

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

CAREMARK RX, INC. and
CAREMARK, INC.,

Petitioners,

v.

THE STATE OF FLORIDA, EX. REL.
FLORIDA ATTORNEY GENERAL
CHARLIE CRIST and through Relators
MICHAEL FOWLER and PEPPI
FOWLER, INDIVIDUALS and
RESIDENTS OF THE STATE OF
FLORIDA, as Relators under the Florida
False Claims Act,

Respondents.

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

CASE NO. 1D05-0787

Opinion filed May 23, 2005.

Petition for Writ of Prohibition -- Original Jurisdiction.

Kenneth W. Sukhia of Fowler, White, Boggs, Banker, Tallahassee, for petitioners.

W. Robert Vezina, III, and Mary Piccard Vance of Vezina, Lawrence and Piscitelli,
Tallahassee, for respondents.

PER CURIAM.

While we ascribe absolutely no improper motive to the trial judge's actions,
we find that the ex parte hearing on the motion seeking leave to communicate with

current employees of the corporate petitioners was not authorized under the terms of Canon 3B(7) of the Code of Judicial Conduct, and respondents have failed to identify any other applicable exception to the general rule that a judge shall not permit or consider ex parte communications concerning a pending proceeding. We further conclude that the fact that this ex parte hearing occurred constituted a legally sufficient basis for petitioners' motion for disqualification. See generally Rose v. State, 601 So. 2d 1181 (Fla. 1992). Accordingly, the petition for writ of prohibition is granted. On remand, a new judge shall be assigned to hear further proceedings in this matter.

ALLEN, DAVIS, and BROWNING, JJ., CONCUR.