

IN THE THIRD DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

CASE NO. 3D2024-1907  
L.T. CASE NO. 2023-000515-SP-05

UNIVERSAL X RAYS, CORP., a/a/o  
MARIAN T. JIMENEZ,

Petitioner,

v.

INFINITY AUTO  
INSURANCE COMPANY,

Respondent.

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**PETITION FOR WRIT OF PROHIBITION**

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## **INTRODUCTION**

Universal X Rays, Corp., a/a/o Marian T. Jimenez (hereinafter, the “Petitioner”) files this petition for writ of prohibition to obtain the disqualification of the trial judge in the underlying proceeding. Among other issues to date, Counsel has filed a complaint with the Judicial Qualification Commission (“JQC”) of and as related to the trial judge.

In addition to the above-mentioned complaint which undeniably acts as an impediment to impartiality on the part of the Court, the legally sufficient and compelling reason for which Petitioner filed the Motion for Disqualification arises out of the numerous occasions where the Court has displayed personal animus toward Counsel, Robert J. Lee, Esq. and the client’s objectively reasonable concern that it will not and cannot receive impartiality on the part of the Court. In this brief, all reference to the attached appendix will be designated “App.” followed by the appropriate page number.

## **BASIS FOR JURISDICTION**

This Court is authorized to issue writs of prohibition under Article V, Section 4(b)(3), of the Florida Constitution. Prohibition is the proper remedy for an erroneous denial of judicial disqualification. *E.g., Sorhegui v. Park E. Home Owners Ass'n., Inc.*, 260. 3d 790 (Fla. 3d DCA 2003); *JJN FLB, LLC v. CFLB P'ship, LLC*, 283 So. 3d 922, 924 (Fla. 2d DCA 2019).

## **STATEMENT OF THE CASE AND FACTS**

### **SUMMARY OF CIRCUMSTANCES GIVING RISE TO THE DISQUALIFICATION MOTION**

A number of issues have arisen giving rise to Plaintiff's Motion for Disqualification, most notably however being that Counsel has filed a complaint with the Judicial Qualification Committee.

On September 12, 2024, Counsel filed a complaint with the Judicial Qualifications Commission as a result of the Honorable Judge Miesha Darrough's continued mistreatment and harassment of counsel. (App. 1) This, absent more, should suffice to satiate any doubt that the Court, assuming it could have been impartial before, can no longer. This, absent more, would obviate a client's concern

that the Court cannot be impartial. Nonetheless, the Court has denied Counsel's request to disqualify.

Petitioner's Counsel, Robert J. Lee, Esq. is not aware of the genesis of the Court's hostility toward Counsel. The Court, nevertheless, routinely displays and exhibits a hostile temperament toward Counsel, and it is apparent that the Court cannot be fair and impartial. Counsel and its clients, therefore, not only fear, but know they will not be treated fairly given past conduct on the part of the Court.

An exhaustive list is not enclosed in full, but the most recent and relevant transgression(s) where Judge Darrough has, on multiple, separate occasions, demonstrated prejudice against Counsel:

(1) On September 9, 2024, an additional event which occurred within the procedural period governing timeliness of the underlying motion having left Counsel with no choice but to seek remedy from the JQC and file the Motion occurred as follows:

a. Counsel, Robert J. Lee, Esq., was called to trial in the matter of: *Danny Quagliatta et. al. v. Citizens Property*

*Insurance Co.*, Case Number: 2019-014839-CA-01  
before the Honorable Peter Lopez.

- b. Counsel was also “number 1” for trial that week in the case of: *Odalys Piloto v. Heritage Property & Casualty Insurance Corporation*, bearing Case No.: 2020-5277-CA-01, before the Honorable Judge Migna Sanchez-Llorens (counsel’s second oldest case that week).
- c. Counsel was likewise “number 1” for trial that week in the case of: *So. Fla. Water Restoration, Inc. a/a/o Niola Ventura v. Citizens Property Insurance Corporation*, bearing Case No.: 2022-9592-SP-05, before the Honorable Judge Miesha Darrough (counsel’s third oldest case set for trial that week). *Id.* at 3.
- d. While trial in Counsel’s “number 2” case (2020-5277-CA-01) was promptly continued/cancelled absent issue or necessity for further discussion, Counsel’s “number 3 case,” 2022-9592-SP-05 before the Honorable Miesha Darrough, was not ‘promptly addressed’ – though a Notice of Conflict was promptly filed. *Id.*

