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BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE SC13-1333

LAURA M. WATSON, NO. 12-613
_____/

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION'S RESPONSE TO JUDGE WATSON'S MOTION TO STAY JQC PROCEEDINGS AND BRIEFING, AND/OR MOTION FOR EXTENSION OF TIME

The Florida Judicial Qualifications Commission ("JQC"), by and through its undersigned counsel, hereby files its Response to Judge Watson's Motion to Stay JQC Proceedings and Briefing, and/or Motion for Extension of Time (hereinafter "Motion to Stay").

INTRODUCTION

On July 24, 2013, the JQC filed Formal Charges against Judge Laura Watson (hereinafter "Proceedings"). After a hearing before the Hearing Panel February on 10-12, 2014, which Judge Watson unsuccessfully sought to delay by a federal court proceeding, the Hearing Panel issued its Findings, Conclusions and Recommendations ("Recommendation") on April 15, 2014. In its Recommendation, the Hearing Panel determined, *inter alia*, that Judge Watson "sold out her clients;" engaged in conduct "fundamentally inconsistent with the responsibilities of judicial office;" and should be removed from office. Instead of lodging her objections to the Hearing Panel's Recommendation in her forthcoming

response to this Court's Order to Show Cause directing that she respond no later than May 7, 2014, Judge Watson now seeks to further delay the Proceedings while she appeals the federal district court's refusal to enjoin the Proceedings *and* pursues a collateral attack against the JQC in the form of an Original Petition for Injunctive and Declaratory Relief ("Petition for Declaratory Relief") she filed in this Court on April 11, 2014.[1]

The relief which Judge Watson seeks is unauthorized, unprecedented, and perhaps most troubling, a tremendous waste of judicial resources. As embodied in art. 5, section 12(a)(5) of the Florida Constitution, this Court is empowered to "receive recommendations" from the Hearing Panel of the JQC; "accept, reject, or modify in whole or part the findings, conclusions, and recommendations of the commission;" and then impose the resulting discipline. There is no provision in article 5 for the bifurcated review of a hearing panel's recommendation proposed by Judge Watson whereby the hearing panel's recommendation is suspended while the respondent judge launches a collateral attack on the JQC process, and in this case also in a parallel federal proceeding.

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[1] Also named as Respondents in the Petition for Declaratory Relief are the Honorable Kerry Evander, Chair of the Hearing Panel of the JQC; Brooke Kennerly, Executive Director of the JQC; Miles McGrane, Special Counsel to the JQC; and Michael Schneider, General Counsel to the JQC. For purposes of this Response, all of the respondents will be collectively referred to as "the JQC."

This Court should view Judge Watson's maneuvers even more skeptically in light of the fact that all of the issues raised in her Petition for Declaratory Relief were previously raised before the Hearing Panel. Simply stated, there is nothing that precludes Judge Watson from raising the arguments she asserts in her Declaratory Judgment Petition when she responds to the Court's Order to Show Cause.

A. FEDERAL LAWSUIT

Judge Watson's hearing before the Hearing Panel was scheduled to commence on Monday, February 10, 2014. On Friday, February 7, 2014, Judge Watson filed a Complaint against the JQC, and several members of the Hearing Panel in their official and individual capacities ("Federal Action"). She also named as defendants the JQC's Executive Director, General Counsel, and Special Counsel. In addition to her claims for monetary relief, Judge Watson filed motions for a temporary restraining order, preliminary injunction, and permanent injunction in which she requested that the District Court enjoin the JQC from proceeding with her disciplinary hearing.

In denying Judge Watson's claims for injunctive relief, the District Court noted that under *Younger v. Harris*, 401 U.S. 37, 44 (1971), abstention from interference with state proceedings is appropriate where: (1) there is an ongoing state judicial proceeding; (2) the state proceeding implicates important state

interests; and (3) there is an adequate opportunity in the state proceeding to raise constitutional challenges. Finding that all three elements for *Younger* abstention were present, the Court entered its Order Denying Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction on February 9, 2014 ("Abstention Order"). A copy of the Abstention Order is attached hereto as Exhibit A. On February 27, 2014, the District Court entered a separate endorsed order dismissing the Federal Action. ("Dismissal Order").

On March 7, 2014, Judge Watson filed a Notice of Appeal from the District Court's Abstention Order. Thereafter, on March 28, 2014, she filed a separate Notice of Appeal from the Dismissal Order.[2] By requesting that this Court stay these Proceedings pending the final disposition of her appeal(s) to the Eleventh Circuit, Judge Watson is seeking to accomplish what she could not achieve by filing the Federal Action; namely, a delay of these Proceedings while she continues to litigate in an alternative forum.

