IN THE SUPREME COURT OF FLORIDA

CASE NO: SC06-2119

INQUIRY CONCERNING A JUDGE NO: 05-437
RE: JUDGE CLIFFORD BARNES

On Review of the Recommendations of the
Hearing Panel, Judicial Qualifications Commission

JUDGE CLIFFORD BARNES' RESPONSE TO THE FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF THE HEARING PANEL, JUDICIAL QUALIFICATIONS COMMISSION

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JUDGE CLIFFORD BARNES' RESPONSE TO THE FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF THE HEARING PANEL, JUDICIAL QUALIFICATIONS COMMISSION

Pursuant to this Court's Order to Show Cause dated August 1, 2008 Judge Barnes hereby files this response. In doing so Judge Barnes does not seek to take issue with all the findings made by the Hearing Panel. Judge Barnes seeks only to point to certain facts that he believes are not completely accurate or that need further explanation so that they are can be placed in proper context. By providing this additional information, which was presented during the course of the hearing in this manner, this Court can have a better understanding of why Judge Barnes conducted himself as he did. This is necessary because as stated in the Preamble to the Code of Judicial Conduct

> "The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances."

If, after a review of the facts presented, this Court agrees with the conclusions reached and the punishment recommended by the Judicial Qualifications Commission Judge Barnes will accept that punishment.

DISPUTED FACTUAL FINDINGS

Judge Barnes accepts the findings of fact made below, with two exceptions. First, Barnes objects to the finding that "the

release of prisoners at first appearances became an all consuming part of his life as a judge." (Findings Conclusions and Recommendations of the Hearing Panel [hereinafter FCR] p.3). Barnes agrees that he was passionate about the issue of properly conducting first appearances, about providing counsel to indigent defendants, and observing the procedural protections provided by the Rules of Criminal Procedure, but releasing prisoners was not "an all consuming part of his life as a judge". In fact, Barnes complained that the State Attorney was not attending first appearances and no one was present to speak for the victims. (Transcript of Hearing [hereinafter "T"] 425-427) Additionally, Judge Walsh, the only witness below who had actually observed Judge Barnes conducting a first appearance, testified that he saw no difference between the way Barnes conducted first appearances and the way he himself did. (T. 212-213) Judge Walsh was asked specifically whether Barnes appeared to be on an agenda to empty the jail and he responded, "No". (T. 213).

Sheriff Mascara testified that the changes Judge Barnes was advocating would not require any amendments to the Rules of Procedure or state statutes. (T. 160-161). In other words, Judge Barnes was "consumed" with enforcing the laws of this State. Despite finding that the "release of prisoners…became an all consuming part of his life as a judge" the Panel did "not

fault Judge Barnes for any of his individual rulings on specific cases which were before him." (FCR 22)

The second factual dispute centers on the evidence regarding Judge Barnes' release of a mentally retarded man accused of a violation of probation. The hearing panel found "The charge against this defendant on a violation of probation was a serious sex offense and the case was actually before Judge Phillip Yaccuci who became irate when the release occurred." (FCR 17) Although perhaps not clear from the transcript, the defendant was actually on probation with Circuit Judge Vaughn in Indian River County, not St. Lucie County Judge Yaccuci. (T. 128, Respondent's Exhibit 31) In fact, Judge Yaccuci had no jurisdiction over, or connection to the matter, although he did become irate over Barnes' decision.

While perhaps irrelevant to the main issue, the filing of the Petition for Writ of Mandamus, Judge Yaccuci's lack of connection to the case above is illustrative of Yaccuci's mindset in this matter. Judge Yaccuci *was* irate that Barnes released the mentally retarded man back to his group home under DCF supervision. Yaccuci did complain about that decision, along with many other discretionary decisions made by Barnes. In fact, Yaccuci repeatedly testified that he disagreed with the way Judge Barnes exercised his judicial discretion. (T. 62, 96-97,

98, 126).

FACTS IN THE RECORD

The Hearing Panel found

> "…Judges and other public officials asserted that they were acting correctly and in accordance with the law. In short they asserted *that first appearances were rarely important and it was really not necessary that they be attended.* It was agreed that the Public Defender and State Attorney did not attend weekend first appearances and indeed in earlier days attendance during the week was not routine." (FCR 15 emphasis added).

