IN THE SUPREME COURT
OF FLORIDA

CASE NO.: 92,913

INQUIRY CONCERNING A JUDGE NO.: 97-376
RE: STEVEN P. SHEA

PETITIONER'S ANSWER BRIEF
IN RESPONSE TO ORDER TO SHOW CAUSE

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

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PREFACE[1]

Judge Steven P. Shea seeks review of the "Findings, Conclusions and Recommendations" of removal and sanctions submitted by the Judicial Qualifications Commission ("JQC") on March 19, 1999, pursuant to Fla. Const. art. V, section 12(f). In his 86 page response to this Court's "show cause" order, Judge Shea ignores the record and skews all of the facts in his own favor. Because the JQC's findings and recommendations are accorded great weight, In re Kelly, 238 So. 2d 565, 571 (Fla. 1970), cert. den., 401 U.S. 962, 91 S.Ct. 970, 28 L.Ed 2d 246 (1971); In re Graziano, 696 So. 2d 744 (Fla. 1997), and are supported by clear and convincing evidence when the record is construed in its proper light, it is respectfully submitted that those findings and recommendations should be approved. Moreover, removal is the only appropriate remedy for abuse of judicial power to obtain a personal pecuniary advantage and to punish a judge's "enemies" for perceived slights.

STATEMENT OF THE CASE

Special Counsel does not accept the Judge's statement of the case, because it is argumentative and inaccurate. The following is therefore substituted.

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[1] All references are to the docket entries of this Court's clerk (D.E.), the transcript of the trial (T.), specific trial exhibits (Ex. __), and the entire Shea deposition in evidence ("Shea depo." ___). All references to the Hearing Panel findings are denoted ("Findings ___"), and to Judge Shea's initial brief are signaled (I.B. __).

Judge Steven P. Shea, a circuit court judge for the 16th Judicial Circuit, Monroe County, was formally charged with 33 violations of the Code of Judicial Conduct, Canons 1, 2, 3 and 5(g), subsequently amended to 37. (D.E. 1, 74). He was initially represented by the law firms of Holland & Knight (Miami); McFarlain Wiley Cassedy & Jones (Tallahassee); and Mattson & Tobin (Key Largo). (D.E. 11, 39, 40). The defense sought and received an extension of time to answer the formal charges. (D.E. 33, 53).

Judge Shea's answer to the formal charges, filed May 29, 1998 incorporated by reference his "entire 444 page Rule 6(b) Investigative Hearing response...." The answer denied any violations of the Judicial Code and sought attorneys fees under §57.105, Fla. Stats. (a statute inapplicable to JQC proceedings) for the filing of frivolous charges. (D.E. 53).[2]

Special Counsel produced their witness list as early as May 28th, 1998; it was timely supplemented, and the witness areas of testimony broken down and summarized. (D.E. 63, 342-43). The formal hearing was originally set for July 27, 1998. (D.E. 101). At the Judge's request, the hearing was continued until November so

[2] Judge Shea made a demand for the case to be tried at the Plantation Key Courthouse, a very small facility. (D.E. 53). JQC Rule 9 requires the final hearing to be held on demand in the Judge's "county of residence." That is precisely where the case was tried – in Monroe County (at the Federal Courthouse in Key West). Judge Shea also moved to disqualify the hearing panel chairman. (D.E. 30). The facts pertaining to this latter motion are outlined and fully addressed in the Argument section of this Brief.

that his counsel had more time to prepare. (D.E. 85; 118). All told, Judge Shea and his counsel had 6½ months to prepare for his November 16, 1998 trial.

Prior to trial, Judge Shea filed separate motions for summary judgment directed to each and every charge, irrespective of material factual conflicts. (D.E. 176-81; 186-87; 227-40; 317-24; 334-39). Each motion required a response by Special Counsel. (D.E. 271-74; 282-83; 292; 294; 298-99; 301-05; 312; 358-71; 373; 379-80; 383-85). Each was ultimately denied pretrial. (D.E. 330; 351).

The Judge's own trial exhibits were placed into evidence by Special Counsel on the first day of trial. (T. 6). Special Counsel called 24 witnesses and concluded their entire case in 3½ days. (T. 1166). After the presentation of evidence, Special Counsel streamlined the case by dropping twelve of the charges. (T. 1163).

The defense called 53 witnesses.[3] It presented its case for 1½ days in November, and four days during December 14, 1998 through December 18, 1999. The transcript is 2,982 pages long. The record further includes multiple exhibits, including depositions. (T. 1161-62; 1164; 2939; 2698).

The Hearing Panel consisted of the Chairman, Circuit Judge

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[3] The Hearing Panel Chairman did not restrict Judge Shea's presentation of favorable evidence, as implied, stating early on that "[I]'m not going to rein you in .... I'm not going to make any effort to direct it or slow it down. This is Judge Shea's career, and I'm going to let you all do whatever you think you want to do...." (Proceedings 12/14/98, T. 16).

Frank N. Kaney, Third District Court of Appeal Judge James Jorgenson, attorneys Rutledge Liles and Evett Simmons, and lay members Nancy Mahon and Bonnie Booth. Special Counsel were Lauri Waldman Ross and Eileen Tilghman, with attorney Thomas C. MacDonald, Jr. serving as their advisor. Attorney John Beranek served as counsel to the hearing panel. Judge Shea was represented at the trial by James S. Mattson of Mattson & Tobin, with the assistance of yet another attorney, James Wattigny. (D.E. 211).

Both parties filed extensive post-trial memoranda (T. 2979). Judge Shea was granted an extension of time to submit his memorandum, and to designate deposition objections to depositions already in evidence. (T. 2980). His memorandum was submitted on January 11, 1999. (D.E. 388). He filed no deposition objections.

Most of the judge's defense was devoted to demonstrating that he "had been the victim of certain judges and lawyers and various public officials and court personnel in the Florida Keys." (Findings, p. 1; T. 56, 57, 61, 72, 1355, 1943-79; 1981-2036). The JQC Hearing Panel flatly rejected this defense and "based upon the extensive evidence, conclud[ed] that there has been no showing of a plot or anything similar to a plot against Judge Shea." (Findings, p. 2). The JQC hearing panel found Judge Shea guilty of eighteen charges, by clear and convincing evidence, and acquitted him of seven other charges.

According to the Initial Brief, "[n]ot one of the 18 charges against Judge Shea relate in any way to bench conduct ..." or

"impugns Judge Shea's judicial temperament... ." (I.B. p. 5). In contrast, in 65 pages of extensive findings and conclusions, the Hearing Panel found Judge Shea guilty of 18 separate counts of misconduct in office, with most, if not all of the charges, involving some element of abuse of judicial power in a vindictive, retaliatory and abusive manner. (Findings, pp. 9-58). As to Judge Shea's "judicial temperament," the Hearing Panel wrote:

> [J]udge Shea was in office just over three years and his frequent resort to threats of contempt and to ethical referrals to the Florida Bar are a very poor commentary on his judicial temperament.
>
> Judge Shea used the full power of his office as a bully pulpit to punish his perceived enemies. These "enemies" included individuals such as Ms. Baptiste and others whom he perceived to have voiced criticism of him. (Findings, p. 61, emphasis added).

As to its recommendation that this Judge be "permanently removed from office," the Hearing Panel found that "Charge 1, standing alone, is sufficient to warrant Judge Shea's removal from office." (Findings, pp. 60 and 65). This serious charge involved threats made by the Judge to two lawyers, practicing before him, which forced their withdrawal from representing a particular client.

Judge Shea, did not, as suggested, merely "initiate telephone calls to his attorney-friends" to advise them of a conflict of interest. (I.B. pp. 28, 70-71). Instead, the Hearing Panel found as fact that:

> Judge Shea used the power of his office and verbal threats to force a law firm to withdraw from the representation of its client. Judge Shea's threatened recusal on all of the firms cases was specifically intended to deter and did, in fact, deter the law firm's representation. Judge Shea specifically warned the firm that his potential recusal would adversely affect the law firm economically, as well as its clients, and as a result, the firm was forced to abandon its client against its will. Judge Shea also mentioned a sum of money he sought for his mobile homes, which would result in withdrawal of his threatened blanket recusal. Clearly, Judge Shea was acting with his personal financial interests in mind. (Findings, p. 60, emphasis added).

The Hearing Panel found "an unfortunate pattern of vindictiveness" and, by the constitutionally-mandated, affirmative vote of no less than two-thirds of its members, recommended Judge Shea's permanent removal from office. (Findings, p. 60-61). Judge Shea now seeks review.

STATEMENT OF THE FACTS

In the words of Aldous Huxley, "[f]acts do not cease to exist because they are ignored." Judge Shea's brief ignores the overwhelming evidence against him, much of which went without challenge at trial, in favor of reliance on his testimony. This testimony was shown to be untruthful in significant material respects, and was contradicted on nearly every issue by other witnesses, including witnesses called by Judge Shea, other documents, and the Judge's own statements contained in his orders,

transcripts of proceedings before him and his own testimony.[4]

Because the overwhelming evidence on which the Panel's findings were based is clearly unrecognizable in Judge Shea's brief, this new statement of facts follows.

BACKGROUND

Steven P. Shea was elected as a circuit court judge in Monroe County in November 1994. He served in that position from January 5, 1995 until he was suspended from office by this Court on May 7, 1998.

The Plantation Key courthouse is located at Mile Marker 88.8 of the Upper Keys. There is one circuit court judge assigned to that courthouse. The next available courthouse is located at Mile Marker 48.5, in Marathon Florida and is regularly staffed by only one county court judge.[5] The only other courthouse in the Keys is located in Key West. It is currently staffed by three circuit court judges (including the Chief Judge) and two county court judges. Thus, Judge Shea was the only regularly assigned circuit court judge within 89 miles in Monroe County. (T. 96, 156, 2824).

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[4] Inherent in the Judge's reliance on his testimony in the face of vastly contradictory evidence is the notion that his testimony is more reliable simply by virtue of who he is. In the law's sight, however, every person's evidence has equal weight, with credibility disputes resolved by the fact-finder. See Shaw v. Shaw, 334 So. 2d 13 (Fla. 1976); Westerman v. Shell's City, Inc., 265 So. 2d 43 (Fla. 1972). The JQC Hearing Panel served was the fact-finder here.

[5] Two circuit court judges rotate in and out of the Marathon Courthouse to hear civil cases.

A. FORMAL CHARGE 1 – Threatening Recusal in Order to Reap a Personal Pecuniary Benefit.

At least 12 pages of the JQC report are devoted to the facts surrounding Charge 1, which the Hearing Panel deemed sufficient, standing alone, to warrant Judge Shea's removal. (Findings, pp. 9-19, 60). Judge Shea's response is buried at pages 24-26, 69-74 of his Initial Brief. The facts are these.

Judge Shea owns two used mobile homes in a mobile home park known as Coral Key Village, Inc. (T. 142). The park was originally owned by his ex-wife's family, the Wagners, up until its sale to the Keller Group in October, 1995. (T. 138). Judge Shea owned no land and had no written lease for the spaces on which his mobile homes rested. (T. 142; Shea depo. pp 153; 156).

On or about October 9, 1997, Judge Shea, as well as the other tenants in the mobile home park, received an eviction notice signed by Tallahassee lawyer Carl Peterson. (Resp. Ex. 6; Shea Depo. p. 158). The president of the homeowner's association at Coral Key Village testified that if the eviction went through, then all of the mobile homes (including Judge Shea's) would have to be destroyed because the cost of removal would exceed the mobile homes' value. (T. 1211). Judge Shea's own expert appraiser George Rosendale further explained that property under the threat of eviction is "worthless." (T. 1334-35).

On October 18, 1997, Judge Shea read in a local newspaper that Keys attorney Nick Mulick represented the new park owners. (T. 85,

86). Judge Shea called Mulick at his home on a Saturday. (T. 85-86). Judge Shea told Mulick that his clients had a poor reputation, were dishonest businessmen, and that they "were from Chicago and if there was a mafia in Chicago, they would be of that ilk." (T. 88).

Mulick informed Judge Shea that he was representing the clients on land use matters only, and that Carl Peterson, in Tallahassee, was handling the eviction. (T. 86). Nonetheless, Judge Shea warned Mulick that Mulick was "adverse to his financial interests" and if he did not withdraw from his representation of Coral Key Village, the Judge would recuse himself on all of the law firm's cases. (T. 87). In that event, said Judge Shea, "you're going to have to go to Marathon at least to try all your cases ..." and "[t]hat's going to cause a hardship for you and your clients." (T. 88). Judge Shea added that this would adversely affect the firm's clients as well as the firm. (T. 95-96).[6]

As the matter stood, if there was no eviction, there would be no reason for Mulick's client to purchase mobiles homes and if there was an eviction, the mobile homes were worthless. Judge Shea nevertheless suggested that if Mulick's clients were to buy his mobile homes for a total of $150,000, then "he would no longer be involved in the case" and "he would not be forced to withdraw." (T.

