

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING JUDGE

KIMBERLY MICHELE SHEPARD, NO. 14-488

SC 15-1746

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

Pursuant to the Florida Constitution, Art. V, §12(a)(1), (b) and (c), and the Florida Judicial Qualifications Commission (“FJQC”) Rules, the FJQC Hearing Panel certifies these Findings of Fact, Conclusions of Law and Recommendations of Discipline to the Florida Supreme Court.

COURSE OF THE PROCEEDINGS

On September 24, 2015, the Investigative Panel of the FJQC filed a Notice of Formal Charges against the Honorable Kimberly Shepard, Circuit Court Judge for the Ninth Judicial Circuit, Osceola County, Florida. The Notice alleged that, during her campaign for election to judicial office, attorney Shepard circulated a deceptive, misleading advertisement which implied that the *Orlando Sentinel* had endorsed Ms. Shepard, when it had, in fact, endorsed her opponent. The advertisement’s language was taken from a 1994 endorsement for Ms. Shepard for a legislative race, without disclosing the date and office to which it applied. The Notice asserted violations of Judicial Canons 1, 2A, 7A3(b), 7A3(c), 7A3(d), and 7A3(e)(ii), and

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was amended to assert violations of Rule 4-8.2(b), Rules Reg. Fla. Bar.

Attorney Luis Gonzalez appeared for the Respondent, but moved to withdraw before a scheduled status conference. He was replaced by attorney Robert J. Buonauro on November 16, 2015. On November 17, 2015, Respondent filed a Motion for More Definite Statement, a Motion to Strike “Irrelevant, Immaterial Language” in the Notice of Formal Charges, and an Answer and Affirmative Defenses. Respondent withdrew her Answer, almost immediately, on the basis it was “inadvertently filed.” She did **not** file a Motion to Dismiss.

The Chair issued an order scheduling the final hearing to commence February 3, 2016.

On December 2, 2015, the Hearing Panel denied Respondent’s motions to strike and for definite statement, but **sua sponte** directed the parties to be prepared to address the applicability of Inquiry Concerning Kinsey, 842 So.2d 77 (Fla. 2003), in their presentation to the FJQC Hearing Panel. Respondent was directed to answer on or before December 8, 2015.

Judge Shepard answered, denying that her advertisement was “either intentionally or actually deceptive” or violative of any judicial Canon. Judge Shepard also asserted that the verbiage of the notice of formal charges was “designed to build sympathy for [her] defeated judicial opponent and to defend the *Orlando Sentinel’s* editorial decision, and [was] the subject of a previously filed Motion to

Strike.” (Amended Answer and Affirmative Defenses to the Amended Notice of Formal Charges,” ¶1). Judge Shepard alleged “there was no indication that [her] integrity or character underwent a fundamental transformation in the intervening [20] years since being recognized and praised by the *Orlando Sentinel*” (*Id.* at ¶3), that “the *Orlando Sentinel* never withdrew or receded from its earlier evaluation,” and that the statements made in her advertisement were correctly attributed and truthful. (*Id.* at ¶6).

Mr. Buonauro withdrew as Respondent’s counsel, and was replaced by attorney Hugh James McDonnell. Mr. McDonnell sought a continuance based on his personal schedule. Following denial of this motion, he prepared for trial.

On January 14, 2016, Mr. McDonnell moved to withdraw asserting that, after diligently working on Judge Shepard’s behalf, he had a “fundamental disagreement” with the Judge regarding how the case should be handled, making it unreasonably difficult to continue representation. Right before the hearing scheduled on this motion, the Chair received “Respondent’s Response to Counsel’s Motion to Withdraw,” from email address mycell1@hush.com. This response contained many numbered paragraphs, indicated it was filed by Judge Shepard, but was unsigned, and contained no certificate of service. Judge Shepard contested her counsel’s withdrawal asserting that “the single issue remaining to be determined... was relatively straight forward, could be mastered quickly and easily explained by

someone of Mr. McDonnell’s considerable intellectual talents and experience...”
(Id. at ¶55, emphasis in original).

The Chair treated the Judge’s response as a motion for continuance, based on paragraphs 53, 55, and 57, which asserted that the Judge was recently hospitalized for a serious medical condition, and that her mother had just died. The Chair did **not** consider the balance of the response which “ma[de] allegations against multiple parties (including four attorneys who previously represented the judge), and was based, in large part, on the Judge’s ‘impressions.’” Mr. McDonnell’s Motion to Withdraw was granted, and the final hearing was continued for a limited period.