Parenthetically, the District Court's Dismissal Order is in line with decisions of other Florida federal courts that have refused to enjoin JQC proceedings on *Younger* abstention grounds. *See Graham v. Wigginton*, 818 F. Supp. 336, 338 (M.D. Fla. 1993); *McMillan v. Florida Judicial Qualifications Commission*, Case No. 4:00-cv-00391-RH, United States District Court for the Northern District of

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[2] It is unclear why Judge Watson filed separate notices of appeal as opposed to one notice of appeal from both the Abstention Order and the Dismissal Order.

Florida) (Order Denying Request for Temporary Restraining Order or Preliminary Injunction dated October 23, 2000), a copy of which is attached hereto as Exhibit B.

To the extent that Judge Watson is confronted with briefing deadlines before this Court and the Eleventh Circuit which fall close in time, she alone is the architect of that dilemma. This Court should reject her invitation to suspend these Proceedings while she pursues an appeal to the Eleventh Circuit if for no other reason than the federal District Court has already found that the current Proceedings provide her with an adequate opportunity to raise any constitutional challenges she has to these Proceedings.[3]

B. DECLARATORY JUDGMENT ACTION

On April 11, 2014, Judge Watson filed her Petition for Declaratory Relief. In her Petition for Declaratory Relief, Judge Watson seeks a declaration, *inter alia*, that the JQC was without jurisdiction to initiate formal charges against her and that the JQC's enforcement of its rules of procedure violated her rights of due process. She also seeks an injunction to enjoin the JQC from issuing its Findings and Recommendation of Discipline. Of course, that claim is now moot because the Hearing Panel has issued its Recommendation. Alternatively, Judge Watson seeks

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[3] The JQC previously consented to Judge Watson's request for a one-week extension from April 21, 2014 to April 28th to file her initial brief in the Eleventh Circuit.

"an order stating that the Florida Supreme Court *does not* have jurisdiction over these matters so that these proceedings and important state interests can be addressed by the United States District Court." *See* Declaratory Relief Petition at 3.

As to the latter point, this Court should not countenance Judge Watson's attempt to use her Declaratory Relief Petition as a means to bolster her Federal Action. Although it is doubtful whether this Court even has jurisdiction to consider an original declaratory judgment action, that question misses the mark.[4] Rather, this Court's decision whether to stay these Proceedings should more appropriately turn on whether Judge Watson has demonstrated any reason why this Court should deviate from the state constitutional framework already in place for review of the Hearing Panel's Findings.

Significantly, all of the constitutional claims raised by Judge Watson in her Petition for Declaratory Relief have been previously raised before the Hearing Panel. *See, e.g.*, **Judge Watson's Objection to Scope of Status Conference and Renewed Motion for Extension of Time Pursuant to Rule 17 and Rule 1.090(b) Fla. R. Civ. Pro**, filed on August 19, 2013; and **Judge Laura M. Watson's**

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[4] *See Florida House of Representatives v. Crist*, 999 So. 2d 601, 621 (Fla. 2008) (noting that the Florida Supreme Court "generally lacks jurisdiction to consider original declaratory judgment actions.") (Lewis, J., concurring in result only).

Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed on September 16, 2013.[5] Those same arguments can be renewed just as easily in Judge Watson's response to the Court's Order to Show Cause. There is simply no need for an ancillary proceeding to re-argue the same issues.

In a very analogous situation, in *Judge Michael Allen v. The Judicial Qualifications Commission*, Case No. SC08-618 ("*Allen*"), Judge Michael Allen, who was the respondent in a pending JQC proceeding at the time, filed a Petition for Writ of Quo Warranto and Petition for Relief Pursuant to the All Writs Provision of the Florida Constitution ("Petition"), in which he sought an order from this Court "directed to the Judicial Qualifications Commission preventing the JQC from proceeding against him because the Commission may not inquire into the reason for an appellate judge's published opinion." In *Allen*, similar to here, the JQC argued that deferring consideration of the arguments raised in Judge Allen's Petition would allow the JQC process to be completed, as contemplated by state constitutional law, and avoid "the dangerous precedent of allowing judges under investigation to turn to this Court in an effort to halt the investigative and

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[5] Judge Watson's claims regarding the JQC's "Published" and "Unpublished" Rules is a red herring. The JQC's current procedural rules became effective as of August 2, 2012, although the rules were not immediately published in the Florida Rules of Court. *See In re Amendments to the Florida Judicial Qualifications Commission Rules*, 2012 WL 9335827 (August 2, 2012). The applicability of the 2012 rules was raised by Judge Watson's counsel at the beginning of the final hearing and addressed by the Hearing Panel Chair.

hearing process before it is completed . . . ." *See* JQC's Response to Petition for Writ of Quo Warranto at 8.

