

**IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT
STATE OF FLORIDA**

Appeal Case No.: 4D20- 1851
(to be assigned)

ERNESTO BEHRENS

Petitioner,

-VS-

STATE OF FLORIDA

Respondent

PETITION FOR WRIT OF MANDAMUS

Ernesto Behrens, DC#732564
Martin Correctional Institution
1150 S.W. Allapattah Rd.
Indiantown, Florida 34956

INTRODUCTION

Pursuant to Florida Rules of Appellate Procedure 9.100 and 9.030(b)(3),
Petitioner, Ernesto Behrens, pro se, respectfully moves this Honorable Court for a
measure of extraordinary relief stemming from:

The Judge's order of denial which was entered after Mr. Behrens' Motion seeking
disqualification of the judge assigned to the case was deemed granted, the post-
conviction court had no authority to rule on the Motion outside the thirty day time
frame required by the rule.

Specifically, Mr. Behrens seeks a Writ of Mandamus from this Honorable Court
directing the Circuit Court Judge Andrew L. Siegel quashed his order denying the
Motion to Recuse him, where the Judge did not rule within thirty (30) days after
service of the Motion pursuant to Rule 2.330(j) of the Florida Rules of Judicial
Administration.

More to the point, this Motion for Recusal was made after it was disclosed to the
Petitioner, by the Herman Law Firm, on June 26, 2020, that Mr. Dennis E. Siegel,
the former Assistant State Attorney in this case and the currently presiding Circuit
Court Judge Andrew L. Siegel have a familial relationship (by consanguinity or
affinity within the third-degree). Thus, Mr. Siegel, no doubt, has a personal
interest in the outcome of this case which is currently being presided over by one
of his relatives.

Additionally, the Petitioner fears for the additional reasons stated in his Motion, that he would not receive a fair hearing, in that Judge Siegel had a recognized bias and prejudice against him and in favor of the State. Therefore, any reasonable person faced with these same exposed circumstances would experience a well-grounded fear that he or she would not receive a fair hearing. Especially, as in the instant case, where the Petitioner is confronting a judge with familial relationship with one of the interested persons in the case, and of course, a judge with a predisposed demeanor toward the case, reflecting without doubts, bias in favor of the State.

I. BASIS FOR INVOKING JURISDICTION

Petitioner invokes this Honorable Court's jurisdiction under article V, section 4(b)(3) of the Florida Constitution and Florida Rules of Appellate Procedure 9.100 and 9.030(b)(3). Mandamus is defined as a remedy to command performance of a ministerial act that the person deprived has a right to demand, or a remedy where public officials or agencies may be coerced to perform ministerial duties that they have a clear legal duty to perform. See: *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996); *City of Coral Gables, Miami v. State*, 164 So. 2d 26 (Fla. 3rd DCA 1964), leaving no room for the exercise of discretion required by law.

In this case, the Petitioner is entitled to the reassignment of his case to a different circuit court judge, which, at this point, constitutes nothing more than a ministerial duty of the lower court.

II. STATEMENT OF THE CASE AND FACTS

THE CASE

This case was originally filed by Respondent-Plaintiff, the State of Florida against Ernesto Behrens, the Petitioner in the above-styled case number, arising out of multiple sexual battery cases the State filed against him between 1993 and 1997.¹

It is specifically alleged that the sole inculpatory evidence in this case is a single stain of seminal fluid found on a bedsheet allegedly containing the Petitioner's DNA profile.² It is worth mentioning also that all the cases that were previously pending against the Petitioner, were initiated by criminal information sworn by and prosecuted during jury trials by former Assistant State Attorney, Dennis E. Siegel. Mr. Siegel, has been a critical participant in the establishment and use of the "criminal charges" against the Petitioner and he is both the attorney who represented the State during the Petitioner's multiple trials and a potential witness in this case. He is the author of each one of the multiple criminal informations that were filed against the Petitioner. It is expected that during the course of this post-

¹ It should be noted that the Petitioner was acquitted on all the other cases except the case sub-judice.

² Despite the unambiguous accusations of mishandling DNA evidence by the Broward Sheriff's Office (BSO) Crime Laboratory in the last years, and the firm claim of actual innocence raised by the Petitioner. He has not been allowed to review and/or retest this inculpatory evidence.

conviction litigation Mr. Siegel will continue to be used by the State to serve as a critical witness.

However, Mr. Siegel also has a familial relationship (by consanguinity or affinity within the third-degree) with Judge Andrew L. Siegel. This information was disclosed to the Defense by the office of Herman Law Firm on June 26, 2020.³ Thus, Mr. Siegel, no doubt, has a personal interest in the outcome of this case, which is currently being presided over by one of his relatives.

