

**BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION**

INQUIRY CONCERNING A JUDGE,  
NO. 96-30

SUPREME COURT CASE NO. 92,630

RE: RICHARD H. FRANK  
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**FINDINGS CONCLUSIONS AND RECOMMENDATIONS**  
**BY THE FLORIDA JUDICIAL QUALIFICATIONS**  
**COMMISSION HEARING PANEL**

Pursuant to Article V, Section 12 of the Florida Constitution as amended in 1996 and the Florida Judicial Qualifications Commission Rules, the Hearing Panel of the Florida Judicial Qualifications Commission issues the following findings of fact, conclusions and recommendations to the Florida Supreme Court in the inquiry concerning Judge Richard H. Frank, of the Second District Court of Appeal of the State of Florida. These findings are based on clear and convincing evidence<sup>1</sup> and constitute the actions of the Commission based on a vote of at least four members of the Hearing Panel.<sup>2</sup> The recommendation is that Judge Frank be reprimanded.

Judge Richard H. Frank has served the State of Florida for many years. He has been a Judge at the Second District Court of Appeal for 14 years and served as that Court's Chief Judge. (T.67).

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<sup>1</sup>A transcript of the hearing of September 28 and 29, 1998 which took place in the Hillsborough County Courthouse is filed along with these Findings. All exhibits, as indexed in the transcript, are also filed herewith and Judge Frank has been furnished copies.

<sup>2</sup>The Hearing Panel will be referred to herein as the JQC or the Commission. The Investigative Panel will always be distinguished from the Hearing Panel.

He has served as a member of the Judicial Qualifications Commission for approximately eight years and would have been sitting as a member of the Hearing Panel but for his disqualification due to these charges. As an attorney, Judge Frank has been a member of the Florida Bar, the Virginia State Bar and the Washington, D.C. Bar. (T.153). In addition, to his appointment to the JQC as a representative of his conference of appellate judges, he has also served on and as chairman of the Committee on Standards of Conduct Governing Judges. (T.154). He has recognized expertise in the field of judicial ethics.

Judge Frank is presently 72 years of age and will formally leave judicial office at the beginning of 1999. In 1992, he had heart by-pass surgery and resulting cerebral anoxia. (T.158). He states that he believes he has lost significant memory as a result. (T.158). Due to his retirement, he is no longer receiving new case assignments from the Clerk of the Second District Court of Appeal. (T.155). Judge Frank will soon be eligible to return to the practice of law and the Commission makes no findings or recommendations as to his future law practice. We note the absence of any assertions in the formal charges in regard to the practice of law. Thus, no issue is before the Hearing Panel as to "lawyer discipline" under Article V, § 12 of the Florida Constitution as amended effective 1996. Also see Rule 3-4.5 of the Rules Regulating the Florida Bar.

## Charges, Admissions and Defenses

On March 20, 1998 the Investigative Panel of the JQC filed its Notice of Formal Proceedings in five counts. Through counsel, Judge Frank filed his Answer and Defenses. The Answer repeats each charge verbatim and responds to each in detail. This document was introduced as the prosecution's exhibit 1 and copies given to the Panel as a guide to the expected evidence. (T.71). The Answer, with minor additions, is thus an appropriate summary of the charges and defenses and is here repeated verbatim.

### CHARGE:

#### Count I

##### Grievance Testimony

1. *Shortly before September 6, 1993, you were interviewed by a reporter for the St. Petersburg Times concerning a marital dissolution proceeding which had been pending in the Circuit Court of Hillsborough County, between your daughter Stacy Frank and Mark Straley. In the course of that interview, you were questioned regarding the retention in that matter by Stacy Frank of George Vaka, Esq., a former partner of Judge Chris Altenbernd, a member of your court, to represent her in appellate proceedings in her case before the Supreme Court of Florida. In response to those questions you were reported by the Times on September 6, 1993, ("the news article") to have stated:*

*Richard Frank, a member of the JQC, which investigates all complaints of judicial misconduct, said he has been "far removed from that domestic relations matter." (Page 4B, St. Petersburg Times, September 6, 1993)*

*You further were quoted in the news article as stating that you were:*

*...unaware of his colleague Altenbernd asking Vaka to represent Stacy Frank...(Id)*

### ANSWER:

Denied that there was an "interview" with the reporter that preceded the publication of the article. The reporter placed a telephone call and advised Judge Frank that an allegation had been made that lawyers were representing his daughter in her divorce for free in exchange for favorable consideration by the Judge. He recalls telling the reporter words to the effect that he had studiously avoided involvement in the divorce, but that such a claim accused him of criminal misconduct that was not true and would be defamatory if published. The reporter portrayed a hostile attitude in the discussion, which was not lengthy. Judge Frank does not recall being questioned by the reporter "regarding the retention in that matter [Stacy's divorce] by Stacy Frank of George Vaka, Esq.,...to represent her in appellate proceedings in her case before the Supreme Court of Florida." Judge Frank was not aware that Judge Altenbernd asked George Vaka to represent Stacy in the appellate proceedings. Judge Altenbernd said under oath in his affidavit that he did not ask George Vaka to represent Stacy.

**CHARGE:** (Count I continued)

2. *Thereafter, on or about October 28, 1993, notwithstanding the fact that the news article was ostensibly based upon statements made in pleadings in the dissolution matter, you filed with The Florida Bar a grievance complaint against Mark Straley, a member of The Florida Bar. You complained, inter alia, that Mr. Straley "inspired" comments in the news articles that were allegedly "scandalous and untrue" by implying that attorneys were seeking to influence you by representing your daughter without compensation.*

**ANSWER:**

A grievance was filed with The Florida Bar against Mark

Straley. The grievance speaks for itself. The news article was not based upon statements made in the pleadings in the divorce action. It was, instead, the fulfillment of a threat by Mark Straley to go to the newspapers and have defamatory accusations published against Judge Frank if Stacy did not agree to his proposed resolution of the divorce proceedings. The St. Petersburg Times was and is represented by the law firm of Rahdert & Anderson, P.A., and Pat Anderson of that firm. Mark Straley's present wife, Sara Richardson, worked for that law firm previously. The law firm of Rahdert & Anderson represented Mark Straley in portions of the divorce proceeding involving Stacy Frank. Mark Straley had access to the reporter who wrote the article as a result of those connections. There was only one pleading in the divorce file which could possibly relate to that subject matter, and that was a pleading prepared and signed by Mark Straley challenging the charging lien filed by Sessums & Mason, P.A., to secure the attorneys fees due for representing Stacy Frank. That pleading, which even Mark Straley's attorney would not sign, did not provide the information necessary for the article, and had to have been supplemented by Mark Straley in some other fashion. The article Straley caused to be published was scandalous and untrue.

