

SUPREME COURT OF FLORIDA

CASE NO.: SC16-1278

INQUIRY CONCERNING A JUDGE
NO. 16-056

RE: MARK HULSEY, III

ANSWER TO SECOND AMENDED NOTICE OF FORMAL CHARGES

Pursuant to Florida Judicial Qualifications Commission Rule 9, the Honorable Mark Hulsey III (“Judge Hulsey”) responds to the Second Amended Notice of Formal Charges (the “Notice”) filed on December 9, 2016. Judge Hulsey answers the specific allegations contained in the Notice, *in seriatim*, as follows:

1. Judge Hulsey denies engaging in behavior creating or maintaining a hostile work environment for the administrative support staff or the Staff Attorneys. Judge Hulsey further denies making inappropriate comments regarding race or sex as he is not a racist or a sexist and does not conduct himself as such. With respect to the subparagraphs of paragraph 1, Judge Hulsey states:

- (a) Judge Hulsey denies referring to the prior lead Staff Attorney using the language alleged.
- (b) Judge Hulsey denies demeaning female Staff Attorneys as “cheerleaders who talk during the national anthem.” Reflecting further, Judge Hulsey believes he may have made a comment that was intended to compare the conduct of any person showing a lack of respect or decorum for court proceedings with the lack of respect demonstrated by those who talk during the national anthem at football games. This was intended as an illustrative example and was not directed at “female” Staff Attorneys. To

the extent it was so interpreted, Judge Hulsey regrets that misunderstanding and sincerely apologizes.

- (c) Judge Hulsey requested that a Staff Attorney be assigned to attend all phases of the three capital trials he conducted during his six years as a criminal judge. Because Staff Attorneys in the Fourth Circuit often create the initial draft of the sentencing order, it is helpful for them to have been in attendance throughout the trial. In 2015, a Staff Attorney was assigned to assist Judge Hulsey with a capital trial. While the trial was ongoing, the Staff Attorney left the courthouse for the day without advising Judge Hulsey that she was doing so. Judge Hulsey spoke with the Staff Attorney privately and requested an explanation for the Staff Attorney's absence. The conversation, which was completely in private, was intended to correct, but not to embarrass or demean. During this conversation Judge Hulsey also addressed the fact that the Staff Attorney had provided him with certain incorrect information regarding trial procedure. Judge Hulsey believed that addressing these issues directly with the Staff Attorney, privately rather than through the lead Staff Attorney, was the better method to correct mistakes made by that Staff Attorney and to avoid embarrassing her. To the extent that judgment was incorrect, or that the Staff Attorney misunderstood his intention in addressing those issues directly, Judge Hulsey apologizes.
- (d) Judge Hulsey cannot recall the specific verbiage of any conversation he may have had in 2011. However, Judge Hulsey can say with absolute

confidence and conviction that he is not a racist, he rejects and does not hold the ideas expressed in paragraph 1(d), and he denies making the statement alleged.

- (e) Judge Hulsey admits that his former Judicial Assistant offered to, and did help him with such tasks as setting up online bill payment and processing recurring bills. Further, for a brief period of time while Judge Hulsey was moving to a new residence, his former Judicial Assistant was very helpful with transferring accounts and services from his old residence to his new residence. Judge Hulsey denies exploiting his former Judicial Assistant or doing anything that would make her feel compelled to perform personal tasks for him. When she first started as his Judicial Assistant, and without his prompting, Judge Hulsey's former Judicial Assistant said that she had helped her prior judge with such tasks and would be happy to help Judge Hulsey with them. Judge Hulsey was new to the bench at that time and had inherited a large criminal docket that required him to spend a substantial portion of each work day in his courtroom, such that it was very helpful to him, and appreciated by him, that his Judicial Assistant was willing to help with these tasks which he could not do while on the bench. Judge Hulsey denies directing his former Judicial Assistant to use government postage on any personal mail. If that occurred, Judge Hulsey sincerely apologizes and will reimburse such costs. Finally, Judge Hulsey permitted his former Judicial Assistant to adjust her work schedule to accommodate her personal activities, including coaching a softball team.

Judge Hulsey understood that such accommodations to the personal schedule of his former Judicial Assistant were the reason she periodically performed her official duties away from the Courthouse. Had she ever indicated that she was no longer happy to perform any personal task for Judge Hulsey, or that such tasks were interfering with her ability to timely perform her official duties, Judge Hulsey would have immediately ended her involvement in such tasks.

- (f) Judge Hulsey does not believe personal tasks performed for him by his former Judicial Assistant should have prevented timely responses to post-conviction matters. Post-conviction matters in the Fourth Circuit are typically routed first to the Staff Attorneys' office to draft a proposed order. Proposed orders are then transmitted for review and approval by the judge. If the judge makes edits to the order, those changes are typically communicated to the assigned Staff Attorney. In sum, the Judicial Assistant's role in the post-conviction process has been to transmit communications to and from the judge. Further, Judge Hulsey's former Judicial Assistant was free to prioritize her activities during the several hours each day he was in Court, and he has no doubt that his former Judicial Assistant knew that he considered post-conviction orders to be a priority. Unfortunately, Judge Hulsey now believes that his former Judicial Assistant failed to timely open all official mail received in chambers and to timely route all requested orders to Judge Hulsey for signature, and may not have timely forwarded signed orders, contributing

to or causing the delays alleged. Judge Hulsey apologizes for such delays, and in particular apologizes to the impacted persons within the Attorney General's office.

