

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING JUDGE

CYNTHIA G. IMPERATO, NO. 13-545

S. Ct. Case No.: 15-355

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 Proceedings

On March 2, 2015, the Investigative Panel of the FJQC filed a notice of formal charges against the Honorable Cynthia G. Imperato, Circuit Judge for the 17th Judicial Circuit (Broward County). The notice alleged that Judge Imperato was stopped by law enforcement after driving erratically, displayed her judicial badge to a police officer, admitted she had been weaving, and appeared to be driving under the influence of alcohol. The judge was requested, but refused to exit her vehicle and to step to the front of the officer’s vehicle (for roadside sobriety tests). Upon her refusal, Judge Imperato was taken into custody. Thereafter, Judge Imperato refused to submit to a breathalyzer test, and was

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charged with driving under the influence and reckless driving.

This was a second offense, since Cynthia Imperato pled guilty to driving under the influence and failing to comply with a lawful order of a police officer in 1988 (some 25 years earlier).

Following an investigative hearing during which the judge was questioned at length, the FJQC Investigative Panel and Judge Imperato jointly executed a “Stipulation,” and “Findings and Recommendation of Discipline,” subject to the Florida Supreme Court’s review. The stipulation and findings recommended that the judge receive a public reprimand, a \$5,000 fine, a 20 day suspension without pay, and an alcohol evaluation with the completion of any recommended treatment pursuant to a contract with the Florida Lawyers Assistance Program.

On April 30, 2015, the Florida Supreme Court rejected the parties’ stipulation, disapproved the proposed sanctions, and remanded for further proceedings “to include a full hearing... so that the Court, in determining the appropriate sanction, will be apprised of all the facts and circumstances bearing on the violation.”

The Hon. James A. Ruth chaired the FJQC Hearing Panel, which conducted a final hearing on September 10, 2015. In addition to Chairman Ruth, the panel included Mayanne Downs, Esq., Nancy Mahon (lay member/ad hoc), Ricardo Morales (lay member), the Hon. Michele Morley, and John G. White, III, Esq. All

six commissioners were present during the hearing and deliberations.

David L. McGee, Esq. represented the FJQC Investigative Panel. Judge Imperato was represented by David Rothman, Esq. and Jeanne Melendez, Esq. Lauri Waldman Ross Esq. served as counsel to the FJQC Hearing Panel.

FINDINGS OF FACT¹

On November 5, 2013, the Broward County Justice Association hosted a legal reception at Maggiano's restaurant in Boca Raton, from 6:00 to 8:00 p.m. The event charged a fee to lawyers, was complimentary (free) to judges, and served alcohol from an open bar. (T.81). Servers circulated with drinks on trays, and a limited amount of food was provided. Lawyers also commonly brought drinks over to the judges. (T.97). Attendees at these type of receptions often arrive late and stay after they end. (T.83).

Judge Imperato arrived shortly after the reception began, mingled with other guests and stayed until approximately 9:00 p.m. She lost track of what she drank, but thought it was "a couple of glasses of wine." (T.82-83; 98). She explained that when someone brought her a drink, "Sometimes I drink part of it, put it down. You're walking to another part of the room. It's not like you're sitting down to dinner. Everybody's walking around to different tables, socializing with different people." (T.98). She left Maggiano's planning to meet others for dinner at Mizner

¹References are to the transcript of final hearing (T.), and the exhibits admitted into evidence by agreement. (Pet. Ex.____; Resp. Ex.____).

Park. (T.85-86).

At 9:49 p.m., a citizen phoned 911, reporting that a white Mercedes traveling north on Federal Highway was “all over the road” and “really dangerous.” (T.26-28; Pet. Ex.1&2). The Mercedes drifted into other lanes, causing two cars to swerve to avoid collisions. (Pet. Ex.9, pp.490-91; T.89). The citizen identified and took a photo of the car’s license plate number, and last saw the Mercedes in the area of 49 NE 2nd Street in Boca Raton. (Pet Ex.9, pp.494-95). At the time of the citizen’s report, the white Mercedes was only four to five miles away from Maggiano’s. (T.36; 85).

