IN THE
SUPREME COURT
OF FLORIDA

CASE NO. 87,482

INQUIRY CONCERNING A JUDGE NO. 95-412
RE: JUNE LARAN JOHNSON

RESPONDENT'S INITIAL BRIEF
IN RESPONSE TO ORDER TO SHOW CAUSE

On Review of
a Disciplinary Recommendation of Removal
by the Judicial Qualifications Commission

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STATEMENT OF THE CASE

Judge June LaRan Johnson, County Judge of the Seventeenth Judicial Circuit in and for Broward County, Florida, was charged by the Judicial Qualifications Commission with the following consolidated charges:

> In numerous DUI cases pending before you in 1994 and 1995, you directed court personnel to falsify . . . [court records] and those records were falsified pursuant to your instructions, [and] caused false dates to be entered . . . [thereby] allowing the persons found guilty of DUI to receive shortened revocation of their driver's licenses or no revocation at all . . . [and] resulted in your having less DUI trials.

JQC Findings of Fact, Conclusions of Law, and Recommendations [hereinafter "JQC Findings"], p. 3.

The Commission conducted a formal hearing pursuant to article V, section 12 of the Florida Constitution on June 26-28, 1996. Due to a criminal investigation of Judge Johnson's conduct pending in the Dade County State Attorney's Office (by executive appointment due to a conflict in Broward County) (TR-III-511-514, 517; TR-IV-685), she did not testify at the hearing, although she did present evidence, including character evidence.

The Commission issued its report and recommendation to this Court on August 28, 1996 (**Appendix**), which found Judge Johnson had committed fraud

by intentionally falsifying public records:

> 23. The record shows and the Commission finds by clear and convincing evidence that Judge Johnson circumvented the Department of Motor Vehicles, that she did so knowingly and intentionally and that her actions corrupted the official driving records of the State of Florida.

JQC Findings, pp. 12-13. The Commission rejected double jeopardy concerns as an explanation for her backdating:

> [T]he Commission concludes that Judge Johnson committed serious violations of the Judicial Canons. Judge Johnson counseled and directed third parties in the commission of a fraud on the Florida Department of Motor Vehicles and her actions were successful in defrauding the Department. The Commission also concludes that Judge Johnson acted knowingly and intentionally, and for personal reasons rather than over any concern for the legal issue of double jeopardy.

Id. at 15. Finding that Judge Johnson's conduct eroded public confidence in the judiciary, the Commission found her unfit to hold office:

> Accordingly, the Commission finds that Judge June LaRan Johnson, by conducting herself in the manner set out in the above Findings of Fact intentionally committed serious and grievous wrongs of a clearly unredeeming nature. She has rendered herself an object of disrespect and derision

> in her role as a judge to the point of ineffectiveness and has caused public confidence in the Judiciary to become eroded. Judge Johnson is guilty of violating Canons 1, 2(A), 3(B)(2) and 3(C)(2) of the Code of Judicial Conduct. The Commission finds by clear and convincing evidence that Judge Johnson's violations of these Canons demonstrates a present unfitness to hold judicial office any further in this state.

Id. at 15-16.[1]

The Commission recommended her removal from office. Id. In this appeal we accept the Commission's Findings of Fact, but contest the Commission's conclusions that Judge Johnson's wrongs were of an "unredeeming nature," were for "personal reasons," and render her presently unfit to hold judicial office. Most importantly, we urge the Court to impose a public reprimand to be administered in a personal appearance before the Court, rather than the removal recommended by the Commission.

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[1] The Canons are quoted at p. 13 of the JQC findings. In sum, they are: Canon 1 (upholding the integrity and independence of the judiciary); Canon 2(A) (avoiding impropriety and the appearance of impropriety in all judicial activities); Canon 3(B)(2) (be faithful to the law, maintain professional competence in the law, do not be swayed by partisan interests, public perception, or fear of criticism); Canon 3(C)(2) (demand that judicial staff adhere to same standards as judge, refrain from manifesting bias or prejudice in the performance of official duties). **Appendix p. 13.**

STATEMENT OF THE FACTS

On 42-57 occasions, as part of a guilty plea in DUI (driving under the influence) cases, Judge June LaRan Johnson backdated the adjudication date, thereby relieving the defendants, whose licenses had been administratively suspended, from all or part of their statutory post-conviction driver's license revocation. See TR-III-459-461; TR-II-239. The factual findings made by the Judicial Qualifications Commission against Judge Johnson are essentially undisputed. Judge Johnson accepts those findings, each of which is supported by the record. Only the characterization of Judge Johnson's motive and intent is disputed.[2] We set forth below some of the findings, and other relevant record facts which were not contained in the Commission's Findings of Fact, Conclusions of Law, and Recommendations.

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[2] Certain findings made by the Commission are not factual matters of record, but rather inferences drawn from the undisputed facts. We contest those negative inferences, specifically:

--JQC Findings, p. 7 ¶ 12 (Judge Johnson's statements "reflect[ed] a conscious awareness of the impropriety of her actions . . .");
--JQC Findings, p. 8 ¶ 13 (Judge Johnson's statements "reflect[ed] the increasing sense of urgency with which she was acting")

Also, as a matter of clarification, the JQC's reference to Judge Johnson's clerk sitting in the "hot seat" (JQC Findings, p. 5 ¶ 5) is explained at TR-II-267 and TR-III-583-584, where the "hot seat" is defined as the role played by any in-court clerk, without any connection to Judge Johnson, or her orders to backdate adjudications.

June LaRan Johnson was elected to the County Court bench in Broward County in 1982, and continues to serve as a County judge in the civil division. JQC Findings, p. 3 ¶ 1. She came from a modest background, worked hard to become a lawyer and judge, and according to her colleagues relates well to the people in County Court:

> [S]he had to work, she had to huff and puff to get where she is today. It wasn't given to her. And she had to come from humble beginnings and she had to really make an effort to get where she was today.
>
> She could as easily be sitting out there in one of our poorer neighborhoods in a house that didn't even have a screened door on it for a front door or she could be sitting where she is today. It's how she wanted to make it. She chose to make it this way.
>
> I mean, I don't want to give you a blow-by-blow, day-by-day how she grew up, but it was not easy.
>
> * * *
>
> I mean, she was not gifted. She was gifted mentally. She wasn't gifted with money or lavishness.

TR-IV-617-618 (Respondent's witness, Hon. John Miller).

> [June] Johnson came from a background that dictated the same sympathy for those people [in County Court without attorneys] as she

> showed towards her own family, her own friends. She was able to relate to that.

TR-V-866-867 (Respondent's witness Hon. Larry Seidlin). "She shows compassion and kindness to the people of Broward County." Id. at 851. JQC Special Counsel Lauri Waldman Ross agreed, acknowledging in her opening statement that "you will not hear anybody in this courtroom come in and say that Judge Johnson is a bad person." TR-I-16. But it was not Judge Johnson's character or demeanor which led to these proceedings.[3] It was a series of identical on-the-record judicial acts carried out over an 18-month period in 42-57 DUI cases.

