

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING JUDGE,

SC17-362

DANA MARIE SANTINO, NO.16-534

_____/

**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 hereby certifies these Findings of Fact, Conclusions of Law, and Recommendations to the Florida Supreme Court.

COURSE OF THE PROCEEDINGS

On March 6, 2017, the Investigative Panel of the FJQC filed a Notice of Formal Charges against the Honorable Dana Marie Santino, County Court Judge in the 15th Judicial Circuit, Palm Beach County. All of the charges stem from a 2016 campaign for the judicial seat to which Santino was newly elected. The notice charged that Santino used a strategy to "win at all costs" and "pay the fine later," by (1) making a series of false and/or misleading, inflammatory statements about her opponent in emailed advertisements, and social media, either individually or through others she controlled; (2) defending these statements in responses, including one to a complaint filed to the Palm Beach County Bar Association's Judicial Campaign

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Practice Commission (“JCPC”); and (3) minimizing the JCPC decision, after the JCPC unanimously found her campaign’s statements violated the Code of Judicial Conduct.

The Notice charged violations of Canons 7A(3)(a), 3(b), 3(c), (e)(i) and (e)(ii) of the Code of Judicial Conduct, and Rule 4-8.2(a) and (b) of the Rules Regulating the Florida Bar. It contrasted Santino’s steadfast defense of her campaign’s conduct prior to election, with her admissions, statements of remorse, and acceptance of “full responsibility” post-election.

Judge Santino’s answer admitted violations of Canon 7A(3)(a) and (b), and Rule 4-8.2(b), and that her prior statements were inappropriate and wrong. She denied “knowing” violations of Canon 7A(3)(e)(i) and (e)(ii) and Rule 4-8.2(a). She also denied approval of a Facebook webpage, and the falsity of posted statements, but agreed they were inappropriate, and alleged she directed the webpage to be taken down when she learned about it. Judge Santino admitted making “mistakes” during her campaign for which she was deeply remorseful, but asserted that the totality of circumstances demonstrated her present fitness to remain on the bench.

The FJQC Hearing Panel conducted a final hearing on August 2, 2017. The Hearing Panel was chaired by the Honorable Michelle Morley, and included the Honorable James A. Ruth, Mayanne Downs, Esq., Michael Nachwalter, Esq. (ad hoc), Ricardo Morales, III (lay member) and Alvin Alsobrook (lay member).

Alexander Williams, Esq. represented the FJQC Investigative Panel. Judge Santino was represented by Jeremy J. Kroll, Esq. Lauri Waldman Ross, Esq. served as counsel to the FJQC Hearing Panel.

FINDINGS OF FACT¹

Gregg Lerman was admitted to the Florida Bar in October 1985. He worked as a certified legal intern for the Palm Beach County Public Defender's office prior to admission, and has 32 years of trial experience, predominantly in the area of criminal defense. Lerman has long been on the rotating list of attorneys ("the wheel") who volunteer for court appointments in the event of public defender conflicts. (T.40-41; Resp.Ex.21). He is one of only six lawyers in Palm Beach County, death-penalty qualified to serve as first chair. (T.41). Lerman advertises areas of practice to be 100 percent criminal defense. (T.67-68; 100-01). He performs limited civil work, primarily in county court pro bono. (T.28-29).

Dana Marie Santino was admitted to the Florida Bar in 2001, has an advanced degree (LLM) in taxation, and had practiced law 16 years, predominantly in the areas of probate, guardianship, wills, trusts, and real estate. (T.119-20). She is also licensed to practice in Colorado and New York. (T.121). Prior to admission, Santino worked for the intake division of the State Attorney's Office, for a private probation

¹ References are to the transcript of final hearing (T.____), and the parties' respective exhibits, admitted in evidence by agreement (FJQC Ex. ; Resp. Ex.____), including a "Stipulated Factual Timeline" (Stip. ¶____), which appears as FJQC Ex.16.

agency monitoring misdemeanors, for Palm Beach County as a rape, homicide and domestic violence counselor, for the Palm Beach County Sheriff's office running a substance abuse awareness program, and as a certified legal intern for both state attorney and public defender offices. (T.121-22).

In April 2016, a Palm Beach County court judge resigned to run for a circuit court seat, leading to a disagreement on whether the county court vacancy should be filled by election or appointment. (T.30-32; 123-24). Two practicing attorneys (Lerman and Tom Baker) convinced the local elections supervisor that an election was warranted, and to accept their applications and qualify them to run. (T.31-32; 70-71). When the Governor's office disagreed with their position, Lerman petitioned the Florida Supreme Court for a writ of *quo warranto*. (T.31-32).

On June 3, 2016, the Florida Supreme Court granted the petition, directed the vacant county court position to be filled by election, but also extended the qualifying period until noon on June 10, 2016. No motions for rehearing were entertained. Lerman v. Scott, 2016 WL 3127708 *1 (Fla.2016). (T.71-72).

Santino qualified on June 8th or 9th, 2016, becoming the third candidate vying for the vacant county court seat. (T.32-33;123). Santino immediately hired Richard Giorgio ("Giorgio") the vice-president, treasurer and director of Patriot Games, Inc. ("Patriot Games"), who came highly recommended, as campaign consultant. (T.124-25;146-47). Santino's campaign paid \$143,453.01 to Patriot Games: \$23,500 for

campaign management (about \$5,000 per month) and approximately \$120,000 for campaign costs. (T.128-29; 142-43; FJQC Ex.11).

