BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE: CYNTHIA A. HOLLOWAY NO.: 00-143

Florida Supreme Court
Case No.: SC00-2226

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RESPONDENT HOLLOWAY'S MOTION FOR SUMMARY JUDGMENT

COMES NOW Respondent, Cynthia A. Holloway, by and through her undersigned counsel, and hereby moves for summary judgment pursuant to Florida Rule of Civil Procedure 1.510(b) as to the allegations of the Judicial Qualifications Commission set forth in charges 1(a)(b), 3, 4, 5, 6 and 7 of its Amended Formal Charges and as grounds states the following:

1. When the material facts are not in dispute and the moving party is entitled to a judgment as a matter of law, summary judgment in favor of the moving party must be entered. F.R.C.P. 1.510(c). Since the Florida Rules of Civil Procedure apply once the proceedings are set before the Hearing Panel, summary judgment is appropriate in Judicial Qualifications Commission proceedings. Fla. Jud. Qual. Comn'n. R. 12.

2. The undisputed material facts and the argument pertaining to each charge will be discussed separately below because the charges contained in the Amended Formal Charges involve different subject matter.

CHARGE I, FACTS

3. The Circuit Court case, Adair v. Johnson, No. 97-11697, involved an investigation of possible sexual misconduct by the biological father of Parker Adair who was a four-year-old child. Parker Adair's aunt, Cindy Tigert, was Respondent's very close family friend. (Holloway deposition, dated 5/8/01, p. 18). Through Respondent's friendship with Ms. Tigert, Respondent had known Parker Adair since she was a baby. (Holloway deposition, dated 5/8/01, pp. 31-32).

4. Ms. Tigert informed Respondent that Parker Adair was at risk of being removed from her home and placed in shelter status pending an investigation of the sexual abuse allegation. Respondent learned that no official had yet spoken to the child and as a concerned family friend, attempted to contact law enforcement to request that if an interview was going to be conducted that it be done expeditiously. (Holloway deposition, dated 5/8/01, pp. 78-79).

5. On February 24, 2000, Respondent contacted Detective Yaratch, the case investigator with the Tampa Police Department, and requested that he return her call on her cell phone. (Holloway deposition, dated 5/8/01, pp. 74-80). When Detective Yaratch returned Respondent's call, Respondent told him that she did not want to discuss the facts of the case but hoped that if he were going to interview the child, he would do it as soon as

possible at the Child Advocacy Center. (Holloway deposition, dated 5/8/01, p. 81). Respondent did not say anything to intimidate, coerce or try to influence Detective Yaratch. (Detective Yaratch deposition, dated 8/4/00, pp. 41-42).

6. Other than Detective Yaratch's belief that he spoke to Respondent during a second phone call, there is no corroborating evidence that this phone call occurred. Respondent was out of the country from February 27, 2000 to March 2, 2000. (Holloway deposition, dated 5/8/01, p. 107; Wingate deposition, dated 5/8/01, p. 33). Respondent returned to the office on March 3, 2000 during which time she was on the bench for morning and afternoon dockets. Judge Holloway does not leave the bench except for cases of emergencies. There are no message slips indicating that Detective Yaratch attempted to contact her on March 3, 2001. Judicial Assistant, Janice Wingate, does not recall receiving a call from the Detective on March 3, 2001. Respondent had a noon appointment out of the office on that date. (Holloway deposition, dated 5/8/01, p. 119). Respondent's telephone records do not indicate a telephone call from Detective Yaratch on March 3, 2001 and Detective Yaratch's police report does not reference a second telephone call with Judge Holloway. In fact, Respondent's cell phone was not even in her possession on March 3, 2000, but was on the other side of the state with her husband. (Alley deposition, dated 5/9/01, p. 82).

