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BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING JUDGE,

SC12-2495

JUDITH W. HAWKINS, NO. 11-550

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FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF THE HEARING PANEL, FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

Pursuant to the Florida Const. art. v, §12(a)(1), (b) and (c), and Florida Judicial Qualifications Commission ("FJQC") Rules, the FJQC Hearing Panel, submits these Findings, Conclusions, and Recommendations to the Florida Supreme Court.

The Course of Proceedings

On December 5, 2012, an Investigative Panel of the FJQC filed a notice of formal charges against the Honorable Judith W. Hawkins, County Judge, for the Second Judicial Circuit (Leon County). The notice was amended on June 10, 2013, to include additional charges.

The amended charges filed against Judge Hawkins comprised five categories, which are summarized as follows: (1) use of judicial office to promote

a private business (hereinafter "ABC");[1] (2) failure to respect and comply with the law; (3) failure to act in a manner promoting public confidence in the judiciary; (4) failure to devote full attention to judicial office; and (5) lack of candor with the FJQC. The amended notice asserted violations of the Code of Judicial Conduct, Canons 1, 2A, 2B, 3A, 3B(2), 3B(4), 3B(7), 3B(8), 3C(1), 4D(1) and 5D(1), and Florida Const. art. v, §13.

Judge Hawkins' answer admitted that she authored, offered to sell, and sold books. On ABC's website, she was depicted in her judicial robe in advertisements. Furthermore, she failed to register ABC under Florida's fictitious name law. Judith Hawkins generally denied the remaining allegations.

Judge James A. Ruth chaired the FJQC Hearing Panel, which conducted a final hearing on October 7 through October 9, 2013. Six commissioners were present during the hearing and deliberations. In addition to Chairman Ruth, the panel included Alan A. Bookman, Esq., Michele K. Cummings, Esq., Harry R. Duncanson (lay member), Honorable Robert Morris, and Jerome S. Osteryoung, PhD. (lay member).

Special Counsel Gregory R. Miller, Esq. represented the Investigative Panel. Judge Hawkins was represented by Gerald Kogan, Esq. Lauri Waldman Ross served as counsel to the Hearing Panel.

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[1] The identity and nature of the business are irrelevant to these proceedings; and the

The pertinent pleadings are on file with the Florida Supreme Court. A transcript of the final hearing and original trial exhibits[2] are filed with the "Finding of Facts, Conclusions and Recommendations." The Hearing Panel summarizes: (1) the charges and their disposition; (2) findings of facts; (3) conclusions of law; and (4) recommended discipline. This report tracks the numbering system used in the "Amended Notice of Formal Charges," except where otherwise indicated.

The Charges and Their Disposition

Count IA charged Judge Hawkins with operating a private, for-profit business (from which she derived substantial income) from her judicial chambers, using official time and judicial resources and using the judge's position to promote ABC by the following:

> 1. Selling and offering to sell ABC products in your courtroom to lawyers who regularly appeared before you;
>
> 2. Selling and offering to sell ABC products in the courthouse to persons over whom you had disparate influence and authority over, including lawyers who appeared before you and various courthouse employees;
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> 3. Offering to sell ABC products to attorneys appearing before you in your chambers on court business;

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business is therefore referred to by a pseudonym.

[2] In an abundance of caution, personal identifying information has been redacted from the trial exhibits.

> 4. Promoting the sale of ABC products in a website in which you offered those products for sale by including photographs of yourself in your judicial robes;
>
> 5. Knowingly using your judicial assistant to promote the sale of ABC products and... help[ing] [to] produce those products during working hours.
>
> **Disposition:** **Guilty** of the violations alleged in para. IA, and subparagraphs 2-5, as modified to delete language that the judge earned "substantial income." The amount earned by this for-profit business was more than **de minimus**, but ultimately immaterial. **Not Guilty** of the violation alleged in subparagraph 1.

Count II alleged in (A)(1) that Judge Hawkins maintained an idiosyncratic system of justice, inconsistent with generally accepted law and procedure, known as "Hawkins law," and in (A)(2), took measures to coerce compliance. Additional subparagraphs[3] charged the following, independent acts:

> [B] You failed to comply with Florida tax laws when selling ABC products.
>
> [C] You paid your judicial assistant to assist in the operation of your private business but failed to properly report to the appropriate taxing authorities and this Commission the full amount of these payments.
>
> [D] You violated Florida law by failing to register ABC under Florida's fictitious name act.
>
> **Disposition:** **Not Guilty** of the violations alleged in ¶IIA(1) & (2), and subparagraph [C]. **Guilty** of the violations alleged in subparagraphs B & D.

[3] The Amended Notice of Formal Charges contained no subparagraph B. Original subparagraphs C, D & E have been renumbered B, C, and D.

Count III charged Judge Hawkins with failing to act in a manner promoting public confidence in the judiciary by the following:

> A. In presiding over the case of State v. Martin, you instructed the defendant to contact one of three lawyers...stat[ing] "tell them Judge Hawkins sent you."
>
> B. While presiding over jury trials you have been observed openly reading magazines, and when questioned explained that you were catching up with your reading. You also explained that if an objection was made, you could cover up your lack of attentiveness by asking counsel to rephrase the objection.
>
> **Disposition:** The facts alleged in III(A) are admitted, but the Hearing Panel finds Judge Hawkins **Not Guilty** of a canon violation. **Guilty** of the violation alleged in III(B).

