BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING
JUDGE STEVEN P. SHEA,

FLORIDA SUPREME COURT
CASE NO. 92,913

NO. 97-376

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FINDINGS, CONCLUSIONS AND RECOMMENDATIONS BY THE JUDICIAL QUALIFICATIONS COMMISSION TO THE FLORIDA SUPREME COURT

Pursuant to Article V, Section 12 of the Florida Constitution, as amended in 1996, the Hearing Panel [1] of the Florida Judicial Qualifications Commission issues the following findings, conclusions and recommendations to the Florida Supreme Court in the inquiry concerning Judge Steven P. Shea, Circuit Judge of the Sixteenth Judicial Circuit. The Panel finds Judge Shea guilty and recommends his removal from office. Unless otherwise stated, each of these findings is based on clear and convincing evidence and constitutes the actions of the Hearing Panel of the Commission based on a vote of at least four members of that Panel.

As detailed herein, the Panel concludes that Judge Shea has violated Cannons 1, 2, 3 and 5 of the Code of Judicial Conduct and that he has acted in a manner demonstrating his present unfitness to hold the office of circuit judge. Judge Shea suggests he has been the victim of certain judges and lawyers and various public officials and court personnel in the Florida Keys. The Panel

[1] The distinction between the Investigative Panel and the Hearing Panel will be observed throughout this document. "The Panel" refers to the Hearing Panel.

rejects this assertion by Judge Shea and, based upon the extensive evidence, concludes that there has been no showing of a plot or anything similar to a plot against Judge Shea.

Background and Suspension From Office

Judge Shea was elected to the Circuit Court in Monroe County, Florida in November of 1994, taking office January 5, 1995, in the Plantation Key courthouse in the Upper Keys. (T. 2430; 2436). For his entire tenure (3 years and 4 months) he has been the only circuit judge in this courthouse located 89 miles north of Key West.

[2]

On April 30, 1998, the Investigative Panel of the Judicial Qualifications Commission, which is also the prosecutorial panel, filed a Notice of Formal Charges and simultaneously sought an immediate suspension of Judge Shea by the Florida Supreme Court. The Investigative Panel initially filed 55 charges and the request for suspension was strongly resisted by Judge Shea. On May 7, 1998, the Supreme Court suspended Judge Shea with full pay pending final determination of the charges. Judge Shea had filed an extensive response to the 55 charges during the early Rule 6(b) Investigative Panel proceedings and that response was also filed in the Supreme Court in opposition to his suspension and later as the Judge's Answer herein. The present Hearing Panel is independent

[2] The legislation creating this circuit judge position in the Upper Keys contains a residence requirement.

from the Investigative Panel and had no role in Judge Shea's suspension. This Hearing Panel has no jurisdiction to deal with Judge Shea's continued arguments against his initial suspension.

The Notice of Formal Charges included general charges in six prefatory paragraphs plus specific charges as examples of the general charges in 33 separate numbered paragraphs. As his Answer to the formal charges, on May 29, 1998, Judge Shea incorporated by reference his "entire 444 page Rule 6(b) Investigative Hearing Response to all 55 charges originally lodged against Respondent." The Answer denied any violation of the Code of Judicial Conduct and sought attorney's fees under Section 57.105, Florida Statutes, for a frivolous proceeding. The voluminous nature of the 444 page Answer makes it impossible to briefly summarize Judge Shea's positions. The Formal Charges were amended on June 11, 1998, and the matter proceeded pursuant to the Amended Notice of Formal Charges which included the same six prefatory general charges plus 37 (in place of the initial 33) numbered paragraphs as specific examples of those charges.

The Prefatory or General Charges

Judge Shea was charged with violations of Cannons 1, 2, 3 and 5(g) of the Code of Judicial Conduct. Removal from office was sought by the Investigative/Prosecutorial Panel through its Special Counsel, Lauri Waldman Ross who was appointed and supervised by the Investigative Panel. Prosecutor Ross handled the suspension of Judge Shea before the Supreme Court, the filing of the formal charges, the extensive prehearing discovery and related litigation

and the extensive trial before the Hearing Panel lasting almost two full weeks in Key West, Florida. (T. 1-2982).

Throughout the trial, the prefatory allegations were referred to as the "prefatory" charges while each of the 37 factual examples of those general charges were referred to as the separate counts or charges. The prefatory charges were as follows:

> You have repeatedly abused the power of your judicial office by engaging in a pattern of vindictive and retaliatory conduct towards anyone who disagrees with you on any subject. Your vindictive and retaliatory actions include, but are not limited to:
>
> (1) publicly holding the disagreeing party up to scorn and ridicule;
>
> (2) launching unilateral "investigations" of the disagreeing party's conduct and character;
>
> (3) issuing self-serving orders which distort the facts and are intended to paint your own actions in the most favorable light, while engendering all manner of punishment for the disagreeing party;
>
> (4) Airing petty grievances publicly, so as to maximize the embarrassment to all concerned, by your conduct;
>
> (5) being verbally and physically abusive to others; and
>
> (6) personally showing disrespect for and encouraging others to show disrespect for fellow judges of your circuit.
>
> Those persons who have been the subject of your abuse include, but are not limited to, your fellow judges, attorneys appearing before you, courthouse personnel, the sheriff's department, court reporters, court clerks, bailiffs, victim coordinators, judicial assistants, the Guidance Clinic of the Upper Keys, and the Domestic Abuse Shelter. This conduct and behavior are exemplified by numerous incidences or occurrences,

including the following:

The Specific Charges

Following these prefatory charges are 37 separate paragraphs each describing a related incident supporting the general assertions of an overall pattern of improper conduct. Prosecuting counsel dismissed 12 of those 37 specific charges at the conclusion of the case-in-chief. (T. 1163). The dismissed charges were those numbered 5, 10, 11, 13, 14, 24, 25, 29, 30, 34, 35 and 37. This left a total of 25 charges for consideration by the Panel and each remaining charge will be separately dealt with herein after discussion of certain preliminary matters.

[3]

Pretrial Litigation

In addition to the strongly contested suspension proceedings, extremely bitter litigation occurred during the entire prehearing process. Judge Shea moved to disqualify Judge Kaney from the Panel early in the case. After denial of his Motion for

[3] The Hearing Panel consisted of the Chairman, Circuit Judge Frank N. Kaney, Third District Court of Appeal Judge James Jorgenson, Attorneys Evett Simmons and Rutledge Liles, and Lay Members Bonnie Booth and Nancy Mahon. Special Prosecuting Counsel were Laurie Waldman Ross and Eileen Tilghman. Attorney Thomas C. MacDonald, Jr. served as additional legal adviser to the Investigative/Prosecutorial Panel, and attorney John Beranek served as counsel to the Hearing Panel. Judge Shea was represented at the hearing by attorneys James S. Mattson and James Wattigny. Judge Shea had also been represented during the extensive pretrial litigation by the Holland & Knight law firm and by the MacFarlain, Wiley law firm. Although no formal withdrawal by these two firms was filed, they did not appear at the hearing and the Panel was informally advised of their withdrawal.

Disqualification, Judge Shea filed a Petition for Prohibition in the Florida Supreme Court and a further Petition for Prohibition in the Third District Court of Appeal, both of which were denied. Judge Kaney acted as Chair throughout.

Discovery efforts by both sides were heavy and aggressive and extensive motion practice occurred. Judge Shea repeatedly argued that discovery should be limited to the specific facts of the 37 charges while the prosecutor argued for a broader scope based on the more general prefatory charges. The Panel ruled for the prosecution and allowed wide latitude in discovery. Witnesses complained of harassment during depositions and because of the cancellation of depositions by Judge Shea's counsel. Extensive motions for summary judgment were filed by Judge Shea's counsel as to each of the 37 charges. Without reaching a specific ruling on whether summary judgment procedure would be appropriate for charges on which the Investigative Panel had already found probable cause and on which the Supreme Court had already ordered suspension, this Hearing Panel ruled that all such motions should be denied because there were factual issues.

Motions to strike or other objections by the defense were directed to almost every pretrial pleading and on almost every pretrial ruling Judge Shea's counsel requested review by the full Hearing Panel pursuant to Rule 7(b) of the Florida Judicial Qualifications Commission Rules. Full Panel review occurred as to all such rulings and the Chair’s rulings were consistently supported by the full Panel.

