FILED
THOMAS D. HALL
OCT 25 2000
CLERK, SUPREME COURT
BY_____

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
MATTHEW E. McMILLAN, CASE NO.:
99-10 AND and No. 00-17

SC CASE NO.: 95,886
00-703

_____/

MOTION TO DISQUALIFY
HONORABLE HARVEY GOLDSTEIN

COMES NOW Respondent, Judge Matthew E. McMillan, by his undersigned attorneys and moves that pursuant to Rule 2.160 of the Rules of Judicial Administration and in accordance with the provisions of Canon 3(E) of the Code of Judicial Conduct, for the entry of an Order disqualifying the said Honorable Harvey Goldstein from participating in these proceedings and as grounds therefor state as follows:

1. The Respondent, Judge Matthew E. McMillan, is charged in a Notice of Formal Charges with eleven charges that arise from Judge McMillan's 1998 judicial campaign against the incumbent Honorable George K. Brown, Jr. in a hotly contested election.

2. Matthew E. McMillan challenged the 16-year incumbent County Judge George K. Brown, Jr. and defeated him in an elected held September 1, 1998.

3. Judge Harvey Goldstein, a 24-year incumbent judge of the County Court of Dade County was challenged in a hotly contested election that took place on September 5, 2000 for the position he occupied as a judge. In said election Judge Goldstein was defeated. Judge Goldstein's term as a judge expires in December 2000.

4. Judge McMillan fears that he will not receive a fair trial or hearing by the Judicial Qualifications Commission Hearing Panel of which panel Judge Goldstein is Chairman because of the prejudice or bias of Judge Goldstein toward Judge McMillan in that Judge Goldstein is in the

same position as Judge George K. Brown, Jr., who was defeated by Respondent in the September 1998 judicial election in Manatee County, Florida.

5. It is submitted that it would be impossible for the Honorable Harvey Goldstein to put aside the bias, prejudice or ill feelings that he has stemming from his loss of his position as a judge, after being an incumbent judge for 24 years, to a Dade County lawyer, so that he would not be biased or prejudiced, or have ill feelings against Judge McMillan who successfully challenged a 16-year incumbent judge.

6. The charges against Judge McMillan stem from the campaign material used by him in connection with his challenge of the incumbent Judge Brown.

7. Many of the campaign issues in both elections were the same.

8. The Honorable Matthew E. McMillan fears that he will not receive a fair hearing in the proceedings brought by the Judicial Qualifications Commission in connection with which hearing Honorable Harvey Goldstein is chairperson because of the matters herein set forth.

9. Irrespective of Judge Goldstein's actual prejudice of bias against Judge McMillan on the matters herein set forth the appearance of bias and/or prejudice of Judge Goldstein, under the applicable law, requires his disqualification herein.

WHEREFORE, Honorable Matthew E. McMillan prays that Honorable Harvey Goldstein recuse himself from participating in the final hearing scheduled to begin on October 30, 2000 in this matter.

LEVINE, HIRSCH, SEGALL & BRENNAN, P.A.

By: _____
Arnold D. Levine
Attorney for Respondent

_____
Matthew E. McMillan

STATE OF FLORIDA)
COUNTY OF Hillsborough

BEFORE ME, the undersigned authority personally appeared Honorable Matthew E. McMillan, who is well known to me, who upon first being duly sworn, deposes and states that the matters and facts hereinabove set forth are of his personal knowledge and that they are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal in the State and County aforesaid, this 14 day of October, 2000.

Notary Public

Printed Name

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
ARNOLD D. LEVINE
MY COMMISSION # CC 914513
EXPIRES: Apr 29, 2004
1-800-3-NOTARY FL Notary Service & Bonding, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to Marvin E. Barkin, Esq., 101 E. Kennedy Blvd., Suite 2700, Tampa, FL 33602, John Beranek, Esq., 227 S. Calhoun St., Tallahassee, FL 32301, Thomas C. McDonald, Jr., 100 N. Tampa Street, Suite 2100, Tampa, FL 33602, Scott Tozian, Esq. 109 N. Brush St., #150, Tampa, FL 33602 and to Brooke Kennerly, Florida Judicial Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, FL 32399, this 14 day of October, 2000.

LEVINE, HIRSCH, SEGALL & BRENNAN, P.A.

By:

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