

IN THE SUPREME COURT OF FLORIDA

ROBERT WILLIAM BURNS, III,
Petitioner,

v.

RANDY FINE and TIM BOBANIC,
Respondents.

Case No.: SC2026-
1072

Fifth DCA Case No.:
5D2024-3124

L.T. No.:
05-2024-CA-039369-
XXCA-BC

PETITIONER'S INITIAL BRIEF ON JURISDICTION

On Review from the District Court of Appeal,

Fifth District

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STATEMENT OF THE ISSUES

Whether the Fifth District's decision, after expressly identifying the dispositive ruling as the denial of "a continuance to prepare a written motion to disqualify," App. 4, and holding that the requested pause "must be granted" and its denial "requires reversal," App. 5, expressly and directly conflicts with *Aquasol Condominium Association, Inc. v. HSBC Bank USA, N.A.*, 312 So. 3d 105 (Fla. 3d DCA 2018), which reviews denial of a continuance or additional time to prepare such a motion for abuse of discretion and considers prejudice, and with *Davis v. State*, 347 So. 3d 315 (Fla. 2022), which requires harmless-error review rather than per se reversal.

If review is granted, Petitioner intends to raise the additional issue whether Florida Rule of General Practice and Judicial Administration 2.330(g) and *Rogers v. State*, 630 So. 2d 513 (Fla. 1993), compel a recess after the trial court has ruled the orally asserted basis for disqualification untimely.

STATEMENT OF THE CASE AND FACTS

This proceeding arises from the Fifth District's written decision reversing an order adjudging Respondent Randy Fine in civil

contempt. The decision initially distinguishes two requests: counsel first sought a continuance based on several procedural objections and later sought a recess to prepare a written motion to disqualify. App. 4. But when defining the sole issue it decided, the court expressly stated that the trial judge erred in denying Fine's counsel "a continuance to prepare a written motion to disqualify." App. 4.

The Fifth District then relied on *Rogers v. State*, 630 So. 2d 513 (Fla. 1993), stating that counsel may request a "brief recess" and that the recess "must be granted" to prepare the required documents. App. 5. It held that denial of the requested time "was error that requires reversal." App. 5. The court did not apply abuse-of-discretion review, require a showing of prejudice, or conduct harmless-error analysis. It reversed and, "given the unique facts of the record," declined to remand and "simply VACATE[D] the order." App. 5.

SUMMARY OF ARGUMENT

This case presents an announced-rule conflict, not the record-dependent "misapplication" theory rejected in *Askew v. Florida Department of Children & Families*, 385 So. 3d 1034 (Fla. 2024). The conflict appears within the four corners of the opinions.

Aquasol expressly rejected the contention that a trial court was required to grant a continuance so counsel could return to his office and prepare a written disqualification motion. It held that denial of "its motion for continuance or for further additional time (to prepare a written motion)" is reviewed for abuse of discretion, and it considered whether the movant received a reasonable opportunity and demonstrated prejudice. 312 So. 3d at 108-10.

The Fifth District announced the opposite command, and its own terminology places the decisions in direct conflict. It expressly identified the dispositive ruling as denial of "a continuance to prepare a written motion to disqualify," App. 4, but then treated the request as a mandatory "brief recess" whose denial "requires reversal." App. 5. That categorical rule eliminates the discretion and prejudice inquiry required by *Aquasol*.

The decision also conflicts with *Davis*, which held that harmless error remains the proper analysis even for the erroneous denial of a legally sufficient disqualification motion and expressly rejected per se reversal. 347 So. 3d at 326. The Fifth District nevertheless created automatic reversal for the denial of a preliminary step in that same disqualification process, without

harmless-error analysis. The Court should accept jurisdiction to resolve these conflicting rules.

ARGUMENT

I. THE COURT HAS EXPRESS-AND-DIRECT-CONFLICT JURISDICTION.

Article V, section 3(b)(3) of the Florida Constitution authorizes this Court to review a district court decision that "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." See also Fla. R. App. P. 9.030(a)(2)(A)(iv).

