BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA
CASE NO.: 07-64

INQUIRY CONCERNING JUDGE RALPH E. ERIKSSON; SUPREME CT. CASE NO. SC07-1648
_____/

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS BY THE HEARING PANEL OF THE JUDICIAL QUALIFICATIONS COMMISSION

The Hearing Panel of the Judicial Qualifications Commission ("JQC") respectfully submits the following Findings, Conclusions and Recommendations pursuant to Article V, § 12(a)(1), (b) and (c), of the Florida Constitution.

OVERVIEW AND CONCLUSIONS

Judge Ralph E. Eriksson, a County Judge in Seminole County, Florida, was charged by the Investigative Panel of the Judicial Qualifications Commission ("JQC"), with certain violations of the Code of Judicial Conduct. The Charges were initially served on September 16, 2007, and Amended Charges were served April 30, 2008. The charges concerned unrelated events and they were consolidated for a single hearing. Judge Eriksson answered both sets of charges on June 30, 2008. The Hearing Panel denied Judge Eriksson's Motion for Summary Judgment and held that the charging documents were legally sufficient. (See Order of 11/17/08). Due to the separate events in question, there were two preliminary hearings before the Investigative Panel under Commission Rule 6(b). Judge Eriksson appeared at both hearings.

He gave an unsworn statement at the first hearing and a sworn statement at the second hearing. (Exhibit 30d and 30e). At the request of Judge Eriksson the matter was set for a formal hearing before the JQC Hearing Panel in Seminole County in Sanford, Florida.

The charges all concerned Judge Eriksson's conduct while on the bench. Count I related to a defendant in a criminal matter named Bob Lee Walton and Count II related to a defendant named Daniel Bradshaw. Both defendants were represented by counsel. Count III concerned a series of hearings on numerous petitions for injunctions against domestic violence or repeat violence. (Eriksson Exhibits 17a-17o and JQC Exhibit 9). In these injunction cases, the petitioners were usually acting pro se.

Unrepresented petitioners are the common practice in most domestic and repeat violence injunction cases. See: § 741.28 - § 741.31, Florida Statutes, and Florida Family Law Rules of Procedure 12.610. The Legislature and the Florida Supreme Court have made it clear that the judiciary, court clerks and the police shall have a very active role in protecting petitioners in pro se domestic violence injunction cases. See § 741.2902 and Fla. Fam. L. R. 12.610. The 2003 amendment to the Rules included commentary wherein the Court stated: "This rule was amended to emphasize the importance of judicial involvement in

resolving injunction for protection against domestic violence cases." Further, § 741.30(1)(g) allows written or sworn evidence at the injunction hearings and subsection (c)(1) requires the court clerk to "assist petitioners in seeking...injunctions."

Conclusions

After considering all of the evidence and argument and based upon the evidence which the Panel finds to be clear and convincing, the Hearing Panel concludes that Judge Eriksson is guilty of Count I concerning Mr. Walton and guilty of Count III, concerning the domestic violence injunction petitioners. Judge Eriksson is found not guilty on Count II concerning Mr. Bradshaw due to a lack of clear and convincing evidence on that count alone.

The Panel recommends that Judge Eriksson be publicly reprimanded by the Court but remain on the bench. Judge Eriksson should further be required to pay the costs of these proceedings.

The Charges and the Answer

The Amended Charges of April 30, 2008, are here quoted in full.

COUNT I:

In State of Florida v. Bob Lee Walton, Seminole County Case # 06-MM-012701-A, Mr. Walton was charged with Driving Under the Influence and Driving in Violation of the terms and conditions of a Business Purposes License. This case had been previously charged in Circuit Court due to an allegation of Possession of Cocaine that was subsequently dropped.

a. Since there was a video of the traffic stop and the cocaine was mentioned on the video, counsel for the defendant had filed a motion to redact portions of the video. To accomplish this task, the State and the defense jointly moved to continue the case. The court declined to do so, suggesting that the case had been pending too long.

