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James R. Wolf*

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JUDICIAL DISCIPLINE IN FLORIDA: THE COST OF MISCONDUCT

HONORABLE JAMES R. WOLF*

* Judge, First District Court of Appeal, 1990–present; member, Judicial Qualifications Commission, 1999–present. Rutgers University, A.B. (Political Science), 1972; University of Miami, J.D., 1975; University of Virginia, LL.M, 2001. Porsche L. Shantz assisted in the writing of this article.

I. INTRODUCTION

In several recent cases involving judicial misconduct in Florida, a few of the justices of the Supreme Court of Florida have openly questioned the appropriateness of the disciplinary recommendations made by the Judicial Qualifications Commission (JQC).[1] In fact, in several recent election misconduct cases, the supreme court has even rejected the stipulation entered into by the JQC and the accused judge, presumably because the recommended discipline was too lenient.[2]

1. *See, e.g., In re* Diaz, 908 So. 2d 334, 338 (Fla. 2005) (Cantero, J., dissenting). In *Diaz*, Justice Cantero expressed, in a dissenting opinion joined in by Chief Justice Pariente, that the penalty recommended by the JQC and stipulated to by the judge was too harsh. *Id.* Justice Cantero specifically wrote that "[e]ven assuming that Judge Diaz's conduct violated a specific canon, the recommended discipline—a $15,000 fine, a two-week suspension, a public apology, *and* a public reprimand—is much too harsh . . . . I would eliminate all but a reprimand issued by opinion." *Id.* at 341. In *In re Kinsey*, 842 So. 2d 77 (Fla. 2003), *cert. denied*, 540 U.S. 825 (2003), the reprimand and large fine recommended by the JQC were approved in an election misconduct case. *Id.* at 92. Chief Justice Anstead and Justice Pariente concurred with approving the recommended discipline, but expressed concern about the appropriateness of the penalty. *See id.* at 93–5 (Anstead, C.J., specially concurring and Pariente, J., concurring). Justice Lewis also concurred in the finding of a violation, but stated his belief that enormous fines, especially in election misconduct cases, are inadequate. *Id.* at 99 (Lewis, J., concurring in part and dissenting in part). He argued that when the conduct is sufficiently egregious to support such a fine, removal is the appropriate discipline. *Id.* He expressed this view again in a later election misconduct case involving the imposition of a large fine. *In re* Pando, 903 So. 2d 902, 904–05 (Fla. 2005) (Lewis, J., specially concurring) (citing *Kinsey*, 842 So. 2d at 99).

2. *See, e.g., In re* Renke, No. SC03-1846 (Fla. July 8, 2004) (order rejecting stipulation as to "the merits of the issues of misconduct as well as the appropriate discipline"); *In re*

The comments made by the justices in these several cases raise the following questions concerning the issue of discipline in judicial misconduct cases in this state: 1) what is the purpose of punishment for judicial misconduct; 2) are the penalties imposed for judicial misconduct in this state comparatively fair; 3) what factors should be considered in determining the appropriate punishment for judicial misconduct; 4) when is removal from office appropriate as punishment for judicial misconduct; 5) when should the punishment imposed for judicial misconduct be suspension and/or fine; and 6) how should judicial misconduct cases involving election violations be treated in terms of discipline? These questions are not unique to Florida, as evidenced by the following remarks made in the introduction to a recent study of state judicial discipline sanctions:

> After determining that a judge has committed misconduct, the state judicial conduct commission and supreme court must "address the more difficult task of determining an appropriate sanction." Decisions regarding sanctions have been described as "institutional and collective judgment calls," resting on an assessment of the individual facts of each case, as measured against the code of judicial conduct and the prior precedents. Choosing the proper sanction in judicial discipline proceedings "is an art, not a science, and turns on the facts of the case at bar."[3]

In an effort to find answers to these questions, this article will generally examine the conduct which exposes judges to discipline in this state, the penalties available for such misconduct, and the fairness of both the JQC's disciplinary recommendations and the penalties that have actually been imposed for such misconduct, a process that has never been undertaken in an organized fashion in Florida.

While a study of the seven canons of the *Florida Code of Judicial Conduct* will certainly reveal what behavior constitutes judicial misconduct warranting the imposition of discipline, such a study cannot provide an adequate framework for determining the fairness or equality of the penalties actually received by judges for their misconduct.[4] This is true because the canons set forth only broad categories of appropriate conduct for judges; they do not speak to the issue of punishment.[5] In fact, a particular violation of a canon

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Rodriguez, 829 So. 2d 857, 858 (Fla. 2002) (noting the supreme court's rejection of stipulation recommending public reprimand for judicial misconduct); *In re* McMillan, 797 So. 2d 560, 564 (Fla. 2001).

3. CYNTHIA GRAY, A STUDY OF STATE JUDICIAL DISCIPLINE SANCTIONS 1 (2002) (citations omitted).

4. *See* FLA. CODE JUD. CONDUCT.

5. *See id.*

may be very serious, while another violation of the same canon may not. In addition, a particular activity by a judge may constitute a violation of several canons.[6]

In order to study the comparative fairness of the penalties imposed for judicial misconduct in this state, it is necessary to identify particular categories of behavior warranting discipline as judicial misconduct. In this process, it is beneficial for analytical purposes to identify narrow categories of conduct and to create a large number of categories to ensure that the comparison of penalties is truly for like conduct. Creating numerous categories of misconduct also allows for the grouping of specific categories that may involve violations of several different canons, but which are all clearly related.[7] The utility of such a framework has been recognized by others who have engaged in similar efforts on a much grander scale.[8]

According to Gray:

> The question of the appropriate sanction in a judicial discipline case presents special challenges of fairness, consistency, and accountability because there is a wide range of possible judicial misconduct—from taking a bribe to accepting an award at a fund-raising dinner for a charity—and a wide range of possible sanctions—from informal adjustments and private reprimands to removal. The problem of making the sanction fit the misconduct is exacerbated in judicial discipline cases because most states have at most one or two formal cases a year, giving the disciplinary authorities little precedent to use as guidance, a "fortunate circumstance" in serious cases that nonetheless complicates the determination.[9]

In an effort to provide a procedural context for this discussion, this article will begin with an overview of the process of judicial discipline in Florida—including a discussion of the penalties currently available for judicial misconduct under the Florida Constitution, the factors used to determine the appropriate penalty in judicial misconduct proceedings, and the goal of punishment in such cases. A review of the specific canons governing judicial behavior in Florida follows, with emphasis on what conduct has been determined in the past to constitute violations of each provision. The article will then compare the penalties that have been imposed for judicial misconduct in Florida using the following categories of misconduct: 1) lacking judicial temperament; 2) failing to be impartial; 3) engaging in ex parte communica-

6. *See, e.g.*, *In re* LaMotte, 341 So. 2d 513, 515 (Fla. 1977).
7. *See id.* at 515–16.
8. *See, e.g.*, GRAY, *supra* note 3, at 1.
9. *Id.* at 1 (quoting *In re* Drury, 602 N.E.2d 1000, 1010 (Ind. 1992)).

tions; 4) violating recusal and disclosure requirements; 5) improperly communicating with the press; 6) failing to follow the law while conducting judicial duties; 7) inappropriately using contempt power; 8) misusing office for personal gain; 9) misusing office for the assistance of others; 10) abusing substances; 11) improperly receiving gifts; 12) engaging in improper sexual conduct; 13) engaging in improper behavior while practicing law; 14) violating criminal laws; 15) inordinately delaying ruling; 16) exhibiting a lack of candor during official proceedings; 17) failing to file required financial disclosure documents; 18) criticizing juries and other public officials; 19) using intimidation with other judges and parties; and 20) engaging in election misconduct.

Election misconduct, in addition to making misrepresentations during the campaign, includes: a) making inappropriate promises of performance in office; b) campaign finance and reporting misconduct; c) engaging in partisan politics; d) supporting another candidate for office; and e) directly soliciting support from attorneys. The penalties imposed for conduct falling into the last two of these categories have caused the most controversy. It is important to note that these categories do not purport to address every conceivable action which might violate one or more of the canons; these categories are structured using only that conduct which has already been determined to warrant judicial discipline in Florida.

II. PROCESS OF JUDICIAL DISCIPLINE IN FLORIDA

A. *Constitutional Framework*

Article V, section 12(a)(1) of the Florida Constitution gives the JQC the power to "recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct . . . demonstrates a present unfitness to hold office."[10] This section of the constitution also gives the JQC the authority to "recommend the discipline of a justice or judge whose conduct . . . warrants such discipline."[11] "The supreme court may accept, reject, or modify in whole or in part the . . . recommendations of the [JQC] . . . ."[12]

In cases involving a formal hearing and disputed facts, the supreme court "determine[s] if [the JQC's findings] are supported by clear and convincing evidence and reviews the recommendation of discipline to determine

10. FLA. CONST. art. V, § 12(a)(1). "The power of removal conferred by this section [is] both alternative and cumulative to the [legislature's] power of impeachment." FLA. CONST. art. V, § 12(d).

11. FLA. CONST. art. V, § 12(a)(1).

12. FLA. CONST. art. V, § 12(c)(1).

whether it should be approved."[13] The supreme court has stated that while it "gives the findings and recommendations of the JQC great weight, 'the ultimate power and responsibility in making a determination rests with [the] Court.'"[14] In cases where the judge and the JQC "enter into a stipulation, [the] Court independently reviews the stipulated facts on which the JQC's findings are based and also determines whether the recommended discipline is appropriate."[15]

B. *Available Penalties*

The penalties available for judicial misconduct, as set forth in the Florida Constitution, are "reprimand, fine, suspension with or without pay, or lawyer discipline."[16] A reprimand generally consists of the published opinion outlining the judge's misconduct, and, in most cases, also requires the judge's appearance before the Supreme Court of Florida for delivery of the reprimand during a public session.[17] The supreme court has also approved the limited use of what has been designated as an admonition, generally involving a published opinion describing the misconduct, but no required appearance by the offending judge before the supreme court, presumably for cases where less serious violations of the canons have occurred.[18] Lawyer discipline is available so the supreme court may determine whether the misconduct rises to the level which would require Bar disciplinary sanctions.[19] The JQC may also recommend, and the supreme court may impose, reason-

13. *In re* Diaz, 908 So. 2d 334, 336–37 (Fla. 2005) (quoting *In re* Andrews, 875 So. 2d 441, 442 (Fla. 2004)).

14. *In re* Kinsey, 842 So. 2d 77, 85 (Fla. 2003) (quoting *In re* Davey, 645 So. 2d 398, 404 (Fla. 1994)) (footnote omitted).

15. *In re* Gooding, 905 So. 2d 121, 122 (Fla. 2005) (citing *In re* Luzzo, 756 So. 2d 76, 79 (Fla. 2000)).

16. FLA. CONST. art. V, § 12(a)(1). Prior to the adoption of Senate Joint Resolution 978 by the voters in 1996, article V, section 12 of the Florida Constitution only allowed the supreme court to impose two sanctions against judges: reprimand or removal. FLA. CONST. art. V, § 12(a) (amended 1996); Fla. SJR 978 (1996) at 3787 (proposed FLA. CONST. art. V, § 12(a)).

17. *See, e.g.*, *In re* Frank, 753 So. 2d 1228, 1242 (Fla. 2000); *In re* Schwartz, 755 So. 2d 110, 113, 115 (Fla. 2000). In both *Frank* and *Schwartz*, the supreme court determined that all reprimands would require the judge's personal appearance before the court. *Frank*, 753 So. 2d at 1242; *Schwartz*, 755 So. 2d at 115. However, in *In re Allawas*, the supreme court determined, without any mention of the *Frank* case, that no personal appearance by the judge would be necessary for delivery of the public reprimand. *Allawas*, 906 So. 2d 1052, 1055 (Fla. 2005) (issuing public reprimand by publication).

18. *See In re* Baker, 813 So. 2d 36, 37–38 (Fla. 2002).

19. *See id.*

able conditions related to the misconduct, like alcohol abuse counseling,[20] stress management counseling,[21] or anger management programs.[22]

With the 1996 amendment allowing, among other penalties, suspension and fines,[23] it is not totally clear whether there is now a punishment element to judicial discipline or whether the new tools are simply intended to act as a deterrent to future wrongful conduct. After adoption of the constitutional amendment providing for the additional punishments, however, the supreme court reaffirmed its position that the primary purpose of judicial disciplinary proceedings is "to gauge a judge's fitness" for office.[24] Only once has the supreme court addressed the appropriate consideration for the imposition of fines, which will be discussed later in this article.[25]

The 1996 amendment to article V, section 12 of the Florida Constitution also complicates the analysis of equality of judicial discipline.[26] Do the pre-1996 cases provide a legitimate basis for comparison? It is impossible to know whether the JQC would have recommended either reprimand or removal had other options been available. Therefore, the major focus of this paper is on post-1996 cases.

