

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT

CASE NO: 3D24-1657

DARIO CARNEVALE

Petitioner,

vs.

GUY M. SHIR, et al.,

Respondents.

**PETITIONER'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF PROHIBITION**

THE TRIAL COURT ABUSED ITS DISCRETION IN
DENYING THE MOTION TO DISQUALIFY WHERE
THE MOTION DEMONSTRATED ACTUAL BIAS
AGAINST CARNEVALE

Candor to the tribunal is fundamental to the practice of law. R. Regulat-
ing Fla. Bar 4-3.3. So it was and is disturbing that Respondent's counsel,
Robert Menje, represents to this court in the response to petition that Carne-
vale and undersigned counsel have made knowing misrepresentations to this
court in the petition for writ. Attorney Menje goes so far as to seek sanctions

under §57.105, Fla. Stat.¹ But Attorney Menje has a sordid history of misrepresentations and inability to follow court orders. The list of sanctions orders entered against the Respondents Guy Shir and Stuart Zoberg (the “Shir Defendants”) and their lawyer Robert Menje by multiple judges in this case and the formerly consolidated cases is long. Suffice it to say here, Attorney Menje has been sanctioned in this case by Judge Veronica Diaz for making “false material misrepresentations to the court.” S. Appx. 33. As Judge Diaz found in the perjury sanctions order:

32. The Shir Defendants and Mr. Menje made false material misrepresentations to this Court.

33. The testimony by the Shir Defendants and Mr. Menje in this case demonstrates a disregard of the Court’s order and the willingness to engage in inappropriate gamesmanship. The Court cannot allow this behavior.

34. The Court has broad discretion to issue sanctions against litigants before it, and after reviewing the evidence and holding a two-day evidentiary hearing, this Court hereby exercises its discretion to sanction the Shir Defendants and Robert Menje for their endemic egregious behavior before this Court.

S. Appx. 33²

¹ As evidence of the overreaching nature of Respondent’s response, not only does attorney Menje seek §57.105, Fla. Stat. against Carnevale with regard to the petition, but has the audacity to seek such sanctions against plaintiff Flavia Carnevale who neither joined in the petition nor the underlying Motion to Disqualify.

² The letters “S.Appx.” shall represent the supplemental appendix filed in conjunction with this reply.

Second, attorney Menje has also been found to engage in bad faith litigation tactics. S. Appx. 23. Third, in a case which was consolidated with the instant case, the Honorable Miguel de la O issued an order for attorney Menje to show cause why he should not be held in indirect criminal contempt. S. Appx 50-68.³ Consequently, attorney Menje's history reflects negatively on the veracity of what he represents occurred below.⁴

Likewise, in the course of this nearly decade-long litigation, the Shir Defendants (Respondents hereto) have already been found by the Circuit Court in its order granting the Carnevaless' motion for summary judgment as to Counts I and II in this 2016 case to have (a) breached their fiduciary duty to the Carnevaless, (b) committed constructive fraud, (c) extorted the Carnevaless, (d) committed theft of the Carnevaless' business opportunities, (e) violated the Rules Regulating the Florida Bar and (f) engaged in a massive conflict of interest and extensive self-dealing. Summary Judgment in the Carnevaless'

³ Attorney Menje was found not guilty of the criminal charges after a trial before the Honorable Thomas Rebull, but Judge Rebull did impose sanctions against Mr. Menje for civil contempt, for his conduct. S.Appx. 74-77

⁴ The Respondents' Response is replete with representations on the part of Attorney Menje. For example, footnote 4 on page 11 of their Response contains an entire paragraph containing personal attacks, mischaracterizations and allegations involving a Broward County case that was transferred to Dade County which has nothing to do with this case. This court should not give credence to any representation not supported by a record citation.

favor as to as to Count I (Constructive Fraud), and Count II (Constructive Trust), of the operative Amended Complaint in this 2016 case, based on these express findings, was appropriately entered on February 10, 2020. S. Appx. 3-15.