Prosecuting counsel filed various prehearing motions for sanctions and attorney fees for bad-faith litigation and discovery abuses against Judge Shea. At least two witnesses filed similar motions for asserted discovery abuses. All of these motions have been reserved. Judge Shea has formally notified the Hearing Panel of his intention to file a Motion to Dismiss this entire proceeding for alleged Oflagrant prosecutorial misconduct.O The Panel has not received this threatened Motion to Dismiss, but notes the Section 57.105 motion for fees and the numerous arguments, both written and oral, that the prosecution has been guilty of misconduct. The issues regarding sanctions, discovery abuse and bad faith litigation will be ruled upon herein.

The Hearing Location, Evidence and Arguments

The hearing lasted almost two weeks in Key West, Florida over Judge Shea's repeated objections and motions that it be held in his home area, the Plantation Key Courthouse, some 89 miles north of Key West. The Panel found Key West to be the most appropriate location and it is within the "county of the judge’s residence" as required by Rule 11 of the Commission Rules of Procedure.

The prosecution called 24 witnesses and the defense presented 53 witnesses. The Panel imposed a limitation of three live character witnesses, but allowed the filing of character affidavits. Judge Shea filed numerous affidavits as to his good character and the high regard in which he was held by many lawyers and lay people. A petition signed by 44 attorneys, many from the Keys, was filed in support of Judge Shea. Some 18 out-of-state

attorneys and judges signed character affidavits. Judge Shea's counsel also filed numerous affidavits containing the negative views of certain affiants as to other witnesses in the case and as to the prosecution in general. These negative aspects of Judge Shea's affidavits were not considered by the Panel.

The parties submitted extensive written arguments at the conclusion of the hearing. The special prosecutor's summation of the evidence was 48 pages long and Judge Shea's summation of the evidence was 69 pages in length. As stated, Judge Shea's arguments indicate his intent to file a separate Motion to Dismiss the entire proceeding for alleged bad faith by the prosecutor and the Investigative Panel. The case has been hard fought. The transcript is 2,982 pages in length plus numerous depositions. Voluminous documentary exhibits, pleadings and orders were submitted on both sides. All of the exhibits and the complete transcripts are filed along with these Findings, Conclusions and Recommendations. Judge Shea has been provided copies.

Standard of Proof

The Hearing Panel fully recognizes that the evidence supporting these Findings and Conclusions must be clear and convincing as the Florida Supreme Court has defined that standard of proof in Inquiry Concerning Judge Davey, 645 So. 2d 398 (Fla. 1994) and Inquiry Concerning Judge Graziano, 696 So. 2d 744 (Fla. 1997). The Panel has applied this clear and convincing standard and finds the evidence meets this test.

Findings and Conclusions as to Specific Charges

The Hearing Panel will rule on each specific charge and thereafter proceed to making rulings on the more general prefatory charges. For ease of organization, each of the remaining 25 specific charges with a descriptive sub-heading will be quoted from the formal charges and will be followed by the Panel's findings and conclusions as to each. When appropriate, closely related charges will be dealt with jointly.

Charge 1. Threatened Recusal and a Personal Financial Benefit

1. In or about October 1997, you improperly contacted Carl Beckmeyer, Esq. And Nicholas Mulick, Esq., local counsel for Coral Key Village, Inc., which was seeking to close a trailer park it owned in the Upper Keys in which you owned two trailers. To advance your own personal interests you wrongly abused the power of your judicial office by improperly intimidating these lawyers into withdrawing from representation of their client by threatening to recuse yourself from all of their cases pending before you, which action on your part would have caused them and their other clients severe inconvenience because the nearest other circuit judge was stationed at Marathon. You further solicited these counsel to recommend that their clients pay you damages up to $150,000, an exorbitant amount. You further threatened without basis to sue the owners of the trailer park, whom you compared to members of the "Chicago Mafia." The attorneys declined to make this recommendation and withdrew from the case. This withdrawal caused serious inconvenience and unnecessary expense to Coral Key Village, Inc. Thereafter, you continued to act in a retaliatory manner towards these lawyers after the firm was forced to testify about your conduct.

Findings:

With regard to Charge 1, the Panel finds that clear and convincing evidence demonstrates guilt based upon the following events:

The Keynoter is an "Upper Keys" newspaper of general circulation. On Saturday, October 18, 1997, an article appeared in

the Keynoter discussing Coral Key Village (a well-situated tract on which trailers are located pursuant to oral individual annual leases) and the fact that Nicholas W. Mulick, ("Mulick") an Islamorada, Florida, ("Upper Keys") lawyer, was representing the new owners of Coral Key Village. (T. 2462).

As of that date, Judge Shea, who had been on the bench for approximately ten months, owned two trailers located on Coral Key Village lots. According to Judge Shea, he read the article and noted that "Mr. Mulick was quoted as representing my landlords, who were evicting me...and it really surprised me...." (T. 2446). Judge Shea added that he "was surprised to see that...two attorneys who were very good friends of mine who appeared in my court all the time were involved in this eviction." (T. 2446).

Immediately after reading the article, Judge Shea called Mulick at his home at 9:00 or 10:00 a.m. on a Saturday. (T. 85; 2462). According to Mulick, Judge Shea told him that he had attempted to reach Mr. Peterson, a Tallahassee lawyer also representing the new owners, by telephone, but finding him out of town, left a message for him and then called Mulick because his name was in the article. (T. 86). According to Mulick, Judge Shea asked him if he knew that he (the Judge) owned two mobile homes "because he thought that if I knew that, I wouldn't be involved in the case." (T. 86; 2463). Mulick informed Judge Shea that he was not involved in any eviction proceedings, that they were being handled by Mr. Peterson, and that he had only been consulted in connection with land-use matters. (T. 86; 2464).

According to Judge Shea, he "explained to Mulick that they can't even evict us unless they get the land-use changed under Chapter 723" and that "if you're working on the land-use...that's an essential, integral part of the eviction." (T. 2464-65). Judge Shea continued, saying "It all goes hand in hand basically" and that he thought "we'd be - to me, we'd be at odds." (T. 2465).

According to Mulick, Judge Shea then indicated that "he thought that because I was representing Coral Key Village that I was adverse to his interests and that if we did not recuse or withdraw from representing the client, he would have to recuse himself on all cases where we appeared attorney of record." (T. 87). Mulick told Judge Shea that "we shouldn't be talking about this, that he should talk to Mr. Peterson because he was involved in the eviction matter and not I." (T. 87).

According to Mulick, Judge Shea then stated that if the owners of Coral Key Village were to buy him out, that would render the issue moot, and he would not have to withdraw. (T. 89).

Mulick testified that Judge Shea suggested that the buy-out price on the smaller lot was $50,000.00, with the buy-out price on the more desirable lot being $100,000.00. (T. 89). Judge Shea admits to telling Mulick that "my places are worth up to $150,000.00," but denied saying "give me $150,000.00 and I'm out of here," stating, instead, that he suggested that Mulick's client "buy everybody out...and then he can own all the trailers there, and he can leave them there, or he can do what he wants." (T. 2477; 2479).

A short time later, Judge Shea called Karl Beckmeyer, ("Beckmeyer") Mulick's law partner. (T. 154). Judge Shea asked him if he represented Coral Key Village, to which Beckmeyer responded that he thought Mulick was doing some land-use work for the new owners. (T. 154). Judge Shea then reminded Beckmeyer that he (Judge Shea) owned trailers in Coral Key Village, followed by the statement that "you're adverse to my economic interest." (T. 155).

Beckmeyer further testified that Judge Shea spoke in a threatening manner and told him that if his law firm continued to represent the client, he was going to recuse himself from all of their cases, forcing them to go to Marathon and Key West for all of their hearings and trials. (T. 155). According to Beckmeyer, he was "dumbstruck." (T. 155).

When asked whether upon reading the October 18, 1997, Keynoter article it was clear to him that Beckmeyer and Mulick were representing the owners of Coral Key Village, Judge Shea said that it was, and that such representation created a definite conflict between him and Beckmeyer and Mulick. (T. 2902-03). Judge Shea said he called, however, because he felt that "Nick and Karl must not understand that there's a conflict here"... "because [he] was under the impression they were very happy practicing in the Upper Keys; they weren't dissatisfied with [him]." (T. 2903). He then decided to "disclose this conflict to them because it is a conflict, it's a problem." (T. 2903).