Santino reviewed the Judicial Canons and signed a form, under oath, attesting that she understood their requirements. (T.126; 173). She also received and said she reviewed an “Aid to Understanding Canon 7,” a pamphlet given to judicial candidates which addresses campaign pitfalls and restrictions. (T.125-27). She did not review any case law hyperlinked by the pamphlet. (T.125-26). Nor did Santino attend the local judicial campaign conduct forum sponsored jointly by the Florida Supreme Court and the Florida Board of Governors held in West Palm Beach on May 12, 2017 (a month before she qualified) (T.125-26; Resp. Ex.7). Nothing in Canon 7 permitted Santino to delegate to her campaign manager the responsibility for written materials created or distributed by the campaign. (T.174).

After the primary, Baker was eliminated, leaving Lerman and Santino to compete in a runoff. (Stip. ¶3; T.33-35). Lerman received 35.18% of the vote, Santino 33.53%, and Baker 31.29%. (Stip.¶3).

Giorgio advised Santino that as long as information in campaign statements was factual and true, it would not violate Judicial Canons, citing JEAC Opinion 98-27 (T.131; FJQC Ex.4; Giorgio Affidavit 2/4/17).

On or about September 23, 2016, an electioneering communications organization (“ECO”) styled “Taxpayers for Public Integrity,” set up a Facebook

webpage titled "The Truth About Gregg Lerman." The ECO was formed and administered by personnel of Patriot Games, Santino's campaign consultant. (FJQC Ex.12 at Exs. E & D; T.182-84). The Taxpayers for Public Integrity Facebook webpage proclaimed at the top that "Attorney Gregg Lerman has made a lot of money trying to free Palm Beach County's worst criminals. Now he's running for judge!" Below this caption appeared a black and white photograph of attorney Lerman, surrounded on all sides by words (printed for emphasis in bold capital letters) "**Identity Theft,**" "**RAPE,**" "**Sexual Assault,**" "**PEDOPHILES,**" "**DRUG TRAFFICKING,**" "**Internet Solicitation of Minors,**" "**CHILD PORNOGRAPHY,**" and "**MURDER.**" (Emphasis included.) Snapshots of the Facebook webpage are appended. (FJQC Ex.9).

The Facebook webpage also highlighted four high profile murder cases in which Lerman represented accused persons. Lerman was court-appointed in three of these. (T.38-48). A caption "The Truth about Gregg Lerman" was followed, with reference to specific cases, by statements that:

"Instead of representing victims of crime, Gregg Lerman chose to represent convicted serial killer Ronald Knight who targeted gay men and brutally murdered them. Now, he's running for judge!"

"Instead of representing victims of crime, Gregg Lerman chose to represent one of the convicted accomplices in the "Turnpike

Murder” of a family of four, including two children ages 3 and 4. Now, he’s running for judge!”

“Instead of representing the victims of crime, Gregg Lerman chose to represent one of the four convicted co-defendants in the “Three Amigos” robbery murder. Now, he’s running for judge!”

“Instead of representing the victims of crime, Gregg Lerman chose to represent one of the convicted “Thanksgiving Day murderers.” Now, he’s running for judge!” (FJQC Ex.9).

This Facebook webpage remained up and running for approximately one month (September 23-October 21, 2016). (T.138; FJQC Exs.9&14).

It is impossible to determine how many people saw the website from the documents provided. A snapshot of the website shows 67 views as of September 23, 2016 (5:17 p.m.). However, a Lerman supporter started a second website with the same title, and a search engine showed 2,567 “people talking about” this topic without any distinction between the two websites. (FJQC Ex.9).

Fred Hadley publishes “The Village Sentry,” a newsletter covering events in and around Century Village subdivision, including local elections. (T.100-01). Hadley endorsed Lerman in the primary, but was impressed with Santino’s performance in the primary. (T.108). He observed that “Santino came within three points of Mr. Lerman in a three-way race.” Santino never mentioned an opponent in campaigning toward the primary. Hadley agreed to endorse Santino in the runoff.

(T.110-11).

On October 5, 2016, Hadley interviewed Santino for “The Village Sentry.” This interview appeared as a series of questions and answers, published on October 8, 2016. (T.116-17; FJQC Ex.7, pp.9-19).² When Hadley asked Santino why voters should choose her over Lerman, she responded that Lerman viewed the position as a retirement plan, rather than public service, and the job required commitment (FJQC Ex. 7, pp.13-14). The following questions and answers are pertinent to the issues:

FH (Fred Hadley): What else makes Mr. Lerman a less desirable candidate?

DS (Dana Santino): My opponent is a thirty-year criminal defense lawyer. He has seen only one side his entire career and that’s the side of defendant. He’s defended murderers, rapists, pedophiles and batterers.

FH: Is there anything wrong with that?

DS: There’s nothing wrong with that – everyone’s entitled to a defense and **I think that’s what the public defender’s office is for.**

FH: So why mention it? It sounds like a negative.

DS: I think that he doesn’t have the ability to identify with the victims of a crime or with the state’s perspective. I think it’s very important to be able to identify with the parties that are in front of you in county court. My background before I went to law school: I was a probation officer. I was a rape, homicide and domestic violence counselor and I ran very successful programs that were alternative to incarceration for

² Mr. Hadley digitally recorded this interview, which was subsequently transcribed. (Resp. Ex.6).

first-time offenders that got them out of the system and avoided labeling them...

FH: The latest buzz word since the presidential debate was “temperament.” In their case it was executive temperament, but in your case, it’s about judicial temperament. Do you have it?

