BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING JUDGE,

SC15-2148

JOHN PATRICK CONTINI, NO.15-200
_____/

FINDINGS OF FACT, CONCLUSIONS, 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, Conclusions and Recommendations to the Florida Supreme Court.

COURSE OF THE PROCEEDINGS

On October 9, 2015, the Investigative Panel of the FJQC filed a Notice of Formal Charges against the Honorable John P. Contini, Circuit Court Judge for the 17th Judicial Circuit, Broward County. The notice alleged that Judge Contini: (1) forwarded a Palm Beach County sentencing order to an Assistant Public Defender with an email message regarding its general use without copying the State Attorney's Office; (2) denied, as legally insufficient, the State's ensuing motion for disqualification, leaving cases in his division in limbo; and (3) made disparaging, demeaning remarks about the government attorneys who sought his disqualification,

while an appellate petition for prohibition regarding his disqualification order was pending.

Judge Contini's answer admitted violations of Canons 1, 2(A), 3B(4), 3B(7) and 3B(9) of the Code of Judicial Conduct by an improper ex-parte communication, exhibiting discourteous, impatient, undignified conduct, and making disparaging, intemperate remarks. Judge Contini contested only the propriety of his ruling on the State's disqualification motion, and the appropriate discipline.

The FJQC Hearing Panel conducted a final hearing on March 14, 2016. The Hearing Panel was chaired by the Hon. Robert Morris, and included the Hon. Morris Silberman (*ad hoc*), Alan Bookman, Esq., John P. Cardillo, Esq. (*ad hoc*), Dr. Jerry Osteryoung (lay member) and Nancy Mahon (lay member/*ad hoc*). All six commissioners were present during the final hearing and deliberations.

Alexander Williams, Esq. represented the FJQC Investigative Panel. Judge Contini was represented by David Rothman, Esq., Jeanne T. Melendez, Esq. and Bruce S. Rogow, Esq. Lauri Waldman Ross, Esq. served as counsel to the FJQC Hearing Panel.

FINDINGS OF FACT[1]

John P. Contini was admitted to the Florida Bar in 1983. After four years as

[1] References are to the parties' "Stipulation of Facts for Final Hearing" (Stip.¶), the transcript of the final hearing (T.), and the parties' respective exhibits, admitted into evidence by agreement (JQC Ex. ___; Resp. Ex. ____).

an assistant state attorney with the Broward County State Attorney's Office, he entered private practice, primarily in the field of criminal defense. (Stip. ¶1).

In August 2014, when he was elected to a circuit judgeship, Judge Contini was an experienced attorney, who had been practicing law for 31 years. (T.80). Judge Contini sought assignment to the criminal division based on his background and experience. (T.217).

On January 6, 2015, his first day on the bench, Judge Contini was assigned to a felony criminal division which had a significant backlog due to multiple judicial vacancies (requiring judges to cover different dockets) and the unexpected illness of his predecessor. (Stip.¶3; T.46-47, 82). Judge Contini's division was one of the largest in Broward County, with approximately 1,000 pending cases, and 20 to 30 new cases every week. (T.175-79). This division was essentially in a holding pattern pending the election. (T.46-47; 180-81).

Judge Contini was enthusiastic, worked hard to be fair and efficient, and regularly sought advice from other judges about efforts to manage his caseload and move cases. (T.179-82). He also met with division prosecutors and public defenders in an effort to whittle down and streamline the division's docket. (T.83-84). Among other things, they generally discussed downward departures in sentencing as a case management tool in instances where appropriate. (T.83).

On March 16 through March 20, 2015, Judge Contini attended Phase I of

Judicial College, and programs intended to train new judges. (Stip. ¶4; T.187). During the first day of judicial college (March 16, 2015), Judge Contini came into possession of a copy of an "Amended Sentencing Order" entered by another judge in State v. Fedorko, Fifteenth Judicial Circuit, Case No. 2013 CF007736AXXX (Crim. Div. X) ("the Palm Beach Order.") (T.84; JQC Ex.7).

That same day at 2:48 p.m., Judge Contini forwarded the Palm Beach order by email to his judicial assistant and staff attorney as a "very thorough and thoughtful opinion" on downward departures which could be used for checking against a template order he was then in the process of preparing. (JQC Ex.7). At 3:23 p.m., Judge Contini forwarded the Palm Beach order by email to Samuel Perlmutter, an assistant public defender assigned to his division, with the message:

> Sam, fyi, see the Palm Beach Judge's order re downward departures generally, not regarding any particular cases**…** and hopefully, you can perfect your own motions for downward departure (when you believe appropriate) using the excellent research you've already begin (sic), and perhaps some of this Judge's Order and perhaps the cases she relied upon as well, but in either case, maybe there is something of interest (generally) below: (JQC Ex.7).