That judges were willing to come into a public hearing and offer their opinion under oath that first appearances are not important sheds significant light on the judicial culture that faced Judge Barnes. That judges would testify that they could do a fair job at first appearances without the assistance of prosecutors or public defenders highlights the attitude of the St. Lucie County judiciary towards providing a meaningful first appearance in conformity with the Rules of Criminal Procedure.

It became obvious from the testimony that judges in St. Lucie County, if not the entire Nineteenth Circuit, make first appearance bond decisions based on nothing more than a review of the probable cause affidavit and the defendant's arrest history.

> "I have already decided [before I walk in there] unless something changes my mind, I will release A,B,C, and D on their own recognizance because they don't have a bad prior record…And DUIs are set at $350." (Judge Yaccucci [T. 135])

Judge Walsh, with twenty-nine years experience as a judge and a

prosecutor in the Nineteenth Circuit (T. 170), testified under oath that,

> "*I have never seen* a first appearance judge ask somebody about their family ties or work history." (T. 206 emphasis added). "…[A]fter I have reviewed the affidavits, the prior record, the nature of the offense, any threats or [sic] future violence and everything else, yes sir, I have already considered all the factors that I am going to consider in most circumstances." (T. 195)

Walsh admitted that he would not allow defendants to "make statements" to him—even if such statements were to inform him of family ties or work history. (T. 198-199) Prior to Judge Barnes' Mandamus action, Judge Walsh would not even let private lawyers present evidence at first appearance on behalf of their clients. (T. 199-201)

As for the representation during the week that allegedly now occurs, Judge Yaccuci testified that the sole public defender who now attends weekday first appearances "generally did not participate unless I initiate it…She doesn't get involved with active representation of each person that is up for first appearance." (T. 115) Chief Judge Roby testified, in response to a question from a Panel member that he "was satisfied" with the way first appearances are performed in the circuit. (T. 292).

The attitude of the judges regarding first appearances was shared by the Chief Assistant State Attorney who testified, "I

was once told by a seasoned judge in this circuit…that the state attorney is nothing more than a potted plant at first appearances.” (T. 308, FCR 15-16). It was clear from his testimony that the Chief Assistant shared this view, “I have seen no instances of a person’s civil liberties being violated by the absence of a public defender at first appearances.” (T. 308). Clearly, the attitude that first appearances are simply a hollow exercise where lawyers for either side only get in the way is one that permeates the Nineteenth Circuit. That attitude is deeply entrenched and has been passed down from one generation of judges/lawyers to the next.

It was this attitude that Judge Barnes encountered upon taking the bench. It was this attitude that Judge Barnes encountered after returning from Judicial College where he learned how first appearances are supposed to be conducted. It was this attitude that greeted all of Judge Barnes’ efforts at reforming existing first appearance practices in St. Lucie County.

This Court should not overlook the scope of the problem Judge Barnes was attempting to address in his Mandamus action. The sheer number of defendants being deprived of a proper first appearance is staggering. According to the testimony presented by JQC witnesses, on average 50 to 60 defendants per day are at weekend first appearances in St. Lucie County. (T. 119, 132)

Sometimes more are brought in. A hundred defendants per weekend means more than *five thousand* defendants a year attend first appearances without a lawyer and without any meaningful review of their bond status *in St. Lucie County alone.* This number does not include defendants brought in on court holidays which are not attended by the State or public defender (T. 128) or the other three counties in the circuit which operate similarly. (T. 64, 124-125, 184, 206).

With more than five-thousand defendants a year going through first appearances without counsel or any meaningful bond review, Judge Barnes decided something had to be done. Judge Barnes started by approaching fellow judges regarding the requirements of a meaningful first appearance. That got nowhere. (Judge Barnes was himself removed from performing first appearances after releasing the mentally retarded man described above. (T. 232-234))

Seeking a systemic remedy to this problem, Judge Barnes decided to file the Petition for Writ of Mandamus. Before doing so, Judge Barnes asked the Chief Judge to exercise his authority under Rule of Judicial Administration 2.050(b)(6) and order the State Attorney and Public Defender to attend first appearances. The Chief Judge refused (T. 241). The Chief Judge called Barnes' request "a threat". (T. 278-279).

