

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

**INQUIRY CONCERNING A JUDGE,
THE HONORABLE WAYNE CULVER
No. 2022-189 & 2022-203**

SC22-_____

FINDINGS AND RECOMMENDATION OF DISCIPLINE

The Florida Judicial Qualifications Commission (the “JQC”) served an Amended Notice of Investigation dated April 18, 2022 on Seminole County Judge Wayne Culver, pursuant to Rule 6(b) of the Florida Judicial Qualification Commission Rules. Judge Culver provided a written response to the Amended Notice of Investigation, and appeared, with counsel, before the Investigative Panel of the Commission on May 3, 2022 to provide testimony and answer questions under oath. At the conclusion of that hearing, the Investigative Panel, by a vote of a majority of the members, found that probable cause exists as to the allegations of misconduct set forth in the Notice of Formal Charges being filed concurrently with these Findings and Recommendation of Discipline.

In this case, Judge Culver has admitted and agreed that his conduct in the two instances outlined in the Amended Notice of Investigation violated the Code of Judicial Conduct. Additionally, the Stipulation and video exhibits to the Notice of Formal Charges contain most of the essential facts necessary to review this matter. The discussion below is intended to explain the Commission’s reasoning in support of its recommended discipline.

The January 25, 2022 Incident

At the outset, the Commission agrees that the respondent in the injunction hearing was over-speaking and generally obstreperous. Towards the end of the hearing when the Court is sentencing the litigant for contempt, the litigant can be heard yelling expletives and being disruptive. The

Commission further notes that the respondent-litigant, who was acting pro-se, also happened to be an in-custody criminal defendant who was shackled and watched by bailiffs.¹ However, ultimately, the behavior of the of the litigant is of little import to the analysis in this case. As this Court has repeatedly instructed: Unprofessional conduct by a lawyer or litigant does not justify or excuse inappropriate conduct by a judge. In In re Shea this Court noted that, "Due to the demands of his or her position of trust and responsibility, a judge may not act in a manner unbecoming a member of the judiciary-even if provoked by the unprofessional behavior of those appearing before the judge. The disparity in power between a judge and a litigant requires that a judge treat a litigant with courtesy, patience, and understanding." In re Shea, 110 So. 3d 414, 418 (Fla. 2013) [internal citations omitted].

In this instance, the Court was admonishing the litigant to refrain from interrupting the petitioner. Judge Culver told the respondent that the Court's words were "the most important words you'll ever hear as long as you live as an organism on this planet." The Court followed that up by telling the pro-se respondent that if he continued to interrupt the petitioner, the judge would send him to jail for so long that the litigant would "have to have the jail re-named after [him]". The Commission finds that Judge Culver's decision to use sarcasm and mockery to communicate with the pro-se litigant was, itself, inappropriate and violative of the Code of Judicial Conduct. While Judge Culver explained that in making those comments he was trying to grab the litigant's attention, the Commission believes, and Judge Culver now agrees, that rather than de-escalate and restore order to the proceeding, the judge's sarcastic and undignified comments served to raise the level of tension in the courtroom.

¹ Thus, there was not a safety or security issue.

And, in addition to clearly lacking the dignity and decorum expected of judges, the Commission is further concerned that by making such an emphatic threat that respondent could not interrupt the petitioner or the Court under penalty of lengthy “consecutive” jail sentences, the Court effectively barred the pro-se litigant from exercising his right to self-representation by, for example, preventing him from potentially making legally permissible objections. Judge Culver acknowledged to the Investigative Panel that he hadn’t considered those ramifications at the time he made the comments.

Later during the hearing, when the Court does actually find the litigant in direct criminal contempt, Judge Culver failed to provide even the minimum of due process required to the respondent, by failing to conduct the legally required colloquy. He also failed to enter a signed judgment of guilt with the required findings as required by the Rules of Criminal Procedure, failed to advise the litigant of his right to appeal, and unlawfully imposed three consecutive contempt sentences totaling 537 days in jail. Shortly after imposing the sentences, Judge Culver modified the sentences to three concurrent contempt sentences totaling 179 days in jail. Subsequently, on May 12, 2022, Judge Culver vacated the contempt order, and set aside the three criminal contempt convictions and all related sentences.

While the Commission believes that the February 10, 2022 behavior is potentially more serious in terms of damage to the judiciary, the Commission also believes that Judge Culver’s actions on February 10, 2022, coupled with his intemperate and sarcastic comments and failure to comply with the law on January 25, 2022, represent a concerning pattern of failing to uphold the high standards of conduct expected of judges.

The February 10, 2022 Incident

Judge Culver's inappropriate behavior on this occasion speaks for itself. His words and actions are as offensive as they are inappropriate.² Whether or not Mr. Newton's conduct would have warranted the contempt which was threatened, the Commission finds that Judge Culver's conduct was unnecessarily confrontational and escalated the disturbance and disruption instead of de-escalating and minimizing the disturbance of the court proceeding. The Commission notes that Judge Culver later entered an order of recusal from Mr. Newton's own criminal case.³

Analysis

In light of its investigation of this matter, which includes video of these incidents (JQC Exhibits 1 and 2) as well as the testimony and admissions received from Judge Culver, the Investigative Panel finds and concludes that the violations of the Code of Judicial Conduct alleged are supported by clear and convincing evidence.

In reviewing judicial disciplinary matters, this Court has consistently held that, "[w]here a judge admits to wrongdoing and the JQC's findings are undisputed, this Court will ordinarily conclude that the JQC's findings are supported by clear and convincing evidence." In re Collins, 195 So. 3d 1129, 1132 (Fla. 2016) citing In re Flood, 150 So.3d at 1098 (quoting In re Diaz, 908 So.2d 334, 337 (Fla.2005)).

