

HOW TO HANDLE JUDGES BEHAVING BADLY

WHAT LAWYERS NEED TO KNOW ABOUT JUDICIAL DISCIPLINE

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I. HISTORY AND PURPOSE OF THE JUDICIAL QUALIFICATIONS COMMISSION

The Commission is an independent constitutional agency established in Article V, Section 12 of the Florida Constitution.

A. Before the establishment of the Judicial Qualifications Commission (J.Q.C.), there was no mechanism to directly address judicial misconduct

1. The only methods to deal with a judge acting improperly were through impeachment and disqualification, neither of which were of much help to lawyers dealing with judges whose conduct was questionable.

a. Impeachment was of limited value

1. It applied to only Circuit Judges and Supreme Court Justices

a. The Governor had the authority to remove County Judges

2. Since the Legislature was the forum the process was political and could not address concerns promptly

a. Disqualification was case specific

1. Primarily focused on relationship of the judge with the parties or attorneys.

B. Despite the sentiment of the judiciary the present J.Q.C. process provides

1. Protection for the judiciary and the public.

2. Consistency of results.

3. A reasoned discussion of ethical constraints on judges.

C. Jurisdiction of J.Q.C.

1. The Commission is vested with jurisdiction to investigate conduct of judges demonstrates a present unfitness to hold office or discipline.

2. If the J.Q.C. determines that the judge's misconduct is inappropriate it makes recommendations of discipline or removal to the Supreme Court.

D. The purpose of judicial discipline is not to punish judges, rather it is designed to determine the fitness of an individual to hold judicial office.

1. The J.Q.C. serves as both a sword and a shield for judges.
 - a. "Protect public From Bad Judges and Good judges from themselves."
2. There is no individual right to discipline.

E. Judicial Conduct is governed by the Code of Judicial Conduct

1. The Preamble of the Code states that the Code is designed to provide guidance to judges' conduct and are rules of reason.
 - a. The Code and the disciplinary process are not to be used for advantage in litigation.
 - b. Judges are governed at all times by the Code.
2. The J.Q.C. does not provide advisory opinions to judges. The Supreme Court has established the Judicial Ethics Advisory Committee to fulfill that function.
 - a. The J.E.A.C. Opinions are not binding on the J.Q.C., but are persuasive authority.
 - b. The searchable database of opinions are found at the Sixth Judicial Circuit website.

F. Judge Wolf's Three Part Inquiry to determine whether judicial conduct is appropriate:

1. Can I tell my mother?
2. How will I feel if it appears on front page of Miami Herald?
3. Golden Rule: Don't do anything to anyone that you wouldn't want them do to you.

In re Maxwell, 994 So.2d 974 (Fla. 2008):

"A judge has an absolute obligation to 'act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary'", citing Canon 2A. "This provision is not an aspirational principal but a clear and unequivocal mandate."

II. STRUCTURE OF THE J.Q.C.

A. 15 members

1. 6 judges - 2 from each judicial conference
2. 4 Florida Bar Members, chosen by Board of Governors

3. 5 lay people, chosen by Governor.
 - a. Lay members can not have been either member of the Florida Bar or a judge.

B. The Commission is divided into two separate Panels

1. Investigative panel
 - a. 4 judges
 - b. 2 members of the Florida Bar
 - c. 3 lay people
2. Hearing Panel
 - a. 2 judges
 - b. 2 members of the Florida Bar
 - c. 2 lay people

III. THE PROCESS

A. Investigative Panel

1. The purpose of this Panel is to receive and investigate complaints
 - a. Factual information not obviously unfounded or frivolous
 - b. Individual complaint made under oath.
 - c. Most active areas:
 1. Domestic Relations
 2. Criminal
 3. Foreclosures
 4. Victims of Crime
2. The Florida Constitution grants the J.Q.C. access "to all information from all executive, legislative and judicial agencies, including grand juries, subject to the rules of the commission." Art. V. Sec. 12(a)(5).
3. The inquiry is confidential unless and until probable cause is found by the Investigative Panel.
 - a. Rule 2.420(c)(3), Rules of Jud. Administration. Also *Media Convergence v. Chief Judge* 13th, 840 So.2d 1008 (Fla. 2003)
 1. Also the J.Q.C. is not subject to public records.
 - b. The judge is not initially contacted, contrary to the practice of The Florida Bar at this stage.

c. The confidentiality of complaints is constitutional.
Landmark Communications v. Virginia holds that confidentiality:

1. Encourages filing of complaints and the willing participation of witnesses
2. It protects judges from publication of frivolous charges.
 - a. The J.Q.C. receives more than 600 complaints a year, but 90% are dismissed due to lack of jurisdiction (concerns about decisions) or are factually unsubstantiated.
3. Confidentiality maintains confidence in judiciary by avoiding publication of baseless charges.
4. Allows flexibility in negotiation and J.Q.C. flexibility to accomplish its purpose, for example, voluntary retirement.