C. *Factors Used to Determine Appropriate Penalty*

In determining the appropriate penalty in a particular case, the JQC and the Supreme Court of Florida evaluate factors other than the conduct itself. Both bodies weigh past behavior, judicial experience, and other extenuating circumstances in deciding what punishment is warranted.[27] Patterns of behavior are also significant.[28] A number of small incidents may be aggregated and considered in one proceeding.[29] The JQC initially may also consider motive, remorsefulness, repentance, and rehabilitation efforts in an individ-

20. *In re* Wilson, 750 So. 2d 631, 633 (Fla. 1999).
21. *In re* Trettis, 577 So. 2d 1312, 1313 (Fla. 1991).
22. *See In re* Schapiro, 845 So. 2d 170, 173, 174 (Fla. 2003).
23. FLA. CONST. art. V, § 12(a)(1).
24. *In re* McMillan, 797 So. 2d 560, 571 (Fla. 2001).
25. *See infra* Part IV.T.2.; *In re* Rodriguez, 829 So. 2d 857, 861 (Fla. 2002).
26. FLA. CONST. art. V, § 12 (amended 1996).
27. *See In re* Allawas, 906 So. 2d 1052, 1054–55 (Fla. 2005).
28. *See In re* Kelly, 238 So. 2d 565, 566 (Fla. 1970).
29. *In re* Shea, 759 So. 2d 631, 638 (Fla. 2000) (citing *Kelly*, 238 So. 2d at 566).

ual case.[30] A judge's candor or lack of candor also may affect disciplinary recommendations made by the JQC.[31]

Several state supreme courts have adopted specific checklists of non-exclusive criteria to be considered in determining the appropriate discipline for judicial misconduct.[32] The Supreme Court of Washington indicated it would consider the following non-exclusive factors:

> (a) whether the misconduct is an isolated instance or evidenced a pattern of conduct; (b) the nature, extent and frequency of occurrence of the acts of misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge's official capacity or in his private life; (e) whether the judge has acknowledged or recognized that the acts occurred; (f) whether the judge has evidenced an effort to change or modify his conduct; (g) the length of service on the bench; (h) whether there have been prior complaints about this judge; (i) the effect the misconduct has upon the integrity of and respect for the judiciary; and (j) the extent to which the judge exploited his position to satisfy his personal desires.[33]

Louisiana has adopted the same non-exclusive checklist.[34] Michigan has adopted a similar checklist.[35]

Several other states consider aggravating and mitigating circumstances which have been adopted by applicable case law.[36] Other states have adopted criteria by rule.[37] Several compilations regarding appropriate disciplinary measures have been attempted.[38]

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30. *See In re* Lantz, 402 So. 2d 1144, 1146–47 (Fla. 1981).

31. *See, e.g., In re* Wood, 720 So. 2d 506, 508–09 (Fla. 1998); *cf. In re* Davey, 645 So. 2d 398, 405–06 (Fla. 1994) (holding that "only where lack of candor [before JQC] is formally charged and proven may it be used as a basis for removal or reprimand" of a judge).

32. *See, e.g., In re* Chaisson, 549 So. 2d 259, 266 (La. 1989); *In re* Brown (*Christopher Brown*), 626 N.W.2d 403, 405 (Mich. 2001); *In re* Deming, 736 P.2d 639, 659 (Wash. 1987), *amended by* 744 P.2d 340 (Wash. 1987).

33. *Deming*, 736 P.2d at 659.

34. *Chaisson*, 549 So. 2d at 266 (quoting *Deming*, 736 P.2d at 659).

35. *See Christopher Brown*, 626 N.W.2d at 405 (quoting *In re* Brown, 625 N.W.2d 744, 745 (Mich. 1999)).

36. *See, e.g., In re* Seaman, 627 A.2d 106, 122–23 (N.J. 1993) (citations omitted).

37. *E.g.*, ARIZ. COMM'N ON JUD. CONDUCT R. 19 (2006).

38. *See* GRAY, *supra* note 3; Russell G. Donaldson, Annotation, *Removal or Discipline of State Judge for Neglect of, or Failure to Perform, Judicial Duties*, 87 A.L.R. 4TH 727 (1991).

D. *Goal of Judicial Discipline*

According to the Supreme Court of Florida, the primary purpose of disciplinary proceedings is not to inflict "punishment, but rather to gauge a judge's fitness to serve as an impartial judicial officer."[39] Courts in other states have made similar statements regarding the aim of judicial discipline.[40]

The Supreme Court of Florida determined that the most severe penalty, removal, is only appropriate when there is no doubt that the judge "intentionally committed serious and grievous wrongs."[41] The court later modified the standard for removal, stating that removal is required when "'the judge's conduct is fundamentally inconsistent with the responsibilities of judicial office.'"[42] Other states have adopted similar standards determining that removal is only appropriate for the most egregious conduct.[43] One former member of the JQC purportedly described the duty of the JQC as being the protection of the public from bad judges and protection of good judges from themselves.[44] Clearly, this was the duty of the JQC prior to 1996 when the only punishments available were reprimand and removal.

III. CANONS OF JUDICIAL CONDUCT

A. *Canon 1*

Florida Canon 1 defines a judge's responsibility to "[u]phold the [i]ntegrity and [i]ndependence of the [j]udiciary."[45] Conduct covered by Canon 1 of the Model Code includes "probity, fairness, honesty, uprightness, and soundness of character."[46] The courts in other jurisdictions have deter-

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39. *In re* McMillan, 797 So. 2d 560, 571 (Fla. 2001) (citing *In re* Kelly, 238 So. 2d 565, 569 (Fla. 1970)).

40. *See, e.g.*, *In re* JQC (*Vaughn*), 462 S.E.2d 728, 733 (Ga. 1995) (citing *In re* Nowell, 237 S.E.2d 246, 250 (N.C. 1977)).

41. *In re* Boyd, 308 So. 2d 13, 21 (Fla. 1975); *In re* LaMotte, 341 So. 2d 513, 517 (Fla. 1977).

42. *McMillan*, 797 So. 2d at 571 (quoting *In re* Graziano, 696 So. 2d 744, 753 (Fla. 1997)). The previous rule that required "[m]alafides, scienter or moral turpitude" has been modified. *In re* JQC (*Taunton*), 357 So. 2d 172, 180 (Fla. 1978) (citation omitted).

43. *In re* Cunningham (*Patrick Cunningham*), 442 N.E.2d 434, 436 (N.Y. 1982) (citing *In re* Steinberg v. State Comm'n on Judicial Conduct, 409 N.E.2d 1378, 1383–84 (N.Y. 1980)); *In re* Kaiser, 759 P.2d 392, 400–01 (Wash. 1988).

44. This observation was attributed to Judge John S. Rawls, a longtime member and later General Counsel of the JQC.

45. FLA. CODE JUD. CONDUCT Canon 1.

46. *See* Ann. MODEL CODE OF JUD. CONDUCT Canon 1 annot. (2004). Florida's present Code of Judicial Conduct is modeled after the American Bar Association (ABA) Model Code

mined that this Canon, adopted verbatim from the American Bar Association's Model Code of Judicial Conduct in both Florida and other states, is so broad that it will not alone support a charge of judicial misconduct.[47] In Florida, Canon 1 has been held to apply to such diverse behavior such as threatening to misuse the judicial office to get out of a parking ticket,[48] driving under the influence,[49] mishandling client funds while practicing law,[50] improper campaign financing,[51] and failing to exercise judicial temperament in the courtroom.[52]

B. *Canon 2*

Canon 2 addresses the requirement that judges "[a]void [i]mpropriety and the [a]ppearance of [i]mpropriety."[53] As with Canon 1, the language in Canon 2 is necessarily broad.[54] "The Commentary to Canon 2A acknowledges that Canon 2's proscription against judges behaving with impropriety or the appearance of impropriety is cast in general terms. The Commentary, however, defends this language as necessary, noting it is not 'practicable' to list all prohibited acts."[55] Specific sections of this Canon direct judges to promote public confidence in the judiciary;[56] not allow business and family relationships to affect judicial duties;[57] not improperly use the prestige of the judicial office for personal gain;[58] and not participate in organizations that discriminate "on the basis of race, sex, religion, or national origin."[59] Canon 2 has been interpreted as recognizing the very high standard of conduct expected of members of the judiciary.[60]

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of Judicial Conduct adopted in 1990. *See In re* Code of Judicial Conduct, 643 So. 2d 1037, 1037, 1040 (Fla. 1994).

47. *See In re* Larsen, 616 A.2d 529, 558 app. 1 (Pa. 1992) ("Canon 1 is primarily a statement of purpose and rule of construction, rather than a separate rule of conduct."); *see also In re* Jacobi, 715 N.E.2d 873, 875 (Ind. 1999) (finding the judge's conduct not only violated Canon 1, but also Canons 2 and 3).

48. *See In re* Steinhardt, 663 So. 2d 616, 617–18 (Fla. 1995).

49. *See In re* Esquiroz, 654 So. 2d 558, 558–59 (Fla. 1995).

50. *See In re* Meyerson, 581 So. 2d 581, 582 (Fla. 1991).

51. *See In re* Rodriguez, 829 So. 2d 857, 859–60 (Fla. 2002).

52. *See In re* Haymans, 767 So. 2d 1173, 1174 (Fla. 2000).

53. FLA. CODE JUD. CONDUCT Canon 2.

54. *See id.*; *see* FLA. CODE JUD. CONDUCT Canon 1.

55. ANN. MODEL CODE OF JUD. CONDUCT Canon 2A cmt. (2004).

56. FLA. CODE JUD. CONDUCT Canon 2A.

57. FLA. CODE JUD. CONDUCT Canon 2B.

58. *Id.*

59. FLA. CODE JUD. CONDUCT Canon 2C.

60. *See, e.g., In re* LaMotte, 341 So. 2d 513, 517, 518 (Fla. 1977) (determining that removal was appropriate where judge used a state credit card for personal travel, and stating that

A violation of Canon 2 can be based on the same behavior that would constitute a violation of Canon 1. Such conduct includes, but is not limited to: exhibiting a lack of judicial temperament,[61] engaging in illegal gambling,[62] being publicly intoxicated,[63] driving while intoxicated,[64] and acting in a discourteous manner toward attorneys.[65] Conduct which has been punished under Canon 2, but which did not form the basis of a charge under Canon 1, has included failing to act impartially,[66] misusing the judicial office for personal gain,[67] and signing official documents in a case involving a family member.[68]

C. *Canon 3*

Canon 3 generally requires that judges perform their duties impartially and diligently.[69] Specific sections of this Canon address the judge's: 1) adjudicative responsibilities in terms of maintaining competence, requiring order and decorum, remaining dignified and courteous, performing duties without bias and prejudice, insuring a party's right to be heard, not permitting improper ex parte communication, handling matters expeditiously, refraining from public comment which impairs the fairness of the proceeding, and not disclosing confidential matters;[70] 2) administrative responsibilities, which include many of the same duties set forth as adjudicative responsibilities, and the additional prohibition against favoritism or nepotism in the exercise of the judge's power of appointment;[71] 3) disciplinary responsibilities which include reporting to the appropriate authorities substantial violations of the Code of Judicial Conduct and the Rules Regulating The Florida Bar;[72] and 4) duty of disqualification in terms of the specific requirements of disclosure and recusal.[73] Misuse of office for personal gain[74] and inappropriate

"[a] judge is required to conduct himself under standards which are much higher than those required of an attorney").

61. *See In re* Haymans, 767 So. 2d 1173, 1174 (Fla. 2000).
62. *See In re* McIver, 638 So. 2d 45, 46 (Fla. 1994).
63. *See In re* Norris, 581 So. 2d 578, 578–79 (Fla. 1991).
64. *See In re* Esquiroz, 654 So. 2d 558, 558–59 (Fla. 1995).
65. *See In re* Steinhardt, 663 So. 2d 616, 617–18 (Fla. 1995).
66. *See In re* Gridley, 417 So. 2d 950, 954–55 (Fla. 1982).
67. *See In re* Richardson, 760 So. 2d 932, 932–33 (Fla. 2000).
68. *See In re* Brown (*Robert Brown*), 748 So. 2d 960, 961–62 (Fla. 1999).
69. *See* FLA. CODE JUD. CONDUCT Canon 3.
70. Fla. Code Jud. Conduct Canon 3B.
71. Fla. Code Jud. Conduct Canon 3C.
72. Fla. Code Jud. Conduct Canon 3D.
73. FLA. CODE JUD. CONDUCT Canon 3E.
74. *See In re* Steinhardt, 663 So. 2d 616, 617–18 (Fla. 1995).

courtroom demeanor[75] constitute violations of Canon 3, as well as Canons 1 and 2.[76] Conduct which has been determined to violate the specific language of Canon 3 includes failing to disclose the judge's relationship with one of the attorneys litigating a case over which the judge was presiding,[77] conducting ex parte communications,[78] failing to properly follow the law,[79] expressing inappropriate bias,[80] and inappropriately communicating with the press.[81]

D. *Canon 4*

Canon 4 encourages judges to engage in "quasi-judicial" activities in order to improve the legal system and the administration of justice.[82] Under this Canon, "[a] judge is encouraged to speak, write, lecture, [and] teach . . . the law."[83] However, this Canon also states that judges engaging in these activities must not "cast reasonable doubt on [their] capacity to act impartially," they must not "demean the judicial office," and they may not allow such activities to "interfere with the proper performance of [their] judicial duties."[84] This Canon also describes the types of organizations in which a judge may be an officer or member.[85] In addition, it contains a specific prohibition against personally participating in fund-raising or solicitation of funds on behalf of such an organization.[86]

The aspirational goals set forth in Canon 4, as restricted by the prohibitions set forth in Canon 5, strike the appropriate balance between two competing interests.[87] First, as the commentary to the Model Code states,

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75. *See In re* Marko, 595 So. 2d 46, 46 (Fla. 1992).

