

IN THE SUPREME COURT OF FLORIDA

RESPONSE TO FORMAL CHARGES

November 9, 2006

RE: INQUIRY CONCERNING A
JUDGE, NO. 05-437

RE: CLIFFORD BARNES

CASE NUMBER: SC06-2119

As to Allegation #1 (newspaper column): The allegation is DENIED. The newspaper column was entirely factual, was not misleading, and did not in any way demean the integrity and independence of the judiciary and the judicial system. The article was intended to, and did, comply with Canon 4B “Activities to Improve the Law, the Legal System, and the Administration of Justice” whereby judges “may speak, write, lecture ... concerning the law, legal system, and the administration of justice ...” The Canon does not require that judges only make positive, cheery assessments to the public. Simply because the article was unpopular with the Sheriff, State Attorney, and Public Defender did not make it ethically objectionable. It could be argued that the article served to underscore that the judiciary is in fact separate from these agencies. A truly independent judiciary should not be afraid of offering honest, constructive criticism of the legislative or executive branches, or itself for that matter, when it comes to the administration of equal justice.

As to Allegation #2 (4th District Petition): Should the Motion to Dismiss be denied, the allegation is DENIED. The Petition was addressed to irregularities in the way both the State Attorney, Sheriff, Public Defender, and Judges are conducting first appearance hearings – that is the overall procedure. The undersigned did not single out any particular side or entity for criticism, and made only factual allegations backed by public records and citations to cases, rules and statutes. There was no personal or irrelevant criticism and the respondent was extremely circumspect with what was included – as will be revealed at hearing. Respondent believes there is nothing unethical about the judiciary using the legal system to resolve differences. In an enormous number of civil and criminal cases each day judges (including the undersigned) sit on appellate panels to review other judges’ rulings and opine in writing whether the judge was correct in his/her ruling, even whether they abused their discretion – all without “demeaning” the judges they may overrule, or the judiciary itself. Many cases have involved the judiciary as named and unnamed litigants wherein important rulings of law were made. For just a few, see State v. Norris, 768 So.2d 1070 (Fla. 2000) wherein the Chief Judge of the Fifth Judicial Circuit was sued by a defendant seeking a Writ of Prohibition/Mandamus ruling that one of his administrative orders violated the Florida Supreme Court’s Criminal Rules of Procedure – a case which gave the public insight into the struggle in that circuit between the Chief Judge and a county judge who was handcuffed in his efforts to set reasonable bonds; Office of the Public Defender v. State, 714 So.2d 1083 (Fla. 3rd DCA 1998) wherein the Public Defender in Broward County sought a Writ of Mandamus against the first appearance judges in that county claiming their procedures

violated the rules, and Judges of the Polk County Court v. Ernst, 615 So.2d 276 (Fla. 2dDCA 1993) wherein a group of judges in Polk and Highlands counties appealed a Polk Circuit Court ruling which had granted a Writ of Prohibition against certain judicial assignments made by the Chief Judge of the Tenth Judicial Circuit. The undersigned is not aware of any authority forbidding him from seeking the time honored, extraordinary writs that are set forth in Florida's Constitution. Thus, there is nothing inherently wrong with this judge asking the panel of the Fourth District Court of Appeals to decide whether the judges and constitutional officers in his jurisdiction are conducting first appearance hearings lawfully.

As to Allegation #3 (practicing law): Should the Motion to Dismiss be denied, the allegation is DENIED. Canon 1 requires the undersigned to "participate in establishing, maintaining, and **enforcing** high standards of conduct..." The filing of the petition was obviously not in advocacy of any particular person or class of persons, but purely to enforce existing laws, rules, and appellate rulings in the undersigned's jurisdiction. In the petition, the undersigned asked that law enforcement, prosecutorial, and defense agencies, and the judiciary, simply follow that law. The laws are designed for an orderly administration of justice for both defendants and victims, as well as society in general. Judges occasionally write their own briefs in cases without being accused of practicing law, see Norris v. State, 737 So.2d 1240 (Fla. 5th DCA 1999) for example.