Count IV charged Judge Hawkins with failure to devote full time and attention to her judicial office, as follows:

> A. Your involvement with ABC has caused you to devote less than your full time and full attention to your judicial duties. You have explained that as a judge, you and your Judicial Assistant have a great deal of time, so you feel [free] to use your judicial chambers and out-of-court free time to conduct your for-profit business, and schedule business appointments. ~~You often take time away from your judicial duties to promote your business. To the detriment of the prompt and efficient administration of justice.~~
>
> B. You often are absent or take trips and vacations on your trial week. The fact that you frequently do not inform the attorneys or parties in advance of your absences, in a timely and reasonable fashion, exacerbates

the harmful and disruptive effect of your actions upon those who appear before you.

Disposition: **Guilty** of the violation alleged in IV(A), as modified to delete the crossed through language. **Not Guilty** of the crossed through language in IV(A) and IV(B).

Count V(A) charged Judge Hawkins with lack of candor before the FJQC, ignoring the requirements of law, and evading lawful orders of the Hearing Panel Chair presiding over these proceedings, by the following paraphrased acts:

1. Deleting subpoenaed financial records of your private business from your computer on the morning of your scheduled deposition;

2. Misleading the Investigative Panel in your appearance and subsequent deposition with regard to your efforts to keep your private business separate from your judicial duties and those of your judicial assistant;

3. Misleading the FJQC investigator and its forensic computer expert with regard to evidence of flash drives, production of which was required by subpoena and the Hearing Panel Chair's order, and violating that order by refusing to turn over the flash drives listed in the order;

4. Refusing to turn over financial data required by Hearing Panel Chair's order ~~and failing to do so to date;~~

5. Misleading the Investigative Panel with regard to payments made to your judicial assistant, only admitting fully to such payments after your deposition, and collaboration with your assistant.

Paragraph V(B) alleged that:

Your responses to the Commission at the 6(b) hearing, at

your deposition, and in response to discovery create a pattern of conduct demonstrating a refusal to comply with lawful authority, misleading through incompleteness, and lacking the candor expected of a judicial officer.

The obstructive behavior, untruthful answers, and attempts to repeatedly frustrate and obfuscate discovery in this cause, as described in Section V above, if proved as alleged, reflect an intentional disregard for the Rules of Procedure applicable to this action, a lack of candor to the Investigative Panel, and a lack of candor during the discovery phase of this case.

Disposition: **Guilty** of the violations charge in V(A), and paragraphs 1-5, **except** for that portion of subparagraph 4 crossed through. **Not Guilty** of the portion of the crossed through sentence. **Guilty** of the violations charged in Paragraph V (B).

Findings of Fact[4]

A. Background

Judith Warren Hawkins was elected to the county court bench in the Second Judicial Circuit on November 5, 1996. She was re-elected in a contested election in 2000, without opposition in 2006 and 2012, and is currently serving her last term. (T. 478-79). Throughout her legal career, prior to and during her tenure on the bench, Judge Hawkins has dedicated her life to public service. (T. 480). She volunteered in public schools, served as a guardian ad litem and an attorney for guardians ad litem. Furthermore, she worked with the Barristers, Parents

[4] References are to the hearing transcript (T.) and the trial exhibits. (Ex.).

Anonymous, and Legal Services, among others, earning awards and accolades. (T. 481-82; 497-98; Ex. 27). She was also actively involved in the community and engaged in charitable works. (T. 506-08).

Judge Hawkins is an experienced judge who has served in all divisions of county court, traffic, misdemeanor, civil and administration. (T. 487-88). She is currently one of five county court judges, on a five week rotation,[5] with each handling one fifth of the docket. (T. 487-88).

B. <u>Conducting a for-profit business</u>

In 2008, Judge Hawkins wrote a book, which she self-published. In the fall of 2010, Judge Hawkins started ABC, as an additional source of income for charitable works. (T. 500-01; 506-509).[6] Judge Hawkins first sold her book out of state at a women's conference, accepting credit card payments through a square. (T. 500). The book was republished to correct typographical and other errors. Judge Hawkins was very excited about her book, and discussed it at the Leon County courthouse. (T. 500-01).

In November 2011, attorneys Jessica Yeary, Mose Bracey and Louise St. Laurent (assistant public defenders and an assistant state attorney on opposing sides) appeared before Judge Hawkins to discuss a plea **in abstentia** in a criminal

[5] One week out of five is spent in civil, two in criminal, one in administration, and one conducting jury trials.

case. (T. 414-15; 420-22). Judge Hawkins was in chambers, signing copies of her book, which had apparently just been delivered from the publisher. She handed the attorneys copies of her book to peruse, and made it clear that books were for sale. (T. 415-17; 422-23).[7]

Suzette Tompkins, a clerk, saw Judge Hawkins enter the rear entrance of the clerk's office carrying pamphlet type books. Judge Hawkins stopped at the first cubicle, where several persons congregated in the course of business. Ms. Tompkins heard the judge tell others that these books were for sale. Ms. Tompkins herself did not buy a book. (T. 412).

Judge Hawkins sat down in the court administrator's lobby, a rare event, and struck up a cordial conversation with Karen Dyke, the receptionist. In the course of conversation, it came up that the judge had written a book. Ms. Dyke chose to buy the book because she was interested in the subject, not because of the judge's position or any pressure exerted. (T. 433-34).

On November 10, 2011, during a hearing in open court, an attorney appearing before Judge Hawkins mentioned, "Judge, I hear you have a new book out," and requested an autographed copy. (Ex. 44, p.3). He heard about the book

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[6] The Hearing Panel accepts Judge Hawkins' testimony that, apart from some small personal items, funds after expenses were spent on charity. (T. 508).