Askew confirms that this is a strict standard, satisfied by either "the announcement of a conflicting rule of law" or the application of a rule producing a conflicting outcome on substantially the same controlling facts. 385 So. 3d at 1037 (quoting *Kartsonis v. State*, 319 So. 3d 622, 623 (Fla. 2021)). The conflict must appear within the four corners of the opinions; the record cannot create jurisdiction. *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986).

Petitioner does not ask the Court to inspect the hearing transcript or decide whether the Fifth District correctly applied

Rogers. The jurisdictional conflict is facial. *Aquasol* applies abuse-of-discretion and prejudice principles to the denial of a continuance or additional time to prepare a written disqualification motion. *Davis* rejects per se reversal for erroneous disqualification rulings. The decision below expressly calls the dispositive ruling the denial of "a continuance to prepare a written motion to disqualify," but says the requested time "must be granted" and denial "requires reversal." App. 4-5. Those announced rules cannot all govern the same category of judicial-disqualification ruling.

II. THE DECISION CONFLICTS WITH AQUASOL ON THE STANDARD GOVERNING A REQUEST FOR TIME TO PREPARE A WRITTEN DISQUALIFICATION MOTION.

Aquasol involved the same procedural category of request addressed below. During trial, counsel orally moved for a continuance so he could prepare a written motion to disqualify, explaining: "I have to go back to my office, I have to prepare it . . . and then I can submit it to the Court." 312 So. 3d at 107, 109. The trial court denied that request at that point, later recessed, allowed counsel to prepare the motion, granted some additional time, and denied a request for still more time. *Id.* at 107.

Aquasol argued that because a disqualification motion had to be written, the trial court was required to grant the continuance. The Third District squarely rejected that proposition: "Aquasol's premise is incorrect." *Id.* at 109. It explained that the governing rule permits a motion arising during trial to be stated orally and then promptly reduced to writing. *Id.*

The Third District then announced the appellate standard for the timing ruling:

"To the extent that Aquasol asserts error in the trial court's denial of its motion for continuance or for further additional time (to prepare a written motion) we review this claim for an abuse of discretion." Aquasol, 312 So. 3d at 108.

Applying that standard, the court found no abuse of discretion and emphasized both the reasonable opportunity afforded and Aquasol's failure to allege prejudice from the denial of additional time. *Id.* at 110.

The Fifth District announced a different rule while using the same procedural label. It first distinguished the initial continuance request from the later recess request. App. 4. But the court then identified the sole issue it decided as whether the trial judge erred by denying counsel "a continuance to prepare a written motion to disqualify." App. 4. It nevertheless applied *Rogers's* "brief recess"

formulation, held that the pause "must be granted," and concluded that denial "requires reversal." App. 5. It did not ask whether the trial court reasonably managed a continuance request, whether the movant was prejudiced, or whether the ruling was harmless.

The conflict is one of announced law, not merely different outcomes. Under *Aquasol*, a ruling on a motion for continuance or additional preparation time is reviewed for abuse of discretion, and reasonable opportunity and prejudice matter. Under the decision below, the court's own characterization of the dispositive ruling as a "continuance" is transformed into a mandatory "brief recess," and denial itself compels reversal. The two standards cannot both govern the same procedural ruling.

Aquasol's later accommodation does not eliminate the announced-rule conflict. The Third District relied on the time ultimately afforded when applying its abuse-of-discretion and prejudice analysis. But the standard it expressly announced encompassed both the "denial of its motion for continuance" and the denial of "further additional time." 312 So. 3d at 108. The factual difference may affect application of the governing standard on the merits, but it does not eliminate the facial disagreement over

whether the ruling is discretionary and prejudice-dependent or automatically reversible.

