097

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

GARY G. GRAHAM,

Respondent.
_____/

Case No. 84,897
[TFB Case Nos. 93-31,809 (09E)
and 94-30,110 (09E)]

COMPLAINANT'S INITIAL BRIEF

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(904) 561-5600
ATTORNEY NO. 123390

JOHN T. BERRY
Staff Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(904) 561-5600
ATTORNEY NO. 217395

and

CARLOS E. TORRES
FRANCES R. BROWN
Bar Counsel
The Florida Bar
880 North Orange Avenue
Suite 200
Orlando, FL 32801
(407) 425-5424
ATTORNEY NO. 939455
ATTORNEY NO. 503452

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SYMBOLS AND REFERENCES

In this brief, the Appellant, The Florida Bar, shall be referred to as "The Florida Bar" or "the bar".

The Appellee, Gary G. Graham, shall be referred to as "the respondent".

The Judicial Qualifications Commission shall be referred to as "the JQC" or "JQC".

The referee's Order Dismissing Counts I Through XIII With Prejudice, dated March 24, 1995, shall be referred to as "Order", followed by the cited page number(s).

STATEMENT OF THE CASE

On June 24, 1993, the respondent was removed from the office of county court judge for misconduct by Order of the Supreme Court of Florida. On August 5, 1993, the allegations of misconduct which caused the respondent's removal from judicial office were forwarded to the Ninth Judicial Circuit Grievance Committee "E" for a review of the respondent's conduct under the Rules Regulating The Florida Bar. At the probable cause vote on April 11, 1994, the grievance committee found no probable cause, with a letter of advice to be issued to the respondent, pursuant to R. Regulating Fla. Bar 3-7.4(l).

At its June, 1994 meeting, the Board of Governors of The Florida Bar voted to overturn the grievance committee's finding of no probable cause and, instead, entered a finding of probable cause against the respondent pursuant to R. Regulating Fla. Bar 3-7.5(a). On December 23, 1994, the bar filed a 15 Count Complaint against the respondent. Counts one (I) through thirteen (XIII) pertained to the charges of misconduct for which the respondent was removed from judicial office by the Supreme Court of Florida. Counts fourteen (XIV) and fifteen (XV) concerned the respondent's conduct prior to and during the hearings before the Judicial Qualifications

Commission (JQC). On January 11, 1995, The Honorable Chester B. Chance was appointed as referee and on January 17, 1995, the respondent filed his Answer and Affirmative Defenses to the bar's Complaint. The bar replied to the respondent's affirmative defenses on January 27, 1995.

A hearing was conducted on February 24, 1995 before the referee on the respondent's First Motion For Continuance and First Motion In Limine. By order dated March 2, 1995, the referee reset the respondent's motion for continuance for a case management conference on March 10, 1995. In his order, the referee gave further guidance as to how the parties were to proceed in the case. Specifically, the parties were to submit memorandums of law concerning the issue of whether the bar may seek disciplinary action against a former judicial officer whose acts of misconduct were committed while acting as a judge and did not involve the commission of a crime, dishonesty, deceit, immorality or moral turpitude.

Subsequent to the submission of the memorandums at the case management conference on March 10, 1995, and prior to any evidentiary hearings, the referee issued an Order Dismissing Counts

I Through XIII With Prejudice, dated March 24, 1995, concerning the bar's formal Complaint against the respondent. Those counts concerned the specific acts of misconduct which resulted in the respondent's removal from the bench. The remaining two counts of the Complaint were not dismissed. At its April, 1995 meeting, the Board of Governors of The Florida Bar voted to seek review of the referee's dismissal of the first thirteen (13) counts of the bar's Complaint. The bar served its Petition For Review on April 19, 1995.

STATEMENT OF THE FACTS

The respondent was a county court judge for Citrus County, Florida, and was first elected in 1986. In April, 1993, after a lengthy hearing in front of the Judicial Qualifications Commission (JQC), the respondent was found guilty of repeated violations of the Code of Judicial Conduct and it was recommended he be removed from judicial office. The commission found the respondent had engaged in a large number of separate actions of misconduct involving making statements directly impugning the integrity of other public officials, repeated improper sentencing, undignified and discourteous behavior toward others in his courtroom, and conduct damaging the public's perception of the integrity and impartiality of the judiciary. Additionally, the JQC found the respondent's actions during the JQC hearing to be disruptive, scandalous, improper, and contemptuous. The JQC noted the respondent's lack of temperament for a judicial proceeding. The Supreme Court of Florida, in reviewing the JQC findings and recommendations, noted the respondent was not dishonest, venal or guilty of moral turpitude, but nonetheless, ordered he be removed from judicial office.

Subsequently, Fifth Judicial Circuit Judge John T. Thurman

filed a complaint against the respondent with The Florida Bar [TFB Case No. 94-30,110 (09E)]. The complaint pertained to the respondent's taking of Judge Thurman's deposition in preparation for the respondent's defense to the charges brought by the JQC. Judge Thurman accused the respondent of attempting to harass and embarrass him during the deposition as the respondent's specific questions were not reasonably calculated to obtain discoverable evidence.

On December 23, 1994, The Florida Bar filed a fifteen (15) count Complaint against the respondent. The first thirteen (13) counts concerned the specific incidents of misconduct committed by the respondent while he was a county court judge for which he was removed from office. Count fourteen (14) generally alleged that the respondent's conduct during the JQC proceedings was improper and prejudicial to the administration of justice. Count fifteen (15) pertained to the allegations brought by Judge Thurman against the respondent.

On February 24, 1995, during a motion hearing in this bar disciplinary case, The Honorable Chester B. Chance, sitting as referee, discussed a recent disciplinary case concerning an

attorney being held in contempt for failing to pay court ordered child support. The referee indicated that the Supreme Court of Florida had declined to discipline the attorney because the child support matter did not involve the commission of crime or fraudulent conduct and had no bearing on the attorney's fitness to practice law. In that regard, the referee expressed his concern as to whether acts by a judicial officer that do not involve a crime, fraudulent conduct, deceit, moral turpitude, etc., were subject to the jurisdiction of The Florida Bar. The referee asked the respondent and bar counsel to submit memorandums on that issue and the requested memorandums were submitted at a case management conference on March 10, 1995.

On March 24, 1995, the referee entered an order dismissing with prejudice counts one (1) through thirteen (13) of the bar's complaint. The referee found that in all prior bar cases where a former judge was disciplined for misconduct while acting as a judge, there were findings of misrepresentation, dishonesty, fraud, moral turpitude and/or criminal conduct. It was the referee's finding that while counts one (1) through thirteen (13) of the bar's complaint described a pattern of conduct showing a severe lack of judicial temperament, they did not suggest that the

respondent is unfit to practice law or that the respondent is dishonest, venal or guilty of moral turpitude. Therefore, according to the referee, the first thirteen (13) counts did not allege conduct subject to attorney discipline.

The referee did not dismiss count fourteen (14) pertaining to the respondent's conduct during the JQC proceedings or count fifteen (15) with respect to the charges brought by Judge Thurman against the respondent. Those two (2) counts are currently pending.

SUMMARY OF THE ARGUMENT

The Supreme Court of Florida has given The Florida Bar the authority to institute attorney discipline proceedings against a former judge for any misconduct which resulted in the judge's removal or resignation from judicial office. While the Judicial Qualifications Commission has jurisdiction over the conduct of sitting judges, The Florida Bar has jurisdiction over judges when they no longer hold judicial office. A judge is still a member of The Florida Bar while a member of the judiciary. As such, the enforcement of the Rules Regulating The Florida Bar is merely suspended during the judge's tenure in office, and is not waived.