CHARGE I, ARGUMENT

7. Respondent's telephone call to Detective Yaratch does not constitute the abuse of power as a judge and cannot be considered the improper utilization of the prestige of her office. Respondent was a concerned family friend who understandably attempted to prevent unnecessary upheaval and family trauma attendant to the removal of this small child. Respondent was worried that any needless delay into the investigation might increase the risk for a lengthy sheltering period or might damage the family's ability to make a full and complete inquiry into the child's statements concerning the alleged sexual abuse. Accordingly, Respondent contacted the case investigator to ask that if he intended to interview the child, that he do so as soon as possible. Any citizen has a right to contact an investigating law enforcement officer and relay concerns or suggestions about an investigation. Respondent was not stripped of her right to have contact with law enforcement merely because she holds the office of circuit court judge.

8. Most recently, in another Judicial Qualifications Proceeding, the hearing panel commented upon a judge's right to speak with law enforcement concerning a personal matter without the stigma of being accused of asking for preferential treatment. (See Inquiry Concerning Judge McMillan, Findings, Conclusions and Recommendations by the Hearing Panel of the Judicial

Qualifications Commission, pp 20-22). In that case, Judge Brown had contacted a deputy who was investigating allegations against his son and told her that she had failed to take a statement from his son. Id. at 21. The investigating deputy described Judge Brown's attitude as "demeaning" and it appeared to her as though he was seeking "special treatment." Id. The hearing panel dismissed the deputy's impression and stated that there was "no reasonable basis. . . to believe that Judge Brown was guilty of asking this officer for favorable treatment of his son who in fact had not been arrested and was not even spoken to by the police on the night of question." Id. at 22.

9. In the decision Inquiry Concerning Judge Frank, 753 So. 2d 1228 (Fla. 2000), the Florida Supreme Court acknowledged that a judge does not abuse his/her power merely because others are aware that he/she holds that position. In pertinent part, the Court held the following:

> Knowledge that one is a judicial officer or respectful conduct in response to such knowledge does not automatically translate into a determination that a judicial position has been abused. . . . A judicial officer should not be sanctioned simply because those with whom he or she has interaction are aware of the official position. The use of a judicial position or power of position in an unbecoming manner requires more than simply someone being aware of one's position. The gravamen of the charge under the circumstances requires that there be some affirmative expectation or utilization of position to accomplish that which would not have occurred.

Id. at 1240-1241.

10. In reference to Respondent's call to Detective Yaratch, he testified clearly that Respondent did not say anything to "intimidate, coerce or try to influence" him. Moreover, Respondent's reference to the child advocacy center was not a request or demand as to where the interview should be conducted. Rather, Respondent was under the impression that any investigation of a minor child concerning sexual abuse allegations had to be conducted at the Child Advocacy Center. Respondent's telephone call was nothing more than a request that the investigation be done promptly in order to prevent any further trauma to the family. Just as Judge Brown had the right to contact the investigating law enforcement officer, so too did Respondent have the right to speak with Detective Yaratch regarding a child for whom she cared deeply.

11. There is no clear and convincing evidence showing that the allegations set forth in Charges 1 (a) and (b) constitute a violation of the Code of Judicial Conduct. Respondent's telephone conversation, as described by Charge 1(a) is not violative of the rules. In addition, there is no evidence, other than Detective Yaratch's belief, that a second conversation ever took place. In fact, there is a complete absence of any evidence suggesting an "affirmative expectation or utilization of position" in order to gain a result that could not otherwise be obtained. See Frank at 1241-1242. Consequently, summary

judgment is appropriately entered on Charges 1 (a) and (b).

CHARGES III AND IV, FACTS

12. On July 19, 2000, pro se litigant, Mark Johnson, deposed Respondent in the Adair v. Johnson case. Immediately prior to the deposition, Respondent had attended the funeral of Harry Lee Coe, III. (Holloway deposition, dated 5/8/01, p. 159). Respondent had explained to Mr. Johnson that she was extremely upset and requested that the deposition be rescheduled. (Holloway deposition, dated 5/8/01, pp. 174-75; Alley deposition, dated 5/9/01, p. 55-56). However, Mr. Johnson, having traveled from Washington, D.C., wanted to proceed with the deposition. Mark Johnson deposition, dated 5/10/01, p. 6).

