Filing # 214276899 E-Filed 01/09/2025 03:39:33 PM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION: IA
NO. 50-2023-MH-001072-XXXX-MB

IN RE:

Patricia A. Sahm,

An Alleged AIP,

2nd EMERGENCY MOTION:
Order Directing Clerk to Reassign Case
Fl. R. Gen. Prac. Jud. Admin. 2.330 (l)
And Reservation of Rights Upon
Mandatory Reassignment to new Judge

2nd EMERGENCY MOTION
Order Directing Clerk to Reassign Case
Fl. R. Gen. Prac. Jud. Admin. 2.330 (l)
And Reservation of Rights Upon
Mandatory Reassignment to new Judge

COMES NOW, Petitioner Kevin R. Hall, an interested person under law with standing, proceeding pro se as an "interested person" under law who respectfully shows and moves this Court as follows:

1. I am an interested person under the law with standing as Manager of Bernstein Family Realty. LLC (BFR) who has made multiple appearances in this case and filed a formal Notice of Appearance on August 15, 2024

under DE No. 41 and other filings showing a direct, immediate, non-contingent interest in this case reasonably impacted by the proceedings and Judgment.

2. Specific standing and interest in this Mental Health Incapacity case is present as no proper finding of Incapacity against Pat Sahm, Sr was previously made and thus no proper authority by an alleged Guardian Charles Revard to have moved again for additional findings of incapacity and further that such finding is directly contrary to stated wishes of Pat Sahm, Sr. and her wish to settle a mortgage foreclosure case against Bernstein Family Realty, LLC where I am Manager and have non-contingent rights to payment and where these proceedings directly impact those rights and have been used to "Silence" Pat Sahm, Sr in exposing fraud.
3. This motion is proper as an Emergency as it relates to the Reassignment of Judge Feuer after the mandatory Disqualification of the Trial Judge as being "deemed granted" after failing to rule within 30 days.
4. This 2nd motion is further in Opposition to frivolous papers filed by licensed attorney Kathryn Lewis of the Kitroser firm on behalf of alleged Guardian Charles Revard after attorney Mitch Kitroser filed similar papers and then "withdrew" but all such papers designed to thwart the mandatory process of law in the Reassignment of this MH Case to a new Judge.

The 4th DCA follows Florida Supreme Court that Even One Day Late beyond 30 Days deems the Mandatory Disqualifcation Granted and it is the Court's Obligation and Not the Petitioner's to ensure a proper ruling

5. The 4th DCA made it clear in 2007 following the Florida Supreme Court that **there is a "bright line" rule** and **even one day late beyond 30 days deems the motion granted and Judge Feuer has thus lost Jurisdiction** and is mandatorily disqualified for failing to rule within 30 days after both being Served with the motion for mandatory disqualification on December 2, 2024 and then Noticed by email she had issued an Order in the wrong case under the wrong standard and wrong facts. See Exhibit 3.
6. In Schisler v State the 4th DCA noted, "As scheduled, the motion was heard on January 9, 2007 — 32 days after it was filed and served — and denied. **Schisler now maintains that this matter must be reassigned because his motion was not ruled on within 30 days. We agree and grant relief.** Rule 2.330(j), as amended in 2005, expressly states that a motion to disqualify must be ruled on immediately and no later than 30 days after service under subsection (c) of the rule. **This rule also provides that disqualification results upon the failure to rule on a disqualification motion within 30 days of service of the motion:** (j) Time for Determination. The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in

subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case. Fla.R.Jud.Admin. 2.330(J).” See, Schisler v. State, 958 So. 2d 503 (Fla. Dist. Ct. App. 2007) 4th DCA.