76. *See* FLA. CODE JUD. CONDUCT Canons 1–3.

77. *See In re* Frank, 753 So. 2d 1228, 1230–34, 1238–40 (Fla. 2000).

78. *See In re* Turner (*Fred Turner*), 421 So. 2d 1077, 1078–79 (Fla. 1982).

79. *See In re* JQC (*Taunton*), 357 So. 2d 172, 174, 177 (Fla. 1978).

80. *See In re* Kinsey, 842 So. 2d 77, 88–89 (Fla. 2003), *cert. denied*, 540 U.S. 825 (2003).

81. *See In re* Miller, 644 So. 2d 75, 78 (Fla. 1994).

82. *See* FLA. CODE JUD. CONDUCT Canon 4.

83. FLA. CODE JUD. CONDUCT Canon 4B. Prior to the amendment to this canon in 2003, judges were merely allowed, rather than encouraged, to participate in activities designed to improve the judicial system and the administration of justice. Code of Judicial Conduct, 840 So. 2d 1023, 1026, 1031 (Fla. 2003).

84. FLA. CODE JUD. CONDUCT Canon 4A(1)-(3).

85. FLA. CODE JUD. CONDUCT Canon 4D.

86. FLA. CODE JUD. CONDUCT Canon 4D(2)(a)-(d).

87. *See* FLA. CODE JUD. CONDUCT Canons 4, 5. It should be noted that Canons 4, 5, and 6 of the *Florida Code of Judicial Conduct* are derived from Canon 4 of the *Model Code of Judicial Conduct*. *See In re* Code of Judicial Conduct, 643 So. 2d 1037, 1040 (Fla. 1994). "We note that the new Florida code places most of the provisions of [C]anon 4 of the Model Code in three separate [C]anons: 4, 5 and 6." *Id.*

"[c]omplete separation . . . from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives."[88] However, as the annotations to the Model Code make clear, to maintain public confidence in the judiciary, a judge must avoid all activity that either affects or appears to affect the ability of the judge to do the job fairly and impartially.[89] Therefore, Florida's Judicial Ethics Advisory Committee has recognized that some extra-judicial activities may need to be completely avoided when one takes the bench.[90]

Canon 4 has rarely been the basis for judicial discipline in Florida. However, in one case a judge was found to have violated Canons 1, 2, 3, and 4 by writing letters to a newspaper which were unduly critical of the criminal justice system.[91] The Supreme Court of Florida determined that the letters undermined public confidence in the court system, and therefore imposed a public reprimand for the judge's conduct.[92] In another case, the Supreme Court of Florida found that a judge's statements made to a newspaper, reflecting the judge's endorsement of racial stereotypes, warranted the judge's removal as Chief Judge of a circuit.[93] Canon 4 may provide the basis for warnings by the JQC to judges concerning their membership in inappropriate organizations and their allowance of the use of their names in connection with fund-raising on behalf of an organization.[94] These warnings have generally been sufficient to correct the offending behavior, thus removing the need for formal action.[95]

88. ANN. MODEL CODE OF JUD. CONDUCT Canon 4 cmt. (2004).

89. *Id.* (citing JEFFREY M. SHAMAN ET AL., JUDICIAL CONDUCT & ETHICS § 10.02 (3d ed. 2000)).

90. *See, e.g.*, Fla. Jud. Ethics Advisory Comm. Op. 97-31 (1997) (holding that Canon 4(D) prohibits a judge from serving as a member of the Comprehensive Offender Rehabilitation and Education Program where that organization administers probation services), *available at* http://www.jud6.org/LegalPractice/opinions/judicialethicsadvisoryopinions/ninet7/97-31.html.

91. *See In re* Miller, 644 So. 2d 75, 76–78 (Fla. 1994).

92. *Id.* at 78.

93. *In re* Removal of a Chief Judge, 592 So. 2d 671, 671–72 (Fla. 1992).

94. *See* FLA. CODE JUD. CONDUCT Canon 4D(2)(a)-(d).

95. Informal actions taken by the JQC prior to a determination of probable cause are confidential; therefore, no citation to authority is available in connection with these actions of the JQC. FLA. CONST. art. V, § 12(a)(4). "Until formal charges against a justice or judge are filed by the investigative panel with the clerk of the [S]upreme [C]ourt of Florida all proceedings by or before the commission shall be confidential . . . ." *Id.*

E. *Canon 5*

Canon 5 defines the scope of a judge's appropriate participation in non-judicial activities.[96] Like Canon 4, Canon 5 has been amended since its original promulgation to encourage judges to participate in ethically permissible and beneficial community activities.[97] However, like Canon 4, Canon 5 states that these activities must not: "(1) cast reasonable doubt on the judge's capacity to act impartially . . .; (2) demean the judicial office; or (3) interfere with the proper performance of judicial duties."[98] Specific sections of this Canon address the extent to which a judge may participate in governmental, civic, or charitable activities; the limitations on a judge's financial activities; the limitations on the acceptance of gifts by a judge and his family; the limitations on a judge's ability to serve as a fiduciary, arbitrator, or mediator; and the outright prohibition against a judge's practice of law.[99] The specific provisions of Canon 5 are violated when a judge allows his name to be used in support of a charity golf tournament;[100] becomes intoxicated and engages in inappropriate behavior at a judicial conference;[101] or accepts baseball tickets from a law firm whose lawyers previously appeared before the judge.[102]

A judge's failure to follow the general prohibitions set forth in Canon 5 has also been found to violate Canons 1 and 2.[103] A recent example of this kind of violation of Canon 5 occurred in a case involving a judge's violation of campaign finance and reporting laws.[104] A judge's pattern of intimidating behavior has also been found to violate Canons 1, 2, 3, and 5.[105] Similarly, a judge's intercession into a pending custody dispute violated the same Canons.[106] Finally, a judge's making of racially insensitive remarks has been found to violate Canons 2, 4, and 5.[107]

96. *See* FLA. CODE JUD. CONDUCT Canon 5.
97. *See* Code of Judicial Conduct, 840 So. 2d 1023, 1027, 1031, 1034 (Fla. 2003).
98. FLA. CODE JUD. CONDUCT Canon 5A.
99. FLA. CODE JUD. CONDUCT Canon 5C–G.
100. *In re* Byrd, 460 So. 2d 377, 377 (Fla. 1984).
101. *In re* Cope, 848 So. 2d 301, 302–03 (Fla. 2003).
102. *In re* Luzzo, 756 So. 2d 76, 77–78 (Fla. 2000).
103. *See In re* Rodriguez, 829 So. 2d 857, 858–59 (Fla. 2002).
104. *Id.* at 858–60.
105. *In re* Shea, 759 So. 2d 631, 632–33, 638 (Fla. 2000).
106. *In re* Holloway, 832 So. 2d 716, 717, 729 (Fla. 2002).
107. *In re* Removal of a Chief Judge, 592 So. 2d 671, 671–72 (Fla. 1992).

F. *Canon 6*

Canon 6 regulates the financial interests of a judge.[108] The first section of this Canon sets forth the limited circumstances under which a judge may receive compensation in addition to his or her judicial salary.[109] This section also addresses the amount which may be received by the judge for such extra-judicial activity.[110] The second and third sections of this Canon define the terms and conditions of a judge's required public and confidential filings concerning his or her income assets and gifts.[111] Few cases have involved violations of Canon 6. However, the Supreme Court of Florida has determined that a judge's failure to make full disclosure within a required filing warranted a public reprimand.[112] The Supreme Court of Florida has also held that filing an incomplete or misleading campaign finance report violates Canon 6.[113] Yet, campaign finance improprieties alone will not constitute a violation of this Canon in the absence of evidence that any public filing was required.[114]

G. *Canon 7*

Canon 7 regulates the political activities of judges.[115] It applies to judges and candidates for judicial positions.[116] The first section of this Canon prohibits a judge from engaging in certain political activities, including personally raising money for, or making speeches on behalf of a candidate, or endorsing any candidate.[117] This section also specifically prohibits partisan political activities.[118] It also regulates campaigns for judicial office by expressly prohibiting pledges or promises of specific conduct while in office, commitments concerning issues that will likely come before the judge once in office, and knowingly misrepresenting another candidate or the op-

108. FLA. CODE JUD. CONDUCT Canon 6.
109. FLA. CODE JUD. CONDUCT Canon 6A.
110. *Id.*
111. FLA. CODE JUD. CONDUCT Canon 6B–C.
112. *In re* Meyerson, 581 So. 2d 581, 582 (Fla. 1991).
113. *In re* Rodriguez, 829 So. 2d 857, 858–60 (Fla. 2002); *cf. In re* Pando, 903 So. 2d 902, 902–04 (Fla. 2005) (finding that a misleading finance report violates Canon 7).
114. *In re* Gooding, 905 So. 2d 121, 122–23 (Fla. 2005).
115. FLA. CODE JUD. CONDUCT Canon 7.
116. FLA. CODE JUD. CONDUCT Canon 7A.
117. FLA. CODE JUD. CONDUCT Canon 7A(1)(b), (c), (e).
118. *See* FLA. CODE JUD. CONDUCT Canon 7A(1)(a)-(e).

posing candidate's qualifications for judicial office.[119] The remaining sections of this Canon place additional limitations on a judge's fund-raising and campaigning in competitive and merit retention elections.[120]

Canon 7 and similar canons adopted in other states have generated much debate at both the state and federal levels. The tension between an individual judge's right to free speech under the First Amendment of the United States Constitution on the one hand, and the state's compelling interest in regulating judicial elections on the other, has spawned several significant court decisions. Foremost among these decisions is the United States Supreme Court's opinion in *Republican Party of Minnesota v. White*,[121] wherein the Supreme Court considered the constitutionality of a canon in the *Minnesota Code of Judicial Conduct* forbidding a candidate for judicial office from "announc[ing] his or her views on disputed legal or political issues."[122] The Supreme Court held that "[t]he Minnesota Supreme Court's canon of judicial conduct prohibiting candidates for judicial election from announcing their views on disputed legal and political issues violates the First Amendment."[123] Soon thereafter the Supreme Court of Florida considered in *In re Kinsey*[124] whether the decision in *White* precluded enforcement of Canon 7 of the *Florida Code of Judicial Conduct*.[125]

In *Kinsey*, the Supreme Court of Florida held that Canon 7's prohibition against a judicial candidate making statements during an election which appear to commit the candidate to a particular position in a case or on an issue, did not violate the candidate's right to free speech under the First Amendment.[126] In reaching this result, the Supreme Court of Florida specifically determined that the judicial candidate's statement of intent in her campaign literature that she would "help law enforcement by putting criminals where they belong . . . *behind bars*" could not be considered protected speech under the First Amendment.[127] The Supreme Court of Florida in *Kinsey* distinguished the United States Supreme Court's *White* decision as follows:

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119. FLA. CODE JUD. CONDUCT Canon 7A(3)(d)(i)-(ii). This Canon was recently amended by Court Order. *In re* Amendment to Code of Judicial Conduct, No. SC05-281 (Fla. Jan. 5, 2006).

120. *See* FLA. CODE JUD. CONDUCT Canon 7B–F.

121. 536 U.S. 765 (2002).

122. *Id.* at 768 (quoting MINN. CODE OF JUD. CONDUCT Canon 5A(3)(d)(i) (2000)).

123. *Id.* at 788.

124. 842 So. 2d 77 (Fla. 2003), *cert. denied*, 540 U.S. 825 (2003).

125. *Id.* at 85, 88–89.

126. *See id.* at 87.

127. *Id.* at 88–89 (emphasis added).

> The [United States Supreme] Court . . . emphasized that the "announce clause" [at issue in *White*] was separate and apart from the "pledges or promises clause" [in the Minnesota Code], since Minnesota adopted a separate canon which prohibited a candidate from promising or pledging to act in a certain manner while on the bench. Based on these observations, the Court found that Minnesota did not fulfill its burden in showing that the "announce clause" was narrowly tailored, and hence found that the rule violated the First Amendment.
>
> In contrast to *White*, Florida does not have an "announce clause" but instead adopted a more narrow canon, which provides as follows:
>
> A candidate for judicial office . . . shall not:
>
> (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; [or]
>
> (ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court . . . .[128]

Two other recent federal cases have addressed provisions similar to those found in Canon 7. On remand in the *White* case, the Eighth Circuit considered the constitutionality of judicial canon prohibitions against personal fund-raising and taking part in partisan politics; the court found that both prohibitions violated the First Amendment.[129] In *Weaver v. Bonner*,[130] a case decided prior to the *White* remand opinion, the Eleventh Circuit held that the provisions of the *Georgia Code of Judicial Conduct* that prohibited judicial candidates from personally soliciting campaign contributions and regulated campaign speech violated the First Amendment because they were not narrowly tailored to prevent only false statements knowingly or recklessly made.[131]

The Supreme Court of Florida addressed some of these concerns in several cases decided after *Bonner* but before the remand decision in *White*. In

128. *Id.* at 86–87 (some alterations in original)(quoting FLA. CODE JUD. CONDUCT, Canon 7A(3)(d)(i)-(ii)). Florida previously had an announce clause, but it was determined to violate the First Amendment. ACLU v. The Fla. Bar, 744 F. Supp. 1094, 1099–1100 (N.D. Fla. 1990).

