NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

JULIANNE HOLT, Public Defender for the Thirteenth Judicial Circuit, Hillsborough County, Petitioner, v. HONORABLE TRACY SHEEHAN, Circuit Court Judge, Hillsborough County, Respondent.	Case No. 2D12-4254

Opinion filed October 11, 2013.

Petition for Writ of Certiorari to the Circuit Court for Hillsborough County; Tracy Sheehan, Judge.

Julianne Holt, Public Defender, and Theda R. James, Assistant Public Defender, Tampa, for Petitioner.

Pamela Jo Bondi, Attorney General, Tallahassee, and Cerese Crawford Taylor, Assistant Attorney General, Tampa, for Respondent.

ALTENBERND, Judge.

Julianne Holt, in her capacity as the Public Defender for the Thirteenth Judicial Circuit, Hillsborough County, petitioned the Florida Supreme Court for a writ of

quo warranto, disputing the authority of Judge Tracy Sheehan to issue an order disqualifying herself in all cases involving an attorney who was employed by the Public Defender as the supervising division chief for the division in which Judge Sheehan was the presiding judge. The supreme court transferred the petition to this court. We treat the petition as one for a writ of certiorari.

To the extent that Ms. Holt argues that Judge Sheehan could not disqualify herself in all cases involving a specific attorney, we deny the petition. We conclude that a trial judge, like an appellate judge, has the authority to disqualify herself in all cases involving a specific attorney under appropriate circumstances. However, we agree with Ms. Holt that Florida law does not permit the filing of an "order" of blanket disqualification in a specific court file. In this case, the error was compounded by Judge Sheehan's decision to express her personal opinions about the specific attorney, essentially attacking the attorney's reputation and professionalism, in the unauthorized filing. By using the public court file as a forum to attack the attorney and by including scandalous content in an order that was completely unnecessary for that file and unappealable by any party, much less by the attorney in question, Judge Sheehan departed from the essential requirements of the law. Thus, we grant the petition to the extent that the order shall be stricken from the case in which it is filed. If Judge Sheehan concludes that her relationship with this lawyer is such that she will be unable to treat the lawyer's clients fairly, she can provide a simple written notice of blanket disqualification to her chief judge and the clerk of circuit court and file a typical notice of disqualification without further explanation in any affected court file.

I. THE CIRCUMSTANCES OF THE CHALLENGED ORDER

The assistant public defender involved in this case filed a motion to disqualify Judge Sheehan in case number 10-CJ-002677. The motion was a rather typical motion to disqualify filed on behalf of a juvenile client who was concerned that the judge would not be fair. Whether this motion was facially sufficient is a close question, but Judge Sheehan gave the juvenile the benefit of the doubt and granted the motion. Pursuant to rule 2.330(f) of the Florida Rules of Judicial Administration, she entered an order in response to this motion that stated: "The motion is granted." To that point, the order is entirely appropriate and in accordance with proper procedure.

Unfortunately, the judge's order did not stop there. Entitled "Order on Motion to Disqualify and Standing Order to Disqualify Court in All Cases Involving Attorney X,"[1] after the short sentence granting the motion to disqualify, the order states:

> Based upon the factual matters raised in the Motion, the Court further enters a standing Order to Disqualify the Court in all cases involving Attorney X. The Court acknowledges that she has strong feelings that Attorney X is incompetent, untrustworthy and extremely dilatory in matters related to her legal duties, based upon Attorney X's actions and inactions in this Division over the past month and based upon Attorney X's ten year tenure at the Courthouse which has developed her widespread reputation as an inept supervisor and mean spirited individual who publically berates her underlings as "stupid" and "idiotic."
>
> Based upon this information available to the court, the court acknowledges it would be appropriate to disqualify herself from all matters involving Attorney X.

[1]Ms. Holt, as the Public Defender, filed this petition because she views the order as an intrusion into her constitutional authority to select division supervisors. We conclude that she has standing to bring this action. In this context we also conclude that there is no need to disclose the identity of the attorney.

Because the attorney for whom the judge entered the disqualification was the supervising division chief for the division in which Judge Sheehan was presiding, the order effectively required one of two options: either (1) Ms. Holt, as an independent, elected constitutional officer, was required to reassign this lawyer from the position that Ms. Holt wished her to fill, or (2) Judge Menendez, as the Chief Judge of the Thirteenth Judicial Circuit, was required to reassign Judge Sheehan to a division other than the division to which he had assigned her. From the record, it does not appear that Judge Sheehan attempted any coordination with either her chief judge or Ms. Holt before entering this order.

