

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE

CASE NO.: SC09-1182

N. JAMES TURNER

JQC Case No.: 09-01

**RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES
TO AMENDED FORMAL CHARGES**

Respondent, The Honorable N. James Turner, by and through undersigned counsel, hereby files his Answer and Affirmative Defenses in response to the Notice of Amended Formal Charges filed on December 1, 2009, and admits or denies the allegations as follows:

1. Denied.
2. Denied.
3. Denied.
4. Admitted that the communication was sent. Denied that paragraph 4 accurately characterizes the communication.
5. Admitted that the communication was sent. Denied that paragraph 4 accurately characterizes the communication.
6. Denied as pled. The Respondent campaigned heavily, and admittedly crossed paths with persons engaged in partisan campaigns. The Respondent denies that he in any way knowingly attended political events to which his opponent was

not invited. Respondent further expresses grave concerns that the JQC appears to take the position that Respondent, by the mere act, sometimes incidental, of being in proximity to politically active African Americans, attempted to seek improper political advantage. Respondent further denies the conclusions of the second paragraph 6.

AFFIRMATIVE DEFENSES

In further answering the Amended Notice of Amended Formal Charges, the Respondent affirmatively alleges as follows:

FIRST DEFENSE

Respondent denies the allegations in the Notice of Amended Formal Charges as set forth above. Without waiving this denial, the activities alleged to have occurred are protected by the First Amendment to the United States Constitution. *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002).

SECOND DEFENSE

A Grievance Committee of The Florida Bar concluded, in Case No. 2009-30,S6S(09E), after reviewing a complaint alleging some of the same violations as are before the JQC Hearing Panel, found that there was no probable cause for disciplinary proceedings against Judge Turner for improperly soliciting campaign funds. Although the Code of Judicial Conduct does not define the term “decisional

law,” it is suggested that this determination by a quasi-judicial body such as The Florida Bar, acting through a grievance committee, is tantamount to a decision and should be regarded as decisional law within the context of this term as contained in the Preamble to the Code of Judicial Conduct.

Moreover, because both The Florida Bar and the Judicial Qualifications Commission are arms of the Supreme Court of Florida, prosecution of this matter by the Judicial Qualifications Commission runs counter to the doctrines of collateral estoppel and double jeopardy. In the alternative, the findings and recommendations of the Judicial Qualifications Commission should be mitigated by the finding of no probable cause by The Florida Bar. Therefore, Respondent respectfully submits that a determination has already been made on this issue by the decision of The Florida Bar with its finding of no probable cause and dismissing the grievance.

THIRD DEFENSE

Section 7A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

FOURTH DEFENSE

Canon 7C(1) has been held unconstitutional by the Eleventh Circuit Court of

Appeals. *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002) as having a chilling effect on a candidate's speech.

Respectfully submitted this 3rd day of February, 2010.

_____/s/_____
Barry W. Rigby, Esq.
Florida Bar No. 613770

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 3rd day of February, 2010, to the persons on the attached Service List by U.S. Mail.

_____/s/_____
Barry W. Rigby, Esq.
Florida Bar No. 613770
Law Offices of Barry Rigby, P.A.
47 East Robinson Street, Ste. 204
Orlando, FL 32801
Phone 407-999-2630/Fax 407-386-6150
email: barryrigby@yahoo.com

Service List

Marvin E. Barkin, Esq.
Michael K. Green, Esq.
Special Consulting Counsel
Trenam Kemker
101 E. Kennedy Blvd., Suite 2700
P.O. Box 1102
Tampa, FL 33601-1102

Michael L. Schneider, Esq.
General Counsel
Judicial Qualifications Commission
1110 Thomasville Road
Tallahassee, FL 32303

Lauri Waldman Ross, Esq.
9130 S. Dadeland Blvd.
Ste. 1612
Miami, FL 33156

The Honorable John P. Cardillo, Esq.
Chairman, Hearing Panel
Florida Judicial Qualifications Commission
3550 Tamiami Trail
E. Naples, Florida 34112-4905