[6] After much equivocation in his deposition and at trial (Shea depo. pp. 201-07; T. 2462-2494), Judge Shea finally admitted that this "[m]ay well have been said." (T. 2824).

90). Mulick described the Judge as "very agitated" and described the pressure brought to bear on him as follows: "Judge Shea wanted us to either get off the case or to have ... the mobile homes bought." (T. 92).

Judge Shea also pressured Karl Beckmeyer, Mulick's partner, who was not involved in the representation at all. (T. 154-55). Judge Shea reiterated to Beckmeyer that he was adverse to the Judge's economic interests. (T. 155). Beckmeyer was "dumbstruck." (T. 155). Judge Shea was very threatening in his manner and said "I'm going to recuse myself from all of your cases and you're going to have to go to Marathon and Key West for all of your hearings and trials." (T. 155). During his phone call to Beckmeyer, Judge Shea again stressed that his recusal would have a major financial impact on the firm because clients would either have to pay more for its legal services or the law firm would not get paid for its time driving to and from its offices in Key Largo to Marathon or Key West. (T. 155-56). Beckmeyer termed the calls "absolutely inappropriate." (T. 161). As a result of the Judge's threats, both lawyers felt they had "no choice." They, accordingly, withdrew, requiring their client to secure other counsel. (T. 95; 158).

Judge Shea's suggestion that he merely called "his friends to advise of his ownership interest and the conflicts his representation posed" (I.B. p. 71) was expressly negated on this record:

Q. At the time when Judge Shea made this phone

call to you personally, could you tell us please whether he was simply informing you in some informative matter about the fact that there was some type of conflict of interest?

A. (Karl Beckmeyer) It was definitely what you – not what you described. He was not simply making a head's up call to say, "Hey there's a conflict of interest," no. (T. 159, emphasis added).

It was likewise negated by the Judge's own answer, which characterized all of his telephone discussions with the Beckmeyer & Mulick firm as "in the nature of settlement discussions as a private litigant." (Shea depo., p. 158).

Judge Shea claims that Mulick was "disingenuous" with him, and argues that evidence as to his conduct was "sharply disputed." (I.B. p. 71, 73). To determine that the Hearing Panel's resolution of these credibility disputes against the Judge was warranted, one need only compare the very specific testimony given by the lawyers about the Judge's telephoned threats (T. 82-132; 155, 182), to Judge Shea's vague, rambling, inconsistent, and, at times, incomprehensible responses to all questions asked of him on this charge (Shea depo. pp. 159-60, 173-76, 184-186; T. 2444-2505; 2817-2831; 2900-2908).

According to Judge Shea, the lawyers initiated the subject of money when they called him back together on a speaker phone to his office. (Shea depo. pp. 187-91).

Q. So you were not the first person who raised the subject of money, is that your testimony?

A. I would not have, because my place was not for

sale on Lot 6.

Q. Well, you didn't raise a specific sum of money?

A. Well, they got talking as to, what do you think your places are worth? I said: I think one is worth about 100,000 and the other is worth 50,000. (Shea depo. pp. 191-92).

These claims were flatly rejected by the lawyers. Mr. Mulick testified:

Q. Now Mr. Mulick, who was it who raised the subject of money and linked it to recusal?

A. Judge Shea. I did not discuss - I did not initiate discussion about buying mobile homes. (T. 89, emphasis added).

Other evidence was corroborative of the lawyers. Lee El Khoury, one of the Judge's judicial assistants, heard his part of a phone conversation. While she did not recall any other details, she was absolutely certain that the Judge mentioned the sum of $150,000. (T. 1434-35).

Judge Shea attempts to equate his telephoned threats to the situation where a judge maintains a pre-filed recusal list for attorneys with whom he shares a special relationship. (I.B. p. 74, n. 33). This also ignores the evidence of record. As Mr. Beckmeyer testified:

Q. You were asked whether it was unusual for a judge to recuse himself in a case. That's not unusual, is it?

A. No. Judges recuse themselves from time to time.

Q. What was unusual to you about what happened

with Judge Shea in the Coral Key Village case?

A. Well, what was unusual was that he called me up and threatened me and said that if I didn't drop them as a client that he was going to recuse himself.

* * *

Q. And other then the instance with Judge Shea, had you ever known a judge to link such a threat to money?

A. No. (T. 184, emphasis added).

During the proceedings, Judge Shea characterized the lawyers as very good friends, with whom he shared both professional and personal relations. (T. 2444-46). Hearing Panel member Rutledge Liles got right to the heart of the matter with his questions to the Judge, regarding both lawyers' lack of any incentive to lie. (T. 2906). Judge Shea had no response (T. 2906-07). The judge conceded that Mulick was a "very honorable man," (T. 2906-07) and his trial counsel agreed in closing that he, personally, had known Mulick for a long time and didn't know him "as someone who would lie." (T. 2973).

In questioning Judge Shea's credibility, the Hearing Panel not only relied on the specifics of the conversations given by the lawyers, but on the numbers which showed the pecuniary benefit Judge Shea was seeking. Judge Shea obtained the limited interest he had in the mobile home on the more expensive waterfront lot by effectively paying his ex-wife $20,000 for her interest in the mobile home in December 1995. (T. 2901).

At the Judge's behest, George Rosendale prepared an appraisal of the Shea mobile homes for this trial, estimating that they had a combined value of $141,000, with $108,000 pegged for the waterfront lot. (T. 1323). The effective date of the appraisal was November 30, 1997, because Judge Shea told Mr. Rosendale that he received his eviction notice on December 1, 1997. (T. 1338). In fact, it was beyond dispute that Judge Shea received his notice of eviction on October 9, or well before the date he told his appraiser to consider. (T. 1335). The bad information on which the appraiser relied to prepare his appraisal came directly from the Judge. (T. 1338). In addition, Judge Shea – who had actually prepared the prospectus for the mobile home park when he was a lawyer (T. 139), failed to inform his appraiser that he only had an oral one year lease for the land. (T. 1343).[7] Nevertheless, the Hearing Panel gave Judge Shea the "benefit of the doubt" as to whether his conduct with regard to the appraisal he presented at trial was "deliberately misleading," and likewise refrained from finding that he was intentionally seeking an inflated amount. (Findings, p. 16). It concluded nonetheless that "the conflicting evidence surrounding the value of the property raises serious questions about the credibility of Judge Shea's testimony and contemporaneous intentions...." (Findings, p. 16).

[7] The appraisal was based on "comparables" of fee simple ownership, rather than the limited oral tenancy owned by Judge Shea. (T. 1334-35).

In sum, the overwhelming evidence establishes that Judge Shea clearly "abused his office and intimidated counsel into withdrawing from their representation of their client," and made "unsolicited and improper comments" in an attempt to come between the law firm and its client. (Findings, p. 18). Judge Shea not only "used the power of his office and verbal threats to force a law firm to withdraw from the representation of its client," he also "linked a sum of money to the withdrawal of his threat." (Findings, p. 60). While Judge Shea had every right to protect the value of his property, he "wrongly used his judicial office to promote his own financial interests." (Findings, pp 18-19).

B. FORMAL CHARGE 2 - Punishing a Litigant for Petitioning the Governor

Judge Shea asserts that the JQC's finding of this Code violation is "not supported by any competent substantial evidence." (I.B. p. 34). The record is as follows.

Joan Baptiste was divorced from her husband in Key Largo. Baptiste v. Baptiste, Case No. 93-20227-FR-04. (T. 457). She moved to Delaware with their five children in 1994 to finish her education. (T. 457-58). Mr. Baptiste fell chronically behind in child support payments, and the Department of Child Support Enforcement repeatedly took him to court before Judge Shea to obtain back payments, without success. (T. 458-59). Mr. Baptiste simply ignored all court orders, including Judge Shea's. (T. 459).

On April 6, 1997, out of money, and fraught with concern for

her children's well-being, Ms. Baptiste wrote a letter to Governor Chiles. (T. 459, 461-62). Judge Shea characterizes this letter as a "direct, no holds-barred attack on the integrity of the Monroe County circuit bench and Judge Shea." (I.B. p. 35). The letter is therefore set forth in full in an Appendix for the Court's own consideration (Resp. Ex. 13, App. "A").

In the course of a hearing set to hold Mr. Baptiste in contempt on May 8, 1997 for non-payment of child support, the Department handed Judge Shea a copy of Mrs. Baptiste's letter. (T. 2537-2539). Days later, Judge Shea issued an order "directing Joan Baptiste to show cause why she should not be held in indirect criminal contempt," finding that "the attack upon the Court [through the letter] may constitute an indirect criminal contempt of court." (Resp. Ex. 14). Despite knowledge of Ms. Baptiste's lack of funds to travel, Judge Shea ordered her to appear in Key West, Florida for the contempt hearing. (Resp. Ex. 14). Only then did he recuse himself. (Resp. Ex. 14). Ms. Baptiste's attempts to obtain child support - the reason for the hearing - were delayed as a result. (T. 476-77).

Judge Shea had this order personally served on Ms. Baptiste at her home in Delaware. (T. 463). This action frightened Ms. Baptiste, as well as her children, and the aged mother for whom she was the sole means of support. (T. 463). Ms. Baptiste had no funds to travel and was not informed that she could attend the hearing by telephone. (T. 463; 466). She was upset that Judge Shea was using

his power to intimidate her simply because she had disagreed with the way he was enforcing his orders. (T. 464). Ms. Baptiste was forced to expend funds she did not have in her effort to obtain representation. (T. 465). That Judge Shea's order had a great impact on her confidence in the judiciary because, "I felt like if I can't turn to the Court to help me with this, there is no other place." (T. 467).

Contrary to suggestion, (I.B. p. 34) there is no evidence that Ms. Baptiste lied in her letter. Ms. Baptiste testified at the hearing and was found by the JQC to be a "very credible" witness. (Findings, p. 21).[8]

Even the attorney for the husband was taken aback by this order because Ms. Baptiste "hadn't been ordered to do anything" (T. 382-83) and "a rudimentary understanding of First Amendment for - about any public servant - [is] that the people you work for have the right to criticize your performance." (T. 384).

C. FORMAL CHARGE 3 - Threatening to Put the Upper Keys Guidance Clinic out of Business

The Upper Keys Guidance Clinic is a private non-profit community mental health clinic (T. 496-97). Early in his tenure as

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[8] Judge Shea disputes the panel's finding that his show cause order (App. "B") made it appear he was ruling on a "motion for contempt pending against Joan Baptiste when, in fact, no such motion was pending against her." (I.B. p. 37, n. 22). That is precisely the case since his order makes it appear as though the motion for contempt was filed <u>against</u> Ms. Baptiste for her "fail[ure] to appear." No order was in effect requiring Ms. Baptiste to appear, and the only motion for contempt was the one <u>filed on her behalf</u> by the Department. (T. 381-82).

a judge, Judge Shea was specifically advised by Dr. Matthews, its Executive Director, that the clinic does not provide custody or visitation evaluations. This type of service was simply outside the scope of the agency's policy. (T. 512). Judge Shea was reminded of that policy by the clinic in writing on January 7, 1997, after he tried once again to bend the clinic to his will. (T. 501, 532; Shea depo. pp 91-92, and Depo. Ex. 2).

Despite his knowledge, Judge Shea continued to insist that the Clinic perform these services. On June 13, 1997, in Wood v. Wood, Judge Shea ordered Mr. Wood to undergo a psychological evaluation with Barbara Martin at the clinic. (T. 479-80). The order was not directed to Barbara Martin. (T. 386-87; 485; Resp. Ex. 47).

Contrary to Judge Shea's suggestion, Dr. Martin did not "mistakenly believe she had been directed to do a custody evaluation". (I.B. p. 9 n. 7). Dr. Martin did an ordinary "psychosocial assessment" of the patient, and asked the patient why he was there. (T. 504). As a result, she learned that he was referred by the Judge to determine issues of visitation and custody. (T. 504; 506). Dr. Martin advised the patient, the guardian ad litem, and through them, Judge Shea, about the clinic's policy. (T. 486-88).

In response, on July 3, 1997, Judge Shea served Dr. Martin with an order to personally appear before him and to show cause "why she should not be held in indirect civil contempt of court for her failure to comply" with the prior order. (T. 489-90; Resp. Ex.

54, App. “C,” emphasis added). Dr. Martin, Dr. Matthews, (Dr. Martin’s superior) and their counsel, all appeared in response to Judge Shea’s show cause order on July 15th, 1997. (T. 385; Resp. Ex. 54). Counsel pointed out that there was no order in effect directing Dr. Martin to do anything. (T. 388).

