

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

MARTIN A. ALVAREZ,

CASE No. 25-CA-006626
DIVISION: C

Plaintiff,

vs.

CITIZENS PROPERTY INSURANCE
CORPORATION,

Defendant.

_____ /

CITIZENS' MOTION TO DISQUALIFY

“Prejudice of a judge is a delicate question to raise” *Dickenson v. Parks*, 140 So. 459, 462 (Fla. 1932). Notwithstanding the sensitivity of the issue, however, Florida’s Code of Judicial Conduct imposes a mandatory duty on *every* judge to perform her judicial duties impartially, and to disqualify herself in any proceeding in which the judge’s impartiality might reasonably be questioned. *See* Fla. Code Jud. Conduct, Canon 3E(1).

Every litigant, including Citizens Property Insurance Corporation (“Citizens”), “is entitled to nothing less than the cold neutrality of an impartial judge.” *State ex rel. Davis v. Parks*, 194 So. 613, 615 (Fla. 1939). As explained below, Judge Polo has ruled the applicable Florida statute at issue in the case, and arbitration endorsement, as unconstitutional before any arguments have been presented in the case by Citizens in writing or by hearing. This announced intention of the trial judge’s ruling is “the paradigm of judicial bias and prejudice.” *Gonzalez v. Goldstein*, 633 So. 2d 1183, 1184 (Fla. 4th DCA 1994). Citizens reasonably fears that this case will not be decided fairly. Accordingly, under section 38.10, Florida Statutes, and Florida Rule of General Practice and Judicial Administration 2.330, Citizens moves to disqualify Judge Polo from further participation in this matter.

I. Background and Supporting Facts

On July 11, 2025, Plaintiff filed the Complaint in this case. Plaintiff is seeking a declaration that the arbitration endorsement in his homeowners insurance policy from Citizens violates his right of access to courts under article I, section 21 of the Florida Constitution, and his right to due process. Plaintiff did not file the Complaint as a class action, did not request injunctive relief, and did not allege a violation of the Equal Protection Clause of the Fourteenth Amendment.

On August 1, 2025, after an ex parte hearing, Judge Polo entered a brief written order granting Plaintiff's motion for a temporary injunction ("Injunction Motion"). The order states that her ruling is based on her review of the Injunction Motion as well as "argument of counsel." There is no mention of any evidence that may have been admitted or considered. Judge Polo made the following findings.

- Likelihood of Success on the Merits: Judge Polo ruled that Plaintiff had demonstrated a likelihood of success on the merits of his access to courts claim and "alleged violations of the Due Process and Equal Protection Clauses of the Fourteenth Amendment."
- Irreparable Harm: Judge Polo ruled that Plaintiff established that "he and similarly situated Citizens policy holders" will suffer irreparable harm because the arbitration endorsement "compels insureds into a forum that lacks neutrality, discovery, motion practice, and meaningful judicial review."
- Balance of Equities: Judge Polo ruled that this favored Plaintiff because "the protection of constitutional rights outweighs any administrative or operational burden to the Defendant."
- Public Interest: Judge Polo ruled that the "public interest best served by ensuring access to the judiciary, halting enforcement of the statute and provisions that erode constitutional protections, and preventing the continued prosecution of cases currently entangled in the Defendant's constitutionally infirm administrative process."

Based on these findings, Judge Polo enjoined Citizens from enforcing the arbitration endorsement in Plaintiff's policy as well as "the same or any substantially similar arbitration clause against any other current or future Citizens policyholder." She also stayed "[a]ll pending actions"

at DOAH and ordered Citizens to “refrain from any action that would interfere with Plaintiff’s or any other individual’s ability to pursue judicial relief.”

On August 4, 2025, Shutts & Bowen and the undersigned counsel entered a notice of appearance as counsel for Citizens. Citizens also filed a notice, appealing the order granting the Injunction Motion and invoking the automatic stay afforded to government entities under Florida Rule of Appellate Procedure 9.310(b)(2).

Also on August 4, 2025, Plaintiff filed an emergency motion to strike the notice of appeal and vacate the automatic stay (“Motion to Vacate”). Judge Polo immediately ruled that the motion was “not an emergency and should be handled in the normal course.”

On August 5, 2025, in response to the Complaint, Citizens filed a motion to transfer venue (“Motion to Transfer”) to Leon County based on its common law home venue privilege and the terms of the arbitration endorsement.

On August 19, 2025, Judge Polo held a hearing on Plaintiff’s Motion to Vacate and Citizens’ Motion to Transfer.