It was then suggested that Judge Shea's call was to "straighten out a conflict," and did he not see an impropriety in

doing so, to which he responded that he did not remember using the words "straighten out a conflict." (T. 2904). However, the record reflects that during the Rule 6(b) hearing on the charges, Judge Shea had testified that he had called Beckmeyer's office "and I said, 'Karl,' I said, 'We need to straighten this out, because there's going to be a conflict of interest for me to hear your cases if you're suing me or if I'm suing you and you're representing the other side.'" (T. 2822).

In closing, Judge Shea was asked whether his calls to Mulick and Beckmeyer "might be viewed as a veiled threat or a show of muscle by a member of the judiciary, [and] would it not have been the better practice to wait until the first case came...before [him]--and at that time say, "I'm going to recuse myself" in open court and let them decide what to do there, rather than a private phone call?" (T. 2906). In response, Judge Shea stated that is what he should have done, rather than what he did. (T. 2906).

Following the contact by Judge Shea, Beckmeyer and Mulick felt that they had no choice but to terminate their representation of Coral Key Village. (T. 95).

While the Panel makes no finding as to whether the actual amounts sought by Judge Shea were "exorbitant," it is noted that Judge Shea called his judicial assistant, Lee El Koury, as a witness on his behalf and she testified she overheard a conversation between Judge Shea and Nick Mulick during which Judge Shea "said a sum of money." (T. 1432; 1434). According to Ms. El Koury, Judge Shea "said $150,000.00." (T. 1435). Following the

telephone conversation, Judge Shea then told Ms. El Koury that he thought that the waterfront trailer was worth "about $75,000.00," or $25,000.00 less than what he had represented to Mulick. (T. 1436).

It is of further interest to the Panel in evaluating witness credibility that Judge Shea acquired his former wife's interest in the waterfront lot in December of 1995, approximately two years before conveying to Mulick the $100,000.00 price. (T. 2901). When asked how much he had paid his former wife for her interest, he stated that "We had a mortgage on it of $40,000.00...and I paid off that mortgage, and that's what I paid for that." (T. 2901). He then conceded that as one-half of the mortgage was, theoretically, his responsibility, he effectively paid her $20,000.00 for her interest. (T. 2901). He did state that they had an "informal agreement" that if he ever sold the place, she would get "whatever equity she would be entitled to." (T. 2901). However, when his attention was called to earlier testimony where he stated that he wanted to retire on the property (rather than sell it) he said "I'd like to live there eventually, right." (T. 2902).

All of this testimony raises serious questions surrounding the actual fair market value of the property, the believability of Judge Shea's statements in this regard and his underlying thought processes and intentions. The testimony shows a representation of a fair buy-out value on the more expensive lot of $100,000.00 to Mulick, but a contemporaneous statement to Ms. El Koury that it was worth "about $75,000.00." The testimony also reveals the Judge's

purchase of his ex-wife's interest two years earlier by simply satisfying a mortgage of which only $20,000.00 was attributable to her, coupled with a questionable statement that when he eventually sold it, she would receive her share of the equity. However, the Judge seemed to contradict that testimony by stating that he intended to retire on it rather than sell it. (T. 2902).

The Panel also heard evidence from Mr. Rosendale who was Judge Shea's appraisal expert. Mr. Rosendale testified to a value of $141,000.00 and to Judge Shea's involvement in the real estate appraisal he presented at the trial. (T. 1323 and Ex. 12).

Mr. Rosendale prepared an appraisal of the mobile homes and arrived at a value of $141,000.00. (T. 1323). Judge Shea did not own the lots where the trailers were parked and had only oral leases with the park owner. (T. 1322). The effective date of the appraisal was November 30, 1997, because Judge Shea told Mr. Rosendale that he received his eviction notice on December 1, 1997. (T. 1338). In fact, Judge Shea received his notice of eviction in October, or before the effective date used in the appraisal. (T. 1335). The erroneous information on which the appraiser relied came directly from the Judge. (T. 1338). In addition, Judge Shea had actually prepared the prospectus for the mobile home park during the time he was a lawyer, and he failed to inform Mr. Rosendale that he had only an oral one-year lease for the land. (T. 1342-3). This information would have affected the appraisal's outcome. (T. 1340-41). The Panel has given Judge Shea the benefit of the doubt as to whether his conduct with regard to his own

appraiser was deliberately misleading and has thus refrained from finding that Judge Shea was intentionally seeking an inflated amount. Notwithstanding, the conflicting evidence surrounding the value of the property raises serious questions about the credibility of Judge Shea's testimony and contemporaneous intentions in response to Charge 1.

Based upon the clear and convincing evidence, as reflected above, and the reasonable inferences in connection therewith, the Panel concludes that Judge Shea is guilty in the following respects:

The contact with Mulick and Beckmeyer was improper and motivated by Judge Shea's own personal financial interests and his desire to effect the removal of two well-respected attorneys from the representation of a party that he perceived as an enemy. In this regard, he abused his office and intimidated counsel into withdrawing from the representation of their client, the new owner of Coral Key Village. (T. 92; 155; 158; 159). The effect of this was to wrongfully, and without justification, deprive the owners of Coral Key Village of counsel of their choice. Judge Shea should not have threatened to recuse himself from <u>all</u> cases in which these lawyers were engaged in the representation of other clients. The telephone calls, regardless of his perceived friendship, were totally improper, as was the suggestion of a buy-out, whether made only for his own property or for his and other owners' properties. The use and abuse of the power of his office in this regard is readily apparent and unacceptable.

As already stated, the Panel makes no finding as to whether the actual amounts sought by Judge Shea were "exorbitant." The facts, however, do raise serious questions as to what happened, why it happened, and the underlying motives. Similarly, although it is not found that Judge Shea made threats to sue the owners while he was a judge or that he used the actual words, "Chicago Mafia," it is found that Judge Shea did tell Mulick that the purchasers of Coral Key Village had a poor reputation, were dishonest businessmen from Chicago and "had acted in bad faith from the very beginning...." (T. 88; 2492). These comments are just further evidence of Judge Shea's attempt to come between Mulick and Beckmeyer and their client. These were unsolicited and improper comments.

It is not suggested that Judge Shea could not have recused himself in particular cases in which Mulick or Beckmeyer might have appeared if he found the necessity to do so. However, this should have occurred in the context of an actual case and without the suggestion of a trade-off by giving counsel the option of discontinuing their representation and having Judge Shea remain in all of the firm's cases. His direct contacts with these counsel outside the context of any particular case were influenced by his own financial interests and were improper.

When Judge Shea made these phone calls to the law firm, it is absolutely clear from the evidence that he knew there was a pending eviction action as to the mobile home park and that this lawsuit may have rendered his trailers worthless because he did not own the

land on which the trailers were parked. Judge Shea had only an informal oral lease on the land.

In sum, Judge Shea violated Canons 1 and 2 of the Code of Judicial conduct by his actions which were dishonorable and improper and did not promote public confidence in the integrity of the judiciary. Although Judge Shea had every right to protect the value of his property, the Panel concludes that he wrongly used his judicial office to promote his own financial interests.

Charge 2. Threatened Contempt for Petitioning the Governor

2. On May 20, 1997, you entered an order in State Department of Revenue on behalf of Joann Baptiste v. Everett Baptiste, directing Ms. Baptiste, a resident of Newark, Delaware, to show cause why she should not be held in indirect criminal contempt of your court for writing a letter to the Governor of Florida complaining of your handling of this case. You stated in your order that the statements in Ms. Baptiste's letter were "directed against the authority and dignity" of the Court, and ordered Ms. Baptiste, a mother of five children without funds, to appear for a hearing in Key West, Florida. At the hearing held on August 11, 1997, Ms. Baptiste appeared by telephone and by court-appointed counsel. Both the Department of Revenue and Everett Baptiste moved to quash the order directing Ms. Baptiste to appear on the grounds of lack of personal jurisdiction and that her actions did not constitute contempt. Chief Circuit Judge Sandra Taylor, to whom the case was transferred, found that the Court had jurisdiction over Ms. Baptiste, but that as a matter of law her conduct did not constitute contempt. Accordingly, the contempt proceeding was dismissed on October 9, 1997.

Findings:

The Panel concludes that Judge Shea is guilty as charged and his actions were deliberate and violated Cannons 1, 2(A) and 3 of the Code of Judicial Conduct. Joan Baptiste was divorced in 1994 in Key Largo and moved to Delaware with her five minor children. (T. 457). She had little money while seeking to finish her

education and become a teacher. She was in need of child support. (T. 457-58). Mr. Baptiste was chronically behind in his child support payments and the Florida Department of Child Support Enforcement (FDCSE) repeatedly took him to court before Judge Shea to obtain back payments with little success. (T. 458-59).

