

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

INQUIRY CONCERNING A  
JUDGE, NO. 05-437

SC06-2119

**RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT**

Comes now the Florida Judicial Qualifications Commission by and through undersigned counsel, and in Response to the Motion for Partial Summary Judgment, would state:

1. Clifford H. Barnes is an elected county judge in Saint Lucie County, Florida.
2. On July 10, 2006 he filed a Petition for Writ of Mandamus in the Fourth District Court of Appeal in Cliff Barnes, St. Lucie County Judge v. Diamond Litty, Public Defender, et al, Case No. 4D06-2717. (JQC Exhibit #1)
3. Under the heading, "STATEMENT OF FACTS", Judge Barnes, although a newly elected county judge, sets forth his *bona fides* stating that he was a Board Certified Criminal Trial Lawyer for 15 years and an Assistant Public Defender for 6 years.
4. Judge Barnes then states at page 3, paragraph 2 of the Petition, "Relief of the type requested here would normally be filed by the circuit's Public Defender, as in Public Defender v. State of Florida, 714 So2d 1083 (Fla. 3<sup>rd</sup> DCA 1998)."
5. It has been noted, "it is somewhat difficult to define exactly what constitutes the practice of law in all instances." The Florida Bar v. Brumbaugh, 355 So2d 1186 (Fla. 1978). The Supreme Court of Arizona has described the practice of law as follows:

We believe it sufficient to state that those acts, whether performed

in court or in the law office, which lawyers customarily have carried on from day to day through the centuries must constitute “the practice of law.”

State Bar of Arizona v. Arizona Land Title & Trust Co.,  
90 Ariz. 76, 366 P.2d 1, 9 (1961) (en banc)

6. Appearing in Court or in proceedings which are part of the judicial process, whether in State or Federal Court, has been held to be the practice of law. The Florida Bar v. Kaufman, 452 So2d 526 (Fla. 1984).
7. By filing the Petition the Judge is acting not on his own behalf, as he asserts, but on behalf of those whose rights he claims are being violated by the alleged failure to follow first appearance procedures in St. Lucie County by the respondents. As he stated in his action, he seeks to act as the *de facto* Public Defender. In filing this impact litigation, the Judge appears to be fulfilling the mandate implicit in section 27.59, Florida Statutes, which empowers the Public Defender to “inquire of all persons who are incarcerated in lieu of bond and to tender them advice and counsel at any time....”
8. The relief sought by the Judge in the Petition is procedural redress for defendants in the booking process and the first appearance process. At no time in his petition does he seek relief of any kind for himself, either personally or in his capacity as a county judge.
9. A party moving for summary judgment must show conclusively the absence of any genuine issue of material fact and the court must draw every possible inference in favor of the party against whom a summary judgment is sought. Wills v. Sears, Roebuck & Co., 351 So2d 29 (Fla. 1977).
10. If the evidence raises any issue of material fact, if it is conflicting, if it will permit different reasonable inferences, or if it tends to prove the issues, it should be submitted to the jury as a question of fact to be determined by it.

Moore v. Morris, 475 So2d 666 (Fla. 1985).

11. With respect to the allegation that the judge violated Canon 5 by engaging in the practice of law, notwithstanding Judge Barnes' affidavit, at the very least differing legal inferences may be drawn as to the import of that action, thus making this litigation one not subject to a motion for summary judgment.
12. Administrative Order 06-01, which is attached to the motion as Exhibit B, facilitates the implementation of a Global Positioning System (GPS) program. The legal basis for the Administrative Order is s.907.041(3), Florida Statutes, which requires the court to assess and obtain the necessary eligibility certification criteria prior to ordering the defendant into the program. In the present case, Judge Barnes signed orders approving release on the GPS program prior to the defendants' arrest, and thus could not have obtained the certification of eligibility required by the law as expressed in Administrative Order 06-01.
13. To argue that since the judge is not specifically named in the Administrative Order, then the Judge is not subject to follow its dictates is a curious argument in light of the relief sought in his Petition. In his Petition he requests the Fourth District Court of Appeal to require the Sheriff to comply with the dictates of Florida Rule of Criminal Procedure 3.111(c). Nowhere in that Rule is the Sheriff mentioned. The Rule addresses the booking officer, who may very well be a police officer and not an employee of the Sheriff. Therefore in an analogous situation, the Judge attempts to force compliance with the law when it is to benefit, but then argue that no compliance is necessary when he finds himself accused of noncompliance.
14. With respect to the allegation that Judge Barnes violated Canons 1 and 2 by failing to adhere to the mandate in Administrative Order 06-01, there exist conflicting material facts as to Judge Barnes' application of the Order.

Wherefore, based upon the foregoing, the Commission maintains that Judge Barnes' Motion for Partial Summary Judgment must be denied.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to the Donnie Murrell, Attorney for Judge Barnes, 400 Executive Center Drive, Suite 201, Executive Center Plaza, West Palm Beach, Florida 33401, 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 26th day of September, 2007.

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Michael L. Schneider  
Associate General Counsel