The above judgments and orders show that the Shir Defendants have been proven repeatedly to lack credibility. So their retaliatory, baseless, and malicious attacks on the Carnevaless' credibility and motives are just that, retaliatory, baseless, and malicious.⁵

⁵ In a further attempted attack on Carnevale's credibility, the Respondents quote (out of context) a prior opinion of this Court which contained a disputed sentence stating that a prior petition of the Carnevaless supposedly contained "mischaracterizations of facts and procedural history that undermine their claim of judicial bias" simply because a non-party (Feldman) who tried to intervene had "claimed" that the Carnevaless had proffered a "fraudulent" consent judgment. With no disrespect meant for this court, an "allegation" without evidence is not proof of anything. Second, the consent judgments are anything but fraudulent. Those signed consent judgments (located at Docket Entry 164 and 165, Case No. 2018-7447-CA-01) were consistent with and confirmed the already final and non-appealable Summary Judgment entered on June 23, 2020 in Case No. 2014-13703-CA-01 and those consent judgments (which the Court reviewed and signed as an Agreed Final Judgment in the 2018 case) also confirmed the earliest-in-time sworn testimony of the signatories of the consent judgments as outlined in that June 23, 2020 final Summary Judgment; and, further supporting the authenticity and accuracy of the consent judgments, the signatories thereto were represented by counsel (Jay Tome, Esq.) when they signed those consent judgments who, as the docket demonstrates, submitted the consent judgments to the Trial Court on October 5, 2021 jointly with the Carnevaless. (Docket Entry 164 and 165, Case No. 2018-7447-CA-01).

Unaddressed by the Respondents in their response to the petition is the initial case management report filed by Carnevale. Appx. 206-219. Although Carnevale filed this case management report on January 23, 2024, as of the July 18, 2024 case management conference, the Trial Court admitted she had not read the report, despite having had several months to read it. This case management report set forth Carnevale's position on the sequence that matters should proceed before the court and the reasons therefor. Appx. 217. It indicated that the thirteen (13) motions which Respondents sought to set for evidentiary hearing, four (4) of which were in a different case,⁶ were either "denied, stricken, rejected on the merits, or withdrawn with prejudice." Appx. 216.⁷ It explained why the positions taken by Respondents were barred by collateral estoppel having been adjudicated adversely to Respondents in a

⁶ *RDR Seashore, LLC v. Seashore Club South Condo Ass'n, Inc., et al*, Eleventh Judicial Circuit Case No. 2014-013703. An order granting summary judgment was entered in favor of Carnevale and his co-plaintiff Flavia Carnevale on June 23, 2020, DE 795. Final judgments were entered in favor of the Carnevales on November 29, 2020 (DE 922, 923).

⁷ This statement was substantiated by the chart that accompanied the Supplement to Plaintiffs' Case Management Report in which Carnevale set forth the basis for his statement in the initial case management report that the thirteen (13) motions were either "denied, stricken, rejected on the merits, or withdrawn with prejudice." Appx. 265-270. The July 18, 2024 hearing transcript shows that Carnevale tried to show the Trial Court the chart attached to the Supplement to the case management report during the July 18, 2024 hearing but she refused to look at it or even let him discuss it. Appx. 292.

companion case. Appx. 210-211. These matters all went to scheduling which was the subject of the case management conference.

The fact that the Trial Court stated she read the docket in detail is of no moment and is no substitute for reviewing the case management report and the Supplement because, among other things, the case management report and the Supplement contained *hearing transcripts* which were not otherwise located on the docket. Assuming the Trial Judge did conduct a detailed review of the docket as she represented on the record, Appx. 292-293, she simply would not have gleaned the information contained in the case management report from such review, especially because the case management report and the Supplement thereto contained those *hearing transcripts* that were not filed elsewhere in the docket. Hearing transcripts that *are* the official record of what occurred at the prior hearings and would have refreshed the Trial Court's recollection of what had actually occurred at the hearings years earlier, instead of her trying to rely solely on her memory of what occurred at hearings in one of thousands of cases she has presided over during the past six years, which she could not possibly remember in detail off of the top of her head.

