BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE

SUPREME COURT NO. 80,457

NO. 92-53
_____/

ANSWER TO CONSOLIDATED FORMAL CHARGES

The Honorable Daniel W. Perry, by and through his undersigned attorneys, pursuant to Rule 6(b), Florida Judicial Qualifications Rules, replies to the Notice of Consolidated Formal Charges dated March 3, 1993, and states in support thereof as follows:

1. As to Count I, the Respondent admits on February 5, 1992 in Courtroom 1 of the Traffic Court Building in Orlando, Florida that he was the presiding judge in the case of State v. Facella, Case No. TO91-156390. Respondent denies that he unnecessarily admonished or berated Defendant Michael Facella. Respondent further specifically denies that his conduct in said proceeding violated Canon 1, Canon 2 or Canon 3 of the Canons of the Code of Judicial Conduct.

2. As to Count II, Respondent admits on Tuesday, January 28, 1992 and Thursday, January 30, 1992 that he was the presiding judge in the proceedings

described in Paragraph (a), (b), (c), (d), (e), and (f). Defendant further admits as to Paragraphs (a), (b), (c), (d) and (e) that on the referenced dates, no judgment reciting facts upon which the adjudication of direct contempt is based was entered. Respondent further admits that no Rule to Show Cause Order for indirect contempt was issued. With regard to Count II, Respondent denies that he "conducted himself in a manner indicating a disregard for the sober and proper exercise of contempt powers, without any deference for due process of law." Respondent would further show as soon as his mistake of law was brought to his attention that he immediately on the Court's own motion dismissed the Contempt conviction mentioned in Paragraphs (a-f) of Count II.

3. As to Count III, Respondent admits that he was the presiding judge on January 28, 1992, January 29, 1992, and January 30, 1992 in the proceedings referenced in Paragraphs (a), (b), (c), (d), and (e) of Count III.

(a) With regard to the allegations in Count III(a), Respondent would respectfully show that the language quoted in Paragraph 3(a) is an extremely minor portion of an approximately forty (40) minute explanation (12 pages transcribed) of an informational statement made by Respondent to persons assembled in the Ocoee Traffic

Court prior to beginning arraignments. In context, said statements are in no way intended to reflect unfavorably on any other judicial officer or the system itself, but rather as an explanation of how Respondent himself would be handling these particular proceedings.

(b) With regard to sub-paragraph 3(b), Respondent would show that this allegation is taken completely out of context, and is an isolated statement which must be taken in the context of the remainder of an approximately forty (40) minute extemporaneous discussion with persons who had appeared for arraignment in the Winter Park Traffic Court. Two (2) statements referred to in Paragraph (b) are separated by many minutes of discussion in approximately eight (8) single-spaced typewritten pages of text. A fair reading of the entire statement would show that in context, neither of the statements referred to in Paragraph 3(b) are meant to, or did, violate any of the stated Canons of Judicial Ethics.

(c) As to Paragraph 3(c), Respondent would show that even if the words "ploy" and "game" were used by him on the above dates in the above proceedings, that said words were used solely in an attempt to fully advise those present for arraignment of the possible consequences of various courses of action. Said words were in no way meant to reflect adversely on any other judicial officer or the

system, and when taken in context, are no more or less the Respondent's attempt to give a complete explanation of the alternatives available to those assembled, and their possible consequences.

(d) As to Paragraph 3(d), Respondent denies statements attributed to him in Paragraph 3(d). Respondent would show that while he did, for illustration of a point, use the words "Ted Bundy look-alike," they were never used in the context alleged in Paragraph 3(d). Respondent would further state that the reference to "Ted Bundy look-alike" was made to reassure the assembled defendants that only a person with a serious criminal record, or aggravated fact pattern, would have to fear a sentence of incarceration. Such a person was then advised to consult with an attorney before resolving his or her case.

(e) As to Paragraph 3(e), Respondent admits making the statement quoted in Paragraph 3(e). However, Respondent would show that said statement was made in the context of giving an overall explanation of the proceedings and rights of persons assembled for arraignment on said date. Respondent denies any intent to disparage or impugn any other judicial officer or the system in connection with this statement.

(f) As to Paragraph 3(f), Respondent denies Paragraph 3(f) in its entirety. Since this Paragraph

contains no facts and identifies no incidents, it is impossible for Respondent to otherwise reply to this allegation.

