

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2003

DIAMY CAMACHO, **

Petitioner, **

vs. **

CASE NO. 3D03-2930

KENDALL HEALTHCARE GROUP, **

LTD., d/b/a KENDALL **

MEDICAL CENTER, **

LOWER
TRIBUNAL NO. 00-24422

Respondent. **

Opinion filed November 26, 2003.

A Case of Original Jurisdiction - Prohibition.

Amarillys E. Garcia-Perez; Robert M. Haggard, for
petitioner.

Parenti, Falk, Waas, Hernandez & Cortina and Gail Leverett
Parenti, for respondent.

Before SCHWARTZ, C.J., and GREEN and WELLS, JJ.

SCHWARTZ, Chief Judge.

This is an application for prohibition claiming that the trial
judge should have granted the plaintiff's motion for
disqualification filed after a mistrial was declared during a jury

trial. The record shows¹ that the now-challenged actions of the trial court did not stem, as the petitioner contends, from any disqualifying personal bias or prejudice towards her or her counsel. See Code of Judicial Conduct, Canon 3-E (1)(a). Rather, they involved well-considered and appropriate exercises of "judicial responsibility to take corrective action" against manifest improprieties. *Birotte v. State*, 795 So. 2d 112, 113 (Fla. 4th DCA 2001), review denied, 819 So. 2d 132 (Fla. 2002). Prohibition is therefore denied. See *State ex rel. Fuente v. Himes*, 160 Fla. 757, 36 So. 2d 433, 438-39 (1948) ("A lawyer cannot disagree with the court and deliberately provoke an incident rendering the court disqualified to proceed further."); *Ellis v. Henning*, 678 So. 2d 825, 827 (Fla. 4th DCA 1996) ("A trial judge's expression of dissatisfaction with counsel or a client's behavior alone does not give rise to a reasonable belief that the trial judge is biased and the client cannot receive a fair trial."), review denied, 699 So. 2d 1373 (Fla. 1997). See generally *5-H Corp. v. Padovano*, 708 So. 2d 244 (Fla. 1997); see also *Kopel v. Kopel*, 832 So. 2d 108 (Fla. 3d DCA 2002) (Schwartz, C.J., specially concurring in denial of rehearing en banc), review denied, 848 So. 2d 1154 (Fla. 2003).²

Prohibition denied.

¹ Particularly the parts supplied only by the respondent.

² It is unnecessary to resolve the separate, substantial issue of the timeliness of the motion for disqualification below. See Fla.R.Jud. Admin. 2.160(e).