7. The 4th DCA went further to clarify there was no obligation on myself as Petitioner to ensure what was the Judicial obligation of Judge Feurer to issue a ruling in the proper case on the proper standards and instead has found, “**The trial court's failure to rule on Schisler's motion within 30 days of its service therefore entitles Schisler to an order directing the clerk of the court to reassign this case.** ***This is so even though the record confirms that the ruling was one day late,*** *a*pparently because Schisler's attorney acquiesced in having the motion set for hearing outside the 30 day time frame.In Tableau Fine Art Group, Inc. v. Jacoboni, 853 So.2d 299, 302-03 (Fla. 2003), **the Florida Supreme Court first imposed a bright-line 30 day rule on disqualification orders.** ***It also confirmed that the burden is on the court, not the litigants, to assure a determination within 30 days***.” See, Schisler v. State, 958 So. 2d 503 (Fla. Dist. Ct. App. 2007) 4th DCA.
8. The 4th DCA went on to further note, “***As an additional matter, this Court in [Fuster-Escalona v. Wisotsky, 781 So.2d 1063 (Fla. 2001)] found that the lower court's focus on the petitioner's failure to request a hearing on***

the disqualification motion was inappropriate. While this Court acknowledged that the petitioner should have requested a hearing to ensure that the trial court considered his motion, **it noted that the rules did not require such a request to be made.** Accordingly, this Court held that the failure of the trial judge to give an immediate ruling on the motion to disqualify violated rule 2.160. We agree with this reasoning." See, Schisler v. State, 958 So. 2d 503 (Fla. Dist. Ct. App. 2007) 4th DCA.

9. Still, "Thus, based upon the reasoning of Fuster-Escalona and the history behind the enactment of the rule, we hold that a motion for judicial disqualification filed pursuant to Florida Rule of Judicial Administration 2.160 must be ruled on within thirty days following its presentation to the court. We believe that thirty days gives the trial court sufficient time to determine the sufficiency of a motion. **A litigant who files a motion for disqualification should not be required to file a petition for a writ of mandamus to compel a trial judge to provide a ruling on the motion**." See, Schisler v. State, 958 So. 2d 503 (Fla. Dist. Ct. App. 2007) 4th DCA.
10. In following the Florida Supreme Court, the 4th DCA further noted, "Tableau Fine Art Group, Inc., 853 So.2d at 302-03; see Fuster-Escalona, 781 So.2d at 1065 (observing "**[t]he trial judge is the manager of the docket and has the ultimate responsibility to rule on pleadings that are**

properly pled before the court, in accord with applicable rules of procedure and court precedent"); see also G.C. v. Dep't of Children and Families, 804 So.2d 525, 526 (Fla. 5th DCA 2002) (**stating that neither sending a gentle reminder to the judge nor applying for a writ of mandamus "is a burden that should be placed on the movant. The rule places the burden on the judge to rule [as required by the disqualification rule] and the litigant should not be required to nudge the judge. Nor is it right to require a party to file a petition for writ of mandamus.**").

Therefore, under Rule 2.330(j), Schisler's disqualification motion is deemed to have been granted because not ruled on within 30 days. Schisler's petition for mandamus relief is therefore granted. The order under review is quashed and this matter remanded for entry of an order directing the clerk of the circuit court to reassign the instant case to a different judge." See, Schisler v. State, 958 So. 2d 503 (Fla. Dist. Ct. App. 2007) 4th DCA.

The Florida Supreme Court "strictly" applies the Court Rules on Disqualification and Judge Feuer has lost Jurisdiction since the Mandatory Disqualification is Deemed Granted by Court Rule if Not Ruled in 30 Days

11. The Florida Supreme Court has made it clear that the Court Rules on Disqualification are **"strictly" applied and 30 days is the limit for ruling on a motion for mandatory Disqualification.**

12. The precise issue in Tableau Fine Art Group v. Jacoboni was, "**At issue in this case is whether Florida Rule of Judicial Administration** 2.160 **requires the automatic granting of a motion for disqualification when a judge fails to rule immediately on the motion.** Essentially this case turns on the interpretation of the meaning of the word "immediate" as used in rule 2.160" (now Rule 2.330). Tableau Fine Art Group v. Jacoboni, 853 So. 2d 299 (Fla. 2003) Florida Supreme Court.

13. "The rules permit trial courts to conduct only a "bare determination of legal sufficiency" in order to prevent an adversarial atmosphere from developing between the judge and the litigant. Bundy v. Rudd, 366 So.2d 440, 442 (Fla. 1978)." Tableau Fine Art Group v. Jacoboni, 853 So. 2d 299 (Fla. 2003) Florida Supreme Court.

