BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

FILED
THOMAS D. HALL
OCT 30 2000
CLERK, SUPREME COURT
BY_____

INQUIRY CONCERNING A JUDGE, MATTHEW E. MCMILLAN, CASE NOS. 99-10 & 00-17	:	SC CASE NOS.: 95,886 00-703

MOTION TO QUASH TRIAL SUBPOENA FOR THE APPEARANCE OF DR. CURTIS B. RICHARDSON AT FINAL HEARING

Petitioner, the Florida Judicial Qualifications Commission ("JQC") moves this Hearing Panel for an order quashing the subpoena served by Respondent, Judge Matthew E. McMillan ("McMillan") upon Dr. Curtis B. Richardson in Tallahassee, Florida[1] on October 26, 2000 ordering him to appear at the final hearing on October 30, 2000 in Bradenton, Florida, upon the following grounds.

1. Dr. Curtis B. Richardson ("Richardson") was and is a lay member of the Investigatory Panel in this proceeding. Richardson has no personal knowledge of the charges or any other matters actually at issue. Thus, the subpoena can only be an attempt to compel Richardson to appear and testify regarding internal processes of the JQC, the relationship between the Investigatory and Hearing Panels, or the alleged "unwritten rule" that attorneys should not run against sitting judges. None of this is relevant or admissible.

2. Richardson's out of court statements are of course inadmissible hearsay to the extent they are offered to prove the truth of the matters asserted even if they were otherwise relevant under controlling substantive law.

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[1]A true and correct copy of the subpoena is attached hereto as Exhibit A.

3. The real or perceived machinations of McMillan's perceived political enemies are irrelevant to the issues here: (a) Whether the McMillan campaign violated the Judicial Canons as charged; (b) Whether McMillan's conduct in the Occura and Lohrey matters violated the Judicial Canons as charged; and (c) Whether McMillan is fit to continue to hold office.

4. In In re Graham, the Florida Supreme Court expressly held that "the conduct of other officials, attorneys and citizens of Citrus County" were not relevant in a prosecution to remove a County Court judge from office. As the Court explained:

> [Graham] focuses his arguments on the conduct of other officials, attorneys, and citizens of Citrus County. Regardless of whether his criticisms of these individuals and institutions are well-founded, they are not relevant to our determination of his ability to administer justice of fairly and professional. . . . Unfortunately Graham fails to recognize that the alleged misconduct of others does not justify his repeated departure from the guidelines established in the Code of Judicial Conduct.

620 So. 2d at 1275. The alleged misconduct of others "simply cannot justify the judges departure from the guidelines established of Judicial Conduct." In re Shea, 759 So. 2d 631, 638 (Fla. 2000) (rejecting the relevance of "Judge Shea's allegations of improper conduct on the part of others" because it could not "excuse his abuse of his judicial office.)

5. The internal process of the JQC and the relationships between the panels is also irrelevant as matter of law. The Florida Supreme Court has flatly rejected all efforts by respondent judges to put the institution, its panels or panel members on trial by litigating the JQC process rather than the charges at issue. See In re Kelly, 238 So. 2d 565 (Fla. 1970) and Graham, supra. McMillan is not entitled and should not be permitted

to waste parties' time and resources (or burden Richardson with complying with the subpoena) to present evidence regarding matters clearly outside the proper scope of this proceedings under controlling Florida Supreme Court precedent.

6. Finally, the alleged misconduct of others, particularly judges or other public officials, is irrelevant as a matter of law, including any "unwritten rule" that attorneys should not run against incumbent judges. Graham, supra. The Florida Supreme Court held in In re Graziano, 696 So. 2d 744, 752 (Fla. 1997) that "the questioning of any witness about alleged improprieties by judges other than [the] respondent" is manifestly "beyond the scope of permissible inquiry in [JQC] proceeding[s]." The same is obviously true of JQC officials and questioning regarding the alleged misconduct of judges or any other public officials.

7. Accordingly, the subpoena should be quashed, and Richardson should be released from the obligation to travel from Tallahassee to appear in Bradenton for the final hearing the week of October 30, 2000.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by Facsimile and U.S. Mail to **BROOKE S. KENNERLY,** Executive Director, Judicial Qualifications Commission, 400 S. Monroe, The Historic Capitol, Room 102, Tallahassee, FL 32399-6000; **THOMAS C. MacDONALD, JR., ESQ.**, General Counsel, 100 N. Tampa Street, Suite 2100, Tampa, FL 33602; **THE HONORABLE JAMES R. JORGENSON**, Third District Court of Appeal, 2001 SW 117th Avenue, Miami, FL 33175-1716; **JOHN R. BERANEK, ESQ.,** Counsel, Hearing Panel, Ausley & McMullen, 227 South Calhoun St., P.O. Box 391, Tallahassee, FL 32301; **MATTHEW E. MCMILLAN**, 3311 46th Plaza East, Bradenton, FL 34203; **ARNOLD D. LEVINE, ESQ.**, Levine, Hirsch, Segall & Brennan, P.A., 100 S. Ashley Dr., Suite 1600, Tampa, FL 33602; and **SCOTT K. TOZIAN, ESQ.**, Smith and Tozian, P.A., 109 N. Brush St., Suite 150, Tampa, FL 33602, this 27th day of October, 2000.

Attorney

EXHIBIT "A"

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

Rec'd 10 25 00 at 3:30 p.m. &
Srvd 10 26 00 at 5:46 p.m. by
DANIEL CERWIN
Certified Process Service # 130
2nd Judicial Circuit of Fla.

SUBPOENA FOR TRIAL

THE STATE OF FLORIDA
GREETINGS:

To: Dr. Curtis B. Richardson
533 Tuskagee Street
Tallahassee, Florida 32310

YOU ARE HEREBY COMMANDED to appear before a judge of this Court, at the Manatee County Courthouse, 1115 Manatee Avenue West, Bradenton, Florida, beginning on Monday, October 30, 2000, at 9:00 a.m., to testify at the trial of this action. If you fail to appear, you may be in contempt of Court.

You are subpoenaed to appear by the following attorney and, unless otherwise excused from this Subpoena by this attorney or the Court, you shall respond to this Subpoena as directed.

Witness my hand and seal of said Court on 10/24, 2000.

ARNOLD D. LEVINE, ESQUIRE
For the Court

BY: _____
Arnold D. Levine, Esq.
Fla. Bar No. 045869
100 S. Ashley Drive, Suite 1600
Tampa, FL 33602
813/229-6585
Attorneys for Matthew McMillan

***Please call the Law Office of Arnold D. Levine, of Levine, Hirsch, Segall & Brennan, P.A., to coordinate the date and time of your testimony.**