Some legal background is necessary to put those acts in context. Under Florida law, a person arrested for driving under the influence and who fails or refuses a breath test for blood alcohol loses his or her license through an administrative suspension. Subsequently, at conviction, the license must be revoked for at least 6 months. TR-I-68, 138-139. Section 322.28(2)(a), Fla. Stat., provides in pertinent part:

> (a) Upon conviction of the driver, the court, along with imposing sentence, shall revoke the driver's license or driving privilege of the person so convicted and shall prescribe the period of such revocation

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[3] The JQC had also charged Judge Johnson with using crude language in the courtroom, but that charge was dismissed. JQC Findings p. 1; TR-III-555-56, 565.

in accordance with the following provisions:

> 1. Upon a first conviction for a violation of the provisions of s. 316.193, except a violation resulting in death, the driver's license or driving privilege shall be revoked for not less than 180 days or more than 1 year.[4]

Department of Motor Vehicles Assistant General Counsel Jill Tavlin Swartz testified that Judge Johnson's practice of backdating adjudications was "contrary to law." TR-III-444-445.

This dual system of suspension followed by revocation was enacted in 1990 (TR-III-478), and spawned considerable double jeopardy litigation in Broward County (id. at 450), with defense lawyers arguing that the sequential imposition of license suspension then revocation was unconstitutional under the double jeopardy clause. TR-IV-700-01, 755. Broward County Judge Ron Rothschild said "there were just a plethora of double jeopardy issues floating around this courthouse for about two years. . . ." TR-V-875. DUI defense attorney Michael Catalano explained:

> So lawyers all over the country were arguing that the administrative suspension was a trial

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[4] Subsection 2(a) of § 322.28, Fla. Stat., was amended during the pendency of these proceedings, to make the criminal revocation explicitly "effective on the date of conviction." 1996 Fla. Sess. Law Serv. Ch. 96-330 § 8 (West). See TR-III-466-467.

> and that when you came to court, you had already been placed in jeopardy once so why should you have to go through this twice.

TR-IV-649.[5]

Judge Johnson fashioned a plea offer for some DUI defendants in her court which both avoided double jeopardy concerns and encouraged guilty pleas. TR-V-840. As part of a guilty plea in some cases, she directed her clerk to enter a date of adjudication on the disposition sheet which was earlier than the actual date of the plea. TR-II-272; JQC Findings, p. 5 ¶ 6, p. 6 ¶ 9. Judge Johnson did this in open court; she never told her clerk or the parties to hide the backdating (TR-II-327, 353), and prosecutors, clerks, and defense lawyers all knew of the practice. TR-I-128-129. The transcripts of such pleas, obtained and reviewed by an Assistant State Attorney supervisor, reflected that the backdating was almost always on the taped record. TR-II-245; see also Testimony of Attorney Craig

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[5] The double jeopardy arguments were being made to preserve the issue in the event the Supreme Court should find double jeopardy was violated. Although the Fourth District Court of Appeal had found that Florida's dual system was not unconstitutional, State v. Murray, 644 So. 2d 533 (Fla. 4th DCA 1994) (TR-IV-650), defense lawyers relied upon a double jeopardy finding by Broward County Judge Ron Rothschild in State v. Reilly (Judge's Exhibit 1; see TR-V-873), and on federal and out-of-state authorities (Department of Revenue of Mont. v. Kurth Ranch, 511 U.S. ___, 114 S.Ct. 1937, 128 L.Ed.2d 767 (1994)), and on the fact that the Supreme Court had not resolved a conflict among jurisdictions. It did so just days before this JQC hearing, in United States v. Ursery, 116 S.Ct. 2135 (1996), which effectively put to rest the double jeopardy argument.

Satchell:

> Q. Did you have a history of cases with Judge Johnson where matters would be routinely done off the record so nobody would know what happened in the case?
>
> A. No, she did things on the record.

TR-V-818. Even on the "couple of times" the tape recorder was turned off (TR-II-282), the backdating was done openly in the presence of prosecutors, clerks, and defense lawyers.

Judge Johnson did not use the term *nunc pro tunc* when backdating adjudications, because the Department of Motor Vehicles would not give the intended retroactive effect to *nunc pro tunc* orders. TR-II-278-79, 285, 291, 295-96; TR-IV-443, 455. She did, however, adjudicate defendants as of a prior date, saying:

> "The Court: It's the only way to get around the Department of Motor Vehicles and it's a wonderful tool to use on occasion. I don't do it all the time. I'm doing it -- I'm doing it for you so that you cannot have too much down time in terms of your work."

TR-II-293 (quoting recorded transcript of DUI plea hearing in Judge Johnson's court).[6]

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[6] The JQC found that Judge Johnson thus exhibited a "conscious awareness of the impropriety of her actions, as well as her intention to mislead

When the practice was questioned by a probation officer who noted that certain defendants had very little time to complete their conditions of probation [due to the backdating] (TR-II-382), the Director of Probation brought it to the attention of the Court Administrator and two administrative judges. TR-III-483; JQC Findings, p. 10 ¶ 16-17. Subsequently, the Director of Probation was contacted by the State Attorney's office, and asked to research whether there were other cases in which Judge Johnson had backdated the disposition dates. Id. at 484. The Director found 54 such cases. Id. at 485.

* * *

As the result of an anonymous telephone call to the State Attorney's office in September 1995 (TR-I-32-33), Assistant State Attorney Howard Scheinberg, supervisor of the County Court division of the State Attorney's office (TR-I-48-49), was instructed by State Attorney Michael Satz to investigate older DUI cases pending in Judge Johnson's division. He reviewed 800-850 open cases in Judge Johnson's division, and identified nine very old cases. TR-II-225-227. Scheinberg reported to Satz that Judge Johnson had repeatedly re-set arraignments in a number of cases. (JQC Exhibit 3).

The monthly case count of pending open cases is based upon those

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the Department of Motor Vehicles." JQC Findings, p. 7 ¶ 12.

cases which have proceeded past the point of arraignment. TR-III-500. Thus, Scheinberg concluded that because it is the arraignment which triggers a case for case count purposes, Judge Johnson re-set arraignments in order to keep her "cases pending" statistics artificially low:

> [A] not guilty plea being entered in a case on the judges' docket are cases set for trial and pending. If you keep resetting that arraignment constantly and the case is never put in a "set for trial" status, then it's never going to come up on your statistics as part of your case load.
>
> So that's -- it was my belief that was what the purpose was for keeping the cases and not just these cases but keeping the majority of the cases in the division on a not trial set status.

TR-II-246; see also JQC Findings, p. 4 ¶ 3, quoting Scheinberg's report as stating that Judge Johnson's practice "appeared to be geared towards minimizing her reported cases for statistical purposes." He observed that when Judge Johnson left the criminal division, the case count went from 112 to 371, and opined that "the case load immediately went up because the cases were actually set for trial." TR-1-87-89; see also TR-III-503-504.[7]

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[7] Chief Judge Ross transferred Judge Johnson into a civil division in December, 1995 because there were "potential criminal charges looming" over the backdating practice, and he thought it inappropriate for her to sit in a criminal division. TR-III-528, 538. At the time of the JQC hearing in June,

Chief Judge Dale Ross thought that re-setting arraignments was a bad practice (TR-III-506) and discussed it with Judge Johnson and asked her to stop:

> A. [JUDGE ROSS:] Well, I indicated to her it was brought to my attention and I asked her what her explanation was for the same. We had a brief conversation. Judge Johnson provided an explanation.
>
> Candidly I don't have a very clear or lengthy recollection of that explanation because it was a short conversation and Judge Johnson was very cooperative and she indicated she would stop the practice.
>
> * * *
>
> Q. Can you remember anything about that discussion?
>
> A. It was a case management in that getting the case involved in the system sooner and that way control -- my recollection is very, very vague, ma'am, because Judge Johnson was very, very cooperative and didn't give me any degree of difficulty whatsoever.

