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THEAS D. HALL

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

2010 FEB 25 A 10: 23

INQUIRY CONCERNING A JUDGE NO. 09-524 and
RE: JUDGE DALE C. COHEN

CLERK, SUPREME COURT

BY _____

SC10-348

NOTICE OF FORMAL CHARGES

TO: The Honorable Dale C. Cohen
Broward County Courthouse
201 S.E. 6th Street, Suite 4880
Ft. Lauderdale, FL 33301

YOU ARE HEREBY NOTIFIED that the Investigative Panel of the Florida Judicial Qualifications Commission, by the requisite vote, has determined, pursuant to Rule 6(f) of the Rules of the Florida Judicial Qualifications Commission, as revised, and Article V, Section 12(B) of the Constitution of the State of Florida, that probable cause exists for formal proceedings to be, and the same are, hereby instituted against you to inquire into charges based on allegations that you violated, the Preamble to and Canons 1, 2A, 2B, 3B(1), 3B(2), 3B(7) and 3E(1)(d) of the Code of Judicial Conduct, to wit:

1. On August 6, 2009, in *State of Florida v. Steven Gibbs*, Broward County Case No. 09-1421-CF-10A, you were the presiding judge. Attorney Stephen Melnick, who was representing defendant, Steven Gibbs, filed a sworn motion to recuse you. The motion was sworn to by both Steven Gibbs and attorney Melnick. Among other things, the sworn recusal motion alleged that

attorney Melnick had conferred with attorney William Scherer about a lawsuit to be filed against your wife, Mardi Levey, who was a candidate for judicial office. The lawsuit, in which Mr. Melnick was involved, was ultimately filed against Marti Levey and the Broward County Supervisor of Elections to have Marti Levey disqualified from the ballot. The lawsuit against your wife also contained allegations about your involvement in the election re-count on behalf of your wife.

2. The Gibbs recusal motion was legally sufficient on its face, but instead of making that determination and recusing yourself immediately, contrary to the provisions of Rule 2.330(f), Fla.R.Jud.Admin., you held an evidentiary hearing in which you were the chief interrogator. Furthermore, before the hearing you had an *ex parte* conversation with your wife, the witness you intended to call, and when you interrogated her at the hearing, over Mr. Melnick's objection, your wife testified in a way that contradicted Mr. Melnick, which put Mr. Melnick in the position of attacking the credibility of your wife in a proceeding before you. At the 6(b) hearing on November 6, 2009, you admitted that the motion was legally sufficient and that in conducting the evidentiary hearing you violated the Judicial Canons.

3. Your purpose in holding the hearing was to intimidate Mr. Melnick, and in doing so you used the courtroom and the power of your office to advance the interests of you and your wife. Your conduct was an abuse of your judicial

power, an abuse of your office and was an improper use of your office for personal gain.

4. On August 28, 2009, twenty-two days after the foregoing events in the *Gibbs* case, and in response to a sworn motion to recuse that attorney Melnick filed in the matter of *State v. Leon Butler*, Broward County Case No. 08-22681-CF 10 A, you required Mr. Melnick and his client, Leon Butler, to appear before you, and again, contrary to Rule 2.330(f), you held an evidentiary hearing.

5. In the *Butler* case, Mr. Melnick filed a motion to recuse you, and both Mr. Melnick and Mr. Butler swore to the truth of the allegations in the motion to recuse. In the *Butler* motion to recuse, the motion contained the same allegations as in the *Gibbs* motion to recuse, but included additional allegations about the recusal hearing you conducted on August 6, 2009, in the *Gibbs* case. These additional sworn allegations were that you questioned the truthfulness and veracity of earlier recusal motions of Mr. Melnick; that you conducted a hearing in which you called your wife as a witness to challenge the credibility of Mr. Melnick; and that the hearing was conducted in an effort to embarrass and intimidate Mr. Melnick.

6. The *Butler* recusal motion is legally sufficient on its face and you should have immediately granted it. Instead, you swore in Mr. Butler and began to question him about conversations he had with his attorney, Mr. Melnick. Mr. Melnick objected, asserting an attorney/client privilege, but you overruled Mr. Melnick's continuous objections that your questions invaded the attorney/client

privilege, and you ordered Leon Butler to answer your questions. During the hearing, you threatened Mr. Melnick that you would file a Florida Bar complaint against him for "forum shopping."

7. The purpose of your interrogation of Leon Butler on August 28, 2009, and your threat to report Mr. Melnick to The Florida Bar was to embarrass and intimidate Mr. Melnick, and to use your courtroom and the power of your office to advance the personal interests of you and your wife. Your conduct was an abuse of your judicial power, an abuse of your office and was an improper use of your office for personal gain.

