BEFORE THE INVESTIGATIVE PANEL OF THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE,

THE HONORABLE SCOTT C. DUPONT, SC16-2103

NO. 16-377

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JUDGE DUPONT'S RESPONSE TO ORDER TO SHOW CAUSE

Respondent Judge Scott C. Dupont respectfully files his Response to the Court's February 15, 2018 Order to Show Cause, and in support hereof says as follows:

As a threshold matter, it should be noted that the Commission failed to produce a single witness who testified that Judge Dupont is presently unfit to hold office. Surprisingly, while the Commission refers to live character witnesses who testified on behalf of Judge Dupont, the Commission seemingly ignored, without substantive comment, the numerous letters attesting to Judge Dupont's character and present fitness to serve, merely saying "Judge Dupont, …offered letters and affidavits from others attesting to his fitness (Resp. Ex. "A")" as if they were irrelevant and unworthy of consideration. (Findings of Fact, Character and Fitness, page 30.)

EVIDENCE REFLECTING ON CHARACTER AND PRESENT FITNESS TO SERVE

We believe it critically important at this point to outline the testimony contained in the character reference letters, to which the Commission referred with only a passing comment. All of the letters were attached to Respondent's Notebook of exhibits as Composite Exhibit A.[1]

HONORABLE TERENCE R. PERKINS, FORMER CHIEF JUDGE OF THE SEVENTH JUDICIAL CIRCUIT

Judge Perkins was called as a live witness by the Commission. Absent from the Commission's analysis of Judge Perkins' testimony referenced on pages 29-30 of the Findings is the fact that Judge Perkins authored a letter of support for Judge Dupont attesting to his character, wherein he stated:

> "Since coming to the bench, I met and have come to know my colleague and fellow Circuit Judge, Scott Dupont. Right from the start, Judge Dupont earned a reputation as an efficient judge in Putnam County doing family law. He works hard and diligently on all of his assignments. Although initially criticized for issues related to his demeanor and comportment, he worked hard on those issues and, as a result, has become a better and more patient judge.

[1] Judges Wendy Berger, Carlos Mendoza, John Alexander, Hubert Grimes, and attorney James Alexander offered live testimony as to character and fitness. Their testimony will be outlined later in our response.

> After Judge Dupont was transferred from a family division to a civil division, his efficient handling of his civil docket resulted in his assignment of 2 civil divisions, located in separate counties.... He mastered our court technology in short order and helped develop our new court procedures in both counties [Putnam and Flagler]. As a testament to his efficiency, he is one of just a few judges with an active caseload in more than 1 county. In addition, he has filled in on matters involving dependency and delinquency and has earned respect from clerks, law enforcement officers and others who serve our court. Judge Dupont is grounded in his faith and sets high moral standards for himself and others.
>
> I am only somewhat familiar with the charges pending against Judge Dupont arising from his re-election in 2016, but, I am very aware of his contrition and remorse. In my opinion, he has learned from his mistakes and is a better judge today because of it." (emphasis added.) (Resp. Ex. "A").

Other judges authored letters attesting to Judge Dupont's character, and fitness, among those being: Judge James B. Clayton, Judge J. Michael Traynor, Judge Clyde E. Wolfe, Judge Patti A. Christensen, Judge Joe Boatright, Judge Elizabeth A. Morris, Judge Howard M. Maltz, Judge John W. Watson, III, and Judge Dennis Craig. Uniformly, these judges praised his work ethic, his unimpeachable integrity and honesty, his dedication to duty, and his creative energy in recognizing problems in Putnam County, a county "with the worst education record in Florida," by starting Truancy Court and implementing a certified batterer's intervention class in Putnam County. All expressed that he had learned from his mistakes, was contrite

and truly remorseful, that the charges had a positive impact, resulting in him being more empathetic and understanding to litigants, attorneys, and court personnel. Finally, Judge Dupont was recognized as a man of deep, genuine faith, caring and kind, sincere and humble, and is a better judge today because of the charges. (Resp. Ex. "A")

Numerous individuals also authored letters attesting to Judge Dupont's character, among those being: Tom Bexley, Clerk of the Circuit Court and Comptroller, Tim Smith, Clerk of Court, Putnam County, Phyllis L. Criswell, former Superintendent of Putnam County Schools, Cynthia Starling, Regional Coordinator, CDS Family and Behavioral Health Services, Inc., Jeffrey S. Hardy, Retired Sheriff of Putnam County, Michelle Garner, Childrens' Advocate, Barry Stewart, Childrens' Advocate, Sung H. Lee, Esq., attorney, St. Augustine, Florida, Angela Pye, former Executive Director, Lee Conley House, Ronald E. Clark, attorney, Palatka, Florida, Rick Ryan, Undersheriff, Putnam County, retired, and Pastor John Beaird, St. Augustine.

Summarizing the comments contained in these many letters of support are statements related to Judge Dupont being a person who is patient, courteous, humble, fair, a person of faith, integrity, and of the highest character. The writers attest to

his volunteer work with the Putnam County Police Athletic League, the Interface Youth Shelter, truancy, Bread of Life, and other organizations especially devoted to rescuing children. Michelle Garner, Childrens' Advocate, stated that she had never had interaction or availability from any other juvenile judge like she had with Judge Dupont. Jeffrey Hardy, retired Sheriff of Putnam County, closed his letter by saying:

> "I am aware of the charges brought against him in connection with the re-election campaign and ask that you be just and allow him to continue to serve the citizens of Putnam County." (Resp. Composite Exhibit "A") (emphasis added.)