III. THE DECISION ALSO CONFLICTS WITH DAVIS'S REJECTION OF PER SE REVERSAL FOR DISQUALIFICATION ERROR.

Davis addressed whether the erroneous denial of a legally sufficient judicial-disqualification motion is automatically reversible. This Court held that it is not: "harmless error remains the proper analysis for erroneous denials of a legally sufficient motion for disqualification." 347 So. 3d at 326. Because the trial record permitted the reviewing court to assess the effect of the error, the Court concluded that "a per se rule is unwarranted." *Id.* at 326. The Court emphasized that it has "repeatedly rejected attempts to depart from the harmless error test" and did so again. *Id.* at 326.

Nor is *Davis* limited to criminal cases. Florida appellate courts have recognized that its harmless-error framework applies in civil proceedings as well. See *Viera v. Viera*, 365 So. 3d 427, 430 n.3 (Fla. 3d DCA 2023); *Meredith v. Meredith*, 420 So. 3d 596, 599 (Fla. 5th DCA 2025) (applying *Davis* and *Viera* to the denial of a

disqualification motion in a civil appeal). Indeed, the decision below itself relies on *Meredith* for the governing disqualification standard. App. 5.

The decision below announces the contrary consequence for a procedural component of the same disqualification process. It holds that denial of time to prepare the written motion "requires reversal," without any harmless-error analysis. App. 5. Thus, the Fifth District treats the denial of an opportunity to prepare a motion as categorically reversible even though *Davis* holds that erroneous denial of the completed, legally sufficient motion itself is not.

The distinction in procedural posture does not remove the conflict over the governing appellate consequence. Both decisions answer whether an error in the judicial-disqualification process requires automatic reversal. *Davis* says harmless-error review remains proper and a per se rule is unwarranted. The Fifth District says the error requires reversal.

Davis reserves per se treatment for errors that are always harmful or that cannot be evaluated without pure speculation. 347 So. 3d at 324–25. The decision below identifies neither circumstance and conducts no harmless-error analysis.

Davis does not hold that every disqualification-related error will ultimately be harmless. It found the error harmful on the record before it. 347 So. 3d at 326-27. But *Davis* requires the analysis. The decision below dispenses with it. This facial conflict independently supports jurisdiction and reinforces the interdistrict conflict with *Aquasol*.

IV. THE CONFLICT IS REAL, LIVE, AND RECURRING.

The conflict concerns a procedure available in every Florida courtroom. When counsel seeks time during a hearing or trial to prepare a written disqualification motion, *Aquasol* directs courts to evaluate a continuance or timing ruling for abuse of discretion, reasonable opportunity, and prejudice. The decision below expressly labels the dispositive ruling a "continuance" yet directs that the requested pause must be granted and that denial requires reversal. *Davis* separately requires harmless-error review rather than categorical reversal for an erroneous disqualification ruling.

The conflict is therefore not academic. It affects trial management, the prompt resolution of disqualification requests, the applicable standard of appellate review, and the remedy for error.

This Court should accept review to establish a uniform statewide rule.

CONCLUSION

The decision below expressly and directly conflicts with Aquasol and Davis on the same question of law. Petitioner respectfully requests that this Court accept jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served through the Florida Courts E-Filing Portal on this 17th day of July, 2026, upon: Ryan Christopher Rodems, Esq., counsel for Respondent Randy Fine, RRodems@ForThePeople.com and episcani@forthepeople.com; Frank Mari, Esq., fmari@roperpa.com; Michael John Roper, Esq.; and all other counsel and parties of record registered for electronic service in this proceeding.

/s/ Robert William Burns III
ROBERT WILLIAM BURNS III

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this computer-generated brief was prepared in Bookman Old Style 14-point font and complies with Florida Rules of Appellate Procedure 9.045 and 9.210. The portions of this brief subject to the word-count limit contain 1,867 words.

/s/ Robert William Burns III
ROBERT WILLIAM BURNS III