

**BEFORE THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION**

INQUIRY CONCERNING A JUDGE,
THE HONORABLE MATTHEW DESTRY
JQC NO. 16-238

SC16- _____

NOTICE OF FORMAL CHARGES

TO: The Honorable Matthew Destry
Circuit Judge, 17th Judicial Circuit
201 SE 6th Street, Chamber 4910
Fort Lauderdale, FL 33301

The Investigative Panel of the Florida Judicial Qualifications Commission (“JQC” or “the Commission”), at its meeting on August 19, 2016, by a vote of the majority of its members, pursuant to Rule 6(f) of the Rules of the Florida Judicial Qualifications Commission and Article V, Section 12 (b) of the Constitution of the State of Florida, finds that probable cause exists for formal proceedings to be instituted against you.

Canon 2A of the Florida Code of Judicial Conduct (the “Canons”) requires a judge to avoid even the appearance of impropriety, stating that a judge “...shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

Canon 3B(7) states that “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to

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law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided;

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and;

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

Canon 3B(9) provides that a judge “shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness...”.

The specific allegations for which the Commission has found probable cause are that:

1. In November of 2015, while presiding over the criminal case of State v. Herbert Smith, Jr. (Broward County Case No. 2012-CF-009067) you sentenced the Defendant to a 60-year prison term. Your sentence received intense media coverage and was widely condemned as excessive.

Approximately one week after Mr. Smith's sentencing, Mr. Vicente Thrower, a well-known political activist who had assisted in your previous judicial campaign, called you to arrange a lunch meeting. This meeting, which was also attended by Rev. Alan B. Jackson, took place outside the presence of the State Attorney and Defendant, and without the knowledge of either party.

2. At the 6(b) Hearing before the Commission August 19, 2016, you were questioned how Mr. Thrower contacted you to arrange the meeting. You disclosed that he had your personal cell phone number. When asked how you knew Mr. Thrower, and what he did for a living, you were evasive. Only when pressed did you disclose that he was a political activist who had worked to generate community support for your first judicial campaign in 2010.
3. You met with Mr. Thrower and Rev. Jackson for an hour at a Broward County restaurant called Mangos. At that meeting you engaged in a discussion about Mr. Smith's sentencing. Mr. Thrower and Rev. Jackson convinced you to reopen the matter, arguing that their community had not been adequately heard on Mr. Smith's sentencing, and they wanted a chance to speak on his behalf. You have admitted that while meeting with Mr. Thrower and Rev. Jackson you committed to setting a hearing to reconsider

Mr. Smith's sentence, and invited Mr. Thrower and Rev. Jackson to attend and be heard regarding the matter.

4. You also acknowledged this meeting between yourself and Mr. Thrower and Rev. Jackson during an interview with the editorial board of the Sun Sentinel newspaper. Your comments were tape-recorded, and witnessed by other judicial candidates as well as newspaper staff. You further acknowledged to the Commission that, after this meeting, you were aware that Mr. Thrower began urging members of his community to support your current re-election campaign.
5. During your testimony before the Commission, you conceded that your lunch-time meeting with Mr. Thrower and Rev. Jackson was an ex-parte communication, but argued that it fell under the Canon 3B(7)(a) exception for "scheduling, administrative purposes, or emergencies, not dealing with substantive matters or issues...". This analysis fails for reasons explained in Paragraph 7 of this Notice.
6. After meeting with Mr. Thrower, and Rev. Jackson, you *sua sponte* scheduled a hearing in Mr. Smith's case. At that time, there was no motion to mitigate or reconsider the sentence pending or even filed. Additionally, the hearing you ordered was set as a "status date," which did not provide adequate notice to the State, or the Defense, about the nature or purpose of

the hearing. The Defense did independently file a motion to mitigate Mr. Smith's sentence, however, it was only filed one day before your judicially ordered "status date." Prior to the hearing, you personally phoned Mr. Thrower to inform him of the date and time of the hearing, and again invited him to be present.

7. At the mitigation/resentencing hearing, Mr. Thrower and Rev. Jackson were present, and provided testimony on behalf of Mr. Smith. You admitted to the Commission you did not disclose your previous meeting with Mr. Thrower or Rev. Jackson regarding Mr. Smith's case at any time before, during, or after the hearing. You acknowledged that this fact alone placed you in violation of Canon 3B(7)(a), which requires prompt and full disclosure of ex-parte communications.
8. At the mitigation/resentencing hearing, you rescinded Mr. Smith's original sentence, choosing instead, to suspend the 60-year prison term, and release Mr. Smith on probation.
9. If it is alleged that Mr. Smith violated the terms and conditions of his probation, the matter would be brought back before you to determine whether the alleged violation was willful, and to determine the appropriate sanction. These decisions would be at your sole discretion and without the benefit of a jury.
10. Notwithstanding any future rulings you may have to make in Mr. Smith's

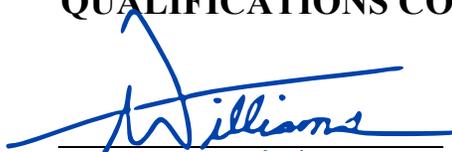
case, your campaign website features carefully selected excerpts of the resentencing hearing transcripts. The portion of the transcript you include is a lengthy speech in which you; (1) acknowledge the widespread public clamor about your original sentence, and (2) attempt to set the record straight on why you sentenced Mr. Smith to the lengthy prison term. The curated information about Mr. Smith's case on your campaign website constitutes a public comment on a pending case in violation of Canon 3B(9).

Taken together, your actions create the appearance of a *quid pro quo* exchange of political support for favorable judicial action, and further constitutes inappropriate conduct in violation of Canons 1, 2(A), 3B(2), 3B(7), 3B(8), 3B(9), 5A(2), 5A(3), 5A(4), of the Code of Judicial Conduct.

You are hereby notified of your right to file a written answer to these charges within twenty (20) days of service of this notice upon you. The original of your response and all subsequent pleadings must be filed with the Clerk of the Florida Supreme Court, in accordance with the Court's requirements. Copies of your response should be served on the undersigned Counsel for the Judicial Qualifications Commission, and the General Counsel of the Commission.

Dated: this 28th day of September, 2016.

**THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION**



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Formal Charges has been furnished by E-Mail on this the 28th day of September, 2016, to the following:

The Honorable Matthew Destry
Circuit Judge, 17th Judicial Circuit
201 SE 6th St- Chamber 4910
Fort Lauderdale, FL 33301



Alexander John Williams
ASSISTANT GENERAL COUNSEL