Mr. Siegel not only prosecuted multiple cases against the Petitioner, he has personal knowledge of many of the material facts in the case and the Petitioner plans to call Mr. Siegel as a witness, probably an adverse witness, during any of the expected post-conviction proceedings of this case. In that event Judge Andrew Siegel would be required to rule on the credibility of the testimony of a former Assistant State Attorney to whom he is consanguinity related to. The Petitioner reasonably fears that, no matter how much the judge attempts to be completely fair and neutral in resolving all issues in this case, it is clear from human experience that it is virtually impossible for a person to set aside and erase a natural bias or prejudice in favor of the credibility of a witness with whom that person has or has had a close familial and personal or professional relationship.

³ Mr. Siegel worked for this Law Firm back in 2013.

On the other hand, Judge Siegel's unchanged demeanor toward this case clearly reflects bias in favor of the State and against the Petitioner so as to affect the Judge's objectivity in reviewing the Petitioner's currently pending post-conviction Motions.

THE FACTS

Based on this Judge's familial ties with one of the persons of interest in this case and the unambiguous demonstration of ill will or, conversely, favouritism toward one of the parties involved in this action (the State). The Petitioner filed a timely "Motion To Recuse."

On June 29, 2020, the Petitioner filed a Motion to Recuse Judge Andrew L. Siegel from presiding over the matter. The certificate of service attached to the Recusal Motion indicated that a copy of the Motion had been served by mail on the State Attorney, the Chief Judge Tuter and on Judge Siegel. The date on the certificate of service (*in compliance with Florida Rule of Civil Procedure 1.080*) was June 29, 2020.

On August 6, 2020 the Petitioner filed a Motion requesting the reassignment of the case to another judge. In this Motion, the Petitioner asserted that the case should be reassigned to another judge because Judge Siegel had not ruled on the Recusal Motion within thirty days as required by Florida Rule of Judicial Administration 2.330(j). However, unknown to the Petitioner and outside of the

thirty (30) days time frame allowed by the rule, on August 4, 2020, Judge Siegel entered an order "denying" the Motion to Recuse without stating his grounds for denial or specifying if the Motion was legally insufficient. The Petitioner immediately files this Petition for a Writ of Mandamus:

III. NATURE OF THE RELIEF SOUGHT

The nature of the relief sought by this Petition is a Writ of Mandamus from this Honorable Court directing the Circuit Court Judge Andrew L. Siegel to quash his order denying the Motion to recuse him, where the Judge did not rule within thirty (30) days after service of the Motion pursuant to Rule 2.330(j) of the Florida Rules of Judicial Administration. Additionally, for this Honorable Court to enter an order for the Clerk of Court to reassign the case to a different Circuit Judge.

IV. ARGUMENT

MR. BEHRENS WILL BE IRREPARABLY HARMED ABSENT A WRIT OF MANDAMUS REASSIGNING THE CASE TO A DIFFERENT CIRCUIT COURT JUDGE WHERE THE JUDGE'S ORDER DENYING THE MOTION TO RECUSE HIM WAS ENTERED A WEEK LATE.

The Petitioner seeks a Writ of Mandamus recusing the post-conviction Judge from any further activity in this case. This Court has jurisdiction over a Petition for extraordinary relief "to review the denial of a motion to disqualify the judge presiding over the proceedings in the lower tribunal." *Padovano*, Fla. App. Prac., § 30.3, 777 (2018); see also *EdwardsFreeman v. State*, 138 So. 3d 507 (Fla. 4th DCA 2014) (granting in part petition for writ of prohibition and quashing order

denying motion for disqualification); *Barnett v. Barnett*, 727 So. 2d 311 (Fla. 2d DCA 1999). “[T]he improper use of judicial power by a particular judge causes harm that cannot be adequately corrected on appeal.” *Padovano*, § 30.3, 777. Florida Rule of Judicial Administration 2.330(d) provides that a party may seek disqualification on the ground “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.” Under Rule 2.330(f), a trial judge’s discretion in ruling on a party’s motion to disqualify is limited to “only the legal sufficiency of the motion” and whether the party sufficiently alleged facts demonstrating a justifiable fear that he or she will not be able to receive a fair trial or hearing. Once the moving party demonstrates the “legal sufficiency” of their disqualification Motion, the judge “shall immediately enter an order granting disqualification and proceed no further in the action.”

Here, Mr. Behrens filed his Motion to Recuse Judge Andrew L. Siegel under oath and stated that he did not believe he could get a fair post-conviction proceeding from the Judge after discovering the familial relationship that exists between Judge Andrew L. Siegel and the former Assistant State Attorney Dennis E. Siegel. Additionally, the Petitioner argued that Judge Siegel's unchanged demeanor toward this case--clearly reflecting bias in favor of the State and against the Petitioner, so as to affect the Judge's objectivity in reviewing the Petitioner's currently pending

post-conviction Motions. For these reasons, the Petitioner properly moved to disqualify the judge. However, this Motion was summarily denied on August 4, 2020.

Under Florida Rule of Judicial Administration 2.330, the Judge's summary denial of Mr. Behrens' Recusal Motion was improper and beyond his judicial authority.