It was against this backdrop that Judge Barnes filed the Petition for Writ of Mandamus. He is grateful for the Hearing Panel's finding that he "was not motivated by ill-will or any desire to harm the judicial system" and that his motives "were essentially high minded and proper." (FCR 25)

PETITION FOR WRIT OF PROHIBITION

The Petition for Writ of Mandamus was the primary matter at issue in the hearing below. (FCR 6). Judge Barnes was charged with failing to follow proper channels concerning grievances regarding other judges' alleged misconduct and of violating the Canons in airing his grievances publicly. He was also charged with practicing law by filing the Petition for Mandamus. (FCR 6). The Panel concluded: The Mandamus Petition showed partiality in criminal proceedings (Count 2); The Mandamus Petition constituted the practice of law (Count 3); The Mandamus Petition was an attack against other sitting judges on matters not before him ([part of] Count 5); and Barnes failed to follow proper channels within the legal system to modify judicial conduct (Count 6). (FCR.6-7) The Panel's conclusions will be addressed in order.

I. JUDGE BARNES' CONDUCT DID NOT CREATE THE APPEARANCE OF HIS BEING UNABLE TO ACT IN AN IMPARTIAL MANNER IN CRIMINAL CASES

The Hearing Panel concluded, "there can be little doubt that after" Judge Barnes filed "the Petition for

Mandamus individual defendants would prefer to have Judge Barnes sitting on their cases rather than any of the other judges at first appearances.” (FCR 23) This conclusion overlooks the fact that the Petition for Mandamus did not advocate for only one side of the criminal justice equation, but for adherence to the laws and rules that exist for all citizens, defendants, victims and law enforcement. Those same unnamed defendants might not have appreciated the portion of the Petition wherein Judge Barnes requested the State Attorney attend first appearances to ensure that victims and law enforcement have a voice that could be heard. (JQC Ex 2, T 425-427) Indeed, there was no evidence that the Petition for Mandamus has ever been cited by any defendant as a ground for removing any of the judges named as respondents from conducting first appearances or for demanding Barnes as a first appearance judge.

The Hearing Panel’s conclusion also overlooks the fact that Judge Barnes still carries twenty percent of the criminal docket in St. Lucie County (T. 139) and that neither the State nor defense has moved to disqualify him from any cases. (T. 269-270) If Judge Barnes is “all consumed” with releasing people from jail or unable to act

in an impartial manner in criminal cases, one would expect that single-mindedness to carry over to his regular docket. There was no testimony or evidence to suggest that has occurred.

II. JUDGE BARNES WAS PRACTICING LAW WHEN HE FILED THE PETITION FOR WRIT OF MANDAMUS BUT HE WAS ACTING PRO SE

The Investigatory Panel charged Judge Barnes with practicing law by filing the Petition for Mandamus. The Hearing Panel concluded that in doing so Judge Barnes was practicing law. The Findings, Conclusions and Recommendations "recognize[s] it is difficult to define exactly what constitutes the practice of law." It then cites two Florida cases and a case from Arizona to support the determination that filing the Petition for Mandamus constitutes the practice of law. (FCR 24-25). Such legal effort was unnecessary. Judge Barnes has never argued that filing the Mandamus action was not the practice of law. It clearly is.

Judge Barnes has maintained all along that he was acting in a pro se capacity which is permissible according to the Commentaries to Canon 5(G) which say:

> "This prohibition refers to the practice of law in a representative capacity. A judge may act for himself or herself in all legal matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not

> abuse the prestige of office to advance the interests of the judge or the judge's family."

Judge Barnes argued in a Motion for Summary Judgment that the Canons specifically allow a judge to act on any legal matter in a pro se capacity. The Motion for Summary Judgment was denied. Barnes raised the issue again at the conclusion of the prosecution case below.(T324-325) The Hearing Panel denied that motion. (T. 326)

"Pro Se" is defined as "For himself; in his own behalf; in person." Black's Law Dictionary (Fifth Ed.). In filing the Petition the record is clear that Judge Barnes had no client, had no oral or written contractual agreement with any client regarding the action, expected no fee for filing the action and identified no client other than himself. Every Respondent named in the Petition filed a Motion to Dismiss arguing the action should be dismissed because Barnes' lacked standing. (FCR 12).

