IN THE
SUPREME COURT
OF FLORIDA

CASE NO. 87,482

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

RESPONDENT'S REPLY BRIEF

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

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I.

COLBY AND FOWLER COUNSEL REPRIMAND, NOT REMOVAL

In her Initial Brief in Response to Order to Show Cause, Judge Johnson surveyed the cases addressing sanctions imposed upon Florida judges. The Judicial Qualifications Commission Answer Brief contends that only In re Colby, 629 So. 2d 120 (Fla. 1993), "is even remotely on point." JQC Brief at 19. Although we think that the array of conduct and sanctions articulated in the cited cases illuminates the issue of appropriate sanctions, we agree that the Colby conduct comes closest to the facts of this case.

The JQC Brief contends that a published reprimand was proper in Colby because Colby was young and had been a judge for less than two years. JQC Brief at 19. What did Judge Jonathan Colby do? He lied in open court and he falsified court records. He "announced" that he was issuing bench warrants, but instead he "made . . . entries in the files" stating that he had "found the missing defendant[s] guilty and sentenced him or her to credit for time served[.]" 629 So. 2d at 120.

In addition, Judge Colby closed non-appearing-defendant DUI cases "with a conviction of the defendant and estreature of the bond posted, thereby

convicting the defendant[s] of Driving Under the Influence without a plea or trial[.]" Id. Thus he both falsified court records and imposed findings of guilt without any adherence to due process of law.

Neither the Court's opinion nor the JQC recommendation adopted by the Court tied the published public reprimand imposed upon Judge Colby to his age or judicial tenure. If the Colby case is the closest to Judge Johnson's, then it counsels reprimand, not removal.

The Chief Judge of the Sixteenth Judicial Circuit, Richard Fowler, older and more tenured than Judge Colby, also received a published reprimand, for furnishing false information to the police:

> Lying is a very serious offense. As this Court has said, "[t]he integrity of the judicial system, the faith and confidence of the people in the judicial process, and the faith of the people in the particular judge are all affected by the false statements of a judge."

In re Fowler, 602 So. 2d 510, 511 (Fla. 1992). Nevertheless, the Court concluded that the erosion of confidence in Judge Fowler was minimized by his prior exemplary service.

The JQC's conclusion in this case that "[i]t would simply be impossible for the public" to have confidence in Judge Johnson (JQC Brief at 11) is no more than an *ipse dixit*. The JQC and the Court showed continuing

confidence in Judges Fowler and Colby, and in a host of other reprimanded judges whose actions were wrong, but not irredeemable. See Initial Brief, pp. 25-34.

Judge Fowler's deception benefitted himself by avoiding arrest and prosecution. Judge Johnson's backdating benefitted defendants who appeared before her. The JQC view that Judge Johnson benefitted by reducing her caseload implies that acceptance of pleas indicates judicial indolence. It does not. Many criminal cases are resolved by plea negotiations eliminating the need for trials. Nothing in this record suggests that Judge Johnson has ever shirked her judicial duties. Indeed, the backdating did not diminish her caseload. TR-III-540.

Recognizing that a sanction is appropriate, and striving for a principled application of the cases to her conduct, Judge Johnson has suggested to the Court that a public appearance reprimand would strike the right balance in this case. Her fourteen years of unblemished public service warrant optimism, not the JQC's speculative pessimism. We refer the Court to the testimony of Broward County Circuit Judge John Miller, the third most senior judge in that court (TR-IV-603), finding Judge Johnson presently fit to be a judge (id. at 608), and attesting to her integrity and character in the legal community:

> Q. Do you know Judge Johnson's reputation in the legal community for being a responsible and honest judge with integrity?

A. I've only heard good things.

Q. Okay. And what is your opinion of her?

A. I think she's a competent, good, human judge.

Q. When you say, "human judge," what do you mean by "human judge"?

A. She has feeling and compassion for people and problems. She knows how people have - you know, get into problems. I don't have firsthand knowledge but I know that she has kind of a little Horatio Alger story as far as growing up, getting an education, becoming a lawyer and becoming a judge, so she's been there.

TR-III-591-592. The qualities of being a "competent, good, human" judge with "feeling and compassion for people," are surely relevant to one's present fitness to sit on the bench. In this case, we urge the Court to view the admitted conduct, not in isolation, but in the context of Judge June LaRan Johnson's fourteen year judicial tenure.

II.

THE FACTS ARE THE FACTS; ONLY STATE OF MIND IS IN DISPUTE

The JQC Answer Brief has accused Judge Johnson of "recasting of the facts in the light most favorable to herself while ostensibly accepting the findings of fact of the Commission." JQC Brief p. 1. However, her Brief could not have been clearer in its acceptance and acknowledgement of the JQC findings:

> 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.

Initial Brief, p. 4. Judge Johnson's Brief attached as an Appendix the full Findings of Fact, Conclusions of Law and Recommendations of the Commission. Her Brief recited other record facts not contained in the findings so the Court could have a rounded picture of the proceedings. But as to the Commission's findings of fact -- they are undisputed.