At the show cause hearing, Judge Shea was very angry. (T. 491; 493). He vented his frustration that other facilities had “jumped through hoops” for him, while this clinic did not. (T. 493-94; Resp. Ex. 64). Judge Shea telegraphed that his next action would be “to talk to whoever funds the guidance clinic to see if we can take the funds and put it in a facility who is willing to provide some services to the court.” (Resp. Ex. 64, p. 4). He also threatened the clinic with “more drastic action.” (T. 494). Shortly thereafter, Judge Shea issued orders terminating the therapeutic treatment of two juveniles by the clinic. (T. 507-08). Judge Shea further called the Department of Corrections, with whom the guidance clinic had a contract, and ordered the department to send no further patients to the clinic. (T. 513, 537).

The clinic’s Chief Executive Officer, Richard Matthews, was flabbergasted at the Judge’s action. (T. 509, 2364). As he testified: “I had assumed that the judge and I had a similar course. We were both trying to help children in the Upper Keys and I saw this as a rather vindictive act.” (T. 509). He termed the Judge’s action in cutting off services for two children based upon his anger at the clinic, “reprehensible.” (T. 508).

Judge Shea went further. Under the impression that Dr. David Rice, the Chief Executive Officer of the Guidance Clinic of the Middle Keys, (a different clinic) was Dr. Mathews' supervisor, Judge Shea contacted Dr. Rice. (T. 539; Ex. 44, pp. 118-19). Judge Shea told Dr. Rice that he was quite unhappy with the Guidance Clinic's refusal to provide treatment and "that he was going to do everything in his power to affect their funding." (T. 540).

As to what type of action the Judge intended to take and why he was taking it, Dr. Rice detailed:

> At that point in the conversation Judge Shea pointed out to me that the clinic had had a rather embarrassing incident. They for a number of years had had a substance-abuse counselor who had also been in recovery many years, who had, as to speak, fallen off the wagon sometime a few months before that... .
>
> His behavior in the room had certainly gained him a certain amount of notoriety and perhaps negatively upon his professional obligations and perhaps also in some people's eyes the clinic since he had been employed there for many years. Judge Shea referred to this incident, and he indicated that he intended to do - to use the behavior of this individual in a damaging way to negatively impact the treatment program in the Upper Keys. (T. 541, emphasis added).

Dr. Rice was "taken aback" by these statements, and tried to reason with the Judge (T. 542). He told Judge Shea that this was "unfair" and that "you of all people" (with a background in substance abuse) should understand that the best substance abuse counselors are people who have experienced such problems themselves. (T. 542). Judge Shea's telling response was that "yes,

he understood that," but "[w]hen you're in a war, you do whatever you have to do to win it." (T. 543).[9] Dr. Rice took the Judge's statements "as a very serious threat" to the Upper Keys Guidance Clinic. (T. 549). There was hardly a satisfactory resolution of the matter, as Judge Shea belatedly claims. (I.B. p. 10). Dr. Rice's testimony was undisputed at trial, he had no motive to lie, and Judge Shea offered none.

Judge Shea attempts to justify his conduct by implying that the clinic lied to him about its funding. According to his brief, "[a] representation was made to Judge Shea that the clinic received only $98,000 in public funds." (I.B. p. 9). This overlooks and ignores the Judge's own testimony in which he conceded below that no such representation was ever made:

> Q. Was there any specific person who you think misled you specifically as to the funding of the Guidance Clinic?
>
> A. I don't think anyone purposefully misled me as to the funding. This was the information I had received through some paperwork, and I don't remember whether I got it through HRS or wherever.
>
> Q. This is a conclusion that you drew based upon documents that you reviewed?
>
> A. Right.
>
> Q. You weren't misled by anybody?
>
> A. That's correct. (Shea depo. pp. 131-32,

[9] It is this conversation that Judge Shea attempts to minimize in his brief as "private conversations to a long-time friend who ran the Middle Keys clinic... ." (I.B. p. 10).

emphasis added).

Judge Shea also claims that the actions he took toward the clinic stemmed from a well-meaning endeavor to find a solution to a serious problem in his community and that "[e]vidence as to 'vindictiveness' was not present." (I.B. p. 41). Based on the foregoing evidence, the Commission rejected each of these arguments in turn. (Findings, p. 26).

D. FORMAL CHARGE 6 - Judge Shea's Private Agendas and Grievances Chill the Rights of Domestic Abuse Victims

Judge Shea terms his actions towards the Domestic Abuse Shelter, "commendable." He relies on the "rectitude" of his actions, blaming this charge once again on the "rigidity" of the commission and its "over-reaction to the cries of Shelter personnel who were not happy with having to take responsibility for representations they were routinely making in a judicial pleading... ." (I.B. pp. 59 and 60). The facts once again belie his claims.

On May 9, 1997, Judge Shea summoned the Domestic Abuse Shelter staff to his office for a meeting, because he heard from some unknown person at an AA meeting that victim advocate Jane Martin had voiced criticism of him while on a trip out of town. (T. 551-53, 559, 2855; Pet. Ex. 59, pp. 6-7).[10] Immediately thereafter, the

[10] When Jane Martin returned from vacation, she met with the Judge, denied making any such charges, and requested to know the name of her accuser. Judge Shea refused to tell her, citing "AA confidentiality." (T. 558-59).

Judge created his own “certification form” for shelter staff to sign, and began to make claims that the shelter was “fabricating” domestic abuse charges. (T. 556-65).

On May 19, 1997, Judge Shea dismissed a domestic violence claim and issued an order with copies to the State Attorney and Monroe County Sheriff’s department with copies to the State Attorney and Monroe County Sheriff’s department directing “Judy Postmus, Director of Domestic Abuse Shelter [to] review a copy of a transcript of the hearing and the allegations of the petitioner that the Domestic Abuse Shelter staff member fabricated allegations as set forth ...(sic) within the petition and report back to the undersigned judge on or before July 10, 1997.” (T. 564; Pet. Ex. 59, p. 12). Concerned that he was accusing the Shelter of serious misconduct with notice to third parties who were not involved, Ms. Postmus attempted to clear the air with the Judge immediately, (Pet. Ex. 59, p. 12). There was no “fabrication” by the Shelter (T. 564-66, 583-84; Pet. Ex. 59 pp. 13-14).

Shelter staff repeatedly objected to the Judge’s certification form, attempting to explain to the judge in writing that the form identified their whereabouts to domestic abusers, and made them witnesses against the victims they were trying to protect. (T. 557; 576). They ultimately refused to sign the Judge’s form, fearing that his <u>real</u> agenda was to hold them in contempt. (T. 576-77).

On August 18, 1997, Judge Shea sent a letter to the Free Press newspaper, <u>falsely and publicly</u> announcing that the Shelter

"agree(d) with" the use of his form, and detailed his claim that others had accused Shelter Workers of fabrications "in several cases." (T. 566-67; Pet. Ex. 59, pp. 15-16; 19-20; Resp. Ex. 84). On August 22, the Shelter director again attempted to address the problems with the certification in a letter directed to the Judge and scheduled a meeting with the Judge to discuss it. (T. 567; Pet. Ex. 59, pp. 16-18; 20; 21-22). On August 25, 1997, Judge Shea accused the Domestic Abuse Shelter staff of making fabrications and engaging in the unauthorized practice of law. (Pet. Ex. 59, pp. 24-25). Judge Shea cancelled the meeting and shut the door on all further discussions with the Shelter regarding the form. (T. 568, Pet. Ex. 59, p. 28; Pet. Ex. 18).

On September 19, 1997, Judge Shea faxed the Shelter a newspaper article with a negative slant about "exaggerated domestic abuse claims," with a copy directed to the state attorney's office. (Pet. Ex. 19; T. 570-71). The Shelter staff was neither exaggerating nor fabricating claims. (Pet. Ex. 59, p. 31).

Victim abuse advocates at the Shelter were deeply disturbed by the Judge's public pronouncements about their alleged misconduct (T. 571), and contacted Chief Judge Sandra Taylor for advice on what to do. (T. 1110-11; Pet. Ex. 59, pp. 34-35). Shelter staff determined that Judge Shea stood alone in making such claims. (JQC Ex. 59, p. 35).

On December 8, 1997, by a majority vote of the Judges in the Circuit, the Chief Judge issued an administrative order adopting a

"uniform petition for injunction against domestic violence" for the precise purpose of avoiding confusion "that might be caused by multiple versions" of the same petition. (T. 572-53). The "uniform petition" contained no "non-lawyer certificate." (T. 572-73). Judge Shea was not deterred - he simply added non-lawyer certificates to the "Uniform Petition." (T. 1110-11). That placed the Shelter "in the middle" between Judge Shea and the other judges (T. 590). Thereafter, in February, 1998, some two months after the Circuit's adoption of a "Uniform Petition," Judge Shea issued an "Order of Referral to the Florida Bar" referring Shelter Staff to the Florida Bar "for investigation and possible prosecution for the unlawful practice of law...." (T. 573; Shea depo., Ex. 17, App. "D"). The reason -- their failure to execute the form he added to the circuit's "Uniform Petition."[11]

Judge Shea asserts that the record "affirmatively shows that petitions of this nature continued unabated" (I.B. p. 59) and that there is no evidence that he limited the access of pro se petitions to the court. (I.B. p. 58). To the contrary, Shelter Staff testified as follows:

> Q. During this time period when you were having this ongoing discussion back and forth with Judge Shea about the certification form, could you tell us what impact this had on what you were doing with regard to domestic violence?

[11] Judge Shea rescinded his order on March 17, 1998 after learning of this Court's February 26, 1998 ruling that a non-lawyer certificate should not be required. (T. 585, 2587).

A. We stopped assisting petitioners with domestic violence injunctions.

Q. And why was that?

A. Because we were afraid of what Judge Shea would do.

Q. And in fact, when Judge Shea reported you to the Florida Bar, were your fears realized?

A. Oh yes.

Q. Did you ever anticipate that your simple act of attempting to help domestic violence victims might result in serious threats against you personally of this nature?

A. No. (T. 575-76, emphasis added; see also Pet. Ex. 59, p. 36).

In sum, there was competent substantial evidence that Judge Shea "repeatedly disrupted the handling of domestic violence complaints by unilaterally imposing unreasonable requirements on the filing of such petitions," which "unreasonably placed Shelter personnel in jeopardy or at risk in the performance of their assigned duties." His conduct "not only discouraged cooperation between court officials, it had an adverse impact on the administration of justice in the circuit." (Findings, p. 31).

E. FORMAL CHARGES 15 & 16 - Judge Shea's Private Agendas Jeopardize a Capital Case

State v. Overton, Case No. PK 96-30-167-CFA is a capital murder case. Thomas Overton was arrested in December 1996 and charged with the murder of a couple and their unborn child.

On February 18, 1997, Judge Shea held a status conference at which both the state and the defense were represented. Judge Shea

was dissatisfied, nonetheless, because the lawyers sitting second chair for each side failed to appear. On February 21, 1997, the Judge entered an order stating that he was "concerned about the failure of Mr. Ellsworth and Mr. Smith to comply with this Court's order to attend the Status Hearing, and hereby orders all counsel of record to personally attend each hearing in this matter unless otherwise excused in writing by this Court pursuant to Motion." Judge Shea then added, "Failure of counsel to comply with this directive or any other directive of this Court shall result in an immediate referral to the Florida Bar and the Chief Justice." (Resp. Ex. 136; T. 204, emphasis added). This order was copied to the Chief Justice of this Court, i.e. the reviewing court. (T. 204). Judge Shea also announced in open court that he had discussed this matter with the Chief Justice, who was "keeping on eye on this case." (T. 208-09).

Judge Shea asserts that "There is ... no basis for discipline when a trial judge requires the personal appearance of counsel at a hearing." (I.B. p. 42). This patently misstates the issue.

Judge Susan Schaeffer, the Chief Judge of Pinellas County and a recognized expert in capital cases, testified that there was no conceivable justification for Judge Shea to send this order to the reviewing court, or for threatening in advance to report a lawyer to either the Bar or to the Chief Justice. (T. 294-95). Judge Shea's own witness, former Chief Judge Richard Payne, agreed that these were improper ex parte communications with a reviewing court

and violated the judicial canons. (T. 1555-56).[12] Judge Shea himself could offer no justification. (T. 2859). Judge Shea was asked whether he considered his language, "[f]ailure of counsel to comply with this directive or any other directive of this Court in this matter shall result in an immediate referral to the Florida Bar," as a "threat". Judge Shea responded that it might be "a promise." (T. 2860).

Judge Shea held another status conference on September 2, 1997, at which both sides indicated their concern that the case could not be ready by the court's October trial date. (T. 210-12). Judge Shea then denied a motion for continuance before it was even made (T. 212).