Despite those uncontroverted facts the Hearing Panel found

> "Judge Barnes was not acting on his own behalf but instead was acting on behalf of all those persons who had been or might be arrested and incarcerated in St. Lucie County. Indeed, his own Petition, which he signed as judge, stated that he was acting as a public defender in reliance on Sec. 27.59, Florida Statutes." (R 25)

This statement is simply not supported by any record

evidence. Nowhere in the twenty-two page Petition does Judge Barnes claim to be acting as the Public Defender or cite F.S. 27.59 as his authority for acting.

The actual language Judge Barnes used in his Mandamus Petition was as follows:

> "Relief of the type requested here normally would be filed by the circuit's Public Defender, as in *Public Defender v. State,* 714 So.2d 1083 (3rd DCA, 1998). However the Public Defender of the 19th Circuit, Diamond Litty, is married to one of the first appearance judges, Tom Walsh. Litty is herself a respondent. Thus, there is no other party appropriate to bring this petition." (JQC Ex 2, Petition for Writ of Mandamus p.3-4)

Judge Barnes was attempting to explain why he felt compelled to file the action.

Logically, illegal or inadequate procedures at first appearances—especially endemic ones such as were described at the hearing below—would be challenged by the elected Public Defender, given that the bulk of defendants unable to post a scheduled bond, and who thus appear before a judge, are indigent. Such a lawsuit would indirectly benefit Barnes who felt that he had suffered injury as an elected County Court Judge in that he was (in his own eyes) handicapped in performing his mandated duties at first appearance without the assistance of the State or defense counsel. Barnes also felt that he had suffered injury by

being permanently removed from first appearance duty due to the Chief Judge's opinion that Barnes was not following the law. (T. 456) Had the Public Defender filed such a suit, Barnes would have benefited, without being represented by, or named as a client of, the Public Defender. The elected Public Defender of the Nineteenth Circuit, apparently sharing the views of the local judiciary and prosecutors that first appearances are not that important, had no interest in filing such a suit.

Given the impact that local custom had on his ability to perform his sworn duty, Judge Barnes felt he had standing to bring the Mandamus action himself. He asserted standing in the Petition in that 1) he had been personally affected by the illegality of the first appearance system in St. Lucie County and 2) he had an ethical duty to bring that system into compliance with the law. (T. 456) He was not attempting to vindicate the rights of indigent defendants appearing before him but rather to correct major perceived *systemic* flaws in the local way of conducting first appearances. (T. 425-428)(See also JQC Ex 2 at P.12). Simply because all defendants at first appearances, whether indigent or not, would benefit tangentially, does not make them clients of Judge Barnes, any more than Barnes would have been the Public Defender's client had the Public

Defender filed the suit.

It is worth noting that when asked by JQC counsel if he believed Judge Barnes filed the Mandamus action to intervene on behalf of those charged with crimes, Judge Yaccuci responded, “No, I do not.” (T. 75). Chief Assistant State Attorney Bakkedahl was also asked on direct examination whether Judge Barnes was representing a certain class of individuals. Mr. Bakkedahl responded, “No, I think he was representing an agenda. He was pushing an agenda.” (T. 312).

III. JUDGE BARNES’ CONDUCT DID NOT AMOUNT TO PUBLIC ATTACKS AGAINST SITTING JUDGES

The Hearing Panel found Judge Barnes guilty of public attacks against sitting judges “in a qualified sense”. (FCR 25) The basis of this finding was the filing of the Mandamus action. Rather than “attacking the majority of the judicial structure of St. Lucie County” (FCR 26) the Hearing Panel offers two alternative courses of action that Judge Barnes should have considered.

First, the panel suggests Judge Barnes

> “could have expressly ruled that the public defender had been absent [from a weekend first appearance] and imposed a sanction against her. This would have been an appealable order and
>
> the District Court of Appeal would have ruled on it.” (FCR 26).

In making this suggestion the Hearing Panel cites no authority upon which Judge Barnes could base such an action. Every witness who was questioned on that tactic insisted that Judge Barnes would have no legal authority to interfere with the way the elected Public Defender operates her office. (T. 56-57, 191, 310). Technically, prior to being appointed at first appearance, the Public Defender is not the attorney of record for any of the defendants. Also Rule of Judicial Administration 2.050 which gives the Chief Judge the authority to order the Public Defender to attend any court proceeding would seem to imply that a mere county court judge does not enjoy the same authority. Jurisdictional issues aside, there is a more immediate practical shortcoming to the suggestion. It ignores the fact that Judge Barnes' was removed from weekend first appearance duty approximately a year before he filed the Mandamus action. He could not "set up" that appeal because he was not allowed to conduct weekend first appearances.