Tom Bexley, Clerk of the Circuit Court and Comptroller added:

> "I ask you to be fair in dispensing justice and allow him to continue serving our community." (Resp. Composite Exhibit A) (emphasis added.)[2]

2011 FAMILY COURT HEARING (Charge 12)

As referenced in Section A of the Findings of Fact (p. 5), in April, 2011, approximately four months into his first term as a Circuit Judge, Judge Dupont presided over a hearing attended by all of the affected parties. It was a civil family law case. The case file that was before the Court was to establish paternity for visitation and custody; however, the accompanying file was a child support case,

[2] Space does not allow us to set out in detail the numerous supportive comments by those attesting to Judge Dupont's integrity and character. We can only request that the Court read these many letters.

and the respondent had already been ordered to pay child support in a department of revenue case. (Barnard TR 167)

According to Judge Dupont, it was a case management conference in a paternity action; however, all of their paternity cases address child support, and in this particular situation, the case manager brought to the judge's attention that they currently had a child support case in "full force and effect." (Barnard TR 167) (Dupont TR 500)

It was brought to Judge Dupont's attention that the father, not only had an arrearage, but had failed to pay anything with regard to child support. (TR 500) Accordingly, Judge Dupont addressed the issue. (Dupont TR 500) Judge Dupont was concerned about the state of the father's sobriety, as he had bloodshot eyes, was somewhat lethargic and had poor dexterity. (TR 500-501)

There was some discussion during the hearing about whether or not the parties had taken a parenting class that was required, and the respondent said that he had not taken the class. (Goodman TR 139). According to Bailiff Goodman, the respondent said he had not done so "...because I didn't have any money." (Goodman TR 139) The Judge then questioned the respondent further, stating that it was "only

$25.00. You don't have $25.00?" to which the respondent answered "No." (Goodman TR 139)

The judge then ordered Goodman to search the respondent for money. (Goodman TR 139) According to Goodman, when the judge said to search him, the respondent..."immediately got up, and he leaned against the wall with his hands and spread his legs as if I was going to pat him down for weapons." (Goodman TR 139) Goodman, in response to a question whether he touched the respondent, testified that "No. Actually I never really touched the guy." (Goodman TR 140) Goodman informed the judge that the gentleman had a wallet in his back pocket, removed the wallet pursuant to instruction from the judge, opened it, saw money and "...told the judge there was money in there." (Goodman TR 140) Goodman then pulled the money from the wallet, counted it and put it on the table. (Goodman TR 140) He recalls that there..."was around $180.00 he had in the wallet." (Goodman TR 140, 141) Goodman then put the money on the table, handed the respondent his wallet and then the respondent returned to his seat. (Goodman TR 141) Goodman complained to no one about what happened that day in court. (Goodman TR 141)

On cross examination, Goodman said in response to the question whether he used force in taking the wallet from the man's back pocket:

A. "No, none whatsoever." "I mean, it was—it was kind of comical in a way, because, I mean, when the judge said that (search him for money), for lack of a better expression, the guy stood up and assumed the position against the wall. And I didn't lay a hand on him." (Goodman 143)

When asked if the judge was polite, Goodman responded:

A. "absolutely," and was courteous: "absolutely." (Goodman TR 145)

Bailiff Goodman was then asked:

Q. "All right. So what in effect, happened is that the judge—the man did not—was not truthful in response to his question about having money, so the judge asked you to check his wallet. There was no force involved, he did not object, and he cooperated. Is that correct?"

A. "Yeah, yeah absolutely. He cooperated 110 percent." (Goodman TR 144) (emphasis added.)

Goodman had spent a lot of time with Judge Dupont and further testified that "He's very professional." (Goodman 145) In response to the question, "And he tries to do the right thing, from your observation, Right?" Goodman responded, "Absolutely." (Goodman TR 145) According to Goodman, the man said he was holding the money for someone else, and Goodman didn't think the judge thought he was credible at that point in the sense that "First he lied about it, and then when

he found out he had $180.00 in his wallet, then he said it wasn't his. Is that right?" to which Goodman answered "Yes, sir." (Goodman TR 146-147)

Bailiff Goodman's testimony conflicts to some extent with that of Ms. Barnard, the case manager. She could not recall directly if the judge asked the man to empty out his pockets or if he asked the bailiff to search the man. She does recall, however, that when the man's pockets were emptied "...a large sum of cash was there, and he ordered the bailiff (Goodman) to push the money across the table to the petitioner." (Barnard TR 168)

She further testified that she was prompted to report the matter to her supervisor "Partially it was his (Judge Dupont's) tone with the respondent.... it appeared to me that he had already made up his mind about the respondent and didn't address him respectfully." (Barnard TR 168) She did not converse with Bailiff Goodman about her concerns. (Barnard TR 169)[3] On cross examination, Ms. Barnard testified that she was surprised or shocked when she saw how much money the respondent had in his pocket because he had been less than candid with Judge Dupont at the outset. (Barnard TR 174)

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[3] Ms. Barnard's testimony is diametrically opposed to that of Bailiff Goodman, who testified that the judge was "absolutely" polite, "absolutely" courteous, and he "absolutely" tries to do the right thing from his observation. (Goodman TR 145, 146)

When asked whether during the subsequent year she had seen other incidents that caused her concern, she said, "No, nothing specific, other than just—I can't testify to anything specific, but I felt like it was important." (Barnard TR 180)

The testimony of Bailiff Goodman and case manager Barnard was followed by the reading of the deposition of Judge Terrill J. Larue, who retired on January 5, 2015.