On February 19, 2016, attorney Timothy R. Hartung appeared as counsel for Judge Shepard,¹ and filed a Motion to Dismiss which bore a certificate of service dated December 29, 2015, and was denied, as was an amended motion (with a corrected service date). Mr. Hartung withdrew on April 6, 2016, but continued to file motions, thereafter. These included several renewed motions to dismiss various charges and a renewed motion to strike verbiage in the amended notice of formal charges.

The FJQC Hearing Panel conducted a final hearing on April 8, 2016, heard argument, and reserved ruling on Respondent’s motions. The Hearing Panel was

¹ This notice was styled as a “limited” notice “for the specific purpose of filing certain motions in this cause... intended to facilitate timing...”

chaired by Mayanne Downs, Esq., and included the Hon. Michelle Morley, the Hon. Krista Marx, John G. White, III, Esq., Ricardo Morales, III (lay member) and Alvin Alsobrook (lay member).

Scott N. Richardson, Esq. represented the FJQC Investigative Panel. The Respondent represented herself. Lauri Waldman Ross, Esq. served as counsel to the FJQC Hearing Panel.

FINDINGS OF FACT²

Kimberly Michelle Shepard was admitted to the Florida Bar in 1990. She worked as a certified legal intern during law school, and as an assistant state attorney for the Ninth Judicial Circuit from 1990 to 1992. (T.118). From 1992 to 1994, Ms. Shepard served as a legislator in the Florida House of Representatives (T.32).

In 1994, Ms. Shepard received the *Orlando Sentinel's* endorsement for her legislative reelection campaign. (T.32-33). This endorsement for House District 36 was titled "Shepard, with enthusiasm" and stated, in pertinent part:

[M]s. Shepard has done well. She has kept her promises. She has worked hard. **She has legislated effectively.** She has maintained her integrity. **She has served her constituents diligently.** (JQC Ex.12, emphasis added).

Ms. Shepard lost the legislative race, and went into private practice. In 2014, Ms. Shepard launched a bid and qualified for judicial office. (T.35).

² References are to the hearing transcript (T.), and the parties' respective exhibits (JQC Ex.____; Resp. Ex.____).

She ran for judicial office against Norberto Katz, a child support hearing officer. Ms. Shepard knew that Mr. Katz had been previously disciplined for ethics violations because “At that time, Mr. Katz and I were engaged in litigation as opposing counsel” and she remembered when it transpired. (JQC Ex.6, March 12, 2015 6(b) hearing, p.151). Ms. Shepard qualified on the last day, campaigning for a very short period of time – from May 2014 through the August 14, 2014 election. (JQC Ex.6, March 12, 2015 6(b) hearing, pp.71-72).

She explained that:

[I] wasn’t planning to run for Judge. I didn’t qualify for this position until two hours before qualifying closed. And I only did so because it became apparent to me that there was not going to be a significant challenge to the gentleman who we now refer to as my former opponent.

And I, frankly, felt that if no one would challenge this gentleman and provide a significant challenge to him that he would arrive in office without the public having any real idea of what his disciplinary record is. (T.229-30).

Ms. Shepard signed a “Statement of Candidate for Judicial Office” acknowledging that she had received, read and understood the requirements of Florida’s Code of Judicial Conduct. (T.35; JQC Ex.14).

During the campaign, both candidates appeared for an interview before the *Orlando Sentinel’s* editorial board. (T.43).

Ms. Shepard distributed a mailer before the *Orlando Sentinel* issued its 2014 endorsement. (JQC Ex.9). Under the heading “A Life of Service,” the front of this

mailer stated that “Kim Shepard has spent her entire life serving others and building a reputation for integrity, independence, honesty, diligence, service, competence and compassion...” It listed Ms. Shepard’s prior positions as a child abuse investigator, emergency medical technician, and executive director, battered women’s shelter. In the lower left corner, underneath the depiction of two children pledging allegiance, was a snippet taken from the *Orlando Sentinel* endorsement for Shepard’s 1994 legislative campaign. This endorsement contained a portion of the *Orlando Sentinel*’s masthead, titled “Shepard, with Enthusiasm.” It was dated “Election 1994,” and referenced Ms. Shepard’s prior service as a “good legislator.” (JQC Ex.9; T.37-39).

