

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC18-55

REX E. RUSSO,

Petitioner,

vs.

**MARY CAY BLANKS,
CLERK OF THE THIRD DISTRICT
COURT OF APPEAL, IN AND FOR
THE STATE OF FLORIDA,**

Respondent.

MOTION FOR REHEARING
EN BANC - BY FIVE JUSTICE PANEL

REX E. RUSSO, ESQ.
PETITIONER — IN PROPER PERSON
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RECEIVED, 02/08/2018 04:18:32 PM, Clerk, Supreme Court

COMES NOW the Petitioner, in proper person, and as a licensed member of the Florida Bar (hereafter “counsel”), and pursuant to Rule 9.330(a) of the Florida Rules of Appellate Procedure files this Motion for Rehearing, which should be “*En Banc*” (i.e. by a five-Justice panel), of this court’s order transferring the Petition to the Third District Court of Appeal, and as grounds therefor states:

The very purpose of the Petition for Mandamus was to obtain documents pursuant to Florida’s constitutional right of access to public documents. *Fla. Const., Art. I, sec. 24*. It is believed the sought after documents would disclose how the three judges empaneled in two separate cases before the Third District Court were chosen. Was the choice by random assignment by the clerk of the court? Did the chief judge assign the panel? Was only a head judge initially assigned to the case, and if so by whom? Did the head judge assigned to the case choose one or both of the other members of the panel? Was there a change of the panel members at any time? Who was changed? Why were they changed? Did a judge assigned to the panel ask to trade with another judge? Did a judge ask to be on the panel? When was the panel chosen? If there was a change in the panel, when did the change take place?

While the Petition makes no presumptions, and does not accuse anyone of having committed any violation of law (other than the failure to provide the documents requested), any member of the Third District Court might have requested to be on one of the panels; or, any member might have been initially on the panel but was reassigned. As stated in the Petition, the Third District’s Internal Operating

Procedures, as approved by a committee of the Third District Court, leaves the gate open for a judge to make their way on to a particular panel by design. It is also possible that any member of the Third District Court has switched cases with another member, or has requested to be on a particular panel, although not in either of the cases for which documents were requested. Nevertheless, those judges might also have reasons for not wanting the practice of the court to be made known (assuming that is the practice of the court) for fear scurrilous accusations would arise. Accordingly, every member of the Third District Court has a conflict of interest, or at least a potential conflict of interest, to hearing or deciding the Petition.

There is sound reasoning to make the clerk's office independent of any control by the court. But, the reality is that the Clerk of the Third District Court of Florida is an integral member of the district court who "serves at the pleasure of the court" [Ax 24]. See, *Fla. R. Jud. Admin., Rule 2.210(b)(1)*; and see *Fla. Stat. §35.22(1)* and *Fla. Stat. §35.23*. In fact, the clerk was merely reiterating the decision of the district court (which may have been on a vote of all its members) when denying the production [Ax 6]. Having the court that refused to abide by a constitutionally guaranteed right decide in an appellate process whether that court's decision was in fact justified would send seismic shock waves through the bedrock upon which Lady Justice stands. Due process is then denied. That is not acceptable. It is reminiscent of the King's court.

Harvard v. Singletary gives no justification for the transfer of the Petition to the Third District. Petitions for Mandamus do not raise issues of fact. See Justice Overton’s dissent in *Harvard v. Singletary*, 733 So. 2d 1020, 1025 (Fla. 1999). The Petition does not raise an “individualized issue” but rather an issue that potentially affects anyone who has appeared, is appearing, or may appear before the Third District Court. An opinion from the Supreme Court would provide important guiding principles for other courts of this State.

WHEREFORE, the order transferring the Petition to the Third District Court must be withdrawn.

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I HEREBY CERTIFY, pursuant to Rule 9.210(a)(2), that the preceding computer generated motion has been prepared in Times New Roman 14-point font.

CERTIFICATE OF SERVICE AND SIGNATURE OF COUNSEL

I HEREBY CERTIFY that a true and correct copy of the foregoing is being served via email to Respondent - Clerk of the Third District Court in and for the State of Florida, by service on the Clerk of the Court, Hon. Mary Cay Blanks via email at BlanksM@flcourts.org , and on Michael William Mervine via email at michael.mervine@myfloridalegal.com , on this day - February 8, 2018.

/s/
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