- e. While Counsel was in trial before the Hon. Peter Lopez in 2019-014839-CA- 01, seeking to provide effective assistance of counsel to the Plaintiff in that matter and during his trial, counsel was simultaneously notified by his staff members that the Court (Judge Darrough) sought to have heard a Motion for Summary Judgment (filed outside the Court’s Trial Order deadlines and absent proper notice under the Florida Rules of Civil Procedure) – on Tuesday, September 10, 2024 (on the morning of day two of the trial in which counsel was currently proceeding, Judge Darrough was ordering Counsel to likewise argue Summary Judgment in another matter entirely). *Id.*
- f. This transpired after Counsel was further advised by the Court staff of the Judge in front of whom trial was currently proceeding, that Judge Miesha Darrough’s chambers were calling Judge Peter Lopez’ chambers in order to “verify counsel’s (Robert J. Lee’s) whereabouts.” *Id.* at 4.

g. This did not resolve the matter. Counsel was subsequently notified by his staff, again, that the Summary Judgment hearing was still to proceed on Tuesday, September 10, 2024, despite calling and confirming his whereabouts, as well as a lack of an actual 'Notice of Hearing.'

h. After requesting numerous times that the Court in front of whom trial was proceeding contact Judge Darrough on his behalf in order to remove the "new hearing" re: Summary Judgment (set while in trial and without a Notice of Hearing), as well being advised no less than twice by the Court that Judge Darrough's chambers were not responsive on a number of occasions during day one of trial, was the Court able to advise Counsel that 'while Judge Darrough has now cancelled Tuesday's unilaterally noticed Summary Judgment, it was then re-set for Friday, September 13, 2024, during the trial week at that time.

(2) September 3, 2024, the day after the holiday weekend, Judge Darrough granted Summary Judgment in favor of Defendant

in the case of: *Julio Rivera Martinez v. Citizens Property Insurance Company*, Case Number: 2022-045523-CC-05. *Id.* at 5. While this adverse ruling would not ordinarily be the basis for a grievance, here, this Summary Judgment was entered: absent notice of hearing, and without explanation and without reference to any statutory authority, rule of procedure, due process principle, or factual finding. *Id.* This interaction occurred only after Counsel was ‘dressed down’ by the Hon. Miesha Darrough the Friday before the Holiday Weekend (the demeanor of the Court is not reflected in a written transcript, nor is Counsel’s well intentioned greeting of “Good Afternoon” which was met in response on the part of the Hon. Judge Darrough with “Yeah, O.K.” – Counsel verifies that this in fact transpired irrespective of the written/transcribed record which began thereafter upon identification of the parties).

(3) Then, Counsel was set for Trial with Judge Miesha Darrough in the matter of: *Universal X Ray, Inc. v. Infinity Auto Ins. Co.*; Case Number: 2022-039600-SP-05. *Id.* at 7. Counsel proceeded and appeared at trial; while the Court’s Jury Trial

Order expressly forbode Motions for Summary Judgment to be heard outside its deadlines, and while Robert J. Lee is routinely held to strict and absolute compliance with same, at time of trial the Hon. Judge Miesha Darrough, advised Counsel for Plaintiff, Robert J. Lee, Esq., that it would nevertheless hear Defendant's Motion for Final Summary Judgment.

(4) Also, during the trial period March 18, 2024 – March 21, 2024, in the matter of *So Fla Water Restoration, LLC a/a/o Niola Ventura v. Citizens Property Insurance Corporation*, Case No.: 2022-009592-SP-05, Judge Darrough improperly admitted unauthenticated, undated, non-descript, randomized, and patently improper photographs taken, at some point by someone, unknown, over the objections of the Plaintiff.

(5) May 16, 2024, Judge Darrough chastised counsel and co-counsel after entering a mistrial grounded on a dispute over evidence and held an evidentiary hearing to 'sanction' counsel. *Id.* the purported 'egregious statement' on which the Hon. Judge Darrough granted the mistrial was furnished to

the Court at time of hearing on sanctions and it was abundantly apparent that no such issue had in fact transpired.