b. Subsequently, the defendant asked his lawyer to file a Motion to Recuse. When told this, you expressed that you were not satisfied that the defendant's bail of $3,500.00 was sufficient to insure his presence, so you revoked the bond, ordered a new $10,000 bond, and ordered the defendant taken into custody.

c. As a result the defendant was taken into custody and spent the next 11 hours in the Seminole County Jail until his family was able to arrange for bail.

d. When counsel for the defendant stated that his client was withdrawing his suggestion of recusal and was ready for trial, you ignored that statement, stating that you had granted the defendant's motion to continue.

e. In response to questioning by the Investigative Panel of the Commission, you stated that the sole reason for revoking Mr. Walton's bond and imposing a new bond was in response to his Motion to Recuse.

f. Your actions were calculated to punish the defendant for exercising a legitimate legal right, and so your actions were punitive and vindictive, undermining the orderly administration of justice.

g. This charge is governed by Canons 1, 2A, and 3B of the Code of Judicial Conduct.

COUNT II:

In State of Florida v. Daniel Bradshaw, Seminole County Case # 05-7182-MMA, Mr. Bradshaw was charged with Possession of Cannabis and Possession of Paraphernalia.

a. On Monday, April 3, 2006 the case was set for jury selection and trial. Counsel for the defendant had indicated that he desired to enter a guilty plea. On April 6, 2006, as the Court began the plea colloquy, the defendant asked why his Motion to Suppress had not been heard.

b. After the Court indicated that it did not become involved in what motions the parties desired to be heard, the defendant then decided to maintain his plea of not guilty. In response you stated that the defendant had interrupted the administration of justice, revoked his release on recognizance, imposed a monetary bond of $5,000.00, and remanded Mr. Bradshaw to the custody of the Sheriff.

c. In response to questioning by the Investigative Panel, you acknowledged familiarity with the defendant's surname and as a result "felt that he was aware of the court system".

d. In regard to Mr. Bradshaw particularity, in describing him to the Investigative Panel, you characterized him by stating, "He's kind of a pathetic little character. Kind of looked liked Sammy Davis, Jr."

e. Your actions were calculated to punish the defendant for exercising a legitimate legal right, and so your actions were punitive and vindictive, undermining the orderly administration of justice.

f. This charge is governed by Canons 1, 2A, and 3B pf the Code of Judicial Conduct.

COUNT III:

> **In a series of cases in which pro se petitioners sought injunctions against Domestic Violence or Injunctions for Repeat Violence, all heard on October 30, 2007 in Seminole County, Florida, you failed to properly accord those petitioners the right to be heard on their petitions by implying that the verified petitions were somehow insufficient even though the facts contained in the petitions were uncontested. It was suggested by the court that the petitioners were required to produce independent witnesses without acknowledging that the petitioners themselves could testify, as the law permits. This charge is governed by Canons 1, 2A, 3B (2), 3B (7) and 3B (8) of the Code of Judicial Conduct.**
>
> **Rather than assisting the parties in understanding the process of obtaining a domestic or repeat violence injunction, you employed an unduly rigid and formulaic process in dealing with pro se litigants, so as to impede their ability to obtain the relief and protection they sought from the court. This charge is governed by Canons 1, 2A, 3B (2), 3B (7) and 3B (8) of the Code of Judicial Conduct.**

The Amended Answer and Affirmative Defenses generally admit the facts concerning the Walton and Bradshaw cases and the revocation of the bonds and incarcerations, but deny that Judge Eriksson acted with the intent to be vindictive or to punish either of the defendants. Judge Eriksson consistently asserted he acted only to "preserve the integrity of the judicial process" and that he revoked both bonds based upon the "precedent of Thomas v. State, Case No.: 05-CA-1317-16H-L (Fla. 18th Cir. June 30, 2005).

As to the injunction hearings which all occurred on October 30, 2007, Judge Eriksson's answer asserted that he acted in a neutral and impartial fashion so as not to favor one party over another. His defensive pleading rationalized and even complimented his own handling of the injunction matters but in his hearing testimony in response to questions from panel members, he conceded he had changed his own views on how he should have treated the unrepresented petitioners. (T. 873-4).