The merits of the Petitioner's Motion to Recuse itself, are not at issue. Rule 2.330(j) of the Florida Rules of Judicial Administration controls the result in this case. The Petitioner served his Motion on the subject judge on June 29, 2020, seeking disqualification under Rule 2.330(j), which provides:

The [trial] 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). (Emphasis added).

After more than 30 days had passed, the Petitioner filed a Motion for case reassignment on August 6, 2020. However, unknown to the Petitioner, on August 4, 2020 (outside the 30 day time frame allowed by the rule), the trial judge denied the Petitioner's Motion for Recusal.

The Florida Supreme Court and other district courts have applied the 30 days rule strictly. If a trial judge does not rule on a Motion to disqualify within the requisite 30 days, the Motion "shall be deemed granted" by operation of Rule 2.330(j)

thereby entitling the movant to seek reassignment of the case. See *Tableau Fine Art Group, Inc. v. Jacoboni*, 853 So. 2d 299, 302-03 (Fla. 2003) (holding that "a motion for judicial disqualification filed pursuant to Florida Rule of Judicial Administration 2.160 [now Rule 2.330] must be ruled on within thirty days following its presentation to the court."); *Schisler v. State*, 958 So. 2d 503, 505 (Fla. 3d DCA 2007) ("The trial court's failure to rule on [movant's] motion within 30 days of its service therefore entitles [movant] to an order directing the clerk of the court to reassign this case."); *Johnson v. State*, 968 So. 2d 61, 63 (Fla. 4th DCA 2007); *Schisler*, 958 So. 2d at 504.

The strictness of the 30-day limit in Rule 2.330(j) is reflected in *Schisler*, where the trial court's order issued just one day late. 958 So. 2d at 504. Nonetheless, it was deemed untimely. Cf. *Lightsey v. State*, 53 So. 3d 1093, 1093 (Fla.1st DCA 2011) (order issued "several months" late). In addition, courts have noted that the "burden is on the court, not the litigants, to assure a determination" within that time period. *Id.*; see *Tableau Fine Art Group*, 853 So. 2d at 302-03. As an example, in *Schisler* the Third District granted relief under the rule even though the movant's counsel had "acquiesced in having the motion set for hearing outside the 30 day time frame." 958 So. 2d at 504 (footnote omitted).

In this particular case, the Judge entered an order denying the Petitioner's Motion to Recuse on August 4, 2020. However, the order states, in pertinent part: "... upon

the Defendant's Motion to Recuse, filed *on or about 7-13-20* and the court receiving it in 8-4-20..." (Emphasis added). Interestingly enough, although the Case Docket depicts as the first filing date 7-6-20, the trial court choose the second and more convenient date of 7-13-20. Nevertheless, assuming arguendo that the correct filing date was 7-13-20, as the court chooses. The Judge still missinterprets the Rule. It is thirty (30) days from the date of service of the Motion, not the date of the Motion being docketed what satisfy the Rule. Therefore, taking the filing date admitted by the court of 7-13-20. The court still had 16 days to consider the Petitioner's Motion within the thirty (30) day time frame required by the rule. Nevertheless, the court chose not to rule on this Motion in a timely fashion as he has consistently and recklessly done in Petitioner's previous Motions.

Therefore, because the Petitioner's Motion to Recuse was not ruled upon within the requisite 30 days it is deemed to have been granted under Rule 2.330(j) thereby warranting mandamus relief. The order under review should be quashed and this matter should be remanded for entry of an order directing that this case be reassigned to a different judge.

CONCLUSION

As a result of 1) Judge Andrew Siegel's familial ties with the former Assistant State Attorney Dennis Siegel; 2) Judge Andrew Siegel's demonstrated bias and refusal to act as a neutral arbiter; and 3) because the Judge's order denying the

Petitioner's Motion to Recuse outside the thirty days time frame required by the rule, Mr. Behrens faces irreparable harm. He therefore respectfully requests that this Honorable Court grant the relief requested herein.


Respectfully submitted,

[S] 

Ernesto Behrens, DC# 732564

OATH

UNDER PENALTIES OF PERJURY and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this Petition is found to be frivolous or made in bad faith. I certify that I understand the contents of the foregoing Petition, that the facts contained in the Petition are true and correct, and that I have a reasonable belief that the Petition is timely filed. I certify that this Petition does not duplicate previous petitions that have been disposed of by the court. I certify that I understand English and have read the foregoing Petition or had the Petition read to me. **I further certify that this Petition and its statements are made in good faith.**

[S] 

Ernesto Behrens, DC# 732564

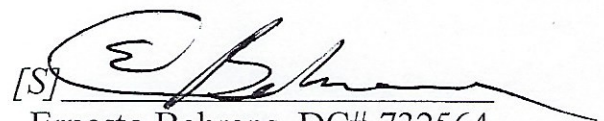
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this forgoing Petition has been furnished to: The Fourth District Court of Appeal, 110 South Tamarind Avenue, West Palm Beach, Florida. 33401; to the Office of the Attorney General, at 1515 N. Flagler Dr., Suite 900 West Palm Beach, Florida. 33401; to the Office of the State Attorney, Michael J. Satz, Post-conviction Unit, at 201 S.E. Sixth Street. Fort Lauderdale, Florida 33301; to the Honorable Chief Judge Jack Tuter and to **the subject Judge Andrew L. Siegel's Chamber** at Broward County Main Courthouse, at 201 S.E. Sixth Street. Fort Lauderdale, Florida 33301 (*in compliance with Florida Rule of Civil Procedure 1.080*). On this 10 day of August, 2020.