On April 6, 1997, Ms. Baptiste was without funds and wrote a letter to then Governor Lawton Chiles in which she detailed the many attempts she had made to collect the court ordered child support. (T. 459; 461-62). This letter was stipulated into evidence and stated in part:

> * * *
>
> For some reasons, the court in Key Largo will not help my children collect the support that their father agreed to give them. After three years and several reductions in payment, the arrears total over $15,000. Child support workers in Delaware, as well as Patty Pearce in Key West, have worked tirelessly to bring this problem to the attention of Judge Steven Shea, but payments are always below what Mr. Baptiste agrees to pay or non-existent. We have gone for a year at a time with no support at all. All rulings have been in favor of Mr. Baptiste. He has received every request for a reduction in payment.
>
> * * *
>
> If Judge Shea would serve his elected position as one who upholds his own rulings as well as the laws, my children would have much more of a chance to survive and hopefully prosper. I would appreciate any help you could give me in rectifying this callous abuse. Thank you. (Resp. Ex. 13).

At the next hearing which was set by the FDCSE to hold Mr. Baptiste in contempt for non-payment of child support, Judge Shea was given a copy of Ms. Baptiste's letter to the Governor. In reaction, on May 20, 1997, Judge Shea issued an order "directing Joan Baptiste to show cause why she should not be held in contempt," finding that "the attack upon the Court [through the

letter] may constitute an indirect criminal contempt of court." (Resp. Ex. 14). Judge Shea had his order personally served on Ms. Baptiste at her home in Delaware. Despite his knowledge of Ms. Baptiste's lack of funds and out-of-state residence, she was ordered to appear at the courthouse address in Key West, Florida for a criminal contempt hearing against her. (Resp. Ex. 14). Judge Shea recused himself from the case in the same Order to Show Cause and the matter was reassigned to another judge. Judge Shea's show cause order made it appear he was ruling on a "motion for contempt" pending against Joan Baptiste when, in fact, no such motion was pending against her.

The personal service and content of the show cause order seriously frightened Ms. Baptiste. (T. 463). Judge Shea should have expected no less. As disclosed in her letter to the Governor as read by Judge Shea, Ms. Baptiste had no funds whatsoever and Judge Shea did not inform her she could attend the hearing by telephone. (T. 463; 466). She was upset that Judge Shea was using his power in this intimidating manner merely because she had written the Governor. (T. 464). Ms. Baptiste was forced to expend funds she did not have in her effort to obtain representation. (T. 465).

Ms. Baptiste testified at the JQC hearing and was found to be very credible. Criminal contempt is a serious offense which Ms. Baptiste well-knew. (T. 464). Moreover, she testified that Judge Shea's order had a great impact on her confidence in the judiciary because, "if I can't turn to the Court to help me with this, there

is no other place." (T. 467).

The successor Judge (Judge Sandra Taylor) ultimately allowed Ms. Baptiste to attend the hearing by phone and discharged the Order to Show Cause, finding that the letter contained constitutionally protected criticism. (T. 381; 383; 407-08). There was no suggestion by Judge Shea before this Panel that there was anything in the Baptiste letter which was inaccurate or even exaggerated.

Judge Shea's position at the hearing (contrary to his Answer) was that his order had been a mistake and that he had been too "thin skinned." (T. 2540). However, he absolutely refused to admit any violation of the Canons and said he thought his order was justified by Justice v. State, 400 So. 2d 1037 (Fla. 1st DCA 1981). (T. 2837-40). Judge Shea relied upon this particular case in his written Answer, his oral testimony and his written closing argument.

In the Justice case, Mr. Justice purchased newspaper space in which he published his own personal letter making "scurrilous allegations regarding a judge's private life." Mr. Justice was found in contempt for publishing this "personally embarrassing" and offensive material. The District Court of Appeal reversed the contempt order concluding the letter was not directed against a judge's judicial authority or dignity and did not obstruct the administration of justice. The Justice decision simply does not support the threat of criminal contempt against Ms. Baptiste for her letter to the Governor.

Judge Shea's actions against Ms. Baptiste were deliberate and calculated and violated Canons 2(A) and 3 of the Code of Judicial Conduct. His conduct had a devastating impact on Ms. Baptiste and her family, and is clear evidence of his bias, unfairness and vindictiveness against a person who dared to criticize him. Judge Shea abused his judicial power.

Charge 3. Threats of Contempt and Deprivation of Funding Against the Guidance Clinic

3. You were advised repeatedly that the Upper Keys Guidance Clinic did not perform custody evaluations. Thereafter, you unsuccessfully sought to hold Barbara Martin, a counselor at the clinic, in case no.: PK97-20-3000-FR-22 in indirect criminal contempt for allegedly violating a court order. In fact, Ms. Martin was not in violation of any court order. When this was pointed out, you thereafter sought to retaliate against the clinic by ordering it to produce its financial records and by threatening to put the Guidance Clinic out of business.

Findings:

Again, the Panel concludes Judge Shea abused his contempt powers. As the only circuit judge in the Upper Keys, Judge Shea had broad jurisdiction and responsibility. (T. 2436-7). The Upper Keys Guidance Clinic (Clinic) is a private community mental health clinic which receives some public funding. (T. 496-97). Judge Shea's last employment before running for judicial office was as a Certified Addiction Professional with Florida Lawyer's Assistance, Inc. (F.L.A.). (T. 2413). Judge Shea had a keen interest in substance abuse and mental health issues and saw himself as a crusader on these issues. (T. 542-3; 2419-2426). Early in his tenure, Judge Shea was advised by Dr. Matthews, the Clinic’s Executive Director, that the Clinic did not perform custody or

visitation evaluations. This type of service was simply outside the scope of the Clinic's policy. (T. 512).

Judge Shea strongly disagreed and insisted that the Clinic perform these services. In Wood v. Wood, on June 13, 1997, Judge Shea ordered Mr. Wood to undergo a psychological evaluation with Barbara Martin at the Clinic. (T. 479-80). This order was directed to Mr. Wood and not to Ms. Martin. (T. 386-87; 485; Resp. Ex. 47). By interviewing the patient, Ms. Martin determined that the purpose of the evaluation concerned pending litigation issues of visitation and custody. (T. 485). Ms. Martin advised the patient, the guardian ad litem, and others, that the Clinic's policy was against performing such evaluations. (T. 486-88).

Judge Shea learned of Ms. Martin's actions and, in response, on July 3, 1997, he served Ms. Martin with an order to personally appear before him and show cause "why she should not be held in indirect criminal contempt of court for her failure to comply" with the prior order. (T. 489-90; Resp. Ex. 54). Dr. Mathews and Ms. Martin, together with their counsel, appeared on July 15, 1997. (T. 385; Resp. Ex. 54). They pointed out that there was no order in effect directing Ms. Martin to do anything and therefore, no jurisdictional basis for a contempt citation. (T. 388). At the hearing, Judge Shea was described by Ms. Martin as being angry. (T. 491; 493). He expressed his frustration that other facilities had seemingly "jumped through hoops" for him, while this Clinic did not do so. (T. 493-94; Resp. Ex. 64). Judge Shea stated that his next action would be "to talk to whoever funds the Upper Keys Guidance

Clinic to see if we can take the funds and put it in a facility who is willing to provide some services to the court." (Resp. Ex. 64, p. 4). He also threatened the Clinic with "more drastic action." (T. 494). The Clinic personnel understood these statements as threats. (T. 494).

Shortly thereafter, Judge Shea issued two orders terminating the therapeutic treatment of two juveniles by the Clinic. (T. 507-08). Judge Shea further called the Department of Corrections, with whom the Guidance Clinic had a contract, and ordered the Department to send no further patients to it. (T. 513). The Clinic's Chief Executive Officer, Richard Matthews, was flabbergasted at Judge Shea's action and saw it as vindictive. (T. 509). He termed the Judge's action in cutting off services for two children based upon his anger at the Clinic as "reprehensible." (T. 508).

Judge Shea went further. Under the impression that Dr. David Rice, the Chief Executive Officer of the Guidance Clinic of the Middle Keys, was Dr. Mathews' supervisor, Judge Shea contacted Dr. Rice. (T. 539; Shea Depo. pp. 118-19). Judge Shea told Dr. Rice that he was quite unhappy with the Upper Keys Clinic's refusal and "that he was going to do everything in his power to affect their funding." (T. 540).