On September 15, 1997, the defense filed a motion to recuse Judge Shea. (T. 214). The motion was denied the very next day, September 16, 1997. (T. 214-15). On September 17, 1997, Judge Shea had a 21 minute phone conversation with Judge Schaeffer. During the conversation, Judge Shea told Judge Schaeffer there were "lies" in the motion to recuse, and that he had denied the motion. (T. 303-04).[13] Judge Schaeffer advised him to grant the motion. (T. 304). Instead, on September 19, 1997, Judge Shea issued an order

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[12] Judge Shea makes much of the fact that Judge Payne termed this order "wonderful" (I.B. p. 42). Judge Shea does not mention that Judge Payne did not see this portion of the order, testified at trial that it "was not so wonderful" and that it constituted a judicial canon violation. (T. 1554-56).

[13] There were no "lies" in the motion, which contained a litany of Judge Shea's public pronouncements at hearings, in orders, and in transcripts (T. 213-15; 256-64; 315-20; Pet. Exs. 8-11).

styled a “Memorandum of Concern As to Ineffective Assistance of Counsel and Order of Recusal.” The order suggests that the defense attorneys were ineffective for a variety of reasons when the case was yet to be tried. (Pet. Ex. 11, App. “E”).

Judge Schaeffer reviewed the entire court file, as well as the reasons ascribed by Judge Shea for counsel’s alleged “ineffectiveness.” Working paragraph by paragraph, through the order, Judge Schaeffer detailed why each paragraph was completely contrary to the record. (T. 311-29).

Judge Shea initially claimed that this order was prepared on Judge Schaeffer’s advice. (App. “F”, Shea Answer). Judge Schaeffer disagreed, testifying that was “utterly impossible” (T. 352) and that Judge Shea’s answer to both charges 15 and 16 were absolutely “inaccurate” as they related to her. (T. 376-77). Judge Shea now claims there was a simple miscommunication between judges, and that he “reasonably believed that Judge Schaeffer had told him that information such as this could appropriately be included in a recusal order.” (I.B. p. 42). This analysis overlooks certain evidence for which Judge Shea has no answer.

If Judge Shea was really looking to measure the lawyers’ effectiveness because of his concern about the case, there was plenty of record activity as of September 19, 1997, the date of his order, by which such performance could be measured. (T. 221-22; 320-21; 372-73). Instead, in writing his order, Judge Shea reached back for the much earlier date of February 21, stating that:

> As of February 21, 1997, the Court found little if any preparation for the defense had taken place, no depositions taken and no substantive motions filed or set... . (Pet. Ex. 11).

Judge Shea's use of a February date to measure the "effectiveness" of counsel, when his order was entered in September, 1997 and there was seven months of activity unaccounted for, was inexplicable except as retaliation against a lawyer who had sought to recuse him. (T. 221-223; 320-29; 372-73).

Defense counsel Smith "felt that Judge Shea was trying to get back at me for moving to have him recused as a judge." (T. 221). The state attorneys handling the case likewise "perceived it to be vindictive because the defense counsel had moved to recuse him." (T. 1961).

Judge Shea's "memorandum order" regarding purported ineffective assistance of defense counsel was widely publicized. (T. 221-24). Mr. Smith testified that, particularly after it was released to the press, he lost business because of it. However, on a more personal level, "I felt like I was being attacked for no good reasons by a sitting judge on the case, and I still haven't figured out why it happened the way it did." (T. 224). The record amply reflects that Judge Shea drafted his "memorandum order" to portray defense counsel in the worst possible light in the public eye, and that Judge Shea's action, in fact, succeeded.

Even more significant, however, is the impact of this order on the administration of justice. As Judge Schaeffer outlined for the

Hearing Panel:

> [I] guarantee you to this day, if Mr. Overton is convicted and if Mr. Overton is sentenced to death and if the Supreme Court affirms that and if it goes up to the United States Supreme Court on certiorari, down the road - five years, six years, seven years - there will be a 3.850 filed and one of the grounds will be ineffective assistance of counsel. And I can guarantee you that attached to that petition is going to be Judge Shea's order. It's going to be attached there as an exhibit. Even the judge says so. He will try to subpoena the judge as a witness... [A]ssuming its not quashed, Judge Shea will be a witness saying Mr. Smith was ineffective. It's in writing that Mr. Smith was ineffective. And now you've got a pretty good witness saying that a lawyer was ineffective.... (T. 308-09).

The overwhelming evidence amply reflects that <u>all</u> of this havoc was wreaked simply because Judge Shea had no threshold or tolerance for criticism.

F. Formal Charges 17, 20, 32 and 33 - Judge Shea's retaliation against Attorneys for Doing their Jobs

Judge Shea's investiture was on January 5, 1995. (Shea depo., p. 11). From the beginning of his tenure, Judge Shea was preoccupied with thoughts of a conspiracy against him. One of Judge Shea's first acts after taking office, was to hire a security firm to sweep his office for electronic eavesdropping equipment. (Shea depo., pp. 25-26). The security firm found nothing. (Shea depo., p. 28). Nevertheless, Judge Shea persisted in accusing various persons of "bugging his chambers." On separate occasions, with no underlying basis, Judge Shea made such accusations against

Judge Overby (his predecessor in office), then the Sheriff's department, and then Judge Ptomey, the county judge in residence at Plantation Key. (T. 720-21, 2172).[14]

Judge Shea described himself as a "rebel" and a "warrior" (T. 1106, Shea depo. pp. 658, 971-72, 973), who felt that there were "many people ... out to impede him, to embarrass him or were out to get him." (T. 977-78). When he gave specifics, these would inevitably be "small minor things." (T. 977-78). Witness after witness took the stand at trial to testify to small insignificant events being blown out of all proportion by Judge Shea, and about drastic actions taken in response by the Judge to perceived personal slights. (T. 161-66; 185-88; 204-05; 432; 439; 451-53; 489-90; 541-44; 599-601; 625-26; 636-37; 643-46; 985-93; 1001-02; 1024-25; 2173-74).

Judge Shea's behavior became increasingly "odd, bizarre, conspiratorial and paranoid." (T. 1002; see also 599-603). Singled out for particular abuse were people that the judge believed to have criticized him in some way. These problems surfaced with the very first motion to recuse him filed early in his tenure in June 1995.

In State v. Davis, Davis was charged with stealing from his employer, the local fire department. Judge Shea tried the Davis

[14] Judge Shea attempted to suggest at trial that the firm he hired to sweep "found some live wire in the wall and they undid it." (T. 2442, 2813). He was impeached with prior deposition testimony. (T. 2814).

case without revealing that he was a member of a local fire department. (T. 727-28). The fact of Judge Shea's membership was not disputed as Judge Shea listed it as part of his credentials in his campaign literature. (T. 2798-99). On June 15, 1995, Assistant Public Defender Michael Strickland learned about the Judge's membership and moved to recuse the judge, post-trial. As confirmed by both the state and the defense, the contents of the motion were true. (T. 727-30; 1239-40). Mr. Strickland filed the motion because the Judge's membership was information that had not been revealed to neither side. (T. 1240).

In response, Judge Shea issued an order finding the alleged grounds to be "frivolous" (T. 1253), and stating further that the filing of the motion was "offensive to the fair administration of justice , an abuse of the legal process, and possibly violates the Code of Professional Conduct." (T. 1253). Judge Shea also saw fit to remind Mr. Strickland, "an experienced and competent criminal defense attorney" that "Rule 4.3-3 of the Rules of Professional Conduct prohibits an attorney from knowingly making false statements of material fact or law to a tribunal." (T. 1252).

As Mr. Strickland testified, he filed a valid motion and got back an order accusing him of misconduct. (T. 1255). Mr. Strickland filed no further motions to recuse Judge Shea. However, he watched as motions to recuse the judge filed by other attorneys, including assistant state attorneys "met with similar language in similar orders from Judge Shea." (T. 1255). That appeals could not

correct these type of orders, was readily established by the Hearing Panel's questions, and the responses elicited. (T. 1260-61).

According to Judge Shea, the Hearing Panel recommended his removal from office "for enforcing a policy which prohibits all ex parte communications." (I.B. p. 66). That is not the case. The record reflects that there were no improper "ex parte communications" at issue, and that, once again Judge Shea manufactured claims of impropriety where none existed in response to perceived criticism.

In State v. Gonzalez, ASA Gina McClure gave instructions to a police detective pursuant to Judge Shea's directions. The detective violated those instructions, thereby causing a mistrial. (T. 613-15). The defense then moved to dismiss the charge based on prosecutorial misconduct. (T. 615). After making several public statements, including inter alia in transcripts that McClure had "done nothing wrong," (T. 622-23; 625-26; 735) Judge Shea told McClure and ASA Luis Garcia at an off-the-record sidebar in a different case that "he had trouble with the Sheriff's office... and this was his way of sending a message to the Sheriff's department." (T. 735-36).

The order Judge Shea wrote was the antithesis of his public pronouncements. (T. 626). Judge Shea dismissed the case and found Ms. McClure guilty of intentional prosecutorial misconduct. (T. 626). Judge Shea personally delivered this order to Luis Garcia,

who was not counsel of record on this case. (T. 737-38).

Judge Shea went into Garcia's office and sat down. (T. 740). Around that time, the state had not been given notice of a juvenile detention hearing held by Judge Shea. Without mentioning any case, Mr. Garcia told the Judge that "the next time you've got an emergency hearing, give us a call. We'll be glad to go over." (T. 742). Knowing of the Judge's prior reaction to Mike Strickland's motion to recuse him, Mr. Garcia also mentioned that he was going to have to ask the Judge to recuse himself in the future with regard to the specific officer involved in the matter and, so as not to embarrass the Judge, asked, "[h]ow do you want me to handle this?" (T. 739). The Judge told him to do it in writing, and the meeting ended amicably. (T. 739-40).

Immediately thereafter, on March 18, 1996, Judge Shea addressed a letter to Mr. Garcia with copies to the State Attorney, the Public Defender and the Chief Judge of the Circuit. This letter blatantly mischaracterized all of the events which had just occurred, and falsely accused Mr. Garcia of initiating ex parte communications with the Judge. (Resp. Ex. 235).

Judge Shea recounted that he was "shocked" when Mr. Garcia registered ex parte complaints to Judge Shea while he was "dropping off paperwork to Garcia." (Resp. Ex. 235). Judge Shea "could not recall" what paperwork he would be "dropping off" to Mr. Garcia personally. (Shea depo. p. 379), while Mr. Garcia confirmed that "the paperwork" was, in fact, the State v. Gonzalez order. (T.

738). Further mischaracterizing everything else that had occurred, Judge Shea wrote in his letter that "[y]our implication to me that the Court engaged in improper conduct reflects a continuation of a pattern of disrespect for the Court...." (Resp. Ex. 238). He added that, "[i]t is inappropriate and borders on the unethical for an attorney to directly criticize or complain to the Judge of his ruling outside of proper conduct...." (Resp. Ex. 238). Judge Shea concluded this letter by severing contact with the State Attorney's office "due to your actions as set out in this letter," and warning Mr. Garcia that:

> The Code of Judicial Conduct has been recently amended to allow a Judge who may have knowledge of improper conduct of an attorney to bring this to the attorney's direct attention rather than filing a formal bar complaint. I have done this with both you and Mr. Zuelch, as well as a member of the Public Defender's Office, when I felt it was appropriate. However, please be advised [that] any further misrepresentations made by you or your office toward this Court, any further violations of Rule 4-3.5(b), or other conduct I determine to possibly constitute an ethical breach, shall immediately be filed with the Florida Bar in Miami for appropriate action. (Resp. Ex. 238, emphasis added).

Mr. Garcia was devastated by these threats, made against him for the first time by a sitting circuit court judge. (T. 755; 761). As he told the Hearing Panel, when you were on Judge Shea's bad side "you couldn't win any rulings." It was "not the fact that he ruled against you, because all judges do. That's not the issue. The issue is, is it personal, or is it a ruling on the facts? And

we – I felt it was personal; the State Attorney's office." (T. 759, emphasis added).

One week later, ASA Gina McClure phoned Judge Shea's office. Ms. McClure did not, as portrayed "call the [Judge's] office to change a court order setting a jury selection date... ." (I.B. p. 66). Instead, she merely called to determine the proper date for jury selection because of an error in Judge Shea's order. (T. 629-36). The error in the Judge's order, as well as the purpose for the call, was confirmed by the Judge's judicial assistant in a transcript of the hearing. (T. 629-36; Resp. Ex. 163, pp. 3-4; Shea depo. pp 415-16). Judge Shea refused to listen to either McClure or his own judicial assistant, using the opportunity to berate McClure, by warning that "the minute I have to file a bar complaint against any attorney for any reason, that attorney cannot appear in my courtroom...." (T. 629-36; Resp. Ex. 163, p. 4).[17]

In State v. Hendricksen, Judge Shea ordered State Attorney Kirk Zuelch to personally report to him why he was nolle prosseing a case. (T. 747-51; Resp. Ex. 164 & 165). That Judge Shea's actions were intended to punish the State Attorney's office for the criticism he alone perceived is reflected by what happened next. Following the hearing, Judge Shea asked Garcia to stay behind and

[17] The Hearing Panel was patently not required to accept the new story told by the judge or his former judicial assistant, Lee El Khoury (who was working as a paralegal for the Judge's defense team at trial), which testimony was flatly contradicted by the hearing transcript.

told Garcia that he had "started fabricating things since Gonzalez and that if [Garcia] didn't straighten up he could make things hard for [the state attorney's] like this order [in Hendrickson)." (T. 752, emphasis added).