[S]
Ernesto Behrens, DC# 732564

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this forgoing Petition complies with the font requirements of Fla. R. App. P., 9.210(a)(2) (i.e., double-spaced Times New Roman 14-point font).


[S]
Ernesto Behrens, DC# 732564
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956

**IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT
STATE OF FLORIDA**

Appeal Case No.: 4D20-_____
(to be assigned)

ERNESTO BEHRENS

Petitioner,

-VS-

STATE OF FLORIDA

Respondent

**APPENDIX TO
PETITION FOR WRIT OF MANDAMUS**

Ernesto Behrens, DC#732564
Martin Correctional Institution
1150 S.W. Allapattah Rd.
Indiantown, Florida 34956

EXHIBITS ATTACHED

A. PETITIONER'S MOTION TO RECUSE

B. PETITIONER'S MOTION TO REASSIGN CASE

C. CASE DOCKET LOG

D. TRIAL COURT'S ORDER OF DENIAL

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

STATE OF FLORIDA,
Plaintiff

V.

Case No: 98-05739CF-10A

PK

ERNESTO BEHRENS,
Defendant.

DEFENDANT'S MOTION TO RECUSE

COMES NOW, the Defendant, Ernesto Behrens, pro se, and respectfully moves pursuant to § 38.10, Fla. Stat. and Rule 2.330 of the Florida Rules of Judicial Administration, to recuse Judge Andrew L. Siegel from proceeding further in this action. As grounds for this Motion, the Defendant alleges:

GROUND IN SUPPORT OF THE MOTION¹

1. The disqualification of a Judge is not a reflection on the personal ethics, It is a Motion directed only to the appropriateness of the Judge serving on a particular case. Because of the facts and circumstances involved in this case, it must be reassigned to another Judge.
2. This is a case against Ernesto Behrens, the Defendant in the above-styled case number, arising out of multiple sexual battery cases the State filed against him between 1993 and 1997.² It is specifically alleged that the sole inculpatory evidence in this case is a single stain of seminal fluid found on a bedsheet allegedly containing the Defendant's DNA profile.³ It is worth mentioning

¹ See: Clerk of the Court Docket Case Number: 98-5739CF10A for a full view of all of the events herein alleged, including the Motions herein described.

² It should be noted that the Defendant was acquitted on all the other cases except the case sub-judice.

³ Despite the unambiguous accusations of mishandling DNA evidence by the Broward Sheriff's Office (BSO) Crime Laboratory in the last years, and the firm claim of actual innocence raised by the Defendant. He has not been allowed to review and/or retest his inculpatory evidence.

Exhibit A

also that all the cases that were pending against the Defendant, were directly charged by criminal information, sworn by and prosecuted during jury trials by former Assistant State Attorney, Dennis E. Siegel.

3. The Defendant's former Assistant State Attorney, Dennis E. Siegel, has been a critical participant in the establishment and use of the "criminal charges" against the Defendant and he is both the attorney who represented the State during the multiple trials and a potential witness in this case. He is the author of each one of the multiple criminal informations that were filed against the Defendant. It is expected that during the course of this litigation Mr. Siegel will continue to be used by the State to serve as a critical witness.

4. Dennis E. Siegel also has a familial relationship (by consanguinity or affinity within the third-degree) with Judge Andrew L. Siegel. This information was disclosed to the Defense by the office of Herman Law Firm on June 26, 2020.⁴ Thus, Mr. Siegel, no doubt, has a personal interest in the outcome of this case currently being presided by one of his relatives.

5. Mr. Siegel not only prosecuted multiple cases against the Defendant, he has personal knowledge of many of the material facts in the case and the Defendant plans to call Mr. Siegel as a witness, probably an adverse witness, during any of the expected postconviction proceedings of this case. In that event Judge Siegel would be required to rule on the credibility of the testimony of a former Assistant State Attorney to whom he is consanguinity related to. The Defendant reasonably fears that, no matter how much the judge attempts to be completely fair and neutral in resolving all issues in this case, it is clear from human experience that it is virtually impossible for a person to set aside and erase a natural bias or prejudice in favor of the credibility of a witness with whom that person has or has had a close familial and personal or professional relationship.