14. The Florida Supreme Court "noted that **it has always "strictly applied" the procedural requirements of rule 2.160(f).** This Court then went on to explain the meaning behind the immediacy requirement of rule 2.160(f): T]he rule provisions concerning "immediate" resolution have been accorded their plain meaning, which the Court has explained requires action that is

"prompt" and "with dispatch." Livingston v. State, 441 So.2d 1083, 1085 (Fla. 1983). Our comment on the adoption of rule 2.160 emphasizes a trial judge's responsibility to act quickly on such a motion: **"We find the motion [to disqualify] should be ruled on immediately following its presentation to the court."**Florida Bar re Amendment to Fla. Rules of Judicial Admin., 609 So.2d 465, 466 (Fla. 1992). **When a trial court fails to act in accord with the statute and procedural rule on a motion to disqualify, an appellate court will vacate a trial court judgment that flows from that error.**" Tableau Fine Art Group v. Jacoboni, 853 So. 2d 299 (Fla. 2003) Florida Supreme Court.

15. The Florida Supreme Court went further to "hold that a motion for judicial disqualification filed pursuant to Florida Rule of Judicial Administration 2.160 **must be ruled on within thirty days following its presentation to the court.** We believe that thirty days gives the trial court sufficient time to determine the sufficiency of a motion." Tableau Fine Art Group v. Jacoboni, 853 So. 2d 299 (Fla. 2003) Florida Supreme Court.

Contrary to the Kitroser-Guardian papers, it is the Judicial obligation to act and not Petitioner's obligation once the Motion was filed and Served

16. Kathryn Lewis of the Kitroser firm acting for Charlie Revard as alleged "Guardian" to interfere with the Clerk's Reassignment of this case claimed

in Par. 13, “Notably, Mr. Hall never filed a motion asking the court to correct the scrivener’s error, or otherwise challenging the sufficiency of the Order.”

17. This is an improper attempt by Kathryn Lewis as a Licensed attorney in Florida acting for the Kitroser firm for Charlie Revard to thwart the mandatory process of law.

18. The Florida Supreme Court made it very clear “**A litigant who files a motion for disqualification should not be required to file a petition for a writ of mandamus to compel a trial judge to provide a ruling on the motion.**” Tableau Fine Art Group v. Jacoboni, 853 So. 2d 299 (Fla. 2003) Florida Supreme Court.

19. Thus, attorney Lewis of the Kitroser firm for Charlie Revard as alleged Guardian interferes with the proper administration of law as the Florida Supreme Court and DCA cases makes it clear “(**stating that neither sending a gentle reminder to the judge nor applying for a writ of mandamus "is a burden that should be placed on the movant. The rule places the burden on the judge to rule [as required by the disqualification rule] and the litigant should not be required to nudge the judge. Nor is it right to require a party to file a petition for writ of mandamus.**").

20. While not required to do so by Rule, I as Petitioner had no obligation to provide Notice to Judge Feuer to correct and rule in the proper case but did provide Notice to Judge Feuer on December 2, 2024 by email the same day the Motion for Mandatory Disqualification which was Served on the Kitroser firm and FBI and provided in part as follows: In your rush, however, just like the case law you rubber stamped from the Kitroser firm, you are in the wrong case. "**The motion was filed in the MH case not the GA case. No motion was ever filed by me or anyone in the MH case. So please correct yourself as this is a first motion in the MH case and govern accordingly**." See Exhibit 3.

21. Thus, Judge Feuer had 30 days Notice to correct and 30 days to rule in the proper case and has failed on both and the motion for mandatory disqualification was deemed granted by Rule after 30 days and Judge Feuer no longer has jurisdiction. See Fl. R. Gen. Prac. Jud. Admin. 2.330 (l).

22. Again as the 4th DCA has stated, "However, rule 2.330(j) entitled Johnson to a ruling within thirty days and, failing that, to an order directing the clerk to reassign the case. See, Johnson v. State, 968 So. 2d 61 (Fla. Dist. Ct. App. 2007) 4th DCA.

