

FILED

SID J. WHITE

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

SEP 10 1992

INQUIRY CONCERNING A JUDGE

No. 92-53

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

80,457

NOTICE OF FORMAL CHARGES

TO: The Honorable Daniel W. Perry
County Judge - Orange County Court
339 Orange County Courthouse
65 E. Central Blvd.
Orlando, FL 32801

YOU ARE HEREBY ADVISED that the Florida Judicial Qualifications Commission, by a vote of at least seven members of the said Commission, at its meeting in Tampa, Florida, on July 30, 1992, has determined, pursuant to Rules 2(b)(2) and 7 of the Florida Judicial Qualifications Commission Rules, that there is probable cause to initiate formal charges against you.

Formal proceedings are hereby instituted to inquire into the following charges against you:

COUNT 1

1. On February 5, 1992 in Courtroom 1 of the Traffic Court Building in Orlando, Florida, while you were the presiding judge in the case of State v. Facella, Case No. TO 91-156390, you unnecessarily admonished and berated an Army recruiter, the

defendant Michael Facella, for appearing in court in his dress Army uniform.

The aforesaid conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

- A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

- A. Adjudicative Responsibilities

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and other with whom he deals in his official capacity and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

COUNT 2

2. You have conducted yourself on several occasions in a manner indicating a disregard for the sober and proper exercise of your contempt powers, without any deference for due process of law. This allegation includes, but may not be limited to, the following:

- a. On Tuesday, January 28, 1992, while you were presiding in Traffic Court in Ocoee, Florida, you summarily held Robert Smith in direct criminal contempt of court for driving away from the courthouse earlier in the day after your having told him not to drive. You sentenced him to 45 days in jail. You failed to enter a judgment reciting those facts upon which the adjudication of direct contempt was based and likewise failed to issue a show cause order as a necessary first step to indirect contempt or to follow any of the other due process safeguards required by law.
- b. On Tuesday, January 28, 1992, while you were presiding in Traffic Court in Ocoee, Florida, Daniel Lee Wingard initially pled not guilty to a charge of direct criminal contempt of court and to a charge of driving on a suspended driver's license, because he had driven away from the courthouse after you had cautioned him not to do so. You set his bond at \$5,000 on the contempt charge and \$10,000 on the license charge. A few moments later Mr. Wingard changed his plea to guilty and you summarily

adjudicated him guilty of direct criminal contempt and sentenced him to 20 days in jail. You failed to enter a judgment reciting those facts upon which the adjudication of direct contempt was based and likewise failed to issue a show cause order as a necessary first step to indirect contempt or to follow any of the other due process safeguards required by law.

c. On Tuesday, January 28, 1992, while you were presiding in Traffic Court in Ocoee, Florida, you summarily adjudicated Tony McCant guilty of direct criminal contempt of court and sentenced him to 15 days in the Orange County Jail. You failed to enter a judgment reciting those facts upon which the adjudication of direct contempt was based and likewise failed to issue a show cause order as a necessary first step to indirect contempt or to follow any of the other due process safeguards required by law.

d. On Thursday, January 30, 1992, while you were presiding in Traffic Court in Apopka, Florida, you summarily held Jack Allen Rickel in direct criminal contempt of court after defendant pled no contest and sentenced him to 20 days in jail. You failed to enter a judgment reciting those facts upon which the adjudication of direct contempt was based and likewise failed to issue a show cause order as a necessary first step to indirect

contempt or to follow any of the other due process safeguards required by law.

- e. On Thursday, January 30, 1992, while you were presiding in Traffic Court in Apopka, Florida, you set bond at \$10,000 for a charge of direct criminal contempt of court and \$10,000 on a charge of driving on a suspended driver's license after Emma Russell pled not guilty. Ms Russell was arrested and brought before you when she started to drive herself away from the courthouse earlier in the day after you had cautioned her not to do so. Ms Russell spent 26 days in the Orange County Jail. You failed to issue a show cause order as a necessary first step to indirect contempt or to follow any of the other due process safeguards required by law.
- f. On or about January 28, 1992 you caused to be issued a capias warrant for the arrest of Herbert Hernandez on a charge of direct criminal contempt for allegedly having driven away from the courthouse that day and set a bond for \$5,000. Because Mr. Hernandez was not apprehended on January 28, 1992, you did not adjudicate him, nor did you issue a show cause order, contrary to the law's requirements.

The aforesaid conduct if true would be in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

- A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor or fear of criticism.