Indeed, the candor and openness of Judge Johnson's court pronouncements -- "Today's date is;" backdates described as "quantum leaps;" "they don't accept nunc pro tuncs;" "Today is January 25, 1995" (when it wasn't); "It's the only way to get around the Department of Motor Vehicles;" "you're not going to get that offer anywhere else in the world;" "It's very difficult to turn it

down. I intend it that way" -- indicates that she was oblivious to the *impropriety* of her actions. No rational person, intent on deception, would openly say the things Judge Johnson said if he or she consciously believed that the statements and actions were egregious, unredeemable, dishonest conduct.[1]

Her errors, like those of other judges misapplying § 322.28 (the license revocation statute) could have been remedied on appeal. Compare State, Dept. of Highway Safety and Motor Vehicles v. Degrossi, 680 So. 2d 1093 (Fla. 3d DCA 1996) (reversing trial court's order granting stay of license revocation pending appeal, as contrary to § 322.28(6)), and citing State v. Rowell, 669 So. 2d 1089 (Fla. 2d DCA 1996) (trial court cannot circumvent mandatory requirements of license suspension by withholding adjudication in DUI case)).[2] The trial judges in

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[1] The Commission makes much of the fact that in two instances the tape recorder was turned off. See JQC Brief p. 18. But that record silence, in just two of 42 to 57 cases, combined with the fact that the *written* records confirmed the conduct, proves only that the tape recorder was turned off, not that there was any attempt to keep some secret.

[2] We note that the state had not objected in Rowell, but the Second District found that no objection is necessary to preserve the right to appeal an illegal sentence. 669 So. 2d at 1090. Thus, Judge Johnson's backdated adjudication dates would have been appealable by the State, even in the absence of an objection. Assistant State Attorney Scheinberg described the Assistant State Attorneys in Judge Johnson's courtroom as "rookies, fresh out of law school . . . extremely new, untrained . . . baby lawyers" (TR-II-230-231). Their naivete did not cause, and does not excuse, Judge Johnson's mistake in judgment, but it did allow it to be repeated without the benefit of appellate review. Timely advocacy would have righted the error. Removal of an otherwise fit judge is too

Degrossi and Rowell were neither disciplined nor removed for their actions which ignored applicable law. Judge Johnson's similarly misguided attempt to circumvent the mandatory license revocation statute should not lead to her judicial demise.

Sometimes hard lessons are the most instructive. These proceedings questioning her conduct have taught their lesson. The record reflects that once before, when Chief Judge Dale Ross asked Judge Johnson not to re-set arraignments, "[s]he said, Dale, I will do anything you want me to do." TR-III-527. As to the conduct here, had her error been brought to her attention by the State, or by her Chief, her response would have been the same: conformity with the law. Judge Johnson has been fit for office for fourteen years. One error, openly repeated and never judicially reviewed, should not render her unfit for the future.

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harsh a sanction.

III.

THE NOVEMBER 1996 AMENDMENT TO ARTICLE V, § 12 OF THE FLORIDA CONSTITUTION PERMITS CONSIDERATION OF OTHER SANCTIONS, SHORT OF REMOVAL

On November 5, 1996, voters approved amendments to Article V, § 12 of the Florida Constitution relating to judicial discipline. Those amendments take effect on January 7, 1997.[3] The amendments relevant to this case are the change to § 12(a):

> For purposes of this section, discipline is defined as any or all of the following: reprimand, fine, suspension with or without pay, or lawyer discipline.

and this change in § 12(c):

> (1) The supreme court may accept, reject or modify in whole or in part the findings, conclusions, and recommendations of the commission.

Since Judge Johnson's case is pending and the constitutional changes are impending, the added discretion now provided to the Court should be applicable to her case. The general rule is that issues of law on appeal are determined based on the law as it exists at the time of the appellate decision. Compare Smith v.

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[3] The effective date is the first Tuesday after the first Monday in January following the election. Art. XI, § 5(c), Fla. Const.

State, 598 So. 2d 1063 (Fla. 1992) (changes in the criminal law are applied prospectively, and to those cases pending on direct review or not yet final at the time of the decision announcing the new rule). As to new constitutional provisions specifically, our research identified only one case in which an amendment was applied to conduct which occurred prior to the amendment. In Florida Commission on Ethics v. Plante, 369 So. 2d 332, 337 (Fla. 1979), the disclosure provisions of Article II, § 8(a), the Sunshine Amendment, were applied to legislators who took office prior to the effective date of the amendment. The Court held that the amendment imposed no "new and onerous" obligations, thus distinguishing Myers v. Hawkins, 362 So. 2d 926 (Fla. 1978), in which the Court declined to apply the "newly created professional limitations" contained in Article II, § 8(e) to legislators who assumed office with no way to anticipate the later-enacted law. While it is obviously unfair to apply "new and onerous" changes in the law to conduct which preceded that law, where the new law could benefit a litigant whose case is not final, as here, this Court should apply the new law.

Thus, in light of the new amendment to Article V, § 12, if the Court concludes that the appropriate sanction is more than a personal appearance public reprimand, but something less than removal, a suspension could be considered.

CONCLUSION

The Judicial Qualifications Commission's recommendation of removal should be rejected, in favor of a lesser sanction. Judge June LaRan Johnson's mistaken assumption that she could backdate adjudication dates of DUI defendants who pled guilty, consistent with her discretion as a sentencing judge, was a legal error which will not be repeated. Despite her error, she is presently fit to be a judge, and respectfully requests that she be allowed to continue to serve the people of Broward County as she has done for 14 years.

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 32399-6000, and (2) LAURI WALDMAN ROSS, Special Counsel to the Florida Judicial Qualifications Commission, Two Datran Center, Suite 1705, 9130 S. Dadeland Boulevard, Miami, FL 33156, by U.S. Mail this 27th day of November, 1996.

BRUCE ROGOW

reply.brf