129. Republican Party of Minn. v. White, 416 F.3d 738, 766 (8th Cir. 2005).

130. 309 F.3d 1312 (11th Cir. 2002).

131. *Id.* at 1315, 1319–20, 1322–23, 1325.

In re Angel,[132] the Supreme Court of Florida accepted a stipulation finding that a judge's participation in partisan politics during his judicial campaign violated Canon 7 and recommended a public reprimand as the appropriate punishment.[133] In *In re Pando*,[134] the Supreme Court of Florida also accepted stipulations finding violations of Canon 7 based on campaign finance and reporting laws improprieties.[135] The Supreme Court of Florida has also imposed discipline for a judge's campaign misrepresentations[136] and inappropriate promises of performance,[137] as well as a judge's active support for another candidate for office.[138] The controversy that has arisen concerning the appropriate punishment for a violation of Canon 7 will be discussed later in this article.

IV. CATEGORIES OF MISCONDUCT

A. *Lacking Judicial Temperament*

Canon 3B(3) of the *Florida Code of Judicial Conduct* states, "[a] judge shall require order and decorum in proceedings before the judge."[139] Canon 3B(4) states, "[a] judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity . . . ."[140] The portion of the *Annotated Model Code of Judicial Conduct* on decorum and intemperate behavior covers twenty-two pages.[141] Some of the behavior described as violating these sections are: 1) "[j]udges' [l]ack of [d]ecorum;"[142] 2) lack of dignity;[143] 3) "[i]ntemperate [s]peech to or

132. 867 So. 2d 379 (Fla. 2004). In *Angel*, the Supreme Court of Florida reaffirmed the determination, originally made in *In re Alley*, 699 So. 2d 1369 (Fla. 1997), that judges cannot participate in partisan politics. *Angel*, 867 So. 2d at 380, 382–83.

133. *Angel*, 867 So. 2d at 382–83.

134. 903 So. 2d 902 (Fla. 2005).

135. *Id.* at 903–04.

136. *In re* Kinsey, 842 So. 2d 77, 80, 82–84, 92 (Fla. 2003), *cert. denied*, 540 U.S. 825 (2003); *In re* McMillan, 797 So. 2d 560, 571–73 (Fla. 2001); *In re* Alley, 699 So. 2d at 1369, 1369 (Fla. 1997).

137. *Kinsey*, 842 So. 2d at 79–80, 84–92; *McMillan*, 797 So. 2d at 562, 566, 573.

138. *In re* Glickstein, 620 So. 2d 1000, 1001, 1003 (Fla. 1993); *In re* McGregor, 614 So. 2d 1089, 1090 (Fla. 1993).

139. FLA. CODE JUD. CONDUCT Canon 3B(3).

140. FLA. CODE JUD. CONDUCT Canon 3B(4).

141. ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(3)-(4) (2004).

142. ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(3) annot. (2004). The Florida example given for this type of behavior is *In re Trettis*, 577 So. 2d 1312, 1313 (Fla. 1991), in which the "judge violated [this] canon by directing verbal tirades at jurors, defendants and attorneys." ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(3) (2004) (citing *Trettis*, 577 So. 2d at 1313).

[a]bout [l]awyers, [l]itigants, and [c]ourt [e]mployees;"[144] 4) "[d]isparaging [l]awyers;"[145] 5) "[d]isparaging [l]itigants and [w]itnesses;"[146] 6) making disparaging or critical remarks to judges or other court employees;[147] 7) using racial slurs or profanity;[148] 8) "[y]elling during a court proceeding;"[149] 9) using inappropriate humor or sarcasm;[150] and 10) interrupting people who appear in the courtroom.[151] While these behaviors are given many names, they essentially involve a judge being discourteous and not treating people the way he or she would want to be treated.[152]

Complaints of discourteous conduct constitute a large percentage of the filings received by the JQC. A number of cases are resolved by the JQC by counseling the judge prior to formal charges being filed. Nevertheless, many

143. *See* ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) annot. (2004). The Florida example given as violating this principle is *In re Shea*, 759 So. 2d 631 (Fla. 2000). ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) (2004). In *Shea*, the judge "engaged in a pattern of conduct in which he acted with hostility towards attorneys, court personnel and fellow judges." *Shea*, 759 So. 2d at 638.

144. ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) annot. (2004). The Florida example given for this type of behavior is *In re Schwartz*, 755 So. 2d 110, 111–12 (Fla. 2000), in which the "appellate judge verbally abused law students who were making initial appearances before the court and made discourteous remarks about [a] professor who was supervising students." ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) annot. (2004) (citing *Schwartz*, 755 So. 2d at 111–12).

145. ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) annot. (2004). The Florida example given for this type of behavior is *In re Wood*, 720 So. 2d 506, 507 (Fla. 1998), in which the "judge attacked [the] good faith of [a] lawyer who filed a motion for continuance." ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) (2004) (citing *Wood*, 720 So. 2d at 507); *see also In re* Carnesoltas, 563 So. 2d 83 (Fla. 1990).

146. ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) annot. (2004). The Florida example given for this type of behavior is *In re Golden*, 645 So. 2d 970, 971 (Fla. 1994), in which the judge told a defendant to "'quit having so many babies so you can afford to pay your fines.'" ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) annot. (2004) (quoting *Golden*, 645 So. 2d at 971).

147. ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) annot. (2004). The Florida example given for this type of behavior is *In re Graziano*, 696 So. 2d 744, 748 (Fla. 1997), in which a judge was disciplined for "reduc[ing] a court reporter to tears by approaching her in the midst of a trial in another judge's courtroom, demanding" her to move her car from the judicial assistant's parking spot. ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) cmt. (2004) (citing *Graziano*, 696 So. 2d at 748).

148. ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) annot. (2004). The Florida example given for this type of behavior is *Golden*, 645 So. 2d at 971 in which a judge made disparaging remarks regarding Hispanic Americans. ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) cmt. (2004) (citing *Golden*, 645 So. 2d at 971).

149. ANN. MODEL CODE OF JUD. CONDUCT Canon 3B(4) annot. (2004).

150. *Id.*

151. *Id.*

152. *See id.*

cases involve the filing of formal charges after informal procedures have been utilized.[153] One case presently pending for trial by the hearing panel of the JQC involves allegations of inappropriate comments to court personnel including chastising a deputy sheriff for being an unwed mother.[154] In the vast majority of these cases, the offending judge receives a reprimand.[155] Occasionally professional counseling is imposed as part of a reprimand.[156] Even where a pattern of rudeness is established, reprimand appears to be the preferred method of discipline.[157] Only when the discourteous conduct has been coupled with other misconduct has removal from office been utilized.[158]

In other states, intemperate judges have received similar punishments. First offenses for less serious cases of discourtesy have received public censures (which appear to be similar to reprimands in Florida), reprimands[159] or short suspensions.[160] Patterns of discourtesy,[161] numerous outbursts of temper,[162] repeated behavior after admonition,[163] extremely offensive remarks,[164]

153. *See, e.g., In re* Schapiro, 845 So. 2d 170, 173–74 (Fla. 2003); *In re* Schwartz, 755 So. 2d 110, 111 (Fla. 2000); *In re* Wood, 720 So. 2d 506, 507 (Fla. 1998).

154. Answer and Affirmative Defenses at 1–2, *In re* Todd, No. SC04-1655 (Fla. Sept. 27, 2004).

155. *See, e.g., In re* Newton, 758 So. 2d 107, 109 (Fla. 2000); *Schwartz*, 755 So. 2d at 115; *In re* Wright, 694 So. 2d 734, 736 (Fla. 1997); *In re* Fleet, 610 So. 2d 1282, 1282 (Fla. 1992); *In re* Marko, 595 So. 2d 46, 46 (Fla. 1992); *In re* Carr, 593 So. 2d 1044, 1045 (Fla. 1992); *In re* Muszynski, 471 So. 2d 1284, 1285 (Fla. 1985); *In re* Turner (*Fred Turner*), 421 So. 2d 1077, 1081 (Fla. 1982); *In re* Lantz, 402 So. 2d 1144, 1147 (Fla. 1981).

156. *Schapiro*, 845 So. 2d at 174; *Wood*, 720 So. 2d at 509.

157. *E.g., In re* Haymans, 767 So. 2d 1173, 1174 (Fla. 2000).

158. *See, e.g., In re* Shea, 759 So. 2d 631, 638–39 (Fla. 2000) (holding that a pattern of discourteous behavior and intimidating behavior toward attorneys for personal gain justified removal); *In re* Graziano, 696 So. 2d 744, 747, 753 (Fla. 1997) (holding that discourteous behavior, misuse of office, and threatening behavior, lack of veracity with the JQC, and an inability to recognize the impropriety of certain ethical violations she committed justified removal); *In re* McAllister, 646 So. 2d 173, 178 (Fla. 1994) (holding that discourteous behavior, sexual harassment of an assistant, and improper ex parte communications justified removal); *In re* Graham, 620 So. 2d 1273, 1274–75, 1277 (Fla. 1993) (holding that discourteous behavior, improper use of contempt and sentencing power, and unwarranted criticism of fellow judges and public officials warranted removal).

159. *See, e.g., In re* Jenkins, 503 N.W.2d 425, 427 (Iowa 1993); *In re* Bowers, 721 So. 2d 875, 883–84 (La. 1998); *In re* Sheppard, 815 S.W.2d 917 (Tex. Spec. Ct. Rev. 1991).

160. *See In re* Hocking, 546 N.W.2d 234, 246 (Mich. 1996).

161. *In re* Moore, 626 N.W.2d 374, 393–94 (Mich. 2001) (holding that a pattern of discourteous behavior warranted a six-month suspension); *In re* Elliston, 789 S.W.2d 469, 480, 484 (Mo. 1990) (holding that a pattern of discourteous, abusive, and abrasive comments warranted fifteen-day suspension).

162. *In re* Flournoy, 990 P.2d 642, 643, 646–47 (Ariz. 1999) (holding that repeated outbursts of temper warranted in six-month suspension).

163. *In re* Gorenstein, 434 N.W.2d 603, 609 (Wis. 1989) (holding that repeated conduct after admonition warranted two-year suspension).

and rudeness, along with other serious misconduct,[165] have resulted in longer suspensions and removal.

B. *Failing to be Impartial*

Canon 3 requires that a judge perform the duties of office impartially.[166] The Supreme Court of Florida has recognized the importance of this precept for many years.[167] In a recent disciplinary case, the Supreme Court of Florida stated, "no other principle is more essential to the fair administration of justice than the impartiality of the presiding judge."[168] Although the Supreme Court of Michigan has noted that discourteous behavior may lead parties to question the impartiality of proceedings,[169] discourtesy generally has been treated as a separate area of judicial misconduct.[170]

In a case involving lack of impartiality, the Supreme Court of Florida held that it was inappropriate for a judge to interject himself on behalf of a criminal defendant, and that this conduct justified a reprimand against the offending judge, even though there was evidence of his good intentions.[171] In another proceeding, due to the judge's commendable service, lack of prior misconduct, demonstrated remorsefulness, and cooperative attitude, a public reprimand was adequate for signing legal documents in a case involving his former daughter-in-law.[172] Another judge, however, who was facing unrelated JQC charges, intentionally arranged to have himself handle a first appearance hearing of a defendant that the judge helped apprehend for Driving While Intoxicated.[173] The judge set an abnormally high bond, and the supreme court determined that such behavior, along with the other charges, justified his removal.[174]

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164. *In re* Mulroy, 731 N.E.2d 120, 123 (N.Y. 2000) (holding that a pattern of engaging in making racial epithets and ethnic slurs warranted removal from office).

165. *See, e.g., In re* Holien, 612 N.W.2d 789, 792–93, 798 (Iowa 2000) (holding that persistent violations of court rules and disrespectful and hostile treatment of other people in the legal system warranted removal).

166. FLA. CODE JUD. CONDUCT Canon 3B(5).

167. *See, e.g., In re* JQC (*Taunton*), 357 So. 2d 172, 177–79 (Fla. 1978).

168. *In re* McMillan, 797 So. 2d 560, 571 (Fla. 2001).

169. *See In re* Brown (*Christopher Brown*), 626 N.W.2d 403, 405–406 (Mich. 2001); *see also* Leonard E. Gross, *Judicial Speech: Discipline and the First Amendment*, 36 SYRACUSE L. REV. 1181, 1211–20 (1986).

170. *See In re* O'Dea, 622 A.2d 507, 508–09 (Vt. 1993).