Without explanation, but presumably for the reasons advanced by the JQC, this Court entered an order denying Judge Allen's Petition "***without prejudice to [his] right to raise the claims asserted [in the Petition] on review of Inquiry Concerning A Judge, No. 06-249 Re: Michael E. Allen, No. SC07-774.***" The policy rationale underlying the deferral of the arguments raised in Judge Allen's Petition is even more compelling here because Judge Allen filed his Petition *prior* to his final hearing; whereas, in this matter, Judge Watson's final hearing has already occurred and the Hearing Panel has issued its Recommendation. It would be completely nonsensical, not to mention unnecessarily strain judicial resources, to now suspend these Proceedings for the purpose of duplicating a review process that is already available to Judge Watson if she simply responded to the Order to Show Cause.

CONCLUSION

For the foregoing reasons, this Court should reject Judge Watson's attempt to inject further delay into these Proceedings and deny her Motion to Stay JQC Proceedings and Briefing, and/or Motion for Extension of Time.

[SIGNATURE LINE ON FOLLOWING PAGE]

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **FLORIDA JUDICIAL QUALIFICATIONS COMMISSION'S RESPONSE TO JUDGE WATSON'S MOTION TO STAY JQC PROCEEDINGS AND BRIEFING, AND/OR MOTION FOR EXTENSION OF TIME** has been furnished by **E-Mail** on this 25th day of April, 2014 to the following:

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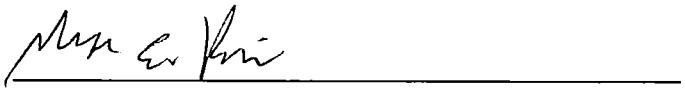

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 14-60306-Civ-COOKE/TURNOFF

LAURA M. WATSON,

Plaintiff,

vs.

THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION, *et al.*,

Defendants,

_____/

ORDER DENYING TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION

THIS CASE is before me on Plaintiff's Motion for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction (ECF No. 4). Plaintiff Judge Laura Watson seeks to enjoin an enforcement hearing scheduled to take place before Florida's Judicial Qualifications Commission ("FJQC") on Monday, February 10, 2014. The hearing is on allegations of professional misconduct that stem from the Plaintiff's role in the settlement of several Personal Injury Protection ("PIP") claims. Plaintiff alleges that the proceedings against her violate her rights to procedural and substantive due process under the Fifth and Fourteenth Amendments. I have reviewed the motion, the record, and the relevant legal authorities. For the reasons provided below, it is **ORDERED** that Plaintiff's Motion for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction be **DENIED**.

Plaintiff seeks this Court's intervention in an ongoing quasi-judicial disciplinary proceeding by the FJQC. However, abstention is appropriate under *Younger v. Harris*, 401 U.S. 37, 44 (1971). The *Younger* abstention doctrine is based on the principle of equitable restraint described by the *Younger* Court as the notion of "comity." Comity includes "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National

Exhibit A

Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Younger v. Harris,* 401 U.S. 37, 44 (1971), *quoted in Middlesex County Ethics Comm. v. Garden State Bar Assn.,* 457 U.S. 423, 431 (1981).

Younger abstention effectively bars federal district courts from interfering with certain ongoing state proceedings. There are essentially three issues that must be addressed in order to invoke the *Younger* abstention: (1) whether the action constitutes an ongoing state judicial proceeding; (2) whether the proceedings implicate important state interests; and (3) whether there is an adequate opportunity in the state proceedings to raise constitutional challenges. *See Middlesex County,* 457 U.S. at 432. If those questions are answered affirmatively then *Younger* abstention applies unless there is a showing of "bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate." *Id.* at 435.

The quasi-judicial proceeding instituted by the FJQC is analogous to state bar disciplinary proceedings, which are sufficiently judicial in nature to warrant *Younger* abstention. *See Middlesex County Ethics Comm. v. Garden State Bar,* 457 U.S. 423 (1981); *see also Graham v. Wigginton,* 818 F. Supp. 336. 338 (M.D. Fla. 1993). Further, Plaintiff challenges the FJQC's process before it has even concluded, which is done through a recommendation to the Florida Supreme Court. In fact, the commission has yet to hold a hearing on the allegations against Judge Watson. The first prong of *Younger* is clearly satisfied because the FJQC's proceedings are quasi-judicial in nature and ongoing,

Courts have consistently found that state bar disciplinary proceedings constitute an important state interest. *See Middlesex County Ethics Comm. v. Garden State Bar,* 457 U.S. 423 (1981); *see also Graham v. Wigginton,* 818 F. Supp. 336. 338 (M.D. Fla. 1993). As previously discussed, the quasi-judicial proceeding instituted by the FJQC is analogous to state bar disciplinary proceedings. Thus, the discipline of state court judges constitutes an important state interest, which satisfies the second prong of *Younger's* abstention analysis.

