

**BEFORE THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION**

INQUIRY CONCERNING A JUDGE
NO.14-488

CASE NO. : SC15-1746
RE : KIM SHEPARD

**MOTION IN LIMINE TO STRIKE
PREJUDICIAL LANGUAGE
FROM THE NOTICE OF FORMAL CHARGES AND TO
PROHIBIT REFERENCE OR ELICITING TESTIMONY AT
FINAL HEARING**

COMES NOW, the Respondent, by and through her undersigned counsel, and pursuant to FJQCR 12(b) and Fla.R.Civ.P. 1.140 (4)(f), and §90.403 Florida Statutes files this Motion In Limine To Strike prejudicial language from the Notice Of Formal Charges and to prevent reference to the prejudicial language, including eliciting the same through testimony during the final hearing and as grounds therefore would state :

1. Florida Rule Of Civil Procedure 1.140(f) provides that a “party may move to strike... redundant, immaterial, impertinent, or scandalous matter from any pleading **at any time.**”
2. In paragraph one of the Notice Of Formal Charges served on the Respondent, the pleading states: “The Orlando Sentinel chose to endorse your opponent, Norberto Katz.”

This is a sufficient recitation of the fact that the Orlando Sentinel endorsed the respondent’s opponent in the judicial race that was decided in August 2014.

3. Nonetheless, the paragraph goes on to include the following legally irrelevant and highly prejudicial language, attempting to evoking sympathy for respondent’s defeated former opponent: “*They noted that **he had diligently worked to rebuild his reputation and had become chair of the Bar’s family law section and had been endorsed by 18 past Orange County Bar presidents, a clear indication that he had regained his good standing within the legal community.***” (Emphasis supplied)

4. These assertions included by the JQC regarding the respondent's defeated former opponent are completely irrelevant to any consideration of any supposed action by the respondent alleged to potentially breach any of the specific Canons listed in the Notice.
5. Instead, at best, the assertions are likely to confuse the sole issue to be tried before the hearing panel and mislead panel members into an improper, perhaps subconscious, consideration or comparison of each candidate's relative clout in the legal community and support in the local legal circles during the election.
6. If the prejudicial language is not stricken, there is a danger that the attention of the hearing panel members will be diverted from the important matter to be decided by them, and infected by wholly extraneous and impermissible considerations.
7. At worst, hearing panel members might feel intimidated, influenced or obliged to rectify the outcome of the election and ratify the judgment of influential members of the legal community who supported respondent's opponent.
8. The number of "*past Orange County Bar Presidents*" who supported the respondent's former opponent is completely irrelevant to the question of what specific canon, if any, may have been breached by any alleged action by the respondent. REICHMANN V. STATE 581 SO 2D, 133, 139 N.12 (FLA. 1991)
9. Likewise, whether or not the respondent's defeated former opponent "*had become Chair of the Bar's family law section*" is completely irrelevant to the determination as to whether respondent's conduct violated any of the cited judicial canons in the Notice Of Formal Charges. **Id.**
10. Reference to respondent's defeated former opponent's Florida Bar connections is however, highly prejudicial in its tendency to evoke improper sympathy. **Id.**
11. Similarly, whether or not, in the judgment of the Orlando Sentinel or 18 past Orange County Bar Presidents, Mr. Katz had sufficiently "rehabilitated" himself from his prior suspension from the practice of law by the Florida Supreme Court for, among other things, engaging in conduct which is unlawful and contrary to honesty and justice and conduct involving dishonesty, fraud, deceit or misrepresentation, to ascend to the circuit bench, does not make any alleged action by the respondent a violation or not of the specific provisions of the code of judicial conduct cited in the Notice of Formal Charges.

12. The sole issue before the hearing panel is whether the specific action alleged in the Notice Of Formal Charges breached any of the specifically identified Judicial Canons contained therein.

13. None of the prejudicial language objected to by the respondent, is probative of any matter properly before the hearing panel for consideration. Florida Rule Of Evidence 90.403 requires its exclusion.
14. Accordingly, since the prejudicial language has no probative value as to the issue before the hearing panel, the language should be stricken from the Notice Of Formal Charges and counsel for the JQC should not be permitted to reference that prejudicial language nor elicit testimony making reference to the prejudicial language.

WHEREFORE, the Respondent respectfully requests the Chair grant her Motion In Limine To Strike and strike the objectionable language from Notice Of Formal Charges.

Dated this 3rd day of April, 2016.

____/Timothy R. Hartung____
Timothy R. Hartung, Esquire
Counsel For Judge Shepard

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished in open court to the following this 19th day of April, 2016:

Alexander J. Williams, Special Counsel
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
P.O. Box 14106
Tallahassee, FL 32317
awilliams@floridajqc.com

Michael Schneider, General Counsel
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
P.O. Box 14106
Tallahassee, FL 32317
mschneider@floridajqc.com

Scott N. Richardson, Esquire
Special Counsel
Florida Judicial Qualifications Commission

1401 Forum Way, Suite 720
West Palm Beach, Florida 33401
snr@scottrichardsonlaw.com

Lauri Waldman Ross, Esq.
Counsel to the Hearing Panel of the
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
ROSS & GIRTEN
9130 S. Dadeland Blvd., Suite 1612
Miami, FL 33156
RossGirten@Laurilaw.com

/s/ Timothy R. Hartung
Timothy R. Hartung, Esquire
Fla.Bar Number: 857440
44475 Chamberlain Terrace, Unit 106
Ashburn, Virginia 20147
Phone : (321) 277-7424
trhartung@verizon.net