It is important to note, for reasons unknown, the Honorable Miesha Darrough also denied Counsel's request to consolidate the matter of *So Fla Water Restoration, LLC a/a/o Niola Ventura v. Citizens Property Insurance Corporation*, Case No.: 2022-009592-SP-05 with the insured's case (Case Number: 2022-009049-CA-01) though each and every basis necessitating consolidation has been met.

### **NATURE OF RELIEF SOUGHT**

Petitioner, Universal X Rays, Corp., a/a/o Marian T. Jimenez, asks the Court to issue its writ of prohibition disqualifying the trial judge from presiding over the underlying case and any additional trials and hearings, including summary judgment, and remand the case to the county court for reassignment to another judge.

## **ARGUMENT**

### **I. A WRIT OF PROHIBITION MUST ISSUE BECAUSE THE MOTION TO DISQUALIFY TRIAL JUDGE WAS LEGALLY SUFFICIENT**

Because the Motion to Disqualify (App. 9) was legally sufficient, a writ of prohibition must issue disqualifying the trial judge from presiding over the underlying case and any additional trials and hearings, including summary judgment, and remand the case to the county court for reassignment to another judge.

#### **Standard of Review**

The standard of review for the legal sufficiency of a motion to disqualify is *de novo*. See *R.M.C. v. D.C.*, 77 So.3d 234, 236 (Fla. 1st DCA 2012). In deciding on an initial motion for disqualification, the trial court must follow the requirements of rule 2.330(f) of the Florida Rules of Judicial Administration. This provision requires the trial court to determine only if the motion is legally sufficient; the trial court may not consider whether the factual assertions of the motion are true. *Messianu v. Pigna*, 180 So.3d 229 (Fla. 3rd DCA 2015); See also *Bundy v. Rudd*, 366 So.2d 440, 442 (Fla. 1978). “The facts alleged in a motion seeking to disqualify a trial judge must be evaluated as true for the purposes of determining legal sufficiency.”

*Messianu v. Pigna*, 180 So.3d 229 (Fla. 3rd DCA 2015); *See also City of Hollywood v. Witt*, 868 So.2d 1214, 1217 (Fla. 4th DCA 2004).

The issue before this Court is the legal sufficiency of the motion to disqualify the trial court judge. To demonstrate legal sufficiency, Petitioners 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.

*Livingston v. State*, 441 So. 2d 1083, 1086 (Fla. 1983) [Emphasis Added].

## 1. **STANDARD FOR DISQUALIFICATION**

“[T]he standard for determining whether a motion is legally sufficient is ‘whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair trial.’ *See Enter. Leasing Co. v. Jones*, 789 So. 2d 964, 968 (Fla. 2001) (citations omitted). A mere “subjective fear” of bias will not be legally sufficient; rather, the

fear must be objectively reasonable. *Fischer v. Knuck*, 497 So.2d 240, 242 (Fla. 1986).

Canon 3E, Fla. Code Jud. Conduct, and Rule 2.330, 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).

\* \* \*

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) [Emphasis added].

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.

## **II. THE MOTION TO DISQUALIFY SATISFIED THE REQUIREMENTS OF RULE 2.330(c)**

The Motion to disqualify satisfied all requirements of Florida Rule of Judicial Administration 2.330(c).

### **A. The Motion to Disqualify was “In Writing”**

The Motion to Disqualify was “in writing.” Fla. R. Jud. Admin. 2.330(c)(1).

**B. The Motion To Disqualify “Allege[d] Specifically The Facts And Reasons Upon Which The Movant Relies As The Grounds For Disqualification”**

The Motion to Disqualify “allege[d] specifically the facts and reasons upon which the movant relies as the grounds for disqualification.” Fla. R. Jud. Admin. 2.330(c)(2).

Petitioner alleged, on multiple, separate occasions, Judge Darrough has not only harbored bias against Counsel, but has instilled fear that any matter proceeding before the Court will deprive Counsel’s clients of their day in court. (App. 9).

Specifically, at the time of trial (March 18, 2024 – March 21, 2024), in the matter of *So Fla Water Restoration, LLC a/a/o Niola Ventura v. Citizens Property Insurance Corporation*, Case No.: 2022-009592-SP-05, Judge Darrough improperly admitted unauthenticated, undated, non-descript, randomized, and patently improper photographs taken, at some point by someone, unknown, over the objections of the Plaintiff, and absent an ounce of proper foundation in order to prejudice Plaintiff. Motion to Disqualify (App. 9) at 72.