In this case, the respondent was removed from the position of county court judge for numerous incidents of misconduct. Accordingly, The Florida Bar instituted disciplinary proceedings against the respondent charging him with engaging in conduct, in general terms, that was prejudicial to the administration of justice. In the past, former judges who were removed or resigned from office for misconduct have been disciplined as attorneys, and those cases mainly involved some form of immoral or criminal conduct on the part of the former judge. Although there were no findings of moral turpitude, immorality or criminal conduct in the

respondent's removal from the bench, his misconduct was sufficiently serious enough for The Supreme Court of Florida to remove him from office. Therefore, the bar has properly instituted these proceedings for a determination of whether the respondent's judicial misconduct also violates the rules governing attorney conduct.

The purpose of these proceedings is to determine whether the respondent's judicial misconduct reflects adversely on his fitness as a lawyer and member of the bar. It is the Supreme Court of Florida which has the ultimately authority to determine all bar disciplinary proceedings. However, the referee has dismissed the allegations in the bar's Complaint against the respondent concerning his judicial misconduct by, in essence, determining that the bar does not have the authority to pursue this disciplinary case because there have been no findings of immorality or criminal conduct. The referee has based his position on a prior bar disciplinary case and on out of state cases that have little authority over the instant matter before this Court. The bar is seeking, based upon the authority granted by this Court, a determination after a review of all the evidence as to whether the respondent's conduct as alleged in all fifteen (15) counts of the bar's Complaint, violates he Rules Regulating the Florida Bar.

ARGUMENT

Point I

THE FLORIDA BAR HAS THE AUTHORITY TO INSTITUTE DISCIPLINARY PROCEEDINGS AGAINST A FORMER JUDGE WHO WAS REMOVED FROM JUDICIAL OFFICE FOR MISCONDUCT.

Article 5, Section 15 of the Florida Constitution grants The Supreme Court of Florida "exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted." Article 5, Section 12 of the Florida Constitution provides a judicial qualifications commission with "jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct....demonstrates a present unfitness to hold office, and to investigate and recommend the reprimand of a justice or judge whose conduct....warrants such a reprimand." In both provisions of the Constitution, the Supreme Court of Florida has the ultimate authority over the discipline of attorneys and members of the judiciary.

The Supreme Court of Florida has granted The Florida Bar the authority to pursue discipline proceedings against former judges

who were removed or resigned from office for misconduct. The bar only has this authority once a judge's tenure in office has ended as the Judicial Qualifications Commission (JQC) has the exclusive authority to institute discipline proceedings against sitting judges. Additionally, R. Regulating Fla. Bar 3-4.5 permits, where it is appropriate, the suspension of a former judge as an attorney subsequent to the judge's removal from office by the Supreme Court of Florida on the basis of a JQC proceeding.

One of the first Florida cases to discuss attorney discipline proceedings against a former judge was *The Florida Bar v. McCain, 330 So. 2d 712 (Fla. 1976).* That case was instituted through an interlocutory appeal by McCain of the decision by the Board of Governors of The Florida Bar to proceed with disciplinary proceedings concerning McCain's resignation from the bench for misconduct. McCain argued that the bar did not have jurisdiction to discipline an attorney for misconduct which occurred when he was a judicial officer. The Court pointed out that such an argument was an misinterpretation of the Court's authority. "The responsibility for disbarring, suspending or otherwise disciplining lawyers who are admitted to practice in Florida rests with this Court alone." (At pg. 714). The Court in McCain, supra, rejected

the assertion that a lawyer's conduct during judicial office could not be considered in bar disciplinary proceedings and viewed that proposition as "a challenge to this Court's jurisdiction and is tantamount to a claim that a lawyer is immune from discipline for the most egregious ethical improprieties, so long as his misconduct disgraced not only the bar but the bench as well." Therefore, the Court made the following ruling:

> We reject the contention that a lawyer's status as former judge or justice immunizes him from discipline for ethical violations occurring during judicial tenure. We adopt for Florida the general rule that 'misconduct in ....a judgeship, reflects upon an attorney's fitness to practice law and is consequently a proper ground for discipline.'" [Citing Annot., 57 A.L.R.3d 1150, 1158 (1974)]. At pg. 715.

Subsequent to the above referenced ruling, the bar pursued disciplinary proceedings in *The Florida Bar v. McCain 361 So. 2d 700 (Fla. 1978)*. McCain was charged with tampering with the administration of justice by trying to influence the decision of a lower court and attempting to tamper with and influence the results of a motion pending before another lower court while McCain was a member of the judiciary. The Court held that The Florida Bar "may institute disciplinary proceedings against an attorney for **any** improper act bearing on his current fitness to practice law, even

when that act occurred while such attorney held judicial office." At p. 701. (Emphasis added). As a result, and based upon the findings and recommendations of the referee, the Court ordered McCain be disbarred.

In rendering its order in the bar disciplinary case against McCain, the Court made no pronouncements limiting bar disciplinary actions against former judges to specific acts of misconduct. To the bar's knowledge, there has never been any ruling by the Supreme Court of Florida confining the bar to the institution of disciplinary proceedings only on certain acts of judicial misconduct. As recently as 1992, the Court, in a bar disciplinary case, found simply that misconduct as a judge may be grounds for attorney discipline. *The Florida Bar v. Gross, 610 So. 2d 442 (Fla. 1992)*. Accordingly, based upon the Florida Constitution, the Rules Regulating The Florida Bar, and Florida case law, disciplinary proceedings can be instituted against a former judge based upon any misconduct engaged in during judicial office as such acts of misconduct reflect on the former judge's fitness to practice law.

POINT II

THE REFEREE ERRED AS A MATTER OF LAW IN DISMISSING COUNTS I THROUGH XIII OF THE FLORIDA BAR'S FORMAL COMPLAINT AGAINST THE RESPONDENT.

In his order dismissing Counts I through XIII of the bar's Complaint, the referee cites disciplinary cases from Georgia and Oklahoma as part of the basis for his dismissal. The bar asserts that those cases are not dispositive of these proceedings in Florida. In citing *Gordon v. Clinkscales, 215 Ga. 843, 114 S.E.2d 15, 19 (1960)*, the referee recognized in his order that said case concerned a disbarment proceeding of a sitting judge. Although disbarment of a sitting judge may incidentally remove a judge from office, incidental removal is not an issue in the present case because the removal proceeding was instituted by the JQC. The courts in the *Gordon* case and *State Ex Rel. Oklahoma Bar Association v. Sullivan, 596 P.2d 864 (Okla. 1979)*, also cited by the referee, required a stricter standard be applied to the conduct of former judges in subsequent attorney disciplinary proceedings. Other states have different disciplinary systems and procedures which result in their own rules and requirements. However, out of state disciplinary cases are not authoritative over disciplinary matters in Florida. While some other states may have determined

that attorneys may be disciplined for misconduct performed in their capacities as former judges, with the qualification that the judicial misconduct must involve some form of criminal conduct or moral turpitude, that has never been the law or rule in Florida.