171. *See In re* Gridley, 417 So. 2d 950, 953–55 (Fla. 1982).

172. *In re* Brown (*Robert Brown*), 748 So. 2d 960, 961–62 (Fla. 1999).

173. *McMillan*, 797 So. 2d at 569–70.

174. *See id.* at 570, 573.

C. *Engaging in Ex Parte Communication*

Misconduct closely related to impartiality includes inappropriate ex parte communication.[175] The judicial canons state, "[a] judge shall not initiate, permit, or consider ex parte communications . . . outside the presence of the parties concerning a pending or impending proceeding."[176] The Supreme Court of Florida has commented, "there is nothing 'more dangerous and destructive of the impartiality of the judiciary than a one-sided communication between a judge and a single litigant.'"[177] Thus, the supreme court authorized the removal of two judges who committed ex parte communication violations along with other misconduct.[178] While the supreme court deems ex parte communication to be serious, the court accepted stipulations providing for a public reprimand.[179] However, these cases occurred prior to 1996.[180] Despite reasonable justification for the ex parte communication, the supreme court publicly reprimanded the judges involved.[181] In one, the court determined a reprimand was appropriate in spite of the judge's overriding "concern for [the] welfare of the children involved."[182] In the other, discipline was approved in spite of the fact that there was no immoral or illegal intent.[183] Yet, in another case, the court considered the prior unblemished record of the judge involved and reprimanded him.[184]

In 2002, the court admonished rather than reprimanded a judge when, without the knowledge or consent of the parties, the judge consulted several computer experts to better understand the case.[185] The Supreme Court of

175. FLA. CODE JUD. CONDUCT Canon 3B(7).

176. *Id.*

177. State v. Riechmann, 777 So. 2d 342, 351 (Fla. 2000) (citation omitted).

178. *See In re* Damron, 487 So. 2d 1, 7 (Fla. 1986) (holding that ex parte communication, along with solicitation of favors for judicial action, discouraging criminal defendants from exercising constitutional rights, threatening parties and individuals, and giving inaccurate testimony to the JQC warranted removal); *In re* Leon, 440 So. 2d 1267, 1268–70 (Fla. 1983) (holding that ex parte communication, along with a number of other violations, warranted removal).

179. *In re* Sturgis, 529 So. 2d 281, 281, 283 app. (Fla. 1988); *In re* Clayton, 504 So. 2d 394, 395 (Fla. 1987).

180. *Sturgis*, 529 So. 2d 281; *Clayton*, 504 So. 2d 394.

181. *Sturgis*, 529 So. 2d at 281, 283; *Clayton*, 504 So. 2d at 395.

182. *Sturgis*, 529 So. 2d at 281, 283 app.

183. *See Clayton*, 504 So. 2d at 395.

184. *In re* Dekle, 308 So. 2d 5, 12 (Fla. 1975). The rule established in *Dekle* was invalidated by the amendment to article V, section 12, subsection f of the Florida Constitution in 1976. *In re* JQC (*Taunton*), 357 So. 2d 172, 180 (Fla. 1978).

185. *In re* Baker, 813 So. 2d 36, 37 (Fla. 2002).

Florida removed another judge after a JQC trial, finding the judge guilty of ex parte communication and abusive behavior, among other things.[186]

Across the country, the discipline for engaging in ex parte communication has varied widely, ranging from reprimand to removal.[187] Other factors, including motive, past judicial record, and remorse may influence the penalty which is imposed.[188]

D. *Violating Recusal and Disclosure Requirements*

Canon 3E of the *Florida Code of Judicial Conduct* sets forth the guidelines governing disqualification.[189] It states, "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned."[190] The Canon then lists specific circumstances when a judge must be recused.[191] Further, the Supreme Court of Florida has determined a duty to disclose exists even in certain circumstances when recusal is not required.[192]

> Specifically, because a judge "should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification," it appears that the standard for disclosure is lower. In other words, a judge should disclose information in circumstances even where disqualification may not be required.[193]

Failure to properly disclose an attorney's representation of his daughter in a divorce proceeding resulted in a public reprimand for one judge.[194] Other judges were publicly reprimanded for acting in cases where recusal

186. *In re* McAllister, 646 So. 2d 173, 178 (Fla. 1994).

187. *See* Phoebe Carter, Annotation, *Disciplinary Action Against Judge for Engaging in Ex Parte Communication with Attorney, Party, or Witness*, 82 A.L.R. 4TH 567, 572–73 (1990). *See also* Miss. Comm'n on Judicial Performance v. Bowen, 662 So. 2d 551, 551 (Miss. 1995) (holding that public reprimand and $1450 fine was warranted for dismissing traffic tickets after ex parte communications with defendants); *In re* Schenck, 870 P.2d 185, 210 (Or. 1994) (holding that forty-five-day suspension without pay was warranted for ex parte communications with district attorney and public comments regarding pending case); *In re* Rasmussen, 734 P.2d 988, 989 (Cal. 1987) (holding that public censure was warranted where judge communicated with a defendant outside the presence of his counsel).

188. *See, e.g.*, *Clayton*, 504 So. 2d at 395; *Dekle*, 308 So. 2d at 12.

189. *See* FLA. CODE JUD. CONDUCT Canon 3E.

190. *Id.*

191. *See id.*

192. *In re* Frank, 753 So. 2d 1228, 1239 (Fla. 2000).

193. *Id.* (quoting FLA. CODE JUD. CONDUCT Canon 3E(1) cmt.).

194. *Id.* at 1230.

was required.[195] Continuing to preside over cases when recusal is required has resulted in discipline in other states, including reprimands.[196]

E. *Improperly Communicating with the Press*

Publicity violations generally involve contact with a nonparty member of the media regarding pending litigation. Canon 3B(9) in pertinent part states:

> A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness . . . . This Section does not prohibit judges from making public statements in the course of their official duties or from explaining . . . the procedures of the court.[197]

Cases involving inappropriate contact with reporters have generally resulted in public reprimands. In *In re Andrews*, the Supreme Court of Florida publicly reprimanded a judge who made statements to a reporter regarding a party in a pending proceeding which evidenced bias against that party.[198] The same behavior warranted a public reprimand in a pre-1996 case.[199] However, a judge's general comments regarding opposition to capital punishment did not violate the *Florida Code of Judicial Conduct* where the judge indicated he would follow the law.[200]

Several states have suspended or removed judges based on the nature of the remarks made by the judge or when the improper comment is tied to other misconduct.[201]

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195. *In re* Brown (*Robert Brown*), 748 So. 2d 960, 961–62 (Fla. 1999); *In re* Wood, 720 So. 2d 506, 509 (Fla. 1998).

196. *See In re* Johnson (*Shirley L. Johnson*), 532 S.E.2d 883, 884–85 (S.C. 2000).

197. FLA. CODE JUD. CONDUCT Canon 3B(9). *See also* Fla. Jud. Ethics Advisory Comm. Op. 00-30 (2000) (stating that a trial judge may not comment on cases pending appeal).

198. *In re* Andrews, 875 So. 2d 441, 441–42 (Fla. 2004).

199. *In re* Hayes, 541 So. 2d 105, 105–06 (Fla. 1989).

200. *In re* Gridley, 417 So. 2d 950, 954–55 (Fla. 1982).

201. *See, e.g.*, *In re* Sheffield, 465 So. 2d 350, 353, 359 (Ala. 1984) (finding improper comment and failure to recuse self warranted two-month suspension); Office of Disciplinary Counsel v. Ferreri, 710 N.E.2d 1107, 1109, 1111 (Ohio 1999) (finding improper comments warranted suspension); *In re* Schenck, 870 P.2d 185, 188–89, 207, 210 (Or. 1994) (finding improper comments to newspaper about pending cases with three other code violations warranted forty-five-day suspension).

F. *Failing to Follow the Law While Conducting Judicial Duties*

Canon 3B(2) provides, "[a] judge shall be faithful to the law and maintain professional competence in it."[202]

> The vast majority of judicial rulings that are not "faithful" to the law are simply legal errors, which can be corrected on appeal, and are not grounds for judicial discipline. To discipline a judge for mere legal error would threaten judicial independence because judges might consciously or unconsciously render decisions based on how they think the disciplinary body would view the decision instead of what they think would be the right decision in a particular case.[203]

However, conscious refusal to follow a clear legal duty, or commission of a gross legal error resulting in a significant loss of a party's rights, may result in judicial discipline.[204] For example, a judge who repeatedly imposed unauthorized sentences, along with other misconduct, was removed from office.[205] A judge's refusal to vacate an order, which both parties agreed was entered by mistake, warrants reprimand where the judge had otherwise rendered conscientious service to the judiciary.[206] Readily apparent violations of constitutional rights have subjected judges to judicial discipline.[207] In one circumstance, the court imposed a public reprimand where a judge was convicting defendants without trial when they failed to appear.[208] Additionally, the Supreme Court of Florida determined that a judge who held a hearing in a child custody case without giving pre-hearing notice to the mother deserved a public reprimand.[209] Similar cases in other jurisdictions involving failure to follow the law have resulted in censures as well as suspensions of varying length.[210]

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202. FLA. CODE JUD. CONDUCT Canon 3B(2).

203. ANN. MODEL CODE OF JUD. CONDUCT Canon 3 cmt. (2004) (citation omitted).

204. *See In re* Graham, 620 So. 2d 1273 (Fla. 1993).

205. *Id.* at 1274-75.

206. *In re* Vitale, 630 So. 2d 1065, 1066 (Fla. 1994).

207. *See In re* Miller, 644 So. 2d 75, 77, 79 (Fla. 1994); *In re* Colby, 629 So. 2d 120, 120 (Fla. 1993).

208. *Colby*, 629 So. 2d at 120, 121.

209. *Miller*, 644 So. 2d at 77, 79.

210. *See, e.g.*, *In re* Spencer, 798 N.E.2d 175, 183, 185 (Ind. 2003) (holding that judge's misconduct warranted a thirty-day suspension); *In re* Brown (*Helen Brown*), 662 N.W.2d 733, 735-37 (Mich. 2003) (holding that public censure was an appropriate sanction for a judge); *In re* Landry, 789 So. 2d 1271, 1280 (La. 2001) (holding that justice of the peace's misconduct warranted a six-month suspension plus two years probation).

G. *Inappropriately Using Contempt Power*

The JQC has been particularly sensitive to a judge's failure to follow the law in the area of contempt. The Supreme Court of Florida has said of the contempt power of the court:

> [A]lthough the power of contempt is an extremely important power for the judiciary, it is also a very awesome power and is one that should never be abused. Further, because trial judges exercise their power of criminal contempt to punish, it is extremely important that they protect an offender's due process rights, particularly when the punishment results in the imprisonment of the offender. As such, it is critical that the exercise of this contempt power never be used by a judge in a fit of anger, in an arbitrary manner, or for the judge's own sense of justice.[211]

The court went on to further say that:

> Judges must necessarily have a great deal of independence in executing [their] powers, but such authority should never be autocratic or abusive. We judges must always be mindful that it is our responsibility to serve the public interest by promoting justice and to avoid, in official conduct, any impropriety or appearance of impropriety. We must administer our offices with due regard to the system of law itself . . . .[212]

Thus, when a judge fails to follow the law concerning the use of the contempt power, the court has upheld imposition of public reprimands.[213] In addition, when the evidence demonstrated a pattern of abuse in this area, the court has removed the offending judge.[214] Other jurisdictions have handled contempt in a similar manner.[215]

H. *Misusing Office for Personal Gain*

Canon 2B of the Code of Judicial Conduct states that "[a] judge shall not lend the prestige of judicial office to advance the private interests of the

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211. *In re* Perry, 641 So. 2d 366, 368 (Fla. 1994).

212. *Id.* at 368–69 (alteration in original) (quoting *In re* Turner (*Fred Turner*), 421 So. 2d 1077, 1081 (Fla. 1982)).

213. *Id.* at 361 (citing *In re* Eastmoore, 504 So. 2d 756, 758 (Fla. 1987); *Fred Turner*, 421 So. 2d at 1081; *In re* Crowell, 379 So. 2d 107, 110 (Fla. 1979)).

214. *Crowell*, 379 So. 2d at 110.

