BEFORE THE INVESTIGAVE PANEL OF THE
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE, RALPH E. ERIKSSON NO. 09-629 — SC 10-1007

RESPONDENT'S MOTION TO DISMISS OR MOTION FOR MORE DEFINITE STATEMENT

The Respondent, County Judge Ralph E. Eriksson, moves to dismiss the Notice of Formal Charges in this case pursuant to Fla.Jud.Qual. Comm'n R. 12 and Fla.R.Civ.P. 1.140, and as reason sets forth the following:

ARGUMENT I

1. The Notice of Formal Charges implies throughout that Judge Eriksson has some imputed knowledge of the decisions in the cases where Writs of Habeas Corpus, or Writs of Certiorari, were either granted or denied. There were no final orders in any of the cases. Until a Mandate is issued the decision or order is not final. Blackhawk Heating v. Data Lease, 328 So.2d 825 (Fla. 1975). The Mandate is the appellate court's official mode of communicating the decision. Tierney v. Tierney, 290 So.2d 136 (Fla. 2nd DCA 1974). In short, until the Mandate issues that court has not spoken. Fla.R.App.P. 9.340(a) directs that the clerk shall issue a Mandate after the expiration of 15 days from the date of the order or decision. An inspection of the court files in each of the cases cited in the Notice of Formal Charges fails to find that a Mandate was ever issued in any of the cases. It is important to point out that both a

Petition for a Writ of Habeas Corpus and a Petition for a Writ of Certiorari are both original proceedings. As such they are filed directly in the appellate court. Unlike when an appeal is taken from a trial court's order and the party filing the appeal files a notice of appeal in the trial court, there is no such pleading (or notice) filed in the trial court. Hence, the trial court has no knowledge of any such application for the extraordinary Writ, and will have none until a Mandate issues (if it ever does).

2. As no Mandates were ever issued Judge Eriksson is not cast with any knowledge of them and any conduct in the Notice of Formal Charges that is alleged to be improper must be dismissed because the decision granting the Writ is not final.

3. Judge Eriksson would only have knowledge of the holding in a Writ if a Mandate were issued, the case returned to the trial court and the case docketed for further action. It is also interesting to note that research of all the referenced cases shows no Mandate has yet to be issued in any of the cases. Presumably, this is so that those decisions can be re-evaluated in light of Fla.R.Crim.P. 3.810 and Fla. Stat. 938.30(1)(2)(3) and (9). (It is presumed that none of that was done because none of the potential Writs directed or ordered Judge Eriksson to do anything.) How can Judge Eriksson be accused of violating any Writ that has not been communicated to the trial court? See Tierney, supra.

4. As none of the decisions granting any Writ is final yet, Judge Eriksson cannot be accused of violating the decision in any such

case and the Notice of Formal Charges must be dismissed because there is no cause of action.

ARGUMENT II

5. The Notice of Formal Charges seems entirely to be predicated upon a case entitled State of Florida v. Marlon Potiah. State v. Potiah purports to be a case that grants a Writ of Habeas Corpus by the circuit court concerning activity by a county court, but which is not yet final. Judge Ralph E. Eriksson was not involved in that case in any way, i.e., neither as a judge, nor as a party, nor did the Writ direct him to do, or not do, anything. In short, Judge Ralph E. Eriksson had nothing to do with the case, and is not bound by the holding when and if it becomes final.

6. Fla.R.App.P. 9.100

> "(a) Applicability. This rule applies to those proceedings that invoke the jurisdiction of the courts … for the issuance of Writs of … Habeas Corpus.
>
> (b) Commencement; Parties … If the petition seeks review of an order entered by a lower tribunal, all parties to the proceeding in the lower tribunal who are not named as petitioners shall be named as respondents."

7. It is clear that the parties in the lower court were the State of Florida and Marlon Potiah. Judge Ralph E. Eriksson is neither of them. The Writ of Habeas Corpus was not addressed to any particular person and, therefore, under Rule 9.340(a) is to be served on only the two parties, if and when it ever becomes final.