The Investigative Panel of the Commission has now entered into a Stipulation with Judge Culver in which Judge Culver admits that his conduct, as set forth in the Stipulation submitted herewith, was wholly inappropriate and violated Canons 1, 2, 3B(2), and 3B(4) of the Code of

² When one considers the lengthy contempt sentences imposed by Judge Culver in the January 25 incident, it is impossible not to wonder whether, if a person had said those words to Judge Culver, that person would be jailed for contempt.

³ The recusal was entered on April 19, 2022, the same day Judge Culver received the initial Notice of Investigation regarding this incident. Curiously, several days later on April 21 Judge Culver again presided over Mr. Newton's case, granting a defense motion to continue with a waiver of speedy trial rights.

Judicial Conduct. In admitting the foregoing, Judge Culver has cooperated fully, accepted full responsibility, and acknowledged that such conduct should have never occurred. Judge Culver regrets that his actions have cast a negative light on the judiciary and the judicial system.

In crafting the recommendation in this matter, the Commission recognizes Judge Culver's lack of prior discipline by the Commission or The Florida Bar, as well as his completion of an anger management course, sensitivity training, and professionalism training prior to the filing of these Findings. He has also sought counseling with a licensed mental health provider. The Commission also notes Judge Culver's subsequent apology to the individual he swore at and threatened with contempt on February 10, 2022. Judge Culver is also relatively new to the bench, having served since January 2021. Although this fact is presented as mitigation, a short tenure can cut both directions since treating others with patience, dignity, and courtesy is not a skill that takes years of judicial experience to develop. Moreover, two instances of inappropriate conduct occurring after only a year of being in office could signal trouble if appropriate intervention is not undertaken now.

Finally, the Commission is mindful of this Court's previous cases finding that a public reprimand is usually the appropriate sanction for intemperate conduct by judges. See In re Bailey, 267 So. 3d 992, 997 (Fla. 2019) (noting the Court has repeatedly stated that, "[A] public reprimand is the appropriate form of discipline for a 'judge's rude or intemperate behavior in open court'" (citing In re Collins, 195 So.3d 1129, 1132 (Fla. 2016), quoting In re Wood, 720 So.2d at 509 (Fla. 1998)).⁴

However, in light of Judge Culver's undignified comments and unlawfully conducted contempt proceeding on January 25, 2022, and the extraordinarily inappropriate nature of Judge

⁴ Some of the more recent cases like Collins and Bailey, contained additional conditions such as letters of apology, completing behavioral or stress management counseling, or education.

Culver's behavior and contempt threat occurring just a few weeks later on February 10, 2022, the Commission believes a more severe sanction is warranted. The Commission is mindful of this Court's oft-repeated directive, that, "[t]o preserve the integrity of the judiciary, a judge must observe a high standard of personal conduct, act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and be patient, dignified and courteous to every individual with whom the judge interacts professionally" In re Murphy, 181 So. 3d 1169, 1177 (Fla. 2015) (quoting provisions of Canons 1 through 3).

The differences between Murphy and the present matter are clear: Chiefly, that the conduct in Murphy culminated in an alleged physical confrontation, while Judge Culver stopped at cursing and using or threatening to use contempt. There is, however, some crucial overlap: Principally, both cases begin and end with a failure by the judge to try to de-escalate a conflict between the Court and an individual with whom the judge was interacting. And, further, both instances were propelled by, not only a failure to de-escalate, but the judge's own rapid escalation of the confrontation through sarcasm, yelling, cursing, or other injudicious behavior.

In terms of recommending a sanction, the Commission believes the present case falls between the Murphy and Collins⁵ cases. While Judge Culver did not engage in a physical confrontation as in Murphy (removal), he did go further than Collins (public reprimand with conditions) by yelling, using profanity, precluding legal arguments, and using or threatening to use contempt inappropriately. Additionally, in contrast to the single instance involved in Collins, the present case deals with two instances spread over a relatively short span of time.

⁵ In Collins, the Court publicly reprimanded Judge Jerri Collins (and ordered her to attend counseling and domestic violence training) after she stipulated to her intemperate treatment of a victim of domestic violence while conducting an, otherwise legal, contempt proceeding regarding the victim's failure to honor a trial subpoena. In re Collins, 195 So.3d 1129 (Fla. 2016)

The Commission is also mindful of this Court's decision to suspend Judge Jacqueline Schwartz for 30 days without pay, fining her \$10,000, and publicly reprimanding her, for, among other misconduct, swearing at and threatening to sue a convenience store owner who declined to display a campaign sign for Judge Schwartz. In re Schwartz, 174 So. 2d 987 (Fla. 2015).⁶ During the public reprimand of Judge Schwartz, Chief Justice Labarga explained, "When you curse a resident of this state using such language, that resident- and the public at large- correctly question the soundness of your judgment as the holder of judicial office." The Commission agrees and further believes that the deleterious effect of such language is only magnified when uttered by the judge in the courtroom or during court proceedings.

Accordingly, the Commission therefore finds and recommends, and Judge Culver agrees, that the interests of justice, the public welfare, and sound juridical administration will be well served by the imposition of a 60-day suspension without pay, a public reprimand, and completion of an anger management course and stress management counseling. The Commission believes that such a sanction serves to remind judges and assure the public that judges in the State of Florida are held to the highest standard of personal conduct.

Dated this ___ day of June, 2022.

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

By: 
Hon. Michelle Morley
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⁶ The discipline imposed in Schwartz was actually the result of a second Stipulation, after the Court rejected the first Stipulation which called for a public reprimand and letter of apology. The Court stated that the first Stipulation was insufficient to address the serious violations, and indicated that it would accept a Stipulation that included a 30-day suspension without pay, and a \$10,000 fine. The final sanction also included an apology to the store owner.