On July 26, 2014, the *Orlando Sentinel* endorsed Mr. Katz stating:

Group 10

This race matches two veteran lawyers: Norberto Katz of Maitland, who has practiced 30 years, and Kim Shepard of Orlando, who has practiced 24. We prefer Katz, whose experience makes him better qualified to be a judge.

Katz, a child-support hearing officer since 1998, was made the chief among the circuit’s hearing officers four years ago by Chief Judge Belvin Perry – a vote of confidence from the dean of judges in Central Florida. Katz also worked with Perry in developing the circuit’s truancy court, and volunteers as a special magistrate for it. Katz has shown his dedication to his profession by serving in top posts in multiple legal organizations, and to his community through leadership in cultural and charitable groups.

Shepard served two years as a prosecutor to begin her

career, but says she has spent the past 22 years running a “business-focused law practice” that has largely kept her out of the courtroom. She does have admirable examples of community service in her past, including a term in the Legislature.

We didn’t endorse Katz when he ran 12 years ago, noting that he had been suspended in 1995 for 90 days by the Florida Bar for misconduct. In the nearly two decades since his sanction, however, Katz has worked diligently to rebuild his reputation. Currently, he’s chair of the Bar’s family law section, a telltale sign he’s regained his good standing within the legal community. In this race, his dozens of endorsers include 18 past Orange County Bar presidents.

We don’t think his 90-day suspension in 1995 should carry with it a lifetime ban from the bench. We endorse Norberto Katz. (JQC Ex.13).

After the *Orlando Sentinel* endorsed her opponent, Ms. Shepard distributed the campaign mailer at issue, referred to as JQC Ex.10. (T.44-45; 47-48). A copy of the original color mailer is attached. The front and back of the mailer compared Kim Shepard to her opponent in multiple categories. On the back, under the column for Kim Shepard it stated:

“Ms. Shepard has done well. She has kept her promises. She has worked hard. She has maintained her integrity.”
- The *Orlando Sentinel*

This purported to be a direct quotation taken from the *Orlando Sentinel*, but significantly (1) omitted the 1994 date of the newspaper’s endorsement; (2) omitted the fact that this statement was twenty years old, and made in connection with a 1994

legislative race, **not** the current judicial race; and (3) was substantially edited to delete all reference to Ms. Shepard's legislative service. Both the intervening sentence and end sentence of the paragraph of the *Orlando Sentinel* endorsement were removed without any indication. (JQC Exs.10; 12; T.42-43).

Special Counsel called two witnesses in his case: Donald Lykkebak, Esq. and Judge Shepard. Mr. Lykkebak, a criminal defense attorney admitted to the Florida Bar in 1970, and a registered voter in the 9th Circuit, did not receive Ms. Shepard's first mailer (JQC Ex.9) but received JQC Exhibit 10 after the *Orlando Sentinel's* 2014 endorsement. (T.66-67; 70).

Mr. Lykkebak read the *Orlando Sentinel*, knew that its 2014 endorsement had gone to Mr. Katz and believed that JQC Exhibit 10 was "untruthful," "deceptive" and intended to deceive the public. (T.68-69, 80). It was "purposefully edited" to remove the 1994 date, and any reference to Ms. Shepard's legislative service. (T.68-69; 99). Mr. Lykkebak had no involvement with or stake in the Katz campaign, but "mind[ed] that [JQC Exhibit 10] was a lie intended to deceive the voters in a judicial election." (T.88; 105).³

Judge Shepard agreed she was responsible for the conduct of her campaign and the content of her advertisements. She admitted that the language in her mailers

³ Attorney Cheney Mason testified similarly in a deposition that Judge Shepard submitted in evidence. (Resp. Ex.6, pp.8, 10-11, 14, 28-29).

was significantly changed:

- Q. The sentence from the original 1994 endorsement that was placed on Exhibit No.9 for 2014 that says she has legislated effectively does not appear on Exhibit No.10, does it?
- A. [Judge Shepard] No.
- Q. The sentence that was in the 1994 endorsement as part of the 2014 campaign material, quote “She has served her constituents diligently” does not appear on Exhibit No.10, does it?
- A. That’s true.
- Q. In addition, the words “Election 1994” also do not appear on Exhibit No.10, do they?
- A. No, they do not.
- Q. Exhibit No.10 makes no reference to your previous legislative experience, does it?
- A. No, I don’t believe it does. Let me look for sure, but I don’t believe so. Wait. Let me look, I don’t believe so.
- Q. And Exhibit No.10 does not make any reference to your years of legislative experience, does it?
- A. No. (T.42-43).