[7] Ms. Yeary started to leave with her copy, thinking it was a gift. Judge Hawkins called her back and told her the book was for sale. (T. 417).

from one of the bailiffs. (Ex. 44, p.5). The judge, who was still on the bench, requested $15 dollars, told the attorney to pay her personally, and said "I'll take it right now." (Ex. 44, p.5). The attorney offered, and Judge Hawkins accepted, an additional $5 more for her autograph. (Ex. 44, pp.5-6). Judge Hawkins thanked the lawyer, said "I like your spirit" and asked him to "spread it amongst the others" because "[t]hese work for the State. I'm going to let you take the private Bar crowd." (Ex. 44, p.6).

Judge Hawkins asked another attorney appearing before her, who had earlier purchased the book, if he'd given it to his mama, and offered to autograph his copy as well. (Ex. 44, p.7).

Eric Abramson left the State Attorneys' office for private practice in May 2011. (T. 407-08). In December 2011, while Mr. Abramson was in a courthouse hallway of the courthouse discussing a case with another lawyer, Judge Hawkins (who was typically "very friendly") stopped by to chat, mentioned that she had written a book, and that it was available for purchase. Mr. Abramson had no interest in the book (and has never read it to date), but purchased it on the spot. (T. 408-09). Mr. Abramson didn't think his purchase would consciously affect Judge Hawkins' rulings but considered it "a lot better to buy the book than to possibly offend the judge." (T. 409).

In March 2012, the JQC retained Allen Beiner, a retired FBI agent, to

investigate charges that Judge Hawkins had abused her power by conducting for profit business activities at the courthouse by selling books to persons appearing before her. (T. 52-53). Mr. Beiner located ABC's website on the internet; this website showed two pictures of Judge Hawkins on the bench in her judicial robe,[8] and listed various products for sale. These included books, study guides, tracts and "souvenirs" linked to an order page. (T. 54-55; Ex. 15). Judge Hawkins was described as the founder of ABC, who "has served since 1996 as a county court judge in Tallahassee, Leon County, Florida." (Ex. 35).

Records subpoenaed from the state computer system reflected that Wakeelah Falden, Judge Hawkins' judicial assistant, set up her own for profit business (hereinafter "DEF")[9] to conduct business with ABC. (T. 58-60; Exs. 17-23). DEF had its own designated e-mail address. (T. 59).

A subpoena also turned up 205 e-mail communications between Judge Hawkins, her judicial assistant, and persons interested in the goods and services provided by ABC. These e-mails included data pertaining to the sale of books, memos, other products listed on ABC's website, and honoraria and expenses required for speaking engagements by the Judge on behalf of ABC. (T. 58-60).

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[8] A third photograph depicted Judge Hawkins in her judicial robe appearing in a classroom.

[9] The identity and nature of the business are irrelevant to the proceedings, and this business is also referred to by a pseudonym.

C. Compliance with law

At the final hearing, it was established that "Hawkins' law" was nothing more than two basic rules: (1) know your judge; and (2) don't annoy your judge. (T. 441-42; 521). Judge Hawkins did not create her own rules, contrary to law. (T. 521).

In contrast, it is undisputed that Judge Hawkins did not pay sales tax on the sale of ABC products. (T. 126-27; 529-30). On March 21, 2013, as a result of the JQC investigation, she registered with the State Department of Revenue, and paid sales tax for the years 2010-12 (T. 127-28; Ex.33). At the final hearing, she brushed FJQC concerns aside with "I didn't realize that the state of Florida cared as much or more than the income tax people do, the Federal Government does..." (T. 529). It is likewise undisputed that Judge Hawkins never registered ABC as a fictitious name, pursuant to Florida's Fictitious Name Act, §865.09, Fla. Stat. (T.87-89; Ex.18, 19, 20-21). Her response to this legal violation was similar, "[I] hope I don't need to. If I do, oops, I haven't." (T. 89).

Judge Hawkins' payment of deferred compensation benefits on Falden's behalf was a gift; the Hearing Panel rejects the claim that income taxes were due on such payments. (T. 531). This gift will be addressed elsewhere.

D. Failure to promote public confidence in the judiciary

1. State v. Martin: Ms. Martin was a **pro se** litigant who did not

qualify for representation by the public defender's office. The state attorney's office offered Ms. Martin a plea, which required an adjudication of guilt. (T. 531-32; Ex.42). Judge Hawkins recommended three attorneys by name to Ms. Martin with the message to "Tell them Judge Hawkins sent you" and for Ms. Marin to ask for "reasonable costs for an office consultation." (Ex.42, p.8). While this was a poor choice of words, the Hearing Panel accepts Judge Hawkins' explanation that her sole concern was ensuring that Ms. Martin understood the ramifications of an adjudication of guilt, that these attorneys were "on the [public defender's] conflict list," she believed they would make time for Ms. Martin, and she sought nothing for a referral. (T. 533; 617-18).

2. Inattentiveness at trial

Attorneys who appeared before Judge Hawkins testified that, during jury trials, she kept her head down and read magazines during **voir dire** and witness testimony. When attorneys objected, Judge Hawkins either waived them along, or made them repeat their objections on the basis that she wasn't listening. (T. 333-34; 447-49; 454;55).

