

In this Motion, Judge Blich continues his theme that the Amended Notice of Formal Proceedings (the "Notice") merely alleges he was "imperfect" and committed "minor transgressions," which do not warrant any discipline. For example, Judge Blich argues that his continued service on the bench serves no threat to the public interest because there is no allegation that he "profited monetarily" from any of the alleged violations. See Judge Blich's Mot. at 7.

Judge Blich fails to acknowledge, however, that the Notice contains numerous paragraphs detailing a pattern of conduct that demonstrates at best his professional incompetence and at worst his utter disregard for the law applicable to the functioning of his court and his own actions. Moreover, deposition testimony in this matter shows that Judge Blich manipulated various monetary funds over which he had control, imposed an illegal "tax" on criminal defendants, used his title to garner influence for both his and his family's personal gain, exploited the judicial resources provided to him by the state to serve his personal interest and his wife's gain, employed the prestige of his judicial office to intimidate others, and wielded the power associated with his position to make appointments, to file false documents prematurely releasing inmates, to deny criminal defendants basic due process rights by issuing blank arrest warrants, and to acquire further control within Clinch County specifically and the Alapaha Judicial Circuit generally.

In light of the nature and severity of the allegations, the JQC should not cloak Judge Blich with indefinite immunity and sit idly until the alleged federal investigation is resolved. The twenty-five years of pervasive and unfettered corruption detailed in the Notice demands that the JQC allow the immediate deposition of Judge Blich. Thus, the Motion for Protective Order should be denied, so this matter can move forward to a formal hearing without further delay.

I. STATEMENT OF PROCEEDINGS AND RELEVANT FACTS

A. The Purpose of the JQC is to Ensure the Georgia Judiciary is Independent, Fair and Competent.

Our legal system is based on the principle that **an independent, fair and competent judiciary will interpret and apply the laws that govern us.** The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that **judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.**

The Georgia Code of Judicial Conduct Preamble (emphasis added). To accomplish these goals the Georgia Constitution gives express authority to the Supreme Court to adopt rules whereby:

[a]ny judge may be removed, suspended, or otherwise disciplined for willful misconduct in office, or for willful and persistent failure to perform the duties of office, or for habitual intemperance, or for conviction of a crime involving moral turpitude, or for conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

GA. CONST. Art VI, § VII, ¶ VII. Pursuant to this provision, the Supreme Court adopted the Rules of the Judicial Qualifications Commission (“JQC Rules”).

B. The Purpose of this Proceeding is to Determine Whether Judge Blich has Committed Judicial Misconduct Requiring Discipline.

In compliance with the purpose set forth by the Georgia Constitution and the Rules promulgated by the Supreme Court of Georgia, on November 20, 2007, the JQC filed the Notice, which describes Judge Blich’s alleged violations of the Georgia Code of Judicial Conduct. The purpose of this JQC proceeding is to determine whether Judge Blich should be removed or otherwise disciplined for his conduct as a superior court judge in the Alapaha Circuit, not to determine whether he has violated any federal criminal statutes. On November 30, 2007, Judge Blich filed a verified Response to the Notice. In his Response, Judge Blich responded to each of the sixty-four (64) paragraphs of the Notice without reserving any Fifth Amendment privilege.

On December 11, 2007, Judge Blich filed a Motion to Recuse the JQC, alleging that the JQC has already prejudged this matter. The JQC denied the Motion to Recuse on March 4, 2008, finding it to be untimely and without factual or legal basis. Accordingly, there is no evidence of any bad faith, bias, or prejudgment on the part of the JQC. All such allegations of Judge Blich are rendered moot following the JQC’s decision to deny the Motion to Recuse.