Later that same evening, Det. Douglas Immler (employed by the Boca Raton police department) was headed home from work, with no knowledge of the prior 911 call. (Pet. Ex. 9, pp.554-56).

Palmetto Park Road is a six lane highway separated by a divider, with three lanes eastbound, and three lanes westbound. (T.57). Det. Immler saw a white Mercedes in the 600 block of West Palmetto Park Road swerve into other lanes, and nearly side-swipe another vehicle. Id. at 565. (T.23-24). The Mercedes stopped at a red light in the 1200 block, remained stationary approximately ten seconds after the light turned green, then moved forward, again swerving into other lanes. Detective Immler was situated behind the Mercedes the entire time and had an unobstructed view. (T.44-45). He stopped the Mercedes at 10:53 p.m. (just east

of I-95). (Pet. Ex. 7).

Judge Imperato was at the wheel of the white Mercedes from the time it left Maggiano's until it was stopped. She was lost, and had been driving in circles for approximately 2 hours. (T.84-87). There was no evidence presented supporting the suggestion that she might have stopped to have drinks elsewhere during this time period. (T. 86; 161-62).

Det. Immler was wearing his police uniform, and identified himself to Judge Imperato as a police officer. (T.37-38). Rather than requesting her driver's license and registration, he merely asked for identification. (T.30; 38). Judge Imperato responded "I'm a judge" and presented a "shiny" badge. (T.39-40; 46; Pet. Ex.9, pp.579-80). She did not request favors or seek special treatment. (T.40-42, 46).

Judge Imperato initially wouldn't meet Det. Immler's gaze, and was directed to look at the officer. (T.31-32). Det. Immler observed that the judge's eyes were glossy and bloodshot, and he detected the odor of alcohol. The judge slurred her words, and had trouble putting together cohesive thoughts. When Det. Immler inquired whether the judge had consumed any alcohol, she responded that she had "a couple of glasses of wine." (T.82; Pet. Ex.9, p.582). Det. Immler concluded she was "highly intoxicated." (T.43).

Det. Immler called in the vehicle's license plate number. Officer Robert Jesionek, dispatched earlier to search for a white Mercedes in response to the 911

call, arrived on the scene at 10:56 p.m., and took charge of the ensuing DUI investigation. (T.49-50; 65).

Officer Jesionek has served as an officer with the Boca Raton police department for the last 18 years. He was assigned to the DUI task force for the last seven of those years, has investigated hundreds of DUI cases, and trains other police officers for the Department. (T.34; 48-49).

The two officers discussed Detective Immler's observations, and reasons for the stop (out of the judge's earshot). (T.50-51). Officer Jesionek's vehicle was equipped with a police dash camera which records audio and visual, and he positioned it for a clear view of contemplated roadside sobriety tests. (T.35; 51-52).

At 11:01 p.m., Officer Jesionek approached the Mercedes, with his dashcam recording. (Pet. Ex.1). At Judge Imperato's window, he smelled a strong odor of alcohol emanating from her breath; both officers observed the judge unsuccessfully try to manipulate her phone. (T.33; 52). Officer Jesionek asked the judge several times politely to step outside her car (so field sobriety exercises could be videoed). (T.53-56). Judge Imperato declined stating that "I'm not doing anything until I talk to my lawyer," while she continued to unsuccessfully manipulate her phone. She indicated she had no medical condition, and understood she had been pulled over for weaving. (T.52-53). Officer Jesionek finally removed the phone from her

hand, placed it on top of her car's roof, opened its door, and the judge exited. (T.54).

Judge Imperato refused to walk in front of the officer's vehicle, and was arrested. (T.56-61). She was transported to the Boca Raton Police Department, and twice was requested to provide a breath sample (once before and after "implied consent" warnings). At 11:47 p.m., she refused. (T.64; 91-92; Pet. Ex.8).

