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 JUDICIAL QUALIFICATIONS COMMISSION'S REPLY TO ORDER TO SHOW CAUSE

The Commission's Reply contains no new facts or arguments in reply to Judge Dupont's Response to its original Facts and Recommendations; however, there are several inaccuracies and/or impermissible conclusions that must be addressed that are related to the testimony of several witnesses.

In its Reply, the Commission, for no legitimate reason other than to fan the flame of prejudice, again references the fact that Judge Dupont was charged with three additional violations, namely, Paragraph 8, Paragraph 9, and Paragraph 11. They continue by saying on February 15, 2018, the Hearing Panel "determined that Judge Dupont was guilty of several of the noticed charges," but "this reply will not unnecessarily address the few charges for which Judge Dupont was found not guilty," not stating what those charges were, but, instead, leaving it to the Court's imagination. Why even mention them unless attempting to influence the outcome?

THE 2016 JUDICIAL CAMPAIGN

The 2016 Judicial Campaign is the main focus of the inquiry. Judge Dupont admitted his carelessness and has in no fashion attempted to defend what occurred as acceptable conduct. As previously stated, Judge Dupont acted in good faith, with the honest belief that the information supplied by William Tavernier, who was retained by Maureen France, his campaign manager, was accurate. Notwithstanding this belief, he is not advancing this as either an excuse or reason for his conduct in connection with the election, recognizing that the ultimate responsibility for the accuracy of the information rested with him.

Canon 7A(3)(e) of the 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 accused Judge Dupont of knowingly misrepresenting information about his opponent, that is, intentionally publishing false information with knowledge of its falsity. In this context, it defies common sense to think that an incumbent judge would intentionally manufacture false allegations against an opponent. There was absolutely no reason to do so, and the potential consequences dictate against it. The Commission itself concluded that

his actions amounted to "carelessness" and a "reckless disregard for the truth." At no place in its Findings does the Commission 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 under a mistaken belief of its truthfulness. Judge Dupont does not deny that he was wrong. However, "knowingly" suggests that Judge Dupont was aware of the fact that some of the information was false but published it anyway. Careless or reckless publication amounts to negligence and conduct of a rash or unwise nature. It is distinguishable from an evil motive or intent. As Judge Dupont has repeatedly stated, he was careless in not personally verifying the truth of the information, but he did not know it was false.

2011 FAMILY COURT HEARING (Charge 12)

In its Reply, the Commission contends that Judge Dupont "abused his position and showed himself unfit by, among other things, ordering money to be taken from litigants unlawfully." (Reply p.3) Further, the Commission states that...this "outrageous behavior also prompted the case manager, Ms. Katie Bernard...to complain about the event to her superior." Reply (p. 12) This argument completely

ignores the testimony of Bailiff Goodman, who was present at the hearing and participated in the exchange between Judge Dupont and the respondent. Completely contrary to Ms. Barnard's testimony, when asked if the judge was polite, Bailiff Goodman testified, "absolutely," and when asked whether the judge was courteous, he responded "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." (emphasis added.) (Goodman TR 145)

Bailiff Goodman had spent a lot of time with Judge Dupont and further testified that "he's very professional." (Goodman TR 145) He further testified:

Q. "And he tries to do the right thing, from your observation, Right?"

A. "Absolutely." (Goodman TR 145)

According to Bailiff Goodman, the respondent initially stated that he had no money. After it was discovered that the respondent had $180.00 in his wallet, the respondent then testified that he was holding the money for someone else. Bailiff Goodman believed the judge at this point did not think the respondent was credible

in the sense that "first he lied about it, and then when he found he had $180.00 in his wallet, then he said it wasn't his." Goodman (TR 146-147) Certainly, a reasonable person can understand why Judge Dupont acted in the manner in which he did, given the respondent's lack of candor, especially when child support had already been established, had been ordered, and was being pursued through the Department of Revenue. (Bernard TR 176-177.) Clearly, the Commission failed to acknowledge or even consider the testimony of Bailiff Goodman, an eyewitness whose testimony directly contradicts that of Ms. Bernard. It is also in direct conflict with what Judge Larue said about the two law enforcement officers telling him there was a "forceful search." (Larue TR 188)