**CHARGE:**

(Count I continued)

3. *On July 12, 1994, you testified under oath before Grievance Committee 13D of The Florida Bar in support of your grievance complaint. When questioned about the news article you testified as follows:*

Q. Well, you would agree that the article is accurate insofar as it indicates Straley won on appeal with respect to the meat of the issue. Right?

A. I will tell you, I have studiously stayed away from Stacy's divorce litigation. (Emphasis supplied). (Page 47 of Transcript).

**ANSWER:**

The portion of the testimony quoted is accurate, but is incomplete. The testimony continues as follows:

I will tell you also that I don't believe I've even read more than once any of the opinions that came out of the Fifth District.

And I've had a Fifth District--I've been with the Fifth District Judges on several occasions and I have never discussed Stacy's case with any of them. I just don't know that much about it. I have stayed out of it.

I do know that Judges have come to me and have said there was a bizarre result that was reached over in the Fifth District, but I've never commented about that to anyone.

That is the entire answer to that question, but the questioning and further responses continue on pages 48 and 49 of the Transcript.

**CHARGE:** (Count I continued)

4. In that same hearing, you testified regarding the hiring of Mr. Vaka as follows:

Q. I have a question about-if you turn over to the article-actually, you don't have to because there's a copy on the table here. In the fourth column--

A. That's the last column on the right?

Q. -the last column on the right-hand side, in the fourth full paragraph down, the reporter quotes you as saying that you were unaware

*that Chris Altenbernd asked George Vega [corrected to "Vaka" at hearing] to represent your daughter.*

A. Right.

Q. Is that true?

A. It's absolutely true. I never discussed with Chris Altenbernd the representation of my daughter, to the best of my knowledge. (Emphasis supplied). (Pages 52 and 53 of transcript).

**ANSWER:**

The quotation as set forth above is in the transcript of the proceedings before the grievance committee. Denied that this testimony dealt with the hiring of Mr. Vaka. The communication between Judge Frank and Judge Altenbernd involved the question posed by Judge Frank as to whether George Vaka would be competent and willing to consider the handling of a matrimonial matter on appeal. The answer by Judge Frank to the question posed occurred in direct response to the precise phrasing of the question, which is underscored by the testimony of Judge Altenbernd in his affidavit. Judge Altenbernd testified as follows on that matter:

4. ...Judge Frank asked me to recommend an attorney who would be competent to handle an appeal proceeding in a matrimonial matter. I do not recall if he mentioned it was for his daughter, but I certainly believed as much. I mentioned the names of Steve Northcutt, Larry Klein and David Maney. Then Judge Frank asked me whether or not George Vaka would be capable of handling such a matter and, if so, whether I thought he would be interested in being approached.

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8. Mr. Vaka discussed the matter with me over the telephone and outside the presence of Judge Frank, and indicated that he would be willing to consider such a request from Ms. Frank. I did not ask him to accept any representation, and he did not agree to accept any representation. He only said that he would be willing to talk with Ms. Stacy Frank and learn more about the status of the matter.

Although Judge Altenbernd may have assumed the reason for the inquiry, Judge Frank never mentioned Stacy Frank's name or that the inquiry related to his daughter's need for counsel.

**CHARGE:** (Count I continued)

5. *The quoted statements made to the St. Petersburg Times reporter, and the quoted sworn testimony before the grievance committee, were false or misleading and were known by you to be false or misleading, in that you were not far removed from the marital dissolution proceedings. To the contrary, you did not studiously stay away from your daughter's divorce litigation; in fact you counseled and advised your daughter, you initiated a police investigation of certain telephone calls allegedly made by Mark Straley, and you discussed with Judge Altenbernd potential appellate representation of Stacy Frank by Mr. Vaka. Further, you knew that Judge Altenbernd discussed with Mr. Vaka the possibility of his representation of your daughter, and that subsequently Mr. Vaka had agreed to the representation.*

**ANSWER:**

Denied. Judge Frank counseled and advised his daughter on a personal basis, as any father would when she was attempting to deal with a man who was reported to him to be a physically abusive, obsessive, and emotionally unstable former spouse. He did not participate in the legal proceedings surrounding the divorce other than lending her money to pay a portion of the fees owed to her counsel. He asked Judge Altenbernd if he believed that George Vaka would be capable of handling a matrimonial matter before the



Supreme Court. He did not state that this question was being raised on behalf of Stacy Frank. Judge Altenbernd volunteered to call George Vaka and later reported to Judge Frank that Mr. Vaka would consider such a case. Judge Altenbernd was not asked to discuss Mr. Vaka's representation of Stacy Frank; had no authority to discuss Mr. Vaka's representation of Stacy Frank; and has indicated under oath that he made no request of George Vaka to represent her. The information that Mr. Vaka would be willing to consider handling a matrimonial case on appeal was relayed by Judge Frank to Stacy Frank, who herself contacted Mr. Vaka.