According to Judge Larue, Judge Dupont assumed the bench in January of 2011. Judge Larue testified that "Judge Dupont was a very young judge. I think he had only had been—six years of legal experience before he was elected. This was in the very first part of his judicial tenure." (Larue TR 188)

Judge Larue stated he was informed that "two law enforcement officers... had been very upset because of something that had occurred in Judge Dupont's courtroom having to do with a respondent in a family case at some kind of hearing wherein the respondent was liable for some debt." (Larue TR 187-188) Interestingly enough, and diametrically opposed to the testimony of Bailiff Goodman, who was present at the hearing, Judge Larue, addressing what was told to him by the two law enforcement officers, said "...there was an incident that I was told about involving

a forceful search of the respondent by law enforcement or a bailiff in the courtroom." (Larue TR 188)[4] (emphasis added.)

Judge Larue testified his "...main concern was not with what was done because it was a mistake, but first year serving judges, and later on, make mistakes. So what I was trying to do—I considered that to be a mistake, if that was true." (Larue TR 188) When confronted by Judge Larue, Judge Dupont is quoted as saying "Oh, I can do that." And, that "We do that all the time in St. Johns County." (Larue TR 189) He continued, stating that Judge Dupont "...went on to tell me that he had not only—that he not only had the jurisdiction to do it but he was going to keep doing that." (Larue TR 189) On cross examination, however, he modified his comment and said, "I don't know that he actually said he would continue to do it. He just said 'I can do that' and that was—that was that." (Larue TR 195)

Judge Larue continued, saying in further response to a question on cross examination: " So, can we take out the, quote, 'Going to keep doing it' out and his 'I can do that' that was his statement...Is that fair?" to which he responded, saying "You know, again, from what—he could have, yes, that's fair because I don't recall

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[4]Neither Bailiff Goodman nor case manager Barnard had stated that there had been a "forceful search." This is a perfect example of how unfounded rumors start and build. The two law enforcement officials who reported the "incident" were not even present.

him saying, 'I'm going to keep doing that.'" His words were 'Oh, I can do that."' (Larue TR 195)

With regard to the incident in question, again we must be mindful of the fact that Judge Dupont had only been on the bench for four months. During direct examination, Judge Larue was asked whether he was aware of other judges who were doing the same thing as it related to delinquent dads: "...that is, were they either asked to empty their pockets out or asked the bailiff to assist them in extracting whatever they may have in their pockets so that the money, if there was arrearage, could be turned over to the mother for the children?" (Larue TR 189-190) In response, he stated that "Yes." "In fact, it was not uncommon in questions of that sort—or cases of that sort where there was a debtor respondent who was claiming that he or she simply didn't have the funds to pay this debt...." (Larue TR 190). Judge Larue was asked to assume that Judge Dupont asked his bailiff to relieve the individual of his wallet, and the individual turned around and showed his back to the bailiff, and the bailiff merely removed the wallet and, at the judge's direction, and opened the wallet to see if there was any money in it. When asked whether that would that seem less than forceful and perhaps an unobjectionable reaction on behalf

of the individual, he answered "But, no, that would certainly not be a forcible bodily attempt to force a search." (Larue TR 191)

Judge Larue understood that St. Johns County Circuit Judge John Alexander was Judge Dupont's mentor. (Larue TR 192) When asked if Judge Dupont "...were acting in a fashion that was consistent with what Judge Alexander may have instructed him, as his mentor, was permissible, could you understand that he might do what his mentor had suggested he permissibly could do?" he responded, "Absolutely." (Larue TR 192) This would seem to be especially true as relates to an impressionable, new judge mentored by a senior, experienced judge, and trying to help a mother and her child.

According to Judge Larue, "As long as the individual consents and there's not an overt amount of pressure that's being placed upon him by the circumstances, then that's great, and I obviously would like to see the money available for the child's purposes, for the child's use." (Larue TR 194)

JUDGE JOHN ALEXANDER – CHARACTER AND FACT WITNESS

Judge John Alexander was called as a character and fact witness. Judge Alexander testified in person that he was Judge Dupont's mentor, with whom he was frequently in touch, that Judge Dupont was a very eager student and that he followed

his advice and listened to him. (Alexander TR 643-644) Judge Alexander liked him, finding him to be honest, straight forward, contrite, and "...the hardest-working circuit judge in the Seventh Circuit." (Alexander TR 644-645)

He did say, however, that he didn't think Judge Dupont "...was received well by the old guard in Putnam County." "And I knew that. We talked about it." "Some of them down in Daytona don't like him," but "I like him. And, I think it's—I think more people like him than don't." "And some people that say they don't like him, they themselves are not liked." "So, I think he's well liked.... I think the people that know him and work with him like him very much and find he's diligent, hardworking, and wants to do a good job." (Alexander TR 645-646)

Judge Alexander offered insightful testimony regarding Judge Dupont's struggle for acceptance in Putnam County, saying his election win[5] was "kind of out of the blue" and that "everybody expected his opponent to win and not him, and the one county he did not win was the very county he was assigned to." (Alexander TR 646)

Judge Alexander, responding to the question whether "Putnam County is a kind of a county of its own in the circuit, isn't it?" answered "It is" and agreed that

[5] 2010 election

Judge Dupont had a tendency to shake things up and change things from the way it used to be. (Alexander TR 646-647) According to Judge Alexander, Judge Dupont was "Efficient, dedicated, diligent, worked long hours, would call me quite a bit on what should be, what should not be in orders." (Alexander TR 648)

According to Judge Alexander, he has personally encountered situations where he has had occasion to question respondents who owed money for child support and denied having money. In those situations, he has asked them to show him their wallets, learning that they had money and had been untruthful. "I get all kind of great responses": "No, this money is somebody else's money," "This is my rent payment." "This is this." "This is that." (Alexander TR 657) When asked how many times he has seized "watches, money, keys," he said "ten, maybe 15, maybe 20, maybe one or two a year, at the most." (Alexander TR 657)