Judge Shea's vindictive conduct towards the state attorney's office manifested itself further after he recused himself from presiding in Overton. (Charges 15 and 16). On October 6, Judge Shea ordered the State to be ready to try "all cases" during the three weeks he had previously set aside, ordered that no continuances would be granted, and indicated he would impose "sanctions," should any case be *nolle prossed* after jury selection. (T. 643).

On November 6, the defense moved to continue the Jewell case because it had anticipated a plea and hadn't taken any discovery. Judge Shea denied the motion, but ordered the State to make all of its witnesses available for deposition by November 11, or face sanctions. (T. 644). This gave the state four days to produce 21 witnesses. (T. 645-46). After the State scrambled to comply, Judge Shea continued the case without comment the following week. (T. 704).

Luis Garcia described the havoc wreaked by the Judge's order, as well as what subsequently occurred:

> [O]ur office was running around trying to make jury questions, trying to call witnesses, knowing the judge isn't issuing any continuances whatever. And we're getting ready for three weeks of constant trials as

> best we can. And the case has come up for status and the Judge grants all continuances. Our cases we had just prepared questions on, he granted continuances for absolutely no reason .... [I]t was as if that previous order had never existed. (T. 757-58, emphasis added).

Private lawyers Judge Shea disliked fared no better. According to Judge Shea, in the Roof v. Brown case, it was "undisputed that Mr. Brown [the defendant] chose to disregard an order specifically directing his participation in Monroe County's only statutory batterer's intervention program." (I.B. p. 46). This is not the case.

Mr. Brown was served with a temporary injunction to stay away from his co-habitant. There was no requirement in the Judge's order for Mr. Brown to be present at the hearing (T. 426), and Mr. Brown did not attend the hearing because he agreed to the relief sought. (T. 390-91, 426). At the hearing, Judge Shea then added relief that was not requested in the petition, including Mr. Brown's compulsory attendance at a domestic batterer's safety program. (T. 392-93). Mr. Brown, in fact, signed up for the domestic safety program, but the program couldn't accommodate him. Attorney Alison DeFoor detailed the efforts he made to secure rudimentary fairness for his client - all of which fell on deaf ears. Attorney DeFoor filed a motion for rehearing to get that simple fact before the Judge. Judge Shea denied the motion and canceled the hearings that had been set. (T. 398).

Giving the court another chance of correcting its error before

his indigent client entailed the costs of appeal, Mr. DeFoor filed a second motion. (T. 403, 430, 441). Judge Shea responded with a finding that Mr. Brown was in "direct civil contempt" and found that his attorneys "encouraged respondent to disobey this Court's order." (T. 401). Since Mr. Brown had, in fact, applied for the batterer's program, there was no underlying basis for the judge's order. (T. 442).

As Mr. DeFoor outlined, "To accuse me of encouraging somebody to disobey a court's order is, I believe, an accusation that is professionally serious." (T. 451). Moreover, "it wasn't true... The reality was [Mr. Brown] had complied with all of the judge's orders and it was the judge who was choosing to put his blind eyes to it." (T. 452).

Getting to the crux of the issue of judicial misconduct, Mr. DeFoor responded to a question posed by the defense:

> [T]he problem here is that for whatever reason [Judge Shea] was throwing his weight around and he was throwing it on my client. I didn't mind him throwing it around on me. I can stand up for myself. It was my poor, little client that lives on the boat that was about to get ground up in all of this stuff, and that's what was wrong here. And the fact that I don't know anybody in the justice system who hasn't been similarly affected by him, that's the real problem. This isn't an isolated incident. This is a pattern. (T. 453, emphasis added).

That this Court is dealing with actual unfairness, in addition to the appearance of unfairness, is also reflected by Judge Shea's conduct after the filing of the notice of formal charges against

him on April 30, 1998. On May 1, 1998, Judge Shea's counsel responded to the notice by opening a website blaming "Moron County State Attorney Kirk Zuelch" for the filing of formal charges, and characterizing them as the culmination of "a 3½ year battle" between the State Attorney and the Judge.[18] (D.E. 35, emphasis added). Judge Shea also issued a press release publicly blaming State Attorney Kirk Zuelch for the charges, and accusing him of improper conduct stating "I have been expecting something for three years ... starting shortly after I declined to take the Monroe County State Attorney Kirk Zuelch's improper ex parte telephone calls after issuing adverse rulings from the bench." (T. 2872).

After publicly accusing the State Attorney of misconduct, Judge Shea then refused to recuse himself from the state's cases when it immediately sought his recusal based on the Judge's public pronouncements and the fact that the ASAs were listed as witnesses against him in the Notice of formal charges. (T. 1112). These actions by Judge Shea, taken immediately prior to his suspension from the bench, brought the administration of justice in Monroe County to a standstill (T. 1112-13).

G. FORMAL CHARGES 8, 9, 12, 18, 36 – Judge Shea's ruthless pursuit of courthouse personnel to "improve the administration of justice" (I.B. pp. 12-13, 15, 19-20, 22, rephrased)

[18] The "Moron" quote is not a misprint. Moreover, flagging the manner in which they intended to fight these proceedings, Judge Shea's counsel also warned that "this is going to be a fight that ends when only one man is left standing. This firm is putting its bets on Judge Shea." (D.E. 35, emphasis added).

Judge Shea has chosen to omit virtually all of the facts relating to the manner in which he dealt with courthouse personnel to "improve the administration of justice." (I.B. pp. 19-22, 60-62). The "propriety" of Judge Shea's methods are thus detailed here.

Judge Shea made numerous statements to Judge Ptomey, among others, reflecting his displeasure with the sheriff's office and the court clerks because they had not supported him in his election. (T. 972; 1130; 1131; 2869-73).[19] Judge Ptomey became convinced of Judge Shea's unfitness for judicial office on December 7, 1995. (T. 975). On that date, the two judges met to discuss the relatively innocuous subject of dress code. (T. 976-77). Judge Shea produced a memo "which had nothing at all to do with the subject matter discussed," and indicated his intent to give it to Bailiff Supervisor Steven Barney. This memo prohibited Mr. Barney from appearing in Judge Shea's courtroom or chambers, and continued as follows:

> I personally believe that you should be dismissed as a bailiff in Plantation key, however in deference to Judge Ptomey, I will not seek that action from the Sheriff. However, I have prepared a draft memorandum to the Sheriff, a copy of which is attached. This Memorandum has not been seen by anyone other than Linda. I am advising you that I will not submit this Memorandum to the Sheriff

[19] During his 6(b) hearing before the Investigative Panel, Judge Shea made similar statements, venting his displeasure at State Attorney Kirk Zuelch as another one who "was not in support of me" during his election. (T. 2870).

> unless and until it becomes necessary. This is directly dependent upon you. You are not to disrupt or otherwise agitate in any way shape or form my bailiffs, my courtroom, my clerks, attorneys appearing before me or others having business in my court. You are to discontinue immediately your continuous malicious gossiping which has been characteristic of your service thus far. Any violation of these or any further instructions to be submitted in the future will result in an immediate complaint to the Sheriff as well as any other appropriate action... . (Shea depo., Ex. 35, emphasis added).

Judge Shea told Judge Ptomey that the "real reason" for the memo was that Barney was overheard at a fraternal order of police meeting making remarks critical of Judge Shea. Judge Ptomey was shocked because "it appeared that the memo was written to vindicate a wrong he felt had been done him by this person, totally unrelated to the contents of the memo...." (T. 977).

Attached to the memo was a draft letter directed to the Sheriff's Department. It was not actually sent, and, Judge Shea told Barney that it would be held back unless, and until, Barney displeased him in the future. (Shea depo. pp. 748-49, 751, 753). Instead, Deputy Barney turned himself in, taking the December 7, 1995 memo, and its attachment directly to the Sheriff's department himself (Shea depo. pp. 749-50, 760). When the Sheriff's office approached the Judge to inquire, Judge Shea "revised" his letter of complaint, adding a new charge that Barney had gone through the Judge's desk and his "personal confidential mail," and claiming Barney made "admissions" to him never previously mentioned (Shea

depo. p. 750; 763, 765-66; depo. Exs. 35 and 36). Judge Shea's attempt to explain these changes was patently incredible. (Shea depo. pp. 775-76).

While this review was pending, on December 24, 1995, Sheriff Barney took domestic abuse victim Victoria Arena home with him - an admitted impropriety. Instead of reporting the issue to law enforcement, when Judge Shea learned of the incident, he contacted Arena, brought her into his chambers, and took a private sworn statement from her. (T. 1273-74). Judge Shea's statement in the transcript was that Arena was there for an "informal inquiry commenced by [the Judge]." (T. 1275, emphasis added). Judge Shea told Judge Ptomey that he "had done his own investigation ... was certain that sheriff's office was going to whitewash or cover up the event" and that he was going to turn his statement "over to the press" to be certain "that the truth got out." (T. 982).[20] Judge Ptomey testified that "He was out to get this guy. I think that is clear by his correspondence of December 7, and this [Arena] opportunity fell in his lap." (T. 1026).

Judge Shea's dealings with other court personnel followed a similar pattern. Melody Wilkinson succeeded Steve Barney as Bailiff Supervisor at the Plantation Key courthouse. (T. 840). When Wilkinson first became supervisor, she and Judge Shea got along well. He congratulated her on her promotion, and she was

[20] Judge Shea admittedly "didn't think" of calling FDLE. (T. 2919).

doing a good job. Suddenly, it was all downhill. (T. 878).

Judge Shea had a stated preference for Bailiff Mike Kaffee attending his courtroom and Ms. Wilkinson tried to accommodate him. (T. 841-42). On March 7, 1997, Kaffee left a courtroom packed with prisoners to run personal errands for an inmate. (T. 843-45). Bailiff Kaffee then exposed his gun too close to an inmate who could have grabbed it, posing a security risk. (T. 846; Resp. Ex. 123).

After court, Judge Shea followed Wilkinson into the coffee room and shut the door. He was angry about Kaffee's conduct, and started screaming. (T. 846). Judge Shea told Wilkinson that he was waiting for an inmate "to either grab Mike or his fire arm. Had that happened, the Judge was ready to pull his Glock out." (T. 849, 908-09). Wilkinson wrote up Kaffee for his misconduct (Resp. Ex. 123) and conveyed her safety concerns to her own superiors. (T. 849-51).

Several months later, a reporter sought entry into a juvenile hearing before Judge Shea. Wilkinson attempted to get a note to the Judge seeking his direction, but was unable to do so without disrupting the proceedings. (T. 853-55, 1734-36). Wilkinson therefore made a judgment call and kept the reporter out. (T. 853-54). When a local newspaper reported that the hearing was "closed," Wilkinson learned that the Judge was upset with her and went to talk to him. (T. 855-56). Judge Shea refused to discuss the matter, saying "No, I don't have anything to say to you" and

slammed the door in her face. (T. 856).

Wilkinson freely admitted her mistake and received permission to write to the newspaper, accepting "full blame" for the hearing's closure. (T. 861-63; JQC Exs. 29-32). However, Judge Shea was dissatisfied, and demanded a "full supervisory review" of her actions, which was not limited to the incident at hand, but claimed an added impropriety in Wilkinson's filing of her March report against Kaffee. Judge Shea now accused Wilkinson of violating his confidence, by citing "his personal bailiff" for the dangerous situation Kaffee created, and claimed her report contained "falsehoods."[21] Judge Shea's response to the dangerous situation created by his own bailiff was thus to "ban" the bailiff supervisor and to preclude her from supervising her subordinates. (T. 862-63).

Judge Shea also ordered Bailiff Kaffee to turn over his keys so that Wilkinson couldn't get them. (T. 2174). It was undisputed that Ms. Wilkinson never sought to obtain Kaffee's keys. (T. 2174).