8. In *State v. Gibbs*, although you had earlier recused yourself, Mr. Gibbs ultimately came before you for sentencing because Mr. Melnick was no longer representing Mr. Gibbs, and at that hearing you questioned Mr. Gibbs about Mr. Gibbs' motion to disqualify. The purpose of this questioning was to develop information you could use to embarrass and intimidate Mr. Melnick.

9. In your personal appearance before the Investigative Panel on November 6, 2009, you repeatedly described Mr. Melnick as a friend for whom you had no animosity, yet in your written response to the Commission in lieu of personal appearance dated December 10, 2009, which you submitted for your hearing before this Commission on January 15, 2010, you sought to discredit Mr. Melnick by personally attacking him as follows:

- "I was seriously in doubt of [Mr. Melnick's] ethics"
- "I knew he had a reputation for being 'less than ethical' at times, in the handling of his cases."
- "Stephen Melnick is the lawyer in the courthouse who regularly appears in court dressed in jeans and a casual blazer, no tie and untied sneakers."
- "He is very lax in his approach to the court, shows a general disdain for the authority of the court and does not respect the decorum of the courtroom."
- "Many of Melnick's clients appear in court without him and indicate that he has told them to appear for him and to request a reset or a continuance on their own."

10. On January 12, 2010, your wife, who is now running for judicial office under the name Mardi Ann Levey Cohen, was observed by a court deputy and the court clerk in Judge Jeffrey Levenson's courtroom clandestinely photographing Mr. Melnick, and when confronted about it, your wife left the courtroom. You submitted those photographs of Mr. Melnick to the Investigative Panel of the Commission. This was a continuation of your efforts to embarrass and intimidate Mr. Melnick and to advance your personal interests and those of your wife, and constituted an abuse of your office, an abuse of judicial power and an improper use of your office for personal gain.

11. On November 6, 2009, when the Investigative Panel was expressing its concern that your behavior in the *Gibbs* matter suggested that you had allowed a marital relationship to influence your conduct or judgment, you

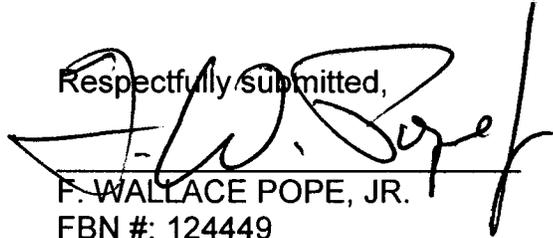
failed to disclose to the Panel that you had held an evidentiary hearing on an additional disqualification motion involving Mr. Melnick and your wife in the *Butler* case. Although not directly related to the merits of the *Gibbs* motion, the failure to mention the *Butler* hearing was relevant to the Panel's attempt to ascertain the purpose of your conducting the *Gibbs* hearing.

12. The Preamble to the Code of Judicial Conduct provides that the Code "is intended to govern conduct of judges and to be binding upon them" and also provides that this Commission should determine "whether there is a pattern of improper activity" Your continuing pattern of judicial misconduct indicates a disregard for the Code of Judicial Conduct and constitutes a pattern and practice unbecoming a judicial officer and lacking the dignity appropriate to judicial office, with the effect of bringing the judiciary into disrepute. The foregoing acts violate the Preamble to and Canons 1, 2A, 2B, 3B(1), 3B(2), 3B(7) and 3E(1)(d) of the Code of Judicial Conduct.

13. These acts, if they occurred as alleged, would impair the confidence of the citizens of this State and the integrity of the judicial system and in you as a judge; would constitute a violation of the Preamble and Canons of the Code of Judicial Conduct; would constitute conduct unbecoming a member of the judiciary; would demonstrate your unfitness to hold the office of judge; and would warrant discipline, including, but not limited to, your removal from office and/or any other appropriate discipline recommended by the Florida Judicial Qualifications Commission.

You are hereby notified of your right to file a written answer to the above charges made against you within twenty (20) days of service of this notice upon you.

Respectfully submitted,



F. WALLACE POPE, JR.

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and

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518483

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Notice of Formal Charges was furnished to the Hon. Dale C. Cohen, Suite 4880, Broward County Courthouse, 201 S.E. 6th Street, Fort Lauderdale, FL 33301 by U.S. Certified Mail No. 7001 2510 6248 5194, this 24th day of February 2010.

Brooke S. Kennerly
Brooke S. Kennerly, Executive Director