On December 19, 2014, over a year after her arrest, Judge Imperato was tried by a jury of her peers and convicted of driving under the influence and reckless driving. (Pet. Ex.9, pp.1144-45; Resp. Ex.10). She was adjudicated guilty, and sentenced to 12 months probation, with a special condition of 20 days community control, AA meetings twice weekly, community service and random alcohol testing. (Pet. Ex.9, pp.1172-1200; Resp. Ex.10-11; T.116).

On January 29, 2015, Judge Imperato appeared before the JQC Investigative Panel at an investigative hearing pursuant to FJQC Rule 6(b). (Resp. Ex.13). The judge fully cooperated with the investigation, did not dispute the underlying facts, agreed she should never have been behind the wheel of a car on November 5, agreed that her conduct was unacceptable, and took full responsibility for her actions. (Resp. Ex.13, pp.5, 33, 59-61, 77). Judge Imperato apologized for embarrassing the judiciary, and the community she'd been honored to serve. (Resp. Ex.13, pp.5-6, 84). After the hearing, she voluntarily dismissed her criminal

appeal, served the 20 days of community control, and went to work wearing an ankle monitor (equipped with GPS). (Resp. Ex.12; T.116-17).

Judge Imperato has more experience than most with the effects of drunk driving. From 1981 to 1990, she was employed by the Tallahassee Police Department as a police officer, was called to the scene of accidents caused by intoxicated persons, and worked DUI cases. (T.75-76). She worked her way through law school, and obtained a job with the statewide prosecutor's office, where she remained for the next 13 years. She was appointed to the circuit court in 2003, where she presided over a wide variety of cases, where driving while intoxicated was an issue. She even received an award from Mothers Against Drunk Drivers ("MADD"). (T.76-77). When arrested in November 2013, Judge Imperato had served as a circuit judge for over ten years, and had spent 33 years serving the public in different facets of the criminal justice system. (T.75-76).

At the final hearing before this Hearing Panel, Judge Imperato did not dispute the underlying facts, and that her conduct had embarrassed the judiciary. Once again, she took responsibility and apologized for her actions. (T.90-95; 111-15; 117, 122-23). She also stipulated that her conduct violated the Judicial Canons. (T.122-23).

After the police officers testified, Judge Imperato took the stand, agreed that they "did a perfect job" in their DUI investigation, and apologized to them publicly

and personally as they sat in the back of the courtroom. (T.100-01). The Hearing Panel believes and credits the judge's explanation that she didn't issue this apology earlier for fear "it would seem like I was trying to sway [the officers'] testimony..." (T.101).

In meting out discipline, Judge Imperato asked the Hearing Panel to take into account her entire career in public service, her reputation on the bench, her cooperation and contrition.

Judge Imperato testified that she's learned from this experience, which provided "humility" and a better "understanding of what people are going through in the system." She promised she would never again "have anything to drink and get behind the wheel of a car." (Resp. Ex.13, p.63).

Peter Weinstein, the Chief Judge of the 17th Judicial Circuit, testified that Judge Imperato is well respected and liked by both the prosecution and criminal defense bar, and the civil plaintiffs' and defense bar. (T.146-47). When assigned to the foreclosure division, she did an "exemplary job." (T.148-49). While Judge Imperato's arrest, conviction and ensuing publicity clearly embarrassed the court, her reputation was otherwise "impeccable," and her quality as a judge, "outstanding." (T.148-49; 154-56). In his opinion, Judge Imperato remained an effective judge, presently fit to serve. (T.150-51).

Georgette Douglas, an attorney and member of the 17th Judicial Circuit

Nomination Commission, echoed these sentiments. (T.138-43). She testified that Judge Imperato was “one of the most professional judges she had ever met.” Judge Imperato arrived early every morning, came well prepared, was fair, well liked by both sides and didn’t “have an agenda...” She was also actively involved in a plethora of community organizations. (T.141; Resp. Com. Ex.4). Ms. Douglas also described the judge as “deeply embarrassed and ashamed,” particularly in view of the fact that her earlier career was law enforcement, and “mortified” that her conduct has affected public confidence in the judiciary. (T.143).