In evaluating this charge, it must be remembered that Judge Alexander was Judge Dupont's mentor and that Judge Larue testified that if Judge Dupont "...were acting in a fashion that was consistent with what Judge Alexander may have instructed him as his mentor, was permissible, could you understand that he might do what his mentor had suggested he permissibly could do?", he responded "Absolutely." (Larue TR 192)

FINDING STATUTES UNCONSTITUTIONAL – CHARGE 5

At a candidates' forum, Judge Dupont made passing comments regarding finding statutes unconstitutional. Judge Alexander spoke with him after it occurred. Judge Alexander asked him why he would make a statement that it was not the role of a circuit judge to determine whether a given statute is unconstitutional because, as stated by Judge Dupont, that would be legislating from the bench. In response to Judge Alexander's challenge to what he had said, Judge Dupont stated, "I didn't mean it that way. What I meant was, I don't go into a case looking to overturn the statute. I'm presuming that it's constitutional," to which Judge Alexander said, "You didn't say it that way," to which Judge Dupont responded, "I know, I screwed up. But what I meant was, I don't go in looking to find something unconstitutional." Judge Alexander testified: "He didn't say it that way, but he was very contrite; but that's what he had meant to say." (Alexander TR 650-651)[6]

In concluding his remarks, Judge Alexander testified as follows:

> "Q. We know that the charge in paragraph 12 happened four months into his assuming the bench. Have you had an

[6] Judge Dupont misspoke when he made this statement. Just as it was delivered in an unintended fashion, it was perhaps received in an unintended way; however, as he stated to Judge Alexander "I didn't mean it that way." (Alexander 650-651) While what he stated at the forum may be technically a violation of Canon 7, it in no fashion could be said to be evidence of a pattern of inappropriate conduct justifying removal. Even the most erudite among us on occasion make mistakes and misspeak.

opportunity to learn about and judge his reputation in the community for honor, truth, integrity in telling the truth?"

"A. Straight shooter, calls it down the middle, I've never—you know, people that complained about the way he does things is one thing, but I've never heard anyone say he was biased, prejudiced, profane, mistreated people. I have not heard that."

"Q. Do you think he's presently fit to continue serving as a circuit judge in the Seventh Judicial Circuit?"

"A. I do, and I think he has done an excellent job." "...And it's kind of befuddling to me that you know this is the type of guy that goes in and cleans cases up and divisions up, and he leaves them better than he found them. He reaches out to the stakeholders in the community; he reaches out to—when Putnam County didn't have resources for batterers' intervention classes, he got with the church to provide a free office so that the provider could have enough people to make money to provide the class. The same thing with parent education and stabilization class. They weren't even doing that in Putnam County....But he reaches out to stakeholders. He's requiring those that have batterers' intervention class, making them go to class, following up to see if they went to the class. None of that was being done." (Alexander TR 658-660)

FORMER JUDGE HUBERT GRIMES- CHARACTER AND FACT WITNESS

Judge Grimes appeared in person and testified regarding Charge 12, the 2011 Family Court hearing, and as to Judge Dupont's character. He currently occupies the position of interim president of Bethune-Cookman University in Daytona Beach. He testified that Putnam County, Palatka, is one of the poorest counties in Florida

and that statistics bear out the fact that they have a lot of trouble, crime, domestic violence, truancy, and things of that nature. (Grimes TR 416-418)

Judge Grimes stated that he has had parents appear before him where a father has had an arrearage in child support "many times." (Grimes TR 420) He testified he has in the past encountered a situation where he has had occasion to have his bailiff relieve a dad of some money to pay to the mother of the child. (Grimes TR 420) He offered that "...at times we had to take some extra-judicial efforts in order to get them to own up to their responsibilities," and, responding to the question whether that was a fairly common practice throughout the Seventh Judicial Circuit, answered "Yes, with me, and with some of the other judges, you know, also had similar kind of challenges." (Grimes TR 420)

He further responded to the question:

> Q. "Did you have occasion where you had an individual appear before you and your bailiff relieved him of some money?"
>
> A. I'm sure on more than one occasion...." (Grimes TR 420-421)

One such occasion was when Judge Grimes conducted a contempt hearing, the respondent was being taken into custody and his bailiff patted him down. The respondent had said that he did not have the ability to pay the arrearage: "He had

lied to us in open court and said he did not have the ability to pay." (Grimes TR 421) His bailiff discovered the guy had "a wad of cash on him". (Grimes TR 421) There were other instances where he testified he had to do the same thing. (Grimes TR 421)

According to Judge Grimes, "the primary dictate from the Supreme—as we understood it, from the Florida Supreme Court was the best interest of the children should always be paramount in decision making in family court." (Grimes TR 422)

When asked whether he had on occasion had situations where technically he should not do what he did, but did it because he was trying to help a child who needed support, he testified that:

> "I interpreted that as within the sound discretion of the Court to be able to carry out the Court's orders, and it might have been little bit, you know, awkward, so to speak, or maybe it was a little bit more than what some people may have done, but I find it to be within the sound discretion of the court, so, yes." (Grimes TR 422-423)

He continued:

> Q. "So something may not be legally correct, but it would be morally correct, and that's the compass you followed?"
>
> A. "And particularly in family court when you're talking about children, where you've got to make sure those kids

> are—you know, that they've got a roof over their head, food on the table, and clothes on their back." (Grimes TR 423)

In closing, Judge Grimes stated that he had known Judge Dupont to have an excellent reputation for truth, veracity and had never known anything to the contrary. (Grimes TR 423)

"Q. Is he a good man?