Judge Shepard asserted the *Orlando Sentinel*’s assessment of her character and reputation for integrity, written in 1994, still applied in 2014 because “integrity is a quality... you either have or you don’t,” and it doesn’t diminish with the passage of time. (T.55-56; 167-69). She used this particular language to distinguish between herself and her opponent because **inter alia** the *Orlando Sentinel* never withdrew or receded from its prior assessment “when they had an ample opportunity to do so...” (T.55; 57). She didn’t believe her mailer was misleading because she personally handed out the entire 1994 article on the campaign trail. (T.63; 188).

Judge Shepard also disclaimed any intent to deceive or mislead. (T.51). She testified that no one received JQC Ex.10, who had not previously received JQC Ex.9, urging her mailer should be considered in context. (T.51, 60-61, 166-67). Judge Shepard relied on a demonstrative aid, with an overlay depicting her mailers sequentially. (T.170; Notice of filing demonstrative exhibits, dated April 11, 2016). While not intended for this purpose, Judge Shepard's demonstrative aid actually highlighted the language which she deleted from JQC Ex.10: the date of the 1994 election, and sentences reflecting it referred to her prior legislative service. (T.170-71).

In her defense, Judge Shepard called one character witness, and two witnesses to attest to their "perception" of JQC Ex.10 (the mailer at issue) and whether they were personally misled.

Lawson Lamar, Esq. met Ms. Shepard in 1989, when she was a certified legal intern, and he was the new state attorney. (T.118). She continued working for his office as an assistant state attorney for two years after graduation. (R.119).

Mr. Lamar testified that, during her employment as an A.S.A., Ms. Shepard was "appropriately aggressive," had "a great sense of duty and justice," was well-liked by co-workers, and he "never heard a bad word." (T.119; 122). He believed she was a truthful person and "never had any involvement with [her] or [her] reputation that did not involve truth." (T.124). After Ms. Shepard left the state

attorney's office, they had less contact, but talked from time to time. (T.119).

Anthony Ferentinos, a “super duper voter” and frequent candidate for county commissioner met Judge Shepard on the campaign trail. (T.128; 133-36).⁴ Mr. Ferentinos supported and voted for Ms. Shepard's opponent. (T.134). He testified that the mailer at issue didn't seem misleading to him because it “doesn't say anything other than the fact that you know, Kim Shepard is running for judicial position, and she's done well, and different things about her opponent.” (T.133). Mr. Ferentinos added that “[I] don't see any endorsement here whatsoever. Doesn't say that they endorsed you, other than the fact that maybe on the first one that you were at one time running for election for, I guess, state, and they endorsed you then. But that's all it says.” (T.135). He also volunteered that “these cards are – half of them are throwaways... people read them, and they already know who they want to vote for” and that “the *Orlando Sentinel* endorsement might as well have a death sentence. I mean I wouldn't want it if I was running, which I am running.” (T.133; 135).

Judge Shepard also questioned Karl Kaiser, a longtime friend, about the “impression” made on him by JQC Ex.10 (T.152). Mr. Kaiser knew Ms. Shepard was a former legislator before she ran for judge. (T.158). He testified that “These

⁴ Mr. Ferentinos did not recall receiving JQC Ex.9, but saw it at a campaign function. (T.128, 129-31).

are various things that various parties send,” that JQC Ex.10 didn’t say that Shepard had received the *Orlando Sentinel*’s current endorsement, and “You’d have to read something else into it. It doesn’t say that.” (T.152-53).

Hearing Panel members questioned Judge Shepard about her selective editing of JQC Ex.10, including the lack of a date for the language attributed to the *Orlando Sentinel*, and the removal of both sentences relating to her legislative service, including one located mid-quotation, without the mailer so reflecting. (T.170-71; 173-77). Judge Shepard claimed she “didn’t really think about quotes” but, when pressed, admitted that two sentences in the 1994 *Orlando Sentinel* endorsement (relating to her legislative service) had been excised from her mailer (JQC Ex.10). This was a deliberate act. (T.176-78).