Jury trial proceedings in Leon County court are taken down by digital recording only. (T. 398). The managing court reporter had such difficulty hearing the judge's rulings when transcribing a digital recording of a trial that she reported these as "inaudible due to Judge's mike being turned away." (T. 396-97; Ex.28,

pp.1, 17, 20, 30, 31, 33, 34, 35, 36 and **passim**). The court reporter discussed this with Judge Hawkins, with whom she had a good working relationship. Judge Hawkins indicated that she turned the microphone away, so it wouldn't pick up the sound of the magazines she was reading. (T. 399-400; 525-26).

At the 6(b) hearing before the JQC Investigative Panel, Judge Hawkins was questioned regarding the allegation that she was seen openly reading magazines while presiding over jury trials. She explained that she was catching up with her reading and, if an objection was made, she could cover for her lack of attentiveness by asking counsel to rephrase their objections. (T. 566-67).

The Hearing Panel finds that Judge Hawkins was, in fact, reading magazines rather than paying attention during jury trials. It rejects the further assertion that Judge Hawkins intentionally went off the record in order to defeat appellate review.

E. <u>Time and attention to judicial duties</u>

Judge Hawkins testified that, as a duly elected constitutional official, she serves "24/7," but her job is "to be available to deal with the judicial work as it comes..." She lives a short distance from work, and, if there were no trials on her docket she may not come in all day. Her judicial assistant handles the office and lets her know if something needs to be done. Once her docket is finished she may go home even if it's only 9:30 or 10:00 a.m. in the morning. (T. 535). She is

available after hours should the need arise. (T. 537).

Judge Hawkins clearly believes that her time is her own when she is not in court. The Hearing Panel rejects her claim that availability by phone constitutes "full time" devotion to judicial duty, leaving her free to run ABC during down time. (T. 535-36).[10]

However, there was no proof, by clear and convincing evidence, that Judge Hawkins was often absent during trial weeks, that absences created disruption in the court system, or left parties in the lurch.

F. Judge Hawkins' conduct before the JQC

1. Judge Hawkins' Statement to the Investigative Panel

On November 16, 2012, Judge Hawkins appeared before the FJQC investigative panel pursuant to a notice of investigation (the "6(b) hearing"), and made a statement (not under oath). (T. 62; 142). Judge Hawkins told the FJQC Investigative Panel that she was meticulous in trying to separate judicial and business activities, agreed she initiated contact with courthouse employees about book purchases, but knew not to pressure anyone, claimed that any purchasers were persons with whom she had a "personal relationship" or were "personal friends," and that she kept a "fairly meticulous list" of purchasers. (Ex. 48, pp.75;

89-99, 138-39; T.507).

Judge Hawkins admitted running ABC out of the courthouse **only** "in the most literal sense," and denied use of state resources, on the basis she used her own phone, her own laptop and her own printer. (Ex. 48, pp.147; 152-53). Judge Hawkins stated that she did not "micromanage Falden," paid Falden separately for work performed by ABC, that this work was not supposed to be done during work hours, and denied that Falden used state resources or time to conduct ABC's business. (Ex. 48, pp.83; 144-45).

Judge Hawkins indicated that she and her judicial assistant transferred materials between their computers electronically by "jump drive," and exchanged e-mail messages between their personal e-mail accounts. (Ex. 48, pp.144-45). Judge Hawkins stated that Falden's company was paid for separate work by check from ABC, that financial records would reflect this, and that any use of state resources for ABC was thus **de minimus**. (Ex. 48, p.147).

2. Litigation Misconduct

On December 5, 2012, the FJQC filed a Notice of Formal Charges against Judge Hawkins, asserting that: (1) she had established a for-profit business, with a website on which she offered products and services for sale; (2) the website's slideshow depicted the judge in her judicial robes; (3) she sold or attempted to sell

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[10] There was likewise no reason for the judge to be inattentive, and read magazines

ABC's products in the courthouse, her chambers, and the courtroom in which she presided, to purchasers which included persons of disparate authority; (4) she used courthouse facilities and personnel to create, edit, and promote products for sale through her for profit business; (5) for calendar year ending December 31, 2011, she reported ABC as a business interest generating personal income of $13,518; and (6) that her involvement with a for-profit business caused her to devote less than full time and attention to judicial duties.

Judge Hawkins answered, admitting that she sold her book at the courthouse, but denied taking advantage of judicial authority. She indicated that the book was written at her home, during her own time, using her own equipment. She also indicated that her judicial assistant did not work on her book during court hours.

The JQC subpoenaed the judge to produce 20 categories of documents at a deposition scheduled February 19, 2013 at 9:00 a.m. These generally included documents identifying persons to whom Judge Hawkins sold ABC's wares, financial records relating to the income and expense of ABC for the sale of services and products, records reflecting income, gifts or loans given by the judge to her judicial assistant, tax schedules, forms, and electronic and financial records reflecting Judge Hawkins' non-judicial, for-profit business activities. (T. 574-75; Ex. 2).

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during trial, if she had so much available down time.

Judge Hawkins answered the subpoena, and agreed to produce ABC's dedicated e-mail and laptop, IRS form 1099s issued by ABC to her judicial assistant (and/or DEF), and her official calendars. She responded that she "ha[d] not deleted any materials on her personal dedicated laptop [except JQC pleadings and work product]," had made no loans to her judicial assistant, was "unable to respond" to questions regarding "gifts," and that income paid to Ms. Falden would be reflected by the form 1099s she was going to produce. Otherwise, the judge objected to documents requested or stated that "None exist." (Ex. 63).