13. Mark Johnson had previously been very adversarial to Respondent. On June 15, 1999, Mr. Johnson confronted Respondent in a local restaurant. (Holloway deposition, dated 5/8/01, pp. 47-62). He verbally and physically confronted the Respondent to the point that he was removed from the establishment by an employee. (Holloway deposition, dated 5/8/01, p. 61). In addition, prior to this deposition Mr. Johnson had told numerous people that he would "get" the Respondent's job. (Holloway deposition, dated 5/8/01, p. 65; Alley affidavit, dated 10/3/00, p. 1; Brooks deposition, dated 5/9/01, p. 20). As one can imagine, the Respondent and her attorneys cautiously began this

deposition. (Alley affidavit, dated 10/3/00, p. 1; (James T. Holloway affidavit, dated 9/29/00, p. 1).

14. During the deposition, Judge Holloway admitted that she or someone else had contacted law enforcement about the Adair case. (Respondent deposition, dated 7/19/00, p. 35). Judge Holloway further stated that she did not recall whether or not she actually spoke to the Detective about the case but that it was possible that she did. (Respondent deposition, dated 7/19/00, p. 35).

15. Mr. Johnson asked Respondent when she had learned that Parker Adair had been sheltered. (Respondent deposition, dated 7/19/00, p. 38). When Respondent answered that she discovered that fact on a Saturday morning, Mr. Johnson then asked her if she did anything in response to that discovery. (Respondent deposition, dated 7/19/00, p. 39). Respondent truthfully answered that she did not recall being able to do anything at that point. (Respondent deposition, dated 7/19/00, p. 39). Mr. Johnson followed up Respondent's statement by asking whether she contacted Judge Stoddard in anyway. This question was asked immediately after questions that referenced Respondent's knowledge and actions on that Saturday morning. Based on the temporal relationship, the context, and the cadence of the questions, Respondent answered that she had not contacted Judge Stoddard. (Alley deposition, dated 5/9/01, pp. 68-74; Holloway

deposition, dated 5/8/01, pp. 186-189, 191; James T. Holloway affidavit, dated 9/29/00; Brooks deposition, dated 5/9/01, p. 11).

16. Mr. Johnson subsequently asked Respondent whether she had anything to do with Judge Stoddard's recusal. (Respondent deposition, dated 7/19/00, p. 41). Because the questions were outside the scope of Respondent's deposition, her attorneys objected to the question and instructed Respondent not to answer the question. (Respondent deposition, dated 7/19/00, pp. 41-42; letter dated June 17, 2000 from Mr. Johnson to Mr. Alley; Alley deposition, dated 5/9/01, pp. 49-51; James T. Holloway affidavit, dated 9/29/00).

17. After the deposition had ended, Respondent remembered that she had spoken to Detective Yaratch. (Holloway deposition, dated 5/8/01, p. 195; Alley deposition, dated 5/9/01, pp. 58-59; James T. Holloway affidavit, dated 9/29/00). An errata sheet was in the process of being prepared with respect to the conversation with Detective Yaratch. (Holloway deposition, dated 5/8/01, p. 198; Alley deposition, dated 5/9/01, p. 74; James T. Holloway affidavit, dated 9/29/00). After reviewing her deposition, Respondent realized that a reader could misinterpret the time frame of Mr. Johnson's questions concerning whether she had contacted Judge Stoddard. (Holloway deposition, dated 5/8/01, p. 193; Alley affidavit, dated 10/3/00, pp. 2-3). Accordingly, when

Respondent reviewed her deposition, she corrected her testimony concerning her contact with Detective Yaratch and clarified that her responses concerning contact with Judge Stoddard only pertained to the Saturday morning when she learned of the child being sheltered.