As to Allegation #4 (several): Should the Motion to Dismiss be denied, this allegation is DENIED. First, although the undersigned has not been advised of any details of the allegation, the undersigned has not conducted any “unfounded attacks against the judiciary and sitting judges and other public officials”. Second, the undersigned’s two incidents of tardiness in 80 hours of judicial education in early 2005, for which he long ago took responsibility for and apologized, and which allegation was previously dismissed for lack of probable cause, is hardly evidence of “contempt for the judicial education process”. The undersigned was awarded a certificate of satisfactory completion by the Chief Justice of the Florida Supreme Court, and has worked to bring the lessons learned in the Judicial College to the 19th Circuit. Third, as to “inappropriate attire”, the undersigned has always been properly attired while on the bench. On several occasions the undersigned admits that he forgot his robe in Fort Pierce while shuttling to Port St. Lucie to conduct Small Claims Court. Instead of holding up court for an hour while retrieving his robe, the undersigned conducted court attired in dress slacks, dress shirt, and tie – always with an explanation to the litigants. However, instructors in Judicial College had advised that some judges conduct Small Claims Court informally without wearing a robe, and that it was up to the individual judge. The undersigned is unaware of any authority to suggest his attire was inappropriate. Fourth, the undersigned has not had inappropriate colloquies with any litigants or witnesses while on the bench, as evidenced by the fact that this allegation too was previously dismissed for lack of probable cause. Finally, as to the judges’ meetings the undersigned has missed several quarterly 19th circuit judges’ meetings but has never been informed they were mandatory,

and has certainly not “refused” to attend. The last missed meeting was while the undersigned was traveling to Tampa for his daughter’s major spinal surgery – certainly a more important concern than the meeting.

As to Allegation #5 (proper channels): Should the Motion to Dismiss be denied, the allegation is DENIED. The undersigned has never “chosen to air ...grievances in the media” about other judges’ alleged misconduct. Assuming this reference is to the Petition for Writ of Mandamus since the undersigned has not been advised of any specific instances to support the charge, the undersigned did not make any comments to the media, and the Petition is a public record. The undersigned pursued and exhausted all available remedies, including a last ditch appeal to the Chief Judge, before finally petitioning the Fourth District Court of Appeals. There is no agency or court that can be petitioned confidentially to change a system such as exists in St. Lucie County for first appearances, where several separate and diverse constitutional officers that participate can all be ordered to comply with the law. If the suggestion is that this body could have solved the problem in a confidential fashion, to the undersigned’s knowledge, the JQC has only the power to discipline individual judges for misbehavior. It does not have the authority to order groups of judges to change procedure. Even if it had that authority, the first appearance procedure in St. Lucie could not be corrected simply by a change in the judges’ methods since the rules require the Sheriff to immediately put defendants in contact with the Public Defender, and the Public Defender to interview them and put their best argument before the first appearance judge. Victims and the public at large depend

on the State Attorney representing their interests at the hearing. This body has no jurisdiction over these constitutional officers, and the Florida Bar has no power to order the Public Defender and State Attorney to change their procedures. Finally, even if this body had the authority to help, until recently the undersigned was under investigation for not conducting his first appearances in accordance with the other judges' established procedures, so that door was closed for all practical purposes.

As to Allegation #6 (domestic violence cases): The allegation is DENIED as to being in violation of Canons 2 and 3. The undersigned has reviewed audios of the four cases previously alleged by this body as evidence of repeated failure to comply with 741.281. One of the cases did not even involve an assault or battery (State v. Bellinger #05-3760MM), and two cases involved the State affirmatively recommending a sentence that didn't include the Domestic Violence sanctions (State v. Killings #04-4876MM, #05-897MM). The Killings cases were apparently allegations of battery on the defendant's estranged girlfriend, which does not qualify as Domestic Violence under the definition found in 741.28 because a girlfriend is not a "family or household member". Although the fourth case (State v. Andrade-Escamilla #05-3189MM) does appear to be a Domestic Violence case, the undersigned followed the law exactly by placing the defendant on the minimum 12 months probation. The batterer's intervention class was not ordered because the State recommended anger management classes instead. The law specifically allows the judge that discretion. Although the undersigned did not err in these cases, he may have in others, as might any judge. Any failure to comply with the statute,

however, has certainly never been intentional. The lawyers for both sides are there to inform the judge on the laws they feel are applicable to each particular case and to appeal any ruling made over their objection. The undersigned is unaware of any appeal as to this issue from his court. In fact, the undersigned is unaware of any ruling being overturned that was made in the many thousands of cases he has heard in misdemeanor, criminal traffic, and small claims. The undersigned tries very hard to follow the law.

As to Allegation #7 (cumulative): The allegation is DENIED.

Respectfully submitted,

Clifford H. Barnes
St. Lucie County Judge
218 S. 2nd Street, Room 226
Fort Pierce, FL 34950

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Formal Charges has been furnished via certified mail to Special Counsel Marvin E. Barkin, the Judicial Qualifications Office, John R. Beranek, Esq., and Special Counsel William P. Cassidy, Jr., this _____ day of November, 2006.

Clifford H. Barnes
St. Lucie County Judge