TR-III-505-506; JQC Findings, p. 4 ¶ 4. Although Chief Judge Ross "didn't particularly agree" with Judge Johnson's practice, he recalled her explanation "did have a sense of logic to it." TR-III-524. On cross-examination he confirmed Judge Johnson's willingness to comply with his directive:

Judge Ross had not received any complaints about Judge Johnson. Id. at 529.

Q. Did she just simply take your advice?

A. She said, Dale, I will do anything you want me to do.

TR-III-527.[8]

A few months later, after the probation office had alerted court officials to the backdating practice, Scheinberg was again assigned by the State Attorney, to investigate all of the closed cases in Judge Johnson's division for the past 18 months, to determine whether backdating had occurred and in particular what the Assistant State Attorneys' role had been. TR-I-63, 116. He found that in 50-57 cases, most of which were open pleas, the records reflected a backdating of the date of conviction, almost always without objection by the State. TR-I-67, 113, 117.[9] Transcripts were prepared from 42 of those cases (TR-I-164) and the practice of backdating, and its consequence of reducing or eliminating those defendants' term of drivers license revocation was established before the JQC. See JQC Findings, pp. 11-12 ¶ 20. The JQC noted that "no mention of double jeopardy as a basis for any of the pleas" appeared in the transcripts of record. Id. at ¶ 21.

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[8] Although the State Attorney had asked Chief Judge Ross to discuss the re-setting of arraignments with Judge Johnson, he did not ask him to discuss the practice of backdating dispositions. TR-III-519.

[9] An "open" plea permits the Court to impose any sentence, as opposed to a "negotiated plea" in which the State and the Defendant agree to the sentence in advance of the plea. TR-I-65-66.

The JQC also found that the backdating practice served Judge Johnson's (unspecified) "personal reasons," (JQC Findings, p. 15), although it was Judge Ross' testimony that "the changing of the dates wouldn't have anything to do with the case count, but the resetting of arraignments would, yes." TR-III-540.

* * *

Despite her clear error in legal judgment, Judge Johnson received strong support at the hearing from Chief Judge Dale Ross, as well as from her colleagues Circuit Judges John Miller and Larry Seidlin. See p. 5, *supra*; JQC Findings, p. 12 ¶ 22. Chief Judge Dale Ross said:

> A. Judge Johnson is probably one of the nicest people I've ever known in my entire life. She's a very, very caring person, very, very compassionate person, and she generally tries and likes to help people.
>
> Q. [BY MR. KAY:] Would it [the backdating] change your opinion as to her honesty and integrity?
>
> A. No, I believe Judge Johnson's motive is a *pure motive*. I think she was doing what she was doing because she -- *for a pure motive*. It's my opinion that she wasn't doing it for illegal purposes or otherwise.

TR-III-546-547 (emphasis supplied). Although he was not familiar with the details of the backdating cases (TR-III-540) Judge Ross told the JQC that Judge Johnson's

reputation in the judicial community for honesty and integrity was "high," and that "lawyers in particular have a great deal of respect for Judge Johnson." (TR-III-537).

He differentiated legal error from intentional corrupt misconduct:

> Q. And there is a difference, is there not, Judge, between backdating something for what you believe is a legal reason and backdating it quietly and secretly for a reason you know is illegal?
>
> A. Well, if you're asking me a legal opinion, I certainly think that would be reflective on intent, motive, malice, things like that. Sure.

TR-III-545-546.

With that background, we turn to the legal issues.

STATEMENT OF THE ISSUE

I.

IS A PERSONAL APPEARANCE PUBLIC REPRIMAND -- NOT REMOVAL -- THE PROPER SANCTION TO BE IMPOSED UPON A JUDGE WHO BACKDATED DUI ADJUDICATION DATES, RESULTING IN THE DEPARTMENT OF MOTOR VEHICLES BEING MISLED WITH REGARD TO LICENSE REVOCATIONS?

SUMMARY OF THE ARGUMENT

Judge June LaRan Johnson should not be removed from the bench. Her conduct, backdating adjudications of DUI defendants who pled guilty, thus shortening or eliminating their statutory drivers license revocation, was an abuse of judicial discretion which exceeded the wide discretion given a judge in the context of plea negotiations and sentencing. However, it was done openly, on-the-record, and generally without objection from the State, which never appealed any order to backdate a conviction date. Judge Johnson's single error in legal judgment, though repeated 42-57 times, represents but one mark on an otherwise unblemished 14-year judicial career. It is not the sort of conduct which requires this Court to impose the drastic sanction of removal, and is more appropriately addressed through a public reprimand administered by the Chief Justice.

Judge Johnson's acts were not prompted by corrupt motive. She did not abuse citizens or colleagues, or deny litigants constitutional rights, or engage in *ex parte* communications or use her office for personal gain. The backdating enabled defendants to limit their loss of driving privileges. It was wrong, but as her Chief Judge said: "Judge Johnson's motive is a pure motive . . . . It's my opinion that she wasn't doing it for illegal purposes or otherwise." TR-III-547.

A public reprimand with a personal appearance will stress for Judge

Johnson, the public, and the judiciary, the responsibilities of a judge. Judge Johnson's otherwise unmarred record, and the record of the JQC proceedings, do not show her to be presently unfit to be a judge. Her wrongs are not beyond redemption. Her good character and long years of public service are relevant considerations supporting her present fitness for the bench.

The Court should exercise its constitutional prerogative and reject the recommendation of removal in favor of a personal appearance public reprimand.

ARGUMENT

JUDGE JUNE LARAN JOHNSON SHOULD RECEIVE A PUBLIC REPRIMAND REQUIRING A PERSONAL APPEARANCE BEFORE THE COURT. THE JUDICIAL QUALIFICATIONS COMMISSION RECOMMENDATION THAT SHE BE REMOVED FROM OFFICE SHOULD BE REJECTED.

A. THE REMOVAL CASES

> This Court will not lightly remove a judge from office. *E.g.*, In re Boyd, 308 So. 2d 13 (Fla. 1975); In re Dekle, 308 So. 2d 5 (Fla. 1975); In re Kelly, 238 So. 2d 565 (Fla. 1970). Here however the JQC's findings illustrate a serious character flaw. On the totality of the circumstances it appears that Berkowitz is basically dishonest. His conduct, both while a judge, and while a practicing attorney, demonstrates a propensity to skate close to the edge.

In re Berkowitz, 522 So. 2d 843, 844 (Fla. 1988). Berkowitz lied to the Judicial Qualifications Commission, misused trust accounts, failed to produce or disclose ~~or~~ trust account records, practiced law while a judge, and failed to file accurate tax returns. Id. at 843. The Court concurred with the JQC recommendation and removed Judge Berkowitz from office.

Judge Gary Graham was removed from office upon the JQC's recommendation because of his "cumulative conduct over a period of time and the totality of the circumstances" of the charges against him. In re Graham, 620 So.

2d 1273, 1276 (Fla. 1993). Graham had:

> 1. Repeatedly use[d] his position as judge . . . 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 ~~regulations~~ reputations.
>
> 2. Exceed[ed] and abus[ed] the power of his office by imposing improper sentences and improper use of contempt power.
>
> 3. Act[ed] in an undignified and discourteous manner toward litigants, attorneys, and others appearing in his court.
>
> 4. Act[ed] in a manner which impugned the public perception of the integrity and impartiality of the judiciary.
>
> 5. Clos[ed] and attempt[ed] to close public proceedings.