Even with the benefit of hindsight, Judge Shepard was either unable or unwilling to answer “Yes” or “No” to the most basic questions regarding whether her mailer was misleading. (T.188-90). She apologized **only** “If anyone was misled,” stating that “wasn’t my intent.” (T.180). Judge Shepard argued that she read and tried to follow the judicial canons, and that nothing “requires a judicial candidate to wrap... truth in velvet before delivering it in the course of a judicial campaign, far as I can tell,” but offered an apology in the event she “misunderstood.” (T.208). She attributed these disciplinary proceedings to linguistic “differences of interpretation.” (T.194-95). There was little, if anything, she would do differently.

(T.180-84; 190-92).

During the course of these proceedings, Judge Shepard repeatedly tried to shift the focus from her conduct to that of her prior opponent, his qualifications to become a judge, and his campaign literature. (T.95-97; 104-06; 107-10; 113; 155-57). Judge Shepard's formal response to the "Notice of Investigation" denied that JQC Ex.10 was misleading, attributing such contention to the "self-serving interpretation of the party pursuing the complaint." (JQC Ex.4, Response, pp.3 and 4).⁵

The "Notice of Formal Charges" alleged **inter alia** that Ms. Shepard and her opponent both sought the *Orlando Sentinel's* 2014 endorsement, and that the Sentinel preferred Katz. Judge Shepard did not merely deny that she sought the endorsement, she implied powerful improper forces were at work on Katz' behalf, stating she was "without specific knowledge as to whether Mr. Katz and other powerful influencers on his behalf, made specific appeals to or lobbied the *Orlando Sentinel* editorial board and others to provide an endorsement of Mr. Katz despite his established disciplinary record and suspension from the practice of law for misconduct and dishonesty." (Amended Answer, ¶1).

Judge Shepard's answer did not merely defend her conduct. It attacked Mr. Katz, asserting that:

⁵ Judge Shepard apparently believed that Mr. Katz was the complainant.

There is no indication that Mr. Katz’s participation on bar committees after his suspension from the practice of law at the age of 37... for “conduct involving dishonesty, fraud, deceit, or misrepresentation among multiple other ethical and professional conduct violations, or the close social relationships he may have developed while fraternizing with other powerful and influential bar members at meetings and social gatherings, produced a fundamental transformation of his character or suddenly instilled in him, an integrity that was not evident or demonstrated prior to his suspension from the practice of law. (Id. at ¶1).

The Judge’s selective editing of the 1994 endorsement, in context, was much more than a matter of inexact punctuation, or a mistake. (T.220, 224). Ms. Shepard believed Mr. Katz to be unworthy of judicial office, and that any action she undertook to defeat him was justified. In doing so, she knowingly misled the public by campaign literature which implied that she was endorsed by the *Orlando Sentinel*, when this was untrue.

CONCLUSIONS OF LAW

A. Preliminary Issues

Judge Shepard posited, by way of Motion to Dismiss, that all charges relate to her conduct as a candidate for judicial office. Thus, she cannot be found guilty of violating Canons 1 and 2 of the Code of Judicial Conduct. The Hearing Panel agrees, based on In re Kinsey, 842 So.2d 77, 85-86 (Fla. 2003), which is controlling and applicable.

Judge Shepard also moved “**in limine** to strike prejudicial language from the

notice of formal charges” pursuant to Rule 1.140(f), Fla.R.Civ.P., which permits the striking of “redundant, immaterial, impertinent or scandalous matter” from any pleading at any time.

This kind of motion is “not favored.” Costa Bella Development Corp. v. Costa Development Corp., 445 So.2d 1090 (Fla. 3d DCA 1984); see Padovano, Florida Civil Practice §7.30 p.278 (2009 ed). It should only be granted if the matter alleged is “wholly irrelevant,” can have no bearing on the equities, and no influence on the decision. McWhirter, Reeves, McGothlin, Davidson, Rief & Bakas, P.A. v. Weiss, 704 So.2d 214, 216 (Fla. 2nd DCA 1998); Pentecostal Holiness Church, Inc. v. Mauney, 270 So.2d 762, 769 (Fla. 4th DCA 1972).

The Judge sought to strike language in the notice of formal charges paraphrasing the *Orlando Sentinel’s* 2014 endorsement of her judicial opponent, which was relevant to these proceedings. Her Motion to Strike is respectfully denied.

B. Violations of Canon 7 and Rule 4-8.2

Canon 7 of Florida’s Code of Judicial Conduct provides, in pertinent part:

A Judge or Candidate for Judicial Office Shall Refrain from Inappropriate Political Activity

A. All judges and candidates

* * *

3. A candidate for judicial office:

* * *

(b) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary...