DS: In addition to my very diverse legal background, I also have litigation experience. The most important attribute that a judge needs to have is the proper temperament especially in county court, the people’s court. You have to have the ability to be patient. You have to have the smallest mouth and the largest ears because it’s about listening and observing. Most importantly, you have to apply the law fairly, impartially and with humility. I really think that that’s something my opponent lacks. **He’s a thirty-year criminal defense lawyer and what I mean by that is he’s seen one side his entire career. After thirty years, he’s been conditioned to take a particular position. I find it hard to believe he can go into the courtroom and be impartial and identify with the victim of a crime or the prosecution’s side of the case. He’s not impartial or unbiased and I don’t think he has the appropriate temperament.** (FJQC Ex.7, pp.14-17, emphasis added).³

Mr. Hadley was taken aback by these comments, which struck him as “inappropriate and anti-American.” (T.114). But, in the context of more egregious statements in national and statewide races during the 2016 election, he did not think they appeared so terrible at the time. (T.115-16).

³ Santino’s favorable comparison of her life’s work “defending victims, children” with Lerman who was ostensibly “pro-defense,” “not impartial; not unbiased,” is even clearer in the transcript. (Resp. Ex.6, pp.13-14; 18-19).

On October 12, 2016, Santino's campaign sent an email (drafted by Giorgio and approved by Santino) to prospective voters. (T.130-31). This email characterized Santino's background as "25 years of life and work experience in the civil and criminal justice system" including work "as an advocate for victims of rape, homicide and domestic violence," and running "community-based treatment programs for first-time offenders," adding "As for her opponent, his experience is limited to criminal defense—**representing murderers, rapists, child molesters, and other criminals.**" (FJQC Ex.10, emphasis added).

On October 21, 2016, the Palm Beach Post published an article under the headline, "Facebook new weapon in nasty PBC judicial race." (FJQC Ex.12, at Ex.F). This article criticized a "Palm Beach County judicial candidate [for] using Facebook to blast her opponent as unfit because he works as a criminal defense attorney." *Id.* Giorgio, who was quoted in the article responding on Santino's behalf, stated that "Candidates are allowed to draw clear, honest, factual differences with their opponents... There's nothing misleading. One candidate focused her career on defending victims and one focuses his on defending perpetrators of crime." *Id.* Giorgio indicated further that he was not worried about an ethics complaint because "[Lerman] doesn't represent these people because he champions constitutional principles. He's doing it because he make[s] a lot of money doing it." *Id.*

According to Santino, she generally discussed a Facebook webpage with

Giorgio, proposed as a comparison of her “breadth of work versus Mr. Lerman’s narrowed body of work.” (T.159-60; 177-78). She disclaimed advance knowledge of the Taxpayers for Public Integrity Facebook webpage’s content, indicating that she first learned of its existence when two prominent local attorneys phoned her to report “there’s a Facebook page up that is being ill-received.” At this point she told Giorgio, “I just got a call from Gary Lesser and Howard Weiss. Whatever it is, take it down” and she reports that the Facebook webpage was taken down. (T.135-36; 159-60). Even then, she did not review the website, or ask why it was receiving negative reactions. (T.188-90). She learned about the Taxpayers for Public Integrity Facebook webpage’s content for the first time in the Post article on October 21, 2016. (T.160-161).

An updated version of the Palm Beach Post article (published that same day) indicated that the webpage had been removed because, quoting Giorgio:

Several defense attorneys who are supporting Dana Santino contacted the campaign. They felt the Facebook page The Truth About Gregg Lerman could be viewed as a commentary on all defense attorneys. In deference to them, the page has been taken down.” (FJQC Ex.14).

On October 22, 2016, the Palm Beach Post published a letter to the editor from a prominent member of the criminal defense bar, joined by a dozen other local lawyers. They criticized Santino’s comments, indicating that these showed that she “[did] not understand or respect our system of justice,” didn’t recognize the system

could not work without talented attorneys dedicated to representing citizens accused of crimes “especially the most heinous” and “expressed a bias against criminal defendants and their attorneys” which was disqualifying. (Resp. Ex.17).

On October 24, 2016, the Santino campaign published a second email titled “A message from Dana Santino,” which defended Santino’s October 12, 2016 email. (Stip. ¶6; FJQC Ex. 10). Candidate Santino’s email accused her judicial opponent, his supporters, and the Palm Beach Post of generating “false allegations and assumptions.” (FJQC Ex.10; T.174-75).

On October 25, 2016, a complaint about Santino’s conduct was filed by Alka Sharma, Esq. with the JCPC. (Stip. ¶7; T.83; FJQC Ex.12).⁴ When she received this complaint, Santino immediately felt that Giorgio had misled her with regard to violation of the judicial canons. (T.137-38). However, Santino did not apologize for her comments and, instead, authorized Giorgio to respond to the complaint on her behalf. (T.137-38; 142-43; 160-61). Santino’s response to the JCPC indicated that:

- (1) the email truthfully stated Lerman’s experience;
- (2) the Facebook post was made by an ECO independent of her campaign and was truthful; and
- (3) the statements in the e-mail, the Facebook Post and the Palm Beach Post were merely efforts to highlight differences between them. (FJQC Ex.13, p.2).

On October 27, 2016, the Palm Beach Post published another article titled

⁴ Ms. Sharma, a local criminal defense attorney, is a friend of and shares office space with Mr. Lerman. (T.35-36;83).

“PBC court race gets ugly—some say—in Donald Trump Like Way.” It noted “[Santino’s] claim that her opponent’s legal chops are questionable because he represents ‘murderers, rapists, child molesters and other criminals,’ ha[d] inflamed criminal defense attorneys and raised concerns that Donald Trump tactics [were] being used in a county court race.” (FJQC Ex.14). The President of the Palm Beach Association of Criminal Defense lawyers (which backed neither party in the election) wrote *inter alia* that:

Every lawyer in Florida takes an oath to uphold the Constitution. Anyone who believes that there is something wrong with a lawyer upholding the ethical duty we have to our clients, to the Constitution, and to the rules of the Florida Bar does not understand how the legal system is supposed to work. (FJQC Ex.14).