8. In fact, an examination of the Writ of Habeas Corpus shows only that copies were furnished to 1) counsel for the defendant, 2) counsel for the State, 3) the sheriff, and 4) County Judge Carmine Bravo. Providing the copy of the Writ provided no legal basis for any

party to take any action as it is not final. The Writ becomes effective only when a Mandate is issued. Until then, the court has not spoken. Judge Eriksson's examination of the file in these cases does not show that any Mandate has ever been issued and, therefore, the Writ is not yet final and in effect. Blackhawk Heating v. Data Lease, 328 So.2d 825 (Fla. 1975).

9. Fla.R.App.P. 9.340 in section (a) Issuance of Mandate states:

> "Unless otherwise ordered by the court or provided by these rules, the clerk shall issue such Mandate or process as may be directed by the court after expiration of 15 days from the date of an order or decision. A copy thereof, or notice of its issuance, shall be served on all parties." (Underlining added for emphasis.)

Therefore, there is no cause of action and the Notice of Formal Charges must be dismissed.

ARGUMENT III

10. Judge Eriksson's rulings in the cases cited in the Notice of Formal Charges will not violate the decision in Potiah v. State, if Potiah ever becomes a final order. To understand this it will be necessary to discuss the proceeding in the Potiah case to this point. At the trial court level County Judge Carmine Bravo sentenced Mr. Potiah to serve 29 days in the county jail, and suspended the date the sentence was to be served to a specific future date (approximately 4 months later). When that future date arrived Judge Carmine Bravo remanded Mr. Potiah to the custody of the Seminole County Sheriff to serve that sentence. (See Fla.R.Crim.P. 3.810.) Mr. Potiah filed a petition for a Writ of Habeas Corpus, alleging as grounds that he could not be imprisoned without first being held in contempt. In

granting the Writ of Habeas Corpus Circuit Judge Donna McIntosh stated:

> "In this case, the modification was well beyond the sixty day time limit and increased the defendant's sentence; therefore, the only method by which the county court could have punished the petitioner for failing to comply with the ordered sanctions was through indirect criminal conduct."

11. If there is such a thing as a decision in a Writ of Habeas Corpus it presumably is the reason given for the granting (or denying) of the petition for the Writ (in the event a reason is given). The "holding" in this case is simply that if a judge is going to remand a person to jail to serve a sentence (that had been suspended for a specific period of time) the judge must first institute a contempt proceeding.

12. Throughout the Notice of Formal Charges the Judicial Qualifications Commission has specified in paragraphs 3, 4, 7, 8, 9, 10, 11, 12, 13, 14 and 15 that Judge Ralph E. Eriksson's rulings in the cases cited therein was "a practice contrary to the ruling in the Potiah case." The ruling in the Potiah case was simply that you need to have a contempt proceeding. In every one of the cases cited or referred to in the above cited paragraphs 3, 4, 7, 8, 9, 10, 11, 12, 13, 14 and 15 Judge Ralph E. Eriksson did institute a contempt proceeding. An order to show cause was filed, served on the defendant and a hearing was held, just like Potiah suggests. The basis for Judge Eriksson issuing orders to show cause was Florida Statute 938.30, Financial Obligations in Criminal Cases; Supplementary Proceedings –

> "(1) Any person liable for payment of any financial obligation in any criminal case is subject to the

> provisions of this section. Courts operating under the provisions of this section shall have jurisdiction over such financial obligations to ensure compliance.
>
> (9) Any person failing to appear or willfully failing to comply with an order under this section, including an order to comply with a payment schedule established by the clerk of the court, may be held in civil contempt.
>
> (12) The provisions of this section may be used in addition to, or in lieu of, other provisions of law for enforcing payment of court imposed financial obligations in criminal cases. The court may enter any orders necessary to carry out the purposes of this section."