CHARGES III AND IV, ARGUMENT

18. Special Counsel can not prove by clear and convincing evidence that Respondent's deposition testimony was false or misleading. In evaluating whether a statement should be characterized as false and misleading so as to "form the basis for judicial discipline," it is necessary to consider the total context of the record from which the statement is excerpted. Inquiry Concerning Judge Frank, 753 So. 2d 1228, 1235 (Fla. 2000). It must then be considered whether the respondent's explanation of the statement is a reasonable interpretation in light of the total context. Id.

19. The entire deposition transcript and errata sheet must be considered together in order to review the entire context of Respondent's statements. It is well established that "once changes [to a deposition] are made, they become a part of the deposition just as if the deponent gave the testimony while being examined." Motel 6, Inc. v. Dowling, 595 So. 2d 260, 262 (Fla. 1st DCA 1992); See also Feltner v. Internationale Nederlanden

Bank, N.V., 622 So. 2d 123 (Fla. 4th DCA 1993). Any contrary interpretation of the significance of the errata sheet would render the deponent's right to review his/her deposition meaningless. Dowling at 262.

20. Respondent's entire testimony was truthful and accurate. There is no evidence that Respondent attempted to conceal or mislead Mr. Johnson about her telephone conversation with Detective Yaratch. First, Respondent admitted to Mr. Johnson that there had been attempts to contact law enforcement concerning the Adair case. Second, her memory lapse concerning the telephone call with Detective Yaratch was reasonable considering the brevity of the conversation and Respondent's emotional state at the deposition which immediately followed the funeral of Harry Lee Coe III. Third, Respondent executed the errata sheet in a reasonable time frame. See Dowling at 261 (errata sheet executed one month after deposition). Fourth, respondent executed the errata sheet on her own accord and not in response to any adversarial pleading.

21. Moreover, there is no clear and convincing evidence to show that Respondent made a false statement concerning her contact with Judge Stoddard. In the context of the deposition questions and answers, it is a reasonable interpretation that Mr. Johnson was asking whether Respondent contacted Judge Stoddard on Saturday morning (when she learned that Parker Adair had been

sheltered). Accordingly, Respondent's answer in the negative and her subsequent clarification noted on her errata sheet that her response only referenced the time frame of that Saturday morning, were entirely candid and truthful.

22. There is no legal authority for the Judicial Qualifications Commission's attempt to impose a greater obligation on Respondent in responding to a pro se litigant's questions than is imposed on any other witness to a proceeding. The burden is on the examiner to frame and ask specific, well-crafted questions. The mere fact that the examiner is not competent or that the witness holds judicial office, does not somehow create a greater burden on the witness to volunteer information or guess at what the questioner means to ask.

23. Moreover, Respondent's entire deposition testimony clearly indicated to Mr. Johnson that she had contact with Judge Stoddard. Specifically, her deposition testimony on her errata sheet explained that her response to the questions concerning contact with Judge Stoddard only referred to the Saturday of the shelter hearing. Mr. Johnson had the option of redeposing Respondent after the errata sheet was executed and inquiring when she had contact with Judge Stoddard, but declined to do so. See Dowling at 262.

24. Because of Mr. Johnson's previous threat to Respondent that he would "get her job," Respondent's attorneys objected to

any question outside of the scope of Respondent's knowledge concerning the fitness of Parker Adair's mother. Their objections were based on the reasonable belief that the questions were intended to annoy or embarrass Respondent. See Fla. R. Civ. P. 1.310(d). Mr. Johnson could have certified his questions concerning her contact with Judge Stoddard after her attorneys objected. (It should be noted that Mr. Johnson certified a question in a subsequent deposition when faced with a similar objection by Ms. Adair's attorney and thus was aware of the procedure.) Again, Mr. Johnson did not pursue this option.