23. **Even one day late beyond 30 days is disallowed by law.** "Schisler v. State, 958 So.2d 503 (Fla. 3d DCA 2007) (granting a mandamus petition to direct

the trial judge to quash his order denying a motion to disqualify the judge, where the judge did not rule within thirty days after service of the motion, even though the ruling was only one day late." See, Johnson v. State, 968 So. 2d 61 (Fla. Dist. Ct. App. 2007) 4th DCA.

24. Other DCAs have found the same as the 4th DCA. "The petition for writ of mandamus is granted. **The trial court's failure to rule upon Petitioner's motion to disqualify within 30 days of its service resulted in the motion being deemed granted by rule. See Fla.R.Jud.Admin. 2.330(j) ("If not ruled on within 30 days of service, the motion [to disqualify] shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case."). Petitioner is entitled to the reassignment of his case to a different judge, which, at this point, constitutes nothing more than a ministerial duty of the lower court.** See Schisler v. State, 958 So.2d 503 (Fla. 3d DCA 2007); . See also Berube v. State, 978 So.2d 893 (Fla. 2d DCA 2008) (reversing denial of rule 3.850 motion; **trial court had no authority to hear motion because appellant's prior motion to disqualify had been deemed granted by trial court's failure to timely rule upon same)**. Accordingly, the matter is remanded to the lower court with instruction to reassign the case to a different judge. Robinson v. State, 11 So. 3d 466 (Fla. Dist. Ct. App. 2009) 5th DCA

25. Rule 2.330 does not contain an exception for successor judges. See Johnson v. State, 968 So. 2d 61 (Fla. Dist. Ct. App. 2007) 4th DCA and here this was an Initial motion in this MH case, not a successive motion.

26. A judge faced with a motion for recusal should first resolve that motion before making additional rulings in a case.Stimpson Computing Scale Co. v. Knuck, 508 So. 2d 482 (Fla. Dist. Ct. App. 1987) 3rd DCA.

27. **An order entered by a trial judge who has been disqualified is void**. See Stimpson Computing Scale Co. v. Knuck, 508 So.2d 482 (Fla. 3d DCA 1987). See, Jenkins v. Motorola, Inc., 911 So. 2d 196 (Fla. Dist. Ct. App. 2005) 3rd DCA.

28. **[O]nce an order disqualifying a judge is entered, the judge is prohibited from any further participation in the case.** Dream Inn, Inc. v. Hester, 691 So.2d 555, 556 (Fla. 5th DCA 1997). **As a result, any order entered by a judge after that judge has been disqualified is void.** Bolt v. Smith, 594 So.2d 864 (Fla. 5th DCA 1992). See, Collado v. Collado, 858 So. 2d 1255 (Fla. Dist. Ct. App. 2003) 5th DCA.

29. Reassignment is proper and prohibition and mandamus if necessary. Lightsey v. State, 53 So. 3d 1093 (Fla. Dist. Ct. App. 2011) 1st DCA.

Kitroser, Lewis Case Citations on Behalf of Charles Revard do Not address the applicable Court Rule nor Disqualification cases

30. Both currently licensed attorneys Mitch Kitroser and Kathryn Lewis on behalf of alleged Guardian Charles Revard have cited no cases that apply to the applicable Court Rule nor any cases involving Mandatory Disqualification **which are "strictly" applied by the Florida Supreme Court and 4th DCA.**

31. Contrary to the filings by these attorneys, the Mental Health (MH) case and Guardian (GA) case have separate Case Numbers, different case Captions, different "parties"and different Service of process and most certainly different issues for Standing.

32. These arguments are frivolous and sanctionable as the substantive rights are significantly different and prejudicial for Kitroser and Lewis and Revard to after the fact deem the same with no notice or opportunity to be heard under due process.

33. It is most disfavorable and a strong appearance of impropriety that these interested lawyers are trying to "speak for" Judge Feuer who has lost jurisdiction.

34. I was not present at any Zoom nor can speak to what was in the mind of Judge Feuer but this was not a mere "scrivener" error and as Noticed applied the wrong standard in the wrong case.

35. The initial and only motion for mandatory Disqualification was timely filed and Served on December 2, 2024 in this MH case within 20 days of an Order striking my Notice of Appearance. The rights under FS Sec. 38.10 and Rule 2.330 are rights of all litigants. Trying to deny the statewide right under Florida Law on Disqualification on "standing" when the conduct at issue occurred in relation to "standing" is absurd and sanctionable.