13. The purpose of the above cited statute is to get compliance with a court imposed sentence and Florida Statute 938.30 says a court can enter any order it deems necessary to carry out that purpose. In each case Judge Eriksson entered an order to show cause. That is exactly what Florida Statute 938.30 empowers him to do and Potiah holds.

14. The Potiah case also contains some explanation of the cases and procedural rules that Judge McIntosh took into consideration in reaching the conclusion to grant the Writ of Habeas Corpus. As none of that discussion was essential to the holding in that case it was dicta and carried no weight as a holding.

15. Florida Jurisprudence 2d Words and Phrases speaks of dicta thusly:

> "Obiter dicta is language quoted in an opinion that is not essential to a decision in the case. Such language, in the eyes of the law, is a gratuitous opinion, which whether right or wrong binds no one, not even the judge that utters it. Dicta is without force as a judicial precedent, because the doctrine of stare decisis applies only to points that are involved and determined in a case in such a way as to be considered of compelling force as precedents in subsequent cases. Nor does the doctrine of stare decisis apply to what is said by the court or judge outside the record or on points not necessarily involved therein."

16. In 1975 Florida's Fourth District Court of Appeal, in Bunn v. Bunn, 311 So.2d 387, addressed the issue of the use of dicta and (diplomatically, but emphatically) stated:

> "The bench and bar not infrequently fall into the error of accepting as binding precedent all of the views expressed in the written opinion of an appellate court. Necessarily, the views and decisions of an appellate court on issues which are properly raised and decided in disposing of the case are, unless reversed or modified by a higher court, binding on the lower court as the law of the case. Additionally, under the doctrine of stare decisis, an appellate court's decision on issues properly before it and decided in disposing of the case, are, until overruled by a subsequent case, binding as precedent on courts of lesser jurisdiction. But a purely gratuitious observation or remark made in pronouncing an opinion and which concerns some rule, principle or application of law not necessarily involved in the case or essential to its determination is obiter dictum, pure and simple. While such dictum may furnish insight into the philosophical views of the judge or the court, it has no precedential value."

Therefore, if and when the proposed Writ in Potiah becomes final all but the sentence that indicates that you must have a contempt proceeding is dicta. It may be interesting but, as noted in Bunn, supra, "it has no precedential value." Therefore, there is no cause of action and the Notice of Formal Charges must be dismissed.

ARGUMENT IV

17. The Notice of Formal Charges is not a short and plain statement of the ultimate facts showing the grounds upon which the relief sought could be granted. It is a broad brush that alludes to multiple things and appears to simply be a shotgun approach.

18. The Notice of Formal Charges contains references to multiple cases, one of which is not a case that Judge Eriksson presided over, or ruled upon, or in any way participated. As it

relates to another judge's ruling it is not relevant in this proceeding. It and all of the other cases are still lodged in the appellate court and have not been communicated to, or docketed into, Judge Eriksson's court.

19. Paragraph #1 of the Notice of Formal Charges pleads, "In a series of misdemeanor cases…". It does not state what cases are being referred to. To properly prepare a responsive pleading it is necessary to know what case or cases are being referred to. It does not say any improper conduct. Is it a claim, or general information? Further, it accuses Judge Eriksson of issuing summonses to review sentences. Florida Statute 938.30 specifically authorizes this.

> "938.30 Financial obligations in criminal case; supplementary proceedings. –
>
> (1) Any person liable for payment of any financial obligation in any criminal case is subject to the provisions of this section. Courts operating under the provisions of this section shall have jurisdiction over such financial obligations to ensure compliance.
>
> (2) The court may require a person liable for payment of an obligation to appear and be examined under oath concerning the person's financial ability to pay the obligation. The judge may convert the statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person's inability to pay. Any person failing to attend a hearing may be arrested on warrant or capias which may be issued by the clerk upon order of the court.
>
> (3) The order requiring the person's appearance shall be served a reasonable time before the date of the examination in the manner provided for service of summons, as provided for service of papers under rules of civil procedure, or by actual notice.
>
> (9) Any person failing to appear or willfully failing to comply with an order under this section, including an order to comply with a payment schedule established by the clerk of court, may be held in civil contempt."