The referee's reliance upon a recent bar disciplinary case, *The Florida Bar v. Taylor, 648 So. 2d 709 (Fla. 1995)*, is also misplaced. The issue in the *Taylor* case was whether an attorney could be disciplined for violating a civil order of contempt for failing to pay court ordered child support. The referee in that case found that the child support situation did not have an adverse impact on Taylor's ability to practice law, nor did it involve dishonesty, moral turpitude, immorality, deceit, or breach of trust. While the Court did not condone Taylor's conduct, the Rules Regulating The Florida Bar at that time did not give the bar the authority to pursue disciplinary proceedings against an attorney for failing to meet a civil obligation such as child support. Moreover, other disciplinary cases involving contempt findings involved criminal contempt and/or some other fraudulent conduct. As a result, Taylor was found not guilty of the rule violations charged. However, both the Florida Legislature and the Court recognized the need for a rule amendment to allow for discipline

against attorneys who fail to pay their child support obligations so that the rules would be more in line with sanctions by the Department of Professional Regulation against other professionals for the same conduct. The Board of Governors of The Florida Bar did seek such a rule amendment and, effective February 9, 1995, R. Regulating Fla. Bar 4-8.4(h) allows for attorneys to be disciplined for willfully refusing to timely pay a child support obligation.

Obviously, the *Taylor* case did not involve a former judge. Taylor was charged with engaging in conduct prejudicial to the administration of justice as the respondent has been charged in this case. However, the *Taylor* case does not stand for the proposition that in all cases for there to be a finding of conduct prejudicial to the administration of justice, a finding of fraudulent or criminal conduct is also required. Such a limitation would impede the bar's ability to regulate the conduct of attorneys. Further, the ruling made in the *Taylor* case was based upon the specific circumstances and facts of that case. The Court's specific ruling was, "... we find that our present disciplinary rules do not grant us the authority to discipline an attorney for the failure to meet a civil obligation such as child support absent a finding of fraudulent or dishonest conduct." The

current Rules Regulating The Florida Bar provide for disciplinary proceedings against former judges for the misconduct which caused their removal from office and there is no prohibition against those proceedings even if there is an absence of dishonest or fraudulent conduct. Accordingly, the referee's interpretation of the ruling in *Taylor* that "... where alleged misconduct has no bearing on an attorney's ability to practice law and does not involve dishonesty, moral turpitude, immorality, deceit, or breach of trust, the alleged misconduct is not subject to discipline" is incorrect. [Order, p. 9].

The bar also takes exception to the referee's finding that:

> The thirteen counts of the complaint describe a pattern of conduct demonstrating a severe lack of judicial temperament on the part of Respondent. They do not, however, suggest that Respondent is unfit to practice law, nor do they suggest that Respondent is dishonest, venal, or guilty of moral turpitude. [Order, p. 9].

The bar asserts that all the allegations of the complaint, taken as a whole, show a serious pattern of unprofessionalism, contempt for the judicial process and, at times, irrational behavior which clearly calls into question the respondent's fitness not only as a judge but his fitness as an attorney and a member of the bar.

During the time the respondent held judicial office, he was still an attorney and member of The Florida Bar subject to the jurisdiction of the Supreme Court of Florida. The bar's ability to initiate disciplinary proceedings against the respondent was merely suspended during his tenure in judicial office, it was never extinguished. Even though the respondent was not engaged in the practice of law during his tenure in judicial office, he was still a member of the bar and subject to the Rules Regulating The Florida Bar. See *The Florida Bar v. St. Laurent, 617 So. 2d 1055 (Fla. 1993); The Florida Bar v. Della-Donna, 583 So. 2d 307, 310 (Fla. 1989).*

In dismissing Counts I through XIII of the bar's Complaint, the referee has, in effect, determined that all attorney discipline cases against former judges who were removed from office for misconduct can only proceed if there are findings of criminal conduct, dishonesty, fraud, deceit, or moral turpitude. However, the referee has not cited any authority in his order which supports the proposition that limits the bar to instituting disciplinary proceedings against former judges only where there is criminal conduct or moral turpitude. Such a limitation would undermine this Court's exclusive jurisdiction over attorney discipline proceedings

and obstruct the bar's ability to regulate the conduct of attorneys. There should not be any restriction on the bar as to what type of misconduct by former judges can result in attorney discipline proceedings. The present Rules Regulating The Florida Bar make no provision for former judges to be exempt from any of its requirements. To do so would require this Court to specifically carve out an exception to the rules on the part of former judges that is not otherwise applicable to the rest of the members The Florida Bar. Because this Court has the ultimate authority over both judicial and attorney discipline matters, there is little room for abuse of the discipline system by the bar against former judges.

The purpose of these proceedings is not to review the wisdom of this Court's removal of the respondent from judicial office nor is it to re-litigate the issues already resolved by the JQC. All the bar is seeking in these proceedings is a thorough review of the respondent's conduct as alleged in the bar's Complaint. It is quite conceivable that after a full evidentiary hearing on all the allegations, a referee and/or this Court could determine the respondent is not guilty of some or all of the rule violations charged, or that the facts requiring the respondent's removal from

judicial office may not necessarily require his suspension or disbarment as an attorney. There are varying forms of discipline that can be imposed against an offending member of the bar, so a finding of guilt does not always mean disbarment is to follow. Therefore, based upon the authority granted by the Supreme Court of Florida, the Rules Regulating The Florida Bar and Florida case law, disciplinary proceedings against the respondent based on all fifteen (15) counts of the bar's Complaint are required and are appropriate.

POINT III

THE FLORIDA BAR HAS THE AUTHORITY TO PURSUE ATTORNEY DISCIPLINE PROCEEDINGS AGAINST A FORMER JUDGE FOR THE MISCONDUCT WHICH CAUSED HIS REMOVAL FROM JUDICIAL OFFICE EVEN THOUGH HIS MISCONDUCT DID NOT INVOLVE FINDINGS OF CRIMINAL CONDUCT OR MORAL TURPITUDE.

In this case, the JQC recommended and the Supreme Court of Florida ordered, the respondent be removed from the office of county court judge based upon numerous incidents of misconduct. The respondent was found to have made statements directly impugning the integrity of other public officials, repeatedly ordering improper sentences, acting in an undignified and discourteous manner toward others in his courtroom, and engaging in conduct damaging the public's perception of the integrity and impartiality of the judiciary. Based upon the authority granted by the Supreme Court of Florida, the bar filed a 15 count Complaint against the respondent alleging that his conduct as an officer of the court and member of the bar was contrary to the oath he took upon becoming an attorney and also violated several Rules Regulating The Florida Bar. The first 13 counts of the bar's Complaint contained the specific incidents of misconduct the respondent engaged in while he held judicial office. Generally, the bar's Complaint alleged that the respondent's conduct reflected adversely on his current fitness

to practice law. Also in general terms, the bar alleged that the respondent's conduct while he held the office of county court judge often disrupted the orderly operation of the judicial process and, at times, infringed upon the rights of those who appeared in his courtroom and, as such, was conduct prejudicial to the administration of justice. It was those 13 separate incidents of judicial misconduct which the referee dismissed from the bar's Complaint by finding that the bar had no jurisdiction to pursue those allegations when they were not based upon criminal conduct, dishonesty, deceit, moral turpitude, etc.