CONCLUSIONS OF LAW

Judge Imperato was charged with violating Florida’s Code of Judicial Conduct, Canons 1, 2A, 2B, 3A, 3B(2), 3B(4) and 5(G), and Fla. Const. art. v., §13. The parties substituted Canon 5A(3) for Canon 5(G) in prior submissions. (Findings & Recommendations of the Investigative Panel dated March 2, 2015).²

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

² Canons 3A, 3B(2), 3B(4), 5(G), and Fla. Const. art. v., §13 have no application to the present case.

the judiciary may be preserved. 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 the judicial office to advance the private interests of the judge or others...

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

A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Extrajudicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

* * *

(3) demean the judicial office;

* * *

Judge Imperato clearly violated these provisions of the Code. Her conduct in driving under the influence on November 5, 2013 “not only violated Florida’s criminal law, but also endangered the public,” undermined public confidence in the judiciary, and demeaned her judicial office. Inquiry Concerning Sheehan, 139

So.3d 290, 292 (Fla. 2014); Inquiry Concerning Nelson, 95 So.3d 122 (Fla. 2012).

As she clearly recognized after the fact, Judge Imperato had much more to drink than a couple of glasses of wine, and should never have gotten behind the wheel of a car. She was trying to get to Mizner Park, but was intoxicated, got lost, and spent approximately two hours driving around in circles. (T.36; 43; 86-87).

That no one was injured on the night in question was attributable to the quick thinking of a concerned citizen, a diligent police officer, and the grace of God.

Judge Imperato did not exhibit respect for the law when she refused to step to the front of Officer Jesionek's vehicle (for roadside sobriety tests) and refused a breathalyzer test. Cf. Inquiry Regarding Sheehan, 139 So.3d at 291 (affirming a public reprimand where judge was given field sobriety tests, and breathalyzer tests, and blew more than double the legal limit).

Judge Imperato may not have intended to obtain special treatment by identifying herself as a judge and displaying her badge, but Det. Immler could have reasonably perceived this to be the case.

RECOMMENDED DISCIPLINE

The object of disciplinary proceedings is not for the purpose of inflicting punishment, but rather to gauge a judge's present fitness to serve as an impartial judicial officer. Inquiry Concerning Sloop, 946 So.2d 1046, 1055 (Fla. 2006). The

standard of fitness to hold office calls for an examination of misconduct from two perspectives: (1) its reflect on the public's trust and confidence in the judiciary "as reflected in its impact on the judge's standing in the community;" and (2) "the degree to which past misconduct points to future misconduct fundamentally inconsistent with the responsibilities of judicial office." Id. at 1055-56.

Other published cases involving driving under the influence have led to public reprimands. See Inquiry Concerning Sheehan, 139 So.3d at 291 (judge stopped by law enforcement for driving erratically at night, blew breathalyzer results more than double the legal limit, and entered a guilty plea to the charge of DUI); Inquiry Concerning Nelson, 95 So.3d at 123 (judge stopped by law enforcement after she struck a guardrail, crashed into a bridge, refused to exit the vehicle and to submit roadside sobriety and breathalyzer tests, where judge pled guilty to DUI and it was an isolated incident); Inquiry Concerning Esquiroz, 654 So.2d 558 (Fla. 1995)(judge charged with DUI while driving home from a birthday party, adjudicated guilty, and sentenced to six months, where her actions did not result in personal injury or property damage to others, and she had no prior charges or convictions); Inquiry Concerning Gloeckner, 626 So.2d 188 (Fla. 1993)(same, where judge was charged with DUI and careless driving for causing an accident, but cooperated with police at the scene and submitted to roadside sobriety and breath alcohol tests); Inquiry Concerning Norris, 581 So.2d 578 (Fla. 1991)(three

day drinking binge, leading to irrational acts, including DUI and attempted suicide, where judge entered into substance abuse programs, and evidence was presented regarding rehabilitation and current fitness).