An example of this is demonstrated by the transcript excerpt from the September 28, 2023 hearing. S. Appx. 42-43. That transcript excerpt is

referenced in item 6 of the chart attached to the supplement to Carnevale's case management report, It is material because it reveals attorney Menje's machinations in attempting to set thirteen (13) moot motions, eight (8) of which had been unilaterally added on by Mr. Menje (DE 440) , an action Menje denied on the record: ""I didn't add eight. That's too funny. I didn't add eight. There's the original ones. I don't know what he's talking about." S. Appx. 42-43. Had the Trial Court simply reviewed Carnevale's case management report and Supplement, her recollection of this history would have been refreshed and she would have realized that scheduling the moot motions that Menje admitted were not pending, would be improper, unnecessary and inappropriate. But she refused to even read Carnevale's case management report and supplement, further evidence supporting the contention that the Trial Court is prejudiced against Carnevale..

Nowhere in the record is the contention raised that Carnevale's case management report was a frivolous filing. The Trial Court had the obligation to review it. Carnevale was entirely correct in perceiving that the Trial Court's failure to do so, coupled with the other actions on the part of the Trial Court as outlined in the petition for writ, indicated that the Trial Court was prejudiced against him.

In the petition for writ, Carnevale argues that an improper *ex parte* communication between the Trial Court and the defense attorneys occurred at a case management conference held on July 31, 2024. Petition at pp. 21-22. This non-emergency hearing by the Trial Court was set on less than twenty-four (24) hours notice, at a time when Carnevale was out of the country and unavailable to attend the hearing. Respondents contend that it was perfectly appropriate to set a hearing on short notice and it was Carnevale's obligation to attend. Response at p. 10. Contrary to this statement, procedural due process requires that reasonable notice and opportunity to be heard be furnished. "Procedural due process requires both reasonable notice and a meaningful opportunity to be heard." *Yue Yan v. Byers*, 88 So. 3d 392, 394 (Fla. 4th DCA 2012). "Although the amount of required notice does not turn on "hard and fast rules ... the party served with notice must have actual notice and time to prepare." *Ferris v. Winn*, 242 So. 3d 509, 510 (Fla. 2d DCA 2018). Here the Trial Court refused to cancel the hearing even though Carnevale was unavailable.

The Trial Court noticed the hearing as a July 31, 2024 “Hearing” (not merely a zoom “call” as the Respondents falsely allege).⁸ It is undisputed that the Trial Court never canceled the July 31, 2024 hearing with a notice of cancellation (even after receiving Mr. Carnevale’s written notice that he would not be able to attend on such short notice from out of the country). Due to his inability to attend the hearing, Carnevale sent a court reporter but the court reporter was not allowed to transcribe the hearing. The court reporter indicated: “The JA expressed that sending a court reporter to the hearing and not appearing was unacceptable and as we were not on the record, I was not to

⁸ In its notice to the parties, (July 30, 2024 email at 4:14 pm EDT) S. Appx. 73, the Trial Court referred to the July 31, 2024 hearing as a “ZOOM HEARING”, and a “VIRTUAL HEARING,” “Scheduled Before: Vivianne Del Rio,” not a “zoom call” as the Respondents falsely claim. The docket shows that the July 31, 2024 Case Management Conference was Scheduled as a “Status *Hearing*” and the “Event Type” column described it as a ‘Hearing’. (See attached screenshot of docket. S. Appx. 72 The Respondents’ blatant misrepresentation in their Response that the July 31, 2024 hearing was merely a “zoom call” is a material and demonstrable falsehood. The Respondents appear to believe that by referring to the Hearing as merely a “zoom call” they can change what happened. Yet, the Respondents’ own Response (at pp. 22-23) further proves that it was a hearing, because in their Response they included the email from the Trial Court’s judicial assistant (Bonini) wherein the judicial assistant states that “Since not everyone answered my email yesterday, **the Court is setting this matter for a Case Management tomorrow at 9:30 AM.**” All of this record evidence makes it crystal clear that the July 31 Case Management conference was a *Hearing*, not merely a zoom “call”.

