

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

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 2017CA003184
L.T. NO.: 2016TR153110

KAITLYN MCFARLANE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Opinion filed: **AUG 02 2017**

Petition for Writ of Prohibition from the County Court in and for Palm Beach County,
Traffic Hearing Officer Cathy Chimera

✓ For Petitioner: Carman J. Leon, Jr., Esq.
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✓ For Respondent: No appearance

PER CURIAM.

Petitioner, Kaitlyn McFarlane, filed the instant Petition for Writ of Prohibition (“Petition”) seeking relief from the decision of the traffic hearing officer below denying two motions to disqualify. For the reasons below, the Court grants the Petition and requires the disqualification of the traffic hearing officer in the case at bar.

Factual Background

Traffic Hearing Officer Cathy Chimera (“the Hearing Officer”) has presided over case number 2016TR153110 in which Petitioner has been charged with driving at an unlawful speed.

On January 26, 2017, Petitioner filed a Motion for Disqualification of Traffic Hearing Officer (“First Motion”). In it, Petitioner argued that the Hearing Officer should be disqualified based on certain comments and actions—including referring Petitioner’s counsel to the Palm Beach County Bar Association’s professionalism committee—that Petitioner argued put her in fear of not having an impartial resolution to her case. The Hearing Officer denied the First Motion by written order dated February 3, 2017. In her order, the Hearing Officer found that the First Motion was untimely and that because “[t]he filing of a bar complaint for unprofessional behavior against an attorney” is not grounds for disqualification, neither was the “lesser matter” of referral to a local professionalism committee. The order concluded by stating: “An officer of the court has an obligation to show that the presiding judicial officer has given an impression of bias before making the serious allegation of partiality. Disqualification is a serious matter and must be treated as such rather than a tool for ‘judge shopping.’”

On February 9, 2017, Petitioner filed her 2nd Motion for Disqualification of Traffic Hearing Officer (“Second Motion”). In it, Petitioner argued the Hearing Officer should be disqualified from Petitioner’s case and all future cases in which Petitioner’s counsel was attorney of record because the Hearing Officer improperly commented on the First Motion. Petitioner argued in particular that the Hearing Officer’s comment that motions to disqualify should not be used as a tool for “judge shopping” was itself grounds for disqualification. The Hearing Officer denied Petitioner’s Second Motion by written order dated February 10, 2017. This Petition followed.

Analysis and Ruling

When faced with a motion to disqualify, a judicial officer is to determine “*only* the legal sufficiency of the motion without passing on the truth of the facts alleged.” *Pilkington v.*

Pilkington, 182 So. 3d 776, 778 (Fla. 5th DCA 2015) (emphasis added). A motion to disqualify is legally sufficient when the facts alleged, taken as true, would give the movant a well-founded fear he or she would not receive a fair trial before the judge at issue. *Livingston v. State*, 441 So. 2d 1083, 1087 (Fla.1983); Fla. R. Jud. Admin. 2.330(f). In conducting this analysis, “[t]he trial court cannot insert its own views regarding the facts *or the motivations* of the parties” *Messianu v. Pinga*, 180 So. 3d 229, 230 (Fla. 3d DCA 2015) (emphasis added). Similarly, a trial court’s comment on the validity of a motion to disqualify can “create[] an independent ground for disqualification.” *Pilkington*, 182 So. 3d at 779. Failure to abide by these rules in denying a motion to disqualify is grounds for a writ of prohibition. *E.g., Messianu*, 180 So. 3d at 230.

The Court finds the Hearing Officer failed to adhere to the limited scope of review required for a motion to disqualify, thereby requiring her disqualification. The Hearing Officer denied the First Motion based on its untimeliness and substantive flaws. Petitioner herself admits that absent any other comments, this denial would appear proper. However, the Hearing Officer exceeded her scope of review upon remarking both that an officer of the court “has an obligation to show that the presiding judicial officer has given an impression of bias” before moving to disqualify and that disqualification should not be used “as a tool for ‘judge shopping.’” These comments plainly are not relevant to whether Petitioner had a well-founded fear she would not receive a fair trial, thereby making them irrelevant to the legal sufficiency of the First Motion. In making these comments, then, the Hearing Officer passed on matters *besides* the First Motion’s legal sufficiency. This is grounds for a writ of prohibition. *Messianu*, 180 So. 3d at 230. Moreover, the Hearing Officer’s comments implicate Petitioner’s counsel’s motivations in filing the First Motion at all, as she has intimated that it was an attempt at “judge

shopping.” This in and of itself is grounds for recusal. *Id.* Petitioner is therefore entitled to relief.

The Court notes, though, that Petitioner is not entitled to relief as requested in the Petition. Petitioner has asked the Court to not only require the Hearing Officer’s disqualification in this case, but in every case over which she presides involving Petitioner’s counsel. As the Hearing Officer herself recognized, blanket disqualifications are disfavored. *See Ginsberg v. Holt*, 86 So. 2d 650, 651 (Fla. 1956) (“There is no provision in the statutes or the decisions for a blanket decree restraining a particular judge from hearing all cases in which a particular attorney may appear in his professional capacity”); *R.M.C. v. D.C.*, 77 So. 3d 234, 237 (Fla. 1st DCA 2012) (noting “courts look with disfavor on a blanket request for recusal”). As Petitioner’s case does not involve any extraordinary ground justifying a blanket disqualification, the Court will not stray from this well-settled precedent. The Petition must be granted and the Hearing Officer must be disqualified from the instant case only.

The Petition for Writ of Prohibition is GRANTED and the matter is remanded to the trial court for further proceedings before a different traffic hearing officer.

SMALL, OFTEDAL, and SASSER, JJ., concur.

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KAITLYN MCFARLANE,
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Opinion/Decision filed:

v.

Petition for Writ of Prohibition from
the County Court in and for Palm Beach County;
Traffic Hearing Officer Cathy Chimera

STATE OF FLORIDA,
Respondent.

Petition filed: March 17, 2017

AMENDED

DATE OF PANEL: JULY 18, 2017

PANEL JUDGES: SMALL, OFTEDAL, SASSER

GRANTED/DENIED/OTHER: PETITION GRANTED

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:)	DISSENTING:)	CONCURRING SPECIALLY:)
)	With/Without Opinion)	With/Without Opinion)
<u>Robt. S. Small</u>)))
<u>8/7/17</u>)))
<u>J.</u>)))
<u>Q. Sasser</u>)))
<u>8/7/17</u>)))
<u>J.</u>)))
<u>Men</u>)))
<u>8/7/17</u>)))
<u>J.</u>)))