Id. at 1274. Graham's "repeated departure from the Guidelines established in the Code of Judicial Conduct," and his refusal to confront the question of his fitness, led to his removal:

> [T]his 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 office." [In re Kelly, 238 So. 2d] at 569.

Id. at 1275. Graham (at 1276) cited In re Crowell, 379 So. 2d 107 (Fla. 1980), in which "abuse of contempt power and a pattern of hostile conduct" justified removal. The JQC described Crowell as having "a propensity to summarily adjudicate and incarcerate a citizen . . . without according to the accused a right to be heard or any opportunity to defend himself." Crowell, 379 So. 2d at 108.

Judge Mary Jean McAllister's JQC-recommended removal was approved:

> We conclude that the fmdings of sexual harassment of a judicial assistant, a willingness to engage in ex parte communications and the intentional abuse directed toward the public defender's office when viewed together, warrant removal.

In re McAllister, 646 So. 2d 173, 178 (Fla. 1994).

A single incident -- theft -- resulted in adoption of the JQC removal recommendation for District Court of Appeal Judge Eugene Garrett. The JQC found: "Judge Garrett admitted that he recognized what the VCR Plus device was and did, and that he wanted it, that he intended to steal it, and that he did so purposefully . . . .[H]is admitted conduct shows a conscious deliberate and premeditated theft." In re Garrett, 613 So. 2d 463 (Fla. 1993). The Court

concluded that Garrett "knowingly committed a crime of moral turpitude," likening his case to "In re LaMotte, in which we approved the removal of a judge, who had an otherwise distinguished career, because he had intentionally used a state credit card for personal expenses." Id. at 465.

Judge LaMotte had charged personal air travel for himself and his son "in a regular pattern for summer vacations over a seven year period." In re LaMotte, 34 1 So. 2d 5 13, 5 19 (Fla. 1977) (England, J., concurring), Justice Boyd posed the issue: "The critical question in this case is whether Judge Stewart F. LaMotte, Jr. intended to defraud the State of Florida by use of his air travel card. . ." Id. at 5 19 (Boyd, J., concurring specially). The Court held he did, and removed him:

> The evidence is clear and convincing that the judge intentionally committed serious and grievous wrongs of a clearly unredeeming nature.

Id., 341 So. 2d at 518.[10]

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[10] Justice Boyd, who concurred in the finding, not the punishment, had been reprimanded, not removed, two years before LaMotte. In Boyd, the Court held that judges "should not be subjected to the extreme discipline of removal except in instances where it is free from doubt that they intentionally committed serious and grievous wrongs of a clearly unredeeming nature." In re Bovd, 308 So. 2d 13, 20 (Fla. 1975). Finding Justice Boyd to be without "corrupt motive" the Court publicly reprimanded him for his "bizarre" actions in the "Mason memo" matter. 308 So. 2d at 19, 21. See also In re Dekle, 308 So. 2d 5 (Fla. 1975): (continued. . .)

In In re Damron, 487 So. 2d 1 (Fla. 1985), the Court agreed with the JQC that Judge Damron was unfit for office and concluded "that removal is the only sanction that will adequately protect the public and ensure the integrity of the judicial process." Id. at 7. The Court wrote:

> We find the record contains substantial evidence supporting the Commission's factual findings that Judge Damron abused the authority of his office for personal political gain; improperly used the authority of his office to discourage defendants from exercising constitutional rights; considered ex parte communications in making a specific judicial decision; granted an ex parte request to set aside a DUI conviction without notice to the state; and misused his judicial authority in threatening litigants who complained about his conduct. In addition to these specific matters, the record also supports the Commission's findings that

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(footnote 10, continued. . .)

> We do agree that he was lax, obtuse and insensitive in either not recognizing the memo was improper when Mason gave it to him or was not intuitive or anticipatory enough then or later on to have had the memo checked out to determine if it was proper for him to use it. Despite his protestations, the very nature of the affair smacks of the appearance of evil damaging to the State's judiciary at its top echelon.

Id. at 11. Nevertheless, the Court rejected the JQC recommendation of removal and imposed a reprimand because Justice Dekle, too, was without "corrupt motive." Id. at 12.

> respondent routinely discouraged litigants from seeking legal representation and engaged in ex parte communications with parties, attorneys, and citizens concerning matters before his court for resolution. Equally important to the issue of removal is the Commission's finding that the judge's testimony was "inconsistent, inaccurate, and, in many instances, inherently improbable and knowingly false," and that "respondent's demeanor in response to many inquiries was not only unconvincing but evasive; and he could not or would not explain or justify many of his actions.

Id. at 7.[11]

Judge Richard E. Leon's removal was recommended by the JQC and approved by the Court because he had *ex parte* conversations with another judge to secure a reduced sentence for a business associate's son, lied about the conversation and lied to the Commission. The Court found Leon to be "unfit to hold the office to which he was entrusted." In re Leon, 440 So. 2d 1267, 1270 (Fla. 1983).

Against that survey of JQC removal recommendations approved by this Court, we turn to cases in which the recommendations of removal were rejected.

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[11] Damron was decided long before In re Davey, 645 So. 2d 398, 406 (Fla. 1994), which limited "lack of candor as a basis for the reprimand or removal of a judge" unless certain procedural guidelines are utilized by the JQC. See McAllister, *supra 646 So.* 2d at 177 n. 2.

B. *DAVEY* AND *MILLER:* REJECTING REMOVAL AND IMPOSING REPRIMAND *WITHOUT* APPEARANCE

The JQC concluded that Judge Edward Miller was unfit for office primarily because Miller "denied [a] mother her procedural due process rights in a case in which he did not even have jurisdiction. Because of Miller's actions the mother did not get her daughter back for one year." In re Miller, 644 So. 2d 75, 77 (Fla. 1994). The JQC described the matter this way:

> "She was forced to a hearing in a near hysterical state and denied the opportunity to obtain a lawyer. She was likewise given no notice or opportunity to be heard on the amended order. "

Id. at 77. Miller also wrote letters to the local paper criticizing the criminal justice system and the sentencing guidelines. The Court concluded Miller's conduct was serious, but did not justify removal, making the published opinion the reprimand. Id. at 78-79.

Judge P. Kevin Davey was recommended for removal because the Commission found that some years earlier he had "intended to convert to himself the entire fee" in two cases after his law firm partnership had dissolved. In re Davey, 645 So. 2d 398, 401 (Fla. 1994). The JQC also found that "Judge Davey has compounded his original misconduct by appearing before the Commission and attempting to explain his conduct through testimony that the Commission finds to

be false in material respects." Id. at 402. The Court approved the Commission's finding with regard to one fee, found the evidence insufficient as to the other, and required that "lack of candor" be formally charged and proven, not be an outgrowth of other charges. Id. at 406-407. The Court noted Davey's present fitness and the remoteness of the misconduct and concluded that a public reprimand was "appropriate discipline under the facts of this case." Id. at 410. No appearance was necessary.

C. THE PUBLIC REPRIMAND *WITH* APPEARANCE CASES

Judge Wallace E. Sturgis was "directed to appear personally before this Court, at his personal expense . . . for an additional oral and public reprimand." In re Sturgis, 529 So. 2d 281 (Fla. 1988). Judge Sturgis had been found guilty by the JQC of fourteen counts encompassing seven different kinds of transgressions: (1) displays of a handgun; (2) ex parte communications; (3) practicing law for thirteen years while a judge; (4) engaging in fiduciary appointments while a judge; (5) failing to carry out those duties, duties he was not even entitled to undertake as a judge; (6) maintaining a trust account despite being a judge; (7) preventing inspection of public records by keeping the court files of his guardianships in his office. The JQC did not recommend Judge Sturgis' removal ". . . in part because

he has demonstrably derived little profit (over a nineteen year period) from his actions and the Commission finds that 'filthy lucre' was never his motive." Judge Sturgis' 15 years of "illustrious service to the public" was another reason for reprimand, not removal. Id. at 285.