Judge Hawkins' deposition commenced on February 19, 2013 at 9:00 A.M., as scheduled, two weeks after the subpoena issued. (Ex. 61). She did not seek a protective order, or move to quash the subpoena. (T. 577). Instead, she brought copies of self-published materials and judicial calendars (reflecting business and personal appointments) to her deposition, but nothing else. (T. 101; Ex. 62).

During her deposition, Judge Hawkins refused to produce records she had previously agreed to produce, including ABC's e-mail, dedicated computer, and Federal income tax form 1099s reflecting payments made to Falden. (T. 73-75). She also revealed that she had previously deleted subpoenaed "Quicken" documents from ABC's dedicated laptop computer just hours before the deposition. Judge Hawkins testified in deposition, as follows:

> A. [I] deleted whatever financial information had been put into the Quicken program, and I did that this

morning.

Q. Did any of the deleted materials relate at all to your non-judicial income?

A. **It would be the [ABC] income.**

Q. And you deleted that?

A. **I most certainly did.**

Q. And you are refusing to produce that?

A. **I most certainly am.** (T. 77-78, emphasis added).

FJQC Special Counsel questioned Judge Hawkins about each category of subpoenaed documents. Judge Hawkins made no effort to locate subpoenaed records, and adamantly refused to produce them. (T. 69-89). She alternatively stated that these were beyond the scope of the FJQC investigation, or that she was "waiting for the JQC to be able to establish that I did, in fact, operate a business at the courthouse" and might be willing to give up that information "when those dots are connected." (T. 79).

The judge testified that every person to whom she offered her book for sale was "someone that I thought I had a relationship that was separate, distinct and apart from the courthouse," describing prospective purchasers as "friends as in when I had a birthday party I would invite them." (T. 90). However, she refused to identify any of the purchasers or produce documentation identifying them. (T. 93).

Judge Hawkins also refused to answer deposition questions or provide documents regarding ABC's bank accounts or financial records. (T. 81). She gave testimony regarding payment to her judicial assistant as follows:

Q. Number 8, all documents including but not limited to bank records and cancelled checks reflecting any income, gifts or loans given to you by Wakeelah Falden or the [DEF company] from 2010 to the present.

Your response is: "Respondent has made no loans to Wakeelah Falden and her [company]. **Income is reflected by IRS Form 1099." But that's what you refuse to give us, correct?**

A. **That's correct.**

Q. "And unable to respond to gifts as stated." I think I understand all of that except for the "unable to respond to gifts."

A. **Well I don't know what you call gifts.** Wakeelah is my JA. I take her to lunch. That's a gift. She has a birthday. I give her a gift. So what do you mean by gifts? Of course, I would have absolutely no recollection of what those would be with the time she's been with me.

Q. Have you ever given her gifts more substantial than a lunch or simple-

A. **I don't know what you mean by 'substantial.'**

Q. **Anything over 50 bucks.** Let's draw that as an arbitrary line.

A. **Probably not... As I sit here today, I have no independent recollection of giving her anything over 50 bucks.**

Q. Have you ever given her cash as a gift?

A. As I sit here today, I have no independent recollection of having given her cash as a gift.

Q. Have you ever paid her money by the form of check or electronic transfer as a gift?

A. As I sit here today, I have no recollection of having done so. (T. 81-83 emphasis added).

Wakeelah Falden was deposed that same afternoon (T. 94). After Falden's deposition, Judge Hawkins and her counsel spoke privately, after which they returned to the deposition room. Judge Hawkins then disclosed that she was

personally making payments each month in the amount of $48-49 into the State's Deferred Compensation Fund on Falden's behalf.[11] These payments were made by check from ABC's account. (T. 95-96).

A second 6(b) hearing was convened, prior to the amendment of formal charges, during which Judge Hawkins was specifically questioned about the testimony given at her deposition.

Judge Hawkins testified that the deferred compensation payments made on Falden's behalf were "a straight up gift..." no different than passing someone on the street and giving... them $5." (T. 613-14). She clearly attempted to dodge Special Counsel's questions on this subject during deposition, and gave answers misleading by omission because Falden was offended and "adamant that she wasn't going to disclose" such payments. (Ex. 54, p.67; T. 611-16).[12] Judge Hawkins only told the truth after she and Falden were both deposed, later that same day, when she realized that the FJQC would find checks in her financial records. (Ex. 54, pp.66-67).

Judge Hawkins' deposition prompted the following: (1) an emergency

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[11] The judge explained that she strongly believed in the importance of retirement benefits, that Falden was unable to pay these herself, and Falden intended to keep quiet about these payments. (T. 94-97; 553; Ex. 54, pp.66-67).

[12] Special Counsel suggested that Falden testified in deposition that she considered such payments to be income. (T. 613). However, Falden didn't testify at the hearing, and no portion of her deposition was read into evidence.

motion for an order preserving and protecting further destruction of evidence; (2) a motion to compel production of the subpoenaed records; and (3) a motion to compel Judge Hawkins to answer deposition questions. (Exs. 1-3).

On March 11, 2013 the FJQC Hearing Panel Chair entered an emergency order, preserving the status quo, and preventing the destruction of further evidence. (Ex. 6).

On March 13, 2013, the FJQC Hearing Panel Chair compelled the production of specific enumerated documents by a date certain, and ordered Judge Hawkins to reappear to answer deposition questions. (Ex. 7). Judge Hawkins produced some, but not all, of the subpoenaed records. These were haphazardly produced in what was described as a document "dump." (T. 111). One of the documents produced was a two-sided handwritten list of book purchasers, many of whom appeared only by first names. (T. 118-19; Ex. 45).

