

**IN THE SUPREME COURT OF THE
STATE OF FLORIDA**

INQUIRY CONCERNING A JUDGE,
THE HONORABLE JOHN B. FLYNN
JQC NO. 2023-006 & 2023-067

SC23- 1435

**AMENDED FINDINGS AND RECOMMENDATION OF
DISCIPLINE**

The Florida Judicial Qualifications Commission (“JQC” or the “Commission”) served a Notice of Investigation on Polk County Judge John Flynn, pursuant to Rule 6(b) of the Florida Judicial Qualification Commission Rules.

After an inquiry which included sworn testimony by Judge Flynn before the Investigative Panel of the JQC, the Commission has now entered into an Amended Stipulation for Discipline with Judge Flynn in which he admits that his conduct as alleged in the Amended Notice of Investigation and discussed herein was inappropriate and should not have occurred. He further admits and acknowledges that his conduct violated Canons 7A(3)(a), 7A(3)(b), 7A(3)(c), and 7A(3)(e)(i) of the Code of Judicial Conduct.

These amended proceedings are filed pursuant to the Court’s order of March 21, 2024, in which it declined the initial Stipulation presented by the parties and directed the parties to either submit a new Stipulation or proceed in another fashion consistent with the JQC’s rules. As part of this new Stipulation, the Commission has agreed to dismiss Count Two from the Notice of Formal Charges. The nominal

reduction in the penalty from 30 days suspension to 25 days suspension reflects the Commission's determination that the misconduct reflected in Count One is very serious. The Commission credits Judge Flynn for continuing to acknowledge that fact, and his for acceptance of responsibility.

Factual Findings

The Commission's investigation found that while campaigning for Polk County Judge in 2022, John B. Flynn ("Judge Flynn" or "Respondent") made comments on social media, and used advertisements containing statements evincing an inappropriate bias in favor of law enforcement agencies or against people accused of crimes. Specifically, the Commission finds clear and convincing evidence that Judge Flynn's campaign made repeated use of words and phrases signaling his support for law enforcement agencies in a way that could cast doubt on his impartiality.

The inappropriate comments and statements, which Judge Flynn acknowledges he either personally wrote or approved the use of, include:

- "Support Law Enforcement";
- "Support our law enforcement agencies";
- "#supportlawenforcement";
- "Criminals won't be happy to see me on the bench[.] I am tough if someone is found guilty the punishment should sting enough for the

person to learn criminal behavior won't be tolerated. I hope that is helpful because that is the truth.”;

- “...I am not afraid of hurting peoples [sic] feelings if I was this would be the wrong job, I will sentence based on history because that is the best indication of future behavior and if they have a history Grady's Hotel (aka the jail) is open 24*7 365 days a year.”

Statements such as these are clearly inconsistent with the impartiality, integrity, and independence of the judiciary. There are few campaign tactics more corrosive to the integrity and impartiality of the judicial system than a candidate broadcasting his or her support for one party or another. There is little discernible difference between statements of support such as these, and a judicial candidate openly advertising that he or she “Supports Personal Injury Lawyers,” or “Supports Insurance Defense.” Indeed, the only difference might be that the stakes are greatly increased in criminal cases where a person's liberty is at stake.

The Commission is aware that Judge Flynn also made comments to the effect that he would “follow the Constitution and the rule of law,” and that “Everyone will get a fair trial and be treated with respect...”, and “I will adhere to the rule of law.” Given, however, that these phrases were interspersed throughout his campaign theme of “Support Law Enforcement” and “Criminals won't like to see me on the

bench,” it is difficult to escape the conclusion that the statements about fair treatment were mere veneer.

Take for example Judge Flynn’s statement that “Criminals won’t be happy to see me on the bench[.] I am tough if someone is found guilty the punishments should sting enough for the person to learn criminal behavior won’t be tolerated. I hope that is helpful because it is the truth[.]” When asked to define a “criminal”, Judge Flynn stated it was a person who had been convicted of a crime. Pressed, Judge Flynn agreed that even a convicted person (a “criminal”) is entitled to a fair and impartial arbiter to weigh and impose a just sentence. What about a person who was previously convicted, but now stands accused of a new crime? He or she is a “criminal” by his definition, but is also, in fact, clothed in the presumption of innocence- entitled to nothing less than the cold neutrality of an impartial arbiter. See State ex rel. Davis v. Parks, 141 Fla. 516, 519-20, 194 So. 613, 615 (1939) (“This Court is committed to the doctrine that every litigant is entitled to nothing less than the cold neutrality of an impartial judge...”). It is impossible to reconcile the absolute imperative of judicial neutrality and impartiality with Judge Flynn’s inappropriate campaign statements.

Judge Flynn’s statements espousing support for law enforcement did not just occur in a vacuum. His support of and by law enforcement was a theme repeated in his campaign. For example, his campaign also advertised the endorsement of Polk

County Sheriff Grady Judd, and highlighted Judge Flynn's time as an Assistant State Attorney from 2002 to 2005.¹ In fact, a citizen questioned the Respondent about whether or not his endorsement by the Sheriff showed a bias. While the JEAC has opined that it is acceptable for judicial candidates to obtain and use the endorsements of a sheriff,² the Commission believes that such questions should have reminded candidate Flynn about his ethical responsibility to avoid suggesting a bias.