In the course of his conversation with Dr. Rice, Judge Shea pointed out an embarrassing incident in the Guidance Clinic's record and stated his intention to use this information in a damaging way to negatively impact the program in the Upper Keys. (T. 541). When Dr. Rice suggested this would be unfair, Judge Shea

advised him that "when you're in a war, you do whatever you have to do to win it." (T. 542-43).

Judge Shea attempts to justify his conduct by his motive to provide the public with low cost psychological services. (Shea Depo. p. 120). There can be no such justification. See Inquiry concerning a Judge (Gary G. Graham), 620 So. 2d 1273 (Fla. 1993). Judge Shea's use of contempt proceedings along with the full power of his office to bring financial pressures to bear on the Guidance Clinic is the antithesis of Canons 1, 2 and 3 of the Code Judicial Conduct. In his efforts to embarrass and punish the clinic, Judge Shea abandoned fairness and acted more like a dictator than a judge. Again, as in the Baptiste matter, the use of threatened criminal contempt against a person who was not even the subject of an order cannot be justified. The Martin show cause order was entered 43 days after the Baptiste show cause order. When the error of threatening contempt against Martin was pointed out, he further responded by going after the Clinic and used his judicial role to do so.

Charge 4. Videotaping a Suspected Attorney

4. In or about November 1997, you requested Deputy Michael Kaffee to video tape Sherry Collins, Esq. While she was appearing at a hearing before you because you regarded her as a potential election opponent.

Findings:

The Hearing Panel does not find clear and convincing evidence of guilt as to this charge, but will describe the facts because we deem them relevant. Judge Shea agreed he had attorney Sherri

Collins videotaped in his courtroom. (T. 2574). There was evidence this was done because Sherri Collins was perceived to be planning to run against Judge Shea in the next election. (Lawson Depo. pp. 64-72; Pet. Ex. 7 to Lawson Depo.). There was also evidence that the taping occurred because Judge Shea had been told that Collins intended to be disruptive in his courtroom. (T. 2576).

According to Judge Shea's hearing testimony, at some time prior to November 14, 1997, he was tipped-off by a "newspaper" man who called him at home telling him that Collins was to appear before him and was planning to be disruptive so he would hold her in contempt. (T. 2576). Judge Shea had his bailiff Mike Kaffee videotape Collins at that hearing. (T. 2574). Nothing untoward occurred and Judge Shea had his bailiff erase the tape. (T. 2577-8). This was done without Collins' knowledge. (T. 2175-6).

Judge Shea admitted the taping and that it was the only time he ever taped a lawyer. (T. 2176; Shea Depo. pp. 352-355, 359). He denied any knowledge that Collins was an anticipated election opponent and claimed the taping was proper because he was attempting to deter Collins from acting "inappropriately." (T. 2579). While Judge Shea's conduct in this incident causes the Panel concern, the evidence on this point was less than clear and convincing and the charge is thus dismissed.

Charge 6. Grievances Against Support Staff Re Domestic Abuse Victims

6. You repeatedly limited the rights of domestic violence complaints ***pro se*** petitioners by restricting court support personnel from assisting such persons as required by law. In this respect you required court personnel to submit affidavits negating the furnishing by them of such assistance, thereby effectively

chilling the willingness of victims and assistants to come forward with legitimate claims.

Findings:

The Panel concludes that Judge Shea is guilty of this charge. On May 9, 1997, Judge Shea became unhappy with the Domestic Abuse Shelter ("Shelter") because of his perception that one of its workers, Jane Martin, had voiced criticism of him while she was on a trip out of town. (T. 551-553; 559). He summoned the Shelter staff and its director to his office for a meeting, voicing his displeasure with Martin. (T. 551-52).

On May 12, 1997, Judge Shea demanded that the Shelter staff complete a form he created which states as follows:

> CERTIFICATION BY STAFF OF DOMESTIC ABUSE SHELTER
>
> I, _____, am employed by the Domestic Abuse Shelter Office in the Upper Keys, and hereby certify under penalty of perjury that I am the person who has typed and/or filled out the attached Petition for Injunction Against Domestic or Repeat Violence, that all allegations set forth in the Petition were directly communicated to me by the Petitioner, that I have read in full to the Petitioner this Petition for Injunction as well as the specific acts of domestic/repeat violence set forth therein, and the Petitioner agrees that all facts and allegations set forth therein are true and accurate.
>
> Under penalty of perjury, I declare that I have read the foregoing and the facts alleged are true and correct.
>
> DATE AND SIGNED this ___ day of _____, 1997.
>
> _____
> STAFF MEMBER, DOMESTIC ABUSE SHELTER

(T. 556-57).

He included this in a faxed order to the Shelter office on May 13, 1997.

On June 18, 1997, Judge Shea dismissed an injunction petition claiming a Shelter worker had fabricated its contents and ordered the Shelter director to personally review a hearing transcript and report back to him. (T. 563; Ex. 8 to Shea Depo.). On June 30, 1997, the supervisor reported that the staff member had acted properly, and advised the judge that it was not uncommon for domestic abuse victims to recant their initial complaints of abuse. (T. 565).

The Shelter objected to Judge Shea's certification, explaining that the form made the staff witnesses against their own clients. They refused to execute it and feared that the Judge would hold them in contempt. (T. 557; 576). On August 18, 1997, Judge Shea wrongly announced in a letter to the Free Press newspaper that the Shelter "agree[d] with" the use of his form. (T. 566-67; Resp. Ex. 84). On August 22, 1997, the Shelter director once again outlined the problems with Judge Shea's certification. (T. 567). On August 25, 1997, Judge Shea accused the Shelter staff of the unauthorized practice of law. (T. 568; Pet. Ex. 18). On September 19, 1997, Judge Shea sent the Shelter staff a newspaper article about "exaggerated domestic abuse claims," with a copy to the State Attorney's office. (Pet. Ex. 19; T. 570-71).

On December 8, 1997, by administrative order, the 16th Judicial Circuit judges, by majority vote, decided to issue one uniform petition circuit-wide, which did not contain Judge Shea's certification. (Resp. Ex. 86; T. 572-73). Nevertheless, Judge Shea continued to add the certification to the "uniform petition"

and to insist that Shelter staff sign it. (T. 573). On February 27, 1998, more than two months after the "uniform petition" took effect, Judge Shea issued an order referring the Shelter to The Florida Bar for the unauthorized practice of law. (T. 573-76; Pet. Ex. 21).

Workers at the Shelter were deeply troubled by the Judge's public pronouncements and complaints about their conduct. (T. 571). They sought advice on what they were to do about his certificate from Judge Ptomey and also contacted Chief Judge Sandra Taylor. (T. 567; 1110-1111).

During the period of Judge Shea's displeasure with the Shelter, some of the staff stopped assisting domestic abuse petitioners because of their fear of what Judge Shea would do to them. (T. 576-7). Shelter workers stopped going to court because they felt that their presence would have a negative effect on the outcome for victims appearing before the Judge. (T. 576-8).

The Panel finds Judge Shea guilty as to this charge in that he repeatedly disrupted the handling of domestic violence *pro se* complaints by unilaterally imposing unreasonable requirements on the filing of such petitions. These requirements materially affected the handling of domestic violence cases and unreasonably placed Shelter personnel in jeopardy or at risk in the performance in their assigned duties.

This conduct violated Canons 1, 2 and 3(c)(1) of the Code of Judicial Conduct. It not only discouraged cooperation between court officials, it had an adverse impact on the administration of

justice in the Circuit.

Charge 7. Clerk Inks' Harassment

7. At a time between May and November 1995, you called Deputy Clerk Leslie Inks into your chambers, discussed your plans to marry and improperly hinted that you also would like to have a relationship with Ms. Inks. Subsequently on November 21, 1995, you harassed Ms. Inks, informing her that you were a bachelor for a week.

Findings:

The Panel finds no clear and convincing evidence as to this charge and dismisses this charge.