6. The law recognizes this concern: The test is whether, on the facts alleged, a reasonably prudent person would fear that he or she would not get a fair and impartial trial or hearing. *Rogers v. State*, 630 So. 2d 503 (Fla. 1994); *Livingston v. State*, 441 So. 2d 1083 (Fla. 1983); *Crosby v. State*, 97 So. 2d 181 (Fla. 1957). The basic tenet for disqualification is the appearance of justice, even if the

⁴ Mr. Siegel worked for this Law Firm back in 2013.

record lacks proof of actual bias or prejudice on the part of the judge. *Hewitt v. State*, 839 So. 2d 763 (Fla. 4th DCA 2003).

7. Assistant State Attorney Dennis E. Siegel's familial ties with Judge Andrew L. Siegel is alone a valid ground for disqualification.

8. However there is more. Judge Siegel's unchanged demeanor toward this case clearly reflects bias in favor of the State and against the Defendant so as to affect the Judge's objectivity in reviewing the Defendant's pending postconviction Motions. See: *Lages v. State*, 685 So. 2d 968 (Fla. 2nd DCA 1996). See: Pertinent background in this case:

- a. The Defendant has two Motions for Postconviction relief currently pending in front of this Judge and under the above-styled Case Number.
- b. This Judge has timely issued multiple "Show Cause Orders" on each Motion requesting the State to respond to the Defendant's Motions within sixty (60) days from the date of this Court's Orders. Specifically, these Orders were first issued on March 26, 2019 and April 16, 2019 respectively.
- c. The State failed to comply with this Judge's Order and the State also failed to timely request from this Judge any type of leave for an extension of time.
- d. The Defendant timely filed a "Notice to the Court" calling this Judge's attention to the State's failure to timely respond. Additionally, the Defendant requested this Judge to rule on the pending Motions. However, this Judge did not acknowledge this Notice nor the Judge has taken any action.
- e. On September 11, 2019 three months after the State's due date to respond, the State again filed "Motion for Extension of Time to File Response" in which requested an additional ninety (90) days. The State's Motion states in pertinent part: "[T]he undersigned counsel has ordered and received the records necessary to respond to the defendant's allegations."
- f. This Judge, on the same day September 11, 2019, granted the State's Motion for Extension of Time, giving the State ninety (90) additional days to respond.
- g. Although the State's due date to respond expired on December 11, 2019. The State again failed to comply with this Judge's Orders and to timely request this Judge's permission for additional extension of time.
- h. After the State's ongoing reckless disregard for this Judge's Orders to respond to the Defendant's Motions. The Defendant filed on January 22, 2020, his "Motion to Oppose any

Further Extensions of Time to be Given to the State." Despite the clear statement of prejudice expressed by the Defendant's Motion, stating in pertinent part: "**First**, the Defendant's pro bono DNA consultant, Tiffany Roy, is becoming frustrated with the unnecessary delay and could withdraw for her desires to assist in this case; **Second**, the Defendant is indigent and has no way to pay for DNA experts on his behalf. Therefore, without the immediate release of the requested DNA testing previously performed by the BSO Crime Laboratory to Ms. Roy, the Defendant would not be able to demonstrate his innocence; and **Third**, the Defendant's continued illegal incarceration, aside from unconstitutionally preventing him of his liberty, places him in continuous, unwarranted and needless physical danger..."

- i. Nevertheless, this Judge has completely disregarded the Defendant's Motion and has never addressed the merits of such Motion.
- j. Despite the Defendant's Motion to oppose any more extensions of time being filed by the State and, contrary to the Defendant's expressed request. On February 14, 2020, the State moved the Judge for another ninety (90) days extension of time to file its response. Once again, without hesitation and without acknowledging the Defendant's unambiguous opposition to any further extensions of time. On February 17, 2020, this Judge granted the State's Motion for extension of time, allowing the State its additional requested ninety (90) days.
- k. On the same day February 17, 2020, however, Franziska Kaltenbach, a friend of the Defendant and a loyal supporter of this cause, wrote a letter, on behalf of the Defendant to the Honorable Ron DeSantis (Florida Governor), complaining about the actions and inactions taken in this specific case by this Judge. This letter was also mailed to this Judge. The letter was answered by the Governor's Office on February 20, 2020, with instructions on how to file complaints against a judge with The Judicial Qualification Commission (JQC) and/or how to move for judges' disqualification.
- l. On March 9, 2020, the Defendant filed his "Motion To Preserve Any And All Evidence Introduced At Trial Containing DNA, As Well As, All Fingerprints And Palm Prints Collected At The Point Of Entry And Exit Which Are Currently In The Custody Of The Clerk Of The Court's Evidence Room." As to the day of this Motion being filed, this Judge has not acknowledged the filing of this pending Motion. Nor does this Judge have shown any signs of ruling on these Motions anytime soon, even though the Defendant relies solely and exclusively on this currently existing evidence to prove his actual innocence claim.
- m. On May 14, 2020, the State again filed another "Motion for Extension of Time" requesting thirty (30) additional days to file its response. And of course, as expected, on May 15, 2020 this Judge granted the additional thirty (30) days extension of time requested by the State.
- n. As to the day of the writing of this Motion, fifteen (15) days after the expiration of the last thirty (30) days extension of time granted by this Judge and four (4) days after learning that Judge Andrew Siegel and former Assistant State Attorney Dennise Siegel have familial ties. No Response or Motion for Leave for additional time to respond has been filed by the

State. And of course, this Judge has not moved the State to comply with his previous Orders. Furthermore, this Judge has not ruled on the merits of neither one of the Defendant's two currently pending Motions.