Plaintiff will have an adequate opportunity to raise constitutional challenges. Should the Plaintiff take issue with the proceedings, FJQC Rule 21 provides for Florida Supreme Court review of the Investigative and Hearing panel proceedings pursuant to Florida Appellate Rules. In fact, the Supreme Court must adopt the panel's findings and recommendation of discipline. Thus, the Supreme Court, not the FJQC, makes the final determination. And should the party find it necessary, it may file a brief before the Court

makes its final determination. I find these procedures present the Plaintiff with an adequate opportunity to raise her constitutional claims.

Accordingly, it is, therefore, **ORDERED and ADJUDGED** that Plaintiff's Motion for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction (ECF No. 4) is **DENIED**.

DONE and ORDERED in chambers at Miami, Florida, this 9th day of February 2014.

Marcia G. Cooke

MARCIA G. COOKE
United States District Judge

Copies furnished to:
William C. Turnoff, U.S. Magistrate Judge
Laura M. Watson, pro se
Counsel of record

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

HON. MATTHEW E. McMILLAN, et al.,

Plaintiffs,

v. CASE NO. 4:00cv391-RH

THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION, et al.,

Defendants.

_____/

ORDER DENYING REQUEST FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

Plaintiff Matthew E. McMillan is a sitting Florida County Judge who has been charged before the Florida Judicial Qualifications Commission with multiple instances of misconduct during his 1998 campaign for that position. A full evidentiary hearing on those charges is set for Monday, October 30, 2000, one week from today. After the hearing,

Exhibit B

the JQC will make a recommendation to the Florida Supreme Court, which will make the final decision on the charges and, if any are sustained, on any appropriate sanctions.

Now, at the eleventh hour, Judge McMillan has filed this federal lawsuit, asserting that the conduct with which he has been charged was protected by the First Amendment of the United States Constitution, that the proceedings against him are based on a misconstruction of the applicable judicial canons, and that in any event those canons are unconstitutional in various respects. Judge McMillan's complaint and amended complaint request, among other things, a temporary restraining order and preliminary injunction, and he has filed a memorandum in support of that request.

I deny the request for a temporary restraining order or preliminary injunction. At least for purposes of this request, I conclude that Judge McMillan is unlikely to prevail on the merits, and that in any event he will suffer no irreparable harm from continuation of the JQC proceedings, for the following reasons.

First, the settled law is that federal courts should

not interfere with ongoing state disciplinary proceedings of this nature absent exceptional circumstances not present here. See, e.g., Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982) (disapproving interference with ongoing state disciplinary proceeding against attorney); Pincham v. Illinois Judicial Inquiry Board, 872 F.2d 1341 (7th Cir. 1989) (disapproving interference with ongoing state disciplinary proceeding against judge); see also Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971) (disapproving interference with ongoing state criminal proceeding). If Judge McMillan has a valid constitutional defense to the charges at issue, his remedy is to raise the defense in the ongoing JQC proceeding, and, if necessary, before the Florida Supreme Court, and, if still necessary, by petition for *certiorari* in the United States Supreme Court. Judge McMillan thus is unlikely to prevail in this separate federal lawsuit.[1]

[1] In Butler v. Alabama Judicial Inquiry Comm'n, 111 F. Supp. 1241 (M.D. Ala.), in which an appeal is pending, the court entered a preliminary injunction stopping an ongoing

Second, although prevention of free speech ordinarily constitutes irreparable harm, here the only speech at issue is over; the election was conducted in 1998, and no new election will occur until 2004. Judge McMillan apparently makes no claim that his right to speak freely is currently being curtailed. He thus will suffer no irreparable denial of free speech between now and the time when the JQC proceeding will be concluded. Under these circumstances, being required to defend charges in a forum providing full due process does not constitute the kind of irreparable harm that would support issuance of a temporary restraining order

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state judicial disciplinary proceeding. The court distinguished Middlesex on two grounds: first, that the judge involved in Butler could not sit while the disciplinary proceeding was pending, whereas the attorney involved in Middlesex could still practice law, and second, under Alabama procedure, the judge "does not have full and fair opportunity to challenge the constitutionality of the disputed Canons." Butler, 111 F. Supp. At 1247. Even assuming Butler is good law - a far from certain proposition - neither of these grounds for distinguishing Middlesex applies in the case at bar. Here, Judge McMillan continues to sit while the JQC proceeding is ongoing, and he will have a full and fair opportunity to raise his constitutional claims in the Florida Supreme Court, if not also before the JQC. I reject any claim that the Florida Supreme Court will necessarily be inherently biased against such constitutional claims based on its role in adoption of the canons at issue.

or preliminary injunction.

Because Judge McMillan has established neither the likelihood of success on the merits nor that he will suffer irreparable harm, I need not address the other parts of the four-part test for issuance of emergency relief.

For these reasons,

IT IS ORDERED:

Plaintiffs' request for a temporary restraining order or preliminary injunction is DENIED.

SO ORDERED this 23d day of October, 2000.

Robert L. Hinkle
United States District Judge