**CHARGE:**

**Count II**

**Failure to Recuse or Advise Counsel**

*Despite the fact that your impartiality might reasonably have been questioned by attorneys opposing Mr. Vaka, or their clients, and although you knew that Mr. Vaka was representing your daughter as described, you continued to sit in cases wherein Mr. Vaka personally was counsel, and failed to advise opposing counsel of the representation of your daughter by Mr. Vaka.*

**ANSWER:**

Denied that Judge Frank's impartiality might reasonably have been questioned by attorneys opposing Mr. Vaka, or their clients. Admitted that Judge Frank sat on two cases in which Mr. Vaka represented the appellee in 1993, both of which cases were affirmed by a unanimous panel of three judges. There were no other cases since 1993. See Halpern v. Rood, 626 So. 2d 1374 (Fla. 2nd D.C.A. 1993); and Weissman v. Joye, 619 So. 2d 347 (Fla. 2nd D.C.A. 1993). There is no Canon requiring the recusal of Judge Frank from all cases involving a law firm that represents an adult family member, such as a daughter.

**CHARGE:**

**Count III**

**Interference with Grievance Proceedings**

1. *After initiating the previously described grievance complaint against Mark Straley, you unreasonably continued to seek to direct and control the prosecution of the case by exerting your position as a judge in a manner unbecoming to your office. For example, on or about July 21, 1994, in a hostile and belligerent manner you informed Assistant Staff Counsel Joseph Corsmeier that you would "go to the Board of Governors" of The Florida Bar if the grievance committee (to which Mr. Corsmeier was legal advisor) resolved your complaint by finding only minor misconduct on the*

*part of Mark Straley; on May 5, 1995, in the same manner you criticized the decision of Assistant Staff Counsel David Ristoff and Mr. Corsmeier not to file a petition for rehearing after the referee had granted a summary judgment against the Bar in major portions of the grievance case, telling Mr. Ristoff that the bar lawyers "did not understand the law" and that a summary judgment could not be entered in the case; and on September 5, 1995, in the same manner you criticized the decision of bar counsel to dismiss the remaining portions of the complaint after the summary judgment, by informing Mr. Ristoff that in addition to Mr. Corsmeier, he also was "a target", that you had discussed the matter with John DeVault, president of The Florida Bar, and that Mr. Corsmeier was incompetent.*

**ANSWER:**

Admitted that Judge Frank criticized the handling of the grievance against Mark Straley. The grievance committee had found probable cause on at least three areas of conduct by Mr. Straley. The Florida Bar filed a Complaint in three counts that was attacked by sequential motions for summary judgment. Although two counts were ultimately [sic] dismissed by the Referee assigned to the case after the consideration of the various motions for summary judgment, one count remained pending and was scheduled for trial. The surviving count in the Complaint was thereafter dismissed by Staff Counsel at the request of Mark Straley's counsel after his second unsuccessful attack by a motion for summary judgment. This was done without consultation with, or explanation to, Judge Frank until it was too late. Having exposed himself to retaliation by Mr. Straley for having filed the grievance, Judge Frank was distressed that it was dismissed without obtaining any relief whatsoever against Mr. Straley. Apparently the sole concession or protection was the obtaining of a release from Mr. Straley in favor

of The Florida Bar and the Staff Counsel.

Denied that Judge Frank sought to direct or control the prosecution of the case by exerting his position as judge in a manner unbecoming his office. The conduct of Mark Straley was directed to Judge Frank and his family at his home, and he was entitled to seek relief from that conduct, whether or not he was a judge. Admitted that Judge Frank discussed the matter with John DeVault, president of The Florida Bar, and criticized Mr. Corsmeier in that discussion. Denied that the criticism was anything other than that of a disappointed complainant who felt that Staff Counsel had abandoned the case, even though one of the counts had cleared all the hurdles for a trial on the merits. When Judge Frank learned in this proceeding that the criticism had caused personal difficulties for Mr. Corsmeier, he apologized to Mr. Corsmeier for problems occasioned by the criticism.

**CHARGE:** (Count III continued)

*2. Thereafter, without basis in law or fact, you complained to the Executive Director and other members of the staff of The Florida Bar about the competence of Mr. Corsmeier in the matter, thereby improperly placing his job tenure in jeopardy. A complete investigation by The Florida Bar was accordingly necessitated, which resulted in findings favorable to Mr. Corsmeier.*

**ANSWER:**

Admitted that Judge Frank complained to the Executive Director of The Florida Bar, having been referred to him by Mr. DeVault. Judge Frank was not aware that his criticism was invalid or baseless in law or fact, or that in any way put Mr. Corsmeier's job

in jeopardy. Judge Frank is unaware of any investigation of Mr. Corsmeier, or the results of such an investigation, other than as noted above.

**CHARGE:**

**Count IV**

**Weber Matter**

*In or about 1994, your daughter, Hillary Frank, was involved in a marital dissolution case in Hillsborough County, with her then husband Craig Weber. As a result of a disagreement between the parties following a visit of Mr. Weber to the marital home, you spoke by telephone with his father, Kurt Weber, of Flat Rock, North Carolina. In that conversation, without cause of authority, you threatened to utilize your judicial position or authority to cause his son, Craig Weber, to be arrested for a crime or "committed" because of alleged emotional instability, or as you then expressed it, his having "lost it". These threats needlessly and wrongly upset and created anxiety on the part of Kurt Weber, a lay person.*

**ANSWER:**

Denied. Admitted that Craig Weber, after separating from Hillary Weber, presented himself at the house occupied by Hillary Weber and her young daughter. Hillary Weber was seven months pregnant with her second child at the time. Judge and Mrs. Frank received a frantic telephone call from Hillary Weber indicating that Craig Weber had appeared at the house, demanded that she and her daughter leave the house, and physically threatened Hillary. Craig Weber was at that time trying to remove personal property from the house. In that call Judge and Mrs. Frank were asked to come over immediately, and to bring the police. Judge and Mrs. Frank got into their car and proceeded to their daughter's house.

On the way they encountered two Tampa police officers who they asked to accompany them. The police officers went to the house with them. When they arrived at the house Craig Weber was gone. The police officers prepared and filed a report of the incident. The police officers advised Hillary and her parents that Craig Weber would have been charged with a serious crime if he was touched her in her pregnant condition.