215. *See generally* Ana Kellia Ramares, Annotation, *Abuse or Misuse of Contempt Power as Ground for Removal or Discipline of Judge*, 76 A.L.R. 4TH 982, 987 (1990) (noting national trends in judicial discipline).

judge or others . . . ."[216] According to the Supreme Court of Florida, "[u]sing the prestige of judicial office to advance one's own interest undermines the very prestige and respect that is being traded upon and, inevitably, erodes public confidence in the judiciary."[217] The Court further asserts that "[s]uch acts cannot be tolerated."[218] Thus, utilizing the judicial position, by summoning a reporter to chambers to resolve a personal matter, resulted in a public reprimand.[219] Reprimand was also determined to be appropriate where a judge attempted to get special treatment during his arrest for soliciting a prostitute.[220] Another judge was reprimanded for threatening to withdraw a donation he regularly provided to the Police Officers Benevolent Fund because of a parking ticket the judge had received.[221]

In two cases, the misuse of office coupled with other misbehavior resulted in removal.[222] In *In re Damron*, the Supreme Court of Florida held that the use of judicial office for personal political gain, the threatening of parties and other individuals, and the participation in ex parte communications warrants removal from office.[223] In another case, a judge's misuse of office coupled with elections violations resulted in removal.[224]

In several cases, other states have determined that utilizing the judicial position for personal financial gain justified a reprimand.[225] A judge, who was involved in an accident and tried to direct how the investigation proceeded, was suspended for fifteen days without pay in light of his past indiscretions.[226] In another case, a judge was removed for a pattern of misusing the office for personal gain.[227]

I. *Misusing Office for Benefit of Others*

Closely related behavior is misusing the judicial office for the benefit of others, which is conduct that is also expressly prohibited by Canon 2B.[228]

216. FLA. CODE JUD. CONDUCT Canon 2B.
217. *In re* Richardson, 760 So. 2d 932, 933 (Fla. 2000).
218. *Id.* (citing *In re* Fogan, 646 So. 2d 191, 194 (Fla. 1994)).
219. *In re* Eastmoore, 504 So. 2d 756, 757–58 (Fla. 1987).
220. *Richardson*, 760 So. 2d at 932–33.
221. *In re* Steinhardt, 663 So. 2d 616, 617–18 (Fla. 1995).
222. *In re* McMillan, 797 So. 2d 560, 573 (Fla. 2001); *In re* Damron, 487 So. 2d 1, 7 (Fla. 1986).
223. *Damron*, 487 So. 2d. at 7.
224. *McMillan*, 797 So. 2d at 562–64, 573.
225. *E.g.*, *In re* Brown (*Harry Brown*), 512 S.E.2d 114, 114–15 (S.C. 1999); *In re* Phalen, 475 S.E.2d 327, 333, 335 (W. Va. 1996).
226. *In re* Brown (*Christopher Brown*), 626 N.W.2d 403, 406 (Mich. 2001).
227. *In re* Samay, 764 A.2d 398, 402, 407 (N.J. 2001).
228. FLA. CODE JUD. CONDUCT Canon 2B.

Canon 2B also states it is inappropriate for a judge to "testify voluntarily as a character witness."[229]

In *In re Holloway*, the judge was suspended for thirty days for, among other things, approaching and chastising the presiding judge in a friend's child custody case.[230] Additionally, the judge exerted pressure on a fellow judge to take a case out of turn so her brother, who was a lawyer on the case, might make an appointment.[231] Another judge's involvement in hiring, and subsequent efforts to obtain a raise and promotion for a close personal friend and business associate, along with other misconduct warranted removal.[232] A judge who inappropriately interceded to release a son's friend after the friend was arrested for driving while intoxicated, entered into a stipulation with the JQC for a public reprimand.[233]

In other states, isolated cases of inappropriate involvement in another judge's proceedings appear to have warranted suspension or reprimand.[234] In a case that appears similar to *Holloway*, a judge tried to help a lawyer-friend in a dissolution proceeding.[235] The Supreme Court of Iowa determined that a sixty-day suspension was appropriate.[236] Interceding with law enforcement on behalf of friends' children regarding pending cases resulted in a public censure.[237] A judge's entry of a protective order in a case involving his father, aunt, and first cousin resulted in a fifteen-day suspension.[238] A number of other cases involving fixing traffic tickets have resulted in reprimands or censure.[239]

In a number of cases, the Supreme Court of Florida has held that providing a personal character reference letter for a personal friend who is to be

229. *Id.*
230. 832 So. 2d 716, 717–18, 729 (Fla. 2002).
231. *Id.* at 721.
232. *In re* Graziano, 696 So. 2d 744, 747, 753 (Fla. 1997).
233. *In re* Maloney, 916 So. 2d 786, 786–87, 789 (Fla. 2005).
234. *See, e.g., In re* Eads, 362 N.W.2d 541, 549–51 (Iowa 1985).
235. *Id.* at 543, 547, 549–51.
236. *Id.* at 551.
237. *In re* Martin, 456 S.E.2d 517, 517–18 (N.C. 1995).
238. *In re* Funke, 757 N.E.2d 1013, 1014–15, 1017 (Ind. Ct. App. 2001).
239. *See, e.g.*, Miss. Comm'n on Judicial Performance v. Warren, 791 So. 2d 194, 196, 199 (Miss. 2001) (holding that a public reprimand, as well as payment of a fine and court costs, was an appropriate sanction for the judge's misconduct); *In re* Snow, 674 A.2d 573, 574–75, 579–80 (N.H. 1996) (holding that public censure, six-month suspension, completion of judicial ethics course, and payment of court costs as sanctions for judicial misconduct were all supported by the violations).

sentenced on criminal charges warrants a public reprimand.[240] The law in other states appears to be consistent with the approach taken by Florida.[241]

J. *Abusing Substances*

Many cases involving substance abuse are dealt with informally prior to the case becoming public.[242] The JQC will intervene and require the judge to attend treatment programs.[243] In some of these cases, inappropriate behavior while intoxicated will require that formal charges be filed.[244] In some cases, treatment is required after charges have been filed.[245] In one case, an intoxicated judge who witnessed a petty theft by an acquaintance, and later covered it up, received mandated alcohol counseling as part of her discipline.[246] Another judge who went on a three-day drinking binge, during which he discharged a firearm, received a public reprimand.[247] A public reprimand was determined to be appropriate for being intoxicated and making inappropriate sexual advances at an out-of-state judicial conference.[248] Absent other extensive misconduct, treatment and reprimand appear to be the favored discipline.

K. *Improper Receiving of Gifts*

Canon 5D(5)(h) of the *Florida Code of Judicial Conduct* prohibits a judge from accepting a gift of any value from a "person who has come or is likely to come" before the judge.[249] The commentary to Canon 5D(5)(h) specifically provides that this Canon "prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are

240. *E.g.*, *In re* Ward, 654 So. 2d 549, 550–52 (Fla. 1995); *In re* Fogan, 646 So. 2d 191, 191, 194 (Fla. 1994); *In re* Stafford, 643 So. 2d 1067, 1068–69 (Fla. 1994).

241. *See, e.g.*, *In re* Carton, 658 A.2d 1211, 1211, 1215–17 (N.J. 1995) (holding that giving legal advice to a defendant in a criminal matter, and allowing a fax to be sent to another judge about a matter pending before him, warranted a public reprimand); *In re* Decuir, 654 So. 2d 687, 691–93 (La. 1995) (holding that writing a letter to a judge regarding sentencing of a friend, among several other ethical violations, warranted a public censure).

242. *See, e.g.*, *In re* Norris, 581 So. 2d 578, 578–80 (Fla. 1991).

243. *See id.* at 579.

244. *See, e.g.*, *In re* Cope, 848 So. 2d 301, 302–03, 305 (Fla. 2003); Amended Notice of Formal Changes, *In re* a Judge (*Scott Kenney*), No. 98-198, (Fla. July 12, 2001), *dismissed by In re* Kenney, 828 So. 2d 386 (Fla. 2002); *In re* Wilson, 750 So. 2d 631, 632–33 (Fla. 1999).

245. *Kenney*, 828 So. 2d at 386; *Wilson*, 750 So. 2d at 632–33.

246. *Wilson*, 750 So. 2d at 632–33.

247. *Norris*, 581 So. 2d at 578, 580.

248. *Cope*, 848 So. 2d at 302, 305.

249. FLA. CODE JUD. CONDUCT Canon 5D(5)(h).

likely to come before the judge."[250] One judge, with a spotless record and high grades in bar polls, stipulated to receiving a reprimand for accepting tickets to Florida Marlins games from two friends in a law firm whose firm had two cases in front of him at the time he accepted the tickets.[251] There do not appear to be any other reported disciplinary cases involving acceptance of gifts. The acceptance of gifts from parties appearing, or likely to appear, before the court coupled with attempted concealment, however, has resulted in removal from office in at least two states.[252]

L. *Improper Sexual Conduct*

In *In re McAllister*,[253] sexual harassment of an aide was one of the charges leading to removal.[254] Continual sexual advances to court personnel,[255] or probation officers and other parties appearing in front of the court,[256] have resulted in judges resigning after charges have been filed.[257] Other sexual misconduct has resulted in several judges resigning before formal charges were filed. In one case, a reprimand was warranted when a judge, who was well regarded as a jurist, was arrested for having sex in a parking lot with a woman that was not his wife.[258] Different types of sexual misconduct have resulted in different penalties in other states.[259]

M. *Improper Behavior While Practicing Law*

Judges who violate the *Florida Rules of Professional Conduct*, while practicing as a lawyer, have been found to violate Canons 1 and 2 of the *Florida Code of Judicial Conduct*.[260] In *In re Hapner*,[261] the Supreme Court

250. FLA. CODE JUD. CONDUCT Canon 5D(5)(h) cmt.

251. *In re* Luzzo, 756 So. 2d 76, 77–79 (Fla. 2000).

252. *See* Adams v. Comm'n on Judicial Performance, 897 P.2d 544, 552, 567, 571 (Cal. 1995); *In re* Cunningham (*Mary Rose Fante Cunningham*), 538 A.2d 473, 488–90 (Pa. 1988).

253. 646 So. 2d 173 (Fla. 1994).

254. *Id.* at 174, 178.

255. Notice of Formal Charges, *In re* a Judge (*Howard Berman*), No. 00-211, (Fla. Nov. 30, 2000), *dismissed by In re* Berman, 814 So. 2d 439, 439 (Fla. 2002).

256. Notice of Formal Charges, *In re* Ward, No. 99-379 (Fla. Mar. 1, 2000), *decision without published opinion*, *In re* Ward, 678 So. 2d 338, 338 (Fla. 1996).

257. Opinion, *The Wrong Job Offer*, PALM BCH. POST, July 12, 2005, at 12A; *see Ward*, 678 So. 2d at 338.

258. *In re* Lee, 336 So. 2d 1175, 1176–77 (Fla. 1976).

259. *See* Gregory G. Sarno, Annotation, *Sexual Misconduct as Ground for Disciplining Attorney or Judge*, 43 A.L.R. 4TH 1062, 1105–27 (1986).

260. *See In re* Ford-Kaus, 730 So. 2d 269, 270–72, 276 (Fla. 1999).

261. 718 So. 2d 785 (Fla. 1998).

of Florida held that a judge's removal from office was warranted for neglecting clients while running for office, giving "misleading testimony in a domestic violence proceeding," and failing to comply with a court order in a dissolution proceeding.[262] In *In re Ford-Kaus*, the Supreme Court of Florida found that clear and convincing evidence supported a judge's removal from office who, while a lawyer running for office: lied to clients about the 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.[263] Charging excessive fees and failing to timely pay charges from a trust account while closing an office warranted reprimand.[264] Removal from office was determined to be appropriate in a case of a judge who practiced law while previously serving on the bench and who also counseled a client with pending criminal charges to flee the jurisdiction.[265]

One case involving a dispute over legal fees resulted in a reprimand.[266] Several cases involving inappropriate commingling of funds resulted in reprimands.[267] Obviously, the severity of the discipline will depend on the severity of the misconduct.

N. *Violating Criminal Laws*

Violations of the law clearly demean the judicial office and have been found to violate a number of canons.[268] As in the previous category, the severity of the discipline will depend on the seriousness of the legal violation. In one post-1996 case, the Supreme Court of Florida removed a judge for backdating official court records.[269] In a pre-1996 case, the court held that removal was warranted in a shoplifting case, despite evidence that the incident was caused by severe depression and the judge previously had an exemplary record of public service.[270] Misuse of a state credit card for personal

262. *Id.* at 786, 788.
263. *Ford-Kaus*, 730 So. 2d at 272–74, 276–77.
264. *In re* Meyerson, 581 So. 2d 581, 582 (Fla. 1991).
265. *In re* Henson, 913 So. 2d 579, 582, 594 (Fla. 2005).
266. *In re* Davey, 645 So. 2d 398, 399–400, 409–10 (Fla. 1994).
267. *E.g.*, *In re* Capua, 561 So. 2d 574, 575 (Fla. 1990).
268. *See In re* Wilson, 750 So. 2d 631, 632–33 (Fla. 1999); *In re* Johnson (*June LaRan Johnson*), 692 So. 2d 168, 173 (Fla. 1997); *In re* Garrett, 613 So. 2d 463, 463, 465 (Fla. 1993); *In re* Fowler, 602 So. 2d 510, 510–11 (Fla. 1992); *In re* LaMotte, 341 So. 2d 513, 515, 518 (Fla. 1977).
269. *June LaRan Johnson*, 692 So. 2d at 170, 173.
270. *Garrett*, 613 So. 2d at 463–65.

travel justified removal in another case.[271] Withholding or giving false information to the police during an investigation resulted in a ten-day suspension in one case,[272] and a public reprimand in another.[273]