The FJQC hired Marc Yu to examine the computers used by Judge Hawkins to determine what documents existed or had been deleted. (T. 105-06; 269-70). Mr. Yu is the Chief Forensic Examiner with Pensacola Forensic, with a Bachelor's degree in Information Technology, who trained with the Attorney General's Cyber Crimes Division as a government analyst and performs digital forensic analysis of computer drives. (T. 268-69).

On March 21, 2013, Mr. Yu met Beiner at Judge Hawkins' office. He

initially spoke with the Judge and her judicial assistant, and was given four computers (with four computer hard drives) to inspect: the desktop computer in Judge Hawkins' office, a personal laptop sitting beside Judge Hawkins' desktop computer, the Judge's personal laptop from home, and the desktop computer in her judicial assistant's office. (T. 270-71). Mr. Yu "imaged" each hard drive in a "byte for byte" exact replica, a process which took the entire day. (T. 271-72).

Mr. Yu determined that the Quicken log on Judge Hawkins' personal computer had been opened or modified on February 19, 2013, at 5:17 a.m. (T. 276-77; Ex. 12). Quicken files are huge accounting files, containing hundreds of megabytes. There was no way for Mr. Yu to determine the volume of data which previously existed. (T. 295). However, at 5:20 a.m., three minutes later, data on the Quicken subfile was reduced to only one megabyte. (T. 277; Ex. 12). There was simply "nothing there." (T. 289). Modification and deletions were made to the data on the judge's laptop computer after these computer documents were subpoenaed and just hours before the judge's deposition commenced. (T. 77-78).

Data may be transferred between computers by electronic storage devices ("ESD,"), commonly known as "flash drives" or "thumb drives." (T. 122; 278-29). During his March 21, 2013 inspection, Mr. Yu asked Judge Hawkins (in Beiner's presence) if she had any USB flash drives. (T. 279-80). Judge Hawkins replied that she didn't. (T. 279). While Judge Hawkins denies making this statement, (T.

606-07), the Hearing Panel finds Yu and Beiner more credible on this subject.

Windows Operating System has a "registry" which tracks programs and usage, including every connection to a computer by ESD. Connections are identified by date and time. ESDs are identified by size and serial number. (T. 281-82; Ex. 14). Mr. Yu found that alot of ESDs had been connected to each of the four inspected computers (T. 111). He prepared a report identifying these ESDs and their last "log in date." (T. 112). Beiner and Yu together determined 55 separate serial numbered ESDs had been plugged into the Judge's computers. (T. 113-14; Ex. 14).

On April 1, 2013, Special Counsel moved to compel Judge Hawkins to comply with the March 13, 2013 order. (Ex. 9).

On April 18, 2013, following another hearing, the FJQC Hearing Panel Chair granted this motion. He ordered Judge Hawkins to turn over to the FJQC investigator a list of ESDs specifically identified by name and serial number, as well other documents by April 3, 2013 at 5:00 p.m. These included "a full and complete list of all persons that she sold her publications to (and publications offered for sale by ABC) as requested in paragraph 19 of the subpoena *duces tecum*..." (Ex. 10).

Judge Hawkins turned over 11 of the 55 identified ESDs by the April 3rd deadline, stating these were all she had in her possession. She produced a 12th

ESD on April 16, 2013. (T. 126). One of the ESDs produced was a "Seagate Free Agent Desktop USP device" for mass storage (Serial #6QFONR52), identified by Mr. Yu as an external hard drive, approximately 2 inches thick, 4 to 5 inches wide, with a memory that could store 10 million pages of documents. (T. 297-98; Ex. 14). Mr. Yu could not determine when this drive had been originally attached to ABC's laptop, or for what duration. However, its last "plug in/unplug date" was February 19, 2013, at 6:13 a.m. (T. 297-98; Ex. 14). This was, again, just hours before Judge Hawkins' deposition commenced.

Judge Hawkins produced a two page typewritten list of purchasers, representing sales in the courthouse and shipping labels to other locations. (T. 120; Ex. 46). She produced ABC's financial records for 2012 and 2013. However, she continued to refuse to produce ABC's financial records for 2010 and 2011. She asserted these were too intermingled with her personal finances. (T. 121-22).

Ultimately, the FJQC investigator determined, by documentary evidence, that Judge Hawkins regularly used court resources, including her judicial assistant, for her private business. (T. 161-62; Ex. 24, 25, 26, 27 & 35). Judge Hawkins responded to a request for a speaking engagement from her work computer, stating **inter alia** that "I officially founded [ABC], see attached flyer. I have written materials for sale and would like the opportunity to offer them to the ladies." She requested a "minimum honorarium" to cover out of pocket preparation expenses,

and offered study guides and memos for sale for $3 each. (Ex. 25).

Judges and their judicial assistants have unfettered access to the internet through the state's computer system. They can access personal e-mail accounts on court time without any records captured on the state's computer system. (T. 177-78). On Wednesday, April 6, 2011 at 2:13 p.m., Judge Hawkins sent an e-mail from her personal account to Ms. Falden's business e-mail account, which directed Falden to "learn about self-publishing" on Friday "so we can select a company on Monday." She also questioned Ms. Falden, "How do you charge me? Must be different from others **because you get much done during work day**." (Ex. 35). This e-mail reflects Judge Hawkins' knowledge that her judicial assistant was working for her private business from the office during business hours. (T. 573).[13] It was dated eighteen months before the judge made inconsistent statements to the FJQC investigative panel at a 6(b) hearing.