In its opinion removing the respondent from judicial office, [*In Re Graham, 620 So. 2d 1273 (Fla. 1993), Appendix p. A12*], this Court found that the respondent was not dishonest, venal or guilty of moral turpitude. Accordingly, the bar did not charge the respondent in its Complaint with any rule violations of that nature. This Court did find, however, that the respondent's conduct "was, at times, neither professional nor rational, and there was a clear abuse of judicial power to the detriment of individuals." (At pg. 1275). It is the bar's position that the totality of the respondent's actions as a judge which caused his removal from the bench, as well as his conduct during the JQC

proceedings clearly called into question his qualifications as an attorney and member of the bar. If an attorney appeared in court and repeatedly denigrated public officials, engaged in unprofessional and/or irrational conduct, disrupted the orderly process of the tribunal, or otherwise hindered the administration of justice, most likely the attorney would be sanctioned by the court and/or The Florida Bar would institute disciplinary proceedings against him or her. There would be no question whether the bar had the authority or duty to pursue disciplinary proceedings against such an attorney. In a recent bar disciplinary case, *The Florida Bar v. Machin 635 So. 2d 938 (Fla. 1994)*, the Court basically defined "conduct prejudicial to the administration of justice" under R. Regulating Fla. Bar 4-8.4(d), which is one of the rule violations charged against the respondent in the first 13 counts of the bar's Complaint. The Court stated:

> While conduct that actually affects a given proceeding may be prejudicial to the administration of justice, conduct that prejudices our system of justice as a whole also is encompassed by rule 4-8.4(d). This conclusion is supported by the Standards For Imposing Lawyer Sanctions which makes clear that harm to our legal system is a concern the rules were designed to address. (At pgs. 939-940).

Clearly, any conduct, whether it is by a judge or an attorney,

which has an adverse impact on our legal system as a whole, is a matter the bar is obligated to pursue under the Rules Regulating The Florida Bar.

In the past, bar disciplinary cases against former judges have usually involved incidents of criminal conduct or moral turpitude. See *The Florida Bar v. Sepe, 380 So. 2d 1040 (Fla. 1980); The Florida Bar v. Merckle, 498 So. 2d 1242 (Fla. 1986); and The Florida Bar v. Corbin, 540 So. 2d 105 (Fla. 1989).* Although there have not been any previous bar disciplinary cases against former judges for conduct similar to that in the instant matter, it should be noted that this Court did not find the respondent's judicial misconduct to be insignificant. In fact, the Court stated in its order removing the respondent from the bench that his "cumulative conduct over a period of time and the totality of the circumstances compel us to consider extreme remedial action." *In Re Graham, supra.* It is also evident from the relatively few cases where judges have been removed from judicial office based on misconduct, the Court does not lightly remove a judge from office. Therefore, regardless of whether or not the respondent's misconduct involved criminal conduct or moral turpitude, his actions were sufficiently serious enough to warrant his removal from judicial office.

Another judicial discipline case, *In Re Crowell*, *379 So. 2d 107 (Fla. 1979)*, is factually similar to the case against the respondent. Crowell was found guilty of repeated intemperate and irrational behavior, a pattern of persistent abuse of the contempt power over a long period of time, lack of proper judicial temperament, and abuse of the authority of the office. As the Court ruled in the respondent's judicial discipline case, the Court in *Crowell* found there was no vindictive or corrupt motive by the judge or any evidence of moral turpitude. However, the Court found Crowell's misconduct to be serious and demonstrating an unfitness to hold judicial office, so he was ordered removed from the position of circuit court judge. Although The Florida Bar did not institute disciplinary proceedings subsequent to Crowell's removal from judicial office, had the bar decided to pursue attorney discipline proceedings at that time based upon the misconduct for which Crowell was removed from office, there would have been nothing to preclude the bar from doing so. As in the instant case, there was no order, rule or requirement that strictly prohibited the bar from pursuing attorney discipline proceedings against Crowell for the misconduct which caused his removal from the bench even when there was no finding of criminal conduct or moral turpitude.

To further demonstrate this point, under Article 5, Section 12(f) of the Florida Constitution, a judge may be removed from office without regard to his "malafides, scienter or moral turpitude", if the conduct demonstrates a present unfitness to hold office. The bar recognizes that JQC proceedings and attorney discipline proceedings are not the same. But, by dismissing the first 13 counts of the bar's Complaint against the respondent, the referee has ruled that the bar has no jurisdiction to pursue attorney discipline proceedings based upon a former judge's misconduct where there is no finding of criminal conduct or moral turpitude. This proposition, in essence, holds the bar to a much higher standard in attorney discipline cases than those proceedings which ultimately strip a judge of his or her judicial power. The bar contends there is no authority in Florida which supports that proposition, nor should there be.

CONCLUSION

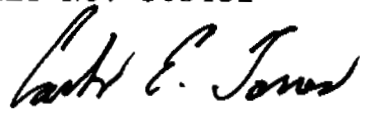
WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's Order Dismissing Counts I Through XIII With Prejudice of the bar's Complaint against the respondent and reverse the referee's dismissal and allow these proceedings to continue based on all fifteen (15) counts of the bar's Complaint.

Respectfully submitted,

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(904) 561-5600
ATTORNEY NO. 123390

JOHN T. BERRY
Staff Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(904) 561-5600
ATTORNEY NO. 217395

CARLOS E. TORRES
FRANCES R. BROWN
Bar Counsel
The Florida Bar
880 North Orange Avenue
Suite 200
Orlando, FL 32801
(407) 425-5424
ATTORNEY NO. 939455
ATTORNEY NO. 503452

By: 

CARLOS E. TORRES
Bar Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing Initial Brief and Appendix have been furnished by regular U.S. Mail to The Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing has been furnished by regular U.S. Mail to Gary G. Graham, respondent, at Post Office Box 519, Inverness, Florida, 34451; a copy of the foregoing has been furnished to The Honorable Chester B. Chance, Referee, at the Alachua County Courthouse, 201 East University Avenue, Gainesville, Florida, 32601; and a copy of the foregoing has been furnished by regular U.S. Mail to Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399-2300, this 17th day of May, 1995.

Carlos E. Torres

CARLOS E. TORRES
Bar Counsel

Appendix

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

-vs-

SUPREME COURT CASE NO: 84,897
(93-31,809(09E) & 94-30,110(09E)

GARY G. GRAHAM,

Respondent.

ORDER DISMISSING COUNTS I THROUGH XIII WITH PREJUDICE

THIS CAUSE came to be heard upon the complaint filed by THE FLORIDA BAR against Respondent GARY G. GRAHAM. The first thirteen counts of THE FLORIDA BAR's complaint pertain to acts allegedly committed by Respondent acting in his capacity as county court judge for Citrus County, Florida. These thirteen counts are summarized below.

In Count I, THE FLORIDA BAR alleges that Respondent grossly abused his judicial power by increasing the sentence he imposed upon a defendant from a six month suspension of defendant's driver's license to a nine month suspension, and finally to a one year suspension, merely because the defendant questioned the fairness of the sentences. (Complaint ¶¶ 10-16).

In Count II, THE FLORIDA BAR alleges that Respondent, upon learning that a defendant standing before the court was a shrimper, stated in open court that shrimpers were unsavory characters that tended to be in trouble. It is further alleged that Respondent ordered the defendant not to associate with anyone engaged in the

business of shrimping. He then changed his order and placed defendant on probation with the special condition that she find alternative employment. The Respondent's order did not have any relation to the crime for which the defendant was charged. (Complaint ¶¶ 17-21).