A personal appearance reprimand was imposed on Judge Jack Block who, shortly before assuming the bench, shared legal fees with a suspended lawyer and with a non-lawyer, and who violated criminal gambling statutes. In addition, the Commission found Block's "testimony to be 'incredible"' and that he "'knows very little about the Code of Professional Responsibility."' In re Block, 496 So. 2d 133, 134-135 (Fla. 1986).

The Court rejected the JQC's recommendation of a personal appearance reprimand of Judge William Norris whose numerous "irrational or questionable acts . . . including driving while intoxicated[,] . . . discharging a firearm, and attempt[ing] to commit suicide" were the product of untreated disease and serious personal problems. In re Norris, 581 So. 2d 578 (Fla. 1991). Finding that Judge Norris had "substantially rehabilitated himself' the Court wrote:

> We do not agree, however, that Judge Norris should be called into this Court to receive his reprimand. Our review of our own precedent shows that such a measure truly is extraordinary and has been done only when the judge's conduct reflects either a

> wilful disregard of the law or serious, cumulative misconduct on the bench.

Id. at 579.

By this Brief, Judge Johnson acknowledges that the backdating of adjudications was improper. However, she respectfully submits that removal is neither necessary, nor appropriate, on the facts of this case.

D. JUDGE JUNE JOHNSON SHOULD RECEIVE AN ORAL AND PUBLIC REPRIMAND BY PERSONALLY APPEARING BEFORE THE COURT

The Court has explained that an in-Court reprimand serves the purpose of "hold[ing] the judge up to public criticism, thereby reinforcing the urgent need to correct the misconduct." In re Norris, 581 So. 2d at 580. Justice McDonald wrote in In re Graham:

> 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 believe these proceedings were necessary. I also believe that they are bound to have a

> therapeutic affect [sic] on the future conduct of Judge Graham and, hopefully, 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.

Graham, 620 So. 2d at 1278 (McDonald, J., concurring in part, dissenting in part).

Judge Johnson's acts in backdating DUI adjudication dates may merit the "extraordinary" sanction of an in-Court reprimand. Her conduct does not merit removal. She did not act:

- for "filthy lucre"
- to abuse citizens
- to abuse colleagues
- to abuse the contempt power
- to deprive litigants of constitutional rights
- to engage in ex-parte communications
- to commit theft or larceny
- to practice law while being a judge
- to brandish weapons
- to continually and cumulatively engage in varieties of different

transgressions

Judge Johnson's actions were a single error in judgment, repeated in each of the 42 to 57 cases in which she utilized the backdating process. The Commission characterizes Judge Johnson actions as being "for personal reasons" and calls them "serious and grievous wrongs of a clearly unredeeming nature." JQC Findings, pp. 15-16. Although not clearly articulated by the JQC, the "personal reason" was apparently its belief that Judge Johnson desired to reduce her case load: "While Judge Johnson was serving in criminal misdemeanors, she consistently maintained one of the lowest case loads in the division. Within two weeks of her transfer, the amount in this division increased by 259 cases." Id. at 11, ¶ 19. A more benign explanation of a low case load is work:

> Judge Johnson, like Judge Goldstein, Judge Zeidwig and other judges, works long hours . . . .
>
> * * *
>
> She's been in this building as late as 10:00 o'clock, 11:00 o'clock . , . .

TR-IV-805 (Testimony of Karl Tozzi, Broward Sheriffs Office Courthouse Supervisor). Chief Judge Dale Ross attested to Judge Johnson putting in "a day's work," and calling her reputation for honesty and integrity "high." TR-111-537. Given the thousands of cases which came before County Court Judge Johnson, the

backdating of 42 to 57 adjudication dates as part of DUI plea agreements is not a personal reason which even suggests corruptness, personal dishonesty or wrongs "of a clearly unredeeming nature." Compare, LaMotte, 341 So. 2d at 5 18.

"Redeeming" means: "to deliver from sin and its penalties . . . to make amends or atone for . . . to restore (oneself) to favor by making amends." Webster's New World Dictionary, 2d College Edition (1980). To call Judge Johnson's conduct "unredeeming" and to say that she is unfit for judicial office confuses a misguided abuse of judicial discretion with malevolent misuse of judicial power. She is in the former category, not the latter, and the sanction should be so tailored. She did not abuse litigants. She did not deprive people of their constitutional rights. She did not steal, or seek personal gain by acting with corrupt motive. Judge Johnson has been a sitting judge for 14 years. Her record is unblemished, except for this incident. She continues to sit and decide cases today in the civil division of the Broward County Court, with the complete support of the Chief Judge of the Seventeenth Judicial Circuit.

Judge Johnson did order that false dates be put on DUI adjudications. That erroneous decision, made once and then repeated, could have been cured by a single appeal by the State Attorney's office. None was ever taken. The remedy for wrong judicial acts is appellate review. Such acts may constitute judicial

misconduct, but unless the Court is clearly and convincingly persuaded that the judge is unfit for judicial office, removal is not the appropriate remedy.

The JQC's removal recommendation in this case was too severe. Misleading the Department of Motor Vehicles, even if well-intentioned, as an effort to minimize "too much downtime in terms of [defendants'] work" (TR-II-293), or to avoid double jeopardy concerns, was not proper. But neither is removal.

E. THE PUBLIC REPRIMAND CASES

Other judges have received reprimands by published opinion for a variety of misconduct. A brief review of those cases supports the personal appearance reprimand sought here.

Judge Jonathan Colby, in several cases where defendants failed to appear, announced the issuance of bench warrants, but "made . . . entries in the files that reflected Judge Colby found the missing defendant guilty and sentenced him to time served." In re Colby, 629 So. 2d 120 (Fla. 1993). Judge Colby, in "select cases of Driving Under the Influence where a defendant failed to appear, . . . closed the cases with a conviction of the defendant and estreature of the bond posted, thereby convicting the defendant of Driving Under the Influence without a plea or trial." Id. Judge Colby's falsification of records and deprivations of

defendants' constitutional rights resulted in a public reprimand "by publication of this opinion." *629* So. 2d at 121 .[12]

Judge Raphael Steinhardt's crude and threatening speech and conduct toward a Miami Beach police officer who ticketed his Corvette, and his intimidation of a lawyer and police major resulted in a published reprimand. In re Steinhardt, 663 So. 2d 616 (Fla. 1995). Chief Judge Richard Fowler's guilty plea "to furnishing false information about an accident to a police officer" resulted in the same sanction. In re Fowler, 602 So. 2d 5 10 (Fla. 1992). The same sanction was imposed on a judge who signed an order securing his own son's release on recognizance, and who, as a lawyer, committed at least 26 trust account violations. In re Capua, 561 So. 2d 574 (Fla. 1990).

Judge Evelyn D. Golden's litany of "crude, profane and inappropriate language," her racism, her constant tardiness, surliness and incivility ("'it's not my problem that she's dying, that's her problem"') merited a public reprimand. In re

---

[12] Jonathan Colby was a witness at Judge Johnson's JQC hearing. TR-IV-726-743. At the time of his testimony he had gone into private practice. Id. at 728. Subsequent to his reprimand Colby ran for re-election in a contested election, was endorsed by the Miami Herald, and won with 70% of the vote. Id. Colby said of his reprimand experience:

I learned from it and didn 't do it again.