Judge Contini's email and attachment were not copied on or sent to the State Attorney's office. (JQC Ex.7).

On March 20, 2015, assistant public defender Johanna Cipau forwarded Judge Contini's email and attachment to the State Attorney's office. (Stip.¶6, JQC Ex.7 &

8).

Upon his return to the bench on March 23, 2015, Judge Contini held a "side bar conference" with several assistant state attorneys and assistant public defenders, and handed out various materials he received at judicial college, including the Palm Beach Order (Stip.¶7; Resp. Ex.10, ¶6).

On March 26, 2015, the Broward County State Attorney's office filed a Motion to disqualify Judge Contini from all open pending criminal cases. The motion was signed by assistant state attorneys Joel Silvershein and Peter Holden, attached the affidavit of a different state attorney Rayna Karadbil, and a list of open pending cases in the division. (Stip.¶8; JQC Ex.8). Ms. Karadbil's affidavit detailed the means by which the email and attachment reached her attention, adding only that:

> This undersigned ASA was unaware of the communication or the contents of the communication between APD Samuel Perlmutter and Judge Contini.
>
> This undersigned ASA has numerous cases against APD Perlmutter and was unaware that Judge Contini had an **ex parte** communications (sic) with APD Perlmutter regarding motions for downward departure. (JQC Ex.8, ¶5 and 6).

Judge Contini was "shocked**…** embarrassed and humiliated" when he received the motion for disqualification. (T.88). He sought advice from the Administrative Criminal Division Judge Martin Bidwell and Chief Judge Peter Weinstein, who called in the Circuit's General Counsel and its court administrator

(who previously served as the circuit court's staff attorney). (Stip.¶9; T.89; 148; 190-92). Judge Contini was advised to deny the motion as "legally insufficient" based **inter alia** on the fact that the lawyers who signed the motion did not attest to its contents, but, instead, attached an affidavit from a line prosecutor, who failed to set forth any fear that hearings before Judge Contini would be unfair. (T.89; 190-92). They, thus, reasoned that the motion was "technically" legally insufficient, since the motion's allegation that the state could not receive a fair hearing, was unsworn. (T.212-13; 218-19). Judge Contini also thought his email, while improper, "didn't speak to a specific case." (T.90-91).

On March 27, 2015, Judge Contini denied the State's motion for disqualification as "legally insufficient." (Stip.¶9; T.89-91).

On April 9, 2015, the State, through the Attorney General's office, petitioned the Fourth District Court of Appeal ("Fourth DCA") to issue a Writ of Prohibition disqualifying Judge Contini as the trial judge in all open pending criminal proceedings. The respondent named in the petition was "see attached list of cases;" the petition was signed by assistant attorney general Heidi L. Bettendorf. (Stip.¶10; JQC Ex.9).

On April 10, 2015, the Fourth DCA ordered the State to serve a copy of filings "on all attorneys indicated on the list of cases attached to the Petition," to ensure that all parties received notice of these and further proceedings. (Resp.Ex.1). The

Attorney General's office immediately complied. (Resp.Ex.1).

On May 12, 2015, the Fourth DCA ordered the State to file a response within 10 days "identifying from the list of cases attached to the petition those cases where sentencing had not yet occurred," as well as cases, where the public defender was assigned to represent the defendant. (Resp.Ex.2). The Attorney General's office promptly furnished the requested information. (Stip.¶12 &13; Resp.Ex.3).

While the State's petition for prohibition was pending, the JQC Investigative Panel served Judge Contini with his first "Notice of Investigation" regarding his **ex parte** email to assistant public defender Samuel Perlmutter, and denial of the State's disqualification motion. (Stip.¶11; JQC Ex.3).

Judge Contini responded, through counsel, to the Notice of Investigation, acknowledging a "serious mistake" in sending the **ex parte** email. He committed to being a "neutral and detached Magistrate," indicating that he denied the disqualification motion as "legally insufficient" because his email, while improper, was general in nature, not case specific. (Stip.¶14; JQC Ex.4).

