

IN THE SUPREME COURT OF FLORIDA

GUILLERMO TABRAUE, III, ETC.,

Petitioner,

CASE NO. SC19-685
L.T. Case Nos. 3D16-1661
14-002006-CA-24

vs.

DOCTORS HOSPITAL, INC. ET AL.,

Respondent(s).

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**RESPONDENT'S RESPONSE IN OPPOSITION TO PETITIONER'S
MOTION TO DISQUALIFY JUSTICES LAGOA AND LUCK**

Respondent, DOCTORS HOSPITAL, INC., by and through undersigned counsel, files this Response in Opposition to Petitioner's Motion to Disqualify Justices Lagoa and Luck, and states as follows:

1. The Petitioner's Motion to Disqualify Justices Lagoa and Luck does not state a legally sufficient basis for disqualification and should be denied.

2. While Justices Lagoa and Luck were members of Third District Court of Appeal's oral argument panel, they did not participate in the decision, as they were appointed to this Court before the decision was reached. The Third District Court of Appeal's opinion was authored by Judge Scales and joined by Judges Salter and Fernandez.

3. Petitioner relies on Canon 3(e)(1)(b) of the Code of Judicial Conduct.

This canon states:

E. Disqualification.

(1) **A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned**, including but not limited to instances where:

.....

(b) **the judge** served as a lawyer or **was the lower court judge** in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it[.]

FL ST CJC Canon 3 (emphasis added).

4. Canon 3(e)(1)(b) does not mandate disqualification of Justices Lagoa and Luck for two reasons. First, Petitioner is not questioning the impartiality of either Justices Lagoa or Luck. (*See* Pet.’s Motion to Disqualify, p. 2) (“Petitioner does not allege that either Justice Lagoa or Justice Luck, in fact, would be partial in deciding this case.”). Therefore, this is not a situation where the justices’ “impartiality might reasonably be questioned.” FL ST CJC Canon 3(E)(1). Because this threshold standard has not been met, disqualification is not required.

5. Second, Justices Lagoa and Luck did not decide the underlying appeal. Therefore, Justices Lagoa and Luck were not “the lower court judge[s] in the matter in controversy.” FL ST CJC Canon 3(E)(1)(b). This is not a situation where the justices are being called upon to review their own prior decisions.

6. Under the Petitioner’s reasoning, Justices Lagoa and Luck would be *required* to recuse themselves from all cases that were pending before the Third District Court of Appeal at the time of their appointment to this Court if they were previously assigned to the panels. If the Petitioner’s logic is accepted, all Florida Supreme Court justices would be *required* to recuse themselves under similar circumstances. This interpretation of the canon would create disruptive precedent and should be avoided.

7. The decision to disqualify rests within the sound discretion of Justices Lagoa and Luck. As this Court unanimously held in *In re Estate of Carlton*, 378 So. 2d 1212 (Fla. 1979):

each justice must determine for himself both the legal sufficiency of a request seeking his disqualification and the propriety of withdrawing in any particular circumstances. This procedure is in accord with the great weight of authority, and it reenforces the modern view of disqualification as a matter which is “personal and discretionary with individual members of the judiciary”

Id. at 1216-17 (quoting *Department of Revenue v. Leadership Housing, Inc.*, 322 So. 2d 7, 9 (Fla. 1975)).

8. The discretion to recuse oneself should be balanced against the justice’s “constitutional duty to sit on cases within the constitutional jurisdiction of

this Court[.]” *Daytona Beach Racing & Recreational Facilities Dist. v. Volusia County*, 372 So. 2d 417, 417 (Fla. 1978). Where there is no showing of partiality, that balance should be resolved in favor of remaining on the case.

WHEREFORE, for the reasons stated above, Doctors Hospital, Inc. respectfully requests that this Court deny the Petitioner’s Motion to Disqualify Justices Lagoa and Luck.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy hereof has been filed and electronically served via Florida ePortal on this 17TH day of May, 2019, to all counsel on the attached service list.

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