In *In re McIver*,[274] the Supreme Court of Florida found the judge's participation in an illegal card game and misdemeanor gambling conviction warranted a reprimand.[275] Participation on a golf tournament committee that promoted gambling on the tournament was cause for public reprimand.[276] Improper exhibition of a weapon warranted the same discipline.[277] Reprimand was also deemed appropriate in several driving while intoxicated cases.[278] Failure to report a boating accident[279] also resulted in a public reprimand.[280] Moreover, in a Michigan case, removal from office was the penalty imposed for a judge who left the scene of an automobile accident, appeared intoxicated, and drank more alcohol before speaking to the police.[281]

O. *Delay in Ruling*

Canon 3B(8) states: "[a] judge shall dispose of all judicial matters promptly, efficiently, and fairly."[282] Most cases involving delay are resolved through the informal process. In one case where a large number of cases were involved, the judge received a public reprimand.[283]

P. *Exhibiting Lack of Candor During Official Proceedings*

The failure to be candid during a police investigation has previously been discussed under the section on violating the law.[284] Lack of candor or giving inconsistent statements during a JQC investigation may be taken into

271. *LaMotte*, 341 So. 2d at 515, 518.
272. *Wilson*, 750 So. 2d at 632–33.
273. *Fowler*, 602 So. 2d at 510–11.
274. 638 So. 2d 45 (Fla. 1994).
275. *Id.* at 46.
276. *In re* Byrd, 460 So. 2d 377, 377 (Fla. 1984).
277. *In re* Tye, 544 So. 2d 1024, 1024–25 (Fla. 1989).
278. *In re* Esquiroz, 654 So. 2d 558, 558–59 (Fla. 1995); *In re* Gloeckner, 626 So. 2d 188, 189 (Fla. 1993).
279. *In re* Fletcher, 666 So. 2d 137, 139 (Fla. 1996) (Anstead, J., specially concurring).
280. *Id.* at 138 (per curiam).
281. *In re* Noecker, 691 N.W.2d 440, 441–42, 448 (Mich. 2005).
282. FLA. CODE JUD. CONDUCT Canon 3B(8).
283. *In re* Allawas, 906 So. 2d 1052, 1053–55 (Fla. 2005).
284. *See supra* Part IV.N.

account when assessing penalties.[285] In one case, the Supreme Court of Florida emphasized the importance of candor, stating:

> Berkowitz testified before the commission several times, and, each time, his testimony changed. The JQC found Berkowitz' willful deception, by itself, sufficient to warrant removal. We agree that lying to the JQC is very serious because the "integrity of the judicial system, the faith and confidence of the people in the judicial process, and the faith of the people in the particular judge are all affected by the false statements of a judge."[286]

Q. *Failing to File Required Disclosure*

Judges in Florida are required to file various financial disclosure forms, as well as campaign financing reports, when they run for election.[287] Failure to file these forms constitutes a violation of Canon 6.[288] The vast majority of the failure to file financial disclosure cases are taken care of informally. The judge receives a reminder and the appropriate forms are filed. In one case, the failure to disclose income within a financial disclosure form constituted a violation of Canon 6 and resulted in a public reprimand.[289] At least one other state imposed a reprimand for filing an incorrect disclosure form.[290] The campaign finance violations generally are tied to other charges regarding violations of Canon 7.[291] Such violations are discussed later in this article.[292]

R. *Criticizing Jurors and Officials*

Canon 3B(11) prohibits a judge from criticizing jurors.[293] In several cases, the JQC has taken informal action against judges for violating this

285. *See In re* Berkowitz, 522 So. 2d 843, 843–44 (Fla. 1988); *see also In re* Holloway, 832 So. 2d 716, 719, 729 (Fla. 2002) (holding that making materially misleading and incomplete statements to judges violates judicial canons).

286. *Berkowitz*, 522 So. 2d at 843 (quoting *In re* Leon, 440 So. 2d 1267, 1269 (Fla. 1983)).

287. FLA. CONST. art. II, § 8; FLA. CODE JUD. CONDUCT Canon 6(B).

288. *See* FLA. CODE JUD. CONDUCT Canon 6.

289. *In re* Meyerson, 581 So. 2d 581, 582 (Fla. 1991).

290. *In re* Nelson, 532 S.E.2d 609, 610, 612 (S.C. 2000) (holding that failing to disclose extra-judicial income on an annual disclosure statement, as well as committing several other ethical violations before resigning, warranted a public reprimand).

291. *See generally* FLA. CODE JUD. CONDUCT Canon 7 (regulating inappropriate political activity).

292. *See infra* Part IV.T.2.

293. FLA. CODE JUD. CONDUCT Canon 3B(11). This rule was recently renumbered from 3(B)(10) to 3(B)(11) by court order. *In re* Amendment to Code of Judicial Conduct, No. SC05-281 (Fla. Jan. 5, 2006).

canon. Other canons suggest a judge should not misuse his office in order to unnecessarily criticize other public officials.[294] One judge was removed for this action along with other erratic behavior.[295] The following two categories have proved to be the most controversial as to the appropriate discipline.

S. *Use of Intimidation*

Words of intimidation or threat are used in a number of cases involving judicial discipline. This category involves inappropriate contact with other people as much as the two categories discussed earlier in this article, but because of the seriousness of the behavior, it has been treated with heightened scrutiny by the highest court and the disciplinary commissions of the various states. In Florida, a number of these cases exist.

In *In re Shea*,[296] a judge "improperly contacted two attorneys and intimidated these attorneys into withdrawing from representation of their client."[297] This behavior along with other misconduct warranted removal.[298] In *In re Damron*,[299] a judge's actions of threatening parties and other individuals along with other acts of misconduct justified removal from office.[300] A judge's attempted intimidation of a fellow judge who was handling a friend's case resulted in a thirty-day suspension.[301] In another case, a judge who participated in the intimidation of a minor and his family received a ninety-day suspension and a $1500 fine.[302] Lastly, a judge who threatened an attorney unless subpoenas were withdrawn received a fifteen-day suspension.[303]

The results in other states are similar. Threats made in the courtroom mandated a six-month suspension without pay in a Washington State case.[304] Inappropriate threats of the use of contempt power, as well as the issuance of

294. *In re* Graham, 620 So. 2d 1273, 1274–75 (Fla. 1993) (approving the JQC's finding of violations of Canons 1, 2, and 3(A)(1)).

295. *Id.* at 1274–75, 1277.

296. 759 So. 2d 631 (Fla. 2000).

297. *Id.* at 632.

298. *Id.* at 638–39.

299. 487 So. 2d 1 (Fla. 1986).

300. *Id.* at 7.

301. *In re* Holloway, 832 So. 2d 716, 723, 729 (Fla. 2002).

302. Miss. Comm'n on Judicial Performance v. Bishop, 761 So. 2d 195, 196, 198 (Miss. 2000).

303. *In re* Elliston, 789 S.W.2d 469, 476, 484 (Mo. 1990) (holding that a menacing phone call to an attorney demanding the withdrawal of subpoenas, as well as several other discourteous acts, warranted a fifteen-day suspension).

304. *In re* Hammermaster, 985 P.2d 924, 926 (Wash. 1999).

other threats toward attorneys, resulted in a five-year suspension in Michigan.[305] Other threats have resulted in censure or reprimand.[306]

In *In re Diaz*,[307] Justice Cantero, in his dissenting opinion, questioned the severity of the punishment.[308] Judge Diaz wrote an anonymous e-mail to another judge threatening political retribution unless the judge receiving the e-mail discontinued reporting illegal aliens who appeared before him.[309] The judge received a $15,000 fine, a two-week suspension without pay, a public reprimand, and was required to issue a public apology.[310]

The misconduct in *Diaz* involved threats and intimidation.[311] The facts of *Diaz*, however, are unique. It is therefore difficult to determine whether the penalty was disproportionate. Unlike the other cases involving threats, the party being threatened was unaware that the person making the threat was a judge.[312] While inappropriate off the bench conduct, which may bring the judiciary into disrepute, is clearly covered by the code,[313] one might argue that the misconduct in *Diaz* is less serious because no one knew a judge was involved. The other viewpoint is that anonymous threats are just as serious and may further tarnish the judiciary when they become public knowledge. The only other case in Florida involving attempted intimidation of another judge is *In re Holloway*.[314] Unlike *Holloway*, however, the threat in *Diaz* was not made in the heat of passion, but appeared to be a calculated attempt to coerce specific conduct.[315] Thus, it could be argued that Diaz's level of misconduct was greater because the majority of the court in *Diaz* determined the penalty proposed by the JQC was appropriate.[316]

T. *Election Violations*

The various types of election violations, in addition to making misrepresentations during the campaign, include: a) making inappropriate promises

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305. *In re* Del Rio, 256 N.W.2d 727, 729, 752–53 (Mich. 1977).

306. *See, e.g.*, *In re* Diaz, 908 So. 2d 334, 336, 338 (Fla. 2005) (imposing suspension without pay, a fine, and public reprimand).

307. *Id.* at 334.

308. *Id.* at 338 (Cantero, J., dissenting).

309. *See id.* at 336 (majority opinion).

310. *Id.* at 336, 338.

311. *Diaz*, 908 So. 2d at 336.

312. *See id.* at 337.

313. *See, e.g.*, *In re* Cope, 848 So. 2d 301, 302–03 (Fla. 2003); *In re* Wilson, 750 So. 2d 631, 632–33 (Fla. 1999).

314. 832 So. 2d 716, 718 (Fla. 2002).

315. *See Diaz*, 908 So. 2d at 336.

316. *Id.* at 336–38.

of performance in office;[317] b) campaign financing and reporting misconduct;[318] c) engaging in partisan politics;[319] d) supporting another candidate for office;[320] and e) directly soliciting loans in excess of the $500 statutory limit from family members.[321]

These violations have been difficult to deal with not only because of the First Amendment implications discussed earlier,[322] but because of the competing concepts that a party should not profit (by obtaining a position in the judiciary) from campaign misdeeds and the idea that removal should only occur in those cases where the judge's conduct is fundamentally inconsistent with the responsibilities of judicial office.[323] The most contentious areas concerning discipline have involved inappropriate promises of performance and misrepresentations regarding an opponent. The area of campaign financing and reporting violations has also created some controversy as to appropriate discipline. While the prohibition as to engaging in partisan politics appears to involve profound First Amendment issues, the question of discipline has not been hotly disputed so far in Florida. Cases involving backing another candidate for office have been rare.

1. Making Inappropriate Promises of Performance in Office

In *In re Alley*,[324] the parties stipulated that the judge:

> (a) misrepresented her qualifications and those of her opponent; (b) injected party politics into a non-partisan election, by noting the party affiliation of the governor who had appointed her opponent to her position of county judge (when in fact both Alley and her opponent were members of the same political party, which was different from that of the governor); (c) improperly included a photograph of her opponent sitting next to a criminal defendant noting that her opponent "defend[ed] convicted mass murderer, cop killer, William Cruse," when at the time of the photograph Cruse had not been convicted and her opponent was an assistant public defender observing a duty placed on her as a member of The Florida Bar; and (d) improperly included a portion of a

317. *In re* McMillan, 797 So. 2d 560, 562–64 (Fla. 2001).
318. *In re* Rodriguez, 829 So. 2d 857, 858–59 (Fla. 2002).
319. *In re* Angel, 867 So. 2d 379, 380–82 (Fla. 2004).
320. *In re* Glickstein, 620 So. 2d 1000, 1001–02 (Fla. 1993).
321. *See In re* Pando, 903 So. 2d 902, 902–03 (Fla. 2005).
322. *See supra* Part III.G.
323. *See Rodriguez*, 829 So. 2d at 858, 860–61; *McMillan*, 797 So. 2d at 572–73.
324. 699 So. 2d 1369 (Fla. 1997).

> newspaper editorial which falsely implied that Alley, not her opponent, had been endorsed by the newspaper.[325]

The JQC, finding her response to be sincere, recommended that the judge be reprimanded.[326] The court reluctantly accepted the recommended penalty stating: "we find it difficult to allow one guilty of such egregious conduct to retain the benefits of those violations and remain in office."[327]

The difficulty in determining the appropriate penalty in election cases was more thoroughly discussed in *Kinsey*.[328] The JQC found that judicial campaigns which depicted a very "pro-law enforcement" stance (representations made in pamphlets, flyers, and radio statements) violated Canon 7.[329] The JQC also found that campaign materials which misrepresented a judge's role in criminal proceedings (to combat crime and support police officers) violated the code.[330] In addition, there were misrepresentations concerning the incumbent judge's actions in specific cases.[331]

> [T]he JQC recommended that Judge Kinsey be publicly reprimanded and fined in the amount of $50,000 plus the costs of these proceedings. The amount of the fine represented approximately 50% of her yearly salary, or in other words, a six-month suspension without pay (which was the other option that the JQC considered imposing). The JQC explained this decision as follows:
>
> The Panel finds that Judge Kinsey is guilty of serious violations growing out of her campaign in which she was successful in obtaining the position of county court judge. The Panel has no hesitancy in recommending that she be publicly reprimanded by this Court but believes leaving her in office with no further penalty is entirely inappropriate. Under the current Constitution, Judge Kinsey is subject to removal or further penalty in the form of a fine. The Hearing Panel has thoroughly deliberated this issue and concludes that the penalty imposed here must be sufficient to strongly discourage others from violating the Canons governing contested elections.
>
> At least one member of this Panel strongly urged Judge Kinsey's removal. This Panel member concurs in and would apply the statement of this Court in *Alley* that: "We find it difficult to allow one guilty of such

325. *Id.* at 1369 (alteration in original).
326. *Id.* at 1370.
327. *Id.*
328. *In re* Kinsey, 842 So. 2d 77, 80 (Fla. 2003).
329. *Id.* at 79–92.
330. *Id.*
331. *Id.* at 82–84.

egregious conduct to retain the benefits of these violations and remain in office."

