SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A JUDGE:
CYNTHIA A. HOLLOWAY Case No. SC00-2226
No.: 00-143
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JUDGE HOLLOWAY'S MOTION TO DISMISS AND MOTION FOR SANCTIONS FOR BAD FAITH CONDUCT BY JQC AND PROSECUTORIAL MISCONDUCT

On September 6, 2001, Judge Holloway filed a Motion to Dismiss these proceedings with the Chairman of the Hearing Panel due to the bad faith of the JQC. This Motion to Dismiss was never given appropriate consideration by the JQC, which, apparently, is ill-equipped to police its own misconduct. Judge Holloway would now renew this Motion to Dismiss before this Court, which is attached as Exhibit "A" in the Appendix, as this Court has original jurisdiction to consider such matters. In addition, since the filing of this first Motion to

Dismiss, there have been further events relating to the bad faith conduct of the JQC as well as prosecutorial misconduct that warrant a dismissal of these proceedings.

The breaches of confidentiality, conflicts of interest, inadequate investigation, failure to consider exculpatory evidence, and selective enforcement of the Canons by the JQC have infected these proceedings since their inception, and these problems continue to linger and have had an untold impact on the ultimate findings and conclusions of the Hearing Panel. Further, and more importantly, these irregularities and bad faith conduct have caused irreparable harm to Judge Holloway. If the JQC had corrected these problems after being admonished by this Court in previous actions, or even if the JQC had given due consideration to Judge Holloway's criticisms, it is likely that these proceedings would never have been instituted and certainly would not have proceeded to a full hearing. In addition to the irregularities outlined in the Motion to Dismiss, Judge Holloway would add the following to the long list of improper actions by the JQC in these proceedings.

A. **THESE PROCEEDINGS SHOULD BE DISMISSSED DUE TO PROSECUTORIAL MISCONDUCT**

Special Counsel for the JQC, as a prosecutor, has special obligations and is held to the "highest standard because of their unique powers and responsibilities."[1] A prosecutor has the duty to "fairly present the evidence and permit the jury to come to a fair and impartial verdict."[2] In no instance is a prosecutor permitted to disregard the truth or proffer perjured testimony in order to win at all costs.

This higher standard of conduct for prosecutors is very similar to that which the JQC seeks to enforce against judges in these proceedings and others. It is for this reason that the misconduct of Special Counsel in these proceedings would be ironic if not for the fact that such misconduct has resulted in such untoward consequences for Judge Holloway. It is absolutely appalling that Special Counsel has launched such a personal attack upon Judge Holloway and attempted to brand her as a liar before the Panel, the media and anyone else that would listen, but seems incapable of seeing the glaring credibility problems exhibited by the JQC's own witnesses and the fact that Special Counsel has proffered perjured testimony in these proceedings.

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[1] Florida Bar v. Cox, 2001 WL 521314.

[2] Id.

In her Opening Statement, Special Counsel related the following to the Hearing Panel regarding Charge 6 of the amended charges (commonly referred to as the "tree incident"):

> You will also hear evidence in this case how Judge Holloway, when a friend's, you know, trees were being cut down on government property in front of her law firm, how she interfered in that and came out to the scene and not only signed an injunction but went, you know, toe to toe with the tree cutter. [3]

At the hearing on October 15, 2001, Special Prosecutor Beatrice Butchko called as her only witness an individual by the name of Randy Emmerman to testify concerning Judge Holloway's supposed misconduct arising from her having issued a temporary injunction enjoining Sonny's Tree Service from cutting down trees in the City of Tampa's right-of-way on Hyde Park Avenue in the vicinity of Attorney Jeanne Tate's office. Ms. Butchko elicited the following testimony from Mr. Emmerman:

- That Mr. Emmerman was present at the scene on the time and date of the above stated incident and participated therein.[4]

- That Mr. Emmerman arrived at the scene in time to have observed Judge Holloway direct Ms. Tate to go to her office and draft a motion for temporary injunction and order granting same.[5]

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[3] JQC's Opening Statement, HT, 31:24-32:6.
[4] Emmerman Testimony, HT 259:8.
[5] HT 264:6-8.

