

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

DR. ERWIN D. JACKSON,
As an elector of the City of Tallahassee,

Plaintiff,

v.

CASE NO: 2016-CA-2052

LEON COUNTY ELECTIONS
CANVASSING BOARD and SCOTT C.
MADDOX, as the successful candidate for
Tallahassee City Commission, Seat 1,

Defendants.

ORDER OF RECUSAL

The First District Court of Appeal issued an opinion November 23, 2016 stating “we find that Jackson’s November 15 motion for disqualification of the trial judge was legally sufficient.” However, the appellate court concluded Plaintiff Erwin Jackson had waived his right to object to me continuing to serve on this case.

I do not believe the motion for disqualification was legally sufficient. However, given the appellate court’s finding that it was, and despite the appellate court stating I may proceed with this case, I hereby recuse myself and request the Chief Judge of the circuit to appoint a new judge on the case.

In recusing myself this trial judge feels compelled to summarize the events leading up to its decision. The First DCA stated in its November 23 opinion that there were due process violations committed by me, citing as support another case for the proposition that “outright denial of the basic and fundamental right of cross-examination would give a reasonably prudent person a well-founded fear of judicial bias.”


The alleged due process violation by me arose after the First DCA instructed me in its order of November 9, 2016 to have an “immediate hearing on Jackson’s timely complaint.” That order concluded “the lower tribunal should proceed with the immediate hearing forthwith.”

This court first became aware of the appellate court’s order late afternoon Wednesday, November 9. On Thursday, November 10 beginning at 8:15 a.m., I was to begin jury selection for a trial scheduled for Monday, November 14 through Thursday, November 17. The lawyers on that jury selection had indicated they thought they would conclude jury selection by 1 PM November 10. Accordingly, before proceeding to the courtroom at 8:15 AM for jury selection, this court issued a notice scheduling a 2 ½ hour hearing for 1:15 PM pursuant to the First DCA’s November 9 order. The “immediate hearing” needed to be held that day, because the next day, Friday, November 11, was Veterans Day, and the jury trial was scheduled for the next week. This court determined that postponing the hearing for a week could not be considered “immediate”, as required by the First District. The jury selection actually concluded about 1:10 PM and I convened the “immediate hearing” at the scheduled 1:15 PM starting time, to execute the First District’s order.

If the First District’s order had directed this court to schedule an immediate case management conference, with discovery deadlines, etc., I would have done so. I would not have scheduled a 2 ½ hour hearing. Instead, the hearing would have been scheduled for 15 to 30 minutes, as this court routinely schedules discovery deadlines, etc. in that length of time.

Judge Makar in his separate opinion discusses the need for speedy resolution of such controversies as this. He states that when such controversies “land on our (the First DCA’s) plate, and involve matters of great urgency, we dig in and adjudicate them with studious speed.” Commendably, the appellate court did that. I did also. Each time the appellate court ruled, ordering me to act quickly, I did so. I never delayed in my rulings. They were all what I believed the law required me to do. Obviously, the First DCA disagreed. However, again, the case would never be in this posture had the appellate court told me that the “immediate hearing” they required simply meant to have an immediate case management conference. Nevertheless, rather than taint the outcome of this case any further by this court’s actions, I recuse myself.

DONE AND ORDERED this 28th day of November, 2016 in Tallahassee,
Leon County, Florida.


CHARLES W. DODSON
CIRCUIT JUDGE

Copies sent via E-portal to all parties listed on service list.