

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

RANDY FINE,  
Appellant,

v.

Case No.: 5D2024-3124  
L.T. No.: 05-2024-CA-039369-XXCA-BC

TIM BOBANIC and  
ROBERT WILLIAM BURNS, III,  
Appellees.

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**APPELLEE ROBERT WILLIAM BURNS III'S MOTION FOR  
REHEARING, CLARIFICATION, AND CERTIFICATION**

Appellee, ROBERT WILLIAM BURNS III, appearing pro se, respectfully moves under Florida Rule of Appellate Procedure 9.330 for rehearing, clarification, and, in the alternative, certification of this Court's June 19, 2026 opinion reversing and vacating the trial court's October 21, 2024 contempt order. In support, Appellee states:

**I. INTRODUCTION**

This motion is narrow.

Appellee does not ask this Court to reweigh the contempt evidence. Appellee does not ask this Court to decide, in the first instance, whether Judge Blaue was biased, whether any motion to disqualify would have been legally sufficient, or whether Appellant's conduct

ultimately constituted contempt. The panel did not decide those issues.

This motion addresses one discrete point of fact and law that appears to have been overlooked or misapprehended: the opinion's dispositive premise that Appellant's counsel sought time to prepare a written motion to disqualify "based upon matters that occurred during the hearing" and "based on certain occurrences during the hearing." Slip op. at 2–3.

Respectfully, the certified transcript shows that the asserted grounds were not matters that occurred during the hearing in the Rogers sense. They were pre-hearing matters raised by Appellant's counsel at the outset of the hearing, before witnesses testified, before evidence was taken, and before any new in-hearing event occurred. Counsel's arguments concerned pending prohibition petitions, prior denied disqualification efforts, election timing, the scheduling of the contempt hearing, the September 13 order appointing Attorney Scott Widerman, witness subpoenas, witness contact, returns of service filed the morning of the hearing, and whether the hearing had been noticed as evidentiary.

The trial court did not simply refuse a recess in a vacuum. It expressly ruled that the asserted basis was untimely because the appointment order had been entered more than two weeks (18 days) earlier and already disclosed the very functions counsel claimed to have just learned were being carried out.

That distinction matters because Florida Rule of General Practice and Judicial Administration 2.330(g), the rule on which the opinion relied, provides that a motion for disqualification made during a hearing or trial “must be based on facts discovered during the hearing or trial.” The opinion did not address that textual predicate, nor the trial court’s ruling that the asserted basis was untimely. Instead, the opinion relied on Rogers v. State, 630 So. 2d 513 (Fla. 1993), for the proposition that a requested recess “must be granted.” But the record here does not reflect a hearing-arising event. It reflects a request to leave the courthouse and go back to counsel’s office to draft a successive disqualification motion based on pre-hearing facts, previously disclosed by written order, already raised at the outset of the hearing, and intertwined with prior disqualification and prohibition litigation.

Appellee is also not a stranger to this appeal. Appellee is a named appellee, appeared pro se in this Court, and was the person whom the contempt order found to be the target of Appellant's courtroom conduct. Appellee therefore has a direct interest in the accuracy of the record and the disposition of an order entered in a case in which he was a party and the identified target of the conduct at issue.

Because the opinion's reversal and no-remand vacatur turn on this factual characterization, Appellee respectfully requests rehearing or, at minimum, clarification.

## **II. RELEVANT RECORD REFERENCES**

For clarity, Appellee cites the certified October 1, 2024 hearing transcript as "T. \_\_:\_" by transcript page and line, and the Record on Appeal, where applicable, as "R. \_."

## **III. POINTS OF FACT AND LAW OVERLOOKED OR MISAPPREHENDED**

**A. The alleged disqualification grounds were not based on matters that occurred during the hearing.**

The opinion states that Appellant's counsel requested a recess to prepare a written motion to disqualify "based upon matters that occurred during the hearing." Slip op. at 2. The opinion later states

that counsel acted “based on certain occurrences during the hearing.” Slip op. at 3. Respectfully, the transcript shows a different sequence.

