

BEFORE THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE,
THE HONORABLE MARNI A. BRYSON
JQC NO 2019-351

No. SC 21-546

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JUDGE BRYSON'S ANSWER TO NOTICE OF FORMAL CHARGES

The Honorable Marni A. Bryson, through undersigned counsel, hereby files her Answer to the Notice of Formal Charges and states as follows:

Count 1 (2016)

Judge Bryson denies the allegations in Count 1.

In 2016, Judge Bryson was assigned to the criminal division of the County Court in the main Courthouse in West Palm Beach, presiding over misdemeanor cases. Judge Bryson did all work assigned to her division and was at or near the top of the list of County Court judges in the number of misdemeanor cases resolved.

In addition to completing all her assigned work, Judge Bryson was the only County Court Judge who volunteered to preside over felony cases for Circuit Court Judges, including the following:

State v. Jarvis Jackson, first degree murder (J. Kastrenakes)

State v. Demetrius Hopkins, first degree murder (J. Feuer)

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State v. McKinley Williams, first degree murder (J. Keever)
State v. Bryan Augustin, first degree murder (Judge K. Marx)
State v. Tomer Sanchez, second degree murder (J. Kastrenakes)
State v. Mark Campbell, Lewd and Lascivious on child (Judge K. Marx)

In addition to the six trials for Circuit Judges, Judge Bryson voluntarily took on other Circuit cases that resolved before trial. Judge Bryson also handled any post-trial work in 2016 that was required as a result of the seven felony trials she voluntarily handled in 2015 for Circuit Judges Rapp, Kelly and Kastrenakes.

In 2016, Judge Bryson also voluntarily served as: 1) Chair of the Probation Services Advisory Committee; 2) a member of the Corrections Task Force Commission; and 3) Administrative Judge for the County Court. She held these positions until July 2018, when she rotated out of the criminal division and into the civil division in the South County Courthouse in Delray Beach.

In 2016, Judge Bryson also ran for re-election in a contested race during which time she attended various judicial functions. In addition, she was the sole parent to a toddler in day-care.

Judge Bryson was diligent, did not neglect her judicial duties, covered for other judges, and volunteered to handle more holiday,

night and weekend duty than was required. Judge Bryson did not take excessive leave.

It is not mathematically possible for Judge Bryson to have “failed to devote full time and attention” to her judicial duties in 2016, as alleged in Count 1, while resolving more County Court cases than all or most of her colleagues, serving on two commissions, serving as administrative judge of the County Court *and* voluntarily presiding over a such a substantial amount of extra Circuit Court work.

To the extent the Formal Charges are intended to suggest that “full-time” or “full devotion” requires judges to accomplish their non-courtroom work (such as legal research or review of pleadings) from the confines of their Courthouse office-space, or to “otherwise” (as that term is used in the Formal Charges) be physically located in the Courthouse between the hours of 9am and 5pm, there is no rule, canon, or constitutional provision that requires such. The words “full-time” appear in the Florida Constitution. *See* Article V, Section 13(a)(“All justices and judges shall devote full time to their judicial duties. A justice or judge shall not engage in the practice of law or hold office in any political party.”). “Full time” as it appears

in the Constitution refers to the language that comes next in section 13(a) -- the requirement that Judges not practice law on the side, or hold political office, as they were permitted to do in some counties before the State implemented the Uniform Court System and amended the constitution accordingly. Section 13(a) does not define “full-time” in any other way and makes no reference to physical location despite the fact that Section 13(a) was passed in 1972, before the existence of any of today’s technology. Moreover, no rule or judicial canon defines or interprets “full-time” as requiring judges to do all non-courtroom work from their office space during certain hours of the day and the plain definition of the term does not include any reference to physical location. *See Merriam-Webster Dictionary.*

Given the opportunity at least twice to interpret the phrase “full-time” to require physical presence in the Courthouse during defined periods, the Supreme Court has not done so. *See Opinion 2004-38 of the Judicial Ethics Advisory Committee of the Supreme Court:*

“In fact, under section 26.37, Florida Statutes, judges are mandated to attend Court only two days of the year: the opening of Court for the spring and fall terms. Furthermore,

judges are specifically exempted from the attendance and leave provisions of section 4 of the Personnel Manual. Moreover, judges and their personal staffs are not in leave-accruing positions like other state employees. We conclude that Judges must use their discretion to determine the number of vacation days that the judge may take annually.”