While her parents were still at the house Hillary Weber placed a telephone call to North Carolina to speak with Kurt Weber, Craig's father. Hillary attempted to tell him [what] had happened and to ask that he assist her in dealing with Craig. When Kurt Weber stated that it was his opinion that Craig Weber should be allowed to come and go from the house as he pleased, and showed no concern about the verbal or physical abuse threatened against Hillary and her unborn child, Hillary became even more emotionally upset. While Kurt Weber was still on the telephone line Hillary Weber asked Judge Frank to speak with him. The conversation was brief, and the only substantive comment Judge Frank made was to say that Kurt Weber should control his son, or Judge Frank would. No mention was made of Judge Frank's judicial position or authority. Judge Frank certainly did have cause and authority to attempt to protect his daughter and his living and unborn grandchildren. At no time in that brief telephone conversation did Judge Frank threaten to have Craig Weber arrested or committed. If the

telephone call caused Kurt Weber to be upset, that reaction was appropriate under the circumstances. His son's conduct was, or should have been, the cause of his anxiety. There is no conduct of Judge Frank as to this charge that is violative of any Canon of the Code of Judicial Conduct.

(The quoted Answer ends here with appropriate signatures)

### Preliminary Matters

Prior to hearing, Judge Frank raised two issues concerning alleged breaches of confidentiality during the investigatory stages of this case. The Hearing Panel concluded that these confidentiality issues were not necessary or relevant to disposition of the charges to be heard. Whether or not confidentiality had been breached in the investigatory stages of the case, was referred for decision to the full Judicial Qualifications Commission. The full Commission met on October 23, 1998 and issued orders on both issues. The Hearing Panel again concludes that these issues are not germane to its determination of the formal charges.

### The Panel and Appearances

The hearing occurred before the Panel consisting of chairman Circuit Judge Frank N. Kaney, District Judge John Antoon,<sup>3</sup> attorneys Rutledge Liles and Evette Simmons and Mrs. Bonnie V. Booth, a lay-member. (T.6). Commission lay-member John Robert Middlemas had been scheduled to participate, but was unexpectedly prevented from traveling due to the emergency effects of Hurricane Georges. The case proceeded before the five Commission members without objection. (T.7). There were no motions for disqualifications of any Panel member. Judge Frank was represented by attorney Michael C. Addison and attorneys Steven A. Werber and

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<sup>3</sup>Judge Antoon sat as the replacement for Judge Frank.



John S. Mills served as the prosecuting special counsel. Attorney John Beranek served as counsel to the Hearing Panel.

During its initial presentation, the prosecution called attorney George Vaka, Judge Richard Frank, Judge Chris W. Altenbernd, Clerk of the Second District Court William Haddad, attorney Mark Straley, attorney Joseph Corsmeier, attorney David Ristoff, attorney John Anthony Boggs, Mr. Craig Weber, Mr. Kurt Weber and Ms. Margaret Weber. (T.55,66,230,246,264,305,348,365,382,395,412). Attorney Thomas C. MacDonald, general counsel to the Investigatory Panel, was called as a rebuttal witness. (T.684). In defense, Judge Frank presented his own testimony along with the testimony of four present or former judges of the District Courts of Appeal of Florida. These, included Judge Alan Schwartz of Third District, Judge Peter Webster of the First District, Judge Monterey Campbell of the Second District and Judge Richard Lazzara formerly of the Second District and now a Federal District Court Judge. (T.432,449,524,556). Judge Frank also presented additional testimony from attorney George Vaka, attorney Nelson Blank and attorney Marilyn Elizabeth Culp. (T.476,502,516). Members of the Frank family testified including Mrs. Pat Collier Frank, Hillary Frank Weber and Stacy Frank. (T.541,578,610). Stacy Frank is also an attorney.

#### **Findings and Conclusions**

The divorces of Judge Frank's daughters, Stacy Frank and

Hillary Frank, are the backdrop for this entire unfortunate controversy. Stacy Frank was married to Mark Straley and Hillary Frank was married to Craig Weber. Judge Frank, like any father, was personally concerned with the well-being of his daughters and became involved in some measure in both of their dissolution cases. As the Answer recites: "Judge Frank counseled and advised his daughter [Stacy] on a personal basis, as any father would...." The Frank family was extremely close and Judge Frank was extremely supportive of his daughters. His two sons-in-law were merely tolerated for the sake of his daughters. (T.142-5).

The issues before this Commission may be divided into the Straley controversy (Counts I, II and III) and the Weber controversy (Count IV). A great deal of detailed evidence was presented regarding both marriages and dissolutions. It is, most certainly, not necessary for this Commission to retry the divorce cases and thus the findings will be limited to the facts relevant to the actual issues presented in this JQC trial.

**The Straley Litigation, the Straley Bar Grievance  
and the Resulting Investigation**

Stacy Frank and Mark Straley were both lawyers and met shortly after law school at the Holland & Knight law firm. (T.612). When Judge Frank and his wife Pat Collier Frank were told of the marriage plans they were opposed to their daughter's choice. (T.579-581,652,678). Controversy brewed from the beginning. The marriage occurred June 9, 1984 and the parties separated four years

later on June 10, 1988. (T.614). There were no children of the marriage. (T.265). There was extensive appellate litigation surrounding the Frank-Straley dissolution in the District Court and Florida Supreme Court. (T.266-7). Judges of the Fifth District Court of Appeal sat in place of the Second District Judges due to the family connection. (T.566-7). The Commission notices the following reported cases: Straley v. Frank, 585 So. 2d 334 (Fla. 2d DCA 1991); Robertson v. Robertson, 593 So. 2d 491 (Fla. 1991); Frank v. Straley, 602 So. 2d 1278 (Fla. 1992); Straley v. Frank, 612 So. 2d 610 (Fla. 2d DCA 1992); Straley v. Frank, 650 So. 2d 628 (Fla. 2d DCA 1994); and Straley v. Hosman, 677 So. 2d 24 (Fla. 2d DCA 1996). On the appellate issues, generally Mr. Straley was the prevailing party. (T.267).