(c) shall prohibit employees and officials who serve at the pleasure to the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(d) except to the extent permitted by Section 7C(1) shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under sections of this Canon;

(e) shall not:

* * *

(ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent...

Rule 4-8.2, Rules Regulating the Florida Bar, governing "Judicial and legal officials" further specifies:

(b) **Candidates for Judicial Office; Code of Judicial Conduct Applies.** A lawyer who is a candidate for judicial office shall comply with the applicable provisions of Florida's Code of Judicial Conduct.

States may regulate judicial elections differently than political elections "because the role of judges differs from the role of politicians." Williams-Yulee v.

Florida Bar, 135 S.Ct. 1656, 1667 (2015). Florida’s interest in protecting public confidence in the judiciary is one “of the highest order.” Id.

The Florida Supreme Court has repeatedly warned members of the judiciary and judicial candidates, that they should not mislead the public by placing factually incorrect statements in campaign materials. See In re Dempsey, 29 So.3d 1030, 1033 (Fla. 2010); In re Renke, 933 So.2d 482, 493 (Fla. 2006); In re Kinsey, 842 So.2d at 90; In re McMillan, 797 So.2d 560, 571-72 (Fla. 2001); In re Alley, 699 So.2d 1369 (Fla. 1997).

In Renke, the closest case factually, a successful candidate for judgeship was charged with violating Judicial Canon 7A3(d)(iii)⁶ by prominent display in his campaign brochure of Judge Renke sitting beneath a large banner captioned “Southwest Florida Water Management District” in front a nameplate reading “John F. Renke, Chair.” The JQC concluded this was a deliberate attempt to convey to the public that Renke was the chairman of the Southwest Florida Water Management District, a public body of considerable importance, when, in fact, there was no such position, and Renke only chaired the Coastal River Basin Board.

⁶ Canon 7 of the Code of Judicial Conduct has been amended. The text of this provision remains the same, but is currently located in Canon 7A3(e)(ii). See In re Amendment to Code of Judicial Conduct, 918 So.2d 949, 960-61 (Fla. 2006); In re Amendment to the Code of Judicial Conduct – Amendments to Canon 7, 985 So.2d 1073, 1076-77 (Fla. 2008).

Judge Renke's campaign further disseminated a picture of the judge, surrounded by firefighters below the caption "Supported by our area's bravest: John with Kevin Bender and the Clearwater firefighters." Judge Renke admitted that he did not have the support of the Clearwater firefighters union or any group or organization, just the specific firefighters with whom he posed. The JQC found that the photograph, as captioned, was an attempt to mislead the public into believing Renke had the official support of the Clearwater firefighters.

The Florida Supreme Court affirmed both findings, concluding there was evidence supporting "clear violations of the judicial canon's prohibition on knowing misrepresentations of a candidate's experience and qualification for judicial office." Id. at 487-88.

The present case is stronger. It does not merely involve a picture with a misleading caption. By knowingly deleting the 1994 date of the *Orlando Sentinel's* endorsement, and all references to her legislative service, Judge Shepard made it appear that she had received the *Orlando Sentinel's* current endorsement, which was patently untrue. The Hearing Panel believes that judicial endorsements by local newspapers can and do have significant impact on the electorate, and the outcome of judicial races. Voters, often unable to discern the differences between judicial candidates, rely on local editorial boards to steer them in the right direction. Active and intentional manipulation of those endorsements represents both a strategic

understanding of how important those endorsements are, and a willingness to mislead for personal gain. The Hearing Panel finds Judge Shepard's behavior in this respect to be offensive, and disturbing.

Handing out the original article personally, or mailing an accurate flier first, did not make JQC Ex. 10 any less misleading. If a voter "should not be required to read the fine print in an election flyer to correct a misrepresentation contained in large bold letters" in the same flyer, see Kinsey, 842 So.2d at 90; Renke, 933 So.2d at 488; Dempsey, 29 So.3d at 1033, then a voter should not be required to read prior campaign literature from the same candidate or original source material to glean the truth.

The Hearing Panel finds the Respondent not guilty of violating Canon 7A3(c) and Canon 7A3(d), and that these provisions of Canon are inapplicable to the facts. There was no allegation or proof that any employee or official of respondent's campaign or that any person other than the respondent engaged in conduct prohibited by the judicial canons.