A. Yes." (Grimes TR 423)

He stated that Judge Dupont was "absolutely" fit to continue to serve the people of the Seventh Judicial Circuit and the people of the state; that he "is a caring man;" has had a chance to mentor him; "everybody makes mistakes," and he has learned from his mistakes. (Grimes TR 430-431)

Judge Grimes continued:

> "And he has always been very cordial, even very receptive to conversations and suggestions. And, you know, I realized that he lived in a community that was—had its own breadth of challenges in some ways similar to Deland, where I was, but Deland was maybe a lot more prosperous.
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> And the challenges that he had in terms of trying to help deal with the people coming in front of him can be very difficult at times.
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> And so I salute the fact that he was willing to make the extra efforts to talk to people, to work with people in trying to

effect—carry out his assignment as a Circuit Judge." (Grimes TR 430-431)

This incident occurred just four months into his first judicial term. It amounts to unwarranted selective prosecution when other judges did the same thing without sanction. Judge Dupont was a new member of the bench. Not only had he observed what other judges were doing in similar cases, but his mentor, Judge Alexander, set the example. It was a good- hearted attempt to make sure a child was receiving, as stated by Judge Grimes, "...a roof over their head, food on the table, and clothes on their back." (Grimes TR 423)

This charge is not supported by clear and convincing evidence of a breach of the Canons. It is completely without merit.

In addition to Judges Alexander and Grimes, the following individuals appeared live at the hearing and offered further testimonials as to Judge Dupont's character:

HONORABLE WENDY BERGER, 5TH DISTRICT COURT OF APPEAL

Judge Berger testified in response to a question regarding Judge Dupont's reputation in the community for truth and veracity, that "...he's truthful," and that it was her opinion that he was fit to continue to serve as a judge in Seventh Judicial

Circuit: "I believe he's fit to serve as a judge." (Berger TR 226-227) Judge Berger added that she was aware of the charges and that some sanctions were appropriate, but..."I do believe that he's fit to continue to serve as a circuit court judge." (Berger TR 227) Contrary to the statement by the Commission on page 30 of its findings, Judge Berger DID NOT "render a qualified opinion that Judge Dupont was fit to serve." Her opinion was an absolute and definitive statement that "I believe he's fit to serve as a judge." (Berger TR 226) What she said was that while some sanctions were appropriate, "...I do believe that he's fit to continue to serve as a circuit court judge." (Berger TR 227) It is truly disappointing that the Commission would misstate her actual testimony, calling it a "qualified opinion," which it was not.

JUDGE CARLOS MENDOZA, UNITED STATES DISTRICT JUDGE, MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION

Judge Mendoza testified live and addressed both Judge Dupont's character and the charges. Judge Mendoza was appointed to the federal bench, following service as a judge advocate in the United States Navy, an assistant state attorney, and a circuit court judge for the Seventh Judicial Circuit. (Mendoza TR 377-378)

Judge Mendoza testified that Judge Dupont was already on the bench when Judge Mendoza arrived. According to Judge Mendoza, Judge Dupont was "...the

one person who was always available to me, helping me pick juries, to help qualify juries, and that –that necessitated long hours and someone who's willing to plan their personal life and their vacations around my docket for an extended period of time and that was Judge Dupont." (Mendoza TR 380) Judge Mendoza stated he (Judge Mendoza) "...got a lot of credit for reducing the numbers the way I did...;" however, it "...would not have happened without the help I got from Judge Dupont." (Mendoza TR 380)

In response to the question whether in his opinion and based upon his observations, was Judge Dupont a heavy-handed individual, he answered, "No,...." (Mendoza TR 382) Judge Mendoza stated that he "...watched him (Judge Dupont) a lot in the courtroom" and... "soon learned that a lot of things that I have been told about how heavy handed he was and all the other war stories about Putnam County either were embellished or just were absolutely not true from my observations." (Mendoza TR 383)

Judge Mendoza testified that over an extended period of time, he monitored what was being said about Judge Dupont and "took that information to then Chief Judge Parsons, and then later on, Judge Perkins, to try to tell them, based upon my

observations, 'I don't think we have it right, in terms of what we're looking at here,' I was always summarily dismissed in terms of what my observations were." Mendoza TR 384-385)

Judge Mendoza continued:

> "But I will tell you that there are people that are so biased with these preconceived opinions of Judge Dupont that they could never be fair in evaluating him." (Mendoza TR 385)

Judge Mendoza stated that at judges' meetings "...he (Judge Dupont) was the butt of their jokes. They made fun of him, they belittled him," (and) "There are a lot of discussions about Judge Dupont that I found unseemly." (Mendoza TR 386) Judge Mendoza never observed Judge Dupont being disrespectful to other litigants or lawyers. (Mendoza TR 390)

With regard to Charge 12 in the Amended Charges involving the incident that occurred in 2011, just four months after Judge Dupont took the bench, where Bailiff Goodman retrieved a wallet from a father who was not paying child support and denied having any money, only to discover he had $180.00 in his wallet, Judge Mendoza, responding to a question whether the procedure violated in any respect the Code of Judicial Conduct, testified as follows:

> "I will tell you that I know that there are judges all over the circuit that employ techniques like that, and it's all about nuance." (Mendoza TR 392)

Judge Mendoza testified that he was aware of Judge Dupont's reputation in the community for telling the truth and integrity and that "It's a positive reputation." (Mendoza TR 395)