Subsequently, Wilkinson attempted to enforce court security measures by making court reporter Rex Lear walk through the metal detector. (T. 917-19). She was unaware of any problem until she was called into Judge Shea's office, and learned Mr. Lear had reported her to the Judge. When Wilkinson attempted to explain the security procedure, Judge Shea wouldn't listen, threw up his hands, and told her to "Get out of my office" and to "use common

[21] Wilkinson's report contained no "falsehoods", and was corroborated by two supporting officers' reports. (T. 860-61).

sense." (T. 918-19). Wilkinson testified that "the man broke me. I ended up crying in the afternoons in my office. I didn't know what to do. I don't know how to please him. There was no pleasing him." (T. 877).

Judge Shea's threats to the clerk's office are contained in Respondent's Exhibit 248 in which Judge Shea threatened to begin the assessment of attorneys fees against it. Contrary to suggestion, (I.B. p. 65) this threat did not help the clerk's office in the performance of its duties. (T. 1423).

When his court reporter Kathi Fegers complained to Judge Shea about an evaluation she received from her supervisor that she deemed less than satisfactory. Judge Shea's attention was diverted to, and concentrated on Court Reporter Manager Lisa Roeser. (T. 1781-87). Judge Shea first accused Ms. Roeser of "misinformation" and ordered her evaluation of the court reporter stricken. (T. 1788-89). Judge Shea then began to countermand orders given by Ms. Roeser to her subordinates with his own orders, declaring any "contrary directives" to be "null and void." (T. 1792-94). These conflicting orders placed Judge Shea's court reporter in the middle and required the intervention of the Chief Judge. (T. 1799).

This did not deter Judge Shea. He renewed his attack on Ms. Roeser, with a flurry of memos to the Chief Judge, accusing the Court Reporter Manager of "misconduct," and the Chief Judge of dereliction of duty for failing to investigate and act on these matters. (T. 1799-1810).

In sum, Judge Shea "created dissension between co-workers," pitting them against each other and their supervisors, (Findings, p. 39) and wrongly engaged in running conflicts with personnel (Findings, p. 42).

H. FORMAL CHARGES 22, 23 AND 31 – Judge Shea's Hostility Towards his Judicial Colleagues and Creation of Internal Conflict (I.B. pp. 12, 15, 20 rephrased)

Judge Shea's *modus operandi* of using whatever method it took to accomplish his motives also extended to his dealings with his fellow judges, creating turmoil within the circuit.

Almost immediately after Judge Sandra Taylor became chief administrative judge for Monroe County on July 1, 1997, Judge Shea "began a pattern of conduct that seemed to be designed to undermine [her] effectiveness as a chief judge", and he "embark[ed] upon a course of conduct that began to continue to have an impact on the ability of the circuit as a whole to function." (T. 1076). This Court should therefore reject Judge Shea's attempts to characterize his conduct underlying Charges 22, 23 and 31 as merely: (1) an order referencing court reporting issues; (2) an administrative inquiry concerning a court reporter directive as a local rule or administrative order; and (3) comments made during a meeting of judges. Prior to addressing the facts, some history is in order.

Before the election of Judge Sandra Taylor as Chief Judge, Judge Shea maintained a relatively close relationship with predecessor Chief Judge Richard Payne. In February, 1996,

propelled by a series of otherwise innocuous events which launched Judge Shea into a fullscale paper war against his judicial colleague Reagan Ptomey, then-Chief Judge Payne issued a written warning advising both Judges that:

> [A]ll communications concerning our opinions on how a bailiff, clerks, JA, legal secretary and other court personnel is performing should not be communicated to outside third parties. You are free to speak directly to the individual involved as the need should arise beyond that the Chief Judge should be the individual to speak with that person's superior or supervisor. Once communications are made to the outside world then resolution becomes more difficult if not impossible.
>
> Gentlemen, your relationship should be based upon mutual respect and trust. If problems persist then the delivery of judicial services to the public will be adversely affected and you will not be doing your sworn duty. If matters continue on this course unchanged one or both of you may be subject to discipline by the JQC and this would be a very bad reflection on the judiciary or our Circuit. (Pet. Ex. 39)(Emphasis added).

Even when these warnings were given by a friend, a mentor, and colleague he respected, Judge Shea totally ignored them and continued on his course of doing whatever he pleased regardless of the impact of his conduct. (Shea depo. pp. 593; 598-600).

While Judge Shea was serving as the Acting Chief Judge for one week, he placed on the agenda for the judge's meeting his proposal that the Court take over the Sheriff's court-security

responsibilities. (T. 1129-31).[22] Judge Shea invited the Mayor, the sheriff's department, court security and the county commissioners to attend the judge's meeting to discuss his proposal. (T. 1130). Despite having previously agreed with Judge Taylor that his proposal was not a good plan, Judge Shea took this action because he "just wanted to shake up the Sheriff's department...." and to "try to get the sheriff to do what he wanted [the sheriff] to do with the bailiffs." (T. 1130-32).

In late October or November 1997, Judge Shea launched an attack on Judge Wayne Miller over a ruling Judge Miller had made releasing a defendant on bond over Judge Shea's suggestion on the arrest warrant of a no-bond-allowed. (T. 937-48). During a telephone conversation with Judge Shea about the matter after the defendant failed to appear for a hearing in October 1997, Judge Miller tried to explain to Judge Shea that he had changed the bond because of the unfairness in keeping the Defendant in jail 20 to 30 days on an invalid arrest warrant. (T. 941, 943). Judge Shea said that "he didn't care about that", and that "the worse that would happen to him was that the case would be reversed on appeal." (T. 943). After Judge Miller apologized to Judge Shea for not contacting him before changing the bond. Judge Shea responded told Judge Miller that "[you have been] condescending to me ever since judicial college, you and your little snide remarks." (T. 945).

[22] This was the first judge's meeting over which Judge Taylor was to preside as Chief Judge. (T. 1131).

Judge Miller was “really taken aback by the viciousness in his tone” and his “vindictiveness.” (T. 945). Judge Miller testified that Judge Shea’s demeanor during this five minute telephone conversation was “like letting an animal out of a cage.” (T. 947-48). Judge Miller was “shocked and really dismayed by the attitude that [Judge Shea] showed and the aggressiveness of his tone.” (T. 948). Judge Miller’s encounter with Judge Shea left such a mark on him that he did not see any way that he and Judge Shea could work collectively to improve the justice system in the future and to ensure the public’s confidence in the judicial system. (T. 965).

Before this confrontation with Judge Miller, Judge Taylor had begun to receive memos and orders from Judge Shea of the type she had never seen before from judges or any other court personnel. (T. 1076). The events underlying Charge 31 are these.

Under the circuit’s Court Reporting Plan as set forth in Administrative Order 2.039, the coordination of court reporter services is expressly delegated to a Court Reporter Manager who reports directly to the chief judge. (Pet. Ex. 43; T. 1078). On April 25th, 1997, Judge Shea entered an order prohibiting Court Reporter Manager Lisa Roeser from substituting court reporters during any course of a civil or criminal trial over which he was presiding. (T. 1077; Pet. Ex. 43). On August 14, 1997, Ms. Roeser wrote a memo scheduling Fegers (who was preferred by Judge Shea) as the court reporter to handle the Overton trial over which the Judge was to preside. (Pet. Ex. 43; T. 1079-81). On August 25, 1997,

after Judge Shea received a copy, he entered an order "rescinding" the Court Reporter Manager's memo. (Pet. Ex. 43, T. 1081-82). The order usurped the authority of the Court Reporter Manager and the Chief Judge. (T. 1076; t. 1084; Resp. Ex. 236). When she received a copy of Judge Shea's order, Chief Judge Taylor wrote back to him explaining the procedures and the delegation of authority as set forth in the circuit's Court Reporting Plan. (T. 1082-1084; Resp. Ex. 236). Chief Judge Taylor respectfully requested Judge Shea to rescind his order since it conflicted with the circuit's administrative order. (T. 1084; Resp. Ex. 236). Chief Judge Taylor also indicated her willingness to meet with Judge Shea "to discuss what problems [he anticipated] in [the Overton trial] and to try to work with [him] and the court reporters to make certain [his] concerns [were] addressed without adversely impacting the remainder of the judges or the court reporters in [the] circuit." (Resp. Ex. 236).

After typing and printing this memo, Chief Judge Taylor gave it to her assistant in an envelope to mail. (T. 1086). As elicited by the defense, her judicial assistant stamped the envelope "confidential." (T. 1146). Chief Judge Taylor did not share the contents of the memo with anyone else. (T. 1086).

On receipt of Judge Taylor's confidential memo, Judge Shea accused the Court Reporter Manager of "incompetence and lack of professionalism", and simultaneously entered an order rescinding his previous order, but which published in its body that Chief

Judge Taylor had "assured [him] that the problems encountered by this Court with the Managing Court Reporter [would] be addressed." (Resp. Ex. 235; T. 1088-89, emphasis added). This statement was utterly false, as no such discussion had ever taken place between the two judges. (T. 1088-89).

Judge Shea's failure to heed the earlier directives he had received from Judge Payne and his hostility towards, and lack of cooperation with, his judicial colleagues culminated with the following events underlying Charges 22 and 23. A regularly scheduled monthly Judge's meeting was set for November 7, 1997. (R. 193). Judge Shea knew that the Judge's meeting was scheduled for November 7 and got permission to attend by phone. (Shea Depo. p. 285; T. 1089-90). An agenda was sent to his attention. (T. 1091). Judge Shea did not attend the meeting by telephone or in person because he was conducting a trial. (T. 1090-91).

During the November meeting, the judges unanimously agreed to amend Administrative Order 2.039, the Court Reporting Services Plan, by eliminating civil reporting by the court's Official Court Reporters. (T. 1091). Judge Shea received the follow-up action documents, but paid no attention to them. (Shea Depo. pp. 289, 619). At some point in November, he realized that the court reporting plan had been amended and decided to take matters into his own hands.

In a memo to Chief Judge Taylor on November 19, 1997, Judge Shea stated that he was not given notice that the court reporting

issue would be addressed at the November judges' meeting, and then recited his inaccurate version of what had transpired at the meeting that he had not even attended. (Resp. Ex. 193 and 194; T. 1004-07; 1094-99). Judge Shea then publicly disseminated the memo containing his skewed version of events to the Upper Keys Bar Association, to engage them on his side of the dispute, and to join him in forcing his views upon his fellow judges. (T. 1004-05; T. 1094-99).

At Judge Shea's request, Judge Taylor placed the topic of the change in the Court Reporter Plan on the agenda for the subsequent December judges' meeting. However, when Judge Shea was given the opportunity to discuss this topic, the only view he expressed was that he thought the proposed amendment should be a local rule rather than an administrative order. (T. 1102-03).

Then, after all the remaining items on the agenda were addressed, as is customary, Judge Taylor opened the floor for discussion of any other matters. (T. 1006; T. 1108). At that point, some of the judges expressed their concern to Judge Shea that he had chosen to take his grievance regarding the court reporter issue <u>public</u> by disseminating his November 19, 1997 memorandum to Chief Judge Taylor directly to the Upper Keys Bar Association, without first affording them the opportunity to know his position and the contents of his memo, or affording them the opportunity for consideration of all views and discussion among themselves. (T. 1005-08; T. 1048; T. 1109-1110).

At this point, Judge Shea became agitated, made abusive and derogatory remarks to his colleagues telling them that he had talked to lawyers and judges around the state about all of them and that the lawyers and judges had absolutely no respect for any of them. (T. 1005-008; 1109-1110). Judge Shea then told his colleagues that "he didn't care how or what [they] thought about what he did, he was going to continue to do exactly what he wanted to do" and that "he was going to go public with whatever he wanted to go public [with] because that seemed to get things done." (T. 1008; T. 1109-1110, emphasis added). Discussion ceased when Judge Shea stormed out of the room. (T. 1008).

As expressed by Chief Judge Taylor, the judges "knew that this was not going to be a popular administrative order throughout the Sixteenth Circuit and [they] recognized that and considered that when [they] voted [on the issue]". (T. 1094-95). Indeed, Judge Taylor had always intended to receive the Bar's input to determine how to implement the change with as little impact as possible on the entire circuit, not just on the Upper Keys. (T. 1097-98).

By going "directly to the public with false, embarrassing information about [his] fellow judges and [the Managing Court Reporter]", Judge Shea placed the others in the "position of having to tell [third parties] that [Judge Shea] had given them inaccurate information." (T. 1006). Rather than cooperating with his fellow judges in accomplishing court reform, Judge Shea was more interested in creating controversy by distributing a memo

containing numerous falsities "to make Judge Shea try to look good at the expense of the rest of the judges in the circuit." (T. 1094). Judge Shea's parting words to his fellow judges at the November meeting evidence his intention to continue employing whatever methods he chose to accomplish his goals, no matter what effect his methods might have on others.