It should be remembered that the testimony of Bailiff Goodman and Ms. Bernard were diametrically opposed regarding this incident. Ms. Bernard said she was prompted to report the matter to her supervisor, stating "partially it was his tone with the respondent...," which testimony directly conflicts with that of Bailiff Goodman. Ms. Bernard also could not recall whether Judge Dupont asked the respondent to empty out his pockets, or whether he asked Bailiff Goodman to search the respondent. (Bernard TR 168) Interestingly enough, and despite her "...sufficient concern that you (she) went upset to a supervisor because you (she)

saw what happened," she never discussed her concerns with Bailiff Goodman, who was present with her. (Bernard TR 166, 169) Remarkably, she excuses herself from not discussing her concerns with Bailiff Goodman because "...the judge and the bailiff seemed to be friendly." (Bernard TR 169) 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." (Bernard TR 180)

The Commission advances the testimony of retired Judge Terrell Larue that "Judge Dupont said he could continue the unlawful searches." (Reply p. 14) However, the Reply does not cite us to Judge Larue's testimony where he is alleged to have made that statement. That is understandable, as it is simply wrong, and they cannot support it. Judge Larue did state that 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)[1] (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) Judge Larue stated 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, Judge Larue conceded, "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:

> Q. " [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?"
>
> A. "You know, again, from what—he could have, yes, that's fair because I don't recall him saying, 'I'm going to keep doing that.'"

[1]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.

His words were 'Oh, I can do that."' (Larue TR 195) (emphasis added.)[2]

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 "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, 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 "[b]ut

[2] It is disturbing that the Commission would take such unwarranted liberties with Judge Larue's actual comments.

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 who had been mentored by a senior, and more experienced judge, and who was 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, Judge Dupont's mentor, testified that he, personally, had seized "watches, money, keys..." "ten, maybe 15, maybe 20, maybe 2 a year, at the most." (Alexander TR 657)

Judge Hubert Grimes, a retired Circuit judge now serving as interim president of Bethune-Cookman University in Daytona Beach, testified that he also had in the

past encountered situations where he had had occasion to have his bailiff relieve a dad of some money to pay to the mother of a child. (Grimes TR 420) He referred to it as "extra-judicial efforts in order to get them to own up to their responsibilities," and that it was a fairly common practice throughout the Seventh Judicial Circuit practiced by other judges and himself. (Grimes TR 420) Judge Mendoza addressed Charge 12, saying that "...there are judges all over the circuit that employ techniques like that, and it's all about nuance." (Mendoza TR 392)

In essence, what we are faced with is an effort to pile on Judge Dupont in an attempt to show a pattern of conduct justifying his removal. As regards Charge 12, this is purely and simply unwarranted, unfair, and selective prosecution. Judge Dupont followed the example set by his mentor and other judges in the circuit. His motives were pure, and yet, he is singled out for an incident that occurred when he had been on the bench only four months, which even Judge Larue recognized.

CHARACTER WITNESSES – FITNESS TO SERVE

Once again, the Commission impugns the integrity and accuracy of testimony from Judges Berger and Mendoza about whether Judge Dupont should be removed

or is fit to continue serve.[3] While they agree that some form of sanction is appropriate, they both gave unqualified testimony that Judge Dupont is fit to remain in office. Judge Berger testified without qualification that "I believe he is fit to serve as a judge on the Seventh Judicial Circuit;" and that while she was aware of the charges and that some sanctions were appropriate, "I do believe that he's fit to continue to serve as a circuit court judge." (Berger TR 226- 227) This is not a qualified or "tempered" opinion.

The same can be said of Judge Mendoza. Judge Mendoza stated that Judge Dupont's reputation for telling the truth and integrity is "...a positive reputation." (Mendoza TR 395) Again, Judge Mendoza stated without qualification that while there had to be some sort of sanctions, he "wouldn't recommend removal and that "I do think he's fit to be on the bench." (Mendoza TR 397, 412-413) There is nothing qualified or tempered about his testimony either. It is to also be remembered that Judges Alexander and Grimes testified without qualification that he was fit to serve as a circuit judge.

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[3] This argument completely ignores or conveniently avoids the testimony of Judge Alexander, Judge Grimes and Attorney Alexander regarding their opinions about Judge Dupont's fitness to continue serving the citizens of the Seventh Judicial Circuit.