The second suggestion from the Hearing Panel is bewildering.

> "Surely there must have been an individual case in which the defendant was wrongly incarcerated by another judge and Judge Barnes could have put that defendant in contact with an attorney who could have made the necessary arguments on his behalf." (FCR 26)

This suggestion is impossible to reconcile with the language in the preceding paragraph:

> "Judge Barnes was acting outside his proper judicial function in criticizing these other sitting judges. The basic function of a judge in Florida is to deal with issues placed before him in actual court cases over which he has jurisdiction." (FCR 25-26).

It is difficult to imagine how Judge Barnes would be fulfilling his "basic function" as a judge by recruiting lawyers to challenge decisions by fellow judges over which he has no authority. And no matter how discretely Judge Barnes should attempt such a recruitment effort there can be no doubt that in the insular world of the court house, word would get out. The Panel seems to be suggesting that a clandestine effort to recruit lawyers to challenge rulings of fellow judges is considered ethical judicial behavior but filing a straightforward Petition for Mandamus in a court of competent jurisdiction is not.

Judge Barnes is a county court judge, the lowest member in the judicial hierarchy. By what authority does he review another judge's decisions? He has no appellate jurisdiction over any other judge. Judge Barnes would respectfully suggest it was this very behavior that led to some of the hostilities described at the hearing below—one county court judge sua sponte objecting to discretionary

decisions by a fellow county court judge.

Trial judges get reversed every day by appellate courts. It is usually not any reflection on the trial judge's character or abilities. It simply means the trial court made a mistake on the law. The disagreements and arguments that took place in the trial courts of the Nineteenth Circuit over how to conduct a proper first appearance occurred in part because no one sought a definitive ruling from the Fourth District Court of Appeals. Instead, the attitude that "this is the way we have always done it" prevailed. (T. 120, 161, 206). As Judge Barnes testified at the hearing

> "I don't believe it's a dirty thing to use the court system. We are all members of the court system. Is this a dirty procedure? I didn't sue them for money…I sued them to simply follow the law…That is not a personal attack against that judge…I want a determination whether the system we have in place in this county meets snuff." (T. 428-429)

Finally, both suggestions offered by the Hearing Panel fail to address the magnitude of the problem that exists in St. Lucie County. Either suggestion might benefit one or two defendants initially, but thousands of others would still be denied adequate first appearances. Judge Barnes was seeking a solution that would have a more immediate impact county wide.

IV. JUDGE BARNES DID FOLLOW PROPER CHANNELS IN ATTEMPTING TO REMEDY THE FIRST APPEARANCE SHORTCOMINGS IN ST. LUCIE COUNTY

In finding Judge Barnes guilty the Hearing Panel

> "suggest[ed] that Judge Barnes should have resorted to the JQC or the Florida Bar or taken other steps within the system. He could have postured cases for appeal. Instead Judge Barnes himself chose to become a litigant against the system." (FCR 26-27).

This conclusion is not supported by the facts.

The problem with first appearances was a systemic one that involved components from several constitutional offices. To correct all the inadequacies the behavior of Judges, the State Attorney, the Public Defender and the Sheriff had to be addressed. Judge Barnes attempted to initiate change by speaking with his fellow judges. He got nowhere. Barnes approached the Chief Judge who refused to interfere with the manner in which his more experienced judges conducted first appearances. Likewise, the Chief Judge refused to order the State Attorney or Public Defender to attend first appearances, despite having that clear authority under the Rules of Judicial Administration.

The Hearing Panel suggests Barnes should have come to the JQC or the Florida Bar. (FCR. 26) The Florida Bar has no jurisdiction over elected constitutional officers such as the State Attorney or Public Defender. That fact was

stipulated to at the hearing below. (T. 395) The Sheriff is not a lawyer. The Florida Bar has no jurisdiction over him. That was also stipulated below. (T. 395)

As for the JQC, it has no jurisdiction over the State Attorney, Public Defender or Sheriff. Again, this was stipulated below. (T. 395). In seeking a forum that had the jurisdiction and authority to order all of the involved entities to change, the Fourth District Court of Appeals seemed the only available choice.