Santino’s response, quoted in the article, was that “I completely respect and I’m proud of our judicial system and while every person is entitled to a defense, **Mr. Lerman is not a public defender and chooses to represent individuals who commit heinous crimes.**” She added she was “simply underscoring the differences between herself and Lerman” and “I have spent part of my career and much of my life advocating for victims of rape, homicide and domestic violence... Those are simply the facts.” (FJQC Ex.14, emphasis added).

On November 2, 2016 (six days prior to the election), the JCPC issued the unanimous advisory opinion of eleven members that Judge Santino violated several provisions of the Judicial Canons. First, Santino knowingly misrepresented

Lerman's qualifications in her October 12, 2016 email and the Facebook page, by making inflammatory statements out of context. Second, even in her response to the complaint, Santino urged that "I have been an advocate for the victims of rape, homicide and domestic violence while Mr. Lerman has chosen to represent criminal defendants convicted of those crimes." Her statements were "rife with innuendo that Mr. Lerman would favor even the worst from the bench (whereas, by implication, Ms. Santino would not)" and her comparisons "invit[ed] the voter to choose based on a candidate's supposed predisposition—or in Ms. Santino's case an implied pledge—that is inconsistent with the impartial performance of judicial duties." (FJQC Ex.13).

Santino recognized she had violated Judicial Canons when she received the JCPC opinion (as she anticipated October 25, when she believed Giorgio misled her). (T.137-40). She still did not stop the attack on Lerman for representing criminal defendants, direct Giorgio to stand down, fire him, or retract prior statements. (T.142; 161-63; 179; 181).

Instead, on November 2, 2016 (the same day JCPC's opinion issued), the Palm Beach Post published an article titled "PBC hopeful Dana Santino violated judicial canons, advisory panel finds." Santino's response, quoted in the article, was that "I appreciate the opinion of the commission; however, as the commission itself discloses in their letter, it is just that-their opinion... Judicial Canons allow

candidates to make honest comparisons between the candidates.”⁵ Giorgio described Lerman as “desperate,” adding that, “His supporter filed this last minute complaint in an attempt to generate press for his failing campaign.” (FJQC Ex.14).

On November 3, 2016, the candidates were stationed on opposite sides of an early voting site, when they had words over alleged misrepresentations made to putative voters. When Lerman remonstrated that he would see what the Florida Bar and the JQC had to say about Santino’s comments, she responded “It’s none of the business of the Florida Bar, the local Palm Beach County Bar, or the JQC. It has nothing to do with that. We didn’t do anything wrong. I didn’t do anything wrong.” (T.57-58). She did **not** apologize. (T.58).

On November 8, 2016, Santino defeated Lerman in the general election by 51.53% to 48.47%, a margin of 3.06% or approximately 15,000 votes. (Stip.¶11; T.192).

Santino was sworn in as a Palm Beach County court judge on January 3, 2017. (T.209).

Post-election, Fred Hadley saw Judge Santino and her husband at a social gathering, and questioned Santino regarding whether misconduct charges could possibly lead to her removal. Santino downplayed charges, responding to the effect

⁵ Santino attributed her quoted comment to continued reliance on Giorgio. (T.141).

that “No. I think it will be – won’t rise to that. It will be probably a fine. It’s not a big deal...” (T.105-06).

On January 10, 2017, the Investigative Panel of the FJQC issued a “notice of investigation” to Judge Santino regarding statements made during her campaign. (FJQC Ex.3). Judge Santino appeared before the Investigative Panel, testified under oath, acknowledged violations of Canon 7, and accepted “full and complete responsibility” for her campaign. (FJQC Ex.4,5). By way of mitigation, she asserted that she was a neophyte to the election process, was engaged in a busy, heated campaign, made mistakes, accepted bad advice, and did not follow her own instincts. (FJQC Ex.5, pp.7-8, 10, 14-15; 20, 21 32).

Members of the Investigative Panel questioned *inter alia* the judge’s failure to take curative actions between November 2, 2016 (the date of the JCPC’s opinion) and the November 8, 2016 election, and the difference between the judge’s statements before and after the election. (FJQC Ex.5, pp.8-14; 16-21; 23-24). The following exchange is illustrative:

Judge Evander: [O]n February 23 [2017], you’re saying those comments were improper and you’re apologizing. But on November 2 [2016] did you know at that time that your comments were improper? I mean you had an 11 to zero vote, you had the opportunity to review the Canons, the Canons and the JCPC opinions were set forth in the complaint. **So, would it be a fair statement that on November 2nd, six days before the election, you knew that you violated the Canons and your comments were improper?**

Judge Santino: **Yes.**

Judge Evander: So why didn't you give the same apology to the public, that you're giving to us now, on November 2nd?

Judge Santino: **I honestly had that conversation with my campaign manager and my husband, and I... improperly loaned them the better judgment.** And Mr. Giorgio wrote the response and said they've not been kind to you, this is the response, you must keep it to this many lines, you're in the eleventh hour... And I foolishly followed his advice.

Mr. Duncanson: So the election was more important than integrity, is what you're saying.

Judge Evander: Would it be fair to assume that the reason you did not take the position then that you're taking with the panel now is because you believed it would hurt your chances to win the election?