On January 8, 2008, Judge Blich filed a Motion to Dismiss Counts One and Seven of the JQC's Notice on the grounds that these Counts failed to adequately put Judge Blich on notice of the charges against him. On March 4, 2008, the JQC denied in part and conditionally granted in part Judge Blich's Motion to Dismiss. The JQC conditionally granted Judge Blich's Motion to Dismiss on Count Seven, which describes the failure of Judge Blich to administer the county law libraries in the Alapaha Circuit pursuant to O.C.G.A. § 36-15-1 *et. seq.* Count Seven, however, is not dismissed unless and until Judge Blich complies with all requirements set forth in O.C.G.A. § 36-15-1 *et. seq.* To comply with this Order, Judge Blich must not only comply with the technical mandates of O.C.G.A. § 36-15-1 *et. seq.*, but Judge Blich must also recapture and refund all disbursements that he ordered that were not in compliance with O.C.G.A. § 36-15-1 *et. seq.* This will require Judge Blich to audit the law library funds for each county within the Alapaha Circuit since 1980, when Judge Blich took office. Thus, discovery on Count Seven should be allowed to proceed in the interim. The Counsel for the JQC should be allowed to take discovery on these issues, so it can be prepared for trial if Judge Blich does not comply with the Order and because the conduct alleged in Count Seven is evidence of Judge Blich's pattern and practice of using his control of state resources to garner power for his personal benefit.

II. ARGUMENT AND CITATION OF AUTHORITY

The crux of Judge Blicht's Motion for Protective Order requesting the indefinite stay of these proceedings and prohibiting his deposition is that "allowing the JQC to proceed with Judge Blicht's deposition at this time would deprive Judge Blicht of any viable use of his Fifth Amendment privilege against self-incrimination." See Mot. at 6. In this case, Judge Blicht has waived his right to use the Fifth Amendment privilege by not asserting it in his Verified Response to the Notice. Moreover, his blanket assertion of such a privilege does not require the indefinite stay of these proceedings or Judge Blicht's deposition. Further, the danger to the public interest requires prompt action by the JQC.

A. Judge Blicht Waived His Fifth Amendment Privilege in Regard to the Allegations Contained in the Notice.

The Fifth Amendment privilege against self-incrimination provides "No person . . . shall be compelled in any criminal case to be a witness against himself." CONST., AMEND. V. The Fifth Amendment privilege against self-incrimination is not absolute; it may be waived. Rogers v. United States, 340 U.S. 367, 371-73 (1951); Microsoft Corp. v. Silver Star Micro, Inc., 2008 U.S. Dist. LEXIS 1526 at *31-32 (Jan. 9, 2008, N.D. Ga.); Cohran v. Carlin, 165 Ga. App. 141, 297 S.E.2d 54 (1982) (holding that a witness waived the Fifth Amendment privilege by failing to invoke it in a timely and proper fashion at the first opportunity). The disclosure of facts waives the privilege as to the details surrounding the facts disclosed. Id.

Accordingly, if a person elects to disclose certain facts without asserting the Fifth Amendment privilege, that person cannot then use the Fifth Amendment privilege as a shield to decide what details he may disclose about those facts. Id. In fact, if the Fifth Amendment privilege is not properly invoked in a non-criminal action, the privilege will be waived and the information obtained through the waiver may be used against the witness in a criminal proceeding. United States v. Kordel, 397 U.S. 1, 11-13 (1970).

The justifications for the rule of waiver are well-reasoned. A witness should not be allowed to pick and choose what aspects of a particular subject to discuss without casting doubt on the trustworthiness of the statements and diminishing the integrity of the factual inquiry. Id. A contrary rule “would open the way to distortion of facts by permitting a witness to select any stopping place in the testimony.” Rogers, 340 U.S. at 371. It would essentially “make of the Fifth Amendment not only a humane safeguard against judicially coerced self-disclosure but a positive invitation to mutilate the truth a party offers to tell.” Brown v. United States, 356 U.S. 148, 156 (1958) (holding that a party could not take the stand to testify in her own behalf and also claim the right to be free from cross-examination on matters raised by her own testimony on direct examination). The illogic of allowing a party to offer only self-selected testimony is obvious, so there

is no unfairness in allowing cross-examination when testimony is given without invoking the privilege. Mitchell v. United States, 526 U.S. 314, 321-22 (1999).

