BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 01-244 Case No. SC01-2670
(Judge Charles W. Cope)
/

RESPONSE TO EMERGENCY MOTION FOR PROTECTIVE ORDER

The Special Counsel responds to the Emergency Motion for Protective Order filed by Respondent and states:

1. Special Counsel properly cross-noticed the depositions of Nina and Lisa Jeanes, the victims of the Respondent's alleged conduct and residents of the State of Maryland, "for discovery, for use at trial or both." Deponents are Maryland residents, so use of their depositions is expressly permitted by Fla. R. Civ. P. 1.330(a)(3)(B), applicable to these proceedings pursuant to JQC Rule 12(a).

2. It is the Special Counsel's desire and intention to use the videotapes and/or transcripts of this deposition as part of the Special Counsel's case in the final hearing to be set in this matter in order to minimize the imposition on the victims in this matter and to avoid the unnecessary expenditure of tax payer resources.

3. The Special Counsel has notified counsel for Respondent in every conversation regarding depositions of the Jeanes' that this was and is his intent. To avoid any dispute, the undersigned reduced this notice to writing in a letter dated December 22, 2001, a true and correct copy of which is attached hereto.[1]

[1] December 22 was the Saturday before Christmas. On December 26, the day after Christmas, the undersigned discovered that the letter had not gone out by facsimile, so the letter was not faxed out until December 26, 2001.

4. A protective order is not only unnecessary and unwarranted, the request is premature at this point. Until the deposition is actually taken, the Special Counsel cannot decide whether it will be sufficient to use in lieu of live testimony. To reduce the expense to the Commission, to the taxpayers of the State of Florida, and to the out-of-state witnesses (who are the victims of the alleged misconduct), every effort to avoid further depositions or involvement of these witnesses should be made.

5. If Respondent discovers new information that he did not and, through the exercise of reasonable care, could not have discovered prior to these depositions, then Respondent is always free to ask for an opportunity to take a second deposition. Alternatively, the Respondent can further pursue the idea of having the witnesses testify live by video conference. All of these, however, are questions that cannot be answered until the depositions have been taken. Thus, there is no need for a protective order at this point, and the depositions should proceed.

6. As for Respondent's characterization of his motion as an "emergency motion," the Special Counsel points out that he long ago informed Respondent's counsel of his intentions and Respondent admits in his motion that he learned of these intentions no later than December 27, 2001. He did not file his motion for nearly three weeks, and it is now less than a week before Nina Jeanes' scheduled deposition and the Special Counsel has already made non-refundable travel arrangements.

WHEREFORE, the Special Counsel requests that Respondent's Emergency Motion for Protective Order be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. mail to: **Louis Kwall, Esq.**, Kwall, Showers & Coleman, P.A., 133 N. St. Harrison Ave., Clearwater, Florida 33755; **Robert W. Merkle, Jr., Esq.**, Co-Counsel for Respondent, 5510 W. La Salle Street, #300, Tampa, Florida 33607-1713; **Judge James R. Jorgenson,** Chair of the Judicial

Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Ave., Miami, Florida 33175-1716; **John Beranek, Esq.,** Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32301; **Brooke S. Kennerly,** Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602., and be facsimile to **John Beranek, Esq.,** Counsel to the Hearing Panel of the Judicial Qualifications Commission this 16th day of January, 2002.

By:
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