On June 5, 2015, Judge Contini appeared before the FJQC Investigative Panel, and provided sworn testimony. (JQC Ex.10, p.6). The Judge offered "no excuses," and apologized, noting he was a new judge still learning the ropes. (JQC Ex.10, pp.6-7, 18-19; 23-24; 30-31). Investigative Panel members questioned the substance, as well as the **ex parte**, nature of Judge Contini's email, and his giving of what could

be perceived as legal advice to one of the parties. (JQC Ex.10, pp.22-24; 29-30; 32-34). At the conclusion of the hearing, Judge Contini apologized for his error and the publicity and embarrassment to the judiciary it generated, vowing he'd learned a "very valuable lesson" and that his behavior had changed. (T.30-31).

The FJQC Investigative Panel took the judge's testimony under advisement, and did not vote on whether to pursue formal charges at that time. (Stip.¶15).

On June 10, 2015, the Fourth District ordered the respondents to show cause why the petition for prohibition should not be granted, as to all cases "pending sentencing" listed by the State. Responses, and the State's reply, were due June 17, and June 22, 2015, respectively, with extensions of time prohibited due to the effect of the show cause order on pending cases. (Resp. Ex.4). By operation of law, the show cause order stayed "further proceedings in the lower tribunal" in all cases to which it applied. Fla.R.App.P. 9.100(h).[2]

Judge Contini took the State's motion for disqualification and the appellate proceedings very personally. (T.88; 102-03). He wanted to stay in the criminal division, felt angry, embarrassed and humiliated, and that "the State's list of cases was absolutely wrong" because it included every pending case in Judge Contini's division, and was not limited to cases in which motions for downward departure in

[2] The order excluded cases already called to trial with the jury sworn. (Resp.Ex.4).

sentencing had been filed. (T.101-02). Judge Contini reasoned that:

> [T]his clearly was about downward departure orders and many – most of those cases on the 962 were people that didn't score prison at all. **They were probationary – type cases, what they call discretionary, that you would never need a downward departure, and they were not pending sentencing**. They just filed a not guilty plea. There was no pending sentencing. So they didn't belong on the list. And so I felt that they [State lawyers] were trying to force a complete division change, using this as a reason. (T.104).

There was no formal stay order in effect from March 26, 2015 (the date the motion for disqualification was filed) until June 10, 2015 (when the 4th DCA's order to show cause issued). (T.57; 127-28). However, all parties concerned acted as though there was a stay for fear that rulings could be vacated if the State's prohibition petition succeeded. (T.127-28).

Judge Contini neither recused himself **sua sponte** nor requested a temporary transfer out of the criminal division despite his negative feelings regarding the State's action, and the fact that his division was essentially frozen. (T.101-05; 123-24). Instead "nothing was done." (T.124).

On August 3, 2015, the Fourth District ordered the state to provide a list of cases "pending sentencing" in which a motion for downward departure had been filed. (Resp.Ex.6). The State responded with a list of 28 cases, in which written motions for downward departure had been filed (Resp.Ex.7). Judge Contini (and his advisors) believed that an appellate ruling would be forthcoming swiftly. (T.98;

101-02; 149).

On August 11, 2015, at 11:27 a.m., State v. Lewis, was called for a competency hearing for a defendant who had already been declared incompetent by two doctors. The State argued that this case was "out of [its] control," and Judge Contini had no jurisdiction to transfer it to another judge. (JQC Ex.11, Lewis, p.5). Judge Contini transferred the case, lost his temper, and stated:

> I want you to take me up to the Fourth. I find that a person who is incompetent, who has two reports from two different doctors saying that they are incompetent, that person, by definition, their case is not pending sentencing because they cannot be sentenced.
>
> They are, in fact, incompetent according to two doctors. Therefore, their case cannot be "pending sentence."
>
> **And if a prosecutor, someone with the AG's office, wants to put that person's case on their disingenuous list of cases that are pending sentencing, that's a lie from the pit of hell, and that is a fraud on the Fourth DCA**. (Resp.Ex.11, Lewis, p.5; emphasis added).

Judge Contini further urged the State to "Take me up to the Fourth," assuming that the appellate court was "going to admonish quickly the attorney general who listed disingenuous and in a fraudulent fashion this case or one that was pending sentencing." He added "[f]or that AG to have listed this case**…** that's a lie from the pit of hell." (Id. at p.7).