25. Based on the total context of Respondent's deposition, there is no clear and convincing evidence that Respondent gave false or misleading testimony during her deposition. An understandable memory lapse, that was later corrected and confusion concerning the scope of a question can not reasonably be construed as intentional misrepresentations. In fact, every attorney present at the deposition (including Ray Brooks, whom Respondent did not know) believed the temporal context of Mr. Johnson's inquiry regarding contact with Judge Stoddard was as to the Saturday of the Shelter Hearing. Therefore, summary judgment is appropriate as to Charges IV and V.

CHARGE VI, FACTS

26. On July 10, 1999, Jeanne T. Tate, a member of The Florida Bar for the past twenty years, was returning to her home from a function with one of her children. As she passed her office located at 418 West Platt Street, Tampa, Florida, she discovered that employees of Sonny's Tree Service were engaged in cutting down the large oak trees that line the west side of Hyde Park Avenue. (Affidavit of Jeanne Tate, dated 5/31/01, p. 1).

27. Jeanne Tate requested the foreman, Calvin Frank Dick, to produce a permit or permit number authorizing the tree service to cut down the referenced trees. Mr. Dick could not or would not produce a permit or a permit number and gave at least two explanations as to the location of the permit. (Affidavit of Jeanne Tate, dated 5/31/01, p. 1).

28. Mr. Dick further indicated that they intended to cut down all the trees on the west side of Hyde Park Avenue from Platt Street to the Davis Islands bridge that day. Mr. Dick refused Ms. Tate's request to cease cutting down the trees until such time as he could produce a permit. In fact, when he realized that Ms. Tate intended to seek recourse to stop, he ordered more of his crew from the ground up into the trees to expedite the process. (Affidavit of Jeanne Tate, dated 5/31/01, p. 1-2).

29. As a result, Ms. Tate entered her office and attempted

to determine by telephone who the duty judge was in Hillsborough County on that weekend. Ms. Tate made numerous telephone calls to several county offices, however, she was unable to determine which judge was assigned the weekend duty. (Affidavit of Jeanne Tate, dated 5/31/01, p. 2).

30. Subsequently, Ms. Tate attempted to contact the Chief Judge of the Thirteenth Judicial Circuit, F. Dennis Alvarez, to determine who the duty judge was or to otherwise inquire as to how Ms. Tate could seek relief. Ms. Tate called Judge Alvarez at his home on Davis Islands which is located less than a mile from Ms. Tate's office. However, Ms. Tate was unable to reach him. (Affidavit of Jeanne Tate, dated 5/31/01, p. 2).

31. Judge Alvarez confirms that on Saturday, July 10, 1999, Judge Alvarez had left his home on Davis Islands in the early morning hours and did not return until the afternoon. When Judge Alvarez returned home, he retrieved a voice message from Ms. Tate concerning the trees that were being removed from her property or property adjacent thereto. (Affidavit of Dennis Alvarez, dated 5/30/01).

32. Ms. Tate was also aware that Respondent was also a resident of Davis Islands and therefore contacted her. Respondent gave Ms. Tate a second telephone number for Judge Alvarez but after additional efforts, Ms. Tate was unable to contact Judge Alvarez. Consequently, Ms. Tate made a second

telephone call to Respondent at which time she agreed to come by Respondent's office to address the situation. (Affidavit of Jeanne Tate, dated 5/31/01, p. 2).

33. Ms. Tate did not contact Respondent because of any personal relationship with Respondent. In fact, Ms. Tate and Respondent are not close personal friends. Ms. Tate has known Respondent since they attended the same law school although they were not in the same class. Furthermore, Respondent was previously employed at the Shackleford, Farrior law firm where Ms. Tate was employed for ten years immediately subsequent to her graduation from law school. However, Respondent's employment at Shackleford, Farrior was relatively brief and they did not work in the same department. In addition, Ms. Tate does not socialize with Respondent and they have never eaten dinner at each other's home. While Ms. Tate considers Respondent a friend, there are certainly other judges in this circuit with whom Ms. Tate has had a closer relationship. (Affidavit of Jeanne Tate, dated 5/31/01, p. 2-3).