Also, Petitioner alleged, on May 16, 2024, Judge Darrough chastised counsel and co-counsel after entering a mistrial grounded

on a dispute over evidence and held an evidentiary hearing to ‘sanction’ counsel. *Id.* The ‘egregious statement’ on which Judge Darrough granted the mistrial was furnished to the Court at time of hearing on sanctions and it was abundantly apparent that no such issue had in fact transpired. *Id.*

Moreover, Counsel was set for Trial with Judge Miesha Darrough in *Universal X Ray, Inc. v. Infinity Auto Ins. Co.*; Case Number: 2022-039600-SP-05. *Id.* at 7. Counsel proceeded and appeared at trial; while the Court’s Jury Trial Order expressly forbode Motions for Summary Judgment to be heard outside its deadlines, at time of trial, Judge Darrough, advised Counsel for Plaintiff, Robert J. Lee, Esq., that it would nevertheless hear Defendant’s Motion for Final Summary Judgment. *Id.* Counsel objected and the Court advised of its intention to proceed nonetheless, denying due process. *Id.*

As a result of the Court’s actions, Plaintiff was forced to advise the Court that rather than permit the Court enter an Order which would have irrefutably been in favor of Summary Judgment for Defendant (no matter the evidence), it would dismiss and subsequently took a voluntary dismissal in the matter rather than

permit further harm to Plaintiff as it was abundantly clear an issue had arisen. *Id.*

Also, on September 3, 2024, the day after the holiday weekend, Judge Darrough granted Summary Judgment in favor of Defendant in the case of: *Julio Rivera Martinez v. Citizens Property Insurance Company*, Case Number: 2022-045523-CC-05. *Id.* at 5. While this would not ordinarily be the basis for a grievance, here, this Summary Judgment was entered: absent notice of hearing, and without explanation and without reference to any statutory authority, rule of procedure, due process principle, or factual finding. *Id.*

The above-referenced summary judgment took place after Counsel was scolded by the Hon. Miesha Darrough the Friday before the Holiday Weekend (the demeanor of the Court is not reflected in a written transcript, nor is Counsel's well intentioned greeting of "Good Afternoon" which was met in response on the part of the Hon. Judge Darrough with "Yeah, O.K." – Counsel verifies that this in fact transpired irrespective of the written/transcribed record which began thereafter upon identification of the parties). *Id.* at 6. (App. 3).

Finally, On September 9, 2024, the event which transpired within the procedural period governing timeliness of the underlying

motion and was fundamentally the ‘straw which broke the camel’s back’ having left Counsel with no choice but to seek remedy from the JQC and file the Motion occurred as follows: Counsel, Robert J. Lee, Esq., was called to trial in the matter of: (CIRCUIT COURT) *Danny Quagliatta et. al. v. Citizens Property Insurance Co.*, Case Number: 2019-014839-CA-01 before the Honorable Peter Lopez. Counsel was likewise “number 1” for trial that week in the cases of: (CIRCUIT COURT) *Odalys Piloto v. Heritage Property & Casualty Insurance Corporation*, bearing Case No.: 2020-5277-CA-01, before the Honorable Judge Migna Sanchez-Llorens (counsel’s second oldest case that week), as well as (COUNTY COURT) *So. Fla. Water Restoration, Inc. a/a/o Niola Ventura v. Citizens Property Insurance Corporation*, bearing Case No.: 2022-9592-SP-05, before the Honorable Judge Miesha Darrough (counsel’s third oldest case set for trial that week). *Id.* at 3.