- That Mr. Emmerman observed Judge Holloway execute said order.[6]

- That Judge Holloway threatened to put Mr. Emmerman **and** Sonny Dick in jail if they did not stop cutting the trees in question.[7]

- That Mr. Emmerman had obtained permission from the City of Tampa to remove the subject trees and trim other trees in the area in order to move a home owned by Mr. Emmerman.[8]

All of this testimony was very helpful in corroborating Special Counsel's statement that Judge Holloway was a "judge out of control".[9] It was very helpful in establishing a pattern of alleged misconduct warranting more severe punishment of Judge Holloway.[10] It was very helpful in supporting Special Counsel's contention that Judge Holloway "continuously got involved inappropriately whenever it suited her purposes."[11] **The only problem is that the testimony from Mr. Emmerman is a complete fabrication**.

Jeanne Tate, a local lawyer, testified on behalf of the defense that Mr. Emmerman was not even present when these events occurred.[12] She further testified that she had personally spoken to the City of Tampa employee

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6 HT 286:11-13.
7 HT 263:18-20; HT 264:19-21.
8 HT 258:16-19; HT 276:4-10
9 JQC Opening Statement, HT 22:24.
10 HT 871:17.
11 HT 869:24-25.
12 Tate Testimony, HT 405:4-6.

responsible for issuing permits to cut trees in city right-of-ways and that City of Tampa official confirmed that Mr. Emmerman did not have permission to cut the trees as of July 10, 1999, the date in question.[13] Further, Ms. Tate testified that she never heard Judge Holloway threaten anyone with going to jail on the date in question.[14] Most startling, however, is that Special Counsel knew or should have known all of these facts long before the trial as these matters were covered in the deposition of Jeanne Tate, taken by Special Counsel on September 25, 2001.[15] In addition, just prior to the hearing, Jeanne Tate informed Beatrice Butchko of all of these facts again, including the fact that Mr. Emmerman was not present at the time in question and that she never heard Judge Holloway threaten anyone with going to jail, especially Mr. Emmerman who was not even present.

After Jeanne Tate testified and Judge Holloway's counsel moved for a directed verdict, Special Counsel withdrew this charge on behalf of the JQC. This maneuvering by the JQC kept Judge Holloway from putting on additional rebuttal testimony that would have illuminated for the Hearing Panel that the

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[13] Tate Testimony, HT 437:14-24.

[14] Tate Testimony, HT 420:18 – 421:4

[15] A copy of the entire deposition of Jeanne Tate taken on September 25, 2001, is attached in the Appendix hereto as Exhibit "B".

testimony elicited from Mr. Emmerman by Special Counsel was absolutely false.[16]

Obviously, the Hearing Panel was tainted by the testimony of Randy Emmerman. The fact that these charges were summarily dropped after the JQC presented its case does not diminish the impact on Judge Holloway. This is a charge that never should have been filed in the first place since there was no competent evidence to support the finding of probable cause. Discovery in this case only shed additional light upon the lack of legal or factual support for this charge. A responsible prosecutor would have dismissed this charge long before commencement of the hearing. Instead, the JQC ignored competent evidence from the City of Tampa, a police officer, Judge Holloway, and two lawyers and instead put on the testimony of a witness who was not even present at the time in question before ultimately dismissing the charge. This was irresponsible and terribly prejudicial to Judge Holloway given that the Hearing Panel was told to consider her pattern of conduct and that even seemingly innocuous events

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[16] Special Counsel has obviously forgotten portions of the Oath of Admission that she took when she became a lawyer. This Oath includes a promise to "employ for the purposes of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or Jury by any artifice or false statement of fact or law." In addition, the Code of Professional Conduct requires that "[a] lawyer shall not knowingly permit any witness . . . to offer testimony or other evidence that the lawyer knows to be false." Rule 4-3.3(a)(4).

could be considered in assessing punishment. At a minimum, the Hearing Panel should have been given some type of curative instruction, although even this would have likely been insufficient to erase the prejudice. The bottom line is that the bell had already been rung by Special Counsel and could not be unrung. In essence, Special Counsel chose the wrong course of action, the win-at-all-costs option, and almost got away with it. Although the charge was ultimately dropped by the JQC, there is no doubt that the Hearing Panel was nevertheless poisoned by this inappropriate testimony.