Id. (emphasis supplied).

Golden, 645 So. 2d 970 (Fla. 1994). Judge Gayle Graziano's arrest of a physician, and her repeated failing "to be patient, dignified and courteous to litigants, lawyers and others with whom she dealt in an official capacity" resulted in a public reprimand. In re Graziano, 66 1 So. 2d 8 19 (Fla. 1995). And Judge Allison DeFoor received a public reprimand after he:

> actively participated in political activity inappropriate to his judicial office, utilized his judicial office for the private and pecuniary interests of himself and others, and established an improper procedure by which certain traffic violations could avoid both a court appearance and an adjudication of guilt by paying to the clerk of the court double the statutory fine.

In re DeFoor, 494 So. 2d 1121 (Fla. 1986). Judge DeFoor's traffic procedure "unquestionably violated rule 6.340 of the Florida Rules of Practice and Procedure for Traffic Courts." Id. at 1122.

Judge Johnson's backdating unquestionably violated her duty to insure the accuracy of the court records, But Judge Johnson did not use her office for pecuniary gain, did not mistreat defendants, lawyers or judges, and has never exhibited any conduct suggesting that she is unfit to hold office. Her transgression deserves some punishment. But not removal.

CONCLUSION

This Court has the constitutional prerogative to approve or reduce the disciplinary recommendations of the JQC. Article V, § 12(f), Fla. Const. We respectfully request that the Court exercise its prerogative and reject the recommended sanction of removal, in favor of an in-person public reprimand administered by the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to (1) FRANK N. KANEY, Chairman, Florida Judicial Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, FL 323994000, and (2) LAURI WALDMAN ROSS, Special Counsel to the Florida Judicial Qualifications Commission, Two Datran Center, Suite 1705, 9130 S. Dadeland Boulevard, Miami, FL 33 156, by Fed Ex this 17th day of October, 1996.

BRUCE ROGOW

INITIAL.BRF

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE NO. 95-412
/

Florida Supreme Court
Case No. 87,482

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

Pursuant to Article V, Section 12 of the Florida Constitution and the Rules of the Florida Judicial Qualifications Commission, the Florida Judicial Qualifications Commission ("the Commission*) files these Findings of Fact, Conclusions of Law and Recommendation with the Supreme Court of Florida in the matter of the Honorable June LaRan Johnson, County Court Judge for the Seventeenth Judicial Circuit of Florida.

PROCEEDINGS

On February 27, 1996, the Commission filed a notice of formal charges against the Honorable June LaRan Johnson, County Judge, Seventeenth Judicial Circuit, charging her with violations of Canons 1, 2 and 3, Fla. Code Jud. Conduct.

The first charge was that Judge Johnson entered false dates on pleadings or caused false dates to be entered on pleadings and signed them in numerous DUI cases pending before her in 1994 and 1995. The second charge was that Judge Johnson's actions (in signing falsely dated pleadings) in DUI cases allowed many persons found guilty of DUI to receive shortened suspensions of their driver's licenses or no suspension at all. The third charge was that Judge Johnson used crude language in several instances while

presiding in her courtroom.

The Respondent filed a Motion for More Definite Statement on March 18, 1996, to which a response clarifying the charges was served on March 22, 1996. The Respondent also answered on March 18, 1996.

A hearing on the formal charges was set for May 13, 1996, but such hearing was rescheduled to June 26, 1996 at respondent's request. The matter was heard before the Commission in Fort Lauderdale, Florida on June 26 through June 28, 1996,

The Hon. Frank N. Kaney, Chairman, presided over the hearing. Thirteen Commissioners were present throughout the hearing and deliberations as follows: In addition to Chairman Kaney, the Hon. Earle W. Peterson, Jr., as ad hoc replacement for recused member Judge Richard H. Frank, Hon. Gilbert S. Goshorn, Jr., the Hon. Stephen L. Dakan as ad hoc replacement for recused member Judge Miette K. Burnstein, Hon. Harvey L. Goldstein, Hon. Thomas B. Freeman, Michael Nachwalter, Esq., Rutledge R. Liles, Esq. Stanley G. Tate, Nancy N. Mahon, John Robert Middlemas, Bonnie D. Booth and Patricia T. Heffner.

Lauri Waldman Ross and Timothy W. Ross appeared as Special Counsel for the Commission. The Respondent was represented by Edward M. Kay, Monique A. Brochu and Benedict Kuehne.

The Respondent filed a motion to dismiss the third charge, in which special counsel ultimately joined. This motion was granted by the Commission prior to the hearing's conclusion.

The Commission sua sponte by a vote of no less than 9 members

voted to modify and consolidate the remaining charges to read as follows:

> In numerous DUI cases pending before you in 1994 and 1995, you directed court personnel to falsify . . . (court records] and those records were falsified pursuant to your instructions, [and] caused false dates to be entered ... [thereby] allowing the persons found guilty of DUI to receive shortened revocation of their driver's licenses or no revocation at all ... [and] resulted in youx having less DUI trials.

FINDINGS OF FACT

1. June LaRan Johnson is a County Court Judge for the Seventeenth Judicial Circuit, Broward County, Florida. She has served in that position since her election to the bench in 1982.

2. On or about September 18, 1995, Joann Headrick, a secretary for State Attorney Michael Satz (Broward County) fielded a telephone call from an irate citizen who complained about Judge Johnson's handling of Defendant William Rodda's pending DUI cases. (T. 33-34). Ms. Headrick ran a computer report, determining that Judge Johnson had reset one case some 33 times between July 1991 and September 18, 1995, and had re-set the arraignment of Mr. Rodda in the second (1992) case some 7 times after the case was aasigned to her and after it was set for trial by the prior judge. (T. 35-39; 46; Pet. Ex. 2). Ms. Headrick reported this to SA Satz, who assigned ASA Howard Scheinberg to investigate why the cases were so old. (T. 44; 50-52).

3. Howard Scheinberg is an assistant state attorney in charge of the Eroward Court division. He reviewed a series of Judge Johnson's cases and issued a status report to Mr. Satz on

aged cases in Judge Johnson's division on September 22, 1995. (T. 52-55, Pet. Ex. 3). Mr. Scheinberg testified that an arraignment is the first proceeding following arrest, that typically arraignments were reset only once or twice when necessary for a Defendant to obtain legal counsel. In contrast, Judge Johnson had a practice of resetting arraignments repeatedly over a period of years. Mr. Scheinberg concluded that "the majority of cases pending before Judge Johnson have an inordinate number of continuances," and that the procedure Judge Johnson used of "repeatedly resetting what the Judge terms as 'arraignments' appeared to be geared towards minimizing her reported cases for statistical purposes." (T. 114-15, Pet. Ex. 3). Mr. Scheinberg explained that the clerk's statistics generated to measure a judge's caseload are triggered by a plea entered on the court's docket, thereby generating a trial setting. If a case is constantly re- set far arraignment, it would not show up as part of a judge's pending caseload. (T. 245-46).

4. The information obtained by the State Attorney's Office was conveyed to Judge Dale Ross, Chief Judge, 17th Judicial Circuit who met with Judge Johnson in approximately October 1995. (T. 497). Chief Judge Ross told Judge Johnson that she was not to reset any further arraignments. (T. 506-07). He termed Judge Johnson cooperative and said that she agreed not to do so in the future. (T. 527).