In deciding the case against Judge Barnes, the issue of first appearances was placed squarely before the Hearing Panel. Approximately three pages (FCR. 18-20) of the Findings Conclusions and Recommendations deal specifically with the requirements for first appearance and setting bond under Florida law. Judge Barnes called two expert witnesses to testify as to what the law requires. Three judges and a prosecutor testified during the JQC case as to their understanding of the law in this area. Despite all this evidence, and the acknowledgement that Judge Barnes "had appealing legal and factual arguments" (FCR. 23) the Hearing Panel insisted it

> "is simply not in the position of being able to judge who was right and who was wrong on these very important issues…They are largely unsettled and will remain so until a court in an individual

case actually determines an issue.” (FCR. 23)

Then, with what can only be described as an extreme dose of irony, the JQC finds Judge Barnes guilty for not bringing an issue to the JQC which the JQC says it is not in a position to decide.

POST SCRIPT

The hearing in this matter was held in April, 2008. The Panel labored over its decision and report for three months. During that three month interim, two developments occurred which may have some bearing on the issues presented here. Respondent would like to bring them to the Court’s attention.

Prior to the final hearing on this matter before the JQC, Respondent, through counsel, initiated an amendment to the Florida Rules of Criminal Procedure which would require the presence of the State Attorney and Public Defender at all first appearances. (T. 243, 412) The proposed amendment was endorsed and supported by the Criminal Law Section of The Florida Bar. At it’s meeting on June 20, 2008, the Criminal Procedure Rules Committee of The Florida Bar voted 28-0 to adopt the amendment. The amendment will soon be before this Court for approval. Hopefully, if approved, the presence of counsel for both the State and defense at first appearances will alleviate many of the concerns that prompted Respondent to file the Petition for Writ of Mandamus.

Lastly, Respondent would point out that after his final hearing, while the JQC panel was deliberating, the United States Supreme Court decided Rothgery v. Gillespie County, Texas, 128 S.Ct. 2578 (2008). In Rothgery the Supreme Court held that a county could be liable for money damages under 42 USC Sec. 1983 for failing to provide counsel to an indigent defendant at first appearance. Florida was identified as one of forty-three states that appoint counsel at first appearances, (see note 14). The Court then remarked:

> "The only question is whether there may be some arguable justification for the minority practice. [not appointing counsel at first appearance] Neither the Court of Appeals in it's opinion; nor the county in it's briefing to us has offered an acceptable one." Rothgery at 2587-2588.

CONCLUSION

Respondent hopes that based on the record developed at the hearing below, and summarized above, this Court can discern the obstacles facing Judge Barnes as a new judge trying to bring about change in a county where the judiciary and other elected officials were, and remain, completely satisfied with the status quo even though the law and Rules of Criminal Procedure are not being followed.

The Preamble to the Code of Judicial Conduct contains the following admonition:

> "The text of the Canons and Sections is intended

> to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system."

The Hearing Panel determined that Judge Barnes acted with high minded purpose. The Hearing Panel determined that Judge Barnes has not displayed a pattern of improper conduct. Most importantly the panel determined that Judge Barnes did not file the Petition based upon a desire to harm the judicial system. If filing the Petition for Writ of Mandamus was improper behavior, its effect on others or on the judicial system should be taken into account.

Judge Walsh testified that as a "result of the hullabaloo" raised by Judge Barnes, he now allows private counsel to present evidence on behalf of their clients at first appearance. He also now allows unrepresented defendants who chose to do so to tell him about their community ties and work history. Small steps, but important ones.

While the Petition for Writ of Mandamus did not cause a legal opinion to be issued, Judge Barnes' efforts to effect change have not been in vain. The Petition certainly brought attention to the issue of deficient first appearances and served

as the catalyst for the amendment to the Rules of Criminal Procedure. Actions which result in making better judges and improving the system of Justice should not be the basis for discipline.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Michael L. Schneider, Esquire, Associate General Counsel, Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; The Honorable Thomas B. Freeman, Chair, Hearing Panel, Criminal Justice Center, 14250 49th Street, Clearwater, Florida 33762-2801 and to John R. Beranek, Esquire, Counsel Hearing Panel,

Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302 and to Marvin C. Barkin, Esquire, Special Counsel, P.O. Box 1102, Tampa, Florida 33601 by U.S. Mail on this _____ day of August, 2008.

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DONNIE MURRELL, ESQUIRE