Charge 8. Pattern of Antagonism Re Court Staff and Judge

Charge 9. A Judicial Unilateral Investigatory Deposition

8. After your election, you informed your judicial colleague, Judge Ptomey, in or about 1995, that as a judge you planned to correct problems you perceived to exist in the judicial system in Monroe County, that you believed the Sheriff's Department to be corrupt and incompetent, and that the Trial Court Administrator Theresa Westerfield and her staff were incompetent and should be fired. You further criticized your fellow judges and the court clerks because they were not enthused about your successful election campaign. With this motivation you began, and have continued an improper pattern of verbal and other abuse towards court support personnel, bailiffs, court reporters and your fellow judges.

9. On July 12, 1996, you interfered with an internal inquiry by the Sheriff's Office of Monroe County into the conduct of Deputy Barney by examining a witness about the subject of the investigation, under oath, on your own. (Transcript p. 2). Such examination was done without notice to Deputy Barney, and without the presence of any counsel on his behalf.

Findings:

These two charges are closely related and will be dealt with jointly. The Panel concludes that Judge Shea is guilty of both charges.

Judge Shea characterized himself as a "warrior" who intended to change the corruption and incompetence he perceived in the court system of the "Conch Republic"; the 16th Judicial Circuit. (Shea Depo. p. 658; T. 971-72; 973; T. 542-43; 1106). His pretrial position was that the State Attorney opposed his election and that there was a conspiracy comprised of current and former members of the State Attorney's office and various other members of the "Bubba system" which was the way law was practiced in the Keys. (T. 2869-2873; Response to Evidence pp. 2-4, 9 n.4). Judge Shea believed that he was the target of this "courthouse gang" conspiracy. He suggests in his written closing argument that the style of the Keys was "laid-back" and that his "style" was that of "high standards of honesty and professionalism." (Response to Evidence pp. 3-4). He suggests that these "traits in a judge" were not welcomed by the Bar and "produced complaints, formal and informal, to the Judicial Qualifications Commission." He argues that his adherence to strict rules against *ex parte* communications forced lawyers into uncomfortable positions. He suggests that, before he arrived on the scene, lawyers were able to "solve their clients' problems with a telephone call or a visit to the judge." He argues that after his election, lawyers had to start practicing law and not "politics" with judges. (Response to Evidence pp. 1-4).

Other than Judge Shea's own statements and his counsel’s written accusations and arguments, there was no evidence to support the theory that lawyers in the Keys were able to simply contact judges in an *ex parte* fashion to solve their clients' problems.

There was no evidence that counsel generally made such phone calls to judges. Indeed, there was no evidence of any phone call to a judge which supposedly influenced a judge or a case. There was evidence that Judge Shea once refused to take a phone call from State Attorney Kirk Zuelch and that Judge Shea believed this was a major reason why the State Attorney was out to get him. (T. 2869-2873).

The Panel rejects Judge Shea's contention that he was the victim of a conspiracy or any other adverse reaction to his demands for "high standards of honesty and professionalism." Although argued by Judge Shea, there was no evidence that this was the motivation for complaints being made to the JQC. There was certainly no evidence that the rejected phone call caused Mr. Zuelch to have his staff complain to the JQC concerning Judge Shea.

Judge Shea told Judge Ptomey that the Court clerks were incompetent, that they were displeased at his election and that he was going to make changes. (T. 971-72). Judge Shea characterized certain individuals (such as Mr. Zuelch) as being nonsupportive of his campaign, and felt that many people were "out to get him." (T. 972; 2869-2873). He told Judge Ptomey that the sheriff's department was the most corrupt, incompetent organization in Monroe County. (T. 971). He was highly critical of the clerks, the sheriff's office, the bailiffs, some past judges and other agencies with which he was going to work. He saw them as impediments to his success. (T. 971; 973; 1024-25).

In fact, and contrary to his suspicions, many of the people

Judge Shea suspected were extremely happy to see him in office and had literally "danced on the tables" the night of his election. (T. 973). Nevertheless, his suspicions continued. Judge Shea had his office professionally swept for bugging devices shortly after moving in. (T. 2172; 2812-14). Nothing was found. Various witnesses testified to minor events being blown all out of proportion. (T. 204-05; 432; 439; 451-53; 985-993; 1001-002; 1024-25; 2173-4).

When Judge Shea served as Acting Chief Judge for one week, he placed on the agenda his proposal that the court take over the sheriff's court-security responsibilities. (T. 1129-30). He invited the mayor, the sheriff's department, court security and the county commissioners to attend a judge's meeting to discuss the takeover. (T. 1130). Despite previously telling Chief Judge Taylor that his proposal to take over court security was not a good plan, Judge Shea put this item on the agenda because he "just wanted to shake up the Sheriff's department ...." (T. 1131). It was not his prerogative to set the agenda. (T. 1131).

County Judge Wayne Miller detailed an instance in which he released a defendant on bond because he believed a bond set by Judge Shea was based on an invalid warrant. (T. 940-41). Judge Shea sent him a cryptic note, to which Judge Miller responded by phone. (T. 941-42). When Judge Miller asked why Judge Shea felt it necessary to write and not pick up the phone to call him, Judge Shea responded that Judge Miller "had committed an illegal act by changing his bond ...." (T. 942). When Judge Miller remonstrated

that the issue was one of fairness, and he did not think it was fair to keep someone in jail 20 or 30 days on an invalid warrant, Judge Shea responded that "he did not really care about that ... the worst that would happen to him was that the case would be reversed on appeal." (T. 942-43). As Judge Miller described it, "his demeanor and attitude changed so much it was like letting an animal out of a cage.... I was shocked and really dismayed by the attitude that he showed and the aggressiveness of his tone." (T. 947-48). Judge Miller concluded from that exchange that "Judge Shea had labeled me some enemy to the people..." and they would be unable to work together cooperatively in the future to administer justice. (T. 964-65).

Judge Ptomey also reached a similar conclusion. On December 7, 1995, he became convinced Judge Shea was unfit to sit as a judge. On that day, Judge Ptomey visited Judge Shea to get his direction on a uniform dress code. In an unexplained shift in subjects, Judge Shea showed him a memo directed to the attention of Bailiff Steve Barney, which referred to an attachment which was a proposed uncomplimentary letter to the Sheriff concerning Barney. (T. 975; Resp. Ex. 245). Judge Shea told Judge Ptomey that the "real reason" for the memo was that Barney was overheard at a fraternal police meeting making remarks critical of Judge Shea. (T. 977-78). The memo warned Barney to "discontinue immediately your continuous malicious gossiping which has been characteristic of your service thus far." (Shea Depo. Ex. 35). Judge Shea added that "Any violation of these or any further instructions to be

submitted in the future will result in an immediate complaint to the Sheriff as well as any other appropriate action." (Shea Depo. Ex. 35). Attached to the memo was the letter Judge Shea proposed to send to the Sheriff, Barney's boss. (Shea Depo. Ex. 35).

The draft letter to the Sheriff was not actually sent by Judge Shea. Instead, Judge Shea indicated it would be held back unless Barney displeased him in the future. (T. Shea Depo. pp. 747-48). Deputy Barney then turned himself in -– he took the memo and its attachment to the Sheriff's office and reported it all himself. (Shea Depo. pp. 748-49). When the Sheriff's office approached the Judge to inquire, Judge Shea "revised" his letter of complaint about Barney (Shea Depo. p. 750). The "revision" added a new charge that Barney had gone through the Judge's desk and through his "personal confidential mail," and had Barney making new "admissions" to the Judge which had never been previously mentioned. (Shea Depo. Exs. 35 and 36).

While the Sheriff’s review of Deputy Barney was pending, Judge Shea learned of a new and probably legitimate problem concerning Barney’s conduct with a young domestic violence offender named Victoria Arena. Arena and her sister had been in an altercation and Arena, who was young and had a serious drug problem, had been enjoined and removed from the residence. Barney released Arena from the county lock-up and took her to his own home on Christmas Eve where she spent the night. (T. 1022-23).

Rather than reporting the incident directly to law enforcement, Judge Shea summoned Victoria Arena to his chambers and

took a private sworn statement from her. (T. 1026-27; Resp. Ex. 95). Judge Shea told Judge Ptomey of his intention to give the sworn statement to the newspapers. He was dissuaded only when his colleague Judge Ptomey agreed to join him in making a formal sheriff's complaint. (T. 981; 983; Resp. Exs. 96-97). Judge Ptomey did so only to pacify Shea and to diffuse the matter. As Judge Ptomey described it, "He was out to get this guy [Deputy Barney]. I think that is clear by his correspondence of December 7th and [then] this [Arena] opportunity fell in his lap." (T. 1026). As Judge Ptomey testified, Judge Shea's unilateral investigation of Barney was "out of bounds because of the attitude he [already] had about the man." (T. 1026-27).