The Hearing Panel Proceedings

After discovery occurred and prehearing statements were filed, the matter proceeded to hearing before a Hearing Panel composed of Judge Thomas Freeman, (Chairman) Judge Stasia Warren, attorney John Cardillo, attorney Miles McGrane and lay members Nancy Mahon and Ricardo Morales. Motions in Limine regarding various comments made at the two 6(b) hearings were made and denied. (T. 9-23). Motions in Limine also included arguments based on asserted confidentiality of the hearings which occurred prior to the filing of the Formal Charges. The Hearing Panel granted one Motion in Limine regarding a letter written by a Mr. Wagner on behalf of the Association for the Deaf. (T. 13,23). All other Motions in Limine were denied. (T. 23).

Almost all of the evidence presented to the Hearing Panel was stipulated to. (T. 24). The JQC exhibits were contained in a single notebook while the Eriksson exhibits were contained in three notebooks. An important part of the evidence were DVD recordings of the Walton hearings, the Bradshaw hearings and the injunction hearings. These DVD's showed the actual court proceedings and everything that was stated in the courtroom during those proceedings. The paper transcripts of the hearings are JQC Exhibits #1, #2 and #3 and the video of the February 19, 2007, Walton hearings is JQC Exhibit #4. The video record of the injunction hearings is JQC Exhibit #9.

The proceeding before the Hearing Panel began on December 8, 2008, and recessed at 4:50 p.m. on December 10, 2008. Portions of Exhibit #9 were played in the courtroom and at the request of defense counsel, the Panel watched the entire three hour recording before beginning their deliberations. The paper transcript of the three day hearing is in six volumes covering 978 pages. The transcript is also electronically accessible. All evidence and transcripts have been filed along with these Findings and Conclusions.

The Investigative Panel presented the testimony of Daniel Bradshaw, Jeffery Weiner, Bob Walton, III, Bob Walton, Jr., Kendall Horween, Judge Vernon Mize and the direct examination of

Judge Ralph Eriksson. After the JQC rested, the case by Judge Eriksson consisted of his own continued testimony plus the testimony of Judge Don Marblestone, Catherine Lynn, Grace Miller, Demaris Rivera, Doris Brady, Robert Fischer, Gerry Collins, Alex Hall, Sandra DuVall, Judge O.H. Eaton, Dr. Deborah Day and Chaney Mason.

The findings of guilt and the recommended discipline contained in these Findings, Conclusions and Recommendations were each determined by at least a two-thirds vote of the six member Hearing Panel in accordance with Article V, § 12(b) of the Florida Constitution and Rule 19 of the JQC Rules. In the view of the Hearing Panel, each of the affirmative findings herein are supported by the DVD evidence, the transcripts of the county court proceedings and by Judge Eriksson's own testimony and admissions, all of which constituted clear and convincing evidence in accordance with In re: Henson, 913 So. 2d 579 (Fla. 2005); In re: Ford-Kause, 703 So. 2d 269 (Fla. 1999); In re: Graziano, 696 So. 2d 744, 753 (Fla. 1997) and In re: Davey, 645 So. 2d 398, 404 (Fla. 1994). The vote of the six members of the Hearing Panel on both Judge Eriksson's guilt and recommended discipline met the two-thirds requirement of the Florida Constitution and the JQC Rules.

Count I - State v. Bob Lee Walton
Seminole County Case No.: 06-MM-012701-A

Mr. Bob Lee Walton was arrested after being stopped by the police while driving his automobile at night. (T. 163-164). Walton was 24 years old and was charged with possession of cocaine, driving under the influence of alcohol and driving in violation of the terms of his restricted business purpose license. Walton had previous traffic convictions and a prior DUI. (T. 164-165). Mr. Walton was released on a $3,500 bond which his father posted. (T. 201). The case was initially filed in circuit court due to the cocaine felony charge plus the tagalong driving violations. The case was delayed while the suspected cocaine was subjected to tests in the State Laboratory. After approximately six months the lab results showed that the substance in question was not cocaine and the felony charges were dismissed. (T. 167). The remaining traffic offenses were then transferred to the county court and came within the jurisdiction of county judge Eriksson. (T. 202,211, 230).