See also, Supreme Court Admin Order 14-66, Diligent Performance of Judicial Duties (no reference to physical presence in the courthouse for defined periods of time as a pre-requisite to “diligent” performance of judicial duties).

The Notice of Formal Charges appears to be based on a definition of “full-time” and/or “devotion to judicial duties” that does not exist in any rule or canon or even Supreme Court Guidance. The physical location of a judge says nothing about how much work he or she is doing, or whether the judge is fully devoted to his or her judicial duties. Even a judge located in his or her courthouse office is not guaranteed to be working on judicial matters. The number of cases resolved and tried (as well as additional volunteer work for colleagues, on night duty and on commissions) is the only data that should reflect the amount of work done, not outdated concepts of what it means to “go to work”.

The implied definition of “full-time”, even if it were to be ultimately implemented as part of a new rule, violates due process by effectively creating that new rule retroactively, without proper notice. This usurps the rule-making function of the Supreme Court and violates Judge Bryson’s right to fair notice and due process. Neither the Florida Constitution, nor the Judicial Canons may be re-written or re-defined through a Commission enforcement action, such as this one.

Furthermore, the implied definition of “full-time” in the Notice of Formal Charges contradicts the Commission’s own Findings and Recommendations in a recent matter where the Commission stated: “while the Commission is mindful of the fact that certain aspects of judicial service lend themselves to remote work, the Commission also believes that it is not unreasonable to expect that a judge serving in a trial-level Court be generally present at the Courthouse during normal Court hours.”) *See Inquiry Concerning The Honorable Martin Zilber*, JQC 2020-377.

The Commission in *Zilber* purported to articulate a new rule without rule-making authority and it did so in a constitutionally vague manner, providing inadequate notice as to what precise rule

the Commission is enforcing. For example, the Commission’s language in *Zilber* recognizes that remote work can indeed qualify as “work”, yet goes on to suggest that if a judge works remotely on judicial matters for a period of time that is in excess of what the Commission itself may “reasonably expect”, it will not be counted by the Commission as judicial work at all. The language in *Zilber* also appears to unilaterally dictate that this reasonable expectation rule only applies to “trial level” judges, providing an un-explained exemption to Appellate Division and Supreme Court judges.

Count 2 (2017)

Judge Bryson denies the allegations in Count 2.

In 2017, Judge Bryson was again assigned to the criminal division of the County Court in the main Courthouse in West Palm Beach. Judge Bryson repeats and incorporates herein all the assertions set forth in paragraph 1 above, except with regards to the specifics of voluntary work done for Circuit Court Judges. In 2017, Judge Bryson was one of at most two County Court Judges who volunteered to preside over felony cases for Circuit Judges, including the following trials:

State v. Hermane Thomany, first degree murder (J. Keever)

State v. Gloria Miller, felony theft, (J. Feuer)
State v. Quadelle Seay, first degree murder, (Judge K. Marx)
State v. Juan Siansalic, narcotics trafficking, (J. Feuer)
State v. Beau Durling, vehicular homicide, (J. Kastrenakes)

The list of 2017 trials set forth above does not account for felony cases resolved before trial, or any post-trial work required in 2017 for the six felony trials Judge Bryson handled for Circuit Judges in 2016.

In 2017, Judge Bryson also voluntarily served as Chair of the Probation Services Advisory Committee, a member of the Corrections Task Force Commission, as Administrative Judge for the County Court and voluntarily took on substantial extra night, weekend and holiday duty.

Count 3 (2018)

Judge Bryson denies the allegations at Count 3.

In 2018, Judge Bryson was assigned to the criminal division of the County Court at the main Courthouse until July 2018. In July 2018, she rotated into the civil division in the South County Courthouse in Delray Beach where there are no jury trials and no criminal cases. Before her transfer, however, Judge Bryson voluntarily presided over two murder trials for Circuit Court Judges

Krista Marx and John Kastrenakes (*State v. Strachan* and *State v. Gavin*). She also presided over any required post-trial work from the five felony trials she presided over in 2017 for Circuit judges.

