

**BEFORE THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION**

INQUIRY CONCERNING A JUDGE,
THE HONORABLE PHILIP YACUCCI, JR.
JQC NO. 16-496

SC16- _____

NOTICE OF FORMAL CHARGES

TO: Hon. Philip Yacucci, Jr.
St. Lucie County Judge
218 South Second Street
Fort Pierce, FL 34950

The Investigative Panel of the Florida Judicial Qualifications Commission (“JQC” or “the Commission”), at its meeting on December 2, 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 3E(1) of the Florida Rules of Judicial Conduct provides that:

“[a] judge shall disqualify himself or herself in a proceeding in which the judges impartiality might reasonably be questioned...” [emphasis provided].

Subpart 3E(1)(a) further states that disqualification is required where “the judge has a personal bias or prejudice concerning a party or a party’s lawyer...”.

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

1. In 2014 you jailed attorney Stephen Smith for five days, after finding him in contempt of court for misconduct during his representation of a client before you in State v. Horatio Lewis (St. Lucie County Case No. 2013CT00972).
2. You also filed a bar complaint with the Florida Bar regarding Mr. Smith's conduct in the Lewis case. The Florida Bar took no public disciplinary action against Mr. Smith.
3. Later in 2014, attorney Smith qualified to run for your judicial seat in the general election. The contentious race between you and Mr. Smith would set the stage for the violations alleged in this Notice. During the course of your 2014 re-election campaign:
 - a. You were involved in an altercation with your opponent, Mr. Smith, outside of a polling location, in which you allege that he made grossly inappropriate comments about your wife. For his part, Mr. Smith alleged that you physically assaulted him, shouted obscenities, and threatened to kill him. The police were summoned but no arrests were made.
 - b. After that incident, during a televised interview in your courtroom,

you stated that, “[Smith] should not be a lawyer. He should not be in a courtroom. Mr. Smith is truly a disgrace as a judicial candidate and really as a human being.”

- c. You sued Mr. Smith, and an electioneering organization that was supporting his candidacy, seeking damages and an injunction for promulgating advertisements that you stated in your complaint amounted to defamation, invasion of privacy, and intentional infliction of emotional distress. In 2016, you similarly described the advertisements as “false and vile.”

In September of 2014, the Fourth District Court of Appeal reversed a temporary injunction that the Circuit Court had issued, citing “numerous reasons” that the temporary injunction cannot stand. Among those reasons, the Court noted that, “Yacucci offered no evidence to support the injunction, only the unsworn argument of counsel,” and that, the injunction “issuing in the last three weeks of a political campaign, is a classic example of prior restraint on speech triggering First Amendment concerns.” [internal quotations omitted].

- d. In November of 2014, Mr. Smith filed suit against you in Circuit Court alleging wrongful injunction, assault, and battery.
- e. On December 15, 2015, you and Mr. Smith moved to voluntarily

dismiss your competing lawsuits. The parties were responsible for their own fees in settling Mr. Smith's suit against you. However, you agreed to resolve your injunction case against Mr. Smith by agreeing to relinquish to Mr. Smith, a \$10,000 civil bond that had been required to obtain the injunction. The suits were officially dismissed in January of 2016.

4. In early 2015, the Commission issued to you a Notice of Required Appearance, pursuant to FJQC Rule 6(c). During your appearance, the Commission discussed with you its' concerns about your inappropriate conduct, and interactions with Mr. Smith during the campaign.
5. For a period of time beginning in 2014 after your successful re-election, you disqualified yourself from handling any cases in which Mr. Smith was the attorney of record.
6. Then, in September of 2016, Mr. Smith filed a motion to disqualify you from presiding over two cases involving a client of his. State of Florida v. Clive Harracksingh (St. Lucie County Case No.'s 2016CT1762 and 2015CT2111). Mr. Smith's motions were identical in substance, and referenced the aforementioned conflicts between you and Mr. Smith. On September 20th, you granted disqualification in 2016CT1762 finding that it was legally sufficient, but only two days later, you denied Mr. Smith's

request to disqualify in 2015CT2111.

7. Upon receiving your denial in 2015CT2111, Mr. Smith petitioned for a Writ of Prohibition in the Circuit Court arguing that you should be prohibited from sitting on Mr. Harracksingh's case while he was represented by Mr. Smith.
8. On October 14, 2016, without being asked to provide a response, you filed a pleading in the Circuit Court styled, "Court's Response to Petitioner's Petition for Writ of Prohibition." In this five-page pleading, you document in great detail, the numerous conflicts you have had with attorney Smith. To a reasonable person, your pleading appeared to demonstrate that you should have disqualified yourself pursuant Canon 3E(1). Indeed, because your pleading in response to the prohibition case, appeared to place you in an adversary position to the petitioner, your filing also represented a separate and independent ground for disqualification. See, Ellis v. Henning, 678 So.2d 825 (Fla. 4th DCA 1996), J & J Industries, Inc., v. Carpet Showcase of Tampa Bay, Inc., 732 So.2d 281 (Fla. 2nd DCA 1998), Valltos v. State, 707 So.2d 343 (Fla. 2nd DCA 1997), and Edwards-Freeman v. State, 138 So.3d 507 (Fla. 4th DCA 2014).
9. Shortly after that, on November 1, 2016, you denied another motion to

disqualify in a different Stephen Smith case. State of Florida v. Samuel Leonard, (St. Lucie County Case No. 2016CT1901).

10. On November 3, 2016, again without being directed by the Circuit Court, you filed another pleading styled, “Judge Yacucci’s Response to Petitioner’s Reply and Judge Yacucci’s Request for Sanctions and Rule to Show Cause Against Counsel Louis Arslanian.”

This pleading covers your conflicts with Mr. Smith, and his law firm, in even greater detail. Your filing also chronicles you own personal frustration with Mr. Smith noting that, “[H]ad Mr. Smith simply apologized for his actions and accepted responsibility, his apology would have been accepted and we would not be here today.”

11. However, during your December 2, 2016 Rule 6(b) appearance before the Investigative Panel of the Commission, you maintained that, despite all evidence to the contrary, you did not think disqualification was necessary because you did not hold any ill feelings towards Mr. Smith, and felt that you could be impartial to his clients.
12. You did acknowledge, however, that, at least, in Mr. Leonard’s case, he had a reasonable basis to believe that you could not be impartial after you filed your response to the Writ of Prohibition, but that you nonetheless denied his otherwise legally sufficient motion to disqualify you, in

violation of Canon 3E(1).

Your conduct constitutes inappropriate conduct in violation of Canons 1, 2(A), 3B(8), 3B(9), and 3E(1) 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 8th day of December, 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 electronic service on this the 8th day of December, 2016, to the following:

Hon. Philip Yacucci, Jr.
St. Lucie County Judge
218 South Second Street
Fort Pierce, FL 34950



Alexander John Williams
ASSISTANT GENERAL COUNSEL