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By Facsimile & Email

Charles ("Chip") L. Babcock, Esq.
Jackson Walker, LLP
1401 McKinney Street, Suite 1900
Houston, Texas 77010

Re: Inquiry Concerning a Judge No. 96

Dear Chip:

Attached are pages 8 and 11 from the Response In Opposition To Judge Keller's Motion To Strike And Motion To Show Authority. It appears that these two pages are missing from some copies of the Response and might be missing from your copy as well.

Best wishes.

Sincerely,

John J. McKetta, III, Esq.

JJM:sm
Enclosures

[FN22.] Rules for the Removal or Retirement of Judges, Rule 10(a)(2) provides in pertinent part:

The notice shall specify in ordinary and concise language the charges against the judge, and the alleged facts upon which such charges are based and the specific standards contended to have been violated, and shall advise the judge of his right to file a written answer to the charges against him within 15 days after service of the notice upon him.

This Rule makes no mention of the prior “informal” proceedings before the Commission or the facts upon which the Commission decided to institute “formal” proceedings.⁸

Indeed, amendments to the notice are commonplace in formal proceedings.⁹ The amendments in this case appear to be far less extensive than those described in the appellate decisions. Here, the focus on Judge Keller's conduct continues to be on her behavior on September 25, 2007. Unlike the amendments in *In re Thoma* or *In re Barr*, the subject amendments do not implicate other episodes of misconduct in other cases on the judge's docket or on other dates. But nothing would be improper even if the amended notice were to charge other alleged misconduct not previously alleged in the original notice.

A fundamental error in Judge Keller's motion, which she repeats on four occasions in her motion, is her mistaken belief that neither the Commission nor the Examiner may act unless the

⁸ *Id.* at 510 & n.22.

⁹ See *In re Rose*, 144 S.W.3d at 692-93 (original notice on May 17, 2002; amended notice on September 17, 2002; November 12, 2002 evidentiary hearing before the Special Master); *In re Canales*, 113 S.W.3d at 64-65 & n.7 (original notice on November 28, 2001; amended notice on May 28, 2002; second amended notice on June 27, 2002; August 5, 2002 evidentiary hearing before the Commission); *In re Barr*, 13 S.W.3d at 531-32 (original notice on December 19, 1996; March 1997 evidentiary hearing before the Special Master; amended notice after the evidentiary hearing; second evidentiary hearing before the Special Master on September 11, 1997); *In re Thoma*, 873 S.W.2d at 510-11 (original notice on December 16, 1992; amended notice on March 25, 1993; June 1, 1993 evidentiary hearing before the Special Master).

The special master, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

A detailed comparison of the original notice and the amended notice is set forth in Appendix A. The comparison shows that the Examiner has conformed to additional evidence gathered through discovery. It is odd that Judge Keller has not challenged the Examiner's right to take the deposition of Judge Keller, but that she challenges the right to amend the notice in response to information learned through that deposition. The first sentence of Rule 10(f) allows the amendment "at any time prior to the conclusion of the hearing." The second sentence of Rule 10(f) allows amendment "before or after the commencement of the hearing." Judge Keller argues an unfairly narrow reading of Rule 10(f): she says the rule only allows an amendment "which only sets forth additional facts supporting the charges already filed in the February 19 notice."¹⁵ That interpretation is flawed in at least three ways. First, she erroneously assumes that charges are limited to those related to "the submission of a verified statement and a full investigation by the Commission."¹⁶ But, as shown above, the Rule 10 formal proceedings are not limited by the contents, charges or allegations in any initial complaint brought to the Commission's attention or to the issues addressed by the Commission in its investigation or during the judge's informal appearance. Second, Judge Keller's overly narrow reading gives no effect to the portion of the third sentence in Rule 10(f), which requires reasonable time for the

¹⁵ Motion, at page 8.

¹⁶ *Id.*