- (g) Judge Hulsey denies the allegations of paragraph 1(g) and states that the limited personal tasks his former Judicial Assistant helped him with were not so frequent or time consuming as to prevent her from completing her official duties during the work day. As noted above, Judge Hulsey permitted his former Judicial Assistant, at her request, to adjust her work schedule so that she could attend to her own personal tasks such as coaching softball in the afternoon. 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 due to any personal tasks performed for Judge Hulsey.

2. Judge Hulsey denies the allegation that he has ever been indifferent to his judicial duties. Judge Hulsey acknowledges that in 2011, and at times in 2012, he periodically asked Staff Attorneys to prepare memoranda to him outlining the merits of the parties' respective positions on contested issues. Judge Hulsey requested such assistance from Staff Attorneys when he was new to the bench because he understood such tasks to be a core duty of Staff Attorneys and he did not expect that performing such tasks would unduly burden them. In later years, Judge Hulsey required the litigants to brief such issues. Using the practices of the Federal Courts as a rough model, Judge Hulsey's intent was to make motion practice in his division more professional. With respect to the subparagraphs of paragraph 2, 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 the wait 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. To the extent the Staff Attorney was unnecessarily delayed during the Court calendar, Judge Hulsey sincerely apologizes.

- (b) Admitted.
- (c) Shortly after Judge Hulsey took the bench in 2011 and at times in 2012, Judge Hulsey did request assistance from a specific Staff Attorney and, from time to time, requested that Staff Attorney's assistance. Judge Hulsey did so because that Staff Attorney had done good work, and there were no formal policies at that time for how Judges were to request Staff

Attorney assistance. Judge Hulsey was not made aware that he was causing that Staff Attorney to do “double duty” or otherwise undertake effort beyond normal work requirements. Judge Hulsey stopped assigning work to that Staff Attorney in 2012. To the extent Judge Hulsey overburdened that Staff Attorney, Judge Hulsey sincerely apologizes. However, Judge Hulsey denies that he ever referred to the Staff Attorney supervisor using the language described in the final sentence of paragraph 2(c).

3. Judge Hulsey admits he learned of the JQC inquiry when his former Judicial Assistant told him that she had been 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 respond to him promptly and that she should tell the truth. After the interview, Judge Hulsey asked her about the interview and expressed disappointment that she was apparently unwilling to offer an opinion as to whether he would have made derogatory comments about women or African Americans. Judge Hulsey regrets speaking with his former Judicial Assistant about her interview and regrets the conversation that followed. Given the opportunity to do this over, Judge Hulsey states that he would not have spoken with his former Judicial Assistant about her interview at all. Judge Hulsey apologizes for any undue stress he caused his former Judicial Assistant arising out of this event.

4. Judge Hulsey denies that he continued to ask or suggest that his new Judicial Assistant undertake tasks that were purely personal in nature. Judge Hulsey admits, however, that when his new Judicial Assistant started working for him in April of 2016, he asked her to retrieve a file from his former Judicial Assistant containing personal information belonging to

Judge Hulsey. Judge Hulsey also asked his new Judicial Assistant to place a letter created by his campaign treasurer on Judge Hulsey's judicial letterhead for response to an audit letter from the Florida Elections Commission. Judge Hulsey now recognizes that he should have insisted that his campaign treasurer send that letter directly to the agency. Judge Hulsey sincerely apologizes for this error and will reimburse any costs associated with it.

5. Judge Hulsey admits that during his 2016 reelection campaign, he sent one letter to the members of the Jacksonville Bar Association intended to list 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 for his mistake.

6. Judge Hulsey admits that in his campaign literature he incorrectly claimed to have an endorsement from Clay County Commissioner Ronnie Robinson. Mr. Robinson had endorsed Judge Hulsey in his 2010 campaign. When discussing an endorsement for the 2016 election over the telephone, Mr. Robinson had told Judge Hulsey that he (Hulsey) had done a good job and that Mr. Robinson and his family would support him and vote for him. However, Mr. Robinson also said that as a member of the Clay Canvassing Board, he could not publically endorse Judge Hulsey. Judge Hulsey can only offer that including Mr. Robinson on the letter sent to the Jacksonville Bar Association was an unintentional error. 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 Mr. Robinson's name in that letter.

7. Judge Hulsey denies directing his new Judicial Assistant to use the Fourth Circuit's FedEx account for a campaign related letter, because he would expect to pay for such

expenses from his campaign funds. Judge Hulsey is aware of communications sent to the Florida Elections Commission and that those were sent from Judge Hulsey's office. If those were, in fact, charged to the Fourth Circuit's FedEx account, Judge Hulsey regrets that this occurred and sincerely apologizes for not providing better oversight to his new Judicial Assistant. Judge Hulsey will reimburse those costs.

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 29th day of December, 2016.

TANNER BISHOP

By: /s/ Michael G. Tanner
Michael G. Tanner

Florida Bar Number 261300
One Independent Drive, Suite 1700
Jacksonville, Florida 32202
(904) 598-0034/(904) 598-0395 (facsimile)
mtanner@tannerbishop.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of December, 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

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