The hearing began with the trial court explaining that the matter was before the court on an order to show cause concerning Appellant’s alleged conduct during the August 19, 2024 Microsoft Teams hearing, that the order to show cause was referenced to civil contempt, that the purpose of civil contempt was to compel future compliance with court orders and procedures, and that the burden was by a preponderance of the evidence. T. 5:11–25; T. 6:1–4.

After appearances, and before any testimony or evidence, Appellant’s counsel stated: “All right. Your Honor, **before we begin**, I have a couple of motions.” T. 6:25–7:1. The court asked: “Have they been filed or --” T. 7:2. Counsel answered: “No.” T. 7:3. The court asked: “Okay. Are they any different than the file motions?” T. 7:4–5. Counsel answered: “Yes, sir.” T. 7:6. Counsel then argued the motions orally.

Counsel began with a continuance request premised on disqualification and prohibition litigation already pending in this Court:

“The first motion is a motion to continue. As you know, Your Honor, the Fifth District Court of Appeals has docketed the petitions for writ of prohibition asking that you’ll be recused from this case. Fifth DCA has not had a chance to rule on that yet. Continuing the case today would afford them the time that they need to do that.” T. 7:8–15.

Counsel next raised the court’s scheduling of the hearing and directly referenced a prior “denial of the motion to disqualify”:

“Subsequently, when I filed a petition for a prohibition on the -- on the denial of the motion to disqualify, within a day or so after that, I believe it was, the Court continued the contempt hearing against me to November 25th.” T. 7:21–25.

Counsel then argued that there was at least an appearance that the decision to proceed against Fine that day “may be political in nature,”

that November 25 would fall after the election, and that proceeding that day could be viewed as political interference. T. 8:3–17. Counsel further argued that the court had inserted Fine’s status as a state representative into the matter, T. 8:18–25; T. 9:1–9, and raised his cardiology appointment as an additional basis to continue. T. 9:10–19.

Only after those arguments did counsel raise what later became the asserted basis for disqualification: witnesses, subpoenas, Widerman’s role, witness contact, and notice. Counsel stated:

“There’s a fourth reason. I found out, for the first time this morning, that witnesses have been subpoenaed. Now, Mr. Widerman who you’ve appointed -- there’s no provision under state law to appoint him to do anything. It’s outside of the law. There’s nothing in the law that authorizes you as a Circuit Court Judge to appoint somebody to act as a prosecutor in a civil contempt case.” T. 10:4–12.

“I have recently learned that he has apparently consulted with the witnesses, talked with the witnesses at your behest, at your request. And so with all of that, in mind,

we think a continuance would be appropriate. I haven't had a chance to even see who the witnesses are going to be against my client." T. 10:17–23.

Counsel also argued that the matter had not been noticed as an evidentiary hearing and that he needed time to find out who intended to testify, depose witnesses, and prepare. T. 10:24–25; T. 11:1–10.

Thus, before any testimony began, counsel had already placed before the trial court the same cluster of facts later recast as the basis for disqualification: Widerman's appointment, subpoenas, witnesses, witness contact, returns of service, alleged lack of notice, and alleged unfairness. Those were not events that occurred during the hearing. They were pre-hearing matters raised at the beginning of the hearing.

**B. The trial court expressly ruled that the Widerman-based objection was untimely because the appointment order had been entered more than two weeks earlier.**

The opinion treats the ruling as a simple denial of a mandatory recess. The transcript shows the trial court denied the request because the asserted basis was untimely.

