

~~CONFIDENTIAL~~

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning a Judge,)
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ANSWER TO NOTICE OF
FORMAL PROCEEDINGS

TO: THE HONORABLE CHAIRMAN OF THE COMMISSION ON JUDICIAL QUALIFICATIONS AND TO THE MEMBERS THEREOF.

Respondent herein answers the Notice filed in this proceeding as follows:

COUNT ONE: Denies each and every allegation and charge sought to be stated in Count One.

COUNT TWO: Denies each and every allegation and charge sought to be stated in Count Two.

COUNT THREE: Denies each and every allegation and charge sought to be stated in Count Three.

AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE, respondent alleges as follows:

FIRST AFFIRMATIVE DEFENSE

Rule 906 requiring that respondent answer the charges without recourse to demurrer, pleading, motion, or other screening procedure, exceeds the rule-making power of the Judicial Council under the provisions of the Constitution and thereby denies to respondent Fourteenth Amendment due process, equal protection of the laws.

SECOND AFFIRMATIVE DEFENSE

The statement of charges and the specifications contained therein separately, collectively and constitutionally are insufficient as a matter of law to sustain charges as would constitute the necessary predicate for (1) censure, (2) removal, retirement, or alternatively, some lesser penalty as may be assessed by a person, judicial officer or body, other than the Commission on Judicial Qualifications and the Supreme Court.

THIRD AFFIRMATIVE DEFENSE

A two-tiered investigative and adjudicative system has been constitutionally created herein; the first being the Commission on Judicial Qualifications functioning in the role of special master. The second tier is the Supreme Court.

Should any assembled facts and recommendations included within the first tier proceedings be within the personal knowledge of the judges of the Supreme Court, then as a matter of law each Supreme Court judge is disqualified for reasons of institutional bias, from adjudication, when functioning de novo at the second tier level lest thereby, respondent be denied Fourteenth Amendment due process/equal protection.

FOURTH AFFIRMATIVE DEFENSE

The Rules of Court, Title Three, Division I, apply to disciplinary proceedings against justices of the peace, judges of the Municipal and Superior Courts, and judges of the Courts of Appeal. They were drafted accordingly by the Judicial Council under its constitutional rule-making authority. Neither

the framers of the constitutional provisions here in issue or the Judicial Council contemplated that said Rules would apply, and they do not apply, to proceedings against a judge of the Supreme Court without infringing thereby upon the Judge's rights, privileges and immunities under the Constitution of the United States denying to the Judge due process and equal protection of the law.

FIFTH AFFIRMATIVE DEFENSE

In second tier proceedings, the participation of judges of the Supreme Court therein violates those Canons of Judicial Conduct which command that a tribunal appear to be fair and that those judges of the tribunal have no personal knowledge of the underlying facts or interest in the outcome. Any significant deviation therefrom would deny to this respondent Fourteenth Amendment due process and equal protection.

SIXTH AFFIRMATIVE DEFENSE

A judge of the Supreme Court is a statewide officer within the meaning of the impeachment article of the Constitution. The impeachment article is the sole procedure available in this case.

WHEREFORE, this respondent prays that petitioner taking nothing by this action and that these proceedings be dismissed.

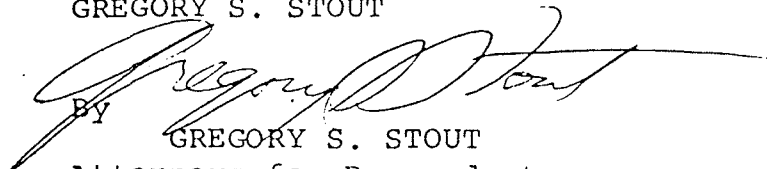
DATED June 14, 1976.

EUGENE J. MAJESKI of
ROPER, MAJESKI, KOHN,
BENTLEY & WAGNER

and

GREGORY S. STOUT

BY


GREGORY S. STOUT
Attorneys for Respondent

VERIFICATION

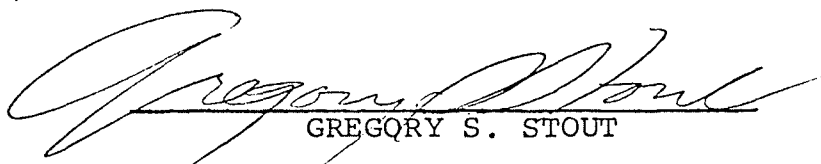
I, the undersigned, say:

I am one of the attorneys for respondent herein; said respondent is absent from the City and County of San Francisco, where I have my office, and that I make this verification for and on behalf of said party for that reason;

The foregoing documents are true of my own knowledge, except as to the matters which are therein stated on my information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 14, 1976, at San Francisco, California.


GREGORY S. STOUT