In Count III, THE FLORIDA BAR alleges that Respondent sentenced a defendant to probation and as part of the sentence, ordered the defendant to perform 40 hours of community service for the state attorney's office. It is further alleged that Respondent stated he would suspend ten hours of the community service if the defendant washed the State Attorney's car with the t-shirt defendant was wearing in court. (Complaint ¶¶ 22-27).

In Count IV, THE FLORIDA BAR alleges that when the mother of one defendant in a case before Respondent questioned the fairness of the sentence he imposed, the Respondent stated to the mother in open court, "You know what his problem is, his problem is you. It is not me. It is you. I can tell by the way you are defending him." It is further alleged that Respondent then engaged courtroom personnel and spectators in a speech designed to further embarrass the defendant's mother and, in so doing, needlessly utilized vulgar and highly inappropriate language. (Complaint ¶¶ 28-32).

In Count V, THE FLORIDA BAR alleges that Respondent was the presiding judge in a case where a defendant was charged with misdemeanor battery on his estranged wife. It is further alleged that as a condition of probation, the Respondent prohibited the

defendant from having any contact with his children and that such condition had no relation to the crime for which defendant was charged. (Complaint ¶¶ 33-36).

In Count VI, THE FLORIDA BAR alleges that the Respondent was the presiding judge in two cases involving misdemeanor possession of marijuana. In one case, Respondent ordered as a condition of the sentence, that the defendant assist the Citrus County Sheriff's Office in "two buys and two sells." In the other case, Respondent ordered the defendant to "assist the state attorney's office in catching a drug dealer" as a condition of his sentence of probation. It is further alleged that the Respondent had insufficient evidence to determine whether the defendants were suitable to participate in such transactions and whether the Citrus County Sheriff's Office or the state attorney's office desired the defendants' assistance. (Complaint ¶¶ 37-43).

In Count VII, THE FLORIDA BAR alleges that Respondent, in open court and without factual basis, accused an assistant public defender and a defendant of deliberately falsifying a transcript used in the defendant's appeal. (Complaint ¶¶ 44-47).

In Count VIII, THE FLORIDA BAR alleges that Respondent, without a factual basis, accused a captain and investigator of the Citrus County Sheriff's Office of improperly releasing a defendant on his own recognizance and "trading official actions for other beneficial acts by the defendant." The respondent sentenced defendant to 90 days in the county jail as punishment for his

"improper" release, stating in open court that a ten day sentence would have otherwise been appropriate. In refusing to mitigate the sentence, Respondent directed the defendant to "tell your friends that's what you get for trading favors to get out of the Citrus County Jail." (Complaint ¶¶ 48-54).

In Count IX, THE FLORIDA BAR alleges that Respondent, during a hearing in open court, accused the state attorney's office of routinely lessening DUI (driving under the influence) offenses for lawyers and doctors to reckless driving, and specifically accused State Attorney Brad King of favoritism in the disposition of DUI cases while Brad King was an assistant state attorney. Respondent repeatedly demanded that the Chief Assistant State Attorney explain the exercise of discretion by the state attorney's office in charging the case before him as a misdemeanor rather than a felony so that Respondent could ascertain whether the decision was the result of politics and favoritism. (Complaint. ¶¶ 55-60).

In Count X, THE FLORIDA BAR alleges that Respondent called an attorney who had been waiting for a hearing into his chambers. Respondent berated the attorney for being improperly dressed for court. The attorney in question was wearing a leather sports coat with matching pants and tie. While berating the attorney, Respondent poked the attorney in the chest with his finger.

The attorney advised Respondent that he had worn the coat in approximately 35 state and federal courts in Florida without incident and that he did not believe the coat was inappropriate

courtroom attire. However, the attorney apologized and informed Respondent that he would not wear the coat in Respondent's courtroom again.

Respondent rejected the attorney's explanation and apology as "not good enough" and required the attorney to wear the Respondent's coat back into the courtroom. Respondent's coat was several sizes too small for the attorney and he was greeted with laughter by courtroom spectators. The attorney described this incident as unnecessary and demeaning. (Complaint ¶¶ 61-67).

In Count XI, THE FLORIDA BAR alleges that Respondent was designated as Acting Circuit Court Judge for Citrus County due to the temporary absence of the circuit judge normally assigned to the county's criminal docket. In carrying out his duties, Respondent improperly conducted closed proceedings in a high profile murder case. (Complaint ¶¶ 69-75).

In Count XII, THE FLORIDA BAR alleges that Respondent, in open court, accused State Attorney Brad King and by implication, Chief Circuit Court Judge William T. Swigert, of ex parte communication which Respondent claimed resulted in the "improper" revocation of his appointment as Acting Circuit Court Judge. Respondent further accused Brad King of seeking Respondent's revocation because Brad King was displeased with Respondent's recent decisions in a circuit court case.

In Count XIII, THE FLORIDA BAR alleges that Respondent made disparaging and insulting remarks about Citrus County attorneys

while interviewed by a reporter from a local Citrus County newspaper. The Respondent ultimately issued a statement in the nature of an apology for his remarks, but later stated in pleadings before the Judicial Qualifications Commission that the only ethical mistake he made as a judge was to issue said apology.

These thirteen counts allege conduct almost identical to the conduct for which Respondent was removed from office as county court judge for Citrus County.[1] Although the allegations, if taken as true, reveal a serious lack of judicial temperament on the part of Respondent, nothing in the allegations indicate that Respondent is dishonest, venal, or guilty of moral turpitude.

In fact, the Florida Supreme Court in explaining Respondent's conduct noted that:

> As a county judge, Graham made what he perceived to be a valiant effort at ridding Citrus County of political favoritism and corruption that caused the demise of his predecessor. His zealous pursuit of a pure society apparently clouded his ability to impartially adjudicate the matters before him. His motives are acceptable, but his methods are not. . . . We recognize that Graham is not dishonest, venal, or guilty of moral turpitude. In Re Graham, 620 So. 2d 1273, 1275 (Fla. 1993).

The issue before this Court is whether such conduct can form the basis of a disciplinary proceeding against Respondent as an attorney, notwithstanding the proceedings already completed to remove him as a judge.

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[1] See Inquiry Concerning a Judge, No. 91-415, Florida Judicial Qualifications Commission, Findings of Fact, Conclusions of Law and Recommendation of Removal, Case No. 80,273, approved by the Florida Supreme Court in In Re Graham, 620 So. 2d 1273 (Fla. 1993).

The Florida Supreme Court first addressed the issue of whether an attorney may be disciplined for acts committed by him in his official capacity as a judge in The Florida Bar v. McCain, 330 So. 2d 712 (Fla. 1976). In holding that judicial acts may form the basis of attorney discipline, the Court cited to decisions from other jurisdictions which found almost unanimously that a judge who is no longer sitting may be disciplined as an attorney for judicial misconduct.

In particular, the Court quoted approvingly from Gordon v. Clinkscales, 215 Ga. 843, 114 S.E.2d 15, 19 (1960) which held that judicial misconduct could result in disbarment of a sitting judge. However, the Gordon court qualified its holding, explaining that:

> . . . [A] judge cannot be disbarred for any official act dictated by his understanding of the law, irrespective of how erroneous his judgment might be, In order to make his conduct in office a valid ground for disbarment, it must be clearly and specifically alleged and proved that such conduct resulted solely from dishonorable motive and was not thought by him to be his duty and within his authority. This being the rule, no honest judge could ever be disbarred for judicial acts no matter how erroneous they might be. We hold that want of knowledge, unsound judgment, or bias and prejudice on the part of a judge constitute no grounds for disbarring him. That there may never be any misconstruction of this ruling, we hold further that his official acts, even showing they are contrary to law and biased or prejudicial, constitute no evidence even circumstantial of corruption or dishonesty in a disbarment proceeding against him and therefore must not be allowed either in pleadings or evidence.