After counsel completed his continuance argument, the court stated: “Most of those are already matters that the Court has been presented with and previously denied.” T. 11:24–25; T. 12:1. The court then addressed Widerman’s appointment:

“Mr. Widerman was appointed. I think I have ample authority to -- particularly under some of the criminal contempt proceedings to appoint another entity or person to prosecute that case. Again, because of the nature of the indirect components of the contempt of -- that’s been alleged, those -- the Court felt it a little more appropriate to have somebody other than the Court examine those witnesses. I entered that order on September 13th, so well over two weeks ago. There’s been no objection to that. That order clearly indicates that the purposes of his appointment was to investigate and interview and issue subpoenas for witnesses. So based on that, I’ll deny the motion to continue.” T. 12:9–23.

Only after the continuance was denied did counsel attempt to convert the same Widerman, witness, subpoena, and notice complaints into

an oral disqualification request. Counsel objected to Widerman's participation, renewed the argument that the hearing was not noticed as evidentiary, and said he felt "sandbagged" because subpoenas were served the week before but returns of service had not been filed.

T. 13:5–25; T. 14:1–7. Counsel then stated:

"In any event, I feel like there has been at least a colorable basis at this point of some collusion between the Court and Mr. Widerman and Mr. Burns and several of the other witnesses. And on that basis, I need to move to disqualify you for these things that I've just learned about this morning. Under the Florida case law on this issue, I think I'm entitled to have a break to go to my office and properly prepare a written motion to disqualify that you can then consider before we proceed further. So I'd ask for some time to do that, Your Honor." T. 14:8–19.

The court immediately ruled:

"Again, the time, the order for appointing him as well, was two weeks ago. And based on that fact, I don't find that it's

timely and I'll overrule that objection and deny the motion." T. 14:20–24.

Counsel responded that Rule 2.330 gave him "30 days or 20 days," and that the things he learned about were "just this morning." T. 14:25; T. 15:1–5. The court asked: "There's no objection to the order of appointing him, correct?" Counsel answered, "There's an objection right now." The court responded: "Okay. I -- that's -- it's not a timely objection, so thank you. I appreciate it. I'll overrule the objection." T. 15:13–18.

Counsel argued that a reasonable time to object was when he learned that Widerman had been talking to witnesses, had subpoenaed witnesses, and had filed a return of service "at 7:06 a.m. the morning of the hearing." T. 16:1–11. The trial court then read from its prior appointment order:

"Well, I'm reading from my order. 'Appointed for the limited purpose of investigating the occurrences described in the order to show cause identifying evidence, documentation and witnesses that may be necessary to support the order to show cause, establishing necessary foundation for

presenting evidence at the hearing, interviewing witnesses, issuing subpoenas to command witnesses to appear and give testimony. Calling and examining those witnesses on behalf of the Court to testify before the Court at the show cause hearing.” T. 16:16–17:2.

The transcript therefore confirms that the trial court’s ruling was not a bare refusal to allow counsel to comply with Rule 2.330. The court ruled that the asserted basis was untimely because the appointment order had already been entered and already authorized the very witness-related activities counsel claimed supported disqualification.

**C. Counsel did not ask for only a brief in-court recess of the type discussed in Rogers; counsel asked to go back to his office.**

The opinion characterizes the request as a request for a “brief recess.” Slip op. at 3. The words used in the transcript matter. Counsel first asked for “a break to go to my office and properly prepare a written motion to disqualify.” T. 14:15–17. After further discussion, counsel again asked:

“May I have time to go back to the office and prepare a motion to disqualify?” T. 17:8–9.

The court responded: “Not at this -- not at this point.” Counsel asked, “Okay. No?” The court answered, “No.” T. 17:10–12. Counsel then asked for “five minutes” to call his doctor, and the court denied that request as well. T. 17:13–25.

Appellee does not contend that the court granted a recess. It did not. The point is narrower: the request at issue was not framed as a short pause at counsel table to reduce a newly arisen motion to writing. It was a request to leave and go back to counsel’s office after the court had ruled the asserted basis untimely.

Rogers speaks of a “brief recess” where a party discovers mid-trial or mid-hearing that a motion for disqualification is required. Rogers does not address a materially different situation where counsel asks to leave the courthouse and return to his office to prepare a motion based on pre-hearing matters already disclosed by an order entered weeks earlier.