On November 30, 2007, Judge Blich filed a verified Response to the Notice. In his Response, Judge Blich responded to each of the sixty-four (64) paragraphs of the Notice without reserving any Fifth Amendment privilege against self-incrimination. In his Response, Judge Blich disclosed facts. Therefore, the privilege cannot be invoked now to avoid disclosure of the details surrounding those facts. See Garner v. United States, 424 U.S. 648 (1976) (privileged waived by facts disclosed in income tax returns); Kordel, 397 U.S. 1 (privileged waived by facts disclosed in civil suit interrogatories); Brown, 356 U.S. 148 (privileged waived by facts disclosed in denaturalization proceeding); Rogers, 340 U.S. 367 (privileged waived by facts disclosed in federal grand jury testimony). Accordingly, in relation to the allegations set forth in the Notice, Judge Blich has waived his Fifth Amendment privilege, and his deposition and the formal hearing of this matter should be set promptly.

B. Judge Blich's Blanket Assertion of the Privilege Against Self-Incrimination Does Not Require the Indefinite Stay of These Proceedings and Judge Blich's Deposition.

If the JQC disagrees and concludes that Judge Blich may assert his Fifth Amendment right in these proceedings, such an assertion does not require the indefinite stay of these proceedings and Judge Blich's deposition. The Georgia

Appellate Courts have not ruled directly on the issue of whether a protective order should be granted in a civil or administrative proceeding to protect an individual's constitutional right against self-incrimination. The Eleventh Circuit Court of Appeals, however, has held that "a blanket assertion of the privilege is an inadequate basis for the issuance of a stay." United States v. Lot 5, Fox Grove, Alachua County, Fla., 23 F.3d 359, 364 (1994).

1. No Special Circumstances Require a Stay of this Proceeding or Judge Blich's Deposition.

As the cases cited in Judge Blich's Motion explain, a stay of a civil proceeding pending resolution of a related criminal prosecution is unnecessary unless "special circumstances" require in the "interests of justice." Fox Grove, Alachua County, 23 F.3d at 364 (quoting Kordel, 397 U.S. 1, 12 & n. 27); SEC v. Dresser Indus., 628 F.2d 1368, 1375 (D.C. Cir. 1980) (stay of civil proceedings pending outcome of criminal proceedings is not constitutionally required). The special circumstances that allow a court in its discretion to issue a stay are when: (1) there is evidence of agency bad faith or malicious governmental tactics; or (2) a party is under indictment for a serious offense and is required to defend a civil or administrative action involving the same matter. Dresser Indus., 628 F.2d at 1375.

In this case, the record lacks of any evidence of bad faith or malicious tactics. The only remaining allegation of a malicious tactic concerns the second notice of Judge Blich's deposition. The JQC noticed Judge Blich's deposition for

January 14, 2008 and after discussion with Judge Blich's counsel, agreed to suspend discovery until the JQC ruled on the Motion to Recuse. See Exhibit B to Judge Blich's Motion. Then, on January 23, 2008, counsel for Judge Blich inquired about scheduling depositions of witnesses in this matter. See E-mail from John F. Salter dated January 23, 2008, attached hereto as **Exhibit A**. These depositions were formally scheduled on February 4, 2008. See E-mail from John F. Salter dated February 4, 2008, attached hereto as **Exhibit B**. Thus, to continue the efficient discovery process initiated by Judge Blich prior to any order of Judge Blich's Motion for Recusal, the JQC noticed the deposition of Judge Blich for a second time on February 7, 2008. At Judge Blich's request, the Parties took a number of depositions of witnesses in this case during mid-February. Upon the conclusion of these depositions, Counsel for Judge Blich informed Counsel for the JQC that it would object to the taking of Judge Blich's deposition on March 4, 2008. For the reasons stated herein, Counsel for the JQC has never stated and does not believe that Judge Blich's deposition is inappropriate due to the allegedly ongoing federal investigation. Thus, it was not malicious to notice the deposition of Judge Blich after his request to seek testimonial discovery.

