

SUPREME COURT OF FLORIDA

CASE NO.: SC16-1278

INQUIRY CONCERNING A JUDGE
NO. 16-056

RE: MARK HULSEY, III

ANSWER TO AMENDED NOTICE OF FORMAL CHARGES

Pursuant to Florida Judicial Qualifications Commission Rule 9, the Honorable Mark Hulsey III (“Judge Hulsey”) responds to the Amended Notice of Formal Charges (the “Notice”) filed on November 3, 2016. Judge Hulsey denies all allegations not specifically admitted herein and notes that the allegations do not allege that Judge Hulsey failed to properly adjudicate the cases in his division or that any litigant before Judge Hulsey was prejudiced in any way. Judge Hulsey further states that the allegations wrongly imply that he harbors ill-will toward female attorneys or African Americans. Judge Hulsey answers the numbered paragraphs of the Notice, *in seriatim*, as follows:

1. Denied. Judge Hulsey states that he treats the people with whom he comes in contact as a judicial officer with proper courtesy and respect. With respect to the subparagraphs of paragraph 1, Judge Hulsey states:

- (a) Judge Hulsey denies using such language to refer to any Staff Attorney or to other court personnel.
- (b) Judge Hulsey denies that he referred to female Staff Attorneys as “cheerleaders who talk during the national anthem”.
- (c) Judge Hulsey denies berating a Staff Attorney. Judge Hulsey further states that, in light of the solemnity and life or death implications of the three capital trials over which he has presided in the last six years, and

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consistent with the advice and training he received, he has relied on Staff Attorneys in those trials to provide him with information to assist him in discharging his judicial duties. Judge Hulsey further acknowledges a discussion occurring in 2015 with a Staff Attorney assigned to assist him with a capital trial. While the trial was ongoing and not in recess, the Staff Attorney left the courthouse for the day without advising him that she was doing so. Judge Hulsey requested an explanation for the Staff Attorney's absence during the capital trial to which she was assigned, but denies berating that Staff Attorney.

2. Judge Hulsey denies the allegations of paragraph 2 of the Notice. Further, Judge Hulsey does not subscribe to, and rejects, the beliefs described in paragraph 2.

3. Judge Hulsey denies exploiting his former Judicial Assistant or making her feel compelled to perform personal tasks for him. While Judge Hulsey admits that she periodically assisted with issues such as online bill payment, she expressly offered to provide that assistance and told Judge Hulsey, who was new to the bench at that time, that she provided similar assistance for her prior judge. Judge Hulsey denies that his former Judicial Assistant advised him that any task which she had expressly volunteered to do burdened her or created an unhealthy working environment. With respect to the subparagraphs of paragraph 3, Judge Hulsey states:

(a) Judge Hulsey denies the allegations of paragraph 3(a). Judge Hulsey does recall speaking directly to the Florida Attorney General's office in 2016 because certain orders he was to enter were late. Judge Hulsey now believes that his former Judicial Assistant failed to timely open all official mail received in chambers or timely route all requested orders to Judge

Hulsey for signature, contributing to or causing the alleged delays.

- (b) Judge Hulsey denies the allegations of paragraph 3(b) and states that the limited personal tasks his former Judicial Assistant helped him with were not time consuming or otherwise unusual and should not have prevented her from completing her official duties during the work day. Judge Hulsey even permitted his former Judicial Assistant, at her request, to adjust her work schedule so that she could coach softball after work. Judge Hulsey's intention was to accommodate her and she never advised him that she was unable to complete her official duties during the normal business day. Further, limited assistance with personal matters is a common and accepted practice in this Circuit where such assistance permits the Judge to focus on his or her judicial duties.

4. Judge Hulsey denies the allegation that he has ever been indifferent to his judicial duties. Judge Hulsey acknowledges asking Staff Attorneys to prepare memoranda to him outlining the respective merits of the parties' positions on trial issues. Judge Hulsey understands such tasks to be a core duty of a Staff Attorney and he did not expect that performing such work would impose any undue burden on the Staff Attorneys as they are employed for the purpose of assisting judicial officers in carrying out their duties. With respect to the subparagraphs of paragraph 4, Judge Hulsey states:

- (a) Judge Hulsey denies that he intentionally caused a Staff Attorney to wait for a case that had been passed. Judge Hulsey recalls one instance when he was reviewing cases on his calendar in open court. A particular Staff Attorney was not present when Judge Hulsey reached the case for which

that Staff Attorney was providing assistance. Judge Hulsey passed the case and continued with the remaining cases on the calendar. The Staff Attorney apparently later entered the courtroom and sat down, but did not make her presence known to Judge Hulsey. Because Judge Hulsey was occupied addressing other cases, he did not become aware that this Staff Attorney was in the courtroom until the calendar was completed. Judge Hulsey does not know how long the Staff Attorney waited in the courtroom but it was not the result of any intentional act on Judge Hulsey's part. Further, Judge Hulsey states that if an attorney enters the courtroom after the criminal calendar call has started, the common practice is for that attorney to alert the Assistant State Attorney present so that the attorney's case can be called at the next opportunity.