4. As to Count IV, Respondent denies that he has exhibited discourteous or insulting conduct towards litigants, attorneys, or courthouse personnel.

(a) Respondent denies that the statements attributed to him in Paragraph 4(a) are accurate representations of what was actually said, and would show that said statements are isolated portions of a larger discussion between the court and counsel, and are taken totally out of context. Respondent further denies that his statement in the referenced case would violate any Canons of the Code of Judicial Conduct.

(b) Respondent admits that he was the presiding judge on the hearing on February 14, 1991 in State v. Basten Johnson, Case No. MO89-6335. Respondent would show that he never actually contemplated issuing a Rule to Show Cause against anyone, but only made these statements in the context of illustrating his frustration regarding what he perceived as an injustice perpetrated upon the defendant by the system. (A review of the whole transcript of the proceedings will show that the Defendant, Mr. Johnson, through a series of unhappy events, very

nearly had to serve double his agreed sentence, and the hearing was an attempt to correct this injustice.)

(c) Respondent specifically denies that he routinely or otherwise uses a sarcastic, condescending or rude tone of voice and choice of words when addressing defendants before him.

5. As to Count V: Count V is factually inaccurate and does not constitute a violation of any Canon of the Code of Judicial Conduct. A copy of the pertinent parts of the trial in State of Florida v. Frank Rhodes, Case No. TO92-84412 (Orange County, Florida), was provided to the Judicial Qualifications Commission on December 3, 1992. It is submitted that this official transcript conclusively demonstrates that Judge Perry did not "direct" the prosecutor to do anything in this case; that, in fact, the defendant was called as a witness pursuant to the stipulation of the parties as demonstrated by the transcript. The law is clear that a defendant on the advice of counsel may waive his Fifth Amendment privilege for specific purposes which was done here.

6. As to Count VI: Judge Perry denies the allegations contained in Count VI. Judge Perry never requires traffic offenders to testify first so that the

police officer can "rebut" the offender. Further, Judge Perry would show civil traffic infractions are governed by the rules for Traffic Courts, and are civil in nature. See also, Kaleel v. State, 4 Fla. Supp. 2d 141; Traffic Infraction: Defendant's Right Against Self-Incrimination?, Volume 52, Florida Bar Journal, February, 1979 at p. 94; Florida Traffic Rule 6.140, 5.450 and 6.460. Furthermore, Judge Perry denies that the allegations contained in Count VI constitute a violation of any Canons of Judicial Ethics.

7. As to Count VII: It is impossible to respond to Count VII without any specifics; Judge Perry denies the allegations contained in Count VII. Furthermore, Judge Perry denies that the allegations contained in Count VII constitute a violation of any Canon of Judicial Ethics. Judge Perry does admit that he does, on occasion and in accordance with Florida Rule of Criminal Procedure 3.300(b), conduct an examination of prospective jurors from the bench. Judge Perry respectfully denies that he has ever precluded any party in a jury trial from conducting examination of prospective jurors, as provided by Rule 3.300.

8. As to Count VIII: It is impossible to respond to Count VIII without any specifics; Judge Perry

denies the allegations contained in Count VIII. Furthermore, Judge Perry denies that the allegations contained in Count VIII constitute a violation of any Canon of Judicial Ethics.

9. As to Count IX: Judge Perry denies the allegations contained in Count IX. No attempt has been made to withhold any information regarding these cases from the Judicial Qualifications Commission, and as soon as the oversight was brought to his attention, Judge Perry corrected the record in each of these cases.

10. As to Count X: Judge Perry denies the allegations contained in Count X. No attempt has been made to misinform or withhold any information regarding any case from the Judicial Qualifications Commission, and as soon as any oversight or mistake was brought to his attention, Judge Perry corrected the record in each case.

BENITEZ & BUTCHER, P.A.

By: _____
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I HEREBY CERTIFY that a copy of the foregoing has been delivered by U.S. Mail to: Joseph J.

Reiter, Chairman, Florida Judicial Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, Florida 32301; Ford L. Thompson, General Counsel, Florida Judicial Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, Florida 32301; and, Patricia F. Anderson, so-called Special Counsel, Rahdert & Anderson, 535 Central Avenue, St. Petersburg, Florida 33701, this the 26th day of March, 1993.

Gus R. Benitez

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