Similarly, as explained above, Judge Blich is not currently under indictment, and until such indictment is made, it would be presumptuous to assume that it is substantially similar to the JQC's Notice. Further, even if indicted, the

indictment will relate to Judge Blicht's alleged federal criminal conduct, not his alleged judicial misconduct. For example, Count Two alleges that Judge Blicht violated Canon 2 or Canon 3, or both, of the Code of Judicial Conduct by "exhibiting improper decorum and inappropriate judicial temperament in proceedings." This alleged conduct could not form the basis for a federal criminal indictment. The JQC is wholly independent from the United States Government. Neither the JQC nor its Counsel is acting for the purpose of providing discovery to the federal government. While it is unfortunate the alleged conduct of Judge Blicht has placed him in this position, these JQC proceedings were initiated as a state process for the purpose of considering whether Judge Blicht should be removed or otherwise disciplined. Thus, no special circumstances require a stay of this proceeding or Judge Blicht's deposition.

2. The Assertion of the Fifth Amendment Privilege will not Compel an Adverse Judgment Against Judge Blicht.

The Fifth Amendment is not violated by denial of a request to stay unless a person, who is a defendant in both a civil and a criminal case, is forced to choose between waiving his Fifth Amendment privilege and an adverse judgment. Fox Grove, Alachua County, Fla., 23 F.3d at 364; see also United States v. Premises Located at Route 13, 946 F.2d 749, 756 (11th Cir. 1991); United States v. Little Al, 712 F.2d 133, 136 (5th Cir. 1983). To trigger this rule, the invocation of the

privilege must result in an adverse judgment, not merely the loss of an effective defense. Premises Located at Route 13, 946 F.2d at 756.

In this matter, there is no real conflict between this proceeding and Judge Blich's Fifth Amendment rights because he has not shown that his invocation of the privilege would result in a decision to discipline him for alleged judicial misconduct. In fact, if Judge Blich is allowed to assert his Fifth Amendment privilege in this matter, the JQC will still bear burden of proof to show Judge Blich committed the judicial misconduct alleged by clear and convincing evidence. Thus, the JQC should deny the stay because Judge Blich's assertion of the Fifth Amendment privilege will not compel an adverse judgment against him.

3. An Indictment will not Narrow the Scope of this Action.

In his Motion, Judge Blich argues that “[t]he existence of an indictment on federal criminal charges alone would constitute grounds for the JQC to recommend removal of Judge Blich from office.” See Mot. at 8. This mischaracterizes JQC Rule 15. Rule 15 allows a Judge to enter voluntary suspension following a felony indictment. Rule 15 also allows the JQC to enter a suspension after fourteen (14) days if it determines the indictment relates to or adversely affects the administration of the office. Any suspension pursuant to Rule 15 requires that the judge continue to receive compensation and does not allow the office to be declared vacant until final conviction with no appeal or review pending.

Moreover, if the suspended judge is not tried in the criminal proceeding at the next regular or special term following the indictment, the suspension is terminated.

Contrary to Judge Blich's assertion, the suspension mechanism provided in Rule 15 is not equivalent to removal, which would end the State's obligation to provide compensation to Judge Blich and allow another judge to obtain appointment. Accordingly, the existence of this Rule is not grounds for a stay of this proceeding and Judge Blich's deposition.

4. To stay the deposition would stultify enforcement of the Georgia Code of Judicial Conduct.

It would severely limit enforcement of the Georgia Code of Judicial Conduct to require the JQC to forgo these proceedings pending the outcome of potential future criminal proceedings against Judge Blich. See generally Kordel, 397 U.S. at 12-13. For example in Kordel, the Supreme Court held that the public interest in protecting consumers from misbranded drugs required prompt civil seizure of the offending products by FDA and that consideration of whether to proceed criminally would have to await consideration of a fuller record. Id. There the Court found that the FDA's civil proceeding was necessary to protect the public and was not brought solely for the purpose of obtaining evidence for the simultaneous criminal prosecution. Id. Accordingly, the Court upheld the convictions. Id.

Similarly, in this matter, the JQC should promptly allow the deposition of Judge Blich and set a hearing in this matter. There is no question the JQC has brought this matter to ensure the Georgia judiciary is independent, fair and competent. As a part of that process, the JQC must evaluate the allegations against Judge Blich and determine whether he should be removed or otherwise disciplined. Moreover, neither the JQC or its Counsel is sharing its discovery or otherwise communicating with federal investigators; therefore, any risk that federal investigators will use the discovery obtained in this proceeding is slight. If anyone stands to benefit from discovery in this proceeding, it is Judge Blich, who has already taken a number of depositions in this matter that he may use if he ever faces an indictment. Accordingly, the risk to the public in staying these proceedings outweighs any potential harm to Judge Blich in moving forward. The Motion for Protective Order should be denied.