Beiner prepared reports analyzing the volume of e-mails generated by Judge Hawkins (Ex.39) and her judicial assistant (Ex.40) during work hours related to ABC's business (Ex.41). They showed **inter alia** that Judge Hawkins regularly accessed her private e-mail from her state computer or laptop, was definitely promoting ABC on state time and "likely did a significant amount of work relating

[13] Another implication is that the judge was asking Falden to charge her less, because Falden was already paid by the state, and accomplished most of her work for ABC on state time. (Ex. 54, pp.112-13).

to [ABC] on state time while occupying a state paid for office." (Ex.39, p.2).

At the final hearing, attorneys and courthouse personnel with whom Judge Hawkins discussed book sales uniformly testified that their relationship with Judge Hawkins was professional. They did **not** socialize with the judge or attend "birthday parties." (T. 409; 412; 423; 434).

During the final hearing, Judge Hawkins claimed that there was "no financial data in the Quicken program" deleted just prior to her deposition. She then stated that "the truth of the matter is, I don't remember what was in it, but it wasn't much of anything..." (T. 579). This directly conflicts with her deposition, taken just after she deleted the Quicken file, in which she admitted deleting her non-judicial income from ABC. (T. 77-78).

CONCLUSIONS OF LAW

Canon 1 of the Florida Code of Judicial Conduct provides:

> **A Judge shall Uphold the Integrity and Independence of the Judiciary**
>
> An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be observed. The provisions of this Code should be construed and applied to further that objective.

Canon 2 of the Florida Code of Judicial Conduct provides, in pertinent part:

A Judge shall avoid Impropriety and the Appearance of Impropriety in all of the Judge's activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
B. ... [A] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others...

Canon 3 of the Code of Judicial Conduct provides, in pertinent part:

A Judge shall perform the duties of Judicial Office Impartially and Diligently

A. <u>Judicial Duties in General</u>

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law...

B. <u>Adjudicative Responsibilities</u>

***

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

***

Canon 5 of the Code of Judicial Conduct provides, in pertinent part:

A Judge shall regulate extrajudicial activities to minimize the risk of conflict with Judicial duties

***

C. **Financial Activities**

> (1) A judge shall not engage in financial and business dealings that
>
> (a) may reasonably be perceived to exploit the judge's judicial position, or
>
> (b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

Fla. Const. art. v, §13 states: "**Prohibited activities** – all justices and judges shall devote full time to their judicial duties. They shall not engage in the practice of law or hold office in any political party."

Judge Hawkins operated a private, for profit business from her judicial chambers. She linked the sale of ABC's products to her judicial office, by a website, which depicted her in a judicial robe, and described her as a county court judge in Tallahassee. She used state time and resources (including her judicial assistant) to promote ABC. This conduct violates Canons 1, 2B and 5D of the Code of Judicial Conduct. It lent the prestige of judicial office to advance the private interest of the judge. See generally In re Fogan, 646 So.2d 191, 192 (Fla. 1994); In re Ford, 404 Mass 347, 535 N.E. 2d 225, 228-29 (Mass. 1989) (judge violated canons by serving as a chief executive officer of a non-profit organization designed to bring economic advantage to the Judge even though the entity was organized for charitable purposes). This "undermines the very prestige and respect

that is being traded upon and inevitably, erodes public confidence in the judiciary." See In re Richardson, 760 So.2d 932, 933 (Fla. 2000).

Compliance with tax law is an obligation which the Florida Supreme Court considers to be of the utmost importance. See In re Florida Board of Bar Examiners re B.U.U., 124 So.3d 172, 174 (Fla. 2013) ("[L]awyers, as guardians of the law, have a very special obligation to not only honor but comply with the law, and this includes applicable tax laws.") Judges are held to a higher ethical standard than lawyers by virtue of their position and the impact of their conduct on public confidence in the judiciary. In re McMillan, 797 So.2d 560, 571 (Fla. 2001).

Judge Hawkins violated the law by failure to pay sales tax on ABC's products, and failure to register ABC as a fictitious name, the latter of which constitutes a second degree misdemeanor. §865.09(9)(C), Fla. Stat. (2011). This conduct violated Canons 1 and 2A of the Code of Judicial Conduct. In re Richardson, 760 So.2d 932, 933 (Fla. 2000); In re Fogan, 646 So.2d at 194.

Judge Hawkins violated Canons 1 and 2A of the Code of Judicial Conduct by repeatedly evading and frustrating discovery in these proceedings, by the following: (1) deleting subpoenaed records; (2) misleading the FJQC investigative panel during her appearance and subsequent deposition; (3) misleading the FJQC investigator and computer expert; and (4) refusing to turn over financial data and flash drives ordered by the FJQC Hearing Panel. Her responses demonstrate a lack

of candor required by a judge. See In re Holloway, 832 So.2d 716 (Fla. 2002) (materially incomplete and misleading statements made during deposition); In re Ford-Kaus, 730 So.2d 269 (Fla. 1999) (false statements made to clients and engaging in cover-up by misleading correspondence to court, and backdating brief).

Recommended Discipline

The Florida Constitution vests jurisdiction in the FJQC Hearing Panel to recommend judicial discipline for misconduct committed "before or during judicial service..." Fla. Const. art. v, §12(a)(1). The object of disciplinary proceedings is not for the purpose of inflicting punishment, but to gauge a judge's fitness to serve. In re McMillan, 797 So.2d at 571; In re Dempsey, 29 So.3d 1030, 1034 (Fla. 2010).