Attorneys fees were one of the main areas of controversy and it is probable that the fees involved in the overall case exceeded the total assets of the marriage. (T.267). Judge Frank attempted to support and assist Stacy in this very difficult dissolution proceeding and although he did not prepare pleadings, he clearly became personally involved. A great deal of animosity had developed between Judge Frank and Mark Straley. (T.579-581,653-654,678).

In addition to the actual trial and appellate litigation, several ancillary controversies occurred. Insofar as relevant to this proceeding, these controversies were: (1) newspaper publicity

with particular emphasis on a St. Petersburg Times article on September 6, 1993, (2) a series of "hang-up" telephone calls to the homes of Judge Frank and Stacy Frank (3) a Florida Bar grievance proceeding instituted against Mark Straley by Judge Frank and (4) a Florida Bar investigation of that grievance proceeding to determine if the Bar staff attorneys had acted in a professionally incompetent manner. This Bar investigation occurred because of Judge Frank's complaints and his stature. (T.367-373,381).

Initially, Judge Frank concluded that Mark Straley had "inspired" newspaper stories which were extremely critical of him. (Resp. Ex. No. 1 and T.166-7). The September 6, 1993 article in the St. Petersburg Times discussed the fact that Judge Frank had been involved in procuring an appellate lawyer (George Vaka) to represent Stacy Frank through Judge Chris Altenbernd and that Mr. Vaka performed this representation at a reduced hourly rate. (Pros. Ex. No. 2 and T.74). The newspaper story suggested that Mr. Vaka frequently appeared before the Second District Court of Appeal on which Judge Frank sat and that the "real pay-off" for Vaka's less than market rate services might be favorable judicial treatment by Judge Frank. (Pros. Ex. No. 2).

The second controversy concerned a number of telephone calls made to the Frank family residence and to Stacy Frank's residence. The caller would usually hang up without speaking. (Resp. Ex. No. 1). The exact number of these calls was uncertain, but they were

numerous and became extremely annoying and harassing to the Frank family. A call source indicator device was installed and showed that most, but not all, of the calls came from Mark Straley. (T.161).

A third major controversy related to a Florida Bar grievance proceeding instituted by Judge Frank against Mark Straley. The grievance matter became Case Number 94-10,636 and was initially before Grievance Committee 13D of the Thirteenth Judicial Circuit. This Grievance Committee found probable cause against Mr. Straley on June 15, 1994. (T.307-8). A formal complaint was then filed by The Florida Bar against Mark Straley on January 4, 1995. (Resp. Ex. No. 3). The Bar Complaint contained allegations that Straley had inspired newspaper publicity that the attorney (George Vaka) representing Stacy Frank in the appellate litigation was providing this representation at little or no cost to her in exchange for preferential treatment by her father Judge Frank on the Second District Court of Appeal. Stacy Frank had been represented in the trial court and the initial appeal by attorney Steven W. Sessums was then represented by attorney George Vaka of the Tampa firm of Fowler, White, Gillen, Boggs, Villareal and Banker, P.A. in two Petitions for Review before the Florida Supreme Court and other appellate matters. The Bar Complaint also contained detailed and extensive allegations regarding the pattern of hang-up telephone calls alleged to be attributable to Mr. Straley.

Judge Frank was very personally involved in this complaint from its beginning. (T.310-314). He attempted to advise Bar counsel on how to proceed, made numerous phone calls and became very upset over the possible handling of the matter on a "minor misconduct" level. (T.311-312). Judge Frank threatened to go to the Bar Board of Governors and staff counsel were pressured. (T.313-314).

The formal Bar Complaint was in 19 numbered paragraphs and major portions of the complaint were determined in Mr. Straley's favor and against the Bar on motions for summary judgment. (T.309). When this information reached Judge Frank he was angry and demanded that a motion for rehearing be filed. (T.332). He told the Bar counsel that the Circuit Judge on the case was wrong and did not know the law. (T.351-2). No rehearing motion was filed by Bar counsel. Eventually the balance of the Bar Complaint was voluntarily dismissed by the Bar. (T.309,350).

Judge Frank was extremely displeased with the handling of this grievance matter by The Florida Bar. Judge Frank repeatedly advised the Bar attorneys of his judicial position (Chief Judge of the Second District Court of Appeal) while repeatedly criticizing the Bar's handling of the Straley matter. (T.314,357). When the initial summary judgments were entered he personally interjected himself and sought to have the summary judgment altered on rehearing. He was critical of the circuit judge who entered the

summary judgment. Judge Frank personally contacted the President of The Florida Bar John DeVault to express his dissatisfaction. At the suggestion of President DeVault he then contacted the executive director of The Florida Bar who suggested he contact the attorney serving as Director of Lawyer Regulation, John Anthony Boggs.

Mr. Boggs carried out a very detailed investigation of Judge Frank's complaints including interviews with many of those connected with the grievance proceeding. (T.367-372). This investigation was done because of Judge Frank's stature as a judge and because his complaints amounted to accusations of incompetency in the practice of law by Bar counsel which, in itself would have been a violation of the applicable rules. (T.371-2). By letter of February 14, 1996, Mr. Boggs advised Judge Frank in detail of his investigation and of his conclusion that there was no indication of incompetence or mishandling of the matter by Bar counsel. (Pros. Ex. No. 7). The accusations against Bar counsel were taken very seriously by the Bar leadership and endangered the job of at least one Bar staff attorney. (T.372).

Returning to the actual Straley litigation, Mr. George Vaka was an appellate specialist with the Fowler, White law firm and began his representation of Stacy Frank shortly after the initial District Court decision in the case. (T.484-5). This was the en banc opinion of the Fifth District Court sitting as the Second District Court. The decision was initially issued, withdrawn, and

then replaced by the en banc opinion.