II. BLANKET DISQUALIFICATIONS BY JUDGES

The Rules of Judicial Administration provide procedures for parties to obtain the disqualification of a judge in a particular case. Fla. R. Jud. Admin. 2.330. The rule, however, does not contain procedures for a judge to disqualify herself when she reasonably concludes that the Florida Code of Judicial Conduct requires it. Canon 3E(1)(a) of the Code provides:

> (1) 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 judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]

Fla. Code Jud. Conduct, Canon 3E(1)(a). Thus, when a judge reasonably concludes that her impartiality might reasonably be questioned because of a personal bias or prejudice concerning a specific lawyer, the Code compels the judge to disqualify herself.

This logically requires blanket recusals even though there are no published rules to implement this provision of the Code.

Virtually every judge has close friendships with lawyers, especially friendships that developed when the judge was a practicing attorney. Occasionally, a judge will have a strong disagreement with an attorney, creating at least the temporary appearance that the judge will not treat the attorney's clients fairly. Thus, it is more the rule than the exception that a judge will have an ethical obligation to implement a blanket disqualification affecting one or more attorneys. Trial courts and appellate courts all create mechanisms to handle blanket disqualifications. How courts and clerks of court handle this issue in the absence of statewide procedural rules apparently varies, but the procedures are invariably internal to the court and are not matters filed in specific court files. The disqualifications are often in writing, but no explanation for the blanket disqualification is included even in these internal documents. This court has never seen an occasion when a judge provided a public written explanation of this sort for a blanket disqualification. It has certainly never seen an order comparable to this one filed in a specific court file.

A judge's decision to disqualify himself or herself on a blanket basis must be left to that judge's own sound judgment. This court has no authority to review such a decision. In the usual circumstance where the blanket disqualification is handled by a list internal to the circuit court, there is no rendered order for this court to review within its constitutional jurisdiction. If such a decision is to be reviewed, it would seem to be a matter that might be more appropriately addressed by the Judicial Qualifications Commission.

This case, of course, does not involve a disqualification based on a client's representation by a close friend of the trial judge who occasionally comes before the court. Instead, it involves the division chief in charge of all of the public defenders who appear before Judge Sheehan. That fact did not prohibit Judge Sheehan from deciding that her impartiality might reasonably be questioned because she had a personal bias or prejudice concerning this lawyer. It does, however, mean that the decision to disqualify affects the administration of justice in that division and intrudes upon the administrative authority of the Public Defender and the Chief Judge. It seems to us that such a decision should be made with extraordinary care and with some communication and coordination with the Public Defender and the Chief Judge. Nothing in this record suggests this occurred in this case. Indeed, the decision has the flavor of one made in a moment of frustration and exhaustion. We will not and cannot review Judge Sheehan's decision to disqualify herself, but we would encourage her to revisit this decision when she has a better opportunity to make a deliberate and thoughtful decision.

III. FILING THIS PERSONAL EXPLANATION IN A COURT FILE

Although we have no authority to review a circuit judge's decision to disqualify herself from all cases involving a specific attorney, we conclude that we do have the power to strike impertinent or scandalous matter placed in a court file by a circuit court judge. Florida provides very broad immunity from suits for libel and slander relating to matters stated in court files. See Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole, 950 So. 2d 380, 383-84 (Fla. 2007). Thus, when impertinent or scandalous information is placed in a court file, the party harmed by the information has

no right to seek recourse in a separate action. In lieu of such legal action, when scandalous matter is filed in a court file by a lawyer or a litigant, the rules of procedure allow a party to file a motion to strike the matter from the record. See Fla. R. Civ. P. 1.140(f). For obvious reasons, the rule does not govern the very rare occasion where the scandalous matter is filed by the judge.

There can be no question that the explanation provided in the challenged order was totally unnecessary to grant the motion to disqualify and was equally unnecessary to accomplish a blanket disqualification. No law authorizes this filing. The affected attorney and the affected office of the Public Defender have no recourse by appeal. Although we do not conclude that the order is the equivalent of a disciplinary order by the supreme court, we understand why Judge Northcutt can reasonably reach that view in his concurrence.[2] It certainly affects the reputation of an attorney and the administration of the office of the Public Defender without any process, much less due process. We conclude that the filing of this order in the trial court file departed from the essential requirements of the law, resulting in injury that cannot be repaired by any

[2]The supreme court's authority to discipline attorneys does not deprive trial judges and appellate judges of the authority to criticize attorneys in open court or in a published opinion for conduct that falls below the high standards of conduct and professionalism expected from professionals. Although there are rare occasions when judges must report attorneys to The Florida Bar, see Fla. Code Jud. Conduct, Cannon 3D(2), there are other times when a lawyer commits a minor violation or oversteps the bounds of professionalism within a particular case when a judge is not obligated to report the matter to The Florida Bar but may still publicly criticize the lawyer, not as a legal sanction, but as a prompt to encourage the attorney to maintain high standards in the future. This court occasionally will criticize even seasoned appellate attorneys when their advocacy in a particular case does not live up to their usual high standards of professionalism. See, e.g., McDaniel Ranch P'ship v. McDaniel Reserve Realty Holdings, LLC, 100 So. 3d 120 (Fla. 2d DCA 2012). The order challenged in this case, however, is not a prompt; it is scandalous comment having no place in a court record.

subsequent appeal. Accordingly, we grant the petition to the extent that this order shall be stricken from the record. Judge Sheehan may replace it with an order that simply grants the motion to disqualify.