SUMMARY OF THE ARGUMENTS

Conduct unbecoming a member of the judiciary may be proven by evidence of specific major incidents, or "by evidence of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary." In re Kelly, 238 So. 2d 565, 566 (Fla. 1970), cert. denied, 401 U.S. 962, 91 S.Ct. 970, 28 L.Ed 2d 246 (1971); In re Crowell, 379 So. 2d 107, 110 (Fla. 1980); In re Damron, 487 So. 2d 1, 6 (Fla. 1986). Both are present here.

Charge 1, standing alone, was more than sufficient to warrant Judge Shea's removal. It is rudimentary that a judge may not use his judicial power to reap personal pecuniary benefits. Removal is the only proper remedy for conduct which so demeans the judicial office. Here, however, there was a great deal more.

Judge Shea makes much of his scholastics, his diligence and his dedication as a jurist. (I.B. pp. 4-5). While these are certainly fine qualities to have in a judge, they are all for naught without the basic qualities of honesty, fairness and understanding. Judge Shea's conduct in office is the antithesis of

all of these.

"When you are in a war," said the Judge, "you do whatever you have to do to win it." (T. 543). This is precisely how the Judge conducted himself. He perceived the slightest obstacle or criticism as a threat from an enemy to be crushed. A judge's job, however, is to administer justice – not to crush the enemy. Since Judge Shea's actions as a judge towards private litigants, attorneys, government agencies and officers, and his own judicial colleagues, reflects a grave misapprehension of the nature of his office in all respects, this too requires his removal.

Florida Constitution, article V, section 12(f) expressly provides that "malafides, scienter or moral turpitude... shall not be required for removal from office of a ... judge whose conduct demonstrates a present unfitness to hold office." Nevertheless, the Commission expressly found an unfortunate pattern of vindictiveness which permeated Judge Shea's dealings with others. Judge Shea's use of power to send messages, rather than administer justice, and his disregard of fundamental notions of fairness and due process all render him completely unfit to serve. The Commission's Findings meet the requisite burden of proof and are supported by competent substantial evidence.

The Amended Notice of Formal Charges complied with JQC Rules 6(g) as well as fundamental notions of due process. The more general, i.e., "prefatory charges" are immediately followed by 37 paragraphs setting forth the "essential facts" on which the more

general allegations were based. Judge Shea had notice of the Charges and more than six months in which to prepare his defense. At various times, that defense enlisted four separate law firms, including some of the most prominent law firms in this State. Judge Shea's hearing lasted two weeks, more than half of which time was expended in his defense.

Judge Shea's motion to recuse the Hearing Panel chairman was insufficient and unsubstantiated. It was properly denied.

ARGUMENTS

I. JUDGE SHEA'S CONDUCT VIOLATED THE JUDICIAL CANONS IN EVERY INSTANCE AND EACH VIOLATION WAS PROVEN BY CLEAR AND CONVINCING EVIDENCE (PT II, I.B. P. 32, REPHRASED)

Judge Shea was charged with violating Canons 1, 2, 3 and 5 of the Code of Judicial Conduct, by specific major incidents and a cumulative pattern of behavior.[23] The parties diverge on the "propriety" of Judge Shea's conduct and whether evidence of his misconduct met the "clear and convincing" standard.

"Clear and convincing" evidence is an intermediate standard of proof, which is more than a mere preponderance and less than beyond a reasonable doubt. In re Graziano, 696 So. 2d 744 (Fla. 1997).

[23] Canon 1 requires a judge to uphold the Integrity and Independence of the Judiciary. Canon 2 requires a judge to avoid impropriety and the appearance of impropriety. Canon 3(B)(5) requires a judge to perform his duties "without bias and prejudice." Canon 3(C)(1) requires a judge to cooperate with other judges and court officials in the administration of court business. Canon 5 requires a judge to regulate his extrajudicial activities so that they do not cast doubt on his capacity to sit impartially as a judge.

It calls for evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter at issue. See Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). This standard of proof may be met even though the evidence is in conflict. See Fraser v. Security & Inv. Corp., 615 So. 2d 841 (Fla. 4th DCA 1993); Slomowitz v. Walker, 429 So. 2d at 800.

Conduct unbecoming a member of the judiciary may be proven by evidence of specific major incidents or by an accumulation of "small and ostensibly innocuous incidents" which when considered together, emerge as a pattern. In re Kelly, supra; In re Crowell, supra; In re Damron, supra. Both are present here. With regard to Charge 1, and Judge Shea's conduct towards the Beckmeyer & Mulick law firm, the evidence entirely supports the Hearing Panel's findings that the Judge used the power of his office to obtain a personal pecuniary benefit for himself. Judge Shea's actions were not honorable, were not proper, and did not promote public confidence in the judiciary.

Judge Shea contends that his frequent resort to contempt powers, referrals to the Florida Bar and castigation of counsel were, alternatively, justified (I.B. p. 27), "not within the ambit of Commission responsibility to criticize" (I.B. p. 42), or were subject to "appellate review." (I.B. p. 33). He is wrong in each respect. The Hearing Panel has express jurisdiction to enforce the Code of Judicial Conduct. Fla. Const. art v, §12(f); In re Graham,

620 So. 2d 1273 (Fla. 1993), cert. denied, 510 U.S. 1163, 114 S.Ct. 1186, 127 L.Ed. 2d 537 (1994); see also Clayton v. Willis, 489 So. 2d 813, 815-16 (Fla. 5th DCA), rev. den, 500 So. 2d 546 (Fla. 1986).

Abuse of power is precisely within the Commission's purview. In re Perry, 641 So. 2d 366, 368 (Fla. 1994). It is the inappropriate manner in which Judge Shea exercised his power that is at issue here.

While Judge Shea was attempting to vindicate his personal honor, the litigant appearing before him, i.e. a mother in desperate need of child support for five children, was forced to take a back seat. A hearing set to help a litigant turned into a trial of the litigant. In the interim, she and her children continued to suffer. Judge Shea's continued indignation with the filing of this charge is totally at odds with his professed "remorse" and "admission" that he "may have been too thin-skinned." (I.B. pp. 8, 34, 37, and 38).

Nor does it matter whether Judge Shea actually harmed the Guidance Clinic (I.B. p. 40) when he stopped its treatment of two juveniles, interfered in its contract with the Department of Corrections, or threatened them with adverse publicity. His willingness to resort to any methods necessary to force his agenda onto others amply reflects his unfitness for judicial office.

As this Court observed in In re Johnson, 692 So. 2d 168, 173 (Fla. 1997):

> It makes little difference whether she was motivated by a desire to reduce her case load or by humanitarian reasons. The fact that her alteration [of records] might have been corrected through an appeal is of no consequence. Her conduct speaks for itself. A person committing acts of this nature cannot be permitted to remain a judge. (Emphasis added).

This same analysis applies, with regard to the remaining orders issued by the Judge. While Judge Shea was trying to bend the Domestic Abuse Shelter workers to his will, their important work was not being done. While Judge Shea was issuing threats of Bar action and "reports" to Chief Justice Kogan, and orders of "ineffective assistance" directed at vindicating his honor in Overton, he lost sight of the impact of his conduct on the administration of justice. That this judge placed personal animosity and vindictiveness over the administration of justice in Overton, a capital murder case, alone, warrants the utmost sanction.

While Judge Shea was zealously pursing each and every person he deemed to be critical of him, trying to "win" every point with courthouse staff, the State Attorney's office, private lawyers and his judicial colleagues, turmoil supplanted the important work of justice.

On these and other issues, this Court's Graham decision is on point. In re Graham, 620 So. 2d at 1273. Graham *inter alia* abused his position to hurl allegations of official misconduct against a variety of others and made arbitrary decisions when his fairness

was questioned. As this Court summarized:

> Graham made what he perceived to be a valiant effort at ridding Citrus County of the political favoritism and government corruption that caused the demise of his predecessor. His zealous pursuit of a pure society apparently clouded his ability to impartially adjudicate the matter before him. His motives are acceptable, but his methods are not. Unfortunately, Graham fails to recognize that the alleged misconduct of others does not justify his repeated departure from the guidelines established in the Code of Judicial Conduct.... (Id. at 1275, emphasis added).

Shea's "defense" is virtually identical to Graham's. As the Hearing Panel aptly observed "Judge Shea simply fails to recognize every error in his actions or other impact on others around him. Since the date that he was formally charged, Judge Shea has persisted in his efforts to place everyone but himself on trial." (Findings, p. 62).

Thus, Judge Shea complains that Ms. Baptiste attempted to "embarrass and intimidate" him (I.B. p. 36); that he was "rightly displeased" with the Guidance Clinic "who affirmatively declined to assist the court in its necessary work" (I.B. p. 38); that his "promise" of Florida Bar referral to the Overton lawyers, "should be commended, not condemned" (I.B. p. 43); that his castigation of counsel in Roof v. Brown, was "entirely proper" and served a "salutary effect" (I.B. p. 49); that domestic abuse shelter personnel "were not happy with having to take responsibility" and he acted rightly based on their "refusal to be accountable" (I.B. 58-59); that court personnel "were unaccustomed to being

criticized" (I.B. p. 62); and that his judicial colleagues were too "thin skinned." (I.B. p. 51). Judge Shea now lumps the Commission in with all these others who have done him wrong. (I.B. pp. 30-31, n. 16, 42, 53, 55, 56, 58, 59, 66). This "defense" is plainly no defense at all.

Evidence on all of the charges was unmistakable and overwhelming. Judge Shea's conduct was the antithesis of proper judicial conduct, as the Hearing Panel rightly found:

> Judge Shea's willingness to take offense where none was suggested, to find hidden meanings in completely benign remarks, take drastic actions based on his perceptions, his hidden agendas and use of power to "send messages" rather than administer justice, and his disregard of rudimentary notions of fairness and due process all render him presently unfit to serve in his position as a circuit court judge. (Findings, p. 62).

These findings are supported by the record, and, respectfully should be affirmed.

II. REMOVAL FROM OFFICE IS THE ONLY REMEDY FOR JUDICIAL CONDUCT CONTRARY TO BASIC HONESTY AND FAIRNESS. (PT. III, p. 77, REPHRASED)

The object of these disciplinary proceedings is "not to inflict punishment, but to determine whether one who exercises judicial power is unfit to hold a judgeship." In re Kelly, 238 So. 2d 565, 569 (Fla. 1970), cert. denied, 401 U.S. 962, 91 S.Ct. 970, 28 L.Ed. 2d 246 (1971). In considering the appropriate remedy, it is important to note that

> [R]emoval is not punishment for a crime, nor is suspension, nor is the withholding of pay.

> The purpose of the removal proceedings and all related aspects of those 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.

In re Shenberg, 632 So. 2d 42 (Fla. 1992), citing In re Coruzzi, 472 A. 201 546, appeal dismissed, 469 U.S. 802, 105 S.Ct. 56, 83 L.Ed. 2d 8 (1984). The parties here diverge on whether Judge Shea's conduct is of sufficient magnitude to warrant his removal. Simply stated, it must.

The judicial system can only function if the public is able to place its trust in judicial officers. See Inquiry Concerning a Judge (Ford-Kaus), 730 So. 2d 269, 277 (Fla. 1999). A judge's honesty and integrity lie at the very heart of that system. See e.g. In re Shenberg, 632 So. 2d at 47. Thus, most, but not all, removal cases involve some basic element of dishonesty. See Inquiry Concerning a Judge (Ford-Kaus), 730 So. 2d at 269 (lying to client while a lawyer, intentionally back dating a brief, and misrepresentation about bills and brief's authorship); Inquiry Concerning a Judge (Hapner), 718 So. 2d 785 (Fla. 1998) (neglecting clients while running for office, and giving misleading testimony in domestic violence proceeding); Inquiry Concerning a Judge (Johnson), 692 So. 2d 168 (Fla. 1997) (judge's knowing falsification of court records); In re Berkowitz, 522 So. 2d 843 (Fla. 1988) (judge's deception inter alia during JQC proceedings because it reflected that judge was "basically dishonest."); In re

Leon, 440 So. 2d 1267 (Fla. 1983) (removal warranted inter alia for making false statements to the JQC); In re Lamotte, 341 So. 2d 513, 519 (Fla. 1977) (intentional repeated use of state credit card for personal expenses). Even one serious and flagrant dishonest act was deemed sufficient to warrant removal from office. In re Garrett, 613 So. 2d 463 (Fla. 1993) (act of petit theft); but see In re Fowler, 593 So. 2d 1043 (Fla. 1992) (one isolated incident in otherwise exemplary career warranted affirming JQC's recommendation of public reprimand).