However, the conduct in *Alley* was, in the view of the majority of the Hearing Panel, significantly more egregious than the conduct involved in the present case. Judge Alley admitted to intentionally misrepresenting the basic qualifications of her incumbent opponent and in intentionally misrepresenting her own qualifications. She altered a published newspaper to make it appear she had been endorsed by the paper which had actually endorsed her opponent. She intentionally injected party politics into the nonpartisan race. Judge Kinsey's misconduct did not rise to this level.

Despite the less egregious nature of the violations, Judge Kinsey must be punished for her conduct and such conduct simply cannot be tolerated in future elections. While a reprimand alone is insufficient, there was no evidence that Judge Kinsey is presently unfit to hold office other than her misconduct involved in winning the election. Although such misconduct can rise to the level of present unfitness as is required for removal under Article V, § 12(a)(1), here, the Panel finds the conduct does not warrant removal.[332]

The panel obviously struggled with some very basic issues, including: 1) weighing Judge Kinsey's culpability versus Judge Alley's culpability; 2) the application of the strict standards for removal previously announced by the Supreme Court of Florida; 3) trying to arrive at an appropriate penalty short of removal for what it obviously regarded as serious misconduct; 4) trying to determine how to apply the relatively new penalties of fine and suspension (applying a fine equivalent to a six-month suspension without straining resources of the court system); and 5) trying to assess a penalty which would be strong enough to deter this misconduct in the future.[333]

The Supreme Court of Florida upheld the decision of the JQC as to discipline, specifically finding:

We agree with the JQC that Judge Kinsey is guilty of serious campaign violations that warrant a severe penalty. Accordingly, this Court agrees with the JQC's recommendation as to discipline and finds that a substantial fine is warranted in order to assure the public that justice is dispensed in a fair and unbiased manner and to warn any future judicial candidates that this Court will not tolerate improper campaign statements which imply that, if elected, the judicial candidate will favor one group of citizens over

332. *Id.* at 91–92 (citation omitted).
333. *Kinsey*, 842 So. 2d at 91–92.

> another or will make rulings based upon the sway of popular sentiment in the community.[334]

Chief Justice Anstead, who concurred in the majority opinion, indicated he felt the decision as to discipline was close.[335] Justice Pariente recognized the difficulty in applying the punishments of suspensions and fines, but deferred to the decision of the JQC, especially in light of its goal to deter this behavior in the future.[336] Justice Lewis, as previously indicated,[337] felt removal was appropriate.[338] Justice Wells dissented in an opinion joined by Justice Quince, finding much of Judge Kinsey's behavior protected by the First Amendment as construed in *Republican Party of Minnesota v. White*, a United States Supreme Court case.[339] In light of this determination, Justice Wells would have only found Judge Kinsey guilty of misrepresentations and imposed a reprimand.[340]

In another case, the Supreme Court of Florida held that a judge is required to be removed when the judge is charged with:

> (1) making explicit campaign promises to favor the State and the police in court proceedings; (2) making explicit promises that he would side against the defense; (3) making unfounded attacks on an incumbent county judge; (4) making unfounded attacks on the local court system and local officials; and (5) improperly presiding over a court case in which he had a direct conflict of interest.[341]

In several recent cases, other state courts have upheld reprimands and censures for promises of being tough on crime,[342] having the heart of a prosecutor, [343] or promising to be "tough on drunk driving."[344] A pledge to stop repeated child abuse resulted in a thirty-day suspension from one

334. *Id.* at 92.
335. *Id.* at 93 (Anstead, C.J., specially concurring).
336. *Id.* at 95–97 (Pariente, J., concurring).
337. *See supra* note 1.
338. *Kinsey*, 842 So. 2d at 97 (Lewis, J., concurring in part and dissenting in part).
339. *Id.* at 100 (Wells, J., dissenting) (referencing Republican Party of Minn. v. White, 536 U.S. 765, 788 (2002)).
340. *Id.* (Wells, J., dissenting).
341. *In re* McMillan, 797 So. 2d 560, 562 (Fla. 2001).
342. *In re* Haan, 676 N.E.2d 740, 741 (Ind. 1997) (upholding reprimand).
343. *In re* Watson, 794 N.E.2d 1, 2–3, 8 (N.Y. 2003) (upholding censure); *see also In re* Kaiser, 759 P.2d 392, 394, 401 (Wash. 1988) (upholding censure).
344. *Kaiser*, 759 P.2d at 394–98, 401.

court.[345] Several cases involving misrepresentations of a judicial candidate's qualifications or the qualifications of the opponent have resulted in fines or reprimands.[346]

2. Campaign Financing and Reporting Misconduct

In *In re Rodriguez*,[347] the judge was disciplined for filing misleading financial reports which, among other things, indicated she had loaned her campaign $200,000 when in fact she had received a contribution to her campaign of that amount from her boyfriend.[348] There were also several other campaign financing violations.[349] The JQC originally recommended a reprimand, which was rejected by the Supreme Court of Florida.[350] On remand, the JQC recommended that Judge Rodriguez be disciplined by: 1) a public reprimand to be delivered personally before the Supreme Court of Florida; 2) suspension for four months without pay; 3) a $40,000 fine to be paid upon Judge Rodriguez's return to the bench "in equal monthly payments until the end of her present term;" and 4) "payment of all court reporter's fees incurred by the JQC."[351] The court accepted this recommendation; however, it commented on appropriate considerations for fines in the future.[352]

> The JQC explains that the fine "is designed to reimburse the public for payments made to the Respondent during her prior paid absence from the bench." Judge Rodriguez's prior paid absence was an eight-month paid suspension which she voluntarily took while being investigated by the State for potential criminal violations of the election laws. All charges related to the State's investigation were eventually dismissed. The amount of the fine represents approximately half of the salary she received during that eight-month suspension. We understand that the JQC intended the fine and the four-month suspension without pay to account for the monies paid to her during her previous suspension. However, the fine and the unpaid four-month suspension will not necessarily make the State whole. Generally, when a judge is suspended or on leave, a senior judge is appointed in

345. Summe v. Judicial Ret. & Removal Comm'n, 947 S.W.2d 42, 43–44, 46, 48 (Ky. 1997).

346. *In re* Donohoe, 580 P.2d 1093, 1096, 1098 (Wash. 1978) (reprimanding judicial candidate's conduct); *In re* Emrich, 669 N.E.2d 586, 586, 588–89 (Ohio 1996) (assessing costs).

347. 829 So. 2d 857 (Fla. 2002).

348. *Id.* at 858–59.

349. *See id.* at 859.

350. *Id.* at 858.

351. *Id.*

352. *Rodriguez*, 829 So. 2d at 861.

> her place. The senior judge's salary is paid out of a special fund. Thus, the JQC should in the future also take into consideration, when determining the amount of any fine, the potential financial burden a given circuit incurs when it has to appoint a senior judge in the event of a suspension. Any fine that is intended to make the circuit whole should include that component.[353]

Thus, one appropriate gauge for a fine is to make the state whole for any damages resulting from the misconduct.[354]

Two other recent cases have dealt with campaign financing violations during judicial campaigns.[355] In *In re Pando*, the Supreme Court of Florida accepted a JQC recommendation of a $25,000 fine where the judge accepted loans from her family in excess of the campaign limits, and then filed misleading campaign reports, as well as giving a misleading statement to the JQC counsel regarding the conduct.[356] In *In re Gooding*, the judge incurred campaign expenses when his account had insufficient funds, and then he tried to reimburse the account after the statutory deadline.[357] The Supreme Court of Florida accepted the JQC recommendation of a reprimand.[358]

3. Engaging in Partisan Politics

In the most recent case that involves engaging in inappropriate partisan politics, the JQC and the accused judge stipulated that during his re-election campaign he spoke at partisan political gatherings to which his opponent was not invited, attended and campaigned at partisan gatherings, and held himself out as a member of a political party at political meetings.[359] The court accepted a reprimand as appropriate where the judge wrongfully believed his conduct was protected by the First Amendment.[360] In several other cases involving wrongfully engaging in partisan activities, the court also accepted recommendations of reprimands.[361]

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353. *Id.*

354. *See id.*

355. *See In re* Gooding, 905 So. 2d 121, 121 (Fla. 2005); *In re* Pando, 903 So. 2d 902, 902 (Fla. 2005).

356. *Pando*, 903 So. 2d at 902, 904.

357. *Gooding*, 905 So. 2d at 121 (citation omitted).

358. *Id.* at 123–24.

359. *In re* Angel, 867 So. 2d 379, 382 n.3 (Fla. 2004).

360. *See id.* at 383. *But see* Republican Party of Minn. v. White, 416 F.3d 738, 766 (8th Cir. 2005) (concluding that Minnesota's partisan-activities clause violated the First Amendment).

361. *E.g.*, *In re* Kay, 508 So. 2d 329, 329–30 (Fla. 1987).

4. Supporting Another Candidate for Office

In one case, the Supreme Court of Florida held that a reprimand was appropriate for a judge who wrongfully supported a Supreme Court of Florida Justice for merit retention.[362] The Supreme Court of Florida stated, "[n]either honest motives nor well-intentioned conduct, however, excuse less than strict compliance with the Code of Judicial Conduct."[363] Another judge received a public reprimand for actively supporting his wife for the position of clerk of the court.[364]

5. Directly Soliciting Support from Attorneys

While federal case law has raised questions concerning the validity of that portion of Canon 7 which prohibits direct solicitation of funds and support by judges seeking election,[365] the Supreme Court of Florida has not spoken on its continued validity. In the one case where a violation was found, the court accepted the JQC's recommendation of a public reprimand.[366]

V. CONCLUSION

While the Supreme Court of Florida retains the right to reject the discipline recommended by the JQC, in the overwhelming majority of cases the court has approved the recommendation. This has been especially true in cases involving either removal or reprimand. There also appears to be basic equality in the discipline that judges receive for violations of the code. Variations usually result from numerous factors which may be considered by the JQC and the unique factual circumstances surrounding individual cases. In fact, the Supreme Court of Florida's rate of rejection of proposed disciplinary action in Florida does not vary significantly from what has occurred in other parts of the country.[367]

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362. *In re* Glickstein, 620 So. 2d 1000, 1002–03 (Fla. 1993).

363. *Id.* at 1002 (citation omitted).

364. *In re* McGregor, 614 So. 2d 1089, 1090 (Fla. 1993); *see also In re* Turner (*Jack Turner*), 573 So. 2d 1, 1–2 (Fla. 1990) (approving recommendation for public reprimand of a judge for actively supporting his son, a candidate for judicial office).

365. FLA. CODE JUD. CONDUCT Canon 7B(1).

366. *In re* Lantz, 402 So. 2d 1144, 1146–47 (Fla. 1981) (court found that soliciting support from a member of the bar violated Canon 7B(2), which at that time was the section that prohibited judicial candidates from soliciting support); FLA. CODE JUD. CONDUCT Canon 7B(2) (1994) (amended 1995).

367. In a recent survey of judicial discipline sanctions, the low nationwide rate of rejection of the recommended discipline in judicial misconduct cases was noted:

The few areas of controversy or potential disagreement seem to concern election cases and cases where fines or suspensions are imposed. Several factors appear to be responsible for this confusion. There are very strict guidelines laid out by the Supreme Court of Florida for removal of judges and, therefore, this punishment is only imposed for the most egregious conduct, repeated behavior, or cases of active concealment. These are cases where there is little room for disagreement. Reprimand usually involves minor or isolated infractions. Suspension and fines are imposed in those tough cases where the misconduct is serious but where the standards for removal have not been met. Suspension and fines are relatively new, as they were authorized in 1996.[368] The philosophy involving when to impose these measures has not been clarified. The Supreme Court of Florida has stated that the goal of judicial discipline even after the 1996 constitutional amendment is not punishment. It is therefore unclear when these disciplinary measures should be utilized.

In the area of elections, the court has stated that a candidate should not profit by their misdeeds. This area of the law however is extremely complicated. Some violations are technical. Many times the offender has taken the bench and performed well. It is unclear whether the same standards for removal apply or whether the court is suggesting a different standard applies in terms of election.

In conclusion, although some areas should be clarified, it appears that in the area of judicial discipline the JQC is performing its duties in the manner contemplated by the Supreme Court of Florida.

> From 1990 through 2001, reviewing [courts imposed] different sanctions than that recommended or imposed by the commissions in 42 cases. In 22 cases, the state supreme court imposed a less severe sanction than that imposed or recommended by the commission; in 20 cases, the court imposed a more severe sanction.

GRAY, *supra* note 3, at 33.

368. FLA. CONST. art. V, § 12(a)(1).