**D. The prior disqualification and prohibition history was material and appears not to have been considered.**

The opinion reads as if the October 1 oral request arose in isolation. The Record on Appeal shows otherwise. Before the October 1 hearing,

the record reflects multiple filings seeking the trial judge's disqualification or recusal, including:

1. Motion to Disqualify Judge, filed August 6, 2024. R. 115–120.
2. Motion to Disqualify Judge, filed August 19, 2024. R. 224–229.
3. Motion for Recusal, filed September 8, 2024. R. 329–390.
4. Motion to Disqualify Judge, filed September 24, 2024. R. 430–441.

The same record reflects the order appointing Attorney Widerman, entered September 13, 2024, R. 406–408, and the October 1, 2024 notice of filing return of service, R. 450–456.

Counsel's own statements at the October 1 hearing confirm that disqualification and prohibition were not new issues. At the beginning of the hearing, counsel stated that this Court had docketed "petitions for writ of prohibition asking that you'll be recused from this case." T. 7:8–12. Counsel also referenced a petition for prohibition based on "the denial of the motion to disqualify." T. 7:21–24. At closing, counsel described the history as including "motions to disqualify and petitions for writ of prohibition, motions denied,

disputes between you and me about the law and things like that.” T. 120:1–3.

That history matters to the application of Rogers. Rogers protects the genuinely hearing-arising disqualification issue. It does not convert a successive or serial disqualification effort, based on pre-hearing facts and prior orders, into automatic reversal merely because counsel asked during the hearing for time to draft another motion.

**E. Rule 2.330(g) requires that a mid-hearing disqualification motion be based on facts discovered during the hearing or trial, a predicate the opinion did not address.**

The opinion expressly relies on Florida Rule of General Practice and Judicial Administration 2.330(g). Slip op. at 3. That rule provides, in pertinent part:

“Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c)(1) and promptly filed.”

The opinion relied on the portion of this procedure permitting a motion to be stated on the record and on Rogers's statement that a requested recess "must be granted." But Rule 2.330(g) contains a threshold requirement that precedes that procedure: the motion made during a hearing or trial "must be based on facts discovered during the hearing or trial."

That predicate is not satisfied on this record. Counsel did not identify a new statement, ruling, witness answer, ex parte disclosure, or other event that arose during the evidentiary portion of the hearing. Counsel identified pre-hearing implementation of a September 13 order: witness contact, subpoenas, returns of service, and preparation for the show-cause hearing. T. 10:4–23; T. 13:20–25; T. 14:8–19; T. 16:1–11. The trial court then read from the September 13 order and explained that the order itself authorized those functions, T. 16:16–17:2, and expressly ruled the objection untimely. T. 14:20–24; T. 15:13–18.

The opinion does not address Rule 2.330(g)'s requirement that a disqualification motion made during a hearing or trial be based on facts discovered during that hearing or trial, nor the trial court's

finding that the asserted basis was untimely because the appointment order had been entered more than two weeks earlier and had not been objected to.

**F. Rogers is materially distinguishable.**

The opinion relies on Rogers v. State, 630 So. 2d 513 (Fla. 1993). In Rogers, the relevant disqualification issue arose during an ongoing evidentiary proceeding, after testimony suggested a possible improper communication involving the judge, and the trial judge then became personally embroiled in the factual dispute over the accusation. The rule from Rogers is that where a party discovers mid-trial or mid-hearing that a motion for disqualification is required, the party may request a brief recess, which must be granted, to prepare the required written documents. This record is different in several material respects:

1. The asserted grounds were raised at the beginning of the hearing, before evidence and testimony. T. 6:25–7:6; T. 10:4–23; T. 13:20–25; T. 14:8–19.