Petition for writ of certiorari granted.

KHOUZAM, J., Concurs.

NORTHCUTT, J., Concurs with opinion.

NORTHCUTT, Judge, Concurring.

I agree with the majority opinion with one exception. In my view, Judge Sheehan's order violated clearly established principles of law by encroaching upon the supreme court's exclusive constitutional authority to discipline attorneys.

To be sure, a court has inherent authority to control the proceedings in the case before it, and this may include publicly criticizing and even sanctioning an attorney for misbehavior in that case. Moreover, given Judge Sheehan's acknowledged bias against this attorney, she could not have been faulted for granting the motion for disqualification in the case before her or, for that matter, taking administrative steps necessary to recuse herself from the attorney's cases generally.

But it was quite another matter for the judge to place on the public record her conclusions regarding the attorney's supposed overall professional incompetence and misconduct "based upon [the attorney's] actions and inactions in this Division over the past month" and based on the attorney's alleged "widespread reputation" during her ten-year tenure. Relying on some unspecified "information available to the court," and

without affording the attorney notice of the allegations against her or an opportunity to challenge them, Judge Sheehan punished the attorney for her alleged misconduct by banning her from the judge's courtroom.

Regulating conduct of members of the Florida Bar is absolutely and exclusively within the jurisdiction of the Florida Supreme Court, not an individual circuit judge. This authority is granted in article V, section 15, of the Florida Constitution, which provides that "[t]he supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted." It is further reflected in rule 3-3.1, Rules Regulating the Florida Bar, which describes the administration of the "exclusive jurisdiction of the Supreme Court of Florida over the discipline of persons admitted to the practice of law."

The self-evident nature of this fundamental principle perhaps accounts for the fact that few Florida cases have addressed a situation in which a judge usurped the supreme court's exclusive power. Ms. Holt invokes a line of Ohio cases to support her view that Judge Sheehan's order exceeded her jurisdiction. For example, in State ex rel. Buck v. Maloney, 809 N.E.2d 20, 23 (Ohio 2004), the Ohio Supreme Court held that an attorney who was prohibited by a judge from serving as counsel of record in any new case that arose before the court presented a meritorious petition for writ of prohibition. Citing provisions of the Ohio Constitution, the court explained that the judge lacked authority to issue a disciplinary rule limiting the ability of certain attorneys to practice their profession; rather, attorney discipline and governance of the practice of law are exclusively the province of the state supreme court. Id. at 22. Among others, the Maloney court relied on the case of State ex rel. Jones v. Stokes, 551 N.E.2d 220 (Ohio

Ct. App. 1989), in which an appellate court issued a writ of prohibition after a municipal judge ordered the legal aid director not to assign a particular attorney to certain courtrooms based on the judge's observation of the attorney's allegedly unethical and unprofessional conduct. The Stokes court noted that "this broad sanction goes beyond disqualification or mere regulation of the conduct of counsel in a particular proceeding," id. at 223, again reiterating that attorney discipline must be meted out by the supreme court, not by individual judges. And in 1975, this court, addressing whether a judge could pass judgment on the eligibility of a legal services attorney to represent clients in juvenile delinquency matters in his courtroom, held that "[n]o authorization, either state or federal, permits judicial inquiry into a client's eligibility for representation in a Florida Court by an attorney who is a member of the Florida Bar in good standing who has been designated by the client." State ex rel. T.J.M. v. Carlton, 314 So. 2d 593, 594 (Fla. 2d DCA 1975). Rather, "Article V, § 15 of the Florida Constitution of 1968, vests the Supreme Court with exclusive jurisdiction to regulate the practice of law." Id.

Judge Sheehan's order violated clearly established principles of law in that it purported to exercise authority that the Florida Constitution vests exclusively in the supreme court. See Allstate Ins. Co. v. Kaklamanos, 843 So. 2d 885, 890 (Fla. 2003) (noting that constitutional provision may constitute "clearly established law" for purposes of certiorari relief). I would issue a writ of certiorari and quash the order on that ground.