In concluding his testimony and responding to whether he had an opinion as to whether or not Judge Dupont was fit to continue serving the Seventh Judicial Circuit, Judge Mendoza stated that "I'm really disappointed we're here." (Mendoza TR 396) He wished that Judge Dupont had not published the website. (Mendoza TR 397)[7]

> "But in the context of what was going on, I want you, I hope you consider the fact that there are people in Putnam County vandalizing his judicial signs. There are people posting photos of his vehicle on the internet. There are people placing these signs where he would see them driving to work from home and back from, so he would see these vandalized signs. There's a lot of ugly things going in Putnam County during the election, and I think he needed to take the high road." (Mendoza TR 397)
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> * * *

[7] Judge Dupont's opponents' supporters posted signs saying, "You Suck Dupont," "Dupont is corrupt," and defaced Dupont's campaign signs. (Resp. Ex. "A", No.12) While these actions did not justify the web site, it might explain why Judge Dupont's emotions entered the picture. These things would upset any reasonable person. Yes, as stated by Judge Mendoza, "he needed to take the high road," but he is human.

> "...I think he is more than this.... I do believe there has to be consequences for what he did, but I do not believe the appropriate consequences are to remove him from the Court, especially in light of the fact that the voters in the Seventh Judicial Circuit overwhelmingly re-elected him, and I think—I hope and pray you will take that into consideration. (Mendoza TR 397-398) (emphasis added.)
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> * * *
>
> "There has to be some sort of sanctions, but based on my reading in its entirety and knowing him might make me a little biased, because I like the guy, and I think he has got a good heart. I wouldn't recommend removal." (Mendoza TR 412-413) (emphasis added.)

Candidly, Judge Mendoza stated that Judge Dupont reacted in a fashion and should have avoided doing so. He likened it to an NFL football game where the person who draws a penalty for a personal foul was not the one who initiated the inappropriate behavior. He agreed that there should be consequences for what Judge Dupont did; but, however, stated, "I do think he's fit to be on the bench," "I do think he is more than this....", and has matured significantly since 2011." (Mendoza TR 397, 402) (emphasis added.) Here again, the Commission has taken liberty with Judge Mendoza's testimony, saying he offered a "qualified opinion regarding Judge Dupont's fitness." As with Judge Berger, there is nothing "qualified" about Judge Mendoza's opinion regarding Judge Dupont's fitness to serve. He agreed that there should be sanctions, to which we have repeatedly agreed; however, there is nothing

"qualified" about his statement that "I do think he's fit to be on the bench." (Mendoza TR 397, 402) (emphasis added.) Once again, it is disappointing that the Commission, as it did with Judge Berger, attempts to devalue Judge Mendoza's opinion as a "qualified" opinion, as it was not.

JAMES ALEXANDER, ESQ., ATTORNEY CHARACTER WITNESS

Mr. Alexander is an attorney engaged in private practice in St. Augustine, Florida, Seventh Judicial Circuit. He was the elected State Attorney for the Seventh Judicial Circuit from 1993 until January, 1997, when he returned to private practice. (Alexander TR 620)

Mr. Alexander testified live that early in Judge Dupont's judicial career, Judge Dupont was "too strict, overbearing, and overreaching on occasion." (Alexander TR 622) However, as time went on "...after about the first year to 18 months, he actually seemed to kind of grow into the job." (Alexander 622)

Mr. Alexander testified that Judge Dupont is a good judge, "A+ today." (Alexander TR 624) and that he has "a sterling reputation for truth, honesty and veracity." (Alexander TR 624-625) "He has a great heart," (Alexander TR 625) and further stated, "I don't know any of my friends in the Putnam, St. Johns County that

don't think highly of him, both as a jurist and in his honesty and reputation in the community." (Alexander TR 625)

When asked about Judge Dupont's religious convictions, Mr. Alexander testified that:

> "...I'd say in the top three is probably my minister, Lisa Franklin, the Miracle Home, and Scott Dupont, if I were going to talk about people who are absolutely faith based, you know, Christian-type people. They don't come any stronger than those three people."
>
> Q. ..."Do you have an opinion as to whether or not Judge Dupont knew something was incorrect or improper, would he not do it?"
>
> A. "He would absolutely follow the right path, probably more so than not. I know him. If he something knew was wrong, he wouldn't do it." Alexander TR 629)

THE 2016 JUDICIAL CAMPAIGN

With regard to the election of 2016 and the allegations surrounding that election (Paragraphs 1-5), we do not defend the activity as acceptable conduct. It was not. However, as Judge Dupont stated in his response to the charges:

> "I am truly remorseful and apologetic for my behavior. I recognize and understand that I must exercise the upmost discipline in connection with my judicial activities, including the activities of my campaign. I am deeply aware of the need for judges and judicial candidates to set an example of the utmost propriety, judicial demeanor and restraint when

> required to run in a contested election. The public that I serve should not, and cannot, expect anything less. I have learned a great lesson from this and have grown accordingly.
>
> I regret having placed the Judicial Qualifications Commission and, ultimately, the Florida Supreme Court, in the position of having to address my actions. In taking full responsibility for my actions, I understand that I will be subjected to sanctions for my conduct. This behavior will never happen again." (Resp. to Charges12/19/16)

Judge Dupont acted in good faith, with the belief that the information supplied by William Tavernier, who was retained by Maureen France, his campaign manager, was accurate. Notwithstanding, he is not advancing this as either an excuse or reason for his conduct in connection with the election, as he recognizes that the ultimate responsibility was his to determine the accuracy of the information:

> "I did not rely on her to follow the rules. That's why I am here taking responsibility, because the buck stops with me. That's my responsibility. But I did rely on her with regard to the accuracy of the information." (TR 562)

The testimony of Judge Dupont and, in some respects, Ms. France are admittedly at odds. Ms. France testified that she told Judge Dupont she did not have the time to verify the accuracy of what Mr. Tavernier had supplied. (TR 74-75, 97-99, 106-107). On the other hand, Judge Dupont testified that Ms. France assured him that the information was accurate; that he relied upon Ms. France and Mr.