Judge Holloway was allowed to proffer the testimony of a single rebuttal witness, Steve Graham of the City of Tampa, for only a few minutes and outside the presence of the Hearing Panel in order to counter the extraordinary allegations leveled by Mr. Emmerman on behalf of Special Counsel.[17] Mr. Graham corroborated Ms. Tate's testimony that Mr. Emmerman did not have permission from the City of Tampa to cut the subject trees, and that he would have been the only City employee with the power to grant Mr. Emmerman that permission.[18] Mr. Graham also testified that he had informed Special Counsel prior to commencement of the hearing that Mr. Emmerman did not have permission to from the City to cut the trees, despite Mr. Emmerman's testimony

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[17] HT 487-495.

[18] Graham's Testimony, HT 491:2-11.

to the contrary. Also, the records of the City of Tampa, which were admitted into evidence and provided to the JQC prior to the hearing, show unequivocally that Mr. Emmerman's testimony before the Hearing Panel about having permission to cut the trees was false.[19]

Given the very limited proffer of rebuttal testimony permitted, and the fact that this proffer was done without the Hearing Panel present, Judge Holloway has not been given an adequate opportunity to build a record to show the egregiousness of Special Counsel's behavior. Since the conclusion of the hearing, Judge Holloway's counsel has spoken with most of the parties involved with this Saturday morning incident relating to the tree-cutting injunction and has obtained affidavits in hopes of creating the record for this Court that Judge Holloway was wrongfully prohibited from creating during the hearing. As evidenced by these Affidavits, Special Counsel had spoken with many of these same witnesses just a few days prior to the hearing, and therefore knew that at least some, if not all, of the testimony that she elicited from Mr. Emmerman was in fact false.

Tampa Police Department Officer Keith Elkington, whose affidavit is attached as Exhibit "C", was the officer called to the scene on the date in question.

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[19] Judge Holloway's Hearing Exhibits 3, 4, and 5.

Officer Elkington avers that when he arrived at the scene Judge Holloway had executed a temporary injunction and that he did not overhear her threaten anyone with jail time. In fact, he states that Judge Holloway merely ordered Sonny Dick, the apparent supervisor of the men cutting the trees, to stop, and that it was he who then told this individual that if he continued to cut the trees he would have to take him to jail. In addition, Officer Elkington has indicated that the only other people he recalls being present at the time were Judge Holloway, a male with Judge Holloway (whom he later learned was her husband), Jeanne Tate, and the tree cutting people. He indicated that Mr. Emmerman was not present at the time. Officer Elkington spoke to Special Counsel in the days prior to the hearing about this incident. In response to her question, the officer told Ms. Butchko that the aforementioned were the only people involved on that morning and that he does not recall Mr. Emmerman being present. Special Counsel then informed Officer Elkington that he was released from his subpoena and that his testimony would not be required at the hearing before the Panel.

Special Counsel made the conscious decision to win this case no matter what got in the way. She elicited false testimony from Mr. Emmerman. She refused to dismiss frivolous charges. She refused to present competent evidence that was favorable to Judge Holloway. She sacrificed her obligations

as a lawyer, as an officer of the Court, and as a prosecutor in this misguided quest for victory. She violated the very Canons that she is duty-charged to enforce and has brought discredit to the justice system. And, in the end, she has irreparably harmed Judge Holloway in these proceedings. There is no way to assess what impact this highly prejudicial evidence on a totally unfounded charge may have had on the ultimate outcome of the proceedings.