On August 21, 2025, Judge Polo entered two orders, one granting Plaintiff’s Motion to Vacate and another denying Citizens’ Motion to Transfer. Judge Polo made the following statements and rulings in those orders, showing her prejudgment of the constitutional issues in this case and her bias towards Citizens:

- “The unfairness to Plaintiff is manifest. Defendant seeks to deprive him of due process and access to his chosen forum and to shield itself from judicial scrutiny by insisting on venue in a county where it resides, all while enforcing an unconstitutional clause.” (*Transfer Order* ¶7).
- “Plaintiff presented verified evidence at the hearing [on the Injunction Motion] establishing disparate treatment of Citizens policyholders. Plaintiff and similarly situated policyholders of Citizens homeowners property insurance are treated differently than other private policyholders, in that they are not provided the protections of Fla. Stat. § 627.70154 regarding the binding arbitration endorsement. The selective

and disparate treatment of certain policyholders over others is inherently a violation of due process.” (*Stay Order* ¶6).

- “Prior to the enactment of Fla. Stat. §627.351(6)(11), Citizens’ policyholders, like all Floridians, possessed the fundamental right to jury trial, access to courts and due process on their breach of contract claims. The clause in Defendant’s insurance policies compelling disputes into DOAH functions as an adhesion contract, offering neither a fair alternative nor a reduction in premiums. This compulsory and unequal treatment offends the very core of constitutional protections, stripping policyholders of due process and access to courts, rendering the statutory scheme unconstitutional on its face and in application.” (*Stay Order* ¶7).
- “Irreparable harm is unmistakable and severe. Plaintiff has made a preliminary showing that the DOAH forum is structurally biased and deprives policyholders of neutral discovery, motion practice, and judicial review. . . . The result is that ordinary citizens, compelled by adhesion contract, are stripped of their constitutional rights and left powerless in a tribunal that appears to favor the State’s insurer.” (*Stay Order* ¶8).
- “The balance of equities at this point favors Plaintiff, as the harm to constitutional rights outweighs any administrative or operational burden to Defendant. Significantly, lifting the stay imposes no tangible harm on Defendant because any actions temporarily enjoined can be resumed if the matter is determined in Defendant’s favor, but failing to lift the stay risks depriving policyholders of constitutional protections.” (*Stay Order* ¶9).

As required by Florida Rule of Judicial Administration 2.330, Citizens states that the date when the totality of the facts constituting grounds for this motion were discovered was August 21, 2025. No previous motions to disqualify Judge Polo in this case have been filed.

II. Standard of Review

Florida Rule of Judicial Administration 2.330 requires that a motion to disqualify “allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification.” Fla. R. Jud. Admin. 2.330(c)(2). Accepting the facts alleged as true, the trial court’s role is to evaluate the motion’s legal sufficiency. *See Montes v. Universal Prop. & Cas. Ins. Co.*, 403 So. 3d 392, 396 (Fla. 2d DCA 2025); Fla. R. Jud. Admin. 2.330(h). If the motion is legally sufficient, the judge must “immediately enter an order granting disqualification and proceed no further in the action.” Fla. R. Jud. Admin. 2.330(h).

One basis for disqualification is whether the facts alleged would make a “reasonably prudent person” fear they will not get a fair or impartial trial. *Hayslip v. Douglas*, 400 So. 2d 553, 556 (Fla. 1981); *Montes*, 403 So. 3d at 396; *see* Fla. R. Jud. Admin. 2.330(e)(1). The motion must be reviewed from the perspective of the litigant rather than the perspective of the judge. *See Davis v. State*, 347 So. 3d 315, 322 (Fla. 2022). “Even if a judge, therefore, is confident that he or she can preside with no bias, the judge must grant a motion to disqualify if a reasonably prudent person could question his or her impartiality.” *Id.*; *see also Great Am. Ins. Co. of N.Y. v. 2000 Island Blvd. Condo. Ass’n*, 153 So. 3d 384, 390 (Fla. 3d DCA 2014) (“[T]he question of disqualification focuses not on what the judge intended, but rather how the message is received and the basis of the feeling.”).

III. Argument

A judge may form mental impressions and opinions throughout litigation, but the judge is *not* permitted to pre-judge the case. *See, e.g., 1440 Plaza, LLC v. New Gala Bldg., LLC*, 314 So. 3d 555, 557 (Fla. 3d DCA 2020); *Great Am. Ins. Co.*, 153 So. 3d at 386. A judge’s predisposition to rule against a party prior to considering that party’s evidence is the “paradigm of judicial bias

and prejudice” and disqualification is required. *Real Estate Golden Invs. Inc. v. Larrain*, 278 So. 3d 812, 813-14 (Fla. 3d DCA 2019) (citation omitted); *see also Barnett v. Barnett*, 727 So. 2d 311, 312 (Fla. 2d DCA 1999) (holding that judge who prejudged custody case before conclusion of trial should have granted disqualification).