take down anything that was said during the brief interaction.” Appx. 338, S. Appx. 59. This is contrary to Fla. R. Gen. Prac. & Jud. Admin. 2.535(b) which states: “Any proceeding shall be reported on the request of any party.” So, the failure to provide this court with a transcript of the hearing which would conclusively demonstrate what actually occurred at the hearing is not the fault of Carnevale. Attorney Menje’s reply in which he states that Judge Del Rio did not appear and that the hearing only concerned scheduling, lacking as it is in record support, is entitled to no consideration whatsoever. Given Attorney Menje’s past history, Carnevale has no reason to believe his recitation is accurate. Moreover, a counsel’s unsworn representations, such as contained in pages 21-24 of the response, do not constitute evidence. *Certain Underwriters at Lloyd’s, London v. Gables Ct. Condo. Ass’n, Inc.*, 357 So. 3d 759, 762 (Fla. 3d DCA. 2023). Due to the instruction that the court reporter was not to take down the hearing, there is no way to disprove Carnevale’s reasonable belief that *ex parte* conversations occurred. The Respondents cannot on the one hand try to benefit from the lack of a transcript, but on the other hand make claims and accusations based on what they allege supposedly happened or did not happen during the hearing with no transcript to substantiate

or back up their claims. Accordingly, the Respondents' attempts to unilaterally revise (or embellish) history fails.

Carnevale's belief that an *ex parte* communication occurred is further buttressed by the court reporter's report to him concerning the hearing: "The JA and judge were extremely unhappy (Emphasis Supplied)." S. Appx. 57. Consequently, Carnevale has every right to consider the judge was present at the hearing. Additionally, contrary to the response, merely because the JA spoke to the court reporter rather than the judge does not mean the judge was not present.

This is not the first time that the court engaged in *ex parte* conversations with Respondents' counsel. At the hearing of April 5, 2024, the following occurred:

MR. CARNEVALE: Right, right, right. Without speculating or hypothetically, I would say, let's just -- if we could just cross that bridge when we come to it

THE COURT: All right.

MR. CARNEVALE: I would appreciate it.

THE COURT: Okay. All right. That's fine.

MR. CARNEVALE: Thank you. Thank you. Have a nice day, your Honor.

THE COURT: Okay. Have a good day.

(Dario Carnevale and Flavia Carnevale left the Zoom hearing.)

MR. MENJE: Your Honor, if I may --

MR. ZOBBERG: Your Honor, hold on. Can we get a chance --

MR. MENJE: Hold on.

MR. ZOBBERG: -- to say something, please?

MR. MENJE: Yeah, we haven't even opened our mouths yet. They -- your Honor never said the hearing was over ...

MR. ZOBBERG: Robert, let me just take it from here. Judge, first of all, the case law is crystal clear that, at this point, you have the discretion to say enough is enough.

THE COURT: I know. I know I do. Listen --
(Simultaneous speakers.)

THE COURT: -- I don't want to do I don't want to -- listen. I don't want to get into an ex parte situation. They have left the Zoom room. I thought, honestly, that they were going to come in here and ask for 60 days, 90 days, 120 days. That's what I was thinking in my mind. I was very relieved, quite honestly, that it was only 30 days.