4. Disciplinary proceedings and criminal prosecution, differences
Lack essential characteristics of criminal because object is not to inflict punishment, but rather to determine fitness to hold judicial office. Some of the differences are

- a. The Investigative Panel may consider the cumulative effect of a number of small incidents.
- b. *Res judicata* and collateral estoppel do not apply.
- c. There is no statute of limitations; however, the passage of time can mitigate the seriousness of the allegation.
- d. The J.Q.C. has jurisdiction over conduct prior to taking judicial office.
- e. The Commentary to Canon 2A makes perception of impropriety nearly as serious as reality.

5. If the Investigative Panel receives a complaint that is well founded but is only relatively minor issue, it can a Notice of Required Appearance under Rule 6(c) of the J.Q.C. Rules. As stated, this is a required appearance and is an opportunity for the Investigative Panel to share its concerns with the judge. Absent an inappropriate response by the judge, the appearance will conclude the process with the understanding that future misconduct will be treated more seriously.

6. When the Investigative Panel receives a complaint that appears to state allegations that merit inquiry it will undertake an investigation.

If the complaint or investigation creates a concern that the judge engaged in misconduct, it will issue a Notice of Investigation pursuant to Rule 6(b) of the J.Q.C. Rules. That Notice will:

- a. Inform the judge of the general nature of the subject matter of the investigation.
- b. The judge will be given an opportunity to make a statement, either personally or in writing, explaining, refuting or admitting the conduct.
- c. The judge does not receive discovery nor to present oral testimony or evidence. The Panel may receive documentary evidence.
- d. These hearings ordinarily take place in a central location, such as Tampa or Orlando.

7. There are typically three possible outcomes:

- a. The Investigative Panel may determine that the complaint should be dismissed. Dismissal may be due to:
 1. That the allegations were not true, or if true, the judge's actions were reasonable given the context.
 2. That the judge appreciated the J.Q.C.'s concerns and the Panel was satisfied that the judge would be governed by that appreciation, requiring no further action.
- b. The judge could receive a private reprimand.
- c. The Investigative Panel could find probable cause to file formal charges.

8. Upon a finding of probable cause by the Investigative Panel, all *further* proceedings become public. The complaint and the proceedings of the Investigative Panel remain confidential.

- a. However, the Investigative Panel retains the jurisdiction to negotiate a settlement with the judge until the trial of the matter.

B. Hearing panel

1. The trial is conducted by the Hearing Panel.
2. The Rules of Civil Procedure are in effect to the extent that they are not inconsistent with the J.Q.C. Rules
3. Generally outside counsel is hired to represent the J.Q.C.

4. Although one member presides as Chair, all rulings are subject to the assent of the entire Panel.
5. In addition to questioning by counsel, the members of the Hearing Panel may also ask questions.
6. All legal evidence is admissible, that is evidence that is trustworthy and relevant.
7. The Standard of Proof is clear and convincing evidence.

8. The Hearing Panel deliberates and determines whether the allegations have been proven. Then it recommends the appropriate sanction. These Findings Of Facts and Recommended Discipline is then conveyed to the Supreme Court for their decision.

C. Supreme Court Review

1. Hearing Panel files the Findings and Recommendations with the Court.
2. The Supreme Court then issues an Order to Show Cause to the Judge giving the judge and opportunity to response to the Hearing Panels Findings and Recommendations.
3. The Court may require oral argument
4. The Court can accept, reject or modify, the J.Q.C.'s recommendations, but in the ordinary course gives great deference to the J.Q.C.

VI. REVIEW OF RECENT CASES.

A. Cases resulting in removal.

1. *In re Garrett*, 613 So. 2d 463 (Fla. 1993), the court held that knowingly shoplifting requires removal from office.
2. *In re Hapner*, 718 So.2d 785 (Fla. 1998), the court held judge's removal from office warranted for neglecting clients while running for office, giving misleading testimony in domestic violence proceeding, and failing to comply with court order in dissolution proceeding.
3. *In re Ford-Kaus*, 730 So. 2d 269 (Fla. 1999), the court said clear and convincing evidence supported removal from office when as lawyer running for office, she lied to clients about status of their appellate brief, told them she had written the brief when it was written by another lawyer, falsified time records, and intentionally inserted a false certification as to the certificate of service.