Tavernier to determine its accuracy; and that Ms. France confirmed its accuracy multiple times. (TR 533, 535, 476-479)[8]

Judge Dupont testified that he "...absolutely" did not 'knowingly' publish false information about his opponent and his opponent's family. (TR 477) And that if he had known the information was false he 'absolutely' would not have published it," saying:

> "I worked too hard for my career, plus my whole campaign was based on character, honesty and integrity. There is absolutely no way that I would ever have done that, by knowingly putting out, false information about my opponent." (TR 477)
>
> * * *
>
> "I worked too hard for my career. I ran two campaigns on character, honesty and integrity, which I believe are the most important qualifications of a judge. And I would never jeopardize that by intentionally, knowingly, disseminate false information." (TR 572-573)

Whether it was a misunderstanding between Ms. France and the judge in the heat of a contentious campaign, it remains that it should not have occurred. However, acknowledging the dire consequences of a "knowing" violation of the

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[8]It should be remembered that Judge Dupont paid Ms. France $8,000.00 for managing his campaign, and Ms. France "expected him to trust you, did you not," to which she responded, "I did." (TR 88)

Canons, as he has done, and the fact that he had the ultimate responsibility, which he does not deny, it is difficult, if not impossible, to believe that Judge Dupont knowingly published false or misleading information. Common sense alone would dictate against that. Careless, yes, but a knowing transgression, no.

ARGUMENT

This Court, pursuant to Article V, section 12(c) of the Florida Constitution, has the discretion to accept, reject or modify the Findings and Recommendations of the Judicial Qualifications Commission's Hearing Panel. We believe that there is ample cause for the Court to reject the JQC's recommendation because the evidence does not establish a "present unfitness to hold office," and thus does not meet the standard for removal under Article V of the State Constitution. While Judge Dupont previously herein has addressed the charges, the evidence has clearly established good cause why the Hearing Panel's recommendation for removal should not be approved by this Court. The plain language of Article V and this Court's prior analysis of that provision and precedent in *In re Decker*, 212 So.3d 291 (Fla. 2017) –as well as *In re McMillan*, 797 S.2d 22 (Fla 2003)—demonstrate, as a matter of law, that removal is not the appropriate sanction. The asserted campaign violations—considering the Court's prior opinions, as well as Judge Dupont's

background, character and performance as a judge—do not establish clear and convincing evidence of "present unfitness to hold office" that is required under Article V for a removal .

In the course of the December hearing, uncontroverted evidence was presented regarding Judge Dupont's background prior to running for judge, his general character, and his performance on the bench since he was elected. This evidence shows that Judge Dupont possesses no prior Florida Bar disciplinary history.[9] The testimony at the hearing and the character references attached as Respondent's Composite Exhibit A establish that Judge Dupont has performed extraordinarily as a judge since his election. Again, it bears repeating, the Commission failed to produce a single witness who testified that Judge Dupont is presently unfit to hold office.

As demonstrated, character letters were admitted attesting to Judge Dupont's character and good work in the community. (Resp. Ex. A) To its credit, the JQC recognized in its Findings of Fact, Conclusions of Law and Recommendations that "By all accounts, Judge Dupont is a hard-working judge who gave willingly of his time and was extraordinarily efficient. He was interested in children, established the

[9]A factor this Court has historically considered and weighed heavily in the present context. *See Decker*, 212 So.3d at 308.

first truancy court in Putnam County, and created a series of forums in different legal areas to help pro se litigants navigate the legal system. (TR 456-69). (See JQC Findings of Fact, Conclusions of Law and Recommendations, page 29)

The Court has consistently acknowledged that Article V provides authorization for this Court "to remove a judge from office only for conduct 'demonstrating a present unfitness to hold office.'" *In re Renke*, 933 So.2d 482, 497 (Fla. 2006) (quoting Art. V. sec. 12(c)(1)). (emphasis added.)

The object of disciplinary proceedings, however, is not for the purpose of inflicting punishment, but to gauge a judge's present fitness to serve as a judicial officer. *In re Graziano*, 696 So.2d 744, 753 (Fla. 1997).

We respectfully suggest that there is genuine cause for this Court to reject the JQC Hearing Panel's Conclusions of Law and Recommendation for removal because (1) Article V permits removal only upon a showing of present unfitness to hold office and, despite Judge Dupont's asserted violations, his exemplary performance as a jurist and his stellar background and character do not support a finding of present unfitness; and (2) this Court's prior precedent underscores that this is not a removal case, especially in light of his acceptance of responsibility and the absence of clear and convincing evidence that he "knowingly" published false

or misleading facts about his opponent. Judge Dupont admitted that he was careless, should not have relied on his campaign manager, and should have independently researched the information discovered by Mr. Tavernier.

In re Decker, 212 So.3d 291 (Fla. 2017) exemplifies that the facts of the instant case do not implicate removal because the "present unfitness" to serve standard is not met. In *Decker*, Judge Decker was found to have violated Code of Judicial Canon Rules 7A(3)(a)(ii), 7A(3)(b), 7C(3), and 4-8.2 and 4-8.4(d) of the Rules of Professional Conduct. Specifically, Judge Decker falsely campaigned that he had never been accused of a conflict of interest when a formal Florida Bar Complaint had been filed against him for a conflict of interest just four (4) months before. *In re Decker,* 212 So.3d at 297-298. Judge Decker had responded to that complaint just prior to the public statement, and this Court approved the finding that he violated Canon 7 by not acting with integrity, acting dishonestly, and by knowingly representing his own record in denying the existence of that complaint.