The false testimony regarding the trees was not an isolated or unfortunate occurrence, but instead yet one more example of the unfairness of these proceedings. Special Counsel also elicited highly inflammatory testimony from Mark Johnson that once Judge Stoddard recused himself from the custody case that his daughter remained in shelter status for five weeks because of Judge Holloway's contact with Judge Stoddard.[20] On numerous occasions in these proceedings, Special Counsel informed the Hearing Panel that Judge Holloway deserved the most severe punishment because this child languished in shelter status because of Judge Holloway's improper conduct, conduct that she admitted from the inception of these proceedings was wrong and for which she has profusely apologized.[21] If Special Counsel had bothered to review the transcripts of the hearings in the custody case conducted by Judges Stoddard

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[20] Johnson Testimony, HT 165:25–166:23.

[21] JQC Closing Argument, HT 815:12-17.

and Maye (and she certainly had an obligation to do so), it would have been abundantly clear that this allegation was unfounded.[22] In addition, had Special Counsel bothered to interview Judge Maye she would have been informed of the falsity of this statement by Mr. Johnson.[23] The Hearing Panel was provided with the transcripts from these proceedings and agreed with Judge Holloway that the allegations by Special Counsel were unsupported by any competent evidence and that Mark Johnson was not a credible witness.[24] Unfortunately, however, even though the Hearing Panel found the JQC's primary witness, Mark Johnson, unworthy of belief, it nevertheless found Judge Holloway guilty of some of the charges based in large part on Mr. Johnson's testimony regarding the deposition and on the totality of the circumstances.

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[22] Excerpts from the transcripts of relevant hearings in the Adair v. Johnson proceedings are attached as Exhibit "D". This is just one example of Special Counsel refusing to consider exculpatory information. In addition, when Special Counsel came to Tampa for three days to "investigate" these charges, an offer was extended for her to meet individually with the three attorneys present at Judge Holloway's deposition. Ms. Butchko refused to speak with these important witnesses during the investigation. It is obvious that this three-day trip to Tampa was not in search of the truth or to find credible evidence to substantiate the charges. Instead, it was an effort to "dig up new dirt" against Judge Holloway. Special Counsel made irrelevant inquiries regarding the details of Judge Holloway's personal life. She questioned witnesses about where and when the judge had her nails done, whether she was "spoiled", and whether she flaunts her wealth.

[23] See Affidavit of Judge Vivian Maye attached as Exhibit "E".

[24] Findings, Conclusion & Recommendations, p. 15 and 21.

Also furtherance of this "win at all cost" attitude, Charge 2 concerning a second telephone conversation with Detective Yaratch was dropped at the beginning of the hearing (actually during opening statements).[25] This tactical decision by the JQC then limited Judge Holloway's ability to cross-examine Detective Yaratch on his allegations that were completely without merit, as Judge Holloway had contended all along. However, there was no information available to Special Counsel on the morning of the hearing that had not existed since the inception of these proceedings regarding the alleged second phone call with Detective Yaratch, which was not even documented in the officer's own police report and only came to light during a deposition in the child custody proceedings. Once again, Special Counsel chose to push yet another frivolous charge in hopes of bolstering the argument that Judge Holloway has engaged in a long series of improper acts which would warrant severe punishment and to poison the Hearing Panel against Respondent.

The Chairman of the Hearing Panel's refusal to permit a thorough cross-examination of Detective Yaratch also harmed Judge Holloway. Obviously, the Hearing Panel gave great weight to Detective Yaratch's belief that Judge Holloway's contact with him was improper, and even discarded applicable law

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[25] Holloway Opening Statement, HT 35: 1-6.

in making its findings. The Hearing Panel was not permitted to hear, however, that Detective Yaratch had in fact given false testimony to Judge Maye in the child custody proceedings regarding the results of a polygraph test.[26] This evidence was very important in that it showed that Detective Yaratch was incredibly biased against Robin Adair in his investigation of the abuse allegations, and that he gave false testimony regarding the results of a polygraph test to the sitting judge in order to support his claims that Robin Adair rather than the father of the child should be charged with a crime.