20. Paragraph #2 specifies a court proceeding (Potiah v. State) that Judge Eriksson did not preside over, or participate in and, as such, cannot be pled as an event that Judge Eriksson can be charged with. The paragraph is vague as to whether the alleged conduct is improper, or just for informational purposes. The paragraph also failed to point out that the Writ is still not final and, therefore, is not binding on anyone. Further, the paragraph fails to point out that the Potiah decision calls for contempt proceedings to be instituted to enforce a sentence.

21. A further review shows that Petitions for Writs were denied. Therefore, Judge Eriksson did nothing wrong. In Paragraph #3 reference is made to "Otis Wellon, et al. v. State, 09-46-AP – 09-62-AP." From this it does not show if it is one case, or a number of cases, and if it is one case number or a series of case numbers. It is also vague because it does not assert any improper conduct or whether it is alleged merely for informational purposes.

22. In Paragraphs #4, #5 and #6 "Alvarez, et al." is alleged. It does not show who "et al." is, and it is not clear whether this is an allegation of improper conduct, or for what purpose it is mentioned. What it does say is that Mr. Alvarez challenged his warrant by way of a Petition for Writ of Certiorari or Habeas Corpus, but what it fails to state is that Mr. Alvarez's petition was denied. To quote from the Order denying the Writ Judge McIntosh wrote,

> "As the petitioner received actual notice in court, of the hearing to be held on August 24, 2009, the county court neither departed from the essential requirements of the law nor denied the petitioner due process in issuing the bench warrant."

As the "reviewing court" found that Judge Eriksson did nothing wrong, how can this constitute an act violative of the Code of Judicial Conduct?

23. In Paragraph #7 reference is made to "Creamer et al. v. State." From this it is not clear if it is one case, or a number of cases. The paragraph also alleges that Judge Eriksson issued Orders to Show Cause. The Notice of Formal Charges does not indicate that there is anything improper with the issuance of Orders to Show Cause. The Orders to Show Cause were proper, both from the holding in the Potiah case and from Florida Statute 938.30(1)(2)(3) and (9), cited hereinabove.

24. In Paragraph #8 the allegation is that two cases were conducted contrary to the ruling in the Potiah case. Potiah's holding was that a contempt proceeding must be initiated to enforce compliance with a sentence. That was exactly the type of proceeding in the two cases.

25. Paragraph #9 does not specify which petitioners had Writs of Habeas Corpus granted, nor if the basis was an erroneous ruling by Judge Eriksson, nor which petitioners had their petitions denied. It also does not state the legal basis, or holding, from the Potiah case; it just says the basis is elucidated in Potiah. As Potiah has one narrow holding, and a whole lot of dicta, the Notice of Formal Charges needs to specify which case or cases may be violative of Potiah (if it ever becomes final). There can be no violation of dicta because dicta has no precedential value, pure and simple.

26. Paragraph #10 alleges that Judge Eriksson issued Orders to Show Cause. It does not specify to any error of law associated with the issuance of said Orders to Show Cause, nor does it in any way state what is erroneous with the issuance of said Orders to Show Cause. Judge Eriksson asserts that the issuance of said Orders to Show Cause is authorized by Fla. Stat. 938.30(1)(2)(3) and (9) and will also be found to be proper if the Potiah case ever becomes final.

27. Paragraph #11 does not specify what the offending procedures will be if Potiah ever becomes final, nor the process used. What it does say is that their challenge was based upon the process used in Alvarez, but what it fails to say is that Alvarez's process was found to be proper. (See paragraph five hereinabove.)