34. When Respondent arrived at Ms. Tate's office, she too requested that Mr. Dick produce a permit, but he failed or refused to do so. Mr. Dick requested some form of identification from Respondent which she produced. When he was shown the identification, Mr. Dick made a comment to the effect that "anyone could have one of those." During these discussions the

tree cutting not only did not cease, but was continued by the tree cutting crew in a feverish fashion. (Affidavit of Jeanne Tate, dated 5/31/01, p. 3).

35. Because the tree service would not cease its activity, Ms. Tate entered her office and typed a Petition for Injunctive Relief as well as a Temporary Injunction Order and took them down to Respondent for her review. Respondent did not assist in the preparation of these documents. (Affidavit of Jeanne Tate, dated 5/31/01, p. 3).

36. After Respondent reviewed the petition and order she signed the order and gave it to Mr. Dick. Mr. Dick refused to obey the order and had his crew continue the removal of the trees. (Affidavit of Jeanne Tate, dated 5/31/01, p. 3).

37. At this time, Respondent called the police and a Tampa police officer responded and ordered Mr. Dick to stop cutting the trees. Initially Mr. Dick balked at the order, however, when he was advised by the police officer that his failure to obey would result in his arrest, the cutting was finally ceased. (Affidavit of Jeanne Tate, dated 5/31/01, pp. 3-4).

38. Shortly thereafter, Ms. Tate filed her petition in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida in Case Number 99-CA-5523. Ms. Tate also learned on or about that day that there was no valid permit in existence on July 10, 1999 so as to allow the destruction of

the trees in question. The City had apparently been in negotiation with the property owner who had hired Mr. Dick to remove the trees. The City had requested a sum certain from the property owner which the property owner apparently did not want to pay. As a result, the permit had not been issued at the time of the cutting of the trees on July 10, 1999. (Affidavit of Jeanne Tate, dated 5/31/01, p. 4).

39. The relief requested by Ms. Tate was appropriate and necessary to temporarily prohibit the tree service from destroying oak trees without a permit. Judge Alvarez has indicated that he would have entered the same or similar order as did Respondent because the removal of the trees was without apparent authority and would create irreparable harm. (Affidavit of Dennis Alvarez, dated 5/30/01, p. 2).

40. Beatrice Butchko, Special Counsel to the Judicial Qualifications Commission, interviewed Ms. Tate concerning these events. At the end of that interview, Ms. Butchko indicated to Ms. Tate that had she been in Respondent's position she might have done the same thing and she could not see that Respondent did anything wrong.

CHARGE VI, ARGUMENT

41. The Judicial Qualifications Commission charges that Respondent acted inappropriately because Respondent executed the temporary injunction order without notice to the City of Tampa

and/or Sonny's Tree Service but was rather served upon a representative of Sonny's Tree Service by a City of Tampa uniform police officer at Respondent's direction. However, Respondent's conduct was in complete accord with the standards pertaining to emergency injunctive relief and the Rules of Judicial Conduct.

42. Hillsborough County Ordinance section 4.01.06, requires the possession of a permit prior to the removal of trees. When the tree cutting service could not produce a permit to remove the oak trees, Ms. Tate properly attempted to contact the emergency duty judge. After Ms. Tate was unable to determine the identity of the duty judge, she called the chief judge of the Thirteenth Judicial Circuit. Since she was unable to reach Judge Alvarez, she called Respondent because she knew that Respondent lived near the location where the trees were being destroyed.

43. When Respondent was first contacted by Ms. Tate, she properly referred the matter to the Chief Judge. However, when Ms. Tate was still unable to reach Judge Alvarez, Respondent postponed her personal plans and drove to Ms. Tate's location. Respondent's willingness to address the situation demonstrates her devotion to her profession.