Judges have likewise been removed for the abuse of their judicial powers. See e.g. In re Graziano, 696 So. 2d 744 (Fla. 1997) (intervening in hiring decisions to obtain promotions and raises for close personal friend, and abuse of court personnel); In re McAllister, 646 So. 2d 173 (Fla. 1994) (sexual harassment of judicial assistant and attempting to hold assistant public defender in contempt of court because of personal dislike). In re Graham, 620 So. 2d 1273, 1275 (Fla. 1993), cert. denied, 510 U.S. 1163, 114 S.Ct. 1186, 127 L.Ed. 2d 537 (1994) (repeated acts of abuse of power, refusal to administer justice based on his own perceptions of "political favoritism in the sheriff's office"); In re Damron, 487 So. 2d 1 (Fla. 1986) (soliciting political favor in return for a judicial act and acting in a threatening manner to parties and individuals); In re Crowell, 379 So. 2d 107, 100 (Fla. 1979) (removal warranted due to judge's tendencies to lose his temper when confronted with the personal failings and shortcomings other,

including patent abuse of the contempt power). Both elements are present here.

Formal Charge 1, standing alone, was more than sufficient to warrant Judge Shea's removal from office. Section 836.05, Fla. Stats. (1997) makes criminal the following conduct:

> Whoever, either verbally or by written or printed communication, maliciously threatens an injury to the ... person, property or reputation of another ... with the intent to compel the person so threatened ... to do any act or refrain from doing any act against his or her will... shall be guilty of a felony of the second degree.

Judge Shea's conduct towards the Beckmeyer & Mulick firm went far beyond alerting the firm to an ethical conflict, and bordered on criminal extortion. See McKee v. State, 715 So. 2d 1010 (Fla. 5th DCA), rev. denied, 728 So. 2d 203 (Fla. 1998) (husband's phoned threat to companion's husband, threatening that if extra-marital affair was exposed "I'll destroy you...and...your business," followed by faxed letter stating that he had connections in high places and would use them).

Judge Shea's malice towards the park owners was reflected by his description of them on the phone to Nick Mulick. That Judge Shea made verbal threats is reflected by his emphasis of fiscal harm to the law firm and its clients, should they not withdraw. Judge Shea also raised a specific sum of money to the lawyers, payment of which would ensure the disappearance of any purported "conflict." Judge Shea's conduct towards these lawyers was

patently not a "momentary lapse in judgement" or a "forgivable indiscretion." (I.B. pp. 76 and 77). He made multiple calls to the lawyers over a period of time, each profuse with threats.

Dishonest use of office to obtain a personal pecuniary advantage has always warranted removal from office. It likewise warrants Judge Shea's removal here. However, there is more.

"A judgeship is a position of trust, not a fiefdom." In re Graham, 620 So. 2d 1273, 1277, (Fla. 1993); cert. denied, 510 U.S. 1163, 114 S.Ct. 1186, 127 L.Ed. 2d 537 (1994). A judge's authority "should never be autocratic or abusive." In re Turner, 421 So. 2d 1077, 1081 (Fla. 1982). It is critical that a judge never seek to use his power "in a fit of anger, in an arbitrary manner, or for the judge's own sense of justice." In re Perry, 641 So. 2d 366, 369 (Fla. 1994). The record overwhelmingly demonstrates that Judge Shea repeatedly resorted to threats and the use of power in anger, arbitrarily and in fits of pique, and that his conduct had a serious impact on others.

The business of a judge is justice - not the conduct of personal wars. One need only examine the record to determine that Judge Shea was engaged in the latter. Judge Shea cut off the treatment of two juveniles, ordered the Department of Corrections to send no further patients, threatened the Guidance Clinic with adverse publicity, and failed to cooperate with public and private attorneys, courthouse personnel and his judicial colleagues because he was "in a war" and he would "do whatever [he] had to do to win

it." (T. 542-43). The record is fraught with evidence of the drastic measures taken by the Judge to "send messages" or to "shake up" others. This reached its penultimate when Judge Shea jeopardized the administration of justice in a capital death case to retaliate towards a lawyer who had moved for his recusal.

Judge Shea asserts that the panel failed to consider exonerating or mitigating factors including the fact that some of his community consider him a "good judge." (I.B. pp. 80-81). This Court has repeatedly held that there are no mitigating factors sufficient to counter basic dishonesty and the disregard of rudimentary fairness. See, e.g., In re LaMotte, 341 So. 2d 513 (Fla. 1977) (repeated acts of theft warranted removal of judge who had an otherwise distinguished career); In re Garrett, 613 So. 2d 463 (Fla. 1993) (one act of petit theft warranted removal even in light of distinguished years of public service "both as a state attorney and as a judge"). In re Johnson, 692 So. 2d 168 (Fla. 1997) (fraud on Department of Motor Vehicles warranted removal even in light of extensive years of judicial service).

Unlike Judge Davey, Judge Shea has no extensive "unblemished career" to draw upon. He was invested in office in 1995 and his adverse response to criticism, and susceptibility to abuse power surfaced within the first six months. Judge Shea's vindictive, retaliatory acts towards others did not diminish as he gained experience, but in fact, escalated with time.

The issue before the Court is thus not whether Judge Shea has

"suffered enough", but whether he is "presently unfit" for judicial office. Since Judge Shea demonstrates no understanding of his misconduct, let alone remorse, his actions are capable of further repetition. Under these circumstances, removal is not just a proper remedy, it is the only remedy.

III. THE JQC DID NOT VIOLATE COMMISSION RULE 6(G) OR FUNDAMENTAL NOTIONS OF DUE PROCESS (I.B. p. 6).

Judge Shea claims that the JQC failed to specify the facts upon which the "prefatory charges" are based in violation of Commission Rule 6(g) and fundamental notions of due process. This position should be rejected.

Commission Rule 6(g) states that the Investigative Panel's notice of formal charges "shall . . . specify in ordinary and concise language the charges against the judge and allege the essential facts upon which such charges are based. . . ." Florida Judicial Qualifications Commission Rule 6(e). The Amended Notice of Formal Charges ("Notice of Formal Charges") involved here fully complies with this rule.

The second paragraph of the Notice of Formal Charges states that Judge Shea is charged with "repeatedly abus[ing] the power of [his] judicial office by engaging in a pattern of vindictive and retaliatory conduct towards anyone who disagree[d] with [him] on any subject." (Notice of Charges at 1). Paragraph two then lists six sub-paragraphs describing the various types of vindictive and retaliatory actions in which Judge Shea had engaged. (Notice of

Charges at 1-2). The third paragraph of the notice goes on to identify the various categories of individuals who have been the subject of Judge Shea's abuse. (Notice of Charges at 2). It is these two paragraphs of the Notice of Charges which have come to be referred to in these proceedings as the "prefatory charges" and which Judge Shea now attacks.

Judge Shea overlooks, however, the 37 separately numbered paragraphs which follow the "prefatory charges". These 37 paragraphs specifically set forth the essential facts upon which the preceding "prefatory charges" are based. (Notice of Charges at 2-13). Moreover, the Notice of Charges identifies paragraphs 1-37 as specific examples of the pattern of vindictive and retaliatory conduct in which he engaged. (Notice of Charges at 2).

Thus, the JQC did in fact issue a notice setting forth in ordinary and concise language the essential facts supporting the general allegations contained in paragraphs 2 and 3 of the formal notice. In addition, in its witness list as well as during the hearing before the JQC Panel, the prosecution specifically identified the charges to which the evidence was directed.

The JQC did not violate Commission Rule 6(g) nor did it violate fundamental notions of due process.[24] See Jent v. State,

[24] Although a JQC proceeding is not a criminal one, by way of analogy, both sides rely on criminal cases where similar challenges were made to indictments. See In re Kelly, 238 So. 2d 565, 570 (Fla. 1970) (JQC proceeding lacks the essential characteristics of a criminal prosecution). See also Clayton v. Willis, 489 So. 2d 813, 815-16 (Fla. 5th DCA 1986) (violation of judicial canons are

408 So. 2d 1024, 1030 (Fla. 1981), cert. den., 457 U.S. 1111, 102 S.Ct. 2916, 73 L.Ed.2d 1322 (1982) ("An indictment must fulfill two requirements: the defendant must be apprised of the charges sufficiently to enable preparation of a defense, and the allegations must be specific enough to protect the defendant against being placed in jeopardy twice for the same offense."); State v. Mena, 471 So. 2d 1297, 1301 (Fla. 3d DCA 1985) ("[A]ll that is required of the information is that it sufficiently apprise the defendant of the charges against him so that he may adequately prepare his defense and not be unfairly surprised by the evidence he is called upon to meet."). Judge Shea received notice of the charges, a full and fair hearing, and an ample opportunity to defend. See In re Graziano, 696 So. 2d 744, 750 (Fla. 1997); In re Shenberg, 632 So. 2d 42, 45 (Fla. 1992).

IV. THE MOTION TO RECUSE JUDGE KANEY WAS BASED ON SPECULATION AND WAS INSUFFICIENT AS A MATTER OF LAW. (PT. IV, P. 84, REPHRASED)

On May 11, 1998, Judge Shea moved to disqualify the hearing panel chairman, Circuit Judge Frank Kaney (D.E. 30, 31). According to Judge Shea, that motion was supported by "appropriate affidavits" (I.B. p. 26) and was based inter alia on the Chairman's "improper ex parte communications with judicial colleagues who had both filed formal complaints against Judge Shea... ." (I.B. p. 84). That is not the case.

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not enforced by criminal prosecution).

The motion stated the following "facts":

> 4. Circuit Judge Kaney has served and is currently serving as Dean of the Florida Judicial College. County Judge Wayne Miller is currently serving as Associate Dean of the Florida Judicial College. (See Program Sheet marked Exhibit A.)
>
> 5. County Judge Reagan Ptomey has served on or is currently a member of the faculty of the Florida Judicial College.
>
> 6. During a conversation between Judge Kaney and Respondent, at the 1997 Circuit Judge Conference, Judge Kaney made a comment to Respondent about "blasting" attorneys. Based on the comment, Respondent believes that Judge Kaney may have had conversations with Judge Miller or Judge Ptomey or someone else from Monroe County regarding complaints against Respondent... .(D.E. 30, emphasis added).

Judge Shea's motion conspicuously declined to describe the contents of the conversation he ascribed to Judge Kaney, and contained no evidence of *ex parte* communications, but his rank speculation that such must have occurred. The supporting affidavits were equally deficient.

JQC Rule 25(a), which addresses the recusal of a hearing panel member is similar to that version of section 38.10, Fla. Stats., which was in effect prior to 1983.[25] In interpreting the statute,

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[25] Prior to the 1983 amendment, this section provided:

> Whenever a party to any action or proceeding, shall make and file an affidavit that he fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of said court against the applicant, or in favor of the adverse party, such judge shall proceed no

this Court has repeatedly held that the affidavits submitted must contain sufficient facts to warrant disqualification. See Wilson v. Renfroe, 91 So. 2d 857, 860 (Fla. 1956) (motion and supporting affidavits "must be more than the mere proclamation of fear that the Judge is prejudiced. The affidavits must tender some actual, factual foundation for assertion of the fear".) Subjective fear by the movant, alone, was insufficient to warrant disqualification under the statute. The fear had to be "well-grounded." See Tafero v. State, 403 So. 2d 355 (Fla. 1981), cert. denied, 455 U.S. 983, 102 S.Ct. 1492, 71 L.Ed. 3d 694 (1982). In addition, the facts and reasons given in the affidavits had to "show personal bias or prejudice." Id. at 361; see also State ex rel. Brown v. Dewell, 131 Fla. 566, 179 So. 695 (1938).

Not one of the "bases" suggested by Judge Shea to recuse Judge

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> further therein, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes where the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists, and such affidavit shall be filed not less than ten days before the beginning of the term of court, or good cause shown for the failure to so file same within such time. Any such affidavit so filed shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith, and the facts stated as a basis for making the said affidavit shall be supported in substance by affidavit of at least two reputable citizens of the county not of kin to defendant or counsel for the defendant.... (emphasis added).

Kaney meet this test. A judge's participation in activities regarding the administration of justice, i.e. faculty membership in the judicial college, in common with other judges does not warrant recusal. See Daytona Beach Racing and Recreational Facilities District v. Volusia County, 372 So. 2d 417 (Fla. 1978) (recusal not necessary because of membership and participation on Florida Constitutional Revision Commission).

Neither does attribution of a statement to a judge by a newspaper on an issue of law, e.g., Judge Kaney's statement about gag orders being the "last quiver in his arsenal." See State ex rel. Sagonias v. Bird, 67 So. 2d 678 (Fla. 1953) (*en banc*). Judge Shea's rampant speculation as to what Judge Kaney meant in an offhand remark to him was insufficient to prompt a recusal. In sum, the order denying Judge Kaney's recusal was proper, and his participation in the proceedings "tainted" nothing.

CONCLUSION

For all of the foregoing reasons, the Hearing Panel's Findings of Fact and Recommendation of Removal should respectfully be approved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via Federal Express this _____ day of July, 1999 to:

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