

**BEFORE THE INVESTIGATIVE PANEL OF THE  
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA**

INQUIRY CONCERNING A  
JUDGE, NO. 05-437

SC06-2119

**REPONSE TO MOTION TO DISMISS**

Comes now the Florida Judicial Qualifications Commission by and through undersigned counsel, and in Response to the Motion to Dismiss Formal Charges, would state:

1. Subsequent to the Motion to Dismiss, the Commission issued a Second Notice of Investigation, dated December 6, 2006. That Notice contained the allegations for which the Respondent claims he was not properly noticed. The respondent judge was then afforded an additional hearing pursuant to Rule 6(b), Florida Judicial Qualification Rules on January 11, 2007.

2. The respondent judge argues that two of the allegations contained in the Notice of Formal Charges had previously come before the Commission. Article V, Section 12 (a) (4) provides that all proceedings before the Commission prior to the finding of probable cause are confidential, and that upon a probable cause finding, only further proceedings are matters of public record. Regardless, due to the nature of this proceeding, "the doctrines of *res judicata* and double jeopardy do not apply. The Commission may at any time consider any acts of misconduct which reflect adversely upon the general character and fitness necessary to the proper performance of the duties of judicial office." *In re Kelly*, 238 So2d 565 (Fla. 1970)

Wherefore, based upon the foregoing, the Commission requests that the Motion to Dismiss Formal Charges be denied.

Respectfully Submitted,

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Michael L. Schneider  
Associate General Counsel  
Judicial Qualifications Commission  
Florida Bar No. 525049  
1110 Thomasville road  
Tallahassee, Florida 32303

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to the Honorable Cliff Barnes, St. Lucie County Court, 226 Courthouse Addition, 218 South 2<sup>nd</sup> Street, Fort Pierce, Florida 34950, The Honorable Thomas B. Freeman, Chair, Hearing Panel, Criminal Justice Center, 14250 49<sup>th</sup> Street, Clearwater, Florida 33762-2801, John R. Beranek, Esq. Counsel, Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302, this 5th day of March, 2007.

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Michael L. Schneider  
Associate General Counsel