28. Paragraph #12 states that Judge Eriksson sentenced three people. What it fails to state is that it was after a finding of contempt and that the contempt was authorized in Fla. Stat. 938.30(1)(2)(3) and (9). Although it cites the ruling in Potiah, Judge Eriksson asserts that it will comply with Potiah if that ruling ever becomes final.

29. Paragraph #13 does not specify that Judge Eriksson did anything erroneously, or that his conduct was offensive, or that the granting of the Writs was in any way due to any action by Judge Eriksson.

30. Paragraph #14 does not specify that Judge Eriksson did anything erroneously or that his conduct was offensive. It asserts that he conducted sentence review hearings and issued Orders to Show

Cause. Florida Statute 938.30(1)(2)(3) and (9) authorizes said action.

31. Paragraph #15 refers to "procedures discredited by Potiah." The Potiah case is not final yet but Judge Eriksson asserts that if it ever becomes final that he is not violative of its decision and that Fla. Stat. 938.30(1)(2)(3) and (9) will support what Judge Eriksson did. It is presumed that the "procedures discredited by Potiah" that is referred to is the dicta in Potiah and, therefore, merits no further discussion.

32. Paragraph #16 does not specify that Judge Eriksson did anything erroneously, or that his conduct was offensive, or that the granting of the Writs was in any way due to any action by Judge Eriksson.

33. Paragraphs #17 and #18 do not specify any erroneous conduct on the part of Judge Eriksson and, therefore, are improperly a part of the Notice of Formal Charges. What these two paragraphs actually assert is that in the eyes of the Judicial Qualifications Commission what Judge Eriksson did was proper. If the Judicial Qualifications Commission claims a judge was proper, how in the world can that violate a Canon?

34. The Notice of Formal Charges, as a whole, does not specify clearly "these acts, if they occurred as alleged" what the specific act was, or what was specifically erroneous with each act.

35. The Notice of Formal Charges seems to allege more than one event and it is not clear if it is based upon one occurrence, or multiple occurrences, and whether there is one claim or multiple

claims. It fails to set forth a plain statement of the ultimate facts relied upon and the specific event(s) for which any relief could be grounded as required by Fla.R.Civ.P. 1.110(f) It only states conclusions.

36. The Notice of Formal Charges seems to be predicated upon a case entitled State v. Potiah which is not yet a final order and, therefore, cannot be used as any case that Judge Eriksson is claimed to be violating.

37. For the above stated reasons there is no cause of action properly alleged and the Notice of Formal Charges must be dismissed.

ARGUMENT V

38. The Judicial Qualifications Commission is without jurisdiction in this matter and the Notice of Formal Charges must be dismissed. The allegations in the Notice of Formal Charges were rulings on, or interpretations of, the law by the county judge in his capacity as a county judge, and in proceedings that he had jurisdiction of, and that he was properly presiding over. The Judicial Qualifications Commission may not substitute its judgment for that of the trial judge.

39. The Respondent prays that this Hearing Panel will dismiss the Notice of Formal Charges as filed for its failure to clearly inform the Respondent of the specific conduct that is alleged to be erroneous by the Respondent, and what acts, incidents or conduct are only for informational purposes. It fails to state the ultimate facts. Fla.R. Civ.P. 1.110(b).

40. The Respondent prays that if the Hearing Panel does not dismiss the Notice of Formal Charges that it will require the Investigative Panel to provide a more definite statement so that the Respondent and the Hearing Panel can better understand the case.

Respectfully submitted,

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Ralph E. Eriksson
Seminole County Judge
Criminal Justice Center
101 Bush Boulevard
Sanford, FL 32773

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Enlargement of Time has been furnished by mail to Michael L. Schneider, General Counsel, Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, FL 32303 and John R. Beranek, Counsel for the Hearing Panel, Post Office Box 391, Tallahassee, Florida 32302 this _____ day of July, 2010.

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Ralph E. Eriksson