

**IN THE SUPREME COURT OF THE
STATE OF FLORIDA**

INQUIRY CONCERNING A JUDGE,
THE HON. KENNETH N. "SONNY" SCAFF, JR.
JQC NO. 2019-118

S20-_____

FINDINGS AND RECOMMENDATION OF DISCIPLINE

The Investigative Panel of the Florida Judicial Qualifications Commission ("Commission" or "JQC") served a Notice of Investigation dated December 11, 2019, on Hamilton County Court Judge Kenneth N. "Sonny" Scaff, Jr., pursuant to Rule 6(b) of the Florida Judicial Qualification Commission Rules. The Investigative Panel conducted a Rule 6(b) hearing on January 10, 2020, at which Judge Scaff appeared, with counsel, and provided sworn testimony. At the conclusion of that hearing, the Panel determined that probable cause existed that Judge Scaff had violated Canons 1, 2A, 3B(2), 3B(4), 3B(7), 3B(9), and 3B(10) the Florida Code of Judicial Conduct.¹

¹ Canon 1 states that, "An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective."

Canon 2A states that, "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 2B provides, in pertinent part, that, "A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge."

Factual Findings

Judge Kenneth N. “Sonny” Scaff was first elected to the Hamilton County bench for a term beginning in 2007. Prior to taking the bench, Judge Scaff was a member of the Florida Bar since his admission in 1985. For all of his professional career as a practicing attorney, he was engaged in a private practice, mostly representing clients in the more rural communities of the Third Judicial Circuit, including Jasper, Florida, the county seat of Hamilton County where he now serves as its judge. In over 20 years as a practicing lawyer he has had no prior discipline imposed by the Florida Bar.

Regarding the specific allegations of misconduct alleged in the Notice of Formal Charges, Judge Scaff has fully admitted and agreed that the facts regarding

Canon 3B(2) states that, “A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.”

Canon 3B(4) states that, “A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge’s direction and control.”

Canon 3B(7) states, in pertinent part, “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, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:... [exceptions omitted as inapplicable here].”

Canon 3B(9) states in pertinent part, “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 its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.”

Canon 3B(10) provides that, “A judge shall not, with respect to parties or classes of parties, cases, controversies or issues 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.”

his misconduct are accurate, and are supported by clear and convincing evidence. A stipulation to that effect is being filed concurrently with the Notice of Formal Charges and these Findings and Recommendations. Additional findings by the Commission related to those charges are outlined below.

Findings Regarding First Appearance Hearings

Hamilton County is a rural county in Northwest Florida, with a population of between 14,000 and 15,000 people.² Judge Scaff serves as the only full-time judicial officer in Hamilton County, and as such, is responsible for conducting most first appearance hearings for arrestees in Hamilton County. In Florida, First Appearances are largely governed by Rule 3.130 of the Florida Rules of Criminal Procedure, and Chapter 903 of the Florida Statutes.

The Notice of Formal Charges has outlined in detail four instances where Judge Scaff conducted first appearance hearings that did not comport with Rule 3.130 or Chapter 903. In these cases, Judge Scaff has acknowledged and admitted that he conducted telephonic bond hearings which occurred with little or no notice to, and no participation by, the Office of the State Attorney, Office of the Public Defender, private attorneys, victims, officers, or in some instances, even the

² The 2010 census found the population of Hamilton County to be 14,799 individuals. The 2018 population estimate by the Census Bureau was 14,310 individuals. <https://www.census.gov/quickfacts/hamiltoncountyflorida>.

arrestee involved. Judge Scaff acknowledges and agrees that proper notice and participation by stake holders in bond hearings is not only required by the rules, but is critical to maintaining the public's perception of fairness in the judicial process.

The Commission finds that the charges relating to Judge Scaff's failure to conduct appropriate first appearance hearings as detailed in the Notice of Formal Charges are supported by clear and convincing evidence.

Findings Regarding Ex-Parte Contact

The Notice of Formal Charges also details several instances where Judge Scaff received, or participated, in ex-parte contacts with relatives of arrestees or defendants. Judge Scaff has admitted and acknowledged that his conduct violated the prohibition in Canon 3B(7) against engaging in ex-parte communications.

While ex-parte communications, outside of the exceptions enumerated in Canon 3B(7), are improper and can diminish the public's perception of fairness in the judicial system, the Commission is particularly concerned by the repeated contacts Judge Scaff had with family members of arrestees.

Judge Scaff explained that although he was trying to facilitate the expeditious setting of bonds, and did not intend to create the appearance of

According to the Florida Legislature's Office of Economic and Demographic Research, Hamilton County ranks 61st

impropriety, he is now very cognizant of the damaging effect that his conduct had on the public's perception of fairness of the judiciary.

The Commission find that the charges relating to Judge Scaff's ex-parte communications as described in the Notice of Formal Charges are supported by clear and convincing evidence.

Recommendation as to Discipline

The Investigative Panel of the Commission has now entered into a Stipulation with Judge Scaff pursuant to FJQC Rule 6(k). This Court reviews the findings of the JQC to determine "whether the alleged violations are supported by clear and convincing evidence, and reviews the recommended discipline to determine whether it should be approved." *In re Woodard*, 919 So.2d 389, 390 (Fla.2006). Where a judge stipulates to the JQC's findings of fact, no additional proof is necessary to support the JQC's factual findings." *Id.* at 390-91.

In this case, Judge Scaff has admitted the foregoing, accepts full responsibility, and acknowledges that such conduct should not have occurred. In addition to cooperating fully with the JQC throughout the investigative process, the Commission also notes that Judge Scaff exhibited a great deal of candor and was very forthcoming in his responses before the Investigative Panel.

While Judge Scaff's conduct was unquestionably improper, and he has admitted this, the Commission is also mindful of the unique challenges of serving as the lone judicial officer in a small community. In fact, this Court has noted the same challenges in addressing ex-parte communications by an Okeechobee County judge.

In small counties, it has been a time-honored tradition for residents to look to a county judge for advice and counsel in many areas, including legal matters. The judicial canon that makes ex-parte communications improper does not distinguish between sparsely populated and metropolitan areas. As our state and its jurisprudence have progressed, the practice of turning to a county judge for legal advice is no longer permitted. Although Miller was not formally charged with engaging in ex-parte communications, this opinion should stand as a statement that such conduct will not be tolerated. Inquiry Concerning Miller, 644 So. 2d 75 (1994).³

The Commission is also mindful of the fact that this Court has repeatedly imposed public reprimands in disciplinary cases involving ex-parte communications. In Inquiry Concerning a Judge Wiley G. Clayton, 504 So. 2d 394 (Fla. 1987) This Court ordered that a Volusia County Judge be publicly reprimanded for, on four occasions, conducting ex-parte proceedings with defendants and/or defense counsel to dispose of criminal cases. In some of those instances, the dispositions took place without the knowledge of the defendant, and

³ According to the 1990 census, the population of Okeechobee County was 29,627 people. <http://edr.state.fl.us/Content/area-profiles/county/okeechobee.pdf>

included pleas, as well as sentences, and in some cases, were not done in open court. This Court also noted that Judge Clayton's conduct had, "...exceeded his proper judicial position by assuming the role of advocate on behalf of defendants."

More recently, in In re Holder, 195 So. 3d 1133 (Fla. 2016), this Court ordered that Circuit Judge Gregory Holder be publicly reprimanded for conducting ex-parte communications on behalf of a defendant appearing before him in the veterans treatment court. The Court also ordered Judge Holder to complete six additional CJE training hours on topics related to ethics.

And again, in In re Contini, 200 So. 3d 1281 (Fla. 2016), this Court ordered Circuit Judge John Contini to be publicly reprimanded for conducting an ex-parte communication with the Office of the Public Defender regarding the format and content of motions for downward departure.

The Commission is also cognizant of the admonition in In re Maxwell, 994 So. 2d 974 (2008), where this court accepted a stipulated recommendation and imposed a public reprimand for a judge who had engaged in prohibited ex-parte communications with a former law partner whose sister had been arrested for driving under the influence. In Maxwell, this Court warned that similar misconduct may result in more substantial discipline in the future. The Commission believes that the facts of the Maxwell matter are distinguishable from

the case at bar. In Maxwell, the judge intervened in a pending matter that was not assigned to him by phoning the Brevard County Sherriff's Office and ordering the sister's release to a pre-trial diversion program. No first appearance was conducted. More egregious, the judge authorized the defendant's release notwithstanding the fact that she was currently serving a sentence of five year-probation for obtaining controlled substances by fraud, thus making her ineligible for the pre-trial release program. Id at 974.

Mitigating and Aggravating Factors

Judge Scaff has also undertaken corrective measures to guard against future occurrences of this type of conduct, and to educate the public about the strict prohibitions that govern his role as a county judge. As noted in the Stipulation, Judge Scaff has begun securing his chambers, previously unlocked and open to the public, to restrict entry to only those who have scheduled court hearings. Judge Scaff has also placed signage around the Courthouse explaining that the judge is not permitted to have ex-parte communications with "any person about any court case." He has also written to the Sheriff and other law enforcement agencies explaining that he is not permitted to discuss pending or impending cases. Separately, the Sheriff has agreed to provide full-time security at the Hamilton County Courthouse, which previously had none. He has also set a fixed time to

conduct first appearances and has informed the State Attorney and Public Defender's offices that a representative shall attend, either in person or telephonically. Most significantly, he has committed to engage with the Chief Judge of the Circuit who will mentor and advise him on issues that might arise while serving as the only judicial officer in Hamilton County. These corrective measures were implemented at Judge Scaff's own behest without direction from the Commission, after receiving the Notice of Investigation, but prior to appearing before the Commission.

While Judge Scaff has not had prior discipline imposed by The Florida Bar or the Commission, he has been previously cautioned by the Commission about the need to remain vigilant against ex-parte communications while simultaneously living and working in a small community.

In this case, Judge Scaff's failure to maintain the strict boundaries required by Canon 3B(7) resulted in serious misconduct in violation the Canons. In light of the facts and circumstances, the mitigating and aggravating factors, and the prior precedent, the Commission finds and recommends that the interests of justice will be well served by a public reprimand of Judge Scaff.

Dated this 31st day of March, 2020.

**INVESTIGATIVE PANEL OF
THE FLORIDA JUDICIAL
QUALIFICATIONS
COMMISSION**

By: /s/ Krista Marx

Hon. Krista Marx
CHAIR OF THE FLORIDA
JUDICIAL QUALIFICATIONS
COMMISSION
PO Box 14106
Tallahassee, FL 32317