- o. Based on this Judge's clear lack of acknowledgment on the Defendant's timely filed Motions. This year alone, the Defendant's family and friends had contacted this Judge's judicial Assistance by phone calls and left messages on behalf of the Defendant, way over 100 times. However, not even once a call was returned. Thus, there is a pattern shown by this Judge which clearly indicates that only the State's file Motions are worthy of acknowledgment and expeditious rulings. Therefore, It is obviously clear to the Defendant that this Judge's demonstration of ill will or, conversely, favouritism toward one of the parties involved in this action (the State), is another valid ground in support to this Judge's disqualification.

9. As clearly stated above, the facts alleged by the Defendant demonstrate that he has a well-grounded fear that he will not receive a fair hearing at the hands of this judge. *Correll v. State*, 698 So. 2d 522 (Fla. 1997).

10. Equally important is the fact that this Judge has a precedent case law describing his favoritism and/or expressed friendship for prosecutors and/or State representatives. See: *Domville v. State*, 103 So. 3d 184 (Fla. 4th DCA 2013). Additionally, in this case Judge Siegel has already been accused by a newspaper reporter, Brittany Shammas (on June 26, 2017 from the Miami New Times newspaper), of not letting the Defendant challenge bad DNA evidence and denying him a hearing. The newspaper article states in pertinent part:

"Late last year, as he served a life sentence in prison, Ernesto Behrens received a notice informing him of problems discovered at the crime lab that had examined DNA in his case. Behrens, who was convicted of armed sexual battery in Broward County in 2000, immediately filed a flurry of motions asking for the evidence to be reviewed. But Judge Andrew Siegel quickly denied the motion without even granting a hearing... Months after hundreds of cases were thrown into question over improper DNA interpretation at the Broward Sheriff's Office Crime Laboratory, Behrens' case has become a point of contention between prosecutors and public defenders. 'The State Attorney's Office should also be looking at justice, and if there's one person sitting in jail or one person that was wrongly convicted based on faulty DNA, they should also be looking to right that conviction,' Assistant Public Defender Gordon Weekes says..."

11. Now three (3) years later, the Defendant is still trying to obtain permission from this Judge to have his pro bono expert, Tiffany Roy, reviewing and retesting the sole inculpatory stain evidence

in this case. However, this Judge refuses to compel the State into complying with his previous Orders to respond to the Defendant's pending Motions and/or to enter a final ruling on the merits of these Motions.

12. The Defendant fears that for these stated reasons he would not receive a fair hearing, in that Judge Siegel has a recognized bias and prejudice against him and in favor of the State. Any reasonable person faced with these circumstances would experience a well-grounded fear that he or she would not receive a fair hearing in front of a judge with these relationships and predisposed demeanor toward the case, reflecting bias in favor of the State.

13. There have been no previously filed motions to disqualify.

14. A copy of this Motion is being immediately served by US mail, as set forth in Rule 1.080, upon Judge Andrew L. Siegel.

15. This Motion is filed within ten (10) days after discovery of the facts disclosed by the Herman Law Firm on June 26, 2020, that Judge Andrew L. Siegel and Assistant State Attorney Dennis E. Siegel are consanguinity related within the third degree.

16. The Motion itself contains the undersigned Defendant's separate certification, that the Motion and its statements are made in good faith.

17. Pursuant to Rule 2.330(f), "The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged." If this Motion is deemed legally sufficient, the Court shall immediately enter an order granting disqualification and proceed no further in the action. *Cave v. State*, 660 So. 2d (Fla. 1994).

18. A motion is legally sufficient if the facts alleged demonstrate that the moving party had a well-grounded fear that he or she will not receive a fair trial or hearing at the hands of the judge. *Correll v. State*, 698 So. 2d 522 (Fla. 1997).

19. The Florida Code of Judicial Conduct, Canon 3 (E)(1) provides that, "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

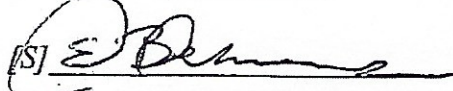
(a) The moving party fears he or she will not receive a fair trial or hearing because of (specific) prejudice or bias of the judge, *or* (b) A family relationship (by consanguinity or affinity within the third-degree) exists between the judge and litigants, Attorneys or interested persons..."

20. The judge is required to rule immediately on a Motion to disqualify. Fla. R. Jud. Admin. 2.160 (e); *Fuster-Escalona v. Wisotsky*, 781 So. 2d 1063 (Fla. 2000). Until the Motion is resolved, the judge cannot proceed further in the case. *Id.* If the court affords a hearing on the Motion, the hearing must be expedited. *D'Ambrosio v. State*, 746 So. 2d 508 (Fla. 5th DCA 1999).