Judge Santino: **I, at that point – it had been my life's dream and my life goal to serve in a judicial capacity, and I did not listen to my instinct.** (FJQC Ex.5, pp.31-32, emphasis added).

Thereafter, the Investigative Panel instituted Formal Charges, and the case proceeded to final hearing.

Lerman learned about the Taxpayers for Public Integrity Facebook web page established by Santino's campaign when other attorneys forwarded a link for his review. (T.35-37). The picture "looked like a wanted poster" and made it seem like **he** was the worst criminal in the world, equating him with murderers, rapists, and pedophiles. (T.47-49). It put a target on his back and made people think he was something that he was not. (T.49). While those in the legal community found it offensive, that was not necessarily the case with the general public, some of whom

already held a negative opinion of criminal defense attorneys. (T.48-49; 86-89).

Lerman did not “make a lot of money trying to free Palm Beach County’s worst criminals.” That statement was false because (1) these types of cases are far from lucrative; and (2) it mischaracterizes the nature of a defense lawyer’s work, which is to ensure the conditional protections of the accused, and sometimes save lives. Moreover, “not everybody is guilty of what they’re charged with.” (T.42-43;68).

Other statements made by Santino either expressly asserted or implied bias, and that Lerman would stand for criminals, not victims. At the time those statements were made, Santino knew literally nothing about him. (T.44-45). Lerman, personally, and members of his immediate family had been victims of heinous crimes, matters he was still dealing with as the family’s lawyer years later. (T.44-46). He testified that:

It’s not a judge’s job to stand for either the criminals or the victim or the plaintiff or the defendant in a civil case. It’s the judge’s job to be fair and impartial and apply the law and instruct the juries and do their job. But I think their implication was that I stood for criminals and apparently Ms. Santino is the one that stood for victims, which was a personal insult to me and my profession... (T.44-45).

Fred Hadley attested to his interview and interactions with Santino, both before and after the election. (T.98-117).

Judge Santino testified that she had long-wanted to be a judge, and considers

it the highest level of public service. She and her husband took turns advancing their careers, and it was her turn to serve the public when her husband retired. (T.122-23). She took “complete and full responsibility” for campaign violations, describing herself as a neophyte, sprinting towards the end of a breakneck campaign, who missed important training and relied on professionals with more experience because she was busy “just trying to put one foot in front of the other...” (T.126; 142-44;157-58;162-63). She performed no legal research regarding her ethical responsibility, did nothing to make up for failure to attend an ethics workshop, and had no explanation for why her campaign manager felt authorized to post a Facebook webpage she did not review. (T.173; 176-77; 202). Nor did she disavow the webpage, even after the fact, despite recognition that it stepped “over the line,” was “deplorable” and made her cringe. (T.160; 202-03). Facing ethics charges, she retained counsel and apologized to Lerman and the “criminal defense bar” for “lend[ing] out her better judgment,” and to members of the JCPC for being “tone deaf” in responding to the complaint. (T.163-66; 180; Resp.Exs. 1&2).

Judge Santino conceded that her statements by e-mail and to Mr. Hadley, as well as the content of the Facebook page, implied that Mr. Lerman was biased, soft on criminals, and favored the defense, while she would favor the state and victims. (T.135). She agreed that statements in her October 12, 2016 email, and the content of the Taxpayers for Public Integrity Facebook webpage were inappropriate and

violated Canon 7. (T.119).

Judge Santino testified that she loves her job, and has made it her mission to prove she takes it seriously because she realizes that her actions negatively impacted and reflected upon the judiciary and her colleagues – many of whom were friends before she became a judge. (T.168-69; 185-86). She asked the Hearing Panel to consider the entirety of her career and the totality of circumstances in recommending discipline, and to not let the campaign define her. (T.186-87).

Five witnesses appeared on the judge's behalf. Circuit Judge Jeffrey Colbath served as the Chief Judge of the Fifteenth Judicial Circuit through June 30, 2017. (T.211). Judge Santino has at all times been assigned to the civil division, where she can continue to remain, if necessary, without imposing hardship on the circuit. (T.220-21). Judge Colbath testified that, while he was Chief Judge, he received no complaints about Judge Santino. He opined she has risen to the challenge by reducing the number of open cases in her division, and volunteering to help colleagues. (T.211-16). Judge Colbath agreed it is never appropriate for a judicial candidate to malign a section of the bar or the community in order to win an election. (T.223). However, based on her performance on the bench (which he characterized as "exemplary"), Judge Colbath opined that Judge Santino was presently fit to serve. (T.219-20).

Theodore ("Ted") Booras, a Palm Beach County judge for the last eleven

years, has known Santino since 1993 when he was an assistant state attorney and she was a probation officer. He deemed her knowledgeable, pleasant and dedicated. (T.228). Their paths continued to cross when Santino became involved with a pretrial diversion program for misdemeanor substance abuse through the Sheriff's office, when Santino advocated to have eligible persons admitted to a program by the State Attorney's office. (T.228-29; 231-34). ASA Booras recommended Santino for a law school scholarship, supervised Santino when she became a certified legal intern for the state attorney's office, and ultimately offered her a job (which she turned down). (T.235-36).

Judge Booras now serves as Santino's (unofficial) mentor in the civil division. (T.237). He testified that Judge Santino is well-regarded by practitioners, helpful to colleagues, hard-working, and diligent. He considers Judge Santino to be an "excellent" judge, notwithstanding campaign missteps. (T.239-45).

Palm Beach County Circuit Judge Luis Delgado met Santino when they were both running for election. (T.247-48). He attended the seminar given for judicial candidates on May 12, 2016, found it "the single most important educational experience" to candidacy, noting that the seminar stressed that candidates are responsible for the acts of surrogates. (T.253-54).

Judge Delgado agreed it was never appropriate to disparage an opponent to win office in a judicial election, and that Santino's comments were not good. (T.259-

60). He opined (without substantiation) that bad publicity “probably hurt” rather than helped her. (T.258).

Over JQC objection, the Panel also heard from two lay people regarding their personal experiences with Santino. (T.265-66). Patricia Hall-Okafur testified that Santino offered strength and support as a homicide counselor in 1994, when Hall-Okafur’s brother was murdered, and they have remained in touch since. (T.260-69; Resp.Ex.20, p.viii). Mary DeMassino, an abused child, was taken in by Santino and her husband at age 16. She credits them for being tremendous role models, who turned her life around. DeMassino is now raising four children of her own in the same neighborhood. (T.270-78).

Others, from various walks of life, submitted affidavits indicating that Santino’s judicial campaign was inconsistent with and not reflective of her character or present fitness. (Resp. Exs.3&22).

CONCLUSIONS OF LAW

Judge Santino was charged with violating Canon 7A(3)(a), 7A(3)(b), 7A(3)(c), and 7A(3)(e)(i) and (ii), Florida Code of Judicial Conduct, and Rule 4-8.2(a) and (b), of the Rules Regulating the Florida Bar. Canon 7 provides, in pertinent part:

**Canon 7. A Judge or Candidate for Judicial Office
Shall Refrain from Inappropriate Political Activity**

A. All Judges and Candidates

* * *

(3) A candidate for judicial office:

(a) shall be forthright to the law and maintain professional competence in it, and shall not be swayed by partisan interests, public clamor or fear of criticism;

(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 of the candidate, and shall discourage other employees and officials subject to the candidate's discretion and control from doing on the candidate's behalf what the candidate is prohibited from doing under Sections of this Canon;

* * *

(e) shall not:

(i) with respect to parties or classes of parties, cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office; or

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

Rule 4-8.2, Rules of Professional Conduct, regarding "Judicial and legal officials" provides:

- (a) **Impugning Qualifications and Integrity of Judges or other Officers.** A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a... candidate for election or appointment to judicial... office.
- (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.

Judge Santino admits violating Canon 7A(3)(a) and 7A(3)(b), and Rule 4-8.2(b) of the Rules Regarding the Florida Bar. Her admissions are supported by clear and convincing evidence. See In re Kinsey, 842 So.2d 77, 89-90 (Fla.2003). This Panel concludes that Judge Santino also violated Judicial Canon 7A(3)(c), (e)(i), and (e)(ii) and Rule 4-8.2(a), Rules of Professional Conduct, for the same reasons reached by the JCPC. Candidate Santino did not merely compare her background, qualifications, character and integrity with that of her opponent. She imputed guilt to those that were merely accused. She also expressly stated and implied that Lerman was not impartial, was predisposed to favor criminals, while she was predisposed to victims, and courted votes based on each candidate's supposed predisposition. Her entire campaign was inflammatory and rife with innuendo. She repeatedly implied that representing persons charged with crimes was, by its very nature, dishonorable and antithetical to the public good. See generally Little Bridge Marina, Inc. v. Jones Boatyard, Inc., 673 So.2d 77, 78-79

(Fla. 3d DCA 1996)(impeachment of a critical witness by resort to his past career as a criminal defense attorney warranted reversal for inflaming the passion of a jury). Santino expressly stated or implied that Lerman could not be trusted “for laboring in an occupation that serves to breathe life and meaning into the Sixth Amendment.” Id. Her published comments, as well as the Facebook page, falsely communicated to the reader that Lerman was unfit for judicial office because of the type of law he practiced, and the type of clients he represented.

Candidate Santino did not prohibit or discourage campaign personnel from doing what she was prohibited from doing, even though they were subject to her control. By her own account, Santino allowed such personnel to operate unfettered or unrestrained.

Candidate Santino, individually, and through her campaign manager, made statements about Mr. Lerman’s integrity, with reckless disregard of the truth. She claimed evident partiality and bias on Lerman’s part, based solely on his employment as a criminal defense attorney. The Taxpayers for Public Integrity Facebook website, established by Santino’s campaign manager, encapsulated Lerman’s photograph, with bold prominent displays of crimes, in an attempt to portray Lerman as a criminal or, one who associates with criminals. It was specifically designed to evoke base human emotions that our legal system, this profession, and our State and Federal Constitutions all seek to overcome. It was a

calculated, tactical decision to ensure that Santino won her election for a judgeship. While she disclaims her role in this process, Judge Santino was reckless in delegating decision-making to her campaign manager, without supervision, and permitting him to speak and act on her behalf continuously even after the filing of the JCPC complaint (October 25, 2016), when she believed she had been misled.

RECOMMENDED DISCIPLINE

The object of disciplinary proceedings is not to inflict punishment, but to gauge a judge's present fitness to serve as a judicial officer. In re Kelly, 238 So.2d 565, 569 (Fla. 1970); In re McMillan, 797 So.2d 560, 571 (Fla. 2001).

Where a judge commits misconduct in office, the Florida Supreme Court has examined the issue of "present fitness" from two perspectives: "its effect on the public's trust and confidence in the judiciary as reflected in its impact on the judge's standing in the community, and the degree to which past misconduct points to future misconduct fundamentally inconsistent with the responsibilities of judicial office." In re Sloop, 946 So.2d 1046, 1055 (Fla. 2006); In re Murphy, 181 So.3d 1169 (Fla. 2015); In re Hawkins, 151 So.3d 1200, 1215 (Fla. 2014).

However, the Court has considered "present fitness" from a different vantage where the misconduct at issue involves campaign violations in the course of seeking judicial office. See e.g. In re Alley, 699 So.2d 1369, 1370 (Fla. 1997)("[W]e find it difficult to allow one guilty of such egregious conduct to retain the benefits of those

violations and remain in office.”);⁶ In re McMillan, 797 So.2d at 571-572. In re Renke, 933 So.2d 482 (Fla. 2006), a case on point, a judge was charged with violating Canon 7 by campaign literature during his 2002 campaign for a judgeship. The Florida Supreme Court rejected the parties’ stipulation to a \$20,000 fine, thirty day suspension, and public reprimand as insufficiently severe, and remanded the case for further proceedings. Id. at 493.

On remand, the FJQC Investigative Panel added another count, charging the judge with violating state campaign finance laws by accepting illegal campaign contributions from his father. The Amended Notice of Formal Charges alleged that, during his judicial campaign, Renke made knowing misrepresentations in campaign literature that: (1) he was an incumbent judge (“John Renke, a Judge With Our Values”) (Count 1); (2) falsely depicted himself as an office holder with the Southwest Florida Water Management District (running his picture with the nameplate “John K. Renke, Chair” under the District’s banner) (Count 2); (3) falsely claimed endorsement by the Clearwater firefighters union (Count 3); (4) falsely described himself as having “real judicial experience as a hearing officer in pending appeals from administrative law judges” when he had limited, if any such experience

⁶ Alley resulted in a public reprimand under Constitutional provisions effective prior to amendment in 1996, which limited disciplinary measures to public reprimand or removal, and limited the Florida Supreme Court’s authority to impose a greater sanction than the FJQC’s recommendation.

(Count 4); (5) falsely claimed he had endorsements from “Pinellas County public officials,” when the persons listed were in fact officials of a private partisan organization (Count 5); (6) falsely claimed almost “eight years experience handling complex civil trials in many areas,” when he had little or no such experience (Count 6); and (7) falsely claimed his opponent lacked “broad civil trial experience,” which Renke ostensibly had (where facts showed the opposite)(Count 7). Renke was also charged with knowingly accepting disguised “loans” totaling \$98,500 (Count 8) and a “pattern or practice” of misconduct based on cumulative charges. (Count 9).

The FJQC Hearing Panel found Judge Renke guilty of knowing misrepresentations of his experience and qualifications for judicial office (Count 1-3, 6-7), campaign finance violations (Count 8), and cumulative misconduct (Count 9). As discipline, it recommended a \$40,000 fine, 30 day suspension, and a public reprimand, relying on character evidence and Renke’s post-election performance on the bench.

The Florida Supreme Court rejected this recommendation, in favor of removal, citing prior published warnings in opinions cautioning against “the exact type of misconduct” and its prior efforts “to deter the kind of conduct we are faced with here.” *Id.* at 493, 495. It placed judicial candidates on notice it would no longer tolerate such serious misconduct, concluding that “the series of blatant, knowing misrepresentations in Judge Renke’s judicial campaign literature and in his

statements to the press amount to nothing short of fraud on the electorate in an effort to secure a seat on the bench.” *Id.* The Court was not swayed by mitigation evidence, observing that:

[I]t is not enough to point to Judge Renke’s successes as a judge if he only obtained that position through his own fraudulent and illegal campaign misconduct. It appears that the JQC may have decided that, as a matter of law, if a judge has committed serious misconduct in serving adequately as a judge, he is presently fit to hold office. However, even accepting the JQC’s findings of fact on this issue, **we hold that regardless of Judge Renke’s present attributes and reputation as a judge, one who obtains a position by fraud or other serious misconduct, as we have found Judge Renke did, is by definition unfit to hold that office.**

In determining the discipline appropriate in cases of judicial wrongdoing, our obligation is first and foremost to the public and to our state’s justice system. Florida has chosen a nonpartisan election process for selecting judges, and **conduct that substantially misleads the voting public and interferes with its right to make a knowing and intelligent decision as to a judicial candidate’s qualifications will simply not be tolerated in selecting members of the judiciary.** Those who seek to assume the mantle of administrators of justice cannot be seen to obtain such position of trust through such unjust means... *Id.* at 495. (emphasis added).

After much deliberation, and for the following reasons, the Panel concludes that removal is the only discipline appropriate under the circumstances.

First, we reject the notion that candidate Santino merely made “mistakes” or “missteps” in the course of a heated campaign. Her conduct “was not simply the product of an isolated instance of indiscretion, a momentary lapse of judgment; or

the exposure of human frailty from which we all suffer from time to time. The conduct here was repeated, intentional, direct action with a designed purpose which cast aspersions and doubt onto the heart of the judicial system and the elected judicial office sought by [the] Judge...” In re Kinsey, 842 So.2d at 97 (Lewis, J, concurring in part and dissenting in part). Santino knew, and acknowledged without a shadow of a doubt, that she had violated Canon 7 after the JCPC issued an adverse unanimous opinion, but chose to take no curative action for fear it would cost her the election.

Second, it strains credulity to believe that Judge Santino never looked at the Facebook webpage she knew was going to be created, when it was available to the public, after she received phone calls from prominent lawyers telling her it was not being “well received,” or even, as she said, before telling her campaign consultant to take it down. Nor does this Panel accept Judge Santino’s explanation that she was too busy or sleep-deprived to manage, let alone pay attention to her campaign.

Third, the Florida Supreme Court has now been warning judicial candidates about the same type of serious campaign violations at issue for some 20 years. In re Alley, 699 So.2d 1369, 1370 (Fla. 1997); In re McMillan, 797 So.2d at 572; In re Kinsey, 842 So.2d at 91-92; In re Renke, 933 So.2d at 494-96. Seminars and forums are regularly conducted in election years, district-wide, presented by the JEAC. An entire pamphlet has been devoted to ensure that every judicial candidate understands

Canon 7 and abides by it. Even JEAC 98-27, cited by Giorgio, quoted extensively from Alley supra, and warned of the need to carefully craft advertisements to avoid improper pledges, misrepresentations or *personal attacks*. Candidate Santino's failure to read pertinent case law, or to attend the Palm Beach County seminar does not favor mitigation.

Judge Santino correctly observes that prior election cases ordering removal based on violations of Canon 7 involved some additional type of misconduct. See In re McMillan, 797 So.2d 560 (Fla. 2001)(judge presided over first appearance and set excessive bond in case to which he was not assigned, personally observed and reported to the police, had the defendant arrested, and was a witness); In re Renke, supra (judge accepted illegal campaign contributions).

The Hearing Panel recently recommended a public reprimand, coupled with a 90 day suspension without pay, based on a single serious violation of Canon 7, and no mitigation. See In re Shepard, 217 So.3d 71 (Fla. 2017); Cf. In re Decker, 212 So.3d 291, 307-08 (Fla. 2017) (public reprimand plus six month suspension without pay, due to a pattern of misconduct, based on testimony concerning Decker's present ability as a judge, and a finding that "he should be given an opportunity to continue to serve..."). One Hearing Panel member favored similar disciplinary measures based on the voluminous character evidence adduced. All other members disagree. Shepard involved one advertisement, not the theme of an entire campaign, and was

less egregious, even though there was substantial evidence presented here in mitigation.

Judge Santino's post-election remarks that discipline would "probably be a fine" and was "no big deal" confirm that a fine or suspension would be inadequate, and treated as the routine cost of doing business. See Kinsey, 842 So.2d at 99-10 (Lewis, J). A suspension without pay would also have the "unavoidable consequence" of punishing the circuit and its citizens by a vacancy in the position. Id. at 95-96 (Pariente, J).

We do not make this recommendation of removal lightly, or without due consideration of its severity. We are mindful of – and heavy-hearted about – the testimony of Judge Santino's witnesses that she is beloved by many, and a judge with a strong work ethic. However, were we to countenance her studied and continued refusal to abide by Canon 7, we would ourselves be undermining the rules governing judicial elections.

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 28th day of September, 2017.

FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION

By: /s/ Michelle T. Morley
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FJQC HEARING PANEL CHAIR
SUMTER COUNTY COURTHOUSE
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CERTIFICATE OF SERVICE

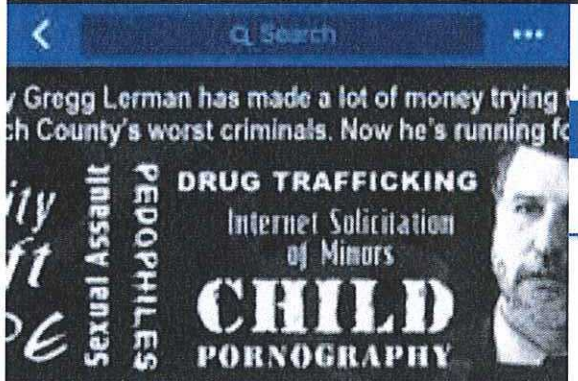
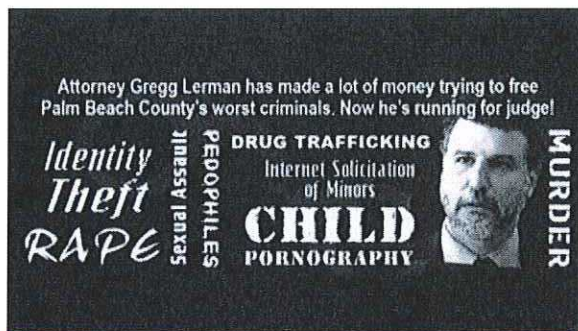
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail this 28th day of September, 2017 to:

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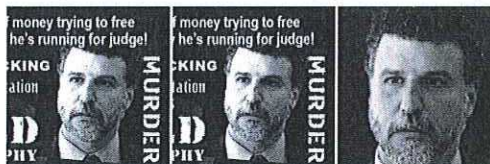
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The Truth About Gregg Lerman

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Ronald Knight rose from his seat, put his wrists behind his back, and said, "I am guilty."

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Instead of representing the victims of crime, Gregg Lerman chose to represent one of the convicted accomplices in the "Turnpike Murder" of a family of four, including two children ages 3 and 4. Now, he's running for judge!



The Truth About Gregg Lerman

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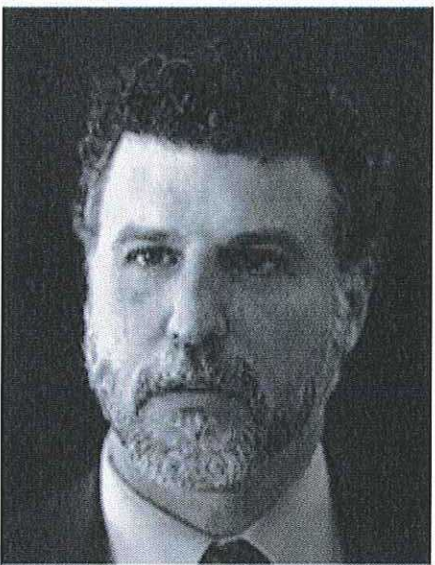
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