While trial in Counsel’s “number 2” case (2020-5277-CA-01) was promptly continued/cancelled absent issue or necessity for further discussion, Counsel’s “number 3 case,” 2022-9592-SP-05 before the Honorable Miesha Darrough, was not ‘promptly addressed’ – though a Notice of Conflict was promptly filed. *Id.*

While Counsel was in trial before the Hon. Peter Lopez in 2019-014839-CA- 01, seeking to provide effective assistance of counsel to the Plaintiff in that matter and during his trial, counsel was simultaneously notified by his staff members that the Honorable Judge Darrough sought to have heard a Motion for Summary Judgment (filed outside the Court’s Trial Order deadlines and absent proper notice under the Florida Rules of Civil Procedure) – on Tuesday, September 10, 2024. This was to take place on the morning of day two of the trial in which counsel was currently proceeding -- Judge Darrough was ordering Counsel to likewise argue Summary Judgment in another matter entirely. *Id.*

The above transpired after Counsel was further advised by the Court staff of the Judge in front of whom trial was currently proceeding, that Judge Miesha Darrough’s chambers were calling Judge Peter Lopez’ chambers in order to “verify counsel’s (Robert J. Lee’s) whereabouts.” *Id.* at 4.

Counsel was instructed by the staff of Judge Lopez to notify the Court (Judge Darrough) that they were in fact in trial – and promptly did so, speaking to the Court’s bailiff in order to “confirm his whereabouts.”

Unfortunately, this did still not resolve the matter as counsel was thereafter notified by his staff again that the summary judgment hearing was still to proceed on Tuesday, September 10, 2024 (despite his call and despite no actual ‘Notice of Hearing’). *Id.*

**C. The Motion To Disqualify Was “Sworn To By The Party Signing The Motion Under Oath Or By A Separate Affidavit”**

The Motion to Disqualify was “sworn to by the party by signing the motion under oath or by a separate affidavit.” Fla. R. Jud. Admin. 2.330(c)(3). “Under penalty of perjury,” Universal X Rays, Corp., alleged that he “ha[d] read the forgoing Verified Motion for Disqualification of the Honorable Judge Miesha Darrough, and based upon the facts alleged therein, I fear that I will not receive a fair trial or hearing because of the described prejudice or bias of Judge Miesha Darrough.” Motion to Disqualify (App. 9) at 84.

**D. The Motion To Disqualify “Include[d] The Dates Of All Previously Granted Motions To Disqualify Filed Under This Rule In The Case And The Dates Of The Orders Granting Those Motions”**

There were no, nor have there been, any prior motions to disqualify filed (though counsel has now filed in all matters pending

before this Court).<sup>1</sup> The Motion to Disqualify stated, “Counsel certifies that this Verified Motion and the statements contained therein are made in good faith and in compliance with Fla. R. Jud. Admin.” Motion to Disqualify (App. 9) at 83.

**E. Petitioner’s Attorney “Separately Certif[ied] That The Motion And The Clients Statements Are Made In Good Faith”**

Petitioner’s attorney “separately certif[ied] that the motion and the client’s statements are made in good faith.” Fla. R. Jud. Admin. 2.330(c). Specifically, the Motion to Disqualify states, “Counsel certifies that this Verified Motion and the statements contained therein are made in good faith and in compliance with Fla. R. Jud. Admin.” *Id.* (App. 9) at 83.

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<sup>1</sup>Motions to disqualify have been filed in Case No.’s: (1) 2022-009592-SP-05; (2) 2023-011771-SP-05; (3) 2022-010748-SP-05; (4) 2023-002444-SP-05; 2023-002449-SP-05; (5) 2023-012487-SP-5; (6) 2022-022226-SP-05; (7) 2023-004115-SP-05; (8) 2023-012485-SP-05; (9) 2023-004645-SP-05; (10) 2023-001639-SP-05; (11) 2023-011462-SP-05; (12) 2023-000480-SP-05; (13) 2022-04032-SP-05; 2022-001463-SP-05; (14) 2023-000515-SP-05; (15) 2024-095660-SP-05; (16) 2023-000510-SP-05; (17) 2023-052424-SP-05; (18) 2022-045523-CC-05.

**F. Petitioner “Immediately Serve[d] A Copy Of The Motion On The Subject Judge As Set Forth In Rule 2.516”**

Petitioner “immediately serve[d] a copy of the motion on the subject judge as set forth in Rule 2.516.” Fla. R. Jud. Admin. 2.330(d). Specifically, the motion states, “Counsel certifies that this Verified Motion and the statements contained therein are made in good faith and in compliance with Fl. R. Jud. Admin., this Motion is served on the subject judge as set forth in Rule 2.516.” *Id.* (App. 9).