There was a video record of the traffic stop and arrest and the alleged cocaine was referred to on that video. (T. 170-171). The state intended to offer this video in evidence against Walton. Mr. Walton was represented by attorney Kendall Horween and after the transfer to the county court he sought to

have the arrest video redacted to have the cocaine references eliminated. The State Attorney agreed to redaction but these attorneys had been unable to agree on the details. (T. 204-5).

On February 19, 2007, the case was before Judge Eriksson for trial and the State Attorney and defense counsel both stated that they were not ready for trial because the video had not been redacted. (T. 204-5,284-5,288). The judge told them that they themselves would have to take care of the redaction. Both attorneys asked the court for a continuance by a joint motion and Judge Eriksson denied it stating that the case had been pending too long. (T. 238,285,288,309,310).

Attorney Horween argued several theories for a continuance including the fact that the case had initially been assigned to another attorney in his office and that he was not sufficiently familiar with it to proceed to trial. He had previously advised Judge Eriksson that he might have a conflict on the February 19, 2007, date because he was scheduled for trial in a serious felony case before another circuit judge (Judge Frank Kaney). Judge Eriksson did not believe Horween was being candid with the court and told him to meet his obligations before Judge Kaney and then return to pick a jury if possible on February 19, 2007. (T. 262-3,312). In fact, attorney Horween did not arrive until late in the day. These and other arguments were all rejected by

Judge Eriksson in oral rulings while Walton, who had been waiting most of the day, was present in the courtroom. (T. 204).

At this point attorney Horween and Walton briefly discussed the possibility of filing a motion to disqualify the judge. (T. 172,192-194,239). Horween then announced that Walton did not believe he could get a fair trial before Judge Eriksson and that he intended to file a motion to disqualify. (T. 192-194). Judge Eriksson reacted to the threat of disqualification by revoking Mr. Walton's $3,500 bail and setting a new bail at $10,000. (T. 240,290,319). He stated he no longer believed the lower bond was enough to ensure the defendant's appearance. (T. 318,319). Walton was ordered remanded to custody but before he left the courtroom Mr. Horween advised that Walton would withdraw his recusal request and proceed to trial. (T. 242,278,321). Judge Eriksson refused this suggestion and stated that he had already granted the continuance requested by Mr. Horween. (T. 319).

Judge Eriksson had recognized that under Rogers v. State, 630 So. 2d 513, 516 (Fla. 1994), he had to give counsel a "recess" in which time to prepare the written motion to disqualify. He further recognized that these supposed disqualifications tactics by Horween "artificially" resulted in

a continuance of the trial. This was because the jury selection system in effect in Seminole County did not contemplate having jurors available except on Monday and Tuesday. Walton was taken into custody where he remained (for less than 24 hours) while his father arranged for another $10,000 bond. (T. 174,208).

The Commission began an investigation concerning the Walton case and a 6(b) hearing was scheduled. Judge Eriksson was asked:

> JUDGE WOLF: Okay. Sir, let me just get this straight because I want to make sure that I'm hearing this. The sole reason that you raised the bond was that they made a motion for recusal? That's what I heard you say.
>
> JUDGE ERIKSSON: Yeah. I don't think there was any other reason, because at that point the recusal says we aren't having a trial. We're at 4:00. We don't have any jurors later that week. I have to give them time. He said he needed some time, and I know the law says that I have to give them time to go and prepare the motion. We're not going to keep jurors there that evening. And so they have, in my opinion, artificially granted themselves a continuance. (T. p.66,67, 6(b) hearing, June 28, 2007).