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We've waited this long. I don't want to, you know -- I don't want to rock the boat any more than it's been rocked. Let me just put it like that. I don't want to, you know, let --

S. Appx. 52-54

The most insidious result of *ex parte* communications is their effect on the appearance of the impartiality of the tribunal. *Rose, v. State*, 601 So. 2d 1181, 1183 (Fla. 1992). As the court noted in *Rose* at 1183:

Nothing is more dangerous and destructive of the impartiality of the judiciary than a one-sided communication between a judge and a single litigant. Even the most vigilant and conscientious of judges may be subtly influenced by such contacts. No matter how pure the intent of the party who engages in such contacts, without the benefit of a reply, a judge is placed in the position of possibly receiving inaccurate information or being unduly swayed by un rebutted remarks about the other side's case. The other party should not have to bear the risk of factual oversights or inadvertent negative impressions that might easily be corrected by the chance to present counter arguments.

The bottom line as to Respondent's misrepresentation argument is that there is no misrepresentation by Carnevale (or undersigned counsel) because there is a reasonable basis for Carnevale to believe an improper *ex parte* conversation occurred.⁹ Significantly, the Trial Court has never addressed

⁹ In footnote 7 on page 27, the Respondents baselessly accuse Carnevale (and inexplicably his sister who as noted above did not even join the Motion to Disqualify or the petition) of having "intent to deceive" in the petition because of certain wording/semantics in the petition regarding the judge's participation in the July 31 hearing which they claim is different from wording in the Motion to Disqualify. But they omit the fact that Carnevale's entire motion to disqualify is attached to his petition. So Carnevale omitted nothing in his petition. The Respondents' argument that "the Carnevaless" Motion to Disqualify is supposedly somehow inconsistent with the appellate petition (which they attribute to "the Carnevaless" supposedly being deceitful) makes

what occurred at the case management conference of July 31, 2024. The Trial Court had the opportunity to rebut any facts outlined in the Motion to Disqualify and the petition but she failed to do so. See Fla. R. Gen. Prac. & Jud. Admin. 2.330(i). Therefore the facts outlined in the Motion to Disqualify and the petition must be taken as true.

Respondents argue that the cumulative effect of multiple acts cannot be a basis for disqualification because each act considered by itself is not enough relying on this court's decision in *Shir Law Group, P.A. v. Carnevale*, 306 So. 3d 319 (Fla. 3d DCA 2020), an appeal from one of the several motions filed by Respondents to recuse various trial judges.¹⁰ However, *Shir*

no sense because the motion to disqualify is attached to the petition. So it could not possibly be said that Carnevale omitted anything, let alone with "intent to deceive."

¹⁰ While Respondents purport to take umbrage at the multiple motions to recuse filed by the Carnevale, they disingenuously overlook their own filing of at least four separate failed prohibition proceedings seeking review of various denials of their multiple motions to disqualify predecessor trial judges in this case. *Shir Law Grp, P.A. v. Carnevale*, 45 Fla. L. Weekly D1575 (Fla. 3d DCA July 1, 2020); *Shir Law Grp, P.A. v. Carnevale*, 302 So. 3d 349 (Fla. 3d DCA 2019); *Shir Law Grp, P.A. v. Carnevale*, 306 So. 3d 319 (Fla. 3d DCA 2020); *Shir Law Group, P.A. v. Carnevale*, 314 So. 3d 523 (Fla. 3d DCA 2020). Respondents also attempt to make it appear as if the Carnevaless filed eight petitions for writ or prohibition in this case, which the Carnevaless did not. The Respondents create this false impression by citing petitions that were filed by the Carnevaless in two other separate cases, not in this 2016 case.

Law Group is inapposite to the argument raised because it did not involve the issue of the cumulative effect of multiple actions on the part of the Trial Court as a basis to establish actual bias. Rather it involves an attempt to argue the same basis for disqualification a second time. This is made clear from this court's opinion:

Carnevale's second disqualification motion, filed on February 18, 2020, contains the same grounds raised by Carnevale in their first disqualification motion, filed on December 2, 2019. The trial court denied Carnevale's first disqualification motion as legally insufficient and this Court, in appellate case number 3D19-2441, denied the petition for writ of prohibition with respect to the lower tribunal's denial. Suffice it to say, we will not reconsider these grounds here.