In State v. Moore, approximately one half hour later, Judge Contini again made demeaning comments about the "disingenuous prosecutor" who created an

"absolutely fraudulent" list. (Resp.Ex.11, Moore, pp.4-5; 10-11). He singled out assistant attorney general Heidi Bettendorf for committing "fraud on the Fourth DCA" in filing a "misleading" list (Id. at pp.12-15; 23-24), adding that he wanted the Fourth DCA "to spank the person" who put the Moore case on its "disingenuous list," and "ream out the idiot**...**" (Id. at p.4). Judge Contini also indicated he wanted the Fourth DCA to "look very, very hard at what this attorney general did in misleading [it]" urging that "It's unethical, its misleading, it's disingenuous, it's a fraud on the court, it's a lie from the pit [of] hell." (Id. at p.14-15). At the time Judge Contini made these remarks, he did not know, and had never met Ms. Bettendorf, and she wasn't present in his courtroom. (T.109-10).

On August 12, 2015, the Fourth DCA clarified in court orders that "the stay imposed on the cases 'pending sentencing' applies only to prevent the judge at issue from acting" and "does not deprive the circuit court of jurisdiction or prevent other circuit court judges from entering orders in the cases at issue." (Resp.Exs.1&8). ASA Joel Silvershein delivered copies of the 4th DCA's orders to Judge Contini. (T.59, JQC Ex.11, 8/12/14 hearing, pp.2-3).

Judge Contini apparently believed that the Attorney General's office acted alone in filing the prohibition petition, distinguishing between the assistant attorney general, whom he accused of disingenuous, misleading conduct, and the assistant state attorneys assigned to his courtroom. (Id. at pp.5-8). Mr. Silvershein disabused

the judge of this notion, stating that his office assisted in creating the list. (Id. at p.8). He also asserted that it was improper for Judge Contini to comment on the pending prohibition petition. (Id. at pp.5, 7, 9-10). When they disagreed on the meaning of the Fourth DCA orders, Judge Contini told ASA Silvershein "I'm going to speak and hold you in contempt if you interrupt me again, Mr. Silvershein." (Id. at p.5).

Judge Contini became red-faced, yelling, and accusatory and the hearing became increasingly adversarial. (T.60). He ordered Mr. Silvershein to answer questions or "leave the courtroom," while simultaneously accusing him of "co-complicity" with Ms. Bettendorf. (JQC Ex.11, 8/12/2015 hearing, pp.8-11). ASA Silvershein was thereafter escorted out of the courtroom. (T.60-61; Pet.Ex.11, 8/12/2015 hearing).

Almost immediately afterwards, Judge Contini sought an administrative transfer to another division, and cooperated with the FJQC. (T.131; 151-52; JQC Ex.10, p.4). On August 18, 2015, Judge Contini was reassigned from the criminal to the family division, where he's remained ever since. (T.138; 151-52; 169-70; JQC Ex.6). The Fourth DCA ultimately dismissed the State's petition for prohibition as moot. (Resp.Ex.1).

On September 2, 2015, the FJQC Investigative Panel served Judge Contini with an "Amended Notice of Investigation" relating to the "belittling, embarrassing and**…** rude" comments he made on August 11 and 12, 2015 and his heated exchange

with ASA Silvershein. (Stip.¶25; JQC Ex.5). Judge Contini responded (JQC Ex.6), and appeared for a second time before the JQC Investigative Panel. (JQC Ex.10, October 9, 2015 hearing). Judge Contini testified under oath that the State was trying to force a division change, its list was "absolutely inappropriate," and he was frustrated because he "couldn't defend himself." (Id. at 22, 25). He also agreed that he "lost it" in court, "overreacted," "personified incivility," and had "no excuse" for his comments. (Id. at p.16, 25).

Thereafter, the Investigative Panel filed a Notice of Formal Charges for the events detailed in both notices of investigation, and this case proceeded to a final hearing.

ASA Silvershein testified that he had known Judge Contini since 1987 (when they were both prosecutors), that they were personal friends and professional colleagues, and there was no conspiracy afoot to force Judge Contini out of the criminal felony division. (T.42-45). The State sought Judge Contini's disqualification because his **ex parte** email to Mr. Perlmutter appeared to be giving legal advice to the public defender's office which "had the potential of affecting every case**…** being sentenced." (T.48-50). Judge Contini "made it personal" with disparaging remarks against Mr. Silvershein and Ms. Bettendorf, over the course of two days, when Ms. Bettendorf wasn't even present to defend herself. (T.71-72). Mr. Silvershein thought that "No lawyer should be treated in the manner that I was,"

and was particularly incensed about the judge's treatment of Ms. Bettendorf because:

> We live in a world now where what happens out of the courtroom immediately shows up on a blog or an Internet post, and he disparaged her reputation. Reputations are earned over a long period of time. And to disparage somebody like that who he doesn't even know, who he hasn't even met, because they were doing their job, zealously advocating a case within the bounds of the law, that's unacceptable. It's totally unacceptable. (T.72).