The purpose of Mr. Vaka's representation was to seek Supreme Court review of the District Court's en banc decision. (T.48405). Judge Frank discussed Stacy's appellate representation with Judge Altenbernd, another judge on his court. Judge Altenbernd initially contacted Mr. Vaka pursuant to that discussion because of his longstanding friendship and prior practice in the same law firm with Mr. Vaka. Mr. Vaka was an appellate specialist, but had not handled family law matters in the past. (T.477-8).

Prior to representing Stacy Frank in the Florida Supreme Court, Mr. Vaka had handled approximately 78 cases before the Second District Court of Appeal and on many of these cases Judge Frank had participated as a panel member. After Vaka's representation of Stacy Frank began, Mr. Vaka continued to routinely appear in the Second District Court of Appeal. (T.179-80). This representation, on occasion, was before a panel of judges which included Judge Frank.

Although Judge Frank carefully considered the question of possible recusal from Mr. Vaka's cases, he decided that there was no requirement that he do so. (T.179). Judge Frank also decided not to advise other counsel of the relationship between George Vaka's representation of Stacy Frank and himself in cases in which Vaka was involved. (T.179-80). At no point was an actual recusal motion filed by any party on the issue of a relationship between



Vaka and Judge Frank, presumably because no one knew of the relationship.

The recusal of judges in the Second District Court of Appeal is not governed by any formal internal rule, however a pattern has evolved. (T.180). Each judge furnishes the clerk with a "recusal list" consisting of cases, individuals and other entities. The clerk automatically does not assign a particular judge to any case involving a person or entity on that judge's recusal list. If a judge wishes to recuse himself from cases handled by a particular lawyer, he may or may not choose to disqualify himself from all cases in which that lawyer's law firm is involved.

Rule of Judicial Administration 2.160 governs the recusal of trial judges and has no application to appellate judges. The recusal of an appellate judge is governed by In Re Estate of Carlton, 378 So. 2d 1212 (Fla. 1980), and that opinion holds that recusal is a "personal and discretionary" decision by each individual appellate judge. Carlton at p. 1216.

As a result of his strong feelings regarding his daughter's dissolution litigation and his personal disagreement with the initial District Court decision issued in her case, Judge Frank took certain actions. Shortly after the Fifth District, sitting as the Second District, issued its first opinion, Judge Frank chose to disqualify himself from all domestic relations cases coming before the Second District Court of Appeal. (T.69). He testified that he

found the Fifth District's decision "difficult to deal with" and that he disagreed with it. (T.69-70).

The initial Fifth District decision was issued on July 31, 1991, and this prompted Judge Frank's disqualification for all family law cases, but not from any particular lawyer's cases. On October 27, 1993, Judge Frank formally added the Fowler, White law firm to his recusal list. On December 26, 1995 the Fowler, White firm was removed from the recusal list and on January 8, 1998 the Fowler, White firm was again added to the recusal list. (Resp. Ex. No. 2). This was shown by the clerk's records from the Second District Court.

#### **Prosecution Arguments**

When reduced to their essence, the prosecution asserts that Judge Frank became overly involved in his daughter Stacy's divorce case and was instrumental in obtaining, through Judge Chris Altenbernd, the services of attorney George Vaka to represent her on appeal. As an outgrowth of the animosity in the divorce case, the prosecution contends Judge Frank filed a grievance against attorney Straley and that Judge Frank gave false or misleading testimony in the grievance proceeding concerning his involvement in the case and his contacts with Judge Altenbernd who initially contacted Mr. Vaka. The alleged false testimony concerned the details of exactly how and under what circumstances Mr. Vaka came to represent Stacy Frank.

After Judge Frank's affidavit resulted in the Bar's filed grievance, it is asserted that Judge Frank used his influence as a judge in attempting to control the grievance process. He put pressure on the Bar staff counsel throughout the entire case. When the Bar grievance ended in favor of Mr. Straley, Judge Frank was angry and was asserted to have further used his position and influence in a manner unbecoming to his judicial office to pressure the Bar into taking steps against the staff who had, in Judge Frank's view, mishandled the grievance.

As a backdrop throughout all of this, Judge Frank is accused of failing to recuse himself or at least advise counsel and clients of his relationship with Mr. Vaka in the cases in which Mr. Vaka appeared in the Second District Court of Appeal before Judge Frank. The prosecution contends that Judge Frank's impartiality would reasonably have been questioned by attorneys opposing Mr. Vaka had they known of the facts concerning Vaka's representation. The prosecution points out that Mrs. Pat Frank had loaned Stacy Frank \$30,000 for expenses in her divorce and that Vaka, who was working at a reduced fee, may have benefitted.

#### **An Appearance of Impropriety**

The prosecution admits and stipulates that there is no assertion of actual improper conduct against Judge Frank concerning any case assigned to him. (T.539-40). The prosecution contends only that Judge Frank is guilty of creating an appearance of

impropriety and that he should be reprimanded for such conduct. The prosecution asserts any lawyer who knew the facts may reasonably have questioned Judge Frank's impartiality. The prosecution also relies on a statistical won/loss record of cases which Mr. Vaka won when Judge Frank was on the panel. (Pros. Ex. NO. 4,5). Statistically, Mr. Vaka won more often when Judge Frank happened to be one of the three judges deciding the case. Again, the contention is only that this would create an appearance of impropriety.

As to the Weber matter, this also involved an acrimonious divorce in which daughter Hillary Frank found herself. An unfortunate argument occurred between Hillary Frank and her estranged husband Craig Weber. Hillary called and asked for her parents' assistance and protection at the residence previously occupied by the Webers. Judge Frank and Mrs. Frank hurried to the scene of the argument. Craig Weber had left by then and Judge Frank had a brief phone conversation with Mr. Kurt Weber who was Craig Weber's father and a co-owner of the Weber residence. The prosecution asserts, with supporting testimony from two Weber family members, that Judge Frank made verbal threats over the phone to use his judicial power against Craig Weber. (T.395,412). Judge Frank himself and the other members of the Frank family who overheard the phone conversation, testified directly to the contrary denying that any threats occurred. (T.146,541,578).