2. The asserted grounds concerned pre-hearing facts: the appointment order, witnesses, subpoenas, returns of service, and witness contact. T. 10:4–23; T. 13:20–25; T. 16:1–11.
3. The appointment order had been entered more than two weeks earlier and, according to the trial court’s reading of that order, already authorized investigation, identifying evidence and witnesses, interviewing witnesses, issuing subpoenas, and calling and examining witnesses. T. 12:9–23; T. 16:16–17:2.
4. The trial court denied the request as untimely, not because it denied the existence of a general right to file written disqualification motions. T. 14:20–24; T. 15:13–18.
5. Counsel asked to go back to his office, not simply for a short in-court pause to reduce a newly arisen motion to writing. T. 14:15–17; T. 17:8–12.
6. Prior disqualification and prohibition efforts had already occurred and were already pending. T. 7:8–15; T. 7:21–24; T. 120:1–3.

For these reasons, Appellee respectfully submits that the panel overlooked or misapprehended the dispositive factual predicate for applying Rogers.

**G. Clarification is warranted to avoid misreading the opinion as deciding issues it did not decide.**

At minimum, clarification is warranted. The opinion reversed and vacated on a single procedural ground: the denial of time to prepare a written motion to disqualify. The opinion did not decide that Judge Blaue was actually biased. It did not decide that counsel's proposed disqualification motion would have been legally sufficient. It did not decide that Appellant's conduct was not contemptuous. It did not decide the merits of Appellant's remaining arguments.

Clarification is important because the contempt order made findings that Appellant's conduct was directed at Appellee Burns, that the gestures and comments occurred, and that the conduct violated courtroom decorum and respect for judicial proceedings. The opinion's procedural reversal should not be misread as an appellate finding that the underlying conduct did not occur, that

disqualification was warranted, or that Appellant's behavior was approved.

**H. Clarification is also warranted as to the no-remand vacatur.**

The Court reversed and then stated: "Given the unique facts of the record before us, we decline to remand this case to the trial court for further proceedings and simply VACATE the order." Slip op. at 3. Appellee respectfully requests clarification of that remedy.

If the reversible error was the denial of time to prepare a written disqualification motion, the ordinary corrective remedy would appear to be remand for proceedings consistent with that procedural ruling. That could include a new hearing, consideration of whether any written disqualification motion would have been legally sufficient and timely, or other proceedings before an appropriate judge. The opinion does not explain why outright vacatur with no remand is required or appropriate where the Court expressly did not reach the merits of the contempt findings or Appellant's remaining arguments. Appellee therefore respectfully asks the Court to clarify what "unique facts" justify vacatur without remand, particularly where the opinion's stated basis for reversal was procedural and where the record shows

the trial court denied the request as untimely based on a prior written order.

#### **IV. ARGUMENT**

##### **A. Rehearing should be granted because the opinion rests on a misapprehension of when the alleged disqualification grounds arose.**

Florida Rule of Appellate Procedure 9.330 permits rehearing when a court has overlooked or misapprehended a point of law or fact. The overlooked or misapprehended point here is central: whether the alleged disqualification grounds were matters that occurred during the hearing. The transcript shows they were not.

Counsel raised the issues **“before we begin.”** T. 6:25–7:1. Counsel stated the motions had not been filed. T. 7:2–3. He began with pending prohibition petitions and a prior denial of disqualification. T. 7:8–15; T. 7:21–24. He argued political appearance and scheduling. T. 8:3–17; T. 9:1–9. He then argued witnesses, subpoenas, Widerman’s appointment, witness contact, and lack of notice. T. 10:4–23; T. 10:24–25; T. 11:1–10. The court denied the continuance and expressly stated that Widerman’s appointment order had been

entered on September 13, more than two weeks earlier, and that the order authorized investigation, interviewing, and subpoenas. T. 12:9–23.

Only after that ruling did counsel state that the same issues created a “colorable basis” for disqualification. T. 14:8–19. The court denied the request as untimely because the appointment order was two weeks old. T. 14:20–24; T. 15:13–18. That sequence does not fit the factual predicate of Rogers or of Rule 2.330(g). It instead shows a pre-hearing procedural objection, already argued as part of a continuance request, then recast as a disqualification request after the continuance was denied.