Given the nature of these proceedings, it is reprehensible that any charge would be dropped during trial or dismissed for tactical reasons. The JQC has an obligation to make a fair and impartial analysis of the evidence and present that to this Court so that it can make appropriate findings. There should be no posturing, maneuvering, strategizing, by the JQC. Exculpatory evidence should be embraced by the JQC and acted upon, not ignored or buried. Witnesses with stories that are wildly inconsistent with the testimony of others or who have an obvious bias against the accused judge should be handled with extreme caution rather than vigorously endorsed by the JQC and Special Counsel.

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[26] Yaratch Deposition Testimony, dated May 10, 2001, at pp. 58-100. Relevant excerpts of Detective Yaratch's deposition are attached in the Appendix as Exhibit "F".

Either the JQC's charges are supported by competent evidence or they are not. If there is no competent evidence to support a charge, then it should not be brought, and if evidence uncovered during discovery indicates that the information acted upon by the Investigative Panel was incorrect or if more reliable information comes to light which exculpates the accused judge, then the charges should be dismissed immediately. Instead, this JQC ignores witnesses who are not supportive of the prosecution (even if they are unbiased and reliable) and, instead, continues to dig until it can find any witness, even those with an obvious bias, who is willing to take the stand and tell a story, even if it is false, that will assist in finding a judge guilty.

B. THESE PROCEEDINGS SHOULD BE DISMISSED DUE TO VIOLATIONS OF JUDGE HOLLOWAY'S RIGHTS TO A FAIR PROSECUTION AND IMPARTIAL PROCEEDINGS

The fundamental fairness of these proceedings has been undermined by a lack of bifurcation, prosecutorial misconduct, a failure of the Special Counsel and the Investigative Panel to seek out or consider evidence that favors of Judge Holloway, and various irregularities in the proceedings before the Hearing Panel.

Judge Holloway has been prejudiced by the apparent confusion of various members of the JQC on the legal limits of their roles in these proceedings. There were good reasons why JQC proceedings were bifurcated in 1996[27], and, in these particular proceedings, this five-year history of bifurcation has been erased.

The Constitution provides for bifurcation of the Investigative Panel and the Hearing Panel.[28] However, the actual practices of the JQC have rendered this mandated bifurcation a sham. As a practical matter, how effective can bifurcation be when the entire Commission meets on a regular basis? This practice is completely inconsistent with the entire notion of bifurcation.

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[27] Article V, Section 12, Paragraph (b), Florida Constitution.

[28] Id.

More significantly, in the case at bar, the "Chairman" of the Investigative Panel (Judge Wolf) maintained contact with the "Chairman" of the Hearing Panel (Judge Jorgensen) throughout the entire course of these proceedings, and long after the Investigative Panel's role in the case had been completed.[29] Judge Wolf continued to correspond with the parties after formal charges were filed and the ninety-day period had expired.[30] At the hearing, Judge Wolf was present and sat at counsel's table with Special Counsel throughout the two-day hearing.[31] Judge Wolf was introduced to the Hearing Panel as the Chairman of the Investigative Panel.[32]

If the JQC were adhering to the mandate of bifurcation, then there was absolutely no reason for Judge Wolf to be present, as his Investigative Panel no longer had any role or jurisdiction with respect to these proceedings. However, Judge Wolf must have believed he had some authority since he directed Special Counsel to dismiss two charges during the course of the hearing. Obviously,

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[29] The JQC has adopted internal procedures whereby the Investigative Panel retains jurisdiction until ninety days after the formal charges are filed and then relinquishes its jurisdiction to the Hearing Panel.

[30] Judge Wolf's Letter of September 24, 2001 is Judge Holloway's Hearing Exhibit 1.

[31] In fact, Judge Holloway objected to the presence of Judge Wolf being at the hearing as a party. The Chairman of the Hearing Panel did not consider the validity of counsel's objection, but instead commented, "Okay. Duly noted." Butchko Introduction, HT 16:17-16:21.