Although the Gordon Court dealt with the issue of whether a sitting judge could be disbarred, its ruling is applicable to disciplinary proceedings against a former judge. In both instances, the judge's

fitness to practice as an attorney is at issue. Although with a sitting judge, disbarment may incidentally result in removal of the judge from office, in Florida, removal is effected by proceedings with the Judicial Qualifications Commission. Incidental removal is not an issue in the instant case.

Notably, Oklahoma followed the Gordon rule in determining whether a former judge could be disciplined as an attorney for judicial misconduct. State Ex Rel. Oklahoma Bar Association v. Sullivan, 596 P.2d 864 (Okla. 1979). The Oklahoma court explained that if the judiciary is to maintain its independence, an attorney cannot be disciplined for acts committed in his official capacity as judge unless such acts involve moral turpitude of a fraudulent, criminal or dishonest nature. Id.

Like the Oklahoma court, many courts have acknowledged that an attorney may be disciplined for acts performed in his capacity as a former judge, with the qualification that the judicial misconduct must have involved moral turpitude in some form. See Frank D. Wagner, Annotation, Misconduct in Capacity as Judge as a Basis for Disciplinary Action Against Attorney, 57 A.L.R. 3d 1150, 1162-1163 (1974).

Of the Florida cases this court has found involving attorney disciplinary actions against former judges, all involve some form of moral turpitude as the basis of the disciplinary action. See The Florida Bar v. McCain, 361 So. 2d 700 (Fla. 1976), The Florida Bar v. Sepe, 380 So. 2d 1040 (Fla. 1980), The Florida Bar v. Gross,

610 So. 2d 442 (Fla. 1992).

Moreover, the Florida Supreme Court has recently held that where alleged misconduct has no bearing on an attorney's ability to practice law and does not involve dishonesty, moral turpitude, immorality, deceit, or breach of trust, the alleged misconduct is not subject to discipline. The Florida Bar v. Taylor, 20 Fla. L. Weekly S20 (Fla. Jan. 5, 1995).

Similarly, this Court finds that the first thirteen counts of THE FLORIDA BAR'S complaint against Respondent do not allege conduct subject to attorney discipline. The thirteen counts of the complaint describe a pattern of conduct demonstrating a severe lack of judicial temperament on the part of Respondent. They do not, however, suggest that Respondent is unfit to practice law, nor do they suggest that Respondent is dishonest, venal, or guilty of moral turpitude.

This Court directed the parties to submit written memoranda addressing whether THE FLORIDA BAR may seek disciplinary action against a former judicial officer whose alleged misconduct are acts committed while acting as a judge, and such acts do not involve the commission of a crime, dishonesty, moral turpitude, immorality, deceit, or breach of trust. Having read the memoranda and being otherwise fully informed in the premises, the Court finds that the first thirteen counts of THE FLORIDA BAR's complaint do not allege misconduct that may form the basis for disciplinary action. Thus the Court is without jurisdiction to entertain further proceedings

pursuant to these counts. The Court further finds that these counts cannot be amended by THE FLORIDA BAR to state justiciable issues in these proceedings. Accordingly,

IT IS ADJUDGED that Counts I through XIII of the complaint are dismissed with prejudice.

DONE AND ORDERED in Chambers at Gainesville, Alachua County Florida this 24 day of March, 1995.

CHESTER B. CHANCE, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished by U.S. Mail, this 24 day of March, A.D., 1995, upon the following:

Carlos Torres, Esquire
Francis R. Brown, Esquire
The Florida Bar
800 N. Orange Avenue, Suite 220
Orlando, FL 32801

John T. Berry, Esquire
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300

Gary G. Graham, Esquire
Post Office Box 519
Inverness, FL 34451

JUDICIAL ASSISTANT

In light of what the United States Supreme Court has done, *Bernie* obviously and blatantly violates this principle. *Bernie* says that the 1982 voters intended to diminish their rights in lock-step with the federal courts, even though these voters could not possibly have been warned of the true impact this would have in the world of the 1990s. Because I believe the voters have a right to know exactly how their rights will be diminished when they amend the Constitution, I now find it unreasonable to construe the 1982 amendment in a way that subjects these same voters to the hasty and unforeseeable erosion of rights being effected by the United States Supreme Court. All that is reasonable is to construe this amendment as the voters themselves must surely have seen it: To incorporate within article I, section 12 all search-and-seizure precedent of the United States Supreme Court up to the date of the election, but nothing else.

I respectfully dissent for the reasons expressed eloquently by Justice Shaw, in whose dissent I fully concur.

SHAW, J., concurs.

KEY NUMBER SYSTEM

In re Inquiry Concerning a Judge, re: Gary G. GRAHAM.

No. 80273.

Supreme Court of Florida.

June 24, 1993.

In judicial disciplinary proceeding, the Supreme Court held that using position as judge to make allegations of official misconduct and to improperly criticize fellow judges and elected officials, imposing improper sentences and improper use of contempt power, and acting in an undignified and discourteous manner, warrants removal from office of county judge.

So ordered.

McDonald, J., concurred in part and dissented in part with opinion.

1. Judges ⇐11(7)

To impose any degree of discipline upon a judge, evidence regarding charges against him or her must be clear and convincing.

2. Judges ⇐11(2)

Judges are not obligated to adhere to uniform mode of behavior and they are free to make decisions without fearing an investigation by the Judicial Qualifications Commission (JQC).

3. Judges ⇐11(2)

When diverting from common professional standards and judicial courtesies, judge's conduct should be rationally based.

4. Constitutional Law ⇐278.4(5)

Judge who was given approximately five and one-half months to prepare for disciplinary charges failed to establish his right to due process was violated because he was given insufficient time to prepare his defense. U.S.C.A. Const.Amend. 14.

5. Constitutional Law ⇐278.4(5)
Judges ⇐11(5.1)

Judge's right to due process was not violated in disciplinary proceeding by fact that Judicial Qualifications Commission (JQC) acted in dual capacity as fact finder and judge, considering that Supreme Court studies the record and independently assesses factual findings and recommendation of the JQC. U.S.C.A. Const.Amend. 14.

6. Judges ⇐11(4)

Using position of judge to make allegations of official misconduct and to improperly criticize fellow judges and elective officials, exceeding and abusing power of of-

tutional rights that will be as meaningful for Florida as for Alaska and every other American jurisdiction. A very good discussion of this point is made in *Heitman v. State*, 815 S.W.2d 681 (Tex.Crim.App.1991).

Digest

fice by imposing improper sentences and improper use of contempt power, acting in an undignified and discourteous manner, and closing or attempting to close public proceedings, warrants removal from office of county judge. West's F.S.A. Code of Jud.Conduct, Canons 1, 2, 3, subd. A(7).

Joseph J. Reiter, Chairman, Ford Thompson, Gen. Counsel, and Roy T. Rhodes, Sp. Gen. Counsel, FL Judicial Qualifications Com'n, Tallahassee, and Terrance A. Bostic and Alicia J. Schumacher, Bush, Ross Gardner, Warren & Rudy, P.A., Sp. Counsel to FL Judicial Qualifications Com'n, Tampa, for petitioner.