However, the Hearing Panel finds Respondent guilty of violating Canon 7A3(e)(ii) by knowingly misrepresenting "other facts" concerning her candidacy, and Canon 7A3(b) by acting in a manner inconsistent with integrity of the judiciary

by these knowing misrepresentations. Respondent is also guilty of violating Rule 4-8.2, Rules Regulating the Florida Bar.

RECOMMENDED DISCIPLINE

The object of judicial disciplinary proceedings is not for the purpose of inflicting punishment, but to gauge a judge's fitness for office. In re McMillan, 797 So.2d 560, 571 (Fla. 2001).

In Alley, 699 So.2d 1369 (Fla. 1977), a judge was charged with knowing misrepresentations of her own qualifications and those of her opponent in newspaper advertisements and campaign mailers. The JQC Investigative Panel found the advertising violations "very serious," but stipulated to a public reprimand based upon respondent's answer in which she indicated she had learned a great lesson, and showed remorse adjudged to be sincere. The Florida Supreme Court felt "constrained" by the JQC's recommendation and approved it, while signaling difficulty in "allow[ing] one guilty of such egregious conduct to retain the benefits of those violations and remain in office." Id. at 1370.

Alley was decided based on provisions of the Florida Constitution, which were subsequently amended. See Kinsey, 842 So.2d at 95, n.10. In the ensuing almost 20 years since Alley issued, the Court affirmed a public reprimand where the judge exaggerated her legal experience and advertised her "re-election," rather than election, but immediately apologized and acknowledged wrongdoing. Dempsey, 29

So.3d at 1032.

At the other end of the spectrum, the Court has ordered removal for “a series of blatant, knowing misrepresentations... in [the Judge’s] campaign literature and... statements to the press,” Renke, 933 So.2d at 495, or “cumulative misconduct.” McMillan, 797 So.2d at 573.

Here, Judge Shepard knowingly misrepresented facts surrounding her endorsement in a single campaign flier disseminated to the public. However, the Hearing Panel is seriously concerned about the Judge’s inability to recognize or understand her inappropriate actions and reactions to these proceedings. In addition, her approach to these proceedings reflects a fear of sinister forces at work conniving at her defeat; the “existence” of these forces – and their alignment against her – appear to justify in her mind her behavior in both the underlying matter and this proceeding. In many respects, Judge Shepard appears to believe these disciplinary proceedings were an extension of the election to be “won” by demonstrating that she was the superior candidate. The Hearing Panel has no hesitancy in recommending a public reprimand, but feeling constrained by prior precedent, still believes that leaving her in office without further penalty is entirely inappropriate. See Kinsey, 842 So.2d at 92. The penalty imposed here must be sufficient to deter others from similar violations.

Accordingly, the Hearing Panel recommends the following discipline:

- (1) a public reprimand; and
- (2) a 90 day suspension without pay; and
- (3) Payment of investigative costs, and the costs of these proceedings.

All of the Hearing Panel's findings are supported by clear and convincing evidence. The votes 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 Hearing Panel members, in compliance with Fla. Const. Art. V, §12(b); FJQC Rule 19.

Done and Ordered this 9th day of June, 2016.

FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION

By: /s/ Mayanne Downs
MAYANNE DOWNS, ESQ.
FJQC HEARING PANEL CHAIR
GRAY ROBINSON, P.A.
301 E. Pine Street
Suite 1400
Orlando, FL 32803
Mayanne.downs@gray-robinson.com

Copies Furnished in accordance with the attached list:

Scott N. Richardson, Special Counsel
LAW OFFICE OF SCOTT N. RICHARDSON, P.A.
1401 Forum Way, Suite 720
West Palm Beach, FL 33401
snr@scottnrichardsonlaw.com
meh@scottnrichardsonlaw.com

Michael Schneider, General Counsel
Alexander J. Williams, Asst. General Counsel
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
P. O. Box 14106
Tallahassee, FL 32317
mschneider@floridajqc.com
awilliams@floridajqc.com

Timothy R. Hartung, Esquire
44475 Chamberlain Terrace, Unit 106
Ashburn, VA 20147
trhartung@verizon.net

Judge Kimberly Shepard
P.O. Box 3525
Orlando, FL 32802
Mycell1@hush.com
Ctjuks1@ocnjcc.org
Ctjajh1@ocnjcc.org

Lauri Waldman Ross, Esquire
Counsel to the Hearing Panel of the
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
ROSS & GIRTEN
9130 S. Dadeland Blvd., Suite 1612
Miami, Florida 33156
RossGirten@Laurilaw.com