Recently, an FJQC Hearing Panel recommended a judge's removal from the bench, but did so on facts much more egregious than those here. Inquiry Concerning Pollack, S.Ct.14-985.³ At the time of Judge Pollack's DUI arrest, she had already taken the bench while intoxicated, and entered into a stipulation with the JQC to a series of measures designed to keep her sober, including an FLA contract and monitoring. Judge Pollack violated this stipulation when she again took the bench while impaired, checked herself out of her alcohol treatment program, and was arrested driving home from the treatment facility.

Judge Imperato's DUI arrest and conviction clearly affected public trust and confidence in the judiciary. Based on the judge's testimony, demeanor, and expression of remorse, the Hearing Panel has no concern that the conduct at issue will recur. Id. at 1056. Judge Imperato pled guilty to DUI related offenses in 1988, some 25 years ago, before she was either a lawyer or a judge, and its remoteness in time may be taken into consideration. See e.g. McGough v. State, 302 So.2d 751, 754 (Fla. 1974)(remoteness of a crime is an aspect of relevance); see generally Roberts v. Tejada, 814 So.2d 334, 342-43 (Fla. 2002).

³ Judge Pollack resigned from the bench following the Hearing Panel's report and recommendation. Thus, its report did not result in a published opinion.

The conduct at issue here clearly requires serious, suitable discipline. See Sheehan, 139 So.3d at 292; Inquiry Concerning Holloway, 832 So.2d 716 (Fla. 2002). However, a judge's expression of remorse, cooperation with the JQC, general reputation as a fair, impartial, competent, and well-regarded judge, are all properly taken into account as mitigating factors. See Inquiry Concerning Colodny, 51 So.3d 430, 433 (Fla. 2010); Inquiry Concerning Luzzo, 756 So.2d 76 (Fla. 2000).

The Hearing Panel believes Judge Imperato's statements of remorse and contrition are heart-felt. The Hearing Panel received letters from a multitude of sources, attesting to the judge's diligence, work ethic, ability, competence and professionalism. (Resp. Exs. 4, 5 & 14). The former Chief of the Homicide Division, State Attorney's Office in Broward, currently in private practice, is illustrative:

[S]ince she has been a judge I have had the distinct privilege to have litigated cases before her. I do understand she has recently been convicted of a DUI, but I can truthfully say she is one of the most outstanding judges we have had on the bench in Broward County since I started practicing law.

Judge Imperato has always been courteous and respectful to all attorneys and litigants before her. She has a true knowledge of the law and her community service and life experiences make her a judge that should remain on the circuit bench and continue to serve the public. She has made such a difference in many lives and should be allowed to continue to do so.

Judge Cynthia Imperato is a devoted and hard working public servant, and should remain on the bench. (Resp. Comp. Ex.14, Letter of Kelly D. Hancock, 3/20/15)

The Hearing Panel was particularly impressed by correspondence pre-dating Judge Imperato's arrest, in which parties who had appeared before her expressed their gratitude for fair treatment. (Resp. Ex.5).

The record is also replete with evidence that Judge Imperato is a highly regarded, well-respected, competent judge, who cooperated with the JQC, displayed remorse, and has repeatedly apologized. The Hearing Panel credits testimony from the Chief Judge of her circuit, who believes she continues to remain effective. Thus, without minimizing the judge's conduct, the Hearing Panel recommends the following discipline:

- (1) a public reprimand;
- (2) a \$20,000 fine;
- (3) a 3 month suspension without pay; and
- (4) an alcohol evaluation with the completion of any recommended treatment pursuant to a contract with the Florida Lawyers Assistance Program.

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 22th day of October, 2015.

FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION

By: /s/ James A. Ruth
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