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(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and other with whom he deals in his official capacity and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

COUNT 3

3. You have repeatedly, while on the bench, conducted yourself in such a manner as to lessen public confidence in the integrity, competence, and impartiality of the judiciary. This allegation includes, but may not be limited to, the following:

- a. On January 28, 1992, while you were the presiding judge in Traffic Court in Ocoee, Florida, in open court you said, "Some judges have told me the best way to handle this kind of a crowd of people is to come in early and look over the files and make a preliminary decision of what it is I [sic] going to do in your case. . .and that is not fair to you, and frankly, it did not make me feel good."
- b. On January 29, 1992, while you were the presiding judge in Traffic Court in Winter Park, Florida, you again said that you had been advised to pre-judge the case files of those defendants who were to appear before you but that you did not "play those kind of games."
- c. On both January 28 and January 29, 1992, while you were the presiding judge in Traffic Court you said in open court that other judges would view a not guilty plea as a "ploy" or a "game" to get more lenient treatment.
- d. On January 29, 1992, while presiding over Traffic Court in Winter Park, Florida, you said that pleading not guilty would "aggravate" the other judges' decisions

about sentencing a defendant to jail time and that pleading not guilty was, to you, an admission of being a "Ted Bundy look-alike."

- e. On January 30, 1992, while you were the presiding judge in Traffic Court in Apopka, Florida, you said in open court, "One of the things I was told though, as a new judge, was the way to handle this massive number of people and get out of here by 4:00 this afternoon or 5:00 this afternoon was to come early. And look at all the files and make my mind up of what it is I was going to do in your case before I've even talked to you. Well now, folks. I'll be honest with you. That is sick!"
- f. You routinely conduct your courtroom in such a fashion and make remarks from the bench while presiding over Traffic Court, as detailed above, so as to create a climate of intimidation and fear that inhibits those before you from exercising their constitutional rights, such as the right to counsel and the right to trial.

The aforesaid conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct.

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

- A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor or fear of criticism.

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(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and other with whom he deals in his official capacity and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

COUNT 4

4. On numerous occasions, you have exhibited discourteous and insulting conduct toward litigants, attorneys, and courthouse personnel. This allegation includes, but may not be limited to, the following:

- a. On or about February 27, 1992, while you were presiding over the case of State v. Byron Henderson, Case No. TO 91-167886 and TO 91-167887 in Traffic Court in Orlando, Florida, you suggested the Assistant State Attorney was an "ally" of the defense in an attempt to get "out from underneath a judge which may or may not have an accurate reputation of being a tough judge" and mentioned contempt for your perception of their "collusion." You also required the State Attorney to give you "personal assurances" that any case originally assigned to your division that was subsequently nolle prossed be annotated to reflect any new case number.
- b. On or about February 14, 1991, during a hearing in State v. Basten Johnson, Case No. MO 89-6335, you suggested the possibility of issuing a Rule to Show Cause to Judge Steven Wallace, his judicial assistant, and "somebody" in the State Attorney's Office.
- c. You routinely use a sarcastic, condescending or rude tone of voice and choice of words when addressing defendants appearing before you, such as the Facella case detailed in Count 1 above and the persons you charged with contempt, detailed in Count 2 above.

The aforesaid conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

- A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor or fear of criticism.

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(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and other with whom he deals in his official capacity and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

WHEREFORE, your conduct as set forth in the above allegations could constitute conduct unbecoming a member of the judiciary and could demonstrate your present unfitness to hold the office of judge and/or warrant discipline.

You are advised of the right to file a written answer to the above charges made against you within twenty (20) days of service of this Notice upon you pursuant to the provisions of Rule 7(b) of the Florida Qualifications Commission Rules.

DATED this 10th day of September, 1992.

J. Klein Wigginton, Chairman
Florida Judicial Qualifications
Commission
Room 102, The Historic Capitol
Tallahassee, FL 32301
(904) 488-1481

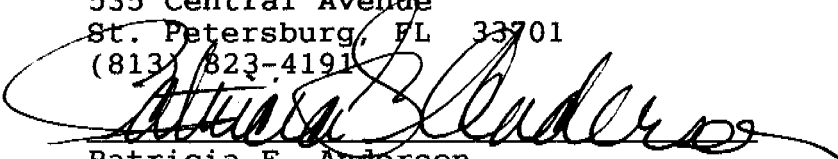
AND

Roy T. Rhodes, General Counsel
Florida Judicial Qualifications
Commission
Room 102, The Historic Capitol
Tallahassee, FL 32301
Fla. Bar #0066222



Roy T. Rhodes

Patricia F. Anderson, Special Counsel
Fla. Bar #352871
RAHDERT & ANDERSON
535 Central Avenue
St. Petersburg, FL 33701
(813) 823-4191



Patricia F. Anderson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Notice of Formal
Certified No. P 731 068 757
Charges has been furnished by U.S. Mail /to the above-named
addressee on this 10th day of September, 1992.

Glenn R. Thomas