Prior to 1996, the choice of recommended discipline was "reprimand or removal from office." The Florida Supreme Court sanctioned removal where judicial conduct was fundamentally inconsistent with the responsibilities of judicial office, or struck at the heart of judicial integrity, despite unblemished character evidence. See e.g. In re Ford-Kaus, 730 So.2d at 269 (basic dishonesty before and after respondent became a judge); In re Graham, 620 So.2d 1273 (Fla. 1993) (abuse of power); In re Garrett, 613 So.2d 463 (Fla. 1993) (shoplifting); In re LaMotte, 341 So.2d 513 (Fla. 1977) (charging personal expenses on state's credit

card). The Court declined to 'remove judges whose conduct was mitigated by other circumstances, or otherwise failed to demonstrate present unfitness. See e.g. In re Holloway, 832 So.2d at 726-27 (public reprimand and 30 day suspension warranted where judge *inter alia* made materially misleading statements during discovery, and engaged in deceit through misdirection and incompleteness, but judge presented evidence in mitigation that she was still capable of performing ably in judicial service); In re Davey, 645 So.2d 398, 408 (Fla. 1994) (serious misconduct in handling cases after election to office, including making misrepresentations to his former law partners, and concealing negotiations, settlement and fee, warranted public reprimand, not removal where context was a highly charged law firm breakup, conduct was an aberration, and judge's lack of candor before the FJQC was neither charged nor proven); In re Fowler, 602 So.2d 510 (Fla. 1992) (judge not removed for furnishing false information concerning traffic accident where this was an isolated incident).

The Florida Constitution has now been amended to broaden available sanctions. In addition to removal, the Hearing Panel has jurisdiction to recommend "discipline," defined as "any or all of the following: reprimand, fine, suspension with or without pay or lawyer discipline." Fla. Const. art. v, §12(a)(1); In re Holloway, 832 So.2d at 729 ("[I]t was not until the 1998 Amendment to art. v. Florida Constitution, that there was constitutional authority to suspend judges.").

The instant case presented a very close call between "removal" and "discipline." On the one hand, Judge Hawkins appears to be a dedicated public servant, who cares about others, including the parties and lawyers who appear before her. Since 1996, she has been efficient and innovative in dispensing justice, and is generally regarded as friendly and caring. Judge Hawkins' actions in creating ABC, and paying her judicial assistant's retirement benefits, were well-intended. She reaped no personal financial benefit. Her actions solely stemmed from a desire to perform charitable works designed to better the community. On the other hand, the Hearing Panel was deeply troubled by the nature and gravity of the canon violations and the judge's lack of comprehension and contrition.

The FJQC is, above all, interested in seeking the truth. See In re Davey, 645 So.2d at 406. It is currently divided into two panels. An Investigative Panel's duty is to receive and initiate complaints, conduct investigations, and submit formal charges. A Hearing Panel's duty is to receive, hear the formal charges, and make recommendations to the Florida Supreme Court. Fla. Const. art. v, §12(b), (c). Both panels have the right to absolute candor from the judges appearing before them. In re Davey, supra.

Judge Hawkins was clearly offended by the JQC's investigation, dug in her heels, and refused to cooperate. (T. 584-85). She then made knowingly misleading statements to the FJQC investigative panel and its investigator. She destroyed

evidence before her scheduled deposition and refused to produce subpoenaed records even after multiple orders. This conduct is the antithesis of respect for the law that Judge Hawkins has sworn to uphold. Similar actions taken by lawyers have led to suspensions, with the length of suspension dependent upon mitigating circumstances. See Florida Bar v. MacNamara, 2013 WL 6670672 at *5-6 (Fla. 2013) (91 day suspension for covering up failure to file estate tax return with misrepresentations to the probate court, a deliberately misleading letter to the IRS, and misleading statements to the Florida Bar, in the absence of prior disciplinary record, or selfish motive, and substantial contribution to the community); Florida Bar v. Head, 84 So.3d 292 (Fla. 2012) (91 day suspension for engaging in conduct involving dishonesty).

The Hearing Panel has considered Judge Hawkins' lengthy judicial career and exemplary conduct for many years **before** the JQC investigation, the absence of personal gain, and her initial motive, which was to better her community through performing charitable works. The Hearing Panel has weighed these positive attributes against the Canon violations at issue, and is recommending a combination of disciplinary measures. See In re Albritton, 940 So.2d 1083 (Fla. 2006); In re Rodriguez, 829 So.2d 857 (Fla. 2002); In re Pando, 903 So.2d 902 (Fla. 2005). Judge Hawkins believes in extending second chances to others. The Hearing Panel concludes that her conduct in response to the FJQC investigation

was an aberration, that she is devoted to the community, is still capable of able service and that she, likewise, is entitled to a second chance. The disciplinary measures recommended include:

(1) a public reprimand;

(2) a three month suspension without pay; and

(3) a $17,000 fine.

The suspension and fine, together, approximate the cost of the prolonged investigation required by Judge Hawkins' conduct.

All of the Hearing Panel's findings are supported by clear and convincing evidence. The vote of the Hearing Panel on guilt as well as the recommended discipline has been determined by an affirmative vote of at least two thirds of the six hearing panel members, in compliance with Fla. Const. art. v, §12(b); FJQC Rule 19.

Dated this 27th day of January, 2014.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

By: /s/ James A. Ruth
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