4. *In re Graziano*, 696 So. 2d 744 (Fla. 1997), the court held that judge's involvement in hiring and subsequent efforts to obtain raises and promotions for close personal friend and business associate, her entry into another judge's courtroom during an evidentiary hearing and demanding the court reporter move her car from judicial assistant's parking spot, and use of threatening or insulting language when dealing with court employees warrants removal from judicial office, in view of earlier misconduct warranting public reprimand.
5. *In re Johnson*, 692 So. 2d 168 (Fla. 1997), the court held judge's knowing and repeated acts of falsifying public records by backdating pleas accepted in DUI cases warranted removal even though had unblemished judicial record.
6. *In re Shea*, 759 So. 2d 631 (Fla. 2000), the court upheld removal from office based on judge's improper contact with two attorneys and intimidating them into withdrawing from client's case.
7. *In re McMillan*, 797 So. 2d 560 (Fla. 2001), the court upheld removal for improper campaign activity and improperly presiding over bond hearing where the judge had been witness to traffic offense.
8. *In re Henson*, 913 So. 2d 579 (Fla. 2005), the court accepted recommendation of removal based on findings after trial that he practiced law after becoming a judge and advised a client to flee jurisdiction while criminal charges pending.
9. *In re Renke*, 933 So. 2d 482 (Fla. 2006), the court held removal was appropriate for campaign misrepresentation and receipt of improper campaign contribution from judge's father.
10. *In re Sloop*, 946 So. 2d 1046 (Fla. 2006), the court ordered removal (JQC had recommended suspension and fine) for continuing to hold people in jail for failure to appear for traffic fine after finding out people had received notice to appear in the wrong courtroom.
11. *In re Turner*, 76 So.3d 898 (Fla. 2011). The Hearing Panel found that Judge Turner had violated campaign financing laws for failing to disclose a loan from his mother. That loan led to her condo being foreclosed. He entered an appearance on her behalf and acted as her lawyer, resulting in another canon violation. He was also found to have taken an unhealthy interest in a clerk. The Supreme Court held that removal was the appropriate sanction.

B. Case resulting in suspension and/or fine.

1. *In re Wilson*, 750 So. 2d 631 (Fla. 1999), the court upheld a 10-day suspension where judge concealed her knowledge concerning a petit theft. Judge was also required to undergo alcohol counseling program.
2. *In re Holloway*, 832 So. 2d 716 (Fla. 2002), the court upheld a 30 day suspension for inappropriate remarks and behavior in front of other judges as well as giving misleading testimony at deposition.
3. *In re Rodriguez*, 829 So. 2d 857 (Fla. 2002), the court upheld a 45 day suspension, large fine and public reprimand for acceptance of \$200,000 loan during campaign and failure to properly report the loan.
4. *In re Kinsey*, 842 So. 2d 77 (Fla. 2003), the court upheld \$50,000 fine for various campaign violations.
5. *In re Diaz*, 908 So. 2d 334 (Fla. 2005), the court accepted stipulation resulting in reprimand, 14 day suspension without pay and \$15,000 fine in sending anonymous e-mail to another county court judge which could be construed as implied threat of group retaliation for judge reporting illegal immigrants to federal authorities.
6. *In re Pando*, 903 So. 2d 902 (Fla. 2005), the court accepted stipulation including reprimand and \$25,000 fine for improperly accepting loan from relative of \$25,000 and by making false reports and making misleading statements to JQC in violation of campaign finance laws and Canons 1, 2, and 7 of the Code of Judicial Conduct.
7. *In re Baker*, 22 So.3d 538 (Fla. 2009) (Table), the court accepted stipulation including a public reprimand and a fine of \$25,000 for campaign materials that pointed out that her opponent's supporters included criminal defense lawyers, concluding with the phrase, "What are they trying to buy?"
8. *In re Colodny*, 51 So.3d 1030 (Fla. 2010), the court accepted a stipulation including a reprimand and \$5,000 fine for improperly characterizing a loan from her father as campaign contributions in excess of the \$500 limit and failing to adequately disclosing the loan on required disclosure forms.

