

DA 1-6-97

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**FILED**

SID J. WHITE

**DEC 27 1996**

IN THE SUPREME COURT  
OF FLORIDA

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

\_\_\_\_\_  
CASE NO.: 87,482  
\_\_\_\_\_

**INQUIRY CONCERNING A JUDGE NO.: 95-412**  
**RE: JUNE LARAN JOHNSON**

\_\_\_\_\_  
**PETITIONER'S SUPPLEMENTAL BRIEF ON**  
**NEW LEGAL ISSUE**  
\_\_\_\_\_

On Review of  
a Disciplinary Recommendation of Removal  
by the Judicial Qualifications Commission  
\_\_\_\_\_

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**SUPPLEMENTAL STATEMENT OF THE CASE**

The notice of formal charges was filed on March 1, 1996 and the case initially set for hearing on May 13, 1996. Judge Johnson's motion for continuance was granted, and the case then re-set for June 26 and 27, 1996. On the first day of the hearing Judge Johnson's counsel of record stated that:

Mr. Kay: [I] would be remiss if I did not mention the fact that in November, a legislative law, constitutional amendment is going to be passed on by the voters of the State of Florida changing the composition of the Judicial Qualifications Committee, and at this time we would ask that rather than Judge Johnson be the last Indian left on the prairie, that perhaps she be the first tribe that is used by the new Commission.

Judge Kaney (Chairman): I think the symbolism got by me, but no, unless — I guess you're asking that we move this trial to January. The answer is no.

Mr. Kay: That's what I was asking. I apologize for my symbolism. (T. 10-11, emphasis added).

The hearing was concluded on June 27, 1996, at which time the Commission took the case under advisement. The Commission issued its report and recommendation of removal on August 28th, 1996. At the time Judge Johnson's initial brief was filed (October 17, 1996), the voters had yet to vote on the proposed constitutional revision. In her reply brief, Judge Johnson seeks the benefits of the Constitutional Amendment passed two months after the Commission's report and recommendation was issued.

## ARGUMENT

### **The New Constitutional Amendments Apply Prospectively Only (new issue, rephrased).**

Judge Johnson contends that the amendments to Florida Constitution, Article V, section 12, effective January 7, 1997, should be applied retroactively to her case. It is respectfully submitted that this analysis is incorrect and should be rejected.

An enactment affecting substantive rights is presumed to apply prospectively, only. Agency for Health Care Administrative v. Associated Industries, 678 So. 2d 1239 (Fla. 1996); Hassen v. State Farm Mutual Auto Ins. Co., 674 So. 2d 106 (Fla. 1996). This is no less applicable in the context of a Constitutional Amendment. See State v. Lavazzoli, 434 So. 2d 321 (Fla. 1983).

In Lavazzoli, this Court considered whether an approved amendment to the Florida Constitution (which mandated conformity of the states's exclusionary rule with that of the federal constitution) should be applied retroactively to the Defendant's case. This Court considered the general rule "that issues of law on appeal are determined based on the law as it exists at the time of the appellate decision" to which the Judge currently refers. (Reply Brief p. 8). It concluded, nonetheless, that the rule is inapplicable when a substantive right is altered. State v. Lavazzoli, 434 So. 2d at 323. Where neither the amendment, nor the ballot statement manifest any intent that the amendment be given effect retroactively, then it should be given prospective effect

only. Id. at 323. That analysis is equally applicable here.

Judge Johnson recognizes this general rule of law regarding the prospective effect of Constitutional amendments, but urges its rejection where, as here, the new law confers a benefit, rather than a detriment, on her. (Reply Brief at 9). As indicated previously, however, Judge Johnson's rights are not the only rights at stake. See In re Shenberg, 632 So. 2d 42 (Fla. 1992) (purpose of regulatory proceedings is "to regulate the judiciary, to protect the public from dishonest judges, to prevent proven dishonest judges from doing further damage, and above all to assure the public that the judiciary is worthy of its trust.").

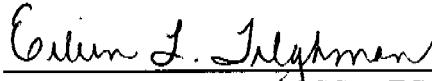
Florida Commission on Ethics v. Plante, 369 So. 2d 332, 337 (Fla. 1979), on which the Judge relies, does not assist her. The issue before this Court in Plante was whether constitutional financial reporting requirements could be imposed on legislators whose terms of office commenced prior to its effective date. This Court held that they could, reasoning that these imposed no "direct limitation" upon the legislator's right to seek office, but left the officeholder with "the choice to continue or curtail his current financial practices." Left unspoken was the notion that public office is a privilege, not a right.

Finally, even assuming arguendo, that the new constitutional Amendments are deemed applicable, they should not impact this case. A judge who knowingly and intentionally instructs third parties in how to circumvent the law simply cannot be left in a position to administer it.

**CONCLUSION**

For all of the foregoing reasons, it is respectfully submitted that the Commission's Report and Recommendation should be approved in all respects.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed faxed this 24<sup>th</sup> day of December, 1996 to:

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