**III. THE MOTION TO DISQUALIFY SATISFIED THE REQUIREMENTS OF RULE 2.330(e)**

The Motion to Disqualify satisfied all the requirements of Florida Rule of Judicial Administration 2.330(e) because it clearly demonstrated that “the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.” Fla. R. Jud. Admin. 2.330(e)(1).

As previously mentioned, the Motion to Disqualify alleged Judge Darrough has, on multiple, separate occasions, demonstrated prejudice against Counsel.

While Counsel was in trial before the Honorable Peter Lopez in 2019-014839-CA-01, seeking to provide effective assistance of

counsel to the Plaintiff in that matter during his trial, Counsel was advised by his staff members that the Honorable Miesha Darrough sought to have heard a Motion for Summary Judgment (filed outside the Court's Trial Order deadlines and absent proper notice under the Florida Rules of Civil Procedure) on September 10, 2024 – on the morning of day two of the trial in which counsel was currently proceeding.

Counsel was subsequently notified by his staff, again, that the Summary Judgment hearing was still to proceed on Tuesday, September 10, 2024, despite calling and confirming his whereabouts, as well as a lack of an actual 'Notice of Hearing.'

After numerous requests to the Court in front of whom trial was proceeding contact Judge Darrough on his behalf in order to remove the "new hearing" re: Summary Judgement, as well being advised no less than twice by the Court that Judge Darrough's chambers were not responsive on a number of occasions during day one of trial, the Court able to advise Counsel that 'while Judge Darrough has now cancelled Tuesday's unilaterally noticed Summary Judgment, it was then re-set for Friday, September 13, 2024, during the trial week at that time.

Prior to the above referenced event, on September 3, 2024, Judge Darrough granted Summary Judgment in favor of Defendant in the case of: *Julio Rivera Martinez v. Citizens Property Insurance Company*, Case Number: 2022-045523-CC-05. This Summary Judgment was entered (order pending): (1) absent notice of hearing, and (2) in retaliation for a vacation on the part of Counsel's Co-Counsel. The Court announced, without explanation and without reference to any statutory authority, rule of procedure, due process principle, or factual finding, that the Court was granting the Defendant's requested Summary Judgment.

Counsel was likewise unjustly accused that particular Friday of "fabricating availability" solely predicated upon Counsel being called to another trial before another Judge (rather than proceeding to trial with Judge Darrough in a matter which was no less than two (2) years the younger and violating FL. R. Jud. Admin. 2.550). (App. 3)

Counsel was set for Trial with Judge Miesha Darrough in the matter of: *Universal X Ray, Inc. v. Infinity Auto Insurance Company*, Case Number: 2022-039600-SP-05. (App. 4). Counsel proceeded and appeared at trial.

While the Court's Jury Trial Order expressly forebode Motions for Summary Judgment to be heard outside its deadlines, Judge Darrough advised Counsel for Plaintiff, Robert J. Lee, Esq., that it would nevertheless hear Defendant's (dilatory) Motion for Summary Judgment. Counsel objected and the Court advised of its intention to proceed regardless, thereby denying due process and extending deadlines where otherwise improper and impermissible.

On May 16, 2024, the Honorable Miesha Darrough chastised Counsel and Co-Counsel after entering a mistrial predicated on a dispute over evidence and held an evidentiary hearing to "sanction" counsel. It was abundantly apparent that no such issue had in fact transpired (neither rising to the level of mistrial nor the greater standard for which there would be an award of sanction/attorney fees), the Court still retained jurisdiction to sanction counsel, unjustly so. (App. 6) (App. 7)

Furthermore, at the time of trial (March 18, 2024 – March 21, 2024), the Court improperly admitted unauthenticated, undated, non-descript, randomized, and patently improper photographs taken sometime by someone unknown, over the objection of the Plaintiff and absent a trace of proper predicate in order to prejudice Plaintiff.

Particularly, Counsel for Plaintiff moved for mistrial – this was denied. (App. 8)

These facts, separately, are enough to satisfy 2.330(e)(1). However, taken together, these facts effectively establish the reasonable fear that Counsel and Counsel’s clients will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge. Fla. R. Jud. Admin. 2.330(e)(1).