[32] Butchko Introduction, HT 16:10-13.

the presence of the Chairman of the Investigative Panel at the hearing in these proceedings could serve to intimidate the Hearing Panel.

Bifurcation is a very important concept in relation to the settlement of JQC proceedings. Obviously, the Investigative Panel is not in a position to be able to amicably resolve pending charges against a judge since that Panel does not have the benefit of all of the evidence adduced during discovery. Furthermore, and more importantly, by its own rules, the Investigative Panel loses jurisdiction of a prosecution ninety days after the filing of formal charges. In these proceedings, the Amended Formal Charges were filed on approximately June 19, 2001, which means that the Investigative Panel lost jurisdiction on or about September 18, 2001.

At the instruction of Judge Jorgensen, Chairman of the Hearing Panel, Judge Holloway, through her counsel, negotiated a settlement between the Special Counsel and Judge Wolf, then acting as Chairman of the JQC (and not Chairman of the Investigative Panel) in October of 2001, just days prior to the hearing. A stipulation signed by Judge Holloway was submitted to Special Counsel and Judge Wolf, who indicated their willingness to endorse the settlement stipulation. Subsequently, Judge Holloway was advised that the **Investigative Panel** had rejected the stipulated settlement and that Judge Holloway would have to proceed to trial before the Hearing Panel. At the time

that the settlement stipulation was signed, the Investigative Panel was without jurisdiction to reject the settlement between Judge Holloway and the Chairman of the JQC.

Judge Holloway attempted to enforce the settlement and raised this issue before Judge Jorgensen, the Chairman of the Hearing Panel, at the commencement of the hearing.[33] Judge Jorgensen indicated that although the Hearing Panel had jurisdiction at the time under the ninety-day rule, it had nevertheless "returned" jurisdiction briefly to the Investigative Panel for consideration and ultimate rejection of the settlement agreement.[34] There is absolutely no authority for temporary return of jurisdiction to the Investigative Panel. Judge Holloway did not agree to waive the ninety-day rule or consent to have the Investigative Panel resume jurisdiction of her case, nor was she given any notice that the Hearing Panel had decided to momentarily relinquish its jurisdiction.

Judge Holloway and all judges subject to JQC proceedings are entitled to the constitutionally-mandated protections of bifurcation. The JQC does not have the right to pick and choose when it wants to abide by the Constitution.

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[33] See Judge Holloway's Hearing Exhibit 2. Motion to Enforce Settlement was filed on October 15, 2001.

[34] HT 5: 11

Also, Judge Holloway and others are entitled to JQC settlement negotiations conducted in good faith. Judge Holloway negotiated a settlement of these charges with the Chairman of the JQC. Her negotiations were conducted in good faith with members of the JQC who assured her that they had the authority to do so. However, it appeared to Judge Holloway on the eve of trial, the JQC was not negotiating in good faith, and the Investigative Panel was permitted to meddle and ultimately derail an amicable resolution of these charges.

Even the Chairman of the Hearing Panel admitted that the circumstances surrounding these settlement negotiations and the juggling of jurisdiction between the two panels was problematic. Judge Jorgensen assured Judge Holloway that he and Judge Wolf would try to do something in future cases to resolve these issues to ensure that future settlement negotiations are conducted in good faith and are effective.[35] While Judge Holloway is comforted that the JQC, too, recognizes this fundamental problem, the promise that it will be addressed for the next judge does not correct the irreparable harm that Judge Holloway has suffered in these proceedings due to the JQC's willful disregard for the fundamental fairness ensured by bifurcated proceedings. Judge Holloway is entitled to the same bifurcation that should be afforded to every judge, and she did not receive that protection in these proceedings.

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[35] HT 15:10.

The JQC panel appears, at present, to be operating without any oversight or accountability. In addition to the foregoing, the fundamental fairness of these proceedings has been undermined by numerous irregularities in the hearing process. While the two JQC panels certainly wrap themselves in all of the formal trappings of grand jury and judicial proceedings, the process has none of the constitutional safeguards for the accused judge.