Here, Judge Polo has prejudged Plaintiff’s claim that mandatory arbitration at DOAH to resolve his coverage dispute violates his right to due process and access to courts. In reviewing Plaintiff’s motion to vacate the automatic stay, Judge Polo was required to determine whether Plaintiff is *likely* to prevail in Citizens’ appeal of the ex parte order granting a statewide temporary injunction. *See State v. Planned Parenthood of Sw. & Cent. Fla.*, 342 So. 3d 863, 868-69 (Fla. 1st DCA 2022). The Plaintiff himself acknowledged this standard in the proposed order he submitted granting the Motion to Vacate. Instead, Judge Polo removed Plaintiff’s reference to the *likelihood* of success on the merits before lifting the automatic stay and ruling that the statute authorizing the arbitration endorsement and the endorsement itself *are* unconstitutional.

For example, Judge Polo wrote in her stay order that Citizens’ use of the arbitration endorsement in this case (and others) is “inherently a violation of due process,” “offends the very core of constitutional protections,” “strip[s] policyholders of due process and access to courts,” and is “unconstitutional on its face and in application.” She also characterized the arbitration endorsement as an “adhesion contract” and determined that “the DOAH forum is structurally biased” which leaves policyholders “powerless in a tribunal that appears to favor the State’s insurer.” Judge Polo made similar statements in her order denying a transfer of venue. She described the arbitration endorsement as “unfair” and “unconstitutional” and stated that Citizens “seeks to deprive [Plaintiff] of due process and access to his chosen forum.”

An adverse ruling, without more, cannot form the basis for disqualification. *See Pilkington v. Pilkington*, 182 So. 3d 776, 779 (Fla. 5th DCA 2015). But that is not the reason for Citizens' motion for Judge Polo's recusal. The ultimate issue in the case is whether the statute and endorsement are constitutional. Judge Polo's statements thus far—all made before any briefing or hearing on the merits of Plaintiff's claim—make it clear that she has "crossed that line from forming mental impressions to prejudging the issue." *1440 Plaza*, 314 So. 3d at 557 (quoting *Barnett*, 727 So. 2d at 312). As described in the statements cited above, Judge Polo has already decided the statute and endorsement at issue are unconstitutional. Such statements leave Citizens with an objectively reasonable fear it will not receive a fair trial from Judge Polo. Therefore, this motion is legally sufficient and should be immediately granted.

IV. Conclusion

WHEREFORE, CITIZENS respectfully requests entry of an order granting its Motion to Disqualify Judge Polo.

CERTIFICATE OF GOOD FAITH

I certify that this motion and the factual statements made herein are made in good faith.

CERTIFICATE OF CONFERRAL

I certify that prior to filing this motion, I discussed the relief requested with counsel for Plaintiff by email on August 29, 2025, and Plaintiff opposes the motion.

Respectfully submitted this 29th day of August, 2025.

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CERTIFICATE OF SERVICE

I certify that on August 29, 2025, this document has been filed and served by the E-Filing

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/s/ Ricky L. Polston

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_____ /

AFFIDAVIT OF DANIELLE BULLOCK

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned notary public, personally appeared Danielle Bullock, who, being duly sworn, deposes and states as follows:

1. My name is Danielle Bullock. I am the corporate representative for Citizens Property Insurance Corporation (“Citizens”). I provide this Affidavit based on my personal knowledge of the facts and matters set forth herein and am competent to testify to same.

2. I have reviewed the Motion to Disqualify Judge Melissa Polo and make this Affidavit in support of that Motion. I have reviewed all pleadings, orders, and filings with the Court, referenced in the Motion. The facts stated in the Motion to Disqualify are true and correct.

3. As stated in the Motion to Disqualify, I am aware of the numerous rulings by Judge Polo in her August 21, 2025 orders in this case declaring Citizens’ arbitration endorsement and the statute that authorizes it unconstitutional. Because these rulings were before any arguments were presented by Citizens in writing or by hearing, Judge Polo has pre-judged the case.

4. As a result of Judge Polo's conduct as outlined in the Motion to Disqualify, I have a fear that Citizens will not receive a fair and impartial adjudication of this case.

FURTHER AFFIANT SAYETH NAUGHT.

DANIELLE BULLOCK

Signed by:
Danielle Bullock
AF29C75814A3496...

Date: August 29, 2025

Sworn to and subscribed before me this 29TH day of August, 2025, by Danielle Bullock who is personally known to me.

KRISTIN MICHELLE OUELLETTE
NOTARY PUBLIC
STATE OF FLORIDA
Commission #1834705
My Commission Expires 12/26/2028
ONLINE NOTARY

[Notary Name]