

IN THE SUPREME COURT OF FLORIDA
CASE NO: SC2023-1478

INQUIRY CONCERNING A JUDGE NO. 2023-539 RE:
HON. KENNETH L. HOSFORD

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**FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS’
MOTION FOR LEAVE TO APPEAR AS AMICUS**

Pursuant to Florida Rule of Appellate Procedure 9.370(a), the Florida Association of Criminal Defense Lawyers (FACDL) moves this Court for leave to appear as amicus curiae and submit an amicus brief expressing FACDL’s deep concern with the stipulated allegations in this case and disapproval of the stipulated resolution reached between the Judicial Qualifications Commission (JQC) and Judge Hosford.

FACDL is a statewide organization with twenty-nine chapters and more than 1,300 members, all of whom are active criminal defense practitioners. FACDL is a nonprofit corporation with a purpose of assisting in the fair administration of the state’s criminal justice system. We seek to preserve and protect the rights of those accused of crimes in Florida, as well as advocate for the interests of criminal defense lawyers. Our participation in this case serves the organization’s

purpose by assisting the courts in reaching just results in cases involving the constitutional rights of criminal defendants in Florida.

This case involves an experienced judge, Judge Hosford, who has stipulated to having a lengthy ex-parte conversation with a prosecutor (which is also transcribed and video-recorded) after having told the public defender the conversation would not be about any pending case but only about how the State Attorney's Office would be staffing the courtroom. When the public defender left, the judge proceeded to talk to the prosecutor about a specific pending case where the judge had approved a warrant and the prosecutor, apparently finding the warrant legally insufficient, had not filed an information. The judge said he had independently investigated and learned that the suspect was a convicted felon who had been to prison and who was physically imposing and who had embarrassed his employer. The judge told the prosecutor that his job was to "back up your sheriff, to back up your officer. That's your job. And to back up your judge." The judge said if sheriff's deputies lost confidence in the prosecutor that would hurt him. The judge said a local newspaper publisher had told him the elected prosecutor, for whom the in-court prosecutor worked, had not been elected sheriff of Liberty County. The judge said an elected sheriff is more powerful than an appointed

law enforcement officer (such, apparently, as an assistant state attorney). The judge said the state attorney has to support the sheriff and judge, and if he can't, needs to say so in open court rather than simply decline to proceed on a case. The judge said that he realized that the search warrant had "thinness" but had suggested to the sheriff how to add to the search warrant to make it stronger and show that the "convicted felon" suspect was "lying". The judge told the prosecutor they should "rework" the search warrant and "I need y'all to be stronger. You know, it puts me out on a limb when y'all are not stronger, and it puts me in a position to have to make inquiries to hold the law." The judge criticized the performance of assistant state attorneys in his courtroom the previous session who had not offered harsh enough pleas and who had missed priors of defendants. The judge complained about attorneys appealing him and talked about how the appeals court had *per curiam* affirmed him on those appeals. The judge talked about an immigrant or non-English speaker stopped for speeding and how "[t]he strong suspicion is he is a drug dealer from over in Texas", even though "[w]e don't know that; we couldn't verify that." The judge said he used to go hunting in Mexico but would not go now "because of the cartel" and "would not cross the border at Piedras Negras, where over 400,000 people live in old cars, without

tires, in cardboard boxes and they desperately want to get to this country, and I understand that”. The judge said that 80 percent of immigrants are good working stable people but others are not and “are cartel related, they are drug related, they are smuggling related and we just—it’s just scary for our country.” The judge talked about how law enforcement that stops immigrants ascertains whether they are in the country legally or not, and talked about the immigration process and how many people file invalid asylum claims. The judge then brought the conversation back to the prosecutor and told the prosecutor he needed him to recognize the issue with No Valid Driver’s License criminal cases being linked to illegal immigration, and also needed to mentor young officers who submitted deficient warrants rather than rejecting those warrants.

Judge Hosford is the only county court judge who hears criminal cases in Liberty County, and the only elected judge in Liberty County.