21. In this case, the reasonably questioned impartiality is a three fold impartiality which relates to: **First**, the Defendant's former Assistant State Attorney, Dennis E. Siegel, having a familial ties of the third degree with Judge Andrew L. Siegel and the family relationship he, his wife and kids appear to have with the Defendant's former Assistant State Attorney and future witness in this cause; **Second**, the clear combination of Judge Siegel's unchanged demeanor toward the case, reflecting bias in favor of the State and against the Defendant, together with the Judge's lack of objectivity in reviewing the Defendant's currently pending postconviction Motions; and **Third**, the existing and damaging newspaper articles criticizing Judge Siegel's unfair rulings against the Defendant--on the very same Motions currently pending in the Court, and of course, the third party letter written to Governor DeSantis requesting sanctions upon Judge Siegel for the way he has been handling this case. The law is clear, because this is the first time the right has been invoked, the Defendant is entitled to the entry of an order disqualifying Judge Andrew L. Siegel from proceeding further in this case and directing the Clerk to reassign this case.

WHEREFORE, the Defendant respectfully requests the entry of an order of disqualification of the Honorable Andrew L. Siegel and reassignment to another Circuit Court Judge.

Respectfully Submitted,

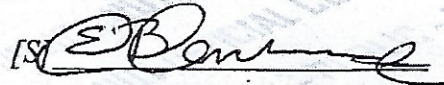


Ernesto Behrens, DC# 732564

OATH

UNDER PENALTIES OF PERJURY and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this Motion is found to be frivolous or made in bad faith. I certify that I understand the contents of the foregoing Motion, that the facts contained in the Motion are true and correct, and that I have a reasonable belief that the Motion is timely filed. I certify that this Motion does not duplicate previous motions that have been disposed of by the court. I certify that I understand English and have read the foregoing Motion or had the Motion read to me. **I further certify that this Motion and its statements are made in good faith.**

Respectfully Submitted,

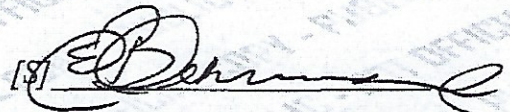


Ernesto Behrens, DC# 732564
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Motion was sent via U.S. first class mail to: State Attorney's Office, Michael J. Satz, Postconviction Unit, 201 S.E. Sixth Street. Fort Lauderdale, Florida 33301; to the Honorable Chief Judge Jack Tuter and to the subject Judge Andrew L. Siegel's Chamber at Broward County Main Courthouse, 201 S.E. Sixth Street. Fort Lauderdale, Florida 33301 (*in compliance with Florida Rule of Civil Procedure 1.080*). On this 29 day of June, 2020.

Respectfully Submitted,



Ernesto Behrens, DC# 732564
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff

Case No: 98-5739CF10A

V.

ERNESTO BRHRENS,
Defendant.

DEFENDANT'S MOTION SEEKING AN ORDER FROM THE COURT DIRECTING
THE CLERK TO REASSIGN THE CASE

COMES NOW, the Defendant, Ernesto Behrens, *pro se*, and respectfully moves this Honorable Court for an order from this Court directing the Clerk to reassign the case pursuant to Rule 2.330(j) of the Florida Rules of Judicial Administration. The Defendant in furtherance thereof, shows as follows:

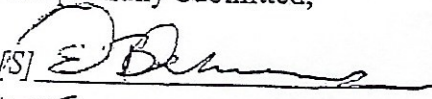
- 1.. On June 29, 2020, the Defendant mailed/served on Judge Andrew L. Siegel a motion for disqualification of judge, referencing the above-styled Lower Tribunal Case Number.
- 2.. However, the Clerk's docket reflects this motion as filed on July 6, 2020.

Exhibit B

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 and petitioner's counsel acquiesced in setting a hearing on the motion outside the thirty-day time frame); *Harrison v. Johnson*, 934 So.2d 563 (Fla. 1st DCA 2006) (stating that, to the extent a movant seeks to compel a ruling by the circuit court on his motion to reassign, mandamus is the proper remedy).

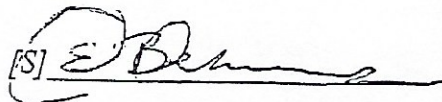
WHEREFORE, the Defendant prays this Honorable Court issues an order directing the Clerk to reassign this case, and grant it as it relates to this pending criminal case.

Respectfully Submitted,

[S] 
Ernesto Behrens, DC# 732564

OATH

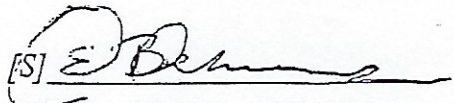
UNDER PENALTIES OF PERJURY and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this Motion is found to be frivolous or made in bad faith. I certify that I understand the contents of the foregoing Motion, that the facts contained in the Motion are true and correct, and that I have a reasonable belief that the Motion is timely filed. I certify that this Motion does not duplicate previous motions that have been disposed of by the court. I certify that I understand English and have read the forgoing Motion or had the Motion read to me. **I further certify that this Motion and its statements are made in good faith.**

A handwritten signature in black ink, appearing to read "E Behrens", with a stylized flourish at the end. The signature is written over a horizontal line.