C. Cases resulting in public reprimand.

1. *In re Richardson*, 760 So. 2d 932 (Fla. 2000), the court held using inappropriate comments designed to get favored treatment after arrest on solicitation of prostitution justified public reprimand. A jury had found the judge not guilty of the criminal charge in a trial.
2. *In re Haymans*, 767 So. 2d 1173 (Fla. 2000), the court held pattern of rudeness and disrespect towards lawyers, parties, witnesses, and court personnel warranted suspension.
3. *In re Newton*, 758 So. 2d 107 (Fla. 2000), the court held abusive, demeaning, and sarcastic remarks to litigants, witnesses, and attorneys warranted public reprimand.
4. *In re Luzzo*, 756 So. 2d 76 (Fla. 2000), the court held acceptance of free professional baseball tickets from law firm appearing in front of judge deserved public reprimand.
5. *In re Schwartz*, 755 So. 2d 110 (Fla. 2000), the court held discourteous and abusive behavior during oral argument mandated public reprimand. The court noted that judge had repeated warnings from JQC regarding his conduct.
6. *In re Cope*, 848 So. 2d 301 (Fla. 2003), the court held intoxication and inappropriate sexual advances at out of state judicial conference warranted public reprimand.
7. *In re Andrews*, 875 So. 2d 441 (Fla. 2004), the court held inappropriate statements to reporter regarding party in case over which judge was presiding which evidenced bias against party warranted public reprimand.
8. *In re Angel*, 867 So. 2d 379 (Fla. 2004), the court held engagement in prohibited partisan politics during election campaign for judgeship warranted public reprimand.
9. *In re Schapiro*, 845 So. 2d 170 (Fla. 2003), the court held inappropriate behavior in courtroom unbecoming of member of the judiciary warranted public reprimand and psychological counseling.
10. *In re Allawas*, 906 So. 2d 1052 (Fla. 2005), the court held based on stipulation that public reprimand for delay in ruling on cases was appropriate.
11. *In re Maloney*, 916 So. 2d 786 (Fla. 2005), the court upheld stipulated reprimand based on misuse of office by interceding to have

son's friend released from jail. For similar fact, see *In re Maxwell*. 994 So. 2d 974 (Fla. 2008).

12. *In re Adams*, 932 So. 2d 1025 (Fla. 2006), the court upheld JQC recommendation of reprimand for county judge having sex with attorney appearing before him. No evidence affected any case or action of the judge.

13. *In re Downey*, 937 So. 2d 643 (Fla. 2006), the court accepted stipulation of reprimand and judge's assurance not to run again by viewing pornography and sexual harassment where the judge had prior clear record and would only serve 8 more months. Judge also required to sign letter of apology to other judges and the woman he harassed.

14. *In re Woodard*, 919 So. 2d 389 (Fla. 2006), the court accepted stipulated reprimand and anger management for campaign violations, discourteous behavior, and setting inappropriately high bonds.

15. *In re Aleman*, 995 So.2d 395 (Fla. 2008), the court upheld a recommendation of a reprimand where the judge held the threat of contempt over the defense lawyers in a contentious trial in which the lawyers repeatedly sought the judge's disqualification.

16. *In re Maxwell*, 994 So.2d 974 (Fla. 2008), the court accepted a stipulation for a reprimand where the judge had released the sister of a former law partner from jail without a first appearance and without contacting the State, on a battery charge that occurred while she was on felony probation.

17. *In re Bell*, 23 So. 3d 81 (Fla. 2009), the court accepted stipulation for judge abusing judicial power by ordering arrest of wife, a domestic violence victim, based on probable cause affidavit for husband where neither police or husband sought arrest.

18. *In re Henderson*, 22 So. 3d 58 (Fla. 2009), the court accepted stipulation for judge creating the appearance of impropriety by having ongoing relationship with person with extensive criminal history.

19. *In re Dempsey*, 29 So.3d 1030 (Fla. 2010) the court accepted a stipulation for an inadequate disclosure on campaign materials.

20. *In re Barnes*, 2 So. 3d 166 (Fla. 2009), the court upheld judicial qualifications recommendation of reprimand where judge improperly acted outside of judicial function by criticizing fellow sitting judges.

Judge failed to follow proper channels for addressing alleged misconduct of other judges.

21. *In re Allen*, 998 So. 2d 557 (Fla. 2008), the court upheld reprimand where judge's concurring opinion and personal attack on a fellow judge was motivated by ill will.