- (b) Judge Hulsey admits requesting Staff Attorney assistance during a particular two week capital trial. Capital trials often present unique and challenging issues, have grave implications for the defendants and appeals of convictions are automatic. Therefore, Judge Hulsey requested Staff Attorney assistance to maximize his ability to thoroughly review the issues raised at trial and to avoid undue delay in the progress of the trial.
- (c) Judge Hulsey did request assistance from a specific Staff Attorney and contacted that attorney directly. Judge Hulsey did so because that Staff Attorney had previously done excellent work. Judge Hulsey was not previously told that doing so caused the Staff Attorney to do "double duty" or otherwise undertake effort beyond normal work requirements.

Judge Hulsey denies that the Chief Judge instructed Judge Hulsey to limit his use of Staff Attorneys. Judge Hulsey admits that the Chief Judge recently circulated a memorandum directed to the Circuit Judges of the Fourth Judicial Circuit that clarified procedures for the use of Staff Attorneys. Judge Hulsey complied with the Chief Judges' clarifications. Judge Hulsey denies that he ever referred to any Staff Attorney or their supervisor using the language described in the final sentence of paragraph 4(c).

5. Judge Hulsey admits that the JQC opened an inquiry regarding him and that he learned of the inquiry from his former Judicial Assistant after she was contacted by a JQC investigator. Judge Hulsey states that his former Judicial Assistant asked him what she should do when questioned by the investigator. Judge Hulsey told her she should tell the truth. Judge Hulsey also admits asking his assistant, after her interview, why she did not vouch for him as one who would not make racist comments. Judge Hulsey denies all other allegations of paragraph 5.

6. Judge Hulsey denies that he has asked his new Judicial Assistant to undertake tasks that are purely personal in nature. Judge Hulsey admits that when his new Judicial Assistant, Nina Huber, started in April of 2016, he asked her to retrieve a file from his former assistant, Jennifer Wolf, containing personal information belonging to Judge Hulsey. Ms. Huber retrieved the file from Ms. Wolf's new office one floor down and returned it to Judge Hulsey.

7. Judge Hulsey admits that during his 2016 reelection campaign, he sent one letter to the members of the Jacksonville Bar Association that listed local persons who had orally agreed to support his campaign. Judge Hulsey admits that he failed to obtain the specific written approval as set forth in the statute and apologizes not doing so.

8. Judge Hulsey spoke with Clay County Commissioner Ronnie Robinson and sought his endorsement in late June or early July of 2016. Robinson had endorsed Hulsey in his 2010 campaign. Hulsey recalls Robinson told him that he (Hulsey) had done a good job and that Robinson and his family would support him and vote for him. Having seen the allegations of the Amended Notice, Hulsey now recalls that Robinson also said that he was a member of the Clay County Canvassing Board which prevented him from publicly supporting Hulsey's campaign. Judge Hulsey can only offer that including Robinson on the letter sent to the Jacksonville Bar Association was an oversight. Judge Hulsey recalls being told by another of his supporters that, because of that person's membership on the Duval County Canvassing Board, he could not provide an endorsement. That person's name was not included in the letter sent to the Jacksonville Bar Association. Judge Hulsey denies any intent to misrepresent his support and regrets his error in including Robinson in that letter.

REQUEST FOR RULE 23 INVESTIGATION

Pursuant to FJQCR 23, Judge Hulsey requests an investigation to determine the source of the breach of confidentiality of the JQC's investigation of him that resulted in the widespread rumors and knowledge of the investigation in the Fourth Judicial Circuit prior to the Notice of Formal Charges.

REQUEST FOR TRIAL IN DUVAL COUNTY

Pursuant to FJQCR 9, Judge Hulsey requests that the hearing of this matter be conducted in Jacksonville, Duval County, Florida.

Dated this 23rd day of November, 2016.

TANNER BISHOP

By: /s/ Michael G. Tanner
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November, 2016, a copy of the foregoing has been uploaded to the Florida Courts E-Filing Portal which will provide a copy to The Honorable Mark Harrison Mahon, Chief Judge, Duval County Courthouse, 501 West Adams Street Room 7008, Jacksonville, FL 32202-4603; Alexander John Williams, Esq., P.O. Box 14106, Tallahassee, FL 32317, David L. McGee, Esq. and Gregory R. Miller, Esq., Beggs & Lane, LLP, 501 Commendencia Street, Pensacola, Florida 32502. I also certify that a copy of the foregoing has been mailed by U.S. mail to those same recipients, postage prepaid.

/s/Michael G. Tanner
Attorney