

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA
CASE NO. 09-01

INQUIRY CONCERNING A JUDGE NO. 09-01
RE: JUDGE N. JAMES TURNER

S. Ct. Case No. 09-1182

**FLORIDA JUDICIAL QUALIFICATIONS COMMISSION'S
MOTION TO COMPEL DISCOVERY**

The Florida Judicial Qualifications Commission (the "JQC"), hereby moves the Hearing Panel for entry of an order compelling Respondent, Circuit Court Judge N. James Turner ("Judge Turner") to permit and proceed with discovery, pursuant to and in accordance with Fla. R. Civ. P. 1.380, upon the following grounds.

1. On or about September 28, 2009, Judge Turner responded to the JQC's First Interrogatories and First Request for Production.
2. On October 6, 2009, the JQC informed Judge Turner that his answers to interrogatories and the documents produced pursuant to the JQC's First Request for Production were incomplete and insufficient.¹
3. On October 12, 2009, the JQC sought alternative dates upon which Judge Turner and/or his counsel would be available for third party depositions during November 2009 and dates upon which Judge Turner could be deposed in "early December 2009, that is, prior to December 15, 2009."²

¹ A true and correct copy of such correspondence from Michael K. Green, Esquire to Barry Rigby, Esquire dated October 6, 2009, is attached hereto as Exhibit A.

² A true and correct copy of such correspondence from Michael K. Green, Esquire to Barry Rigby, Esquire dated October 12, 2009, is attached hereto as Exhibit B.

4. To date, Judge Turner has not provided meaningful responses to the JQC's demands of October 6, 2009, has not produced any additional documents or interrogatory answers. Judge Turner has also failed to provide any dates upon which he and his counsel were available for depositions, including his own.

5. Accordingly, on October 28, 2009, the JQC informed Judge Turner if he did "reasonably comply" with the JQC's prior written requests regarding discovery, "we will have no choice but to file a motion to compel you to do so."³

6. Thus, as of the date of service of this motion, Judge Turner has failed to comply with his evident discovery obligations and has not even attempted to address the discovery issues raised by the JQC.

7. On November 2, 2009, the JQC explained in detail the incompleteness (six of the documents were and are missing significant attachments and enclosures) of many of the documents that were provided in response to its First Request for Production, and simply asked Judge Turner to supply the missing enclosures and attachments.⁴ As of the date of service of this motion, Judge Turner, however, has not even responded, much less produced the additional documents.

ANSWERS TO INTERROGATORIES

8. Interrogatory #1 asks:

Please identify all persons, including full names, addresses and telephone numbers, who do or may have knowledge regarding any of the matters addressed at your Rule 6(B) hearing or set forth in the Notice of Investigation or the Notice of Formal Charges in this proceeding.

³ A true and correct copy of such correspondence from Michael K. Green, Esquire to Barry Rigby, Esquire is attached hereto as Exhibit C.

⁴ A true and correct copy of such correspondence from Michael K. Green, Esquire to Barry Rigby, Esquire dated November 2, 2009, is attached hereto as Exhibit D.

9. In Exhibits A and B to his interrogatory answers, Judge Turner provides a printout listing the names and addresses of numerous paid campaign workers (no less than 66 of them), but provides no telephone numbers for any of them as the interrogatories requested.⁵ It strains credibility (as Judge Turner apparently does) to assert that he does not now and never had any phone numbers for any of his paid campaign workers. Indeed, it is extremely difficult to believe that Judge Turner's campaign could have organized and coordinated the activities of his paid campaign workers without any phone numbers for them whatsoever at any time.

10. The phone numbers are very important because the JQC cannot contact or interview these campaign workers regarding events critical to the formal charges without them. Indeed, with no phone numbers, the JQC would have to physically track down and interview in person no less than 66 paid campaign workers for Judge Turner. This would be impractical and prohibitively expensive.

11. Interrogatory #2 and #3 respectively, asked:

Please summarize and describe in detail the nature and substance of the knowledge of each person identified in response to Interrogatory No. 1 above.

Please identify all persons, including full names, addresses and telephone numbers, who you will or may call to testify on your behalf at the final hearing in this cause, and describe in detail the nature and substance of the anticipated testimony of each such person.

12. Judge Turner's answers to interrogatories 2 and 3 with respect to Jane Sanders, Sandra Lewis, Geraldine Cooper, Ann Hanks, Calandra Potter and Tijuana Rodney do not begin to "describe in detail the nature and substance" of their

⁵ True and correct copies of these attachments from Judge Turner's interrogatory answers are attached hereto as Exhibit E.

knowledge. Instead, Judge Turner states that they “will testify as to activities” at the “Lila Mitchell Community Center”. This is no answer at all. What “activities”? What did they observe or hear? What is the detailed substance of their knowledge of these matters and their anticipated testimony? The JQC is entitled to real, responsive amended answers to these interrogatories.

13. Interrogatory #5 asks:

Please identify and summarize your communications during the 2008 campaign with any partisan political candidates, partisan political party officials, partisan political public officials, or partisan political organizations in any way related to your campaign or the 2008 campaign of any partisan political candidate, official or organization, including the parties to any such communications, when they occurred and the nature and substance of any such communications.