The Court found Judge Decker violated Judicial Canon 7A(1)(c) by politically pandering at a judicial forum by confirming that he is a registered Republican and that his previous affiliation with the Democratic Party was in error. *In re Decker,*

212 So.3d at 301. This Court further found then-attorney[10] Decker violated the Rules of Professional Conduct when he appeared before Judge Bryan while Judge Bryan was an active client of Decker's and did not disclose to opposing counsel that he and Judge Bryan were engaged in an attorney-client relationship. *Id.*

This Court also found then-attorney Decker additionally violated the Rules of Professional Conduct by representing Judge Bryan and two others jointly in a suit without properly notifying all three clients of the advantages and risks thereof. For example, then-attorney Decker failed to explain that joint guarantors are all entitled to demand reimbursement from the other(s) if one pays more than the other. *Id.*

Further, then-attorney Decker advised the two other clients to execute quitclaim deeds to Judge Bryan, putting them in a negotiating disadvantage, clearly favoring one client over the others. This Court explicitly found several other instances of misconduct by then-attorney Decker in that litigation that implicated issues of lack of candor to the tribunal, using information relating to the

[10] It is important to note this Court found Judge Decker was not presently unfit even though his conduct was not limited to his role as a judicial candidate and included additional misconduct as a practicing attorney, while Judge Dupont's case focused on issues as a candidate and did not involve the practice of law or conduct as a sitting judge.

representation of one client to the disadvantage of a former client, and concluded this conduct violated Rules of Professional Conduct 4-1.7(a), 4-1.8(b), and 4-1.9(b).

It is of further importance – especially in the context of this Court's test for present unfitness as analyzing the potential for "future misconduct" – that Judge Decker possessed a prior disciplinary history with The Florida Bar. *Decker*, 212 So.3d at 308. Nonetheless, this Court concluded his conduct and background did "not merit removal from office" because he "ably served the citizens of the Third Circuit since assuming the bench" so that he did not meet the test for present unfitness. *Id.*

It is difficult to analyze the Canon 7 violations in Judge Decker's case in light of the "cumulative nature of the numerous violations proven" in his capacity as both an attorney and judicial candidate and conclude that those violations do not demonstrate present unfitness to hold office, but that Judge Dupont's do. The Court placed heavy weight on Judge Decker's positive service on the bench and, while imposing a sanction less than removal, noted his good service and that the Court did not wish to deprive his Circuit of that service. *Decker*, 212 So.3d at 312. Undersigned counsel respectfully submits that Judge Dupont's "exemplary" work

on the bench should be similarly construed in the analysis of his present fitness to serve.

Judge Dupont's conduct – though wrong and regrettable – in no way involved issues of misconduct as a practicing attorney, false statements to a court, harm to a client, or dishonesty in discharging his judicial responsibilities. Based on this very recent Florida Supreme Court precedent, *Decker* suggests the present charges do not merit removal from office because they do not demonstrate a lack of present fitness to serve.

Canon 7A(3)(e)(ii), Code of Judicial Conduct, specifically provides that a Judge "(e) shall not: (ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent." (emphasis added.)

None of the charges surrounding the 2016 election state that Judge Dupont knowingly misrepresented information about his opponent. Instead, they charge that his actions were reckless. In fact, on pages 36 and 37 of its findings, and while quoting the language of Canon 7A(3)(e)(ii) which prohibits a knowing misrepresentation, the Commission concludes that his actions amounted to "carelessness" and "reckless disregard for the truth." At no time do they conclude that Judge Dupont "knowingly" posted false or misleading information.

There is a vast difference between publishing information knowing it to be false and carelessly or recklessly publishing information, as Judge Dupont admits doing. "Knowingly" suggests that Judge Dupont was aware of the fact that some of the information was false but published it anyway. Careless and reckless publication amounts to negligence and conduct of a rash or unwise nature.

As he has said throughout, he was careless in not verifying the truth of the information but did not know it was false.

CONCLUSION

The Hearing Panel found Judge Dupont "not guilty" of the charges surrounding the 2012 domestic violence case, the Palm Coast case, and the charge addressing the 2010 election. That left remaining the 2016 election charges, which we have addressed, supra. As regards Charge 12, the 2011 Family Court Hearing, this charge is unwarranted and should be dismissed. The event occurred just four months in to Judge Dupont's first term; there was no clear and convincing evidence that he acted improperly; and, in fact, the clear and convincing evidence from Judge Larue, Alexander, and Grimes offer a clear testament to the contrary.

With regard to the charge that Judge Dupont conducted a first appearance hearing without a representative from the state attorney and public defender's offices, he has admitted that that was a poor decision, (Dupont TR 491) and that he

simply could not say why he started the hearing early. (Dupont TR 525). However, despite his oversight, he appointed the public defender to every single person who appeared before him. (Dupont TR 526) He has never done this again. (Dupont TR 491)

Judge Dupont has admitted and apologized for the mistakes he made. Given the undisputed fact that the only testimony regarding his present fitness to remain in office has been uniformly and overwhelmingly positive, we request that this Court allow him to continue to serve the Seventh Judicial Circuit. His case is no different from that of Judge Decker. We understand that he will be subject to sanctions. However, removal is not proper.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, via email to the following individuals this 21st day of March, 2018:

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