

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-1511

STATE OF FLORIDA,

Petitioner,

v.

RACHEL LYNN SCHARLEPP,

Respondent.

Petition for Writ of Prohibition—Original Jurisdiction.

October 31, 2018

PER CURIAM.

The state seeks a writ of prohibition disqualifying the trial judge in a pending criminal matter. We agree that in denying the state's second motion to disqualify, the trial judge attempted to refute the charges of partiality. This created an independent basis for disqualification. *See Bundy v. Rudd*, 366 So. 2d 440, 442 (Fla. 1978) ("When a judge has looked beyond the mere legal sufficiency of a suggestion of prejudice and has attempted to refute the charges of partiality, he has then exceeded the proper scope of his inquiry and on that basis alone established grounds for his disqualification."); accord *Lee Mem'l Health Sys. v. State, Agency for Health Care Admin.*, 910 So. 2d 892, 893 (Fla 1st DCA 2005); *Martin v. State*, 820 So. 2d 403, 404 (Fla. 3rd DCA 2002).

We grant the petition but withhold formal issuance of the writ as we are confident the judge will promptly issue an order of disqualification.

RAY, OSTERHAUS, and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Pamela Jo Bondi, Attorney General, and Jason W. Rodriguez, Assistant Attorney General, Tallahassee, for Petitioner.

Thomas M. Findley of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Tallahassee, for Respondent.