C. The Public Interest Requires Prompt Action by the JQC.

The allegations of judicial misconduct against Judge Blich set forth in the Notice create a substantial and continuing risk to the public. Given the nature and severity of the allegations, the JQC cannot ignore that everyday brings with it the potential the Judge will continue to: (1) use false documents to prematurely release inmates and probationers; (2) distribute blank arrest pre-signed warrants denying due process to criminal defendants in the Alapaha Circuit; (3) employ

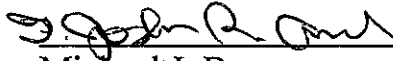
public resources for his personal and political gain; (4) misappropriate public funds to garner influence for himself and his friends; and (5) engage in ex parte communications. See Notice. Additionally, the JQC's continuing investigation has revealed that Judge Blicht continues to pose a threat to the Alapaha Circuit. See recent emails from Ms. Cathy Helms, District Attorney for the Alapaha Circuit warning of the dangers of Judge Blicht's continued ex parte communications and continued release of inmates and probationers, attached hereto collectively as **Exhibit C**. Despite Judge Blicht's assertion that there is "not even a scintilla of risk to the public interest" in delaying this matter, the JQC cannot agree in light of its duty to ensure an independent, fair and competent judiciary to protect the public trust and confidence in our legal system. Thus, the JQC should deny Judge Blicht's Motion for Protective Order and set a formal hearing date.

III. CONCLUSION

For these reasons, the JQC should deny Judge Blicht's Motion for Protective Order allowing this matter to move forward to a hearing without further delay.

[signature on next page]

Respectfully submitted this 14th day of March, 2008.



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QUALIFICATIONS COMMISSION**

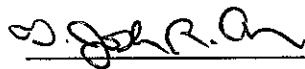
CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing
RESPONSE TO JUDGE BLITCH'S MOTION FOR PROTECTIVE ORDER
via U.S. mail and e-mail to:

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This 10th day of March, 2008.



T. Joshua R. Archer
Georgia Bar Number 021208

Hyde, Richard

From: John Salter [john@barneslawgroup.com]
Sent: Wednesday, January 23, 2008 2:50 PM
To: Archer, Joshua; Hyde, Richard
Cc: Roy Barnes
Subject: 07-0317 Blich, III, Brooks : Deposition dates

Fellas,

Why don't y'all get me some dates where there are 2 or 3 days you can string together and we'll spend the days deposing folks and the nights raising hell in Homerville? I presume Hoagies restaurant is out of the question for lack of a liquor license? Since y'all kindly waited until after the Gov's and my trial in DC earlier this month (thanks) I'll work around your schedules. Give me a call and I'll tell you who we are looking at.

Cheers,
John

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Hyde, Richard

From: John Salter [john@barneslawgroup.com]
Sent: Monday, February 04, 2008 9:01 AM
To: Hyde, Richard
Cc: Roy Barnes; rwillislaw@aol.com; Ashley Murrell
Subject: 07-0317 Blich, III, Brooks : Witness Deposition Scheduling and Tentative Order

Dear Hyde,

Hope your son is recovering and that there are no serious or permanent injuries.

Given that we have 6 days--Feb. 18-20 and 26-28--I have tried to get a list of names that will realistically be able to fall within that timespan. Though I have given an order, we are largely flexible as to who goes when, with the exception of Leccese, who we would prefer to go on one of the last couple days (27 or 28).

