

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

INQUIRY CONCERNING A JUDGE,
THE HONORABLE MARTIN ZILBER
JQC NO. 2020-377

SC21-

FINDINGS AND RECOMMENDATION OF DISCIPLINE

The Investigative Panel of the Florida Judicial Qualifications Commission (“Commission” or “JQC”) served a Notice of Investigation dated November 19, 2020, on Circuit Court Judge Martin Zilber of the 11th Judicial Circuit, pursuant to Rule 6(b) of the Florida Judicial Qualifications Commission Rules. The Investigative Panel conducted a Rule 6(b) hearing on January 21, 2021, at which Judge Zilber appeared, with counsel, and provided sworn testimony. At the conclusion of that hearing, the Panel determined that probable cause existed that Judge Zilber had violated Canons 1, 2A, 3A, 3B(4), 3C(1), 5A(2), 5A(3), 5A(4), and 5A(6) of the Florida Code of Judicial Conduct.¹

¹ Canon 1 is titled “A Judge Shall Uphold the Integrity and Independence of the Judiciary,” and 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 2 is titled “A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge’s Activities,” and 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 3A requires that, “The judicial duties of a judge take precedence over all the judge’s other activities. The judge’s judicial duties include all the duties of the judge’s office prescribed by law. In the performance of these duties, the specific standards set forth in the following sections apply.

Canon 3B(4) states that, “A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses,

The Commission opened an inquiry into this matter upon receipt of a complaint in September 2020 alleging that Judge Zilber had violated several portions of the Code of Judicial Conduct. After receiving the complaint, the Commission conducted an investigation which included interviews with numerous witnesses, reviewing court records, and analyzing other data.

In November 2020, the Commission served Judge Zilber with a Notice of Investigation, and scheduled a hearing pursuant to FJQC Rule 6(b) for the Commission's regularly scheduled meeting on December 3, 2020. Upon the granting of Judge Zilber's request for a continuance, the 6(b) hearing was rescheduled for January 21, 2021.

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 3C(1) states that, "A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business."

Canon 5 is titled "A Judge Shall Regulate Extrajudicial Activities to Minimize The Risk of Conflict with Judicial Duties," and Canon 5A states that, "A judge shall conduct all of the judge's extra-judicial activities so that they do not:

5A(2) "undermine the judge's independence, integrity, or impartiality;"

5A(3) "demean the judicial office;"

5A(4) "interfere with the proper performance of judicial duties; or"

5A(6) "appear to a reasonable person to be coercive."

Judge Zilber and his attorney provided a written response to the Notice of Investigation and appeared at the January 21, 2021 6(b) hearing where Judge Zilber provided testimony and answered questions under oath. The allegations for which the Investigative Panel has found probable cause and determined that formal charges are appropriate reasonably fall into two separate categories discussed in greater detail below. The first category involves the intemperate treatment or misuse of court staff or personnel. The second category involves issues of time and attendance.

Factual Findings and Conclusions regarding Intemperate Treatment or Misuse of Court Staff

Among the allegations brought to the Commission's attention, some of the most concerning involved the judge's intemperate treatment or misuse of court staff. In the 11th Circuit, as is the case in other circuits, Judicial Assistants ("JA's") are paid by the Circuit, but are considered to be employees of the judge they work for. They are hired by the judge, supervised by the judge, and, ultimately, remain employed at the sole discretion of the judge. Many judges in the 11th Circuit also have an additional assistant whose position is paid for by the County, but who, like a Judicial Assistant, is employed at the sole discretion of

the judge. In the 11th Circuit, these additional personnel are referred to as “bailiffs.”²

Through its investigation, the Commission was able to corroborate the allegation that Judge Zilber was intemperate in his treatment of his Judicial Assistant and Bailiff. Judge Zilber, himself, has admitted that, on occasion, his treatment of his staff lacked the patience, dignity, and courtesy required by the Code of Judicial Conduct.

In addition to instances of intemperate treatment, the Commission found several specific instances where Judge Zilber misused his court staff for personal tasks. The specific instances of this conduct that most concern the Commission, include:

- Asking court staff to, on occasion, do personal online shopping for him.
- Asking court staff to perform personal tasks for him such as his bailiff registering his car with the Department of Highway Safety and Motor Vehicles.
- Asking court staff to run personal errands for him. In one instance, Judge Zilber had his bailiff travel to Miami-Beach, during work hours, to pick up the judge’s tickets for Art Basel.

² The bailiffs referred to here are unarmed and generally have a role that differs in scope from the more security-focused mission of bailiffs commonly found in other Circuits who are sworn law enforcement officers employed by the local Sheriff’s Office.