At the hearing on the formal charges, Judge Eriksson made it clear that he believed Mr. Horween was not ready for trial and that he was attempting to play the system to avoid going to trial. Judge Eriksson believed that Mr. Horween was at fault but he took no steps to sanction him. Indeed, Judge Eriksson had never held any attorney in contempt in his many years on the

bench. (T. p.896). Instead, he took the easier alternative and penalized the client Walton instead of the attorney. (T. p.895). Obviously the client should not be made to suffer for the sins of his attorney even if the attorney engages in wrongful conduct.

It is also noteworthy that the written motion to disqualify was in fact later filed by Mr. Horween and that Judge Eriksson granted that motion and disqualified himself. (T. 744,879). Judge Eriksson had repeatedly expressed his view that the threatened disqualification motion could not possibly have been in good faith.

Judge Eriksson was also asked by a member of the Hearing Panel whether he should have taken any action whatsoever against Walton in the face of a threatened motion for disqualification. Judge Eriksson responded: "Would I do this again? I don't think so." (T. 884-5).

In addition to this admission, Judge Eriksson also admitted making an error on the amount of the bond he eventually set. Under applicable Rules of Criminal Procedure, Judge Eriksson believed that he had the right to double the $3,500 bond under these circumstances. However, Judge Eriksson testified that he misread the $3,500 bond amount as stating $5,000 and therefore

he doubled that amount and arrived at the bond of $10,000. (T. 287,883).

Judge Eriksson relied heavily on the Thomas circuit court case. The Panel has closely studied this case and we do not believe that it authorized Judge Eriksson's rulings. The Panel concludes that Judge Eriksson effectively punished Mr. Walton for exercising a legal right and that this result was punitive and gave the appearance of being vindictive. The Canons prohibit such conduct which would result in the judiciary being held in disrepute. The public could certainly conclude that Mr. Horween's requests for a stipulated continuance and his request to disqualify the judge had the effect of placing the client in jail.

The Panel recognizes that numerous witnesses testified that Judge Eriksson is an extremely sincere and fair judge. The Panel has fully considered all of the very complimentary testimony concerning Judge Eriksson but the Panel further notes that even Judge Eriksson has admitted at least partial wrongdoing concerning Walton. The Panel finds that this conduct constituted a violation of Canon 1, Canon 2(a) and Canon 3(b).

A retaliatory ruling in reaction to a request to disqualify a judge has been held to be violative of the Code of Judicial Conduct. In re: Wood, 720 So. 2d 506 (Fla. 1998). As

recognized in Livingston v. State, 441 So. 2d 1083 (Fla. 1983), a motion to disqualify turns on the defendant's well grounded fear that he will not be treated fairly. It is not a question of the judge's perception. Threatening a defendant with incarceration for seeking to disqualify a judge would most certainly be a violation of the Canons. In re: Albritton, 940 So. 2d 1083 (Fla. 2006). In re: Aleman, 995 So. 2d 385 (Fla. 2008), dealt with a situation where Judge Aleman abused her contempt power under somewhat similar circumstances. In Aleman, this Court cited a series of cases in which abuse of judicial power was found to be violative of the Canons.

Even good motives on the part of a judge are not a defense as to conduct which violates the Canons. In the very recent opinion In re: Barnes, ____ So. 2d ____ (Fla. Jan. 29, 2009), 2009 W.L. 196306, the Court dealt with a somewhat similar situation where a county judge became embroiled in a political/judicial controversy with his co-judges and other public officials in the county concerning the manner in which first appearances where handled. Judge Barnes was found guilty of violating the canons and the Court specifically held that even good motives on the part of the judge as found by the Hearing Panel was no justification. Also see: In re: Shea, 759 So. 2d 631, 638-39 (Fla. 2000).