5. Sandra (Sandi) Langley has been employed by the Clerk of Broward County for 25 years, in the misdemeanor division. During

the years 1994 and 1995, she was assigned to Judge Johnson (T. 266). As the clerk in the "hot seat", Ma. Langley actually marked the files.

6. Clerk Langley only kept docket sheets as far back as September, 1994. Therefore, she could not testify with regard to records earlier than that date. (T. *268).* After September 1994, Clerk Langley testified that the Judge directed her to enter dates on the disposition sheet which materially varied from the actual date of the plea. At the beginning, Clerk Langley wrote up each plea to specifically reflect that the defendant was being convicted nunc pro tunc to an earlier date. She stopped when the Judge told her that she didn't want pleas written up that way. (T. 354). Instead, Judge Johnson announced "Today's date is" and gave a date which differed from the actual date of the hearing. (T. 272-74). When attorneys used the term "retroactive", Judge Johnson would say "It's not retroactive" and give the fictitious date. (T. 354). In some instances where Ms. Langley had already noted the actual date of the hearing on her paperwork, *she* would have to cross through that date and enter the date the Judge directed. (T. 272-74). Judge Johnson ofttimes referred to these backdates as "quantum leaps" after a favorite television show. (T. 287).

7. When Judge Johnson took a plea in a DUI case, Ms. Langley would mark the file and fill out several documents. These included a disposition sheet, an original of which stayed with the file, while one copy was provided to the probation department and 2 copies to the Defendant. The citation or ticket was forwarded to

to the Department of Motor vehicles in Tallahassee. (T. 270).

8. When a driver is convicted of a DUI, the Department of Motor Vehicles ordinarily dates revocation of the driver's license from the date of conviction (which is taken from the citation). Entry of an improper, earlier date on the citation gives the driver more time to use the license and thus can have serious consequences for the Department. (T. 474-5).

9. Pursuant to Judge Johnson's directions, Clerk Langley backdated the date of convictions to earlier dates on the citations forwarded to the Department, However, nothing on the citation reflected that backdates, instead of actual conviction dates, were being used. (T. 363).

10. Clerk Langley became concerned over the perception her supervisors might have that she was not performing her job, because the records she dated back pursuant to Judge Johnson's instructions made it look as though she was not turning in her records in a timely fashion. She brought this to the attention of her supervisor. She was told that "[she] was to do what the Judge told [her] to do." (T. 276). On her own initiative, Clerk Langley began to record the Judge's directions to her in dating the files by referencing the backdates as made "per Judge Johnson." (T. 355).

11. In 1994 and 1995, proceedings in Judge Johnson's courtroom were transcribed on tape. When Judge Johnson wanted to stop transcription, she either signaled Clerk Langley by tapping or told her to "push the button". (T. 269). On several occasions, when Judge Johnson directed Clerk Langley to enter a backdate, she

also directed her to turn off the taps. (T. 282-284).

12. Judge Johnson made numerous statement3 of record reflecting a conscious awareness of the impropriety of her actions, as well as her intention to mislead the Department of Motor Vehicles:

A. On March 14, 1995, the Judge directed clerk Langley to backdate paperwork to July 20, 1994, indicating "I don't nunc pro tunc because they don't accept nunc pro tuncs;" (Pet. Ex. 8, pp. 16-17)

B. On May 5, 1995, the Judge announced "Today is January the 25th, 1995" and directed clerk Langley to correct the already-marked paperwork accordingly. When an assistant state attorney asserted her confusion, and questioned the Judge about "dating him back", the Judge responded "I'm not nunc pro tuncing him" because "I can't date it back, but I can make it another date . . . I can't say "Nunc Pro Tunc" because they'll toss it back" and explained further that "It's the only way to get around the Department of Motor Vehicles;" (Pet, Ex. 10, pp. 19-20).

C. On May 9, 1995, Judge Johnson stated that she knew she couldn't nunc pro tunc a drivers license suspension to the time of the administrative suspension, and would only date the file only back to November 8,

1994 because "they won't believe anything further back than that on September;" (Pet. Ex. 12, p. 7).

D. In response to an attorney's indication on May 15, 1995 that the Judge had offered a nunc pro tunc as part of a plea, Judge Johnson responded that "I don't nunc pro tunc. I just make it a different day." (Pet. Ex. 13, P. 9).

13. Judge Johnson also made numerous statements of record reflecting the increasing sense of urgency with which she was acting:

A. On November 7, 1995, in response to an attorney's request to keep her plea offer (involving backdating) open, Judge Johnson indicated that "I'm trying to close stuff out." (Pet. Ex. 23, p. 6).

B. On November 13, 1995, in response to an attorney's refusal to plead his client, Judge Johnson sought to encourage pleas by "mak[ing] today's date 1/19/95." (Pet. Ex. 28, pp. 2-3).

C. On November 17, 1995, Judge Johnson stated "What I'm going to do is make a final offer today. I'm trying to close out stuff for the New Year's...". (Pet. Ex. 32, p. 3). As to her "final offer", Judge Johnson indicated that "if he takes the plea before Tuesday I will transmit

the date to Tallahassee as being April the 4th, which means that his suspension would be up. At least the criminal suspension, I don't know what's going on with the other suspension." (Id. At 4). As to her knowledge of the impact her action, Judge Johnson stated that the Defendant would then "be eligible to walk into the license bureau, just get a regular driver's license like nothing ever happened the day we took the plea. (Id.). Judge Johnson concluded by telling the defense attorney that "you and I both know that you're not going to get that offer anywhere else in the world." (Id.).

D. On December 4, 1995, when the defendant accepted a plea after Judge Johnson asked if he'd "like until the 15th to think it over," Judge Johnson stated, "Absolutely too tempting, wasn't it? I know. It's very difficult to turn it down, I intend it that way." (Pet. Ex. 38, pp 2-3).

E. On December 7, 1995, Judge Johnson offered a plea which included back-dating to June 6, 1995 "if he takes it today, before 2:30" (Pet. Ex. 40, p.7). She stated that the plea was "only going to be open today, because I don't have time to play with you next week.* (Id. At 6).

F. In December 1995, Judge Johnson told still other Defendants that the plea she was offering"- which would allow them to be eligible for drivers licenses immediately — was good for "today only," or "right now", (Pet. Ex. 41, p. 4; Pet. Ex. 31, p. 3).

14. But far Judge Johnson's instructions, the paperwork would have been dated to accurately reflect the date of each Defendant's plea. (T. 300-01).

15. After Judge Johnson stopped resetting arraignments, pursuant to the instructions received from Chief Judge Ross, the amount of backdated pleas that she accepted increased substantially from four in October 1995 to twenty in November 1995. (T. 91).

16. The actual backdating of files was discovered in late November 1995 when Debbie Lesniak, an employee of the Broward County probation department, noticed a discrepancy between the dates of the disposition sheets being turned in by probationers as they came from the courthouse and the dates that the sentencing hearings actually transpired. Ms. Lesniak was concerned that her probationers might have insufficient time to comply with their conditions of probation, which might result in jail time. (T. 378-87; 410-12). Ms. Lesniak had never experienced such a problem before and, accordingly, reported it to her supervisor, Debbie Garr. (T. 424-25). Ms. Lesniak and Garr jointly sent a probation officer to inquire. (T. 413, 430-32, 482). Judge Johnson told the officer to leave the papers and "it would be taken care of." (T. 432). The Judge did not thereafter return any of this paperwork to

the probation department. (T. 432).

