

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE, :
NO. 06-52, CHERYL ALEMAN : CASE NO. _____
: _____ :
:

NOTICE OF FORMAL CHARGES

TO: Honorable Cheryl Aleman
Broward County Courthouse
201 S.E. 6th St., Suite 7910
Fort Lauderdale, FL 33301-3325

You are hereby notified that the Investigative Panel of the Florida Judicial Qualifications Commission, by a vote of those members present at its meeting held in Tampa, Florida on July 25, 2006, has determined pursuant to Rule 6(f) of the Rules of the Florida Judicial Qualifications Commission, as revised, and Article V, § 12(b) of the Constitution of the State of Florida, that probable cause exists for formal proceedings to be, and the same are hereby, instituted against you based upon allegations that you have engaged in a pattern of arrogant, discourteous, and impatient conduct toward lawyers and others appearing before you and have otherwise acted in a manner that erodes public confidence in the integrity and impartiality of the judiciary, *to wit*:

1. In violation of Canon 1, Canon 2A, and Canon 3B(4), you denied motions to disqualify that were filed by public defenders Sandra Perlman and Bruce Raticoff in the case of *State v. Braynen*.

A. Specifically, during morning proceedings in the *Braynen* matter on January 24, 2006, you denied an oral motion to disqualify made by Ms. Perlman without affording her a reasonable opportunity to prepare the appropriate documents and file said motion in writing, as required by applicable law.

B. Thereafter, during afternoon proceedings, Ms. Perlman made another oral motion for disqualification based, in part, upon the fact that: i) you had engaged in preferential treatment in favor of the State by refusing to grant Ms. Perlman's request that the lunch recess be delayed by 15 minutes in order to allow her to attend a previously scheduled plea hearing before another judge; yet, you readily granted a request from the assistant state attorney for a 15-minute delay in the start of the afternoon proceedings; and ii) you had impugned Ms. Perlman's integrity by calling, or directing other courthouse personnel to call, the other judge's courtroom at the time Ms. Perlman was scheduled to appear in front of the other judge in a perceived attempt to "check up" on her.

C. When Ms. Perlman asked for 1 hour to reduce her oral motion to writing, you proceeded to give her a pen and pad of paper and advised her she had 15 minutes to prepare the motion, despite the fact the courtroom was on the 7th floor and the public defender's office was on the 4th floor, which under normal circumstances would require 3-5 minutes in travel time each way. You then stated court would be in recess from 2:20 p.m. to 2:35 p.m. At approximately 2:42 p.m., court resumed and neither Ms. Perlman nor Mr. Raticoff were in the courtroom. You

then announced a brief recess in the proceedings. At approximately 2:49 p.m., when only Mr. Raticoff had returned to the courtroom, you abruptly issued a rule to show cause against both Ms. Perlman and Mr. Raticoff, despite Mr. Raticoff informing you that Ms. Perlman was printing the motion to disqualify and that he would make a phone call to determine her exact whereabouts.

D. When Ms. Perlman returned to the courtroom and explained she was unable to complete the motion for disqualification and accompanying affidavit in the 15 minutes you authorized, you refused to dismiss the rule to show cause and instead advised counsel the matter would be held “in abeyance until the conclusion of th[e] proceeding.”

E. At approximately 3:05 p.m. after Mr. Raticoff expressed concern that the rule to show cause had placed counsel in the untenable position of having to defend themselves and their client during the same proceeding, Ms. Perlman made another oral motion for disqualification based, in part, upon the issuance of the rule to show cause. Ms. Perlman again requested a reasonable amount of time to prepare the written motion. Notwithstanding your knowledge that 15 minutes was insufficient time to prepare a written motion based upon your issuance of the rule to show cause just minutes earlier, you nonetheless indicated you would only give Ms. Perlman 15 minutes. When Ms. Perlman objected and expressed concern she would again be subjecting herself to contempt inasmuch as 15 minutes was insufficient, you responded by indicating court would be in recess for only 12 minutes. After Ms.

Perlman objected to 12 minutes, you then stated she would be given 22 minutes (from 3:08 p.m. to 3:30 p.m.) to prepare the motion.