Six witnesses testified at the hearing in addition to the Respondent judge. All who knew John Contini as a lawyer (including ASA Silvershein) agreed that he practiced law very professionally, and that his behavior on the bench on August 11 and 12, 2015 was unexpected and an aberration. (T.64; 173; 209; 215; 226; 233; 236; 251-54). Brian Cavanaugh, a veteran Broward County prosecutor, worked with the Respondent at the state attorneys' office, and subsequently tried a first degree murder case against him. He commented on attorney Contini's "remarkable evenness of temper," which made what happened here "all the more disturbing, because it's so out of character." (T.252).

Broward Circuit Judge Jeffrey Levenson served as a federal prosecutor for many years prior to his appointment to the bench. (T.224-25). Judge Levenson was impressed with the Respondent as a lawyer, describing him as "well prepared," "passionate" about his clients, and one who always treated others with respect. (T.226; 233). Judge Levenson, who subsequently served as Judge Contini's "mentor judge" indicated that Judge Contini took his job "very seriously." (T.225;

231).

The Hearing Panel credits the testimony of multiple witnesses that sending the March 16, 2015 email to an assistant public defender without copying the state attorneys' office was a "rookie mistake." (T.190; 237; 248). Broward County Circuit Judge Andrew Siegel explained the dynamics of new judges who "feel close to the lawyers that are regularly assigned to [them];" they have to think carefully about sending emails quickly and offering assistance to a party. (T.248).

Judge Contini followed proper procedure when he denied the disqualification motion for "legal insufficiency." See Fla.R.Jud.Admin. 2.330(f). However, feeling the way he did about the State's position and its effect on his division, Judge Contini was required to take further action. He should have either recused himself **sua sponte** thereafter OR sought an administrative transfer. Instead, he remained on cases and in the criminal division out of "pride and ego" in the hope of personal vindication, while his frustration kept building. (JQC Ex.10, 10/9/2015 hearing, pp.49-50; T.202).

Judge Contini agreed that his conduct was "wrong on every level." He made a "mistake" in sending the email, but thereafter was discourteous, intemperate, and rude and there was "zero justification or excuse" for his statements. (T.106). He recognized the disparity in his position and those before him, was embarrassed, ashamed, and remorseful. (T.107-09).

Witnesses were questioned regarding Judge Contini's "present fitness" to hold judicial office and the likelihood that his conduct would be repeated. ASA Cavanaugh (who had known Respondent the longest, in all facets of his career) testified that Judge Contini possesses the character and fitness required of a judge, and his remorse was sincere. He indicated "I'm not Nostradamus either, but I know John Contini, and I am morally certain that he**…** could not ever do that again." (T.254). Judge Levenson echoed these sentiments, noting "No one can predict the future, but**…** having met and worked with Judge Contini over the course of time**…** it would seem to me that he's a very good risk," unlikely to repeat his behavior. (T.233). Other assessments were similar. (Resp. Ex.11).

CONCLUSIONS OF LAW

Judge Contini was charged with violating Florida's Code of Judicial Conduct, Canons 1, 2A, 3B(4), 3B(7), 3B(9) and 3E(1).[3]

Canon 1 of the 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

[3] Canons 4A(1), 4A(2), 4A(3), 4A(4), 4A(5), 5A(1), 5A(2), 5A(3), 5A(4) and 5A(5), referenced in the notice of formal charges, have no application to the present case.

those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2 of the 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.

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

> **A Judge shall Perform the Duties of Judicial Office Impartially and Diligently**
>
> *** * ***
>
> **B. <u>Adjudicative Responsibilities</u>**
>
> *** * ***
>
> (4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity**…**
>
> *** * ***
>
> (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit or consider *ex parte* communications made to the judge outside the presence of the parties concerning a pending or impending proceeding**…** (exceptions inapplicable).
>
> *** * ***

> (9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect the outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing**…**
>
> *** * ***
>
> **E. <u>Disqualification</u>**
>
> (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
>
> (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**…**

Judge Contini clearly violated all of these Canons. The Hearing Panel accepts the judge's explanation that he forwarded the Palm Beach County order to A.P.D. Perlmutter (without copying the State) by mistake, in an overabundance of enthusiasm to share what he had just learned. While his email did not pertain to any specific case, it was still an improper **ex parte** communication applicable to an entire category of pending and impending cases. His communication created the appearance of impropriety because it reasonably could be perceived as rendering advice to one of the parties. <u>See</u> <u>e.g.</u> <u>Blackpool Assoc., Ltd. v. SM-106, Ltd.</u>, 839 So.2d 837, 838 (Fla. 4th DCA 2003)(and cases collected).