36. Judge Feuer was timely noticed over 30 days ago that she issued an Order in the wrong case under the wrong standards as the MH Case was an "initial" motion not a "successive" motion.

37. Contrary to the False Statements of Fact proffered by Mitch Kitroser (apparently now "withdrawn"), I was not present on any Zoom on December 2, 2024 and had not been Served with any Notice of Hearing in that GA case and instead filed an initial motion in the MH case, this case now.

The Case Must Now be Reassigned Under Law as Ministerial Duty

38. I now seek an Order under Fl. R. Gen. Prac. Jud. Admin. 2.330 (l) directing the Clerk to Reassign this case from Judge Schosberg Feuer who has failed for over 30 days to determine **an "initial"** motion for mandatory disqualification in this MH Case filed and served December 2, 2024 under DE NO. 82.

39. “The trial court's failure to rule upon Petitioner's motion to disqualify within 30 days of its service resulted in the motion being deemed granted by rule. See Fla.R.Jud.Admin. 2.330(j) (**"If not ruled on within 30 days of service, the motion [to disqualify] shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case."). Petitioner is entitled to the reassignment of his case to a different judge, which, at this point, constitutes nothing more than a ministerial duty of the lower court.** See Schisler v. State, 958 So.2d 503 (Fla. 3d DCA 2007); . See also Berube v. State, 978 So.2d 893 (Fla. 2d DCA 2008). Robinson v. State, 11 So. 3d 466 (Fla. Dist. Ct. App. 2009) 5th DCA

40. This was the first and only motion for mandatory Disqualification of Judge Feuer or any Judge in the MH Case No. 50-2023-MH-001072-XXXX-MB,

41. The motion was in writing, signed, sworn to in good faith, was timely, ***identified the motion as an “initial” or First motion for mandatory Disqualification in this MH Case*** and established reasonable grounds that a fair trial could not be had before Judge Schosberg Feuer, was Served on Judge Schosberg Feuer on December 2, 2024 and was legally sufficient in all respects. See, Exhibit 1.

42. Fl. R. Gen. Prac. Jud. Admin. 2.330 (l) provides, “Time for Determination. The judge against whom the motion for disqualification has been filed shall

take action on the motion immediately, but no later than 30 days after the service of the motion as set forth in subdivision (d).”

43. This initial motion in this MH case was filed according to the Filing Stamp as Filing # 211956447 E-Filed 12/02/2024 01:01:11 PM.

44. This initial motion in this MH case was promptly served on Dec 2, 2024 at 1:10 PM in accordance with Fl. R. Gen. Prac. Jud. Admin. 2.330(d).

45. It is now January 9, 2025 and over 35 days since this initial motion was filed and Served.

46. Under Fl. R. Gen. Prac. Jud. Admin. 2.330 (l), “**If the motion is not denied within 30 days of service, *the motion is deemed granted*** and the moving party **may seek an order from the court directing the clerk to reassign the case.”**

47. As a matter of law and Court Rule, the December 2, 2024 Emergency Motion for mandatory disqualification under DE No. 82 is now deemed granted.

48. The Clerk is respectfully moved to Reassign the case under law.

WHEREFORE, it is respectfully prayed for an Order directing the Clerk to Reassign the case under Fl. R. Gen. Prac. Jud. Admin. 2.330 (l) and for such other and further relief as may be just and proper.

Dated: January 9, 2025

/s/ Kevin R. Hall, Pro Se Interested Person
PO Box 756
Kinderhook, NY 12106
518-309-2094
kh.itconsultingsalesoffices@gmail.com
krh.itconsulting@gmail.com alternate email

CERTIFICATE OF SERVICE

I hereby Certify that all parties requiring service were served electronically via the Florida ECourt filing portal on this 9th day of January, 2025.

Dated: January 9, 2025

/s/ Kevin R. Hall, Pro Se Interested Person
PO Box 756
Kinderhook, NY 12106
518-309-2094
kh.itconsultingsalesoffices@gmail.com
krh.itconsulting@gmail.com alternate email