**B. The Court should clarify that Rogers does not automatically require reversal where the asserted grounds are pre-hearing matters already disclosed by prior order.**

If the Court denies rehearing, Appellee requests clarification that the opinion does not hold that:

1. any request to prepare a disqualification motion during a hearing automatically requires reversal, regardless of whether the asserted grounds arose during the hearing;

2. a party may use Rogers to obtain automatic reversal based on pre-hearing facts already disclosed by written order;
3. a trial court is forbidden from considering timeliness where the oral proffer shows that the asserted grounds were known, knowable, or previously litigated;
4. a request to go back to the office is necessarily equivalent to a Rogers brief recess;
5. Rule 2.330(g)'s requirement that a mid-hearing disqualification motion be based on facts discovered during the hearing or trial has no independent force; or
6. the existence of prior disqualification motions and pending prohibition petitions is irrelevant to whether a purportedly new disqualification issue truly arose during the hearing.

**C. Certification is warranted if rehearing and clarification are denied.**

If the Court denies rehearing and does not materially clarify the opinion, Appellee respectfully requests certification of the following question as one of great public importance:

DOES ROGERS v. STATE REQUIRE REVERSAL WHEN COUNSEL REQUESTS TIME DURING A HEARING TO PREPARE A WRITTEN MOTION TO DISQUALIFY, BUT THE ASSERTED GROUNDS ARE PRE-HEARING MATTERS RAISED AT THE OUTSET OF THE HEARING, PREVIOUSLY DISCLOSED BY WRITTEN ORDER, OR PREVIOUSLY LITIGATED THROUGH DISQUALIFICATION AND PROHIBITION PROCEEDINGS?

Alternatively:

DOES RULE 2.330(g)'S MID-HEARING DISQUALIFICATION PROCEDURE APPLY WHERE THE ASSERTED FACTS WERE NOT DISCOVERED DURING THE HEARING OR TRIAL BUT INSTEAD CONCERN PRE-HEARING IMPLEMENTATION OF A PRIOR ORDER, INCLUDING WITNESS CONTACT, SUBPOENAS, AND RETURNS OF SERVICE?

Certification is appropriate because the opinion may be read to expand Rogers beyond its factual setting and to require automatic reversal whenever counsel requests time during a hearing to write a

disqualification motion, regardless of whether the grounds were actually discovered during the hearing or were timely under Rule 2.330(g).

### **V. REQUESTED RELIEF**

Appellee respectfully requests that this Court:

1. grant rehearing;
2. withdraw or revise the June 19, 2026 opinion;
3. clarify that the alleged disqualification grounds were not shown by the transcript to be matters that occurred during the hearing;
4. clarify that the opinion makes no finding that Judge Blaue was actually biased, that a motion to disqualify would have been legally sufficient, or that Appellant's conduct was not contemptuous;
5. clarify why vacatur without remand is the proper remedy for the procedural error identified;
6. alternatively, revise the disposition to remand for further proceedings consistent with the Court's procedural ruling; and/or

7. certify the question presented above as one of great public importance.

Respectfully submitted,

/s/ Robert William Burns III  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished on this 19th day of June, 2026, through the Florida Courts E-Filing Portal and/or by electronic mail to all counsel and parties of record, including Ryan Christopher Rodems, Esq., counsel for Appellant, at RRodems@ForThePeople.com and episcani@forthepeople.com, and to any other party or counsel of record required to be served.

/s/ Robert William Burns III  
ROBERT WILLIAM BURNS III

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this motion complies with the applicable font and word-count requirements of the Florida Rules of Appellate Procedure. This document is submitted in Bookman Old Style 14-point font and contains approximately 4,060 words, excluding the portions exempted by the applicable rules.

/s/ Robert William Burns III  
ROBERT WILLIAM BURNS III