Ernesto Behrens, DC# 732564

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Motion was mailed via U.S. first class mail to: State Attorney's Office, Michael J. Satz, Postconviction Unit, 201 S.E. Sixth Street. Fort Lauderdale, Florida 33301; to the Honorable Chief Judge Jack Tuter and to the subject **Judge Andrew L. Siegel's Chamber** at Broward County Main Courthouse, 201 S.E. Sixth Street. Fort Lauderdale, Florida 33301 (*in compliance with Florida Rule of Civil Procedure 1.080*). On this 6 day of August, 2020.

A handwritten signature in black ink, appearing to read "E Behrens", with a stylized flourish at the end. The signature is written over a horizontal line.

Ernesto Behrens, DC# 732564

Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956

Date	Description	Additional Text	View	Pages
08/05/2020	Order	DENYING DEFENDANT'S MOTION TO RECUSE(DENIED)		1
07/13/2020	File Motion	DEFENDANT'S MOTION TO RECUSE		9
07/06/2020	File Defense Motion	Pro Se To Recuse (Emailed JA 7/14/2020)		9
07/02/2020	File Order Granting State Motion Extension Of Time	15 days. Signed 7/1/2020		1
05/22/2020	File Order Granting State Motion Extension Of Time	Signed May 15, 2020 30 Days To Respond		1
05/14/2020	File States Motion For Extension Of Time			2
03/18/2020	File Defense Motion To Preserve Evidence	Emailed JA 3/20/2020		6
02/27/2020	Evidence Viewed By	Susan Hugentugler,ASA & Arielle Demby Berger; Alpha Box A-1183 & 2000-15; Bio Box: 130 On 3		
02/18/2020	File Order Granting State Motion Extension Of Time	90 Days. Signed 2/17/2020		1

8/10/2020

Case Detail - Public - Broward County Clerk of Courts

Date	Description	Additional Text	View	Pages
02/14/2020	File States Motion For Extension Of Time			2
01/24/2020	File Defendant's	Opposition to any Further State's Motion for Ext. of Time. (Emailed JA 1/27/2020)		7
09/11/2019	File States Motion For Extension Of Time			2
09/11/2019	File Order Granting State Motion Extension Of Time	Signed 09/11/2019, 90 Days		1
07/15/2019	File Notice	TO THE COURT		3
04/24/2019	File Document	Certificate of Clerk - Order State to Respond.		1
04/18/2019	File Order Requesting State To Respond	Signed 04/16/2019, 60 Days Second Amended M/Post-Conviction Relief.		1
04/11/2019	File Defense Motion For Post Convict Relief/3.850	Second Amended. Emailed JA 04/12/2019.		128
03/29/2019	File Order Requesting State To Respond	signed 032619 def m/for court order compelling bso crime lab to release all dna testing conducted in this case rfp and pcr to be reviewed and		1

Exhibit C

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs

ERNESTO BEHRENS

Defendant,

CASE NO: 98-5739CF10A

JUDGE: SIEGEL

ORDER DENYING DEFENDANT'S MOTION TO RECUSE

THIS CAUSE having come before this Court upon the Defendant's Motion to Recuse, filed on or about 7-13-20 and the Court receiving on 8-4-20 the Court having considered same, and being advised in the premises, it is:

ORDERED AND ADJUDGED the Defendant's Motion to Recuse is
DENIED.

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida this
4 day of August 2020.




ANDREW L. SIEGEL
CIRCUIT COURT JUDGE

cc:
State Attorney's Office
Defendnat- Ernesto Behrens

Exhibit D


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this forgoing Appendix has been furnished to: The Fourth District Court of Appeal, 110 South Tamarind Avenue, West Palm Beach, Florida. 33401; to the Office of the Attorney General, at 1515 N. Flagler Dr., Suite 900 West Palm Beach, Florida. 33401; to the Office of the State Attorney, Michael J. Satz, Post-conviction Unit, at 201 S.E. Sixth Street. Fort Lauderdale, Florida 33301; to the Honorable Chief Judge Jack Tuter and to **the subject Judge Andrew L. Siegel's Chamber** at Broward County Main Courthouse, at 201 S.E. Sixth Street. Fort Lauderdale, Florida 33301 (*in compliance with Florida Rule of Civil Procedure 1.080*). On this 10th day of August, 2020.


[S]
Ernesto Behrens, DC# 732564

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this forgoing Petition complies with the font requirements of Fla. R. App. P., 9.210(a)(2) (i.e., double-spaced Times New Roman 14-point font).


[S]
Ernesto Behrens, DC# 732564
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956