

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

FRANK DELOACH,

Appellant,

v.

CASE NO. 1D05-0676

STATE OF FLORIDA,

Appellee.

Opinion filed October 3, 2005.

An appeal from the Circuit Court for Walton County, Judge Kelvin Wells.

Robin Miller, Esquire, Ft. Walton Beach, for Appellant.

Charlie Crist, Attorney General, and Trisha Meggs Pate, Assistant Attorney General,
Tallahassee, for Appellee.

PER CURIAM.

Appellant challenges the denial of his motion to disqualify the trial judge. We reverse. At the hearing, a point in contention was whether the Appellee's witness qualified as an expert. Before the hearing, the court sua sponte informed Appellant that, during an ex parte meeting, it had advised the Appellee's witness regarding the steps he needed to take to

qualify as an expert, and offered to recuse himself. When Appellant accepted the offer to disqualify, the trial judge should have fulfilled the offer. The restitution order as to attorney's fees is REVERSED, and the case remanded for rehearing before a different judge.

BENTON, POLSTON and HAWKES, JJ., CONCUR.