impropriety: It is the established law of this State that every litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the court to scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any manner where his qualification to do so is seriously brought into question. The exercise of any other policy tends to discredit and place the judiciary in a compromising attitude which is bad for the administration of justice. *Crosby v. State*, 97 So.2d 181 (Fla. 1957); *State ex rel.*

Davis v. Parks, 141 Fla. 516, 194 So. 613 (1939); *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932); *State ex rel. Mickle v. Rowe*, 100 Fla. 1382, 131 So. 3331 (1930). * *

73. For due process and to secure the Constitutional rights of Windsor, judges may not take the law into their own hands. But this is precisely what Judge Dan R. Mosley has done. He has ignored the law, ignored the facts, and claimed laws and rules provide something that they do not provide, while abusing and disadvantaging Windsor. Judge Dan R. Mosley has proven to Windsor that he is corrupt and has no business serving as a judge.

74. For due process to be secured, the laws must operate alike upon all and not subject the individual to the arbitrary exercise of governmental power. (*Marchant v. Pennsylvania R.R.*, 153 U.S. 380, 386 (1894).) Judge Dan R. Mosley has violated Windsor's rights by using his power to inflict his bias.

75. For due process, Windsor has the right to protections expressly created in statute and case law. Due process allegedly ensures that the government will respect all of a person's legal rights and guarantee fundamental fairness.

76. Due process requires an established course for judicial proceedings designed to safeguard the legal rights of the individual. Action denying the process that is "due" is unconstitutional. Inherent in the expectation of due process is that the judge will abide by the rules. Judge Dan R. Mosley has interfered with the process and violated rules for the purpose of damaging Windsor.

77. An inherent Constitutional right is the honesty of the judge. Judge Dan R. Mosley has not been honest. Judge Dan R. Mosley has violated Canon 2 and other Canons of the Code of Judicial Conduct. At least he was honest when he indicated he had not even read Windsor's Complaint.

78. Due process guarantees basic fairness and to make people feel that they have been treated fairly. Windsor has not been treated fairly.

79. Judge Dan R. Mosley has effectively denied Windsor's rights of equal protection under the law.

80. Based on the foregoing arguments, Respondent respectfully requests that this Court withdraw its decision in this case, examine the questions presented en banc and issue a substituted opinion.

REQUEST FOR RELIEF

WHEREFORE, Petitioner, WILLIAM M. WINDSOR, respectfully urges the Court to withdraw its decision issued November 22, 2005, and reconsider the decision in light of the argument and authority presented herein; conduct a rehearing en banc; enter a writ prohibiting Judge Dan R. Mosley from proceedings in this case; declare that because leave was granted to amend Windsor's Complaint, the Court must allow sufficient time for motions to authorize punitive damages pursuant to Florida Statute 768.72; declare that because leave was granted to amend Windsor's Complaint, a sufficient amount of time must be allowed for amendment to comply with demands required pursuant to Section 617.07401(2) that require 90 days; and order a newly-assigned judge to reconsider the orders of Judge Dan R. Mosley.

This 10th day of February, 2021.

William M. Windsor

CERTIFICATE OF COUNSEL

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is of exceptional importance. I further express a belief, based on a reasoned and studied professional judgment, that the Panel decision is contrary to decisions of this Court and that a consideration by the full court is necessary to maintain uniformity of decisions in this court. The panel decision is contrary to decisions of every appellate district and decisions of the Florida Supreme Court, and a consideration by the full court is necessary to maintain uniformity of decisions in the courts of Florida.

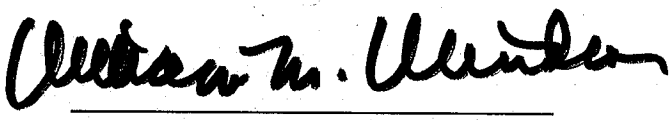
This 10th day of February, 2021.

William M. Windsor

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Petition complies with the font requirements of Rule 9.100(l) of the Florida Rules of Appellate Procedure.

This 10th day of February, 2021.



William M. Windsor
100 East Oak Terrace Drive, Unit B3
Leesburg, Florida 34748
352-577-9988
billwindsor1@outlook.com
bill@billwindsor.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing by Electronic Mail:

Vicki Hedrick, Karen Bollinger, Shehneela Arshi, Ed Broom, Jr., Marta Carbajo, Sue Yokley, Wendy Krauss, Howard Solow, Omar Nuseibeh, Isabel Campbell, Sergio Naumoff, Coach Houses at Leesburg Condominium Association, Inc., Sentry Management, Inc., Art Swanton, Charlie Ann Aldridge, and Brad Pomp:

c/o Christina Bredahl Gierke
COLE, SCOTT & KISSANE, P.A.
Counsel for Board Member Defendants
Tower Place, Suite 400, 1900 Summit Tower Boulevard, Orlando, Florida 32810
Telephone 321-972-0025, Facsimile 321-972-0099
christina.gierke@csklegal.com
allison.barkett@csklegal.com, kirbie.caruso@csklegal.com

Clayton & McCulloh, P.A., Brian Hess, Neal McCulloh, Russell Klemm:

c/o Maura F. Krause
GOLDBERG SEGALLA, LLP
800 N. Magnolia Ave., Suite 450, Orlando, FL 32803, 407-458-5600
mkrause@goldbergsegalla.com, jkovecses@goldbergsegalla.com
sherndon@goldbergsegalla.com, psouza@goldbergsegalla.com, pborges@goldbergsegalla.com

Florida Department of Business and Professional Regulation, Mahlon C. Rhaney, Leah Simms:

c/o Office of the Attorney General
501 E. Kennedy Blvd., Suite 1100, Tampa, Florida 33602-5242
Telephone: 813-233-2880, Facsimile: 813-233-2886
david.asti@MyFloridaLegal.com, wendy.estevez@MyFloridaLegal.com
christina.santacroce@MyFloridaLegal.com

Judge Dan R. Mosley
c/o Ms. Andrea Coluccio - Judicial Assistant to Judge Mosley
acoluccio@circuit5.org

This 10th day of February, 2021.

William M. Windsor

VERIFICATION

Personally appeared before me, the undersigned Notary Public duly authorized to administer oaths, William M. Windsor, who after being duly sworn deposes and states that he is authorized to make this verification and that the facts alleged in the foregoing are true and correct based upon his personal knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

This 10th day of February, 2021,

William M. Windsor

Sworn and subscribed before me this 10th day of February, 2021, by means of physical presence.

Notary Public

JESSICA DIAZ
NOTARY
My Comm. Expires
January 28, 2023
No. GG 273882
PUBLIC
STATE OF FLORIDA