Gary G. Graham, pro se.

CORRECTED COPY

PER CURIAM.

We have for review the Judicial Qualifications Commission's (JQC) finding that Judge Gary Graham demonstrates a present unfitness to hold office and its recommendation that he be removed from office. We have jurisdiction pursuant to article V, section 12 of the Florida Constitution. We approve the JQC's findings and recommendations and remove Graham from the office of county judge.

Graham was elected as the county court judge for Citrus County in 1986 and has served in that position since taking office in 1987. On August 7, 1992, the JQC formally charged Graham with the following violations of canons 1, 2, and 3(A)(1) of the Code of Judicial Conduct:

1. Repeatedly using his position as judge of the Citrus County Court to make allegations of official misconduct and improper criticisms against fellow judges, elected officials and their assistants, and others, without reasonable factual basis or due regard for their personal and professional reputations.

2. Exceeding and abusing the power of his office by imposing improper sentences and improper use of contempt power.

3. Acting in an undignified and discourteous manner toward litigants, attorneys, and others appearing in his court.

4. Acting in a manner which impugned the public perception of the integrity and impartiality of the judiciary.

5. Closing and attempting to close public proceedings.

The JQC made numerous factual findings to support its conclusion that Graham's cumulative conduct is unbecoming a member of the judiciary and demonstrates a present unfitness to hold office. Although the JQC's report fully explains the nature of each particular incident involving Graham's misconduct, we mention only a few of the factual findings that typify his behavior and tend to erode the public's confidence in the judiciary.

Graham presided in a case in which the defendant was charged with being a passenger in a vehicle in possession of an open container of alcohol. Graham suspended his driver's license for six months. When the defendant questioned the fairness of the sentence, Graham increased the suspension to nine months and then asked if the defendant wanted the court to reconsider the sentence. When the defendant responded "yes sir," Graham increased the suspension to one year. We agree with the JQC that Graham's arbitrary increase in sentencing in this instance constituted an improper abuse of power.

Graham also served as the presiding judge in a case in which he sentenced the defendant to six months in jail for spray painting vulgar graffiti on public property. In open court, the mother of the defendant questioned the fairness of the sentence. Graham addressed the mother, stating, "You know what his problem is, his problem is you. It is not me. It is you. I can tell by the way you are defending him." Graham then engaged courtroom personnel and spectators in a highly inappropriate colloquy that would be embarrassing to any reasonable person, particularly the defendant's mother. He needlessly utilized vulgar and offensive language and, in doing so, demonstrated a severe lack of judicial temperament.

In another case in which Graham presided, the defendant was convicted of driving under the influence of alcohol. When Graham sentenced the defendant, he also took that opportunity to accuse the sheriff's office of improperly releasing the defendant on his own recognizance as an act of favoritism. Graham stated that a ten-day sentence would have been appropriate but for the defendant's "improper" release on his own recognizance. As punishment for the "improper release," Graham then sentenced the defendant to ninety days in the county jail. He refused to mitigate the defendant's sentence and told the defendant "That's what you got for trading favors to get out of the Citrus County jail." Although the defendant's sentence was within the legal range, Graham's comments clearly indicated that the length of the sentence was not based on the severity of the offense or on the defendant's criminal record, but on Graham's own allegations of political favoritism in the sheriff's office. His actions constituted an abuse of power and impugned the public's perception of the integrity and impartiality of the judiciary.

[1] To impose any degree of discipline upon a judge, the evidence regarding the charges against him or her must be clear and convincing. *In re LaMotte*, 341 So.2d 513 (Fla.1977). Although the findings of the JQC are of "persuasive force," *In re Kelly*, 238 So.2d 565, 571 (Fla.1970), *cert. denied*, 401 U.S. 962, 91 S.Ct. 970, 28 L.Ed.2d 246 (1971), this Court is charged with rendering the ultimate decision on whether the evidence proves that Graham's conduct is unbecoming a member of the judiciary. The object of these disciplinary proceedings "is not to inflict punishment, but to determine whether one who exercises judicial power is unfit to hold a judgeship." *Id.* at 569. Regrettably, in his appearance before the JQC, in his brief, and in his oral argument to this Court, Graham only obliquely addressed the critical issue of his present fitness to serve as a judge. Instead, he focuses his arguments on the conduct of other officials, attorneys, and citizens of Citrus County. Regardless of whether his criticisms of these individuals and institutions are well-founded, they are not relevant to our determination of his ability to administer justice fairly and professionally.

As a county judge, Graham made what he perceived to be a valiant effort at ridding Citrus County of the political favoritism and government corruption that caused the demise of his predecessor. His zealous pursuit of a pure society apparently clouded his ability to impartially adjudicate the matters before him. His motives are acceptable, but his methods are not. Unfortunately, Graham fails to recognize that the alleged misconduct of others does not justify his repeated departure from the guidelines established in the Code of Judicial Conduct. "A judge's power to make orders exists solely by virtue of his or her function as an adjudicator; it does not extend beyond the performance of judicial duties." *In re Eastmoore*, 504 So.2d 756, 757 (Fla.1987). To go beyond those duties, as Graham has done, amounts to an abuse of power that threatens the integrity of the judicial branch.

[2, 3] We recognize that Graham is not dishonest, venal, or guilty of moral turpitude. According to the constitution, though, "[m]alfides, scienter or moral turpitude on the part of justice or judge shall not be required for removal from office of a justice or judge whose conduct demonstrates a present unfitness to hold office." Art. V, § 12(f), Fla. Const. Judges are not obligated to adhere to a uniform mode of behavior and they are free to make decisions without fearing an investigation by the JQC. *In re a Judge*, 357 So.2d 172 (Fla.1978). "Every judicial officer is granted broad discretionary powers, and one of the great strengths of our system is the carefully guarded right to exercise independently those powers." *Id.* at 178. But when diverting from common professional standards and judicial courtesies, a judge's conduct should be rationally based. The direct evidence in this case reveals that Graham's conduct was, at times, neither professional nor rational, and there was a clear abuse of judicial power to the detriment of individuals.

[4] Graham argues that his right to due process was violated because he was given insufficient time to prepare his defense and because the JQC sat as both the prosecutor and the judge.[1] Procedural due process requires that a "judge be given notice of proceedings against him or her, that a judge be given an opportunity to be heard, and that the proceedings against a judge be essentially fair." *In re Shenberg*, 17 Fla.L.Weekly S217, S218, 1992 WL 63094 (Fla. April 2, 1992). Graham received notice of the investigation and was formally charged on August 7, 1992. The JQC hearing was held in January 1993, giving Graham approximately five and one-half months to prepare for the charges.

[5] We reject Graham's contention that his right to due process was violated by the JQC's dual performance as fact-finder and judge. As the reviewing court, we are obligated to study the record and independently assess the factual findings and recommendation of the JQC. We conclude that the fact finding process was conducted according to the procedural rules of the JQC; that the JQC granted Graham an opportunity to be heard; and that the proceedings were essentially fair and afforded Graham his right to due process.[2]

[6] Having approved the JQC's findings of fact, this Court is faced with the choice of publicly reprimanding Graham or removing him from the office of county judge. Art. V, § 12, Fla. Const. This Court will not lightly remove someone from judicial office. *In re Berkowitz*, 522 So.2d 843 (Fla.1988). A judge who refuses to recognize his own transgressions does not deserve the authority or command the respect necessary to judge the transgressions of others. We are troubled by the fact that Graham shows no remorse and we can only presume that if this Court reprimanded him, he would continue to violate the precepts of the Code of Judicial Conduct. *See In re Trettis*, 577 So.2d 1312 (Fla.1991) (when a judge continuously acts in a manner that undermines public confidence, removal may be required).