F. At approximately 3:35 p.m., proceedings resumed. At that time, you handed counsel an order denying the **first** written motion to disqualify. Ms. Perlman then explained she had not been able to complete the **second** written motion in the 22 minutes allotted but had returned to the courtroom at 3:30 p.m. as directed out of fear she would be held in contempt a second time. She then requested an additional 5 minutes for Diane Cuddihy, an appellate attorney in the public defender's office, to complete the motion and bring it to your courtroom. You permitted the additional 5 minutes and upon receipt of the second written motion, promptly denied it as well.

2. In violation of Canon 1, Canon 2A, and Canon 3B(4), on or about February 7, 2006, in the case of *State of Florida v. Hollis*, you issued an Order [To] Show Cause against attorney Adam Katz and ordered him to appear before you on February 8, 2006, at 2:00 p.m., although you were aware Mr. Katz was out of town at that time and, furthermore, there were no exigent circumstances that compelled you to schedule a hearing on such abbreviated notice. Because Mr. Katz was unable to adjust his travel schedule so as to permit his return to Broward County in time for the February 8th hearing (not having learned of the February 7th Show Cause Order until late in the evening of February 7th), you found him in criminal contempt and sentenced him to 60 days in the Broward County jail by Order entered February 13,

2006 [*nunc pro tunc* to February 10, 2006]. Mr. Katz was then incarcerated from Friday, February 10, 2006, through Tuesday, February 14, 2006.

3. In violation of Canon 1, Canon 2A, and Canon 3B(8), during a hearing in the case of *State of Florida v. Felix* on or about July 1, 2003, you denied the defendant, Jean Felix's request for medical furlough, notwithstanding the fact that:

a. The assistant public defender and assistant state attorney appearing before you stipulated that: i) Mr. Felix was "suffering from an incurable fatal disease" and; ii) "his life expectancy was approximately two months" according to medical personnel at the jail;

b. Neil McKay, who worked at the Broward County Jail as the systems manager for Westford Health Services, testified Mr. Felix was at the "end stage of AIDS" and that his condition would be aggravated if he stayed in jail because of the increased risk of infection; and

c. The assistant state attorney stated on the record during the July 1st hearing, "I have no objection to the furlough."

4. In violation of Canon 1, Canon 2A, and Canon 3B(2), you subsequently entered an Order in the *Felix* case on July 29, 2003 ("Order"), which appeared to be in direct or indirect response to an article that appeared in the *South Florida Sun-Sentinel* entitled, "Lawyers Stunned After Broward Circuit Judge Refuses To Release Dying Inmate" dated July 4, 2003. In defending your July 1st ruling in the Order, you misleadingly stated, *inter alia*, that:

At the hearing on the morning of Tuesday, July 1, 2003, on Defendant's Motion for Furlough, defense counsel

[Steven] Michaelson presented no testimony of any medical doctor [concerning Mr. Felix's medical condition].

Your Order conspicuously omits, however, that the State Attorney's Office and Public Defender's Office had stipulated during the July 1st hearing that Mr. Felix was dying from an "incurable fatal disease" and had a short life expectancy, thereby obviating the need for any medical testimony concerning his medical condition.

5. In violation of Canon 1, Canon 2A, and Canon 3E(1), you refused to disqualify yourself in cases in which attorney Michael Gottlieb was counsel of record; namely, *State of Florida v. Walls* and *State of Florida v. Suppa*, despite the fact you had previously disqualified yourself in another case in which Mr. Gottlieb filed a motion for disqualification wherein he detailed his acrimonious relationship with you during the time you served as an assistant statewide prosecutor.

CONCLUSION

6. The acts described above, if they occurred as alleged, would also impair the confidence of the citizens of this state in the integrity of the judicial system and in you as a judge; would constitute a violation of the cited Canons of the Code of Judicial Conduct; would constitute conduct unbecoming a member of the judiciary; would demonstrate your unfitness to hold the office of judge; and would warrant discipline including, but not limited to, your removal from office and/or any lawyer discipline recommended by the Commission.

You are hereby notified of your right to file a written answer to the above charges made against you within twenty (20) days of service of this notice upon you.

DATED this _____ day of February, 2007.

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--and--

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE OF FORMAL CHARGES** has been furnished by **Certified Mail** to the **HONORABLE CHERYL ALEMAN**, Broward County Courthouse, 201 S.E. 6th St., Suite 7910, Fort Lauderdale, FL 33301-3325 on this _____ day of **February, 2007**.

Attorney