The JQC and Judge Hosford reached a stipulation where Judge Hosford admitted to wrongdoing and agreed to a public reprimand, a 30-day suspension without pay, a \$2,000 fine, a recusal period for presiding over certain cases, 6 additional CLE ethics credits, written apologies, and the institution of safeguards to prevent recurrence of the wrongful conduct. The recusal period appears to be three months

(two of those months apparently with pay after the 30-day unpaid suspension) over criminal and treatment hearings, and after that Judge Hosford will himself decide on recusal on a case-by-case basis. The safeguards appear to be signs outside the judges work areas saying he will not engage in ex parte conversations.

FACDL is concerned that the factually undisputed comments by Judge Hosford evince a clear bias in favor of law enforcement and against criminal defendants, particularly immigrant criminal defendants, which the proposed penalties will not ameliorate. Judge Hosford self-describes being a sort of political “boss” of Liberty County when it comes to law enforcement, who has ex parte conversations about pending cases not just with prosecutors but with sheriff’s deputies, the elected sheriff, and the local newspaper publisher. FACDL is also concerned that it appears that Judge Hosford’s views on immigration are coloring his disposition of cases, with people who are non-immigrants or “good” immigrants treated differently than “bad” immigrants even if otherwise similarly situated. The report and recommendations and stipulation does not even address the immigrant-related comments in the recorded monologue.

FACDL is also concerned that given that this conduct occurred in a county where there is only one judge, the local defense bar will

necessarily be intimidated into failing to report or ignoring improper behavior since they will be certain to be before Judge Hosford on future cases. Judge Hosford, in the comments at issue, already complained about counsel who had the temerity to appeal him and discussed filing bar complaints against defense counsel. Thus, the voice of a statewide criminal defense bar organization who cannot be personally intimidated by Judge Hosford may be particularly important in this case.

FACDL, if permitted to file an amicus brief, will address the above issues in an attempt to assist the Court by providing it with a fuller understanding of the case and comments at issue, and why defense lawyers and criminal defendants, particularly immigrant criminal defendants and their counsel, would quite understandably be concerned about appearing in front of Judge Hosford, whether that occurs tomorrow or three months and one day from now. FACDL will also remind the Court that its disciplinary cases, whether involving attorneys or judges, serve not just to discipline one person but to send a signal to other attorneys and judges regarding what behavior is and is not acceptable among the bench and bar. The signalling function of judicial discipline, FACDL will suggest, is particularly important here. FACDL does not intend to recommend a particular sanction, but simply

to remind the Court that it should consider the concerns and perspectives of criminal defendants and criminal defense lawyers in independently determining whether to accept the stipulation and, if not, what punishment is appropriate.

Undersigned counsel reached out to counsel for both the JQC (Alexander John Williams, Esq.) and Judge Hosford (Scott Tozian, Esq.) yesterday, and again today, via email, to attempt to get their position on this motion for leave to appear as amicus, but did not hear back from either party. FACDL will update the Court with the position of the parties if received. FACDL's executive board just recently voted to move forward with pursuing amicus status in this case and given that the case and stipulation was filed with this Court on 10/25, felt that we should promptly alert the Court to our desire to appear as amicus.

If leave to file an amicus brief is granted, FACDL requests 15 days in order to do so, which will give FACDL time to draft the brief and circulate it among the organization for approval before filing.

Respectfully submitted,

/s/ Daniel Tibbitt

Daniel Tibbitt, Esq.

1175 NE 125th Street

Suite 404

North Miami, Florida 33161

(305) 384-6160

Fl. Bar No: 816361

dan@tibbittlaw.com

Amicus Committee, Florida

Association of Criminal

Defense Lawyers

/s/ Luke Newman

Luke Newman, Esq.

Luke Newman, P.A.

308 McDaniel Street

Tallahassee, Florida 32303

850.224.4444

www.lukewnewmanlaw.com

luke@lukewnewmanlaw.com

Statewide President; Florida

Assn. of Criminal Defense

Lawyers

Board Certified Specialist,

Criminal Appeals

Former Chair; Florida Bar

Criminal Law Certification

Committee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was efiled with the Florida Supreme Court, and a copy served via email to counsel for the Judicial Qualifications Commission, Alexander John Williams, at awilliams@floridajqc.com, and on counsel for Judge Kenneth L. Hosford, Scott Tozian, at stozian@smithtozian.com, this 14th day of November, 2023.

/s/ Daniel Tibbitt
Daniel Tibbitt