Litigants are “entitled to enter the courtroom with confidence that [they] will receive a fair trial,” and “[t]he facts must be viewed from the perspective of the petitioner.” *Michaud-Berger v. Hurley*, 607 So. 2d 441, 446 (Fla. 4th DCA 1992). “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. So long as the allegations are not frivolous or fanciful, they are sufficient to support a motion to disqualify.” *Breakstone v. MacKenzie*, 561 So. 2d 1164, 1167-68 (Fla. 3d DCA 1989) (citations and punctuation omitted), *approved sub nom., Mackenzie v. Super Kids Bargain Store*, 565 So. 2d 1332 (Fla. 1990).

Caselaw recognizes that a motion to disqualify that raises the kinds of fears that Petitioner alleged is legally sufficient because “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.

Here, Judge Darrough has demonstrated, time and time again, the blatant prejudice and bias against Counsel, Robert J. Lee, Esq. Viewing these facts, separately, from the perspective of the Petitioner, it is neither frivolous or fanciful to believe that it will be robbed of the confidence, to which it is entitled, that it will receive a fair trial before the Honorable Miesha Darrough. Viewing these facts, together, it is readily apparent that the Petitioner will not receive a fair trial before Judge Darrough.

#### **IV. THE MOTION TO DISQUALIFY WAS FILED WITHIN THE TIME LIMITATION OF RULE 2.330(g)**

The Motion to Disqualify was filed within the time limitation of Florida Rule of Judicial Administration 2.330(g) because it was “filed within a reasonable time not to exceed 20 days after discovery by the party or party's counsel, whichever is earlier, of the facts constituting the grounds for the motion.” Fl. R. Jud. Admin. 2.330(g). Specifically, the Motion to Disqualify stated, “in compliance with FL. R. Jud. Admin. 2.330(c) & (e), is being promptly presented to the Court within ten (10) days after discovery of the facts constituting the final basis

of the Verified Motion and is being promptly presented to the Court for immediate ruling. Motion to Disqualify (App. 9) at 75.

**V. WHEN JUDGE DARROUGH DENIED THE MOTION TO DISQUALIFY, SHE DID NOT COMPLY WITH 2.330(h)**

The denial of the Motion to Disqualify did not comply with the limited judicial review permitted by Florida Rule of Judicial Administration 2.330(h).

Fl. R. Jud. Admin. 2.330(h) provides that, “[t]he judge against whom an initial motion to disqualify under subdivision (e) is directed may determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged.” Fl. R. Jud. Admin. 2.330(h).

The issue with the Court’s Order Denying Motion to Disqualify Trial Judge (App. 10) is that the Motion to Disqualify (App. 9) was legally sufficient in all respects. *See supra* Argument II.A-II.F.

Accordingly, the writ of prohibition must issue. *Bundy*, 366 So. 2d at 442 (“Once a basis for disqualification has been established, prohibition is both an appropriate and necessary remedy.”).

**VI. THE TRIAL COURT HAS, ON NUMEROUS OCCASIONS, DISPLAYED PERSONAL ANIMUS TOWARD COUNSEL, ROBERT J. LEE, ESQ., WARRANTING DISQUALIFICATION**

As has been previously established, on numerous occasions, Judge Darrough has egregiously displayed animus toward Counsel.

While Counsel was in trial before the Hon. Peter Lopez in 2019-014839-CA- 01, seeking to provide effective assistance of counsel to the Plaintiff in that matter and during his trial, counsel was simultaneously notified by his staff members that Judge Darrough sought to have heard a Motion for Summary Judgment, filed outside the Court's Trial Order deadlines and absent proper notice under the Florida Rules of Civil Procedure – on Tuesday, September 10, 2024 (on the morning of day two of the trial in which counsel was currently proceeding, Judge Darrough was ordering Counsel to likewise argue Summary Judgment in another matter entirely).

Additionally, on September 3, 2024, the Honorable Miesha Darrough, granted Summary Judgment in favor of Defendant in (2022-045523-CC-05); this Summary Judgment was entered: absent notice of hearing, and without explanation and without reference to any statutory authority, rule of procedure, due process principle, or factual finding -- Judge Darrough conducted an internal *Daubert*

hearing, absent notice or request, and instead played the role of meteorologist, general contract, engineer, and jurist.