Graham has provided a number of letters from citizens who support his efforts as a county judge and we realize that he has been popularly elected and reelected to his position. However, "if a judge commits a grievous wrong which should erode confidence in the judiciary, but it does not appear that the public has lost confidence in the judiciary, the judge should nevertheless be removed." *LaMotte*, 341 So.2d at 518. Because judges are held to a very high standard of conduct, *In re Boyd*, 308 So.2d 13 (Fla.1975), they are frequently required to make some sacrifices that other individuals are not called to make. By accepting the privilege of serving as a judge and by taking the oath of office, Graham agreed to live and operate his courtroom by that high standard.

Standing alone, each individual charge against Graham might not warrant the extreme disciplinary measure of removal.

> Conduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents which indicate such conduct, or it may also be proved by evidence of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary.

Kelly, 238 So.2d at 566. Although some of the charges are more severe than others, Graham's cumulative conduct over a period of time and the totality of the circumstances compel us to consider extreme remedial action. "Pec[c]adillos of a judge should be ignored by the Commission unless they cumulatively reflect upon the

1. We find it ironic that Graham now complains about the disciplinary process and the role of the JQC. Graham instigated the JQC to initiate disciplinary proceedings against Judge Leonard Damron. *See In re Damron*, 487 So.2d 1 (Fla. 1986).

2. Our review of the transcripts and video tapes of the JQC hearing revealed that Graham repeatedly objected to motions, intentionally delayed the proceedings, and disregarded the instructions of the presiding chair. Although his performance during the JQC proceedings does not condemn him, it does reflect negatively upon his character. We are convinced that Graham would not have tolerated such behavior in his own courtroom.

present quality of his judicial service or render him an object of disrespect and derision in his role to the point of ineffectiveness." *State ex rel. Turner v. Earle*, 295 So.2d 609, 621 (Fla.1974) (Ervin, J., dissenting). A judgeship is a position of trust, not a fiefdom. Litigants and attorneys should not be made to feel that the disparity of power between themselves and the judge jeopardizes their right to justice. In removing Graham from office, we rely on *In re Crowell*, 379 So.2d 107 (Fla.1980). In *Crowell*, this Court removed the judge for abuse of contempt power and a pattern of hostile conduct that demonstrated a serious lack of judicial temperament.[3] Graham's conduct was similar in degree to Judge Crowell's and warrants the same discipline.

We approve the findings and recommendation of the JQC. Gary Graham is hereby removed from office without compensation effective upon the filing of this opinion, at which time a vacancy will exist on the Citrus County court.

It is so ordered.

BARKETT, C.J., and OVERTON, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.

McDONALD, J., concurs in part and dissents in part with an opinion.

McDONALD, Judge, concurring in part, dissenting in part.

I agree that there is competent evidence to support the findings of fact of the commission. I further agree that Judge Graham's actions as found support the conclusion that on occasions he failed to conduct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary as required by canon 1, Code of Judicial Conduct. He was not always courteous to people with whom he dealt in his official capacity as required by canon 3.

In assessing his fitness to hold office we should address the totality of his performance. None of his transgressions, standing alone, appear sufficient to make a determination that he is unfit. Collectively, he becomes suspect. Our evaluation, however, should not be limited to his ethical violations. Also thrown in the ratio must be the hours and the days where he properly functioned. We must also consider his intellect, his honesty, and other personal traits. Numerous tapes, both audio and video, indicate that for the most part and on most occasions he performed adequately as a judge.

One of Judge Graham's shortcomings is his view that his conduct was justifiable and for good cause without consideration of its effect on others. He explains his actions as that of one trying to clean up a decadent county court system. He fails to recognize that even though one's goal may be appropriate, the means employed to accomplish it must be within the canons of judicial ethics. I believe that some of his actions can be explained by judicial immaturity.

His conduct throughout the proceedings before the Judicial Qualifications Commission was deplorable. He feels that the entire proceedings against him were an extension of his political enemies and that the members of the commission became unworthy participants therein. He presented large amounts of irrelevant evidence, constantly challenged the chairman of the commission, made numerous unnecessary objections. It is unfortunate that he did not employ a skilled lawyer to advise and conduct the hearings for him, because the manner in which he participated in the proceedings could not have created a friendly feeling from members of the commission. *See In re a Judge*, 357 So.2d 172 (Fla.1978).

3. In *In re Crowell*, 379 So.2d 107 (Fla.1980), the judge who was the subject of the disciplinary proceedings partially attributed his misconduct to medical problems. Graham offers no similar justification or mitigating reasons that might explain his actions. Graham's case is distinguishable from *In re Lantz*, 402 So.2d 1144 (Fla. 1981), in which Judge Lantz was publicly reprimanded. Although Judge Lantz was charged with repeated acts of arrogance and displaying a lack of courtesy and dignity to litigants and lawyers, he confessed his misdeeds, apologized, and was rehabilitated.

We do not lightly remove a judge from office. Most removals have been the result of some act of dishonesty by the judge. No one claims, or even suggests, that Judge Graham is dishonest. The record supports his claim that he in fact is genuinely honest.

We reprimanded Judge Dick Lantz in *In re Lantz*, 402 So.2d 1144 (Fla.1981), for conduct that appeared to me more egregious than that of Judge Graham. Judge Lantz acknowledged his transgressions while Judge Graham has not. We reprimanded Judge Richard Kelly for conduct which was quite similar to that of Judge Graham. *In re Kelly*, 238 So.2d 565 (Fla. 1970), *cert. denied*, 401 U.S. 962, 91 S.Ct. 970, 28 L.Ed.2d 246 (1971). We removed Judge Joseph M. Crowell for gross abuse of a judge's contempt power. *In re Crowell*, 379 So.2d 107 (Fla.1979). Judge Crowell was also suffering from medical problems. Neither of these factors exist in Judge Graham's case.

I do not wish to minimize Judge Graham's transgressions, but I do not believe we can find that he is unfit to serve. Now that this Court has advised him of his errors, and with an appropriate reprimand delivered in open court by the Chief Justice, I believe he should be allowed to continue to serve for such time as he has been elected.

I would remind Judge Graham that judges are servants of the people in an unique way. We have huge power over the property and lives of many people. This power must be responsibly and reflectively utilized. All persons must be treated equally and impartially. A judge must not react in anger to any situation. At all times we must serve the public interest by promoting justice and avoid any impropriety or appearance thereof. Courtesy to all is an essential trait of a respected judge. We must not be swayed by partisan demands, public clamor, or considerations of personal popularity, nor apprehension of unjust criticism. A judge should be careful to assure that in every particular the judge's conduct should be above reproach. He should not use his office for political power or retribution against his detractors.

I believe these proceedings were necessary. I also believe that they are bound to have a therapeutic affect on the future conduct of Judge Graham and, hopefully, help steer other judges from like conduct.

Thus I would approve the factual findings of the commission and loudly and severely reprimand Judge Graham. I would not remove him from office.