

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D21-1454

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R.J. REYNOLDS TOBACCO CO., et  
al.,

Petitioners,

v.

WALTER J. COXWELL,

Respondent.

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Petition for Writ of Prohibition—Original Jurisdiction.

August 20, 2021

PER CURIAM.

We deny the petition for writ of prohibition seeking to disqualify the trial judge. *See R.J. Reynolds Tobacco Company v. Gordon*, 316 So. 3d 442 (Fla. 1st DCA 2021).

Putting aside whether Petitioner alleged legally sufficient facts that create a well-founded fear of not receiving a fair and impartial trial, *see* Fla. R. Gen. Prac. & Jud. Admin. 2.330(e); *R.J. Reynolds Tobacco Company v. Cuddihee*, 272 So. 3d 796 (Fla. 1st DCA 2019) (granting the petition under similar circumstances), Fla. R. Gen. Prac. & Jud. Admin. 2.330(g) requires that such motions to disqualify be filed “within a reasonable time not to exceed 20 days after discovery by the party or party’s counsel,

*whichever is earlier*, of the facts constituting the grounds for the motion.” (Emphasis added.) Rule 2.330(c)(2) also requires the motion to identify the “precise date” when the facts constituting the grounds for the motion were discovered by “the party or the party’s counsel, *whichever is earlier*.” (Emphasis added.)

Here, Petitioner filed its motion months after the trial judge was assigned and supplied the “precise date” only of when Petitioner’s “undersigned counsel” became aware of the facts constituting grounds for the motion. The motion failed to give the precise date of the party-Petitioner’s knowledge, while simultaneously alleging facts detailing Petitioner’s long history of opposition in *Engle* cases from the now-trial judge in this *Engle* case. The corporate declaration in support of Petitioner’s motion likewise supplied no precise date of Petitioner’s discovery of the problem with the trial judge. In view of the rule’s time requirement, Petitioner’s extensive *Engle*-litigation history with the now-trial judge, and the motion’s omission of the precise date of Petitioner’s discovery of the problem here, we agree that the motion was legally insufficient. See Fla. R. Gen. Prac. & Jud. Admin. 2.330(c)(2) & (g).

LEWIS, ROBERTS, and OSTERHAUS, JJ., concur.

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

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David M. Menichetti of Arnold & Porter Kaye Scholer LLP, Washington, DC, and Stacey E. Deere of Shook, Hardy & Bacon L.L.P., Kansas City, MO, for Petitioner Philip Morris USA Inc.

George A. Vaka and Kurt J. Rosales of Vaka Law Group, PL, Tampa, and James D. Clark of Morgan and Morgan, Tampa, for Respondent.