Counsel was set for Trial with Judge Miesha Darrough in the matter of: *Universal X Ray, Inc. v. Infinity Auto Insurance Company*, Case Number: 2022-039600-SP-05. (App. 4). Counsel proceeded and appeared at trial. While the Court's Jury Trial Order expressly forebode Motions for Summary Judgment to be heard outside its deadlines, Judge Darrough advised Counsel for Plaintiff, Robert J. Lee, Esq., that it would nevertheless hear Defendant's (dilatory) Motion for Summary Judgment. Counsel objected and the Court advised of its intention to proceed regardless, thereby denying due process.

Counsel was 'dressed down' by the Hon. Miesha Darrough the Friday before the Holiday Weekend. The demeanor of the Court is not reflected in a written transcript; nor is Counsel's well-intentioned greeting of "Good Afternoon" which was met in response on the part of the Hon. Judge Darrough with "Yeah, O.K." – Counsel verifies that this in fact transpired irrespective of the written/transcribed record.

On May 16, 2024, Judge Darrough chastised counsel and co-counsel after entering a mistrial predicated on a dispute over

evidence and held an evidentiary hearing to ‘sanction’ counsel. While the purported ‘egregious statement’ on which the Hon. Judge Darrough granted the mistrial was furnished to the Court at time of hearing on sanctions, it was abundantly apparent that no such issue had in fact transpired (neither rising to the level of mistrial nor the greater standard upon which there would be an award of a sanction/attorney fees). The Court still retained jurisdiction to sanction counsel, wrongfully so.

Also, during the trial period of March 18, 2024 – March 21, 2024 in the matter of *So Fla Water Restoration, LLC a/a/o Niola Ventura v. Citizens Property Insurance Corporation*, the Honorable Miesha Darrough improperly admitted unauthenticated, undated, non-descript, randomized, and patently improper photographs taken, at some point, by someone, unknown, over the objections of the Plaintiff, and without a proper basis in order to prejudice Plaintiff.

Counsel was also prejudicially accused that particular Friday of ‘fabricating availability’ solely grounded upon Counsel being called to another trial before another Judge (rather than proceeding to trial with the Honorable Judge Darrough in a matter which was no less

than two (2) years the younger and violating FL. R. Jud. Admin. 2.550).

“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).

Once the movant meets the statutory requirement of demonstrating a well-founded *belief* that he is unable to receive a due process-mandated fair trial based on the obvious prejudice of a trial judge, the moving documents are deemed sufficient. *Sikes v. Seaboard Coast Line R. Co.*, 429 So. 2d 1216, 1225 (Fla. Dist. Ct. App. 1983) *quoting State ex rel. Davis*, 194 So. at 614–15.

The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the court's own perception of its ability to act fairly and impartially. The disqualification rule was designed to prevent what apparently occurred in this case—the creation of “an intolerable adversary atmosphere” between the trial judge and the litigant. *Id.* [Citation omitted].

Because the trial court has on numerous occasions displayed personal animus toward Counsel, Robert J. Lee, Esq., by: (1) improperly scheduling essential hearings, while knowing about the inability to attend due to trial; (2) what is tantamount to harassing counsel while in trial on another matter and rolling summary judgment from day to day; (3) entering Summary judgment absent notice of hearing, and without explanation and without reference to any statutory authority, rule of procedure, due process principle, or factual finding; and (4) deliberately scheduling and hearing Motions for Summary Judgment – outside the deadlines. The judge's decidedly negative commentary and actions concerning [her] personal opinion of the petitioner's behavior, when viewed in the context of, and at this stage of the proceeding, have given Petitioner, and Counsel, a well-founded fear of not receiving a fair and impartial trial.

### **CONCLUSION**

All of the elements for disqualification have been met. The court has demonstrated, time and time again, animus toward Counsel. Therefore, The Court should issue its writ of prohibition disqualifying

the trial judge and remanding the case for reassignment to another judge.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed on October 27, 2024, via the Florida Courts E-Filing Portal and sent via e-mail to:

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**CERTIFICATE OF COMPLIANCE**

I certify that this Brief has been submitted in Bookman Old Style 14-Point font, and that the number of words in this brief total 6,626 in compliance with Fla. R. App. P. 9.045.

By: /s/ R.J.L, Esq

Robert J. Lee, Esq.