

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, No. 03-14

Case No.: SC 04-1

_____/

HONORABLE JAMES E. HENSON'S MOTION IN LIMINE

The Honorable James E. Henson, by and through his undersigned attorney, and pursuant to Rule 12 of the Florida Judicial Qualifications Commission Rules, moves the Chair of the Hearing Panel for an Order in Limine precluding the prosecution from presenting evidence of uncharged misconduct or prior bad acts allegedly committed by Judge Henson against him at the hearing in this case, and as grounds therefore states the following:

1. The Florida Judicial Qualifications Commission originally brought formal charges against Judge Henson on January 6, 2004.
2. An Amended Notice of Formal Charges was filed on August 25, 2004.
3. In the Amended Notice of Formal Charges, Paragraphs 1-8, the JQC has alleged that Judge Henson committed several specific instances of misconduct.
4. The prosecution should be limited to presenting evidence which is only related to the charges specifically alleged in the Amended Notice of Formal Charges.
5. Pursuant to FJQCR 7, a judge is entitled to a notice of formal charges which specifies "in ordinary and concise language the charges against the judge and allege essential facts upon which such charges are based . . ."
6. Therefore, a judge subject to JQC proceedings is entitled to notice of all the charges that may result in disciplinary action. *In re Davey*, 645 So. 2d 398, 406 (Fla. 1994).

7. Additionally, pursuant to FJQCR 16, a judge subject to JQC proceedings is entitled to defendant against all charges brought against him through the introduction of evidence and examination and cross-examination of witnesses.

8. Finally, a judicial officer subject to JQC proceedings is to be accorded both substantive and procedural due process, and may not be subject to discipline unless his constitutional rights are protected. *In re Inquiry Concerning a Judge*, 357 So. 2d 172 (Fla. 1978).

9. Procedural due process requires that a judge be given notice of the proceedings, that the judge be given an opportunity to be heard, and that proceedings against the judge be essentially fair. Additionally, due process requires the JQC to be in substantial compliance with its procedure rules.” *In re Graziano*, 696 So. 2d 744, 750 (Fla. 1997).

10. First, the introduction of evidence of uncharged misconduct or prior bad acts allegedly committed by Judge Henson would be irrelevant to the charges in front of the Hearing Panel in this case, and thus, is beyond the scope of permissible inquiry in this proceeding. See *In re Graziano*, 696 So. 2d at 752 (inquiry about misconduct of other judges outside the scope of proper inquiry).

11. Additionally, it would violate the Florida Judicial Qualifications Commission Rules, substantive and procedural due process, and fundamental fairness, if the prosecution was permitted to present evidence of uncharged misconduct or prior bad acts allegedly committed by Judge Henson.

12. Even if the limited context in which such evidence is admissible in criminal proceedings, the state is required to provide the defense with notice of its intent to present such evidence. See Fla. Stat. § 90.404(2).

13. Accordingly, there is absolutely no legal basis upon which the prosecution in this case should be permitted to introduce evidence of uncharged misconduct or prior bad acts allegedly committed by Judge Henson, without Judge Henson being provided notice and being formally charged with that misconduct.

WHEREFORE, the Honorable James E. Henson, respectfully requests that the Chair of the Hearing Panel issue an Order in Limine precluding the prosecution from presenting evidence of uncharged misconduct or prior bad acts allegedly committed by Judge Henson against him at the hearing in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by fax/mail delivery this ____ day of September, 2004 to MARK HULSEY, ESQ. and E. LANNY RUSSELL, ESQ., Special Counsel for the Florida Judicial Qualifications Commission, Smith Hulsey & Busey, 225 Water Street, Suite 1800, Jacksonville, Florida 32202 and JOHN R. BERANEK, ESQ., Ausley & McMullen, P.A., 227 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301.

**Kirkconnell, Lindsey, Snure & Yates,
P.A.
1150 Louisiana Ave., Suite 1
P.O. Box 2728
Winter Park, FL 32790-2728
Phone: (407) 644-7600**

**Kirk N. Kirkconnell, Esq.
Florida Bar No. 111988**