

BEFORE THE HEARING PANEL OF THE
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE NO. 06-249
RE: JUDGE MICHAEL E. ALLEN

CASE NO. SC07-774

JQC'S RESPONSE TO ORDER TO SHOW CAUSE ISSUED
FEBRUARY 21, 2008

The JQC, by its undersigned counsel, responds to the Court's order to show cause issued February 21, 2008, directing the parties to show cause on or before March 7, 2008, why the records regarding the Second Notice of Investigation should not be kept confidential pursuant to Article 5, Section 12(a)(4) of the Florida Constitution, and says:

On February 4, 2008, the Investigative Panel of the JQC served a Second Notice of Investigation upon respondent, Michael E. Allen, and his attorneys without public dissemination and honoring the confidentiality provisions of Article 5, Section 12, Florida Constitution and JQC Rule 23.

On February 7, 2008, Judge Allen filed a "Motion to Continue March 10, 2008 Hearing." In paragraph (1) of his motion, Judge Allen recites that a copy of the Second Notice of Investigation is attached and then states that "Judge Allen waives confidentiality."

On February 7, 2008, Judge Allen's counsel sent a letter to the Executive Director of the JQC, and in the first two sentences of the letter states:

Judge Allen has received the 'Second Notice of Investigation.' He waives confidentiality as to that Notice.

Judge Allen's waiver of confidentiality was unilateral. The JQC did not enter into any agreement with Judge Allen to waive confidentiality. The JQC took no action before Judge Allen's waiver to disclose confidential matters.

In both *In Re Graziano*, 696 So.2d 744 (Fla. 1997) and *In Re Frank*, 753 So.2d 1228 (Fla. 2000), the Court requested that the JQC "be ever mindful of the implementation of those rules relating to confidentiality which give to all involved in the Commission's proceedings confidence that confidentiality will be observed." *Frank, supra* at 1241.

While confidentiality protects judicial officers from unsubstantiated charges, *Frank, supra* at 1241, another purpose that confidentiality serves is to "promote the effectiveness of the judicial disciplinary process" *Frank* at 1241.

On February 29, 2008, the JQC filed its Amended Formal Notice of Charges, which lifts confidentiality as to all matters now before the JQC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JQC's Response to Order to Show Cause Issued February 21, 2008 has been furnished by regular U.S. mail to Richard C. McFarlain, Esq., Carr Allison, 305 South Gadsden Street, Tallahassee, FL 32301; Guy Burnette, Jr., Esq., 3020 N. Shannon Lakes Drive, Tallahassee, FL 34309; Bruce S. Rogow, Esq. and Cynthia Gunther, Bruce S. Rogow, P.A., 500 East Broward Blvd., Suite 1930, Ft. Lauderdale, FL 33394; Hon. Paul Backman, Chairman, Hearing Panel, Broward County Courthouse, 201 S.E. 6th Street, Suite 5790, Ft. Lauderdale, FL 33301; Lauri Waldman Ross, Esq.,

Lauri Waldman Ross, P.A., 9130 S. Dadeland Blvd., Datan II, Suite 1612, Miami, FL 33156; and Michael Schneider, General Counsel and Brooke S. Kennerly, Executive Director, Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, FL 32303 the this _____ day of March, 2008.

Respectfully submitted,

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