

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 REPLY TO AFFIRMATIVE DEFENSES TO AMENDED NOTICE
OF FORMAL CHARGES**

The JQC, by its undersigned counsel, files this reply to the affirmative defenses of Judge Michael Allen, and says:

First Affirmative Defense

The issue is not the truth of the matters asserted in the concurring opinion, which the JQC denies, but instead involves the method of Judge Allen's public criticism of his colleague, Judge Kahn, and Judge Allen's motive in making the public criticism. Judge Allen's attack on Judge Kahn is a character assassination masquerading as a concurring opinion.

Second Affirmative Defense

The second affirmative defense requires no reply because the JQC denies the allegations of the second affirmative defense.

Third Affirmative Defense

This affirmative defense is vague and ambiguous and does not place the JQC on fair notice regarding the particular principles of the common law and the Federal and

Florida Constitutions that Judge Allen purports to invoke to justify his opinion. Nevertheless, to the extent that Judge Allen may claim that the common law or the Federal or Florida Constitutions grant him an unrestricted right to publish anything he might choose to publish, irrespective of its content, his motive or the Code of Judicial Conduct, Judge Allen's claim is refuted by the United States Supreme Court's decision in *Garcetti v. Ceballos*, 126 S.Ct. 1951 (2006), and by the Florida Supreme Court's opinions that the JQC cited and relied upon in the JQC's response to Judge Allen's motion to dismiss the original notice of formal charges, and in the JQC's notice of supplemental authority regarding Judge Allen's motion to dismiss the original notice of formal charges.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Production of Documents Directed to Respondent 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, Associate General Counsel and Brooke S. Kennerly, Executive Director, Judicial Qualifications Commission,

1110 Thomasville Road, Tallahassee, FL 32303 this _____ day of March, 2008.

Respectfully submitted,

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