## Specific Findings--Counts I, II and III

### COUNT I-Grievance Testimony

The Commission finds that Count I has been proven true in part. The Count asserts that Judge Frank made statements to a St. Petersburg Times reporter, that he filed a grievance complaint against Straley and that he testified falsely before the grievance committee. The Commission concludes that the important and essential allegations here, as stated in the title of Count I, is the sworn Grievance Testimony. Thus, no specific findings are made in regard to the alleged unsworn statements made to the reporter nor the assertion that Mr. Straley had "inspired" adverse comments in the newspaper.

The Commission does conclude that the testimony before the Grievance Committee was untrue and misleading. Judge Frank stated: "I have studiously stayed away from Stacy's divorce litigation" and "I never discussed with Chris Altenbernd the representation of my daughter, to the best of my knowledge." As a matter of fact, based on the clear and convincing evidence, the Commission concludes that Judge Frank had not stayed away from the divorce litigation and that, in fact, he had discussed the representation of his daughter with Judge Chris Altenbernd. Even though Stacy Frank's name may not have been expressly mentioned in this conversation between Judge Altenbernd and Judge Frank, we conclude that both fully understood that the appellate representation of Stacy Frank was

being discussed and as a result of that conversation Judge Altenbernd contacted Mr. Vaka and asked him whether he would be interested in taking on the appellate representation of Judge Frank's daughter.<sup>4</sup> Judge Altenbernd was entirely proper in making the inquiry of Mr. Vaka and Judge Altenbernd certainly did not attempt to actually retain Mr. Vaka at the request of Judge Frank. Stacy Frank was a lawyer and an adult and Mr. Vaka simply expressed a willingness to discuss the matter of her representation with her. (T.486-7). This would have been a new area of practice for Mr. Vaka. Stacy Frank made her own decision to hire Mr. Vaka. (T.637-8).

The Commission finds that the grievance testimony quoted above was untrue and misleading and violative of the Code of Judicial Conduct.

#### **COUNT II--Failure to Recuse or Advise Counsel**

Count II charges that attorneys opposing Mr. Vaka before the Second District Court of Appeal on any panel including Judge Frank, might reasonably question Judge Frank's impartiality. This count deals with both recusal and a failure to advise. The Commission concludes that there has been no clear and convincing proof that Judge Frank was required to recuse himself on cases involving Mr. Vaka, but that the evidence does show clearly and convincingly that

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<sup>4</sup>At this point in time, there was no divorce litigation on appeal in the Weber family.

he should have advised counsel of the fact that he had been involved in Mr. Vaka taking over the appellate representation.

Judge Frank presented the testimony of Judges Schwartz, Webster, Lazzara and Campbell on this and other issues. Each of these judges are extremely well-respected members of the judiciary and each of them testified unequivocally to the extremely high reputation of Judge Frank for honesty and ethics. (T.432,449,524,556). This testimony is accepted and we fully recognize Judge Frank's reputation.

Each of these four judges testifying on the issue were asked whether there was a difference between the standard for disqualification and the standard for advising counsel of facts which would reasonably warrant an attorney in questioning a judge's impartiality. There appears to be no clear rule other than case law on the subject of disqualification by an appellate judge. As stated in Carlton at p. 1216, the decision is a "personal and discretionary" matter with each individual judge. Judge Schwartz testified that there was "perhaps" a difference between the test or standards for recusal and disclosure. (T.439). Judge Webster testified that the issue was uncertain and that he personally did not know if there was a difference between the standards for disqualification and disclosure. (T.462). He did agree that, hypothetically, a lawyer would want to know if an appellate judge had an indirect financial interest in an attorney's representation

of a family member at less than a market rate. (T.469-70). Judge Lazzara testified that in his view the standards for recusal and disclosure were basically the same. (T.540). Judge Campbell testified that he did not know if there was or should be a difference between the test for recusal and the test for disclosure. (T.572-575).

Despite the above testimony, the Hearing Panel concludes, by clear and convincing evidence, that Judge Frank was at least required to have disclosed the Vaka relationship, and that his failure to do so has created an appearance of impropriety. We note that the prosecution has stipulated that there is no attempt to prove that Judge Frank actually was influenced in the slightest by Mr. Vaka's presence in any case nor was he influenced in any way by the fact that Mr. Vaka was representing his daughter charging her at the rate of \$100 per hour rather than at some higher hourly rate which Mr. Vaka might have exacted. Further, the prosecution's statistical analysis prepared by the Clerk of the Second District Court of Appeal arguably demonstrates that Mr. Vaka won more cases when Judge Frank was on the panel than when he was not on the panel. The Commission discounts this evidence and does not rely upon it. There are too many factors which the statistical analysis does not consider. The same kind of analysis could have been done in regard to any judge on the Second District and Mr. Vaka's statistical won/loss record is irrelevant.



The factors, based on the evidence, which support the Commission's conclusion that disclosure of the Vaka-Frank relationship was necessary and required by the canons are here listed and briefly discussed.

While we conclude that Judge Frank was required to disclose the Vaka relationship, we do not suggest that this is required in every situation where a lawyer represents the adult son or daughter of a sitting judge in an isolated litigation matter. However, the Frank-Straley controversy was clearly out of the ordinary and by no means an isolated event. The entire matter became a cause celebre in the Tampa-Lakeland legal community and Judge Frank clearly should have recognized this. The case had directly affected Judge Frank's duties on the court--he ceased hearing all similar cases.

Mr. George Vaka appeared frequently in the Second District Court of Appeal. Prior to taking over the representation of Stacy Frank, he had handled 78 cases before the Second District. (T.478). Approximately 99% of his cases were insurance company cases and his initial appearance in a dissolution matter which was highly publicized was itself a matter of notoriety.