Although Charge 9 (the Arena statement) is directed to alleged hostility toward the court personnel, the Panel is also concerned that Judge Shea was acting totally outside his proper judicial role in carrying out his own private investigation. Even if he believed Barney’s conduct with Arena may have been criminal in nature, such an investigation was the job of law enforcement or the State Attorney rather than a trial judge.

The harassment and hostility toward court personnel also extended to the Clerk's Office. Judge Shea threatened the assessment of attorney's fees against the Clerk for the "lack of quality control throughout the Clerk's office." (Resp. Ex. 248 and 249).

Judge Shea issued unilateral orders to bailiffs and court reporters which pitted them against their supervisors. (T. 2178-

2183; Pet. Exs. 43). He also issued orders prohibiting supervisory personnel from issuing directions counter to his own. (T. 1076-77; 1082).

One individual singled out by Judge Shea as a particular target was court reporter manager Lisa Roeser. (T. 1080-1090; 1104). Indeed, Judge Shea wrote a memorandum castigating her personally and circulated that memorandum to the Upper Keys Bar Association. (Resp. Ex. 193).

Judge Shea attempts to justify many of his actions based on his professed interest in ridding the county of perceived corruption and favoritism. Judge Shea's counsel asserts in his written closing argument that the "Bubba system" had been in use and that lawyers were now no longer "able to solve their clients' problems with a telephone call, or a visit to the judge." Even assuming such motives, as in the Graham case, Judge Shea's methods were not acceptable. Judge Shea's actions towards court personnel, as well as his colleagues, were violative of Canons 1, 2 and 3(c)(1) of the Code of Judicial Conduct. Judge Shea not only created dissension between co-workers, he pitted them against each other and their supervisors. This pattern was calculated and intentional as exemplified by the Barney letter/memo which was used as a threat and then revised and made even more critical after Deputy Barney turned himself in to his superiors. Judge Shea's treatment of his judicial colleagues was likewise improper and the antithesis of that expected of a judge. This conduct substantially lessened the public respect for members of the judiciary other than

Judge Shea.

The Panel does not accept Judge Shea's arguments that judges in the Sixteenth Circuit could be informally "contacted about a case" and that the other judges and the bar reacted adversely because only he demanded "high standards of honesty and professionalism from attorneys." (Response to Evidence, p. 4).

Charges 12 and 18. Conflict with Bailiff Melody Wilkinson

(also see Charge 8)

12. On or about June 16, 1997, you filed a complaint with the supervisor of Melody Wilkinson, court security supervisor, concerning her actions in denying access to a juvenile delinquency proceeding to a reporter. When Mrs. Wilkinson sought to explain her actions to you, you slammed a door in her face and refused to discuss the matter.

18. On or about September 4, 1997, you inappropriately criticized Melody Wilkinson, Court Security Supervisor, and her personnel, for requiring Rex Lear, a court reporter, to go through a metal detector. You slammed your hand on a desk and stated to Mrs. Wilkinson that she "must use common sense in letting people in the courthouse." You informed Mrs. Wilkinson that she had no common sense and that she and her personnel should get out of your office because you did not "want to look at" them.

Findings:

The Panel concludes that Judge Shea wrongly engaged in a running conflict with Deputy Melody Wilkinson, the bailiff supervisor who replaced Steve Barney.

On March 7, 1997, Bailiff Michael Kaffee had his gun exposed too close to an inmate who could have grabbed it. (T. 843; 844; Resp. Ex. 123). This created an emergency situation to which other bailiffs, including Wilkinson, responded. (T. 846-47).

After court, Judge Shea followed Wilkinson into the coffee

room and shut the door. (T. 846). He was angry and loudly told Wilkinson that if the inmate had grabbed Kaffee's gun, "I'd have pulled mine out and shot him." (T. 846-48). Wilkinson reported Kaffee because of her concerns as bailiff supervisor. (T. 859-61).

Wilkinson also made a judgment call to keep a news reporter from attending a juvenile hearing before Judge Shea. (T. 853-54). She attempted to get a note to the Judge seeking his direction, but was unable to do so without disrupting the proceedings. (T. 852-54). When the newspaper subsequently reported that the hearing was closed, Wilkinson learned that the Judge was upset with her and went to talk to him. (T. 855-56). Judge Shea refused, indicating "No. I don't have anything to say to you" and slammed the door. (T. 856).

Wilkinson not only admitted making an error, she sought and received permission from the sheriff to write the newspaper, accepting full personal responsibility. (T. 861-63; Pet. Exs. 31 and 32). However, Judge Shea was not satisfied. He demanded in a memo a "full supervisory review" of Wilkinson's actions, which was not limited to press exclusion, but instead castigated Wilkinson for filing a "complaint against [his] personal bailiff," for the earlier dangerous situation. (T. 858-59).

Judge Shea then complained that Wilkinson had submitted a "false" narrative report and violated his confidence in disclosing the coffee room conversation because "I directed her to keep my conversation with her private...." Judge Shea concluded his memo by barring Ms. Wilkinson "from [his] chambers or courtroom [or]

from directly supervising any of my bailiffs until the supervisory review was concluded." (T. 862-3). Judge Shea's response to the dangerous situation created by his own bailiff was to ban the bailiff supervisor from his courtroom and to preclude her from bailiff supervision. (T. 862-63).

Judge Shea became extremely adverse to Wilkinson and this was a part of his overall pattern of conflict with court support personnel. The Judge took away his bailiff's keys to his office because he feared Wilkinson would order the bailiff to turn over the keys to her. (T. 2173-4). On another occasion, court reporter Rex Lear complained to Judge Shea that he was being forced to go through the magnetometer. (T. 917-18). Ms. Wilkinson attempted to explain that procedure called for everyone to go through the machine. Judge Shea ordered her to get out of his office and to use common sense. (T. 918-19).

Judge Shea's actions towards Ms. Wilkinson violated Canons 1, 2 and 3(c)(1) of the Code of Judicial Conduct and were part of his overall pattern of conflict with court support personnel. Whatever his perception of Wilkinson's shortcomings, they did not justify the treatment she received and the overall harm to and disruption of the judicial system.

Charge 15. Personal Agenda and Threats in a Capital Case

Charge 16. Recusal Order with Statements on Ineffective Capital Defense Counsel

15. On or about February 21, 1997, in the case of State v. Overton, you entered an order improperly implying that Chief State Attorney Jonathan Ellsworth and attorney Jason Smith were guilty of unethical conduct without affording them an opportunity to respond,

and by threatening that you would refer any failure of counsel to comply with any of your directives to the Chief Justice of the Supreme Court of Florida, who had no jurisdiction in the matter at that time. You improperly sought to discuss this matter with the Chief Justice and furnished him with a copy of your order. You further advised the defendant and counsel on March 11, 1997, that the justices or a justice of the Supreme Court were keeping an eye on the case.

16. After denying, without hearing, a proper motion for recusal in State v. Overton, you then improperly entered an order of recusal dated September 19, 1997 styled "Memorandum of Concern as to Ineffective Assistance of Counsel and Order of Recusal." This document improperly and inaccurately criticized defense counsel without affording them an opportunity to respond. The defendant later specifically denied that his counsel were ineffective. Following an evidentiary hearing, Circuit Judge Mark Jones on October 8, 1997 affirmatively found the representation to be effective, and vacated your memorandum.

Findings:

The Panel finds Judge Shea guilty as to both of these charges. State v. Overton was a capital murder case. After five years without an arrest, finally, in December 1996, the Defendant Overton was charged with the murder of a couple and their unborn child. Both the State and the Defendant were represented by counsel at an early status conference of February 18, 1997. However, Judge Shea was dissatisfied because certain additional counsel were not present. On February 21, 1997, Judge Shea entered an order stating he was "concerned about the failure of Mr. Ellsworth and Mr. Smith [defense counsel] to comply with this Court's order to attend." Judge Shea ordered "all counsel of record to personally attend each hearing in this matter" indicating further that "failure of counsel to comply with this directive or any other directive of this Court in this matter shall result in an immediate referral to The Florida Bar and the Chief Justice." (Resp. Ex. 204).