Collateral Impacts

Further illustrating the effects of damage caused by his campaign comments, Judge Flynn acknowledged that upon his being sworn into office, the Chief Judge and court administration had to make adjustments to the normal rotation of judges in order to avoid assigning him to a criminal docket.

Recommendation of Discipline

The Commission finds, and Judge Flynn admits and agrees, that the conduct alleged the Notice of Formal Charges occurred, is supported by clear and convincing evidence, and violated Canons 7A(3)(a), 7A(3)(b), 7A(3)(c), 7A(3)(e)(i), and 7C(3) of the Code of Judicial Conduct. "Where a judge admits to wrongdoing and the

¹The fact that many if not all of candidate Flynn's advertisements are silent about his more than 16 years of experience as a criminal defense attorney, further solidifies the Commission's belief that he intended to convey the impression that he was a pro-law enforcement candidate.

² The Judicial Ethics Advisory Committee (JEAC) has consistently advised that candidates may accept and use the endorsement of State Attorneys, sheriffs, and police chiefs, but has cautioned candidates to not convey the impression that he or she will not be independent or impartial in carrying out the duties of office if elected. See JEAC Opinion 2014-11.

JQC's findings are undisputed, this Court will ordinarily conclude that the JQC's findings are supported by clear and convincing evidence.” In re Recksiedler, 161 So. 3d 398, 401 (Fla. 2015).

In terms of campaign misconduct, the Commission and this Court have repeatedly seen judicial candidates attempt to align themselves with law enforcement. Examples of this corrosive strategy include Inquiry Concerning a Judge re: Dana Santino, 257 So.3d 25 (Fla. 2018), Inquiry Concerning a Judge re Patricia Kinsey, 842 So.2d 77 (Fla. 2003), and In re McMillan, 797 So. 2d 560 (Fla. 2001). In McMillan, the Court removed a judge for violating the “fundamental principles of judicial ethics” when he explicitly and implicitly stated that he would show favor to law enforcement and made false and disparaging comments about his opponent and the local court system in his race for the judgeship.

Judge Kinsey was publicly reprimanded and fined \$50,000 for campaigning on explicit statements that she would “help law enforcement by putting criminals where they belong- behind bars,” in addition to numerous other comments implying she would help law enforcement. The Court noted, “Judge Kinsey's campaign materials gave the misleading impression that a judge's role in criminal proceedings is to combat crime and support police officers as opposed to being an impartial tribunal where justice is dispensed without favor or bias.” In re Kinsey, 842 So. 2d 77, 91 (Fla. 2003).

Most recently, Judge Santino was removed after she made personal attacks on her opponent's character and made demeaning private practice criminal defense attorneys the central theme of her entire campaign. She too, implied she would favor the State in criminal trials.

Here, Judge Flynn did not make explicit promises or pledges that he would "help" law enforcement like Judge Kinsey, or "go to bat [for them]" like Judge McMillan. Also, unlike McMillan, Judge Flynn did not make attacking the local court system part of his campaign. And unlike Judge Santino, the Respondent here did not make personal attacks on his opponent's character and profession.

Nevertheless, the Commission believes that Judge Flynn's comments, although perhaps a more tepid version of this corrosive campaign tactic, are still clearly still inconsistent with the impartiality, integrity, and independence of the judiciary and deserving of sanction.

Additionally, but for the fact that the Circuit took proactive steps to avoid the issue of Judge Flynn presiding over criminal cases, this recommendation would have included a period of recusal during which he would not be presiding over criminal matters.

Mitigation

By way of mitigation, the Commission notes that Judge Flynn immediately accepted responsibility for his conduct and cooperated with the Investigative Panel

of the Commission. He expressed regret that his actions have tarnished the judiciary and created the appearance of bias. Judge Flynn is brand new to the bench and has no disciplinary history with The Florida Bar. Indeed, the Respondent previously served on a Bar Grievance Committee—a fact which the Commission believes puts the Respondent into the ‘should have known better’ category. Following the rules and fair play are concepts ingrained in lawyers and judges to protect the integrity of the judicial system.

Judge Flynn contends that he did not intend to show that he was pro law enforcement or convey any bias. However, whether he intentionally aligned himself with law enforcement, or piece-by-piece constructed an image evincing a bias without seeing the whole picture, the Commission finds that his conduct was clearly inconsistent with the impartiality, integrity, and independence of the judiciary, and worthy of public discipline. Indeed, lack of intent only somewhat ameliorates the severity of the transgression because the public harm and loss of confidence caused by the act is the same.

It is the Commission’s hope that a public reprimand, delivered by the Court in a public setting, will serve as a visible warning that misconduct in judicial campaigns will not be tolerated. There may come a time when Judge Flynn is required to preside over criminal cases full time. While the Commission has been advised that that Judge Flynn has presided over at least one criminal jury trial, as

well as conducted first appearance and arraignment dockets without objection, it is the Commission's belief that a suspension and accompanying loss of pay will serve as a lasting reminder to Judge Flynn that his obligation to maintain the integrity and impartiality of the judiciary is not aspirational, but a constitutional imperative.

The Judicial Qualifications Commission, therefore, finds and recommends that the interests of justice, public welfare, and sound judicial administration are best served by requiring Judge Flynn to receive a public reprimand and be suspended for 25 days without pay.

Dated this 10th day of April, 2024.

**INVESTIGATIVE PANEL OF
THE FLORIDA JUDICIAL
QUALIFICATIONS
COMMISSION**

By: /s/ Gregory W. Coleman
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