Id. at 321

Carnevale's argument in the instant petition for writ is different because Carnevale argues that the effect of the separate acts when considered together demonstrate actual bias by the Trial Court.¹¹ That issue was not addressed by this court in *Shir*.

¹¹ As set forth in the petition for writ, the cumulative items raised by Carnevale were the relationship between the Trial Court and attorneys who represented other adverse parties in litigation consolidated with this case, the Trial Court's failure to abide by a final judgment entered by her predecessor, the failure to continue a hearing due to Carnevale's attorney's unavailability due to Covid, her failure to enter an order granting summary judgment in favor of Carnevale on his claim that the shared Defendants were professionally negligent although the Trial Court had indicated on multiple occasions that

Respondents imply that Carnevale's motion is designed to prevent the Trial Court from hearing the Respondents' motion to strike his pleadings for fraud on the court which alleges Carnevale lied at an evidentiary hearing. However, that motion was first filed in 2018 in the companion case, *RDR Seashore, LLC v. Seashore Club South Condo Ass'n, Inc., et al*, DE 403, 417, 443, 605 in which final judgment has been entered. Moreover, this is a recurrent theme for the Respondents, and Respondents' contention was rejected by Judge Diaz, the Trial Court's predecessor judge. In her ruling in the companion case, Judge Diaz found:

This Court finds, as Judge De la O did, that there was no fraud on the Court. The portions of the March 24, 2018 Order finding that the Carnevales lied or made misrepresentations to the court in a prior, closed litigation, and to the Court in this litigation, are erroneous. This Court finds that the Carnevales' testimony in the prior, closed litigation was truthful, and the Carnevales' testimony in this litigation was truthful, and that the Carnevales did not make any misrepresentations to this Court's predecessors to block the subpoena on Mr. Carnevales' former employer.

S.Appx. 19

she was granting the motion, the Trial Court's failure to read Carnevale's written submissions in the instant case and her engagement in ex parte conversations with Respondents' counsel.

(Emphasis Supplied)¹²

Furthermore, Judge del Rio in an order in *this case* dated April 21, 2022 made it abundantly clear that she has absolutely no intention of revisiting the order that confirmed the Carnevaless' truthfulness stating, “

The Court has reviewed the Motion to Vacate, heard argument of counsel at a March 18, 2022 hearing, reviewed relevant authorities provided by the parties and their counsel, and is otherwise fully advised in the premises. As the Court explained at the March 18, 2022 hearing in this case, in previous hearings on multiple motions by the Shir Defendants, the Court decided on the merits that it would not reconsider its June 23, 2020 Order (D.E. 796 in Case No. 2014-13703). The Court again reaffirms that it will not reconsider the rulings contained in its June 23, 2020 order.

S. Appx. 69

Lastly, the Trial Court denied the motion to recuse as legally insufficient.

Appx 339. That standard is utilized for an initial motion to disqualify a judge.

¹² This order of Judge Diaz vacated a prior order of Judge de la O making purported “findings” regarding Carnevale’s credibility, findings that Judge Diaz ultimately, after a two-day hearing, found were not accurate and had instead been procured by “fragmented” and “questionable” evidence. S. Appx. 18-19. Despite the prior order being vacated, and despite Judge Diaz expressly finding the Carnevaless have always been truthful, Respondents continue to utilize that prior order as a basis to falsely contend Carnevale lied to the court. The repeated attacks on Carnevale’s credibility based on a predecessor judge’s vacated order violates the principles laid out in *Azran Miami 2, LLC, v. U.S. Bank Trust, N.A.*, 343 So.3d 673 (Fla. 3d DCA 2022), where this court held that using a vacated order for argument, is improper, and warrants sanctions.

