

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

INQUIRY CONCERNING A
JUDGE, NO. 05-437

SC06-2119

FILED
THOMAS D. HALL
2007 APR 12 A 10:56
CLERK, SUPREME COURT
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MOTION TO PROHIBIT EX PARTE COMMUNICATIONS

The undersigned hereby requests the Hearing Panel chair to order that the Hearing Panel members be prohibited from receiving ex parte communications in this case, and to reveal in writing to movant any such communications already received, however innocently.

As grounds, movant states:

1. Many accusations have been made to the JQC against movant over the last two years by unidentified sources. Many of these have been preposterous with no basis whatsoever in fact, and most did not result in formal charges. However, one with no basis in fact actually resulted in a formal charge - the allegation that this judge "as a matter of practice" refused to comply with the Domestic Battery law. This falsehood, having been included as a formal charge by the Investigative Panel, was widely reported in the media and commented on by the public. This formal charge was only abandoned by that panel after this judge himself made audio copies of the hearings of the cases which supposedly supported the charges and forwarded them to the panel - recordings that demonstrated conclusively the

falsity of the allegation.


2. Unfortunately, the Florida Judicial Qualification Rules do not prohibit Investigative Panel members from receiving ex parte communications, no matter how unsubstantiated, from any source before their deliberations as to what charges to make formal. The subject judge also is not allowed to confront and cross examine his/her accuser, and there are very few other due process rights.

3. However, the Rules do give the accused judge full due process rights before the Hearing Panel. Not only are the members required to be totally different than the Investigative Panel, but the accused is only faced with “legal evidence”, and is entitled to confront and cross examine his/her accusers in a trial setting. There is also a provision for removing and recusal of members for prejudice against the accused. It is obvious, then, that the Hearing Panel proceeding is either purely judicial or is quasi-judicial in nature. Therefore, it is governed by the rule against ex parte communications, whether found in Canon 3B(7) of the Rules of Judicial Conduct which states that a judge “...shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding...” or that extended to quasi-judicial proceedings. A quasi-judicial proceeding is one which a decision is made “...after a full hearing pursuant to notice based on evidence submitted...” De Groot v. Sheffield, 95 So. 2d 912 (Fla. 1957). Florida courts have emphasized that “...ex parte communications are an anathema to quasi-judicial proceedings” Jennings v. Dade

County, 589 So. 2d 1337 (Fla. 3rd DCA 1991), and the Attorney General recently opined that violations of the rule create a “rebuttable presumption” of prejudice, 2007 AG 17.

Wherefore, movant requests the Hearing chair to grant the relief requested.

Respectfully Submitted,



Cliff Barnes
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Prohibit Ex Parte Communications has been furnished by mail to Michael L. Schneider, Associate General Counsel for the Judicial Qualifications Office, 1110 Thomasville Road, Tallahassee, Florida 32303 and John R. Beranak at Post Office Box 391, Tallahassee, FL 32302, this 10th day of April, 2007.



Cliff Barnes