14. Judge Turner’s “answer” to interrogatory #5 does not “identify” any “partisan political candidates, partisan political officials or partisan political organizations” with whom he communicated during the 2008 campaign. Instead, Judge Turner asserts that he “cannot accurately recite the candidates or other persons with whom he spoke.” This is absurd in light of his own Rule 6(B) testimony. Indeed, there are good reasons to believe that Judge Turner may in fact have communicated with Alan Grayson (candidate for U.S. representative), Jerry Demings (candidate for Orange County Sheriff) and Bill Robinson (Chairman of the local Democratic Party), among others. Yet, no one is identified in response to interrogatory #5.

15. Thus, the JQC is entitled to an amended answer to this interrogatory which actually identifies the persons within the scope of the interrogatory with whom Judge Turner communicated during the campaign, and a meaningful summary of all

such communications.

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

16. Request for Production #1 seeks all documents reflecting transactions, dealings and communications with Judge Turner's political consultants. Judge Turner identifies Group 6 Communications, Insight Orlando and Stockton Reeves elsewhere in his discovery responses, yet no documents were produced which reflect transactions, dealings or communications with his corporate or individual political consultants. , Judge Turner has already testified he had and paid political consultants, including Stockton Reeves, so where are the engagement letters, e-mails, drafts of campaign literature, the detailed bills etc. It cannot be denied that running a political campaign with paid professionals generates a significant paper trail just like a legal representation. So, where are these documents.

17. The same is true of Request for Production #2 which seeks all documents reflecting communications with Judge Turner's campaign workers. Since, according to Judge Turner, most of them apparently did not have telephones (or phone numbers at which they could be reached), there must have been e-mails, letters, updates, instructions etc. and other written materials provided to or received from the campaign workers.

18. Request for Production #5 asks for all documents reflecting efforts to solicit funds for Judge Turner's campaign. At the very least, there are communications in writing with Judge Turner's political consultant(s), as he had already testified. There are also undoubtedly documents from the political consultant(s) regarding fundraisers'

techniques and strategies, contribution prospect lists etc., as well as documents Judge Turner received from the JQC describing the limitations on, inter alia, judicial fundraising.

19. Request for Production #6 asks for documents reflecting efforts to promote, advance or assist any partisan political candidate or campaign. Judge Turner asserts there are no documents, but it is undeniable that his campaign workers distributed recommended candidate lists, including partisan, political candidates for elective office. Where did those lists come from? Who sent them to Judge Turner's campaign? What e-mails or letters accompanied them? Who revised them by hand before they were distributed? Where are the unrevised lists? We also have reason to believe Judge Turner (or others acting on his behalf such as Kathy Putnam and/or Stockton Reeves) repeatedly communicated with the Obama campaign, Alan Grayson's campaign as well as Jerry Demings; What about Bill Robinson and the Orange County Democratic Party? Where are these documents?

INCOMPLETE DOCUMENTS PRODUCED

20. Additionally, the documents produced by Judge Turner, which have now been identified on the JQC's Preliminary Exhibit List as Exhibits 17, 20, 21, 23, 24 and 25, are incomplete on their face.

21. JQC Exhibit 17 is a Notice of Probable Cause Vote sent to Judge Turner by a Florida Bar Grievance Committee then considering alleged campaign misconduct, but no exhibits thereto were produced even though on its face the document recites that there were exhibits to the Notice of Probable Cause.

22. The same is true of an Amended Notice of Probable Cause sent to Judge Turner on or about November 3, 2008, which has been identified as JQC Exhibit 20.

23. A letter from Kenneth Bryk, Florida Bar Counsel, to Judge Turner dated November 3, 2008 (identified as JQC Exhibit 21) clearly states there was an attachment or enclosure to that letter, but no such attachment or enclosure has been provided.

24. The same is true of correspondence dated December 2, 2008 from Kenneth Bryk, Florida Bar Counsel, to Judge Turner dated December 2, 2009 (identified as JQC Exhibit 23).

25. E-mails identified as JQC Exhibits 24 and 25 refer to other e-mails attached thereto, but the attachments have not been provided.

26. Moreover, complete copies of the Florida Bar Complaints, which included exhibits clearly provided with the originals, arising from Judge Turner's 2008 election campaign, have not been provided.

**SCHEDULED THIRD PARTY DEPOSITION AND DATES
FOR JUDGE TURNER'S DEPOSITION**

27. When Judge Turner and his counsel failed to provide dates they were available for third party depositions for weeks after being asked repeatedly to do so, the JQC had no alternative but to schedule third party depositions on November 30, 2009, December 1, 2009, and December 14, 2009.

28. Under the circumstances, the Hearing Panel should order that these depositions proceed as scheduled because Judge Turner has now waived his right to object thereto, attempt to reschedule the depositions or seek any further delay.

29. Finally, Judge Turner should be ordered to provide dates upon which he can and will appear for deposition following compliance with all of his other outstanding discovery obligations set forth herein.

CONCLUSION

30. Accordingly, this motion to compel should be granted, Judge Turner ordered to (1) provide amended interrogatory answers, (2) produce additional

documents responsive to the First Request for Production, (3) proceed with the third party depositions as previously scheduled, and (4) provide dates upon which he and can appear to be deposed after the third party depositions have been conducted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-Mail and U.S. Mail to Barry Rigby, Esquire, Law Offices of Barry Rigby, P.A., 934 North Magnolia Avenue, Suite 319, Orlando, Florida 32803 on this ____ day of _____, 2009.

Attorney