In the first seven months of 2018, Judge Bryson completed all the work in her County Court criminal division and voluntarily served as Chair of the Probation Services Advisory Committee, a member of the Corrections Task Force Commission and as Administrative Judge for the County Court. She held these positions until July 2018, when she moved to the civil division in the South County Courthouse in Delray Beach.

In July 2018, Judge Bryson moved into the civil division and immediately began working to reduce number of pending cases on that docket. Within one year, she had reduced the number of pending cases by 25% from the time she took over the division.

Count 4 (2019)

Judge Bryson denies the allegations in Count 4.

In 2019, Judge Bryson completed all her assigned work and was at or near the top of the County Court civil division with respect to number of cases resolved. Judge Bryson did not take excessive or unauthorized leave.

In May 2019, Judge Bryson's appendix ruptured, requiring surgery and a five-day hospital stay. For months prior to the rupture, Judge Bryson suffered intermittently, unbeknownst to her, with the symptoms of chronic appendicitis. After the surgery, Judge Bryson suffered with serious complications, which persisted for the remainder of 2019 and into 2020, eventually leading to another surgery in 2020.

Despite a number of serious medical issues and being a single mother to a young child, Judge Bryson completed all of her assigned work in the civil division in 2019 and did so at a pace that substantially eclipsed her predecessor in the division to which she was assigned. By July 2019, Judge Bryson had reduced by one quarter the number of pending cases in the civil division she had taken over twelve months earlier.

Count 5

Judge Bryson denies the allegations in Count 5.

Judge Bryson did not fail to inform the Chief Judge regarding planned absences or fail to keep adequate records of such

absences. The Chief Judge during the relevant time period did not request to see the records of Judge Bryson's leave, which she kept.

First Affirmative Defense

Good Faith Reliance on Florida JEAC Opinion 2004-38 and AOSC 14-66

Florida JEAC Opinion 2004-38 speaks to how much time away from judicial work a judge may take. AOSC 14-66 speaks to "diligence" by a judge. Neither the Opinion nor the Administrative Order suggest that remote judicial work is prohibited or restricted, or that physical location of a judge when he or she is performing judicial work outside the courtroom is a relevant consideration.

Second Affirmative Defense

Lack of Notice and Due Process

Neither the Florida Constitution, the Judicial Canons, or any other rule states that a judge must perform all judicial work from the confines of their courthouse offices during specific hours, or that a judge when may not perform certain judicial work remotely. Interpretation of the Florida Constitution or the Judicial Canons to require a specific number of hours be spent inside the courthouse, irrespective of the amount of work accomplished, where they do not

expressly so state, deprives Judge Bryson of fair notice and due process and usurps the rule-making authority of the Supreme Court.

Third Affirmative Defense

Investigative Panel Conflict of Interest and Appearance of Impropriety

The Investigative Panel members should have recused or been disqualified in favor of a Panel constructed from outside the Commission due to a conflict of interest and appearance of impropriety. The Investigative Panel knowingly presided over this matter with a conflict of interest because the credibility of the Chair of the Commission was placed at issue from the outset of the proceedings, and again during the proceedings through the submission of evidence. Count Five of the Formal Charges (and, upon information and belief, other counts) are based, in whole or in part, upon the findings of the Investigative Panel members as to the credibility of their own Chairperson and, in some cases, friend. The decisions of the Investigative Panel had a potential impact on the reputation of the Chair and the Commission itself.

Fourth Affirmative Defense

Selective Prosecution

The Investigative Panel engaged in selective prosecution,
leading to a biased and discriminatory result.

Respectfully submitted,

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Dated May 3, 2021

I HEREBY certify that a true and correct copy of the the foregoing was electronically filed with the Clerk of the Court using the Florida Courts E-Filing Portal and served upon all interested parties via electronic service generated by the e-Portal system on this 3rd day of May, 2021 to:

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