It is evident that those responsible for these proceedings have lost sight of the goals of the JQC. The object is to ensure faith in the judiciary. The process should have every safeguard for the accused judge to ensure that the JQC process itself does not end up bringing even more discredit to the judiciary than the alleged misconduct of the Judge being investigated and prosecuted. Winning no matter what, the apparent objective in these proceedings, is an inappropriate goal.

The JQC process is unfairly stacked against the judge, when, as with any prosecution, the advantage (if any) should be in favor of the accused. The rules of evidence can be applied to limit the judge's ability to defend his or her actions.[36] Judge Holloway wholeheartedly supports the criticisms voiced by

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[36] Rule 12 of the JQC adopts the Florida Rules of Civil Procedure, yet only the judge is subject to sanctions for violations of the rules. Rule 14 only permits the judge to present "legal evidence" in defending against charges, while the JQC has no such limitations. In these proceedings, there were numerous

Judge Baker, and agrees that the JQC process needs to be reformed so that the Supreme Court is presented with findings of fact that are derived after a fair and impartial review of all of the evidence, no matter who it supports, and after proceedings conducted by the JQC that have given due consideration to the constitutional protections afforded the accused judge.

Judge Holloway has been irreparably harmed by the cumulative impact of the following irregularities: a poorly conducted investigation by the JQC prior to filing charges with a disregard for exculpatory evidence; the Investigative Panel's agreement to press charges even in the face of contrary or lacking evidence; bad faith in the conduct of both the investigative and prosecutorial aspects of these proceedings including breaches of confidentiality; and prosecutorial misconduct.

The Supreme Court has previously imposed the sanction of dismissal upon the Florida Bar for the irresponsible prosecution of disciplinary matters[37] The court justified this severe sanction upon the prosecutors and commented:

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instances where the Chairman of the Hearing Panel did not permit testimony based upon legal objections such as hearsay or lack of foundation, but then permitted the Hearing Panel to hear that same impermissible evidence through the Panel members' questioning of witnesses after direct and cross-examination. See HT 246:11-247:24.

[37] Fla. Bar v. Rubin, 362 So.2d 12, 16 (Fla. 1978). The court rejected the Bar's recommendation of disbarment, and found that the Bar's conduct in the prosecution was "inexcusable." Id.

> The bar has consistently demanded that the attorneys turn "square corners" in the conduct of their affairs. An accused attorney has a right to demand no less of the Bar when it musters its resources to prosecute for attorney misconduct. We have previously indicated that we too will demand responsible prosecution of errant attorneys, and that we will hold the Bar accountable for any failure to do so.
>
> We have pointedly held that the responsibility for exercising diligence in the prosecution rests with the Bar. When it fails in this regard the penalizing incidents which the accused lawyer suffers from unjust delays, might well supplant more formal judgments as a form of discipline. This is so even though the record shows that the conduct of the lawyer merits discipline."

The words of this Court in that proceeding are equally applicable in these proceedings. The JQC, just like the Florida Bar, acts as an arm of the Florida Supreme Court in judicial investigations and prosecutions. Unfortunately, these lessons of the past were not heeded by the JQC in time to protect Judge Holloway, and Judge Holloway would once again request that this Honorable Court dismiss the instant proceedings based upon the irresponsible and improper conduct of the JQC as outlined above, make such referrals for discipline of the responsible parties as the Court deems just and proper, and requests that this Court enter any further relief that it deems just and proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail or Federal Express this day of February, 2002, to Beatrice A. Butchko, Esq., Special Counsel, One Biscayne Tower, Suite 2300, 2 South Biscayne Blvd., Miami, Florida 33131.

By:

Scott K. Tozian, Esq.

Counsel for Respondent

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Response to Show Cause Order complies with the font requirements of Rule 9.210, Fla. R. App. P.. The font use in this matter is Times New Roman 14.

By:

Scott K. Tozian, Esq.

Counsel for Respondent