[4]

Judge Shea's dissatisfaction stemmed from his apparent belief that lead counsel should attend all hearings regardless of their importance or magnitude, a requirement the Panel believes to be inconsistent with customary practice. Judge Shea announced in open court that he had discussed this matter with the Chief Justice of the Florida Supreme Court, who was "keeping an eye on the case." (T. 208-09; Pet. Ex. 8). He sent a copy of his order directly to the Chief Justice which was of course the reviewing Court in the case. (T. 292-93). The threat of "referral to The Florida Bar" clearly meant that the lawyers would be reported to The Florida Bar on ethical grounds if they were thought to have violated any future "directive" by the Judge.

Judge Susan Schaeffer, the Chief Judge of Pinellas County and a recognized expert in capital cases, testified that there was no conceivable justification for Judge Shea sending his February 21 order to Chief Justice Kogan. (T. 295). Judge Shea's own witness, Circuit Judge Richard Payne, concurred. (T. 1555). Defense attorney Jason Smith believed that he was being threatened with sanctions for some unnamed and unspecified events in the future, and was fearful because of the Judge's order and threats of referring him to both The Florida Bar and the Supreme Court. (T. 204-05).

The Judge held another status conference on September

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[4] What Judge Shea was mandating was that all counsel aligned with the respective sides appear, not just counsel with authority to act.

2, 1997, at which both sides expressed concern about the trial date. (T. 211-12). Judge Shea then denied a motion for continuance before it was even made. (T. 212).

The Judge's public pronouncements and interjection of himself into the proceedings prompted a defense motion to recuse him as of September 15, 1997, detailing all of the above. (T. 214). Judge Shea denied the motion on the next day, September 16, 1997. (T. 214-15).

On September 17, 1997, Judge Shea had a 21-minute phone call with Judge Schaeffer. According to Judge Schaeffer, during that phone conversation, Judge Shea told her there were "lies" in the motion to recuse, that he had denied the motion, but that he was concerned about recusal. (T. 303-04). Judge Shea then promptly prepared a long document entitled "Memorandum of Concern as to Ineffective Assistance of Counsel and Order of Recusal," which he signed on September 19, 1997. (Pet. Ex. 11). Judge Shea now recused himself and took the occasion to criticize counsel. The order suggests in detail that the defense attorneys were ineffective for several reasons, despite the fact that the case had not yet been tried. (Pet. Ex. 11).

Judge Shea's Answer to Charge 16 claimed that he prepared this memorandum/order on Judge Schaeffer's advice. (Answer to Formal Charges, 16). Judge Schaeffer disagreed, testifying before the Panel that it was "utterly impossible" for her to have given such advice. (T. 352). Judge Shea's Answer to charge 15 stated that he had continually consulted with Judge Schaeffer

regarding the Overton matter. Judge Schaeffer stated this was "absolutely inaccurate." (T. 376-77). The Panel finds Judge Schaeffer to have been a very credible witness and when in conflict with Judge Shea, her testimony, as supported by the overall weight of the evidence, is accepted.

Judge Schaeffer reviewed the entire pleadings file in the Overton matter. She testified that as of September 19, 1997, substantive motions had been filed and that Judge Shea's use of a February date to measure the "effectiveness" of counsel, left seven months of activity unaccounted for. This was inexplicable, except as retaliation against a lawyer who had sought to recuse him. (T. 320-29; 372-73). Mr. Smith reasonably believed that this order was entered by Judge Shea to get back at him for filing a motion to recuse. (T. 221).

Judge Shea called Judge Richard Payne, the former Chief Judge of his Circuit, to testify on his behalf. Judge Payne conceded that Judge Shea had violated the judicial canons with regard to his handling of the Overton case. (T. 1529; 1537; 1555-56).

Judge Shea's "memorandum order" regarding ineffective assistance of counsel was widely publicized. (T. 221-224). Defense counsel Jason Smith testified that after it was released to the press, he lost business because of it. He also stated, on a more personal level, "I felt like I was being attacked for no good reasons by a sitting judge in the case, and I still haven't figured out why it happened the way it did." (T. 224). The record amply

reflects that Judge Shea intentionally drafted his "memorandum order" to portray defense counsel in the worst possible light in the public eye, and that Judge Shea's action, in fact, succeeded.

By his actions directed toward defense counsel, Judge Shea violated Canons 1, 2, and 3. The Judge placed personal animosity against counsel over the administration of justice. Obviously, a capital murder case cannot be legally tried with ineffective defense counsel. The order raised serious questions as to the future handling of the case which had not yet been tried. Judge Shea's supposed informal contacts with the Supreme Court and his assertions that the Supreme Court was already treating this case with special attention were totally improper. Judge Shea could give no reasonable explanation for sending his improper order directly to the Supreme Court.

Charge 17. Threats Against Assistant State Attorney McClure Over an "Ex Parte" Violation

Charge 20. Misuse of Contempt Power - - Mr. Brown and His Counsel

Charges 32 & 33. Further Threats - - State Attorney Garcia

17. On March 26, 1996, in open court in the case of State of Del Puerto, you accused Assistant State Attorney Gina McClure of unethical conduct for telephoning your judicial assistant to determine when jury selection would begin, implying that you would file a complaint against her with The Florida Bar.

20. On September 2, 1997, you entered an order in Roof v. Brown, suggesting that the attorneys for the respondent in this domestic violence case were encouraging their client to disobey your orders by filing motions for a stay. After finding the respondent to be in contempt, you immediately dismissed the case, and vacated the contempt order against the respondent.

32. In a letter dated March 18, 1996, you falsely accused Assistant State Attorney Luis Garcia of attempts to make ex parte contacts with you and threatened to report him to The Florida Bar.

33. On March, 19, 1996, in the case of In re G.R., a juvenile matter, you improperly and falsely accused Mr. Garcia in open court of having stated that you had engaged in ex parte contact.

Findings:

These four charges all concern Judge Shea's consistent disagreements with the office and personnel of the State Attorney and others. The Panel concludes that, as he admitted concerning the Baptiste matter, Judge Shea was too "thin skinned" and reacted in his judicial role when he felt threatened.

Judge Shea retaliated against lawyers for perceived criticism. This conduct began early and continued until his suspension. In State v. Davis, Mr. Davis was charged with embezzling funds from the local fire department. Mike Strickland (a public defender) learned that Judge Shea, the presiding judge, was a member of a local fire department. He thus filed a motion to recuse on June 15, 1995. (T. 726-28; 1239-40; Pet. Ex. 27 and 28).

In response, in a detailed order, Judge Shea granted recusal but attacked Mr. Strickland. Quoting Rule 4.3.3 of the Rules of Professional Conduct, Judge Shea said that it "prohibit[ed] an attorney from knowingly making false statements of material fact or law to a tribunal." Although the foregoing facts were undisputed, the Judge found the motion to disqualify him to be "frivolous" and found the "procedure ... to be offensive to the fair administration of justice, an abuse of legal process, and possibly violative of the Code of Professional Conduct." (T. 126-28; 1241-42; 1253-54).

Mr. Strickland was not permitted to defend himself before these findings were announced in the order, which also granted the requested recusal. (T. 1260-61). Mr. Strickland could not appeal the favorable ruling and was left with a finding that he was guilty of unethical conduct, a permanent mark on his excellent record with the clear potential to adversely impact his future in business and the practice of law. (T. 1260-61). Despite this order, the Panel notes that Mr. Strickland appeared at the hearing as a witness for Judge Shea. (T. 1218).

Members of the State Attorney's office who filed motions to recuse Judge Shea or took other innocent actions received orders or treatment of a similar nature. (T. 1255). Judge Shea's attacks on counsel were not reserved solely to recusals. In Roof v. Brown, Mr. Brown did not appear for a domestic injunction hearing because he had no objection to the relief sought by petitioner. Judge Shea's order, however, added new measures the petitioner had not requested including requiring Brown to enroll in a Domestic Safety Program. Brown's counsel raised the lack of notice in a "Motion for Rehearing" and sought a hearing to bring the error to the court's attention. This motion was uncontested and unopposed. However, Judge Shea:

(1) refused to grant a hearing;
(2) canceled a hearing that Brown's counsel set;
(3) summarily denied the motion;
(4) issued an order to show cause why Brown should not be held in contempt based on a hearsay document;
(5) held Brown in contempt and refused to consider the evidence because it was "hearsay"; and
(6) castigated defense counsel who sought to rectify this situation, with a finding that their repetitious motions for stay encouraged Respondent to disobey this Court's

order. (T. 389-401).

In State v. Avins, the defendant's privately retained counsel (Mr. Fenn