22. *In re Eriksson*, 36 So.3d 580 (Fla. 2010), the Hearing Panel recommended a public reprimand for revoking the bond of a defendant who sought to file a motion to disqualify the judge and for failing to accord pro se citizens seeking domestic violence injunctions an appropriate hearing.

23. *In re Singbush*, 93 So.3d 188 (Fla. 2012). The Investigative Panel has reached a stipulation with Judge Singbush for a public reprimand and a public apology for habitual tardiness to court.

24. *In re Nelson*, 95 So.3d 122 (Fla. 2012). Judge Nelson received a public reprimand for driving under the influence.

25. *In re Cohen*, 99 So.3d 926 (Fla. 2012). Judge Cohen inappropriately called his wife as a witness in response to a Motion to Disqualify, based on the attorney opposing his wife in her failed judicial election bid. The Supreme Court imposed a public reprimand.

26. *In re Shea*, 110 So.3d 414 (Fla 2013). Judge Shea received a public reprimand for rude behavior towards litigants and lawyers.

D. Cases resulting in admonition.

1. *In re Baker*, 813 So. 2d 36 (Fla. 2002), the court upheld admonition for non-malicious ex parte communication with independent expert.

E. Pending Public Cases.

1. *In re Cohen*, SC12-2244. Judge Cohen commented upon a pending case in a public forum and publically denigrated law enforcement and the State Attorney's Office on the record in criminal cases. This matter is before the Supreme Court upon a Stipulation for a public reprimand.

2. *In re Hawkins*, SC12-2495. Judge Hawkins was tried before the Hearing Panel upon allegations of running a business out of her judicial chambers, intimidation of attorneys appearing before her, and destruction of evidence during the J.Q.C. proceedings.

3. *In re Watson*, SC13-1333. Judge Watson was subject to a Florida Bar complaint for which probable cause was found for improper settlement and distribution of attorneys fees. The matter is pending before the Hearing Panel.

F. Cases in which resignation has occurred after the filing of Formal Charges.

1. *In re Blackstone*, 776 So.2d 275 (Fla. 2000) (Table). It was alleged that the Judge had improper ex parte contact concerning juvenile defendants.

2. *In re DeLaroche*, 954 So.2d 1155 (Fla. 2007) (Table). It was alleged that Judge DeLaroche dismissed a series of traffic citations for family and friends.

3. *In re Hauser*, 969 So.2d 1013 (Fla. 2007) (Table). Judge Hauser was alleged to have made an inappropriate sexual advance toward a law student he teaching and exhibiting erratic and abusive behavior on the bench. The Commission agreed to dismiss case upon his agreement to neither serve as a senior judge nor seek future judicial office.

4. *In re Stringer*, 12 So.3d 752 (Fla. 2009) (Table). It was alleged that Judge Stringer entered into a relationship with an exotic dancer. He set up bank accounts to shield money from her creditors. He later pled to a misdemeanor in federal court and was disbarred for 5 years. The Commission agreed to dismiss case upon his agreement to neither serve as a senior judge nor seek future judicial office.

5. *In re Gardiner*, 37 So.3d 847 (Fla. 2010) (Table). While presiding over a death penalty case, Judge Gardiner entered into a relationship with the prosecutor. While the case was pending they exchanged 1450 phone calls and text messages. The Commission agreed to dismiss case upon his agreement to neither serve as a senior judge nor seek future judicial office.

6. *In re Eriksson*, 36 So.3d 580 (Fla. 2010) (Table). Judge Eriksson, in an effort to collect unpaid court costs, imprisoned defendants without due process or regard to ability to pay. His decisions were routinely overturned on appellate review; however he persisted in using the same procedure. The Commission agreed to dismiss case upon his agreement to neither serve as a senior judge nor seek future judicial office.

7. *In re Hawkes*, 81 So.3d 414 (Fla. 2012) (Table). Judge Hawkes, in association with the building of the 1st DCA was alleged to have attempted to have a vendor supply him with a free trip, used his law clerk to assist his son with a brief before the Supreme Court and to have acted intemperately towards court personnel.

8. *In re Pando*, 109 So.3d 781 (Fla. 2013) (Table). Judge Pando, a county judge, wrote to the Division of Elections on judicial stationery on behalf of a friend who inadvertently dissolved a corporation. Investigation revealed that the friend, as well as others, made improper financial contributions to her campaign.