Count III The Injunction Hearings

In the formal charges, the JQC contended that Judge Eriksson violated the Canons in his handling of several pro se petitioners who sought domestic violence and repeat violence junctions under § 741.30 and § 784.046 and the Rules of Procedure governing such cases. It was alleged that Judge Eriksson failed to accord these pro se petitioners the right to be heard on their petitions by implying in open court that the verified petitions signed by the petitioners were insufficient because the petitioners were required to produce independent witnesses. The absence of such independent witnesses resulted in dismissal or denial by Judge Eriksson. The judge's statements about the absence of witnesses were made without acknowledging or informing the petitioners that they themselves could testify in support of their petitions. (Formal Charge p.3-4). Judge Eriksson was accused of using an unduly rigid and formulaic process dealing with the pro se litigants which impeded their ability to obtain the relief and protection they sought from the court. Judge Eriksson's Answer to the charges contended that he was only attempting to be fair and not to favor one side or the other in the proceedings.

The statutes and case-law on domestic violence establish a complex and detailed system whereby the Florida State Court

system protects victims of domestic and repeat violence. Domestic violence injunctions are specifically provided for in § 741.30. Subsection (f) of this statute creates a cause of action for an injunction and specifically provides that the parties to such an injunction proceeding need not be represented by an attorney. Subsection (g) provides:

> Any person, including an officer of the court, who offers evidence or recommendations relating to the cause of action [for domestic violence] must either present the evidence or recommendations in writing to the court with copies to each party and their attorney, or must present the evidence under oath at a hearing at which all parties are present.

Clearly the statute contemplates written evidence or oral testimony. The sworn petitions describing the events amounting to threats of violence certainly constituted prima facie proof of the basis for an injunction.

Section 741.30(c) requires that the Clerk of the Court assist any petitioner in seeking an injunction. An entire system of complex forms in simple English is established and the circuit court is vested with jurisdiction. No filing fee is required on a domestic violence petition. Police officers are given specific duties on how to handle all domestic violence complaints and arrests. These officers must create detailed reports which become a part of the petition for an injunction. Law enforcement officers are given specific training on domestic

violence and are even granted immunity in carrying out the domestic violence statutes. This is a subject also covered in the New Judge's College which every judge must attend and complete.

Judge Eriksson had serious disagreements with the manner in which domestic violence matters were being handled in his county. His contention was that the circuit court was vested with authority in all domestic violence matters and that such matters should not have been transferred to the county courts. Judge Eriksson complained to Florida Supreme Court Chief Justice Barbara Pariente concerning this and also complained to the State Court Administrator's Office. (T. 501-502). Judge Eriksson contended that the county courts were not furnished with the necessary assistance to carry out the domestic violence duties which the Chief Judge in his circuit transferred to the county judges. To the extent that this became a dispute over personnel and court procedures, there were similarities with the Barnes case. Such "political" disputes should not be allowed to influence the manner in which a judge handles matters in his or her courtroom.

The evidence consisted of a DVD of a series of injunction hearings. The JQC played a portion of the video which was transcribed by the court reporter at (T. 456-480). The video

showed that Judge Eriksson initially handled most of the petitions very briefly. The petitioner and the respondent were both directed to enter the courtroom and none of the other petitioners and respondents were able to watch what occurred during the prior cases.

The Hearing Panel notes that Judge Eriksson did not give any sort of preliminary general explanation to the various petitioners and respondents who were present and waiting for their hearings. He could have also noted the danger of self representation and the fact that any petitioner could seek the advice of counsel. Such general explanations are often given in the county court but we further note that the rules and statutes in effect at the time in question did not specifically require such a general explanation from Judge Eriksson.

The first petitioner recorded on JQC Exhibit 9 was Patrice Taylor and her brief appearance (T. 456-460) serves as a good example of several of the other cases which followed. The Respondent (Mr. Russaw) had received notice of hearing and he and Taylor were both present in the courtroom. Judge Eriksson asked Taylor "Who will be your first witness?" (T. 457). Taylor responded that she did not know she had to have witnesses but that she had the police report as attached to her own sworn petition. (T. 457-458). Judge Eriksson had these documents in

his hands. Ms. Taylor was obviously not aware that she could testify in support of her already sworn petition. Judge Eriksson responded that the police reports could not be used and then asked her how she got the idea of filing a petition. He asked whether the police had told her to bring witnesses. Without further inquiry, Judge Eriksson then announced that the petition was denied due to the lack of evidence. (T. 460). A fill-in-the-blank Order of Dismissal was signed by Judge Eriksson as an "acting Circuit Judge." (Eriksson Exhibit 17a).