Rule 2.330(f), Fla.R.Jud.Admin., governing trial judge disqualification, provides:

> **Determination – Initial Motion.**
>
> The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. It the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

Judge Contini followed this proper procedure in denying the motion. However, Judge Contini's mindset, and personal interest in vindication, required him thereafter to either **sua sponte** recuse himself or to put in for an administrative transfer, particularly as time passed, and problems in his division mounted. See generally Inquiry Concerning Cohen, 99 So.3d 926, 939 (Fla. 2012)(regardless of judge's motivation, disqualification required where impartial observers could have reached the conclusion that judge was seeking to use the power of his office to vindicate his wife).

Judge Contini further violated the Canons when he lashed out at the government attorneys who sought his recusal. Judge Contini not only commented on the merits of the pending prohibition petition, he lost his temper, and made

derogatory remarks about the attorneys, who were just trying to do their job. Judge Contini singled out Ms. Bettendorf for particular abuse, when he did not know her, she wasn't present in court and had no ability to defend her reputation from attack.

The disparity between a judge and attorneys requires the judge to treat those appearing before him with courtesy and patience. Judge Contini created an intolerable atmosphere in the courtroom, by disparaging two attorneys who were merely doing their job. This intemperate courtroom behavior "not only damaged public confidence in him as a judicial officer but struck 'at the very roots of an effective judiciary**…**'" Inquiry Concerning Shea, 110 So.3d 414, 418 (Fla. 2013)(demeaning comments made to litigants and attorneys); Inquiry Concerning Aleman, 995 So.2d 395 (Fla. 2008)(mistreatment of lawyers, including threatened use of "contempt" powers); Inquiry Concerning Allen, 998 So.2d 557 (Fla. 2008)(improper personal attack on another judge); Inquiry Concerning Schapiro, 845 So.2d 170 (Fla. 2003)(berating lawyers); Inquiry Concerning Schwartz, 755 So.2d 110 (Fla. 2000)(rude, impatient, discourteous remarks made to legal interns and their mentor).

RECOMMENDED DISCIPLINE

Judge Contini was a new judge, who underestimated the process of transitioning from a well-respected, professional lawyer to a judge, and made a series

of significant missteps. In mitigation, the Hearing Panel finds that Judge Contini immediately accepted responsibility for his conduct, expressed sincere remorse, and apologized to Mr. Silvershein. The Hearing Panel took into account the testimony of ASA Silvershein, who suggested "a public reprimand [was] definitely in order in this case," and that Judge Contini should give Ms. Bettendorf "as public an apology as possible." (T.71-72).

In several similar cases involving a judge's rude or improper behavior in open court, the Florida Supreme Court has approved a public reprimand, or a public reprimand plus conditions. See Inquiry Concerning Shea, 110 So.3d at 417-18 (four separate incidents of mistreating litigants and attorneys over the course of three years); Inquiry Concerning Aleman, 995 So.2d at 399-400 (mistreating public defenders by forcing them to handwrite disqualification motions in short time periods, and then threatening them with contempt); Inquiry Concerning Schapiro, 845 So.2d at 173-74 (pattern of belittling, embarrassing conduct directed at attorneys, which were "extreme in their seriousness, in their number, and in the length of time over which they occurred"): Inquiry Concerning Wood, 720 So.2d 506 (Fla. 1998)(numerous rude and improper comments in six different cases, including derogatory comments about counsel who made recusal motions).

Without minimizing the judge's conduct, the Hearing Panel recommends the following discipline:

(1) A public reprimand;
(2) A written apology delivered in person to Heidi Bettendorf;
(3) Continued active judicial mentoring for a period of three years by a mentor selected by the Chief Judge of the Circuit;
(4) Setting up a program of stress management with Dr. Scott Weinstein, Clinical Director of the Florida Lawyer's Assistance Program and completion of this program to Dr. Weinstein's satisfaction; and
(5) Assessment of the costs of these proceedings.

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.

Done and Ordered this 11th day of May, 2016.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

By: /s/ Robert Morris

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