- Asking his bailiff or JA to drive him to or from Bar events and work-related appointments.
- Asking his JA to assemble a scrapbook of his personal and professional achievements.
- Requiring his pregnant JA to wheel his chair up several floors to the courtroom and then lift it onto the dais prior to hearings. Judge Zilber explained that when his bailiff was unavailable to set up the courtroom prior to trial and hearings, which included wheeling Judge Zilber's chair to the courtroom and then lifting it onto the dais, the task sometimes fell to his JA. During the time period his JA was pregnant, Judge Zilber should have realized his JA should not perform this task. Once the issue was brought to his attention, Judge Zilber made other arrangements.

Judge Zilber has also admitted that this conduct occurred and acknowledged that it created an impossible situation for his employees. In discussing his actions, Judge Zilber explained that he only asked if the staff would do those things, he did not require it. In fact, he explained that he had made similar requests to previous staff members, and that they sometimes declined. Judge Zilber recognized that even such a request, because it comes from a judge to a JA or a bailiff, is more akin to a directive.

In another instance, the Commission learned that Judge Zilber had

recurrently asked his JA to work through her lunch breaks, and had delayed signing a timesheet for his JA who was claiming overtime hours for work she had done for him. The Commission's inquiry revealed that these issues were resolved prior to the JQC's involvement with the advice and assistance of the Circuit's Human Resources department, the General Counsel, and the Administrative Judge.

At the outset, the Commission notes that Judicial Assistants, like other court staff, are important court resources whose work is vital to the efficient and orderly operation of the judicial system. They are not personal assistants funded by the taxpayers to take on chores for their judges. Adding personal errands and favors to the workloads of these already burdened employees is not only improper, it can create further delays or interruptions in the efficient administration of the courts.

Additionally, while the Commission is mindful of the fact that occasionally judges and their staff may develop friendships, it is imperative to not lose sight of the fact that there is, first and foremost, an employer-employee relationship. The Commission believes that because of the disparity in power between a judge and their employee, requests for favors by the judge-employer carry such significant weight that they cease to be requests, and become, instead, directives or commands.³

³ It is also worth noting that the conduct described in these Findings is quite different from the ordinary exchanges between a judge and court staff that appropriately serve the administration of the court. An example

Noting that Judge Zilber has been a lawyer since 1988, and now presiding as a judge, the Commission believes that he should have been cognizant of that disparity in power and authority, and the untenable position he was placing his employees in.

Based upon its own inquiry, and coupled with Judge Zilber's admissions and acknowledgments, the Commission concludes that these allegations are supported by clear and convincing evidence.

Factual Findings and Conclusions Regarding Time and Attendance Issues

The Commission also investigated allegations that Judge Zilber was absent from the courthouse beyond the permitted number of days of judicial leave and failed to make appropriate notifications of those absences.

Eleventh Judicial Circuit Administrative Order No. 06-05 permits judges to take "no more than 30 working days of annual leave within a calendar year." The AO also requires that, "before any judicial annual leave is taken, each judge must notify the chief judge or the chief judge's designee, in writing, of his or her intention to take judicial annual leave and must indicate the specific date(s) for which annual leave is to be used."

The Commission's investigation revealed that between January 21, 2019,⁴

of an exchange that serves the administration of the court might be, a Judicial Assistant who volunteers to pick up the judge's lunch order from a restaurant he or she was already going to because the judge is presiding over a trial and cannot leave the courthouse.

⁴ The date Judge Zilber started in the civil division.

and March 13, 2020⁵ Judge Zilber was absent from the courthouse on 51 workdays without notifying Court Administration. These absences are separate and apart from 16 court holidays and 25 days of properly noticed leave taken by Judge Zilber during the same period.

Judge Zilber testified that on some of the days he was absent without authorization in 2019, he was working remotely from home reading case law or preparing for hearings.

However, the Commission also found that when he was present, the hours that Judge Zilber was at the Courthouse often fell below what would be considered a full workday. While the Commission is mindful of the fact that certain aspects of judicial service lend themselves to remote work, the Commission also believes that it is not unreasonable to expect that a judge serving in a trial-level court, especially one as busy as the 11th Judicial Circuit, be generally present at the courthouse during normal court hours.

The evidence does not indicate that Judge Zilber was unduly delinquent in making or issuing rulings or managing his docket. Similarly, the Commission does not have evidence of abnormally long wait times for hearings, and Judge Zilber also testified that his case closure rate was on the higher end of the civil division averages, and that he sometimes volunteered to cover trials and calendars for

⁵ March 2020 was chosen as the cutoff because it marked the end of normal court operations due to the pandemic.

colleagues when needed.

However, it is clear that recurring tardiness or absences from the courthouse works to damage the public's perception of the judiciary. This damage can be even more noticeable in larger jurisdictions where citizens sometimes have to wait weeks or even months for court hearing times, and yet see other judges who could be helping, leaving early or coming in late.