Contrary to the order, the motion does reflect a legally sufficient basis to establish actual bias on the part of the Trial Court. In the case of a second motion for recusal by a party who has previously had a motion for recusal granted, the judge may rule on the truth of the facts alleged in support of the motion. Fla. R. Gen. Prac. & Jud. Admin. 2.330(i). Assuming the higher standard is applied because the Motion to Disqualify is deemed a successive motion (as Petitioners argue), then the Trial Court did not apply the correct standard in considering the motion. For this reason, the order which is the subject of this petition does not address the issue of the Trial Court's actual bias and does not indicate she is or is not actually biased.¹³ Contrary to §

¹³ § 38.10, Fla. Stat. provides that: "when any party to any action has suggested the disqualification of a trial judge and an order has been made admitting the disqualification of such judge and another judge has been assigned and transferred to act in lieu of the judge so held to be disqualified, the judge so assigned and transferred is not disqualified on account of alleged prejudice against the party making the suggestion in the first instance, or in favor of the adverse party, unless such judge admits and holds that it is then a fact that he or she does not stand fair and impartial between the parties. If such judge holds, rules, and adjudges that he or she does stand fair and impartial as between the parties and their respective interests, he or she shall cause such ruling to be entered on the minutes of the court and shall proceed to preside as judge in the pending cause. **The ruling of such judge may be assigned as error and may be reviewed as are other rulings of the trial court.**"

38.10, Fla. Stat, the Trial Court did not admit or deny whether or not she could be impartial.

If the lower standard applies, namely, the standard applicable to motion to disqualify a judge that is not a successive motion, then those facts must also be assumed to be true. *Laurence v. State*, 2024 WL 3801742 (Fla. 3d DCA August 14, 2024)

Notably, Respondents who expressly admit on page 6 of their Response that Judge Del Rio is “the tenth (10th) judge” who has presided over this nearly decade old case, have not pointed to and cannot point to *even one* case where the higher standard was applied to a motion disqualify the 10th judge, seven (7) years after the second judge (out of 10) in the case was disqualified. Considering the purpose of imposing the higher standard of the successive disqualification rule is to discourage abuse of repeatedly tactically disqualifying judges, that policy rationale does not apply to these facts. It would be different if Carnevale had moved to disqualify all ten (10) judges or even multiple judges. Instead, Carnevale has only ever previously moved to disqualify one judge, over seven (7) years ago, out of ten (10) judges. So there is no policy reason to apply the higher standard to this new motion to disqualify which was filed over seven (7) years and eight (8) judges later. The

lack of any policy rationale support for the imposition of the higher standard, was never briefed before let alone ruled on so it cannot be fairly stated that the argument is precluded by “law of the case” as the Respondents claim. Even if the lower standard does not apply, the unrefuted facts, law and evidence included in the Motion to Disqualify, the petition, and this Reply overwhelmingly militate in favor of granting the petition even under the higher standard.

Conclusion

Based upon the foregoing cases, statute, and arguments, Petitioner Dario Carnevale, respectfully requests that this Court issue a writ of prohibition prohibiting Judge Del Rio from proceeding further in this case and ordering her disqualification in this matter.

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was electronically served in compliance with Rule 2.516(2) and Administrative Order 13-49 through Florida Court's E-Filing Portal to: Hon. Judge Vivianne Del Rio, vdelrio@jud11.flcourts.org; dbonini@jud11.flcourts.org; Dario V. Carnevale, dcarnevale1@gmail.com; and Pro Se Defendant Stuart J. Zoberg, Esq., szoberg@shirlawgroup.com; and Robert E. Menje, Esq., robert@remlawyer.com; counsel for Defendants Guy M. Shir, Shir Law Group, P.A., ZTJ Recovery Inc., and Jodi Shir; on September 13, 2024.

/s/ Jay M. Levy
Attorneys for Carnevale

Certificate of Type Size, Format, and Word Count

Counsel for Appellant hereby certifies that this brief has been prepared
in 14 point Arial Microsoft Word format and consists of 5070 words

/s/ Jay M. Levy
Attorneys for Carnevale