Opposing counsel and parties could have been aware of Mr. Vaka's representation of Stacy Frank, but would have had no way of knowing of Judge Frank's confidence in Mr. Vaka or the apparent role he played in arranging for the representation through Judge Altenbernd. There is no reason why Stacy Frank could not have made

the inquiry of Mr. Vaka herself. The manner in which it was handled indicated to Mr. Vaka, according to his testimony, that Judge Frank wanted him involved. (T.486-7,496-7).

Judge Frank was not completely candid in his statements to the newspaper and certainly not in his testimony to the grievance committee, which we have found to be untrue.

Judge Frank was intensely involved and interested in his daughter's divorce case and became extremely adverse to Mr. Straley. This is certainly not an uncommon occurrence in hotly contested dissolution litigation and Judge Frank's conduct, as a parent, is well understood. However, a judge is a judge 7 days a week, 24 hours a day and must act accordingly.

Judge Frank and his wife loaned Stacy Frank \$30,000 to assist her in paying her attorney's fees. Again, Judge Frank should have realized that this loan was an additional indirect link to the litigation and to Mr. Vaka. Obviously, the loan could have been used to pay Mr. Vaka. For proper reasons of his own, Mr. Vaka was charging Stacy Frank at a reduced hourly rate. Even though Judge Frank was not responsible for the reduced rate, he well-knew it subjected him to suspicion.

Throughout this entire matter, Judge Frank was well-aware that the dissolution case was of great notoriety. At no point did he simply choose to say "no comment". In fact, it is apparent that at almost every opportunity he let it be known that he was a sitting

District Court of Appeal Judge. (T.314,367).

After the Fifth District sitting as the Second District, issued the initial Straley opinion, Judge Frank chose to disqualify himself in all domestic relations cases. Such cases are a major portion of the Second District's workload and this was a major step and totally out of character for Judge Frank. This step clearly indicates the intensity of Judge Frank's interest and feelings concerning his daughter's divorce case. The lawyers and litigants before the Second District would not have known that Judge Frank no longer sat on divorce cases, but did continue to sit on cases handled by the lawyer he had recommended to his daughter to right what Judge Frank viewed as a very serious wrong.

Based on all of the above, we conclude that Judge Frank should have disclosed the facts concerning Mr. Vaka's representation of his daughter to counsel opposing Mr. Vaka. Of course, a very simple solution would have been for Judge Frank to simply add Mr. Vaka to his recusal list. We find that this failure to disclose constitutes a violation of Canon 3 of the Code of Judicial Conduct.

#### **COUNT III--Interference with Grievance Procedure**

Based upon all of the evidence, the Commission concludes that Judge Frank improperly asserted his judicial position and the power of his office in a manner unbecoming to his office in regard to the grievance case against Mr. Straley. Judge Frank certainly had the

right to file a complaint with the Bar regarding Mr. Straley. However, thereafter he continually attempted to control the process and even after the grievance was determined in Mr. Straley's favor he exerted pressure against The Florida Bar and made serious accusations against Bar staff for allegedly mishandling the matter. We note that Judge Frank has apologized and, in retrospect admitted that he should have been "more gentile" and that he overreacted. However, the Commission finds that his conduct amounts to an abuse of power and lessens the confidence of the public in the judiciary. His conduct, by clear and convincing evidence, was improper and violative of the Code of Judicial Conduct.

#### **COUNT IV--The Weber Matter**

The prosecution asserts that Judge Frank threatened to use his judicial office in an improper manner in a brief telephone conversation with Mr. Kurt Weber. The testimony on this issue was so disputed that the panel was unable to resolve the conflicts and reach any conclusion based on clear and convincing evidence. Accordingly, in the absence of clear and convincing evidence Count IV is dismissed.

#### **Disputes at Hearing**

A dispute arose at the hearing concerning when Judge Frank first became aware of the investigation by the Commission's Investigative Panel. General Counsel to the Investigative Panel, Thomas C. MacDonald, was called as a rebuttal witness at the

request of the Hearing Panel. (T.684). Mr. MacDonald's testimony was contrary to Judge Frank's testimony before the Hearing Panel, and although the Panel does not rely upon it for its decision herein, we find that Judge Frank was not candid in his testimony on this issue. We do not detail this finding further because it plays no part in our decision. See In Re Davey, 645 So. 2d 398 (Fla. 1994).

#### **Violations of the Cannons**

Judge Frank has been charged with violating Cannons 1, 2 and 3 of the Code of Judicial Conduct. Cannon 1 mandates that a judge shall uphold the integrity and independence of the judiciary and we conclude that Judge Frank has violated Cannon 1. Cannon 2 requires that a judge shall avoid impropriety and the appearance of impropriety in all of the Judge's activities. We conclude that Judge Frank's conduct constitutes an appearance of impropriety and that he is in violation of Cannon 2. Cannon 3 requires that a judge shall perform the duties of judicial office impartially and diligently. We conclude that Judge Frank has violated the disqualification requirements of Cannon 3. The commentary under Cannon 3E(1) provides in part:

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

The Hearing Panel finds that Judge Frank should have disclosed the matters as outlined above concerning his relationship with counsel

representing his daughter.

**RECOMMENDATION**

The Hearing Panel recommends that Judge Frank be found guilty of the charges as described above and to have violated Cannons 1, 2 and 3. The Commission recommends that he be reprimanded for his conduct by the Court.

DATED on December \_\_\_\_, 1998.

FLORIDA JUDICIAL QUALIFICATIONS  
COMMISSION

By: \_\_\_\_\_  
JUDGE FRANK N. KANEY, Chairman  
Hearing Panel, Florida Judicial  
Qualifications Commission  
Room 102 The Historic Capitol  
Tallahassee, Florida 32399-6000  
850/488-1581

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy hereof has been furnished via overnight delivery to **MICHAEL C. ADDISON**, Counsel for Judge Frank, P.O. Box 2175, Tampa, Florida 33601-2175 and **STEVEN A. WERBER**, Special Counsel for the JQC, 200 Laura Street, P.O. Box 240, Jacksonville, Florida 33201-0240, this \_\_\_\_\_ day of December 1998.

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