17. Ms. Garr and the court administrator* brought the information to the attention of Judge Johnson's supervisors and the State Attorney. (T. 483-84). The Chief Judge transferred Judge Johnson out of the criminal division pending further investigation. (T. 528).

18. According to the testimony, the amount of files backdated pursuant to Judge Johnson's directions ranged from 42 to 57. (T. 66-67; 484).

19. While Judge Johnson was serving in criminal misdemeanors, she consistently maintained one of the lowest case loads in the division. Within two weeks of her transfer, the amount in this division increased by 259 cases. (T. 88; 119-20; 500-04).

20. Jill Tavlin Schwartz, an assistant general counsel with the Department of Highway Safety and Motor Vehicles, testified as an expert witness in drivers licensing law. (T. 436-37). Ms. Schwartz was asked to trace the Department's treatment of defendants in seven sample files received from Judge Johnson's court. (T. 438). Citations transmitted by Judge Johnson's clerk at her direction gave the backdate as the defendants' actual date of conviction. All were recognized and given effect by the Department, (T. 442). On one occasion the clerk failed to follow Judge Johnson's direction and mistakenly marked a citation "nunc pro tunc." The date given was not honored by the Department, in accordance with existing practice, (T. 442-44). Ms. Schwartz opined that as a result of the Judge's backdating practice,

defendants either suffered no license revocations at all or served shortened revocation periods. Judge Johnson thus caused the Department to 'impose illegal revocation periods and . . . allow[ed] drivers to be licensed contrary to public safety and contrary to the mandates of our statute...". (T. 444-45).

21. The Commission heard from three attorneys specializing in D.U.I practice, on the Judge's behalf: Michael Catalano, Bobby Reiff and Craig Satchell. The gist of their testimony was that backdating was common practice among judges, and/or was legally justifiable on the basis of double jeopardy (T. 763, 821). These witnesses, however, admittedly knew of no other judges who backdated documents. Additionally, the Commission has examined the transcripts of record and finds no mention of double jeopardy as a basis for any of the pleas.

22. Three circuit court judges in Broward County, including Chief Judge Dale Ross, testified as to Judge Johnson's good reputation/character in the community. All of these witnesses described Judge Johnson as a nice person, and/or a "human" judge. However, each of these admitted knowing little or nothing about the charges at issue, and voiced grave concerns regarding the described conduct, its impropriety, as well as its tendency to discredit the judiciary in the eyes of the public. (T. 548-49, 551; 555; 608-19; 852-65).

23. The record shaws and the Commission finds by clear and convincing evidence that Judge Johnson circumvented the Department of Motor Vehicles, that she did so knowingly and intentionally and

that her actions corrupted the official driving records of the State of Florida.

CONCLUSIONS OF LAW

Canon 1 of the Florida Code of Judicial Conduct provides:

> A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.
>
> An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integri ty and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2 (A) of the Florida Code of Judicial Conduct provides:

> A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES
>
> 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 3(B) (2) of the Florida code of Judicial conduct provides:

> A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

Canon 3(C) (2) of the Florida Code of Judicial Conduct provides:

> A judge shall require staff, court officials and others subject to the judge's direct and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties

Article V, Section 12 of the Florida Constitution provides, in part:

> (f) Upon recommendation of two-thirds of the members of the Judicial Qualifications Commission, the Supreme Court may order that the justice or judge be disciplined by appropriate reprimand, or be removed from office with termination of compensation for willful or persistent failure to perform his duties or for other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office . . ..

In determining whether a judge has conducted herself in a manner which erodes public confidence in the judiciary, the Commission must consider the act or wrong itself, not resulting adverse publicity. Nevertheless, if a judge commits a grievous wrong which should erode public confidence, but does not, the judge should be removed from the bench. In re Lamotte, 341 So. 2d 513, 517 (Fla. 1977). Lawyers are disbarred in cases where they commit extreme violations involving moral turpitude, corruption, defalcation. theft, larceny or other serious or reprehensible offenses. Judges are held to an even stricter ethical standard than lawyers because, in the nature of things, more rectitude and uprightness is expected of them. Id.

The paramount concern of these proceedings must be the preservation of public trust and confidence in the judiciary.

> [R]emoval is not punishment for a crime, nor is suspension, nor is the withholding of pay. The purpose of removal proceedings, and all related aspects of those proceedings, is to regulate the judiciary, to protect the public from dishonest judges, to prevent proven dishonest judges from doing further damage, and above all to assure the public that the judiciary is worthy of its trust.

In re Coruzzi, 472 A.2d 546 (N.J.), appeal dismissed, 469 U.S. 802 (1984), quoted with approval in In re Shenberg, 632 So. 2d 42 (Fla. 1992).

Based upon the foregoing findings of fact, the Commission concludes that Judge Johnson committed serious violations of the Judicial Canons. Judge Johnson counseled and directed third parties in the commission of a fraud on the Florida Department of Motor Vehicles and her actions were successful in defrauding the Department. The Commission also concludes that Judqe Johnson acted knowingly and intentionally, and for personal reasons rather than over any concern for the legal issue of double jeopardy. While the Commission is not unmindful of Judge Johnson's prior years of service, "it is essential to our system of justice that the public have absolute confidence in the integrity of the judiciary." In re Garrett, 613 So. 2d 463 (Fla. 1993). It would simply be impossible for the public to repose this confidence in a judge who has knowingly and intentionally counseled third parties on the falsification of official public records.

Accoxdinqly. the Commission finds that Judge June LaRan Johnson, by conducting herself in the manner set out in the above Findings of Fact intentionally committed serious and grievous

wrongs of a clearly unredeeming nature. She has rendered herself an object of disrespect. and derision in her role as a judge to the point of ineffectiveness and has caused public confidence in the Judiciary to become eroded. Judge Johnson is guilty of violating Canons 1, 2(A), 3(B)(2) and 3(C)(2) of the Code of Judicial Conduct. The Commission finds by clear and convincing evidence that Judge Johnson's violations of these Canons demonstrates a present unfitness to hold judicial office any further in this state.

RECOMMENDATION OF REMOVAL

By an affirmative vote of **not less than nine members,** the Florida Judicial Qualifications Commission **recommends that the** Supreme Court of **Florida remove** Judge June LaRan Johnson from her position as County Court Judge for the Seventeenth Judicial Circuit and render its Order and Judgment in accordance with the foregoing **recommendation,** for her **conduct as hereinabove found to have** occurred.

Dated this 28th day of August; 1996.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

by: Frank N. Kaney

Frank N. Kaney, Chairman
Florida Judicial Qualifications Commission
Room 102 The Historic Capitol
Tallahassee, FL 32399-6000
904/488-1581

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furniehed by U.S. Mail to Benedict P. Kuehne, Esq., Counsel to the Respondent, Sale & Kuehne, NationsBank Tower, #2100, 100 S.E. 2nd Street, **Miami,** FL 33131-2154, Edward M. **Kay,** Esq., Counsel to the **Respondent,** 633 S.E. 3rd Avenue, Suite 4F, Fort Lauderdale, FL 33301, and Lauri Waldman Ross, Esq., Special Counsel to **the** Florida Judicial Qualifications Commission, Two Datran Center. Suite 1705, 9130 S. Dadeland Boulevard, Miami, FL 33156, this 28th **day of** August, 1996.

Ford L. Thompson

Ford L. Thompson