1. Annie Ruth Steedley (18 at 9 AM)
2. Sue King (18 at 1 PM)
3. George Bessonette (18 at 3 PM)
4. Wink Strickland (19 at 9AM)
5. Cathy Helms (19 at 1PM)
6. Carol Chambers (20 at 9AM)
7. Charles Reddick (20 at 11AM)
8. Melinda Davis (20 at 2PM)
9. Libby Brown (26 at 9AM)
10. Linda Peterson (26 at 11AM)
11. Patricia Suggs (26 at 3 PM)
12. Sherry Peterson (27 at 9AM)
13. John Davis (27 at 11AM)
14. Willie Lee Wilson (27 at 2PM)
15. Daniel Leccese (28 at 9AM)

Thanks for your cooperation in scheduling these. Of course, let's keep in touch on how the final order of these witnesses should be changed in order to allow for witness conflicts.

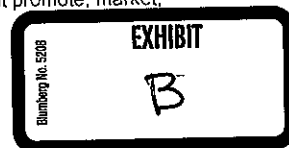
Cheers,
John

John F. Salter | Attorney At Law
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Hyde, Richard

From: Cathy Helms [chelms@pacga.org]
Sent: Thursday, November 01, 2007 10:02 PM
To: Hyde, Richard
Cc: Denise Fachini
Subject: Re: FW: In re: Inquiry Concerning Judge Brooks E. Blich, III

A long, long time coming. Thank you (and tell Cheryl thank you too).

He's been emboldened recently, I guess since the feds are moving so slowly, and has resumed calling to say he's talked with so-and-so's mother/father/wife and here's what he wants done. I have instructed my staff to send his calls to my voicemail so they're preserved. Then, he started calling me out of court to the phone in the judge's chambers. It's awfully hard to do your job when you're constantly having to deal with someone who has no respect for or intention of following the law - -and that person is the chief judge.

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3/5/2008



IOC-R 1239

Hyde, Richard

From: Cathy Helms [chelms@pacga.org]
Sent: Monday, November 26, 2007 2:37 PM
To: Clayton Tomlinson
Subject: Re: lanier def Butcher and Jimmy Mancil

Suzanne Mathis has also called about this case -- State vs. Steven Brian Butcher (Lanier #07CR00171). I told her my policy (we don't drop or reduce DUI's) and referred her over to you. According to her, Judge B dismiss'd the tickets on this D back in Jan. '07. She says he signed off on the back of the tickets dismiss'g the charges. I explained to her that does not have any binding effect on us and that we are pursuing the charges. She says D (and his family?) and Mancil (D's bondsman) spoke with Judge B and he agreed to dismiss if D got into military. D didn't bc he couldn't pass the entrance test. Unless there's a legal problem with the case, policy stands.

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3/5/2008

Hyde, Richard

From: Cathy Helms [chelms@pacga.org]
Sent: Tuesday, January 29, 2008 4:58 PM
To: Hyde, Richard; csmith12@leo.gov
Subject: Fwd: CONFIDENTIAL

FYI

Cathy Harris Helms
District Attorney, Alapaha Judicial Circuit
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--- Original Message ---

Clinch Clerk's office needed to know how to file a paper the judge signed on Charles Posley because they could not find in their files a case number for the shoplifting charge. When I asked what kind of paper were they talking about, in order to answer their question as to which case it should go in, I found out that Judge B signed a "paper" stating to let Charles Posley out of jail. I told her we had a shoplifting case 06-CR-51 and to just put it in that file. You would think HE would not be signing such papers!

There was a court case number given for Charles Posley with nothing else added to that page in the docket book. I told them that Danny was issuing court numbers as soon as the SO gave him a case after we "suggested" he not do that. I would think the page and number were never used because a second number was given to that same case.

Thanks!
Linda

Linda S. Morrison, Admin Asst
Office of the District Attorney
Alapaha Judicial Circuit, Clinch County
Clinch County Courthouse

3/5/2008

Hyde, Richard

From: Cathy Helms [chelms@pacga.org]
Sent: Tuesday, January 29, 2008 5:09 PM
To: Hyde, Richard
Subject: Re: Fwd: CONFIDENTIAL

Lord, I certainly hope so. He still badgers John Davis (DOC probation) about preparing orders for him to release some guy or another from jail or detention center. John won't do them any more and actually requested a transfer to the Lakeland office to get away from him. It makes things awfully hard on those of us merely trying to see that justice is done.

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3/5/2008

IOCLR 1245