

**BEFORE THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION**

**INQUIRY CONCERNING A JUDGE
NO.14-488**

**CASE NO. : SC15-1746
RE : KIM SHEPARD**

**RESPONDENT'S MOTION IN LIMINE
TO DISMISS ALL ALLEGED VIOLATIONS OF
CANON 7(A) (3) (C) OF THE CODE OF JUDICIAL CONDUCT**

COMES NOW, the Respondent, and respectfully moves to dismiss all charges asserting that any of the conduct set forth in the Amended Notice of Formal Charge, violated **Canon 7(A)(3)(c)**, of the Code of Judicial Conduct, and in support thereof would show :

1. **Canon 7(A)(3)(c)** provides : *“A candidate for judicial office : shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate’s direction and control from doing on the candidate’s behalf what the candidate is prohibited from doing under the Sections of this Canon”* (Emphasis Supplied)
2. The alleged conduct, supposedly violative of Canon 7(A)(3)(c), is specifically set forth in the Amended Notice Of Formal Charge, and refers only to the appearance of four particular statements regarding the respondent’s character and reputation for integrity, which were quoted exactly and properly attributed to the maker of those statements and which appeared on a single postcard titled “Proven Integrity” during the respondent’s campaign for judicial office.
3. The Amended Notice Of Formal Charges is totally devoid of any factual allegation that any “employee” or “official” of respondent’s campaign engaged in any conduct prohibited by Canon 7.
4. Despite over a year of investigation and formal discovery conducted by the JQC, no “employee” or “official” of respondent’s campaign who allegedly might have engaged in conduct prohibited by Canon 7, has even been identified or named in the Amended Notice Of Formal Charges.
5. Accordingly, Canon 7(A)(3)(c) does not even apply to the conduct set forth in the Amended Notice Of Formal Charges and all reference to any violation of Canon 7(A)(3)(c) should be stricken from the pleadings and the record and dismissed against the respondent.
6. Prosecutors, including those acting on behalf of the J.Q.C., are under a special duty to “***refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause***” Rule 4-3.8 (a) Rules Regulating The Florida Bar. The same logic would apply to disciplinary prosecutions by the J.Q.C. that exercise the full and awesome power of the Florida Supreme Court against a duly and constitutionally elected judge. Even more so, since allowing such unfounded charges to be brought against a duly qualified, constitutionally elected judge would have the effect of undermining and compromising the constitutional rights and choice of the voting public.
7. There can be no probable cause to support charging a violation of a judicial canon when the Amended Notice Of Formal Charges itself contains no factual allegation related to the alleged violation.

RECEIVED, 04/19/2016 11:58:42 AM, Clerk, Supreme Court

WHEREFORE, in light of the foregoing, all reference to alleged violations of Canon 7(A)(3)(c), set forth in the record and in the Amended Notice Of Formal Charge should be stricken and the charge against the respondent alleging a violation of Canon 7(A)(3)(c) dismissed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via email 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