44. Injunctive relief is appropriate when a party moving for injunctive relief shows that "irreparable harm will be suffered unless the status quo is maintained," that there is "no adequate remedy at law" and that there is a "clear right to the

relief requested." Hall v. City of Orlando, 555 So. 2d 963 (Fla. 5th DCA). In this case, it was reasonable to determine that these factors were present. The tree cutting service could not prove it had permission to remove the trees as required by local law and if its actions were not temporarily halted, irreparable harm would be suffered because the trees would be destroyed. In addition, the order signed by the Respondent was not a final determination of Sonny's Tree Service's authority to destroy the trees. Rather, the temporary injunction order only prohibited the removal of the trees until the service demonstrated proof of its authority to lawfully do so. Even if the Temporary Injunction Order was legally insufficient, a judge's incorrect legal decision is not an appropriate basis for judicial discipline. If that were the case, every judge who was appealed and reversed would be the subject of a Judicial Qualifications Commission investigation.

45. Although the Formal Charges contend that the order was inappropriately executed without notice to the City of Tampa or Sonny's Tree Service, Canon 3(B)(7)(a) of the Code of Judicial Conduct allows for ex parte communications to accommodate emergencies. See also Commentary Canon 3(B)(7). Thus, the situation, created by Sonny's Tree Service, required immediate action necessitating the service of the Order on a representative of Sonny's Tree Service rather than on the registered agent of

the corporation.

46. The undisputed, material facts demonstrate that Respondent's conduct did not violate any canon of the Code of Judicial Conduct. To the contrary, Respondent's actions were honorable and admirably illustrate her fitness to be a judge. Summary judgment should be entered as to Charge VI.

CHARGE VII, FACTS

47. On July 29, 1999, James T. Holloway, Esquire, Respondent's brother, was scheduled for a final hearing in his uncontested divorce in front of Judge Katherine G. Essrig. Respondent was aware that her brother's final hearing was scheduled for that morning and she went to the Judge Essrig's offices to see her brother. (Amended Notice of Formal Charges, pp. 6-7).

48. Mr. Holloway had an out-of-state flight scheduled for that afternoon and he was concerned that he would miss his flight. Because there were many lawyers and litigants present for the uncontested divorce docket of Judge Essrig, Respondent asked Judge Essrig whether she would be willing to hear Mr. Holloway's case next so that he would not miss his flight. Respondent spoke politely and in a normal tone of voice. (Amended Notice of Formal Charges, pp. 6-7).

49. Judge Essrig did not react negatively to Judge

Holloway's request and agreed to call Mr. Holloway's case next in line. (Amended Notice of Formal Charges, pp. 6-7).

CHARGE VII, ARGUMENT

50. Respondent's request that Judge Essrig accommodate a scheduling conflict was not an abuse of Respondent's judicial office. There is no evidence to suggest that Respondent had "some affirmative expectation" or utilized her position "to accomplish that which otherwise would not have occurred." See Frank at 1240-1241. Judge Essrig and Respondent are both circuit court judges, neither of whom have supervisory authority over the other. Judge Essrig has testified that she regularly accommodates scheduling conflicts, both for attorneys and non-attorneys alike. Had Judge Essrig felt uncomfortable with Respondent's request, Judge Essrig could have simply declined to take Mr. Holloway out of turn. There is nothing inherent in the relationship between Judge Essrig or Judge Holloway or in Respondent's demeanor that necessitated acquiescence to Respondent's request.

51. There is no evidence to suggest that Judge Holloway's simple request to Judge Essrig was meant to subvert Judge Essrig's authority in her court. Indeed, such a request to accommodate schedules and avoid conflicts is common and the inevitability of such requests is specifically referenced in the Hillsborough County Standards of Professional Courtesy. The facts as set forth in the Formal Charges can not support grounds

for discipline and summary judgment should be entered in Respondent's favor.

WHEREFORE, Respondent respectfully requests entry of summary judgment as to charges 1(a)(b), 3, 4, 5, 6 and 7 of the Amended Formal Charges.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of September, 2001, the original of the foregoing Respondent Holloway's Motion for Summary Judgment has been furnished by overnight delivery to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927 with copies by U.S. Mail to:

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