It was Judge Mendoza who addressed the nastiness of the campaign being conducted by the supporters of Judge Dupont's opponent. (See footnote 7 on page 25 of our Response to the Order to Show Cause.) While we do not offer this up as either a reason or excuse for what Judge Dupont may have done, and that, as stated by Judge Mendoza, "he needed to take the high road," it might explain why his emotions entered the campaign. These personal attacks would upset any reasonable person, and he is human.

STATEMENTS AT TELEVISED CAMPAIGN FORUM-CHARGE 5

Judge Dupont is not denying what he said about finding statutes unconstitutional during a brief comment at a candidates' forum.

However, his conversation with his mentor, Judge Alexander, following the forum, should be considered. When Judge Alexander challenged his statement, Judge Dupont responded "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," with Judge Dupont replying, "I know, I screwed up. But what I meant was, I don't go in looking to find something unconstitutional." (Alexander TR 650-651)

Judge Dupont misspoke when he made the statement at the forum. Just as it was delivered in an unintentional fashion, perhaps it was received in an unintended way. While inappropriate and a technical violation of Canon 7, it is in no fashion evidence of a pattern of misconduct justifying removal, nor an indication of how Judge Dupont will rule in future cases involving constitutional challenges.

In their Reply, the Commission asserted that former Justice Harding and Judge Van Nortwick "...testified that the comments were blatant violations of Canon 7." (Reply p. 5) A careful review of their respective testimonies shows that, while stating that such a comment by Judge Dupont was a violation of Canon 7, neither witness referred to it as "blatant violation of Canon 7." This is simply another unwarranted attempt to portray Judge Dupont in an extremely hostile fashion through the embellishment of testimony.

BOND HEARING

With regard to the charge that Judge Dupont conducted a first appearance hearing without a representative from the State Attorney's and Public Defender's offices, he has admitted that that was a poor decision, and that he could not explain why he started the hearing early. He has never done that again. (Dupont TR 491)

HEAVY HANDEDNESS

This Court has the discretion to accept, reject or modify the Findings and Recommendations of the Judicial Qualifications Commission's Hearing Panel. 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.

On page 14 of its Reply, the Commission addresses Judge Perkins' testimony regarding Judge Dupont being heavy handed and his concern about Judge Dupont "putting people in jail all the time." (TR 244) It should be remembered that the same Judge Perkins authored a letter, which letter is in evidence, attesting to and praising Judge Dupont's character.[4] (See pp. 2 and 3 of our Response to Order to Show Cause.) With regard to "heavy handedness," it should be remembered that Judge Grimes testified that Putnam County (Palatka) is one of the poorest counties in Florida and that statistics supported the fact that Putnam County had a lot of trouble with "crime, domestic violence, violence and truancy, and things of that nature." (Grimes TR 418) Judge Dupont testified that: Statistically speaking, Putnam County

[4] "Although initially criticized for issues related to his demeanor and comportment, he worked hard on these issues and, as a result, has become a better and more patient judge…in my opinion, he has learned from his mistakes and is a better judge today because of it." (Resp. Ex. A. Emphasis added.)

currently, I believe, is the second poorest county in the State. It has the highest child rape statistic per capita in the State. It has the highest teen pregnancy in the rate. (sic) It has the highest divorce rate, and I believe it also has the highest domestic violence rate. There was an article that came out a couple years ago where we were voted the most violent county in the State of Florida." (Dupont TR 460).

Against this back drop, should "putting people in jail all the time" and being "heavy handed" in dealing with the domestic violence and crime be given even a moment's notice as, is it unreasonable for a judge, who is presiding over a particular case, hearing the seriousness of the charges first hand, to exercise discretion and judgment? Is it reasonable for a judge in Volusia County, where Judge Perkins sits, and who was not, himself, sitting in judgment with first-hand knowledge of the facts, to criticize Judge Dupont for doing what he believed to be his job, as well as dispute those who wrote letters attesting to his character and fitness, and who would, no doubt, applaud his efforts to clean up Putnam County and restore some semblance of order?

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.

Charge 12 regarding the 2011 Family Court Hearing 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 testimony from Judges Larue, Mendoza, 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. While understanding that he will be subject to sanctions, his removal is not proper.

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 the very recent Florida Supreme Court precedent, *Decker*[5] suggests the present charges do not merit removal from office because they do not demonstrate a lack of present fitness to serve. Judge Dupont is a good person and deserves a second chance. We all make mistakes.

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[5] In re Decker, 212 So.3rd 291 (Fla. 2017)

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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 30th day of April, 2018:

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