The petition for injunction was sworn to by Taylor. There was also a sworn statement by her minor child who was a witness to the incident. (Eriksson Exhibit 17a). There were also several incident reports from the Casselberry Policy Department and the respondent was present in the courtroom but was not asked to speak. Again it was obvious that Ms. Taylor did not know she could have called Russaw as a witness or presented her own testimony. The sworn petition for an injunction made it clear that Taylor was an eyewitness and was present during the incident with Russaw.

The next petitioner was Catherine Mitchell and she was again asked "Who will be your first witness?" (T. 461). Again Judge Eriksson denied the petition due to the lack of evidence because she had no independent witnesses and did not volunteer

to testify herself. (T. 461). The next petitioner was Evan Breen who called his father as a witness. This witness had actually seen nothing himself and the case was continued. Another petitioner, Ms. Alexander, was asked "Who will be your first witness?" She responded that she just had her petition and the police reports. Judge Eriksson advised her that she could not use the police documents because that would be hearsay evidence. (T. 470). Judge Eriksson again inquired as to how she had come up with the idea of filing a petition and she stated that the Clerk's office told her about it. This petition was denied on the grounds that the petitioner had offered no actual evidence as to threats of violence. (T. 472).

A Ms. Watson was the next petitioner and she was asked "Who will be your first witness, will you testify?" For the first time, Judge Eriksson added the words "will you testify." This was the fourth actual hearing and Watson then took the stand and testified to one act of violence and one further oral confrontation with the respondent. Judge Eriksson then dismissed this petition because the petition asserted "repeat" violence and only one act of violence was shown rather than repeated violence.

Finally, a Ms. Myers was asked "Who will be your first witness?" and when she had no answer, Judge Eriksson said "Can

you look in a mirror?" This was not a part of the DVD played in open court but was reviewed by the Hearing Panel. Judge Eriksson then began questioning Meyers himself and she described verbal threats and several instances of the respondent physically pushing her around. Judge Eriksson himself asked enough questions of this petitioner to justify an injunction which he then granted.

Petitioner Dawn Fry was the next to be asked: "Who would be your first witness?" and Fry answered "Myself." She then took the stand and testified. The panel can only surmise that one of the unsuccessful previous petitioners who left the courtroom had told Ms. Fry the correct answer to the opening question which had proved fatal to several of the other petitioners.

In this docket of numerous domestic violence cases, Judge Eriksson, at least initially, exhibited a cavalier and insensitive approach to the unrepresented petitioners. Instead of asking only "Who will be your first witness?" he could and should have started off by asking "Will you be testifying?" Several of the petitioners obviously did not recognize that they themselves could testify and their petitions were dismissed or denied for this reason alone. (T. 507).

It was also rather inconsistent and questionable for Judge Eriksson to rule that the police reports and the petitioners'

own sworn petitions which they thought they could rely upon were hearsay and inadmissible. There was no person present and objecting to the police reports even though the respondents were in court or had waived their right to be present by not appearing after being served. In Hernandez v. State, 960 So. 2d 816 (Fla. 3d DCA 2007), the court held that a failure to object to hearsay constitutes a waiver. Also see Rhodes v. State, 638 So. 2d 920 (Fla. 1994), concerning unobjected hearsay evidence and the resulting waiver. Clearly police reports do constitute hearsay but if no one objects then they might well have been admitted in evidence, particularly in view of § 741.29 which requires police to compile very detailed written reports concerning domestic violence and to obtain sworn written statements from the victim and from the witnesses. All of these reports are filed and become a part of the sworn petition for an injunction which remains a civil proceeding. We again point out that § 741.30(g) seems to authorize written or oral evidence at a domestic violence injunction hearing.

To dismiss a petition for injunction due to lack of evidence when the petitioner could have testified was not actually an attempt to be fair to both sides but instead was an over technical and rigid approach. Further, it was not up to

the judge to make the hearsay objection for the respondent who did not make it himself.

Judge Eriksson asserted, without contradiction, that the entry of an injunction against domestic violence or threats of domestic violence can be extremely serious and detrimental to a respondent. A court ordered injunction against violent acts by a specific person may prevent that person from legally carrying a firearm and may even result in a person being placed on a restricted list as a passenger on commercial flights. We most certainly do not wish to infer that such injunctions should be lightly granted. On the other hand, the Florida Legislature and the Florida Supreme Court has established a right to such injunctions upon proper proof and has guaranteed that representation by an attorney is not necessary.

We further note that Judge Eriksson was actually reading the sworn petitions for the requested injunctions while the persons who had sworn to the facts were standing before him. If he had simply asked them to raise their hands and "swear to tell the truth" it would have become obvious to them that they could have testified.

This conduct violated Canon 1 in failing to observe "standards so that the integrity and independence of the judiciary may be preserved." Further, Canon 2A requires acting

in a manner promoting public confidence in the integrity and impartiality of the judiciary. Canon 3B(7) and (8) provide that "A judge shall accord to every person who has a legal interest in a proceeding...the right to be heard according to law" and "A judge shall dispose of all judicial matters promptly, efficiently, and fairly." These applicable canons were each violated.

As previously indicated, the Panel adjourned and watched the entire three hour recording. Judge Eriksson began in a very stern and structured manner giving absolutely no instruction or even a hint that the petitioner could offer testimony or adopt their own sworn petitions which the judge was holding in his hands. However, as the injunction hearings went on it seemed that Judge Eriksson himself recognized he was being over technical and finally asked whether a petitioner should look in the mirror to find a witness. Judge Eriksson obviously had a difficult time in attempting to balance the interests of the petitioners versus the interests of the respondents. Despite this difficulty in balancing it remains that a cause of action for an injunction exists, that petitioners are encouraged to apply pro se and that it would not have been a breach of simple fairness to ask the petitioner whether he or she wished to testify.

Indeed Judge Eriksson recognized his own shortcomings at the initial 6(b) hearing and he has remediated his approach. He clearly recognized his own inappropriate actions during the hearing before this Hearing Panel. (T. 507-508,511). It is further noted that Judge Eriksson has engaged in counseling on these matters and the Panel is confident that no similar conduct will occur in the future. Although the Panel finds Judge Eriksson guilty on this charge, the Panel concludes that there should be no separate penalty over and above the reprimand which the Panel has already recommended.

Recommended Penalty

The Panel recommends that Judge Eriksson be publicly reprimanded by this Court and ordered to pay the costs of these proceedings.

SO ORDERED this 13th day of March, 2009.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

By:/s/ Thomas B. Freeman
THOMAS B. FREEMAN,
Chairman, Hearing Panel,
Florida Judicial Qualifications Commission
1110 Thomasville Road
Tallahassee, Florida 32303
850/488-1581
850/922-6781 (fax)

Copies furnished in accordance with the attached list.

Chandler R. Muller
Counsel to the Judge
Muller & Sommerville, P.A.
P.O. Box 2128
Winter Park, FL 32790-2128
(407) 647-8200
(407) 645-3000 (facsimile)

Michael Schneider
Special Counsel
Florida Judicial Qualifications
  Commission
1110 Thomasville Road
Tallahassee, Florida 32303
(850) 488-1581
(850) 922-6781 (fax)

John Beranek
Counsel to the Hearing Panel
Ausley & McMullen
P.O. Box 391
Tallahassee, Florida 32302
(850) 224-9115
(850) 222-7560 (fax)

Brooke Kennerly
Florida Judicial Qualifications
  Commission
1110 Thomasville Road
Tallahassee, Florida 32303
(850) 488-1581
(850) 922-6781 (fax)