The Commission also found that during the week of August 3, 2020, Judge Zilber took a week-long vacation to Malibu, California without making the proper leave notifications or requests. In fact, the Commission found that he instructed his JA to not submit a leave request or ask for coverage for that absence because he was going to be working remotely anyway. Judge Zilber testified that he planned to, and did, sign orders, and continued to participate remotely in legal community events, read case law, and prepare for hearings set for the following week.

However, instead of remotely attending to his regularly scheduled hearings and dockets, Judge Zilber instructed his JA to cancel and reschedule the hearings and dockets from the week of August 3 to another time.

Additionally, as a special procedure during the pandemic operations, Court Administration for the 11th Judicial Circuit required judges to submit weekly logs detailing the specific hearings that had been conducted each week. The email

request for the pandemic log specifically stated “[p]lease feel free to add any other relevant information you believe is appropriate.” The log contains blanks in which to count various types of court hearings (e.g. special sets, motions, cmc, calendar call, transfer, fwop, evidentiary/trials). There is also a blank space for “notes”. For the week of his August 3 vacation, Judge Zilber instructed his JA to list two motion hearings on the pandemic log, and four “special set” hearings. While the Commission was able to determine that Judge Zilber did remotely conduct two emergency motion hearings on Friday August 7, 2020, the Commission also determined that the four “special set hearings” listed on the pandemic log were, in fact, social and/or educational Zoom meetings including a Cuban American Bar Association luncheon, a Florida Bar town hall meeting, and a swearing in ceremony. In response to the Commission’s Notice of Investigation, Judge Zilber stated that, when he told his JA to list the other functions, he misunderstood the purpose of the log, and believed it was designed to give the Administrative Judge a general perspective of the activities that judges were engaged in during the pandemic while working remotely. Judge Zilber testified he was not attempting to mislead Court Administration with the inaccurate pandemic log, because he was not hiding the fact that he was on vacation. Indeed, throughout the week of August 3, the Commission found that Judge Zilber had been tagging himself and posting pictures on social media from locations in and around Malibu.

However, the Commission finds, and Judge Zilber admits and acknowledges, that it was improper, and a violation of the Canons, for him to take leave and fail to notify Court Administration of the absences. This finding includes the 51 days he was absent from the Courthouse without authorization between January 2019 and March 2020, as well as his failure to submit a leave memo for the week-long vacation in August 2020.

The Commission finds that Judge Zilber's failure to abide by directives of the Chief Judge and the Circuit's Administrative Order constitutes, among other things, a failure to cooperate with other judges and court officials in the administration of court business in violation of Canon 3C(1). The excessive absences from the courthouse and leaving early or coming in late further damage the public's perception and confidence in the judiciary, and violate Canons 1, 2A, and 3A.

Based upon its own inquiry, and coupled with Judge Zilber's admissions and acknowledgments, the Commission concludes that these allegations 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 Zilber pursuant to FJQC Rule 6(k). In this Stipulation Judge Zilber admits that his conduct as alleged in the Notice of Formal Charges

and outlined in the Findings above, was intemperate, inappropriate, and damaged the public's perception of the judiciary.

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 Zilber admits the foregoing, accepts full responsibility, and acknowledges that such conduct should not have occurred. To his further credit, Judge Zilber immediately accepted responsibility from the outset, and has cooperated fully with the JQC throughout the investigative process. He has expressed remorse for his intemperate treatment and misuse of his court staff, and evinced a desire to improve his communications and make amends where possible. To that end, he has agreed to re-attend the Florida Judicial College, Phase I, where he will receive further ethics education, and training on the management of court staff. Judge Zilber will also make restitution for his unauthorized absences from the courthouse in the form of a fine.

The Commission also notes that Judge Zilber does not have any prior disciplinary history with the Commission. Similarly, Judge Zilber has been a

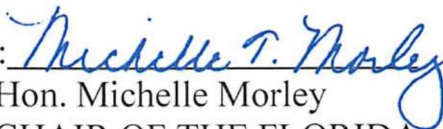
member in good standing with The Florida Bar since 1988 and has had no disciplinary action taken by that organization.

Although the scope of Judge Zilber's misconduct is wide, the Commission's recommendation, while severe, is tempered somewhat by Judge Zilber's sincere reflection, contrition, and cooperation. Indeed, this Court has noted that, "Where a judge admits wrongdoing and expresses remorse before the Commission, this candor reflects positively on his or her present fitness to hold office and can mitigate to some extent a finding of misconduct." See Inquiry Concerning Davey, 645 So.2d 398, 405 (Fla. 1994).

Accordingly, the Commission therefore finds and recommends that the interests of justice will be well served by a public reprimand of Judge Zilber, a 60-day suspension without pay, a fine in the amount of \$30,000, re-attendance at Phase I of the Florida Judicial College when it is next offered, and written letters of apology to his current and former Judicial Assistants and Bailiff.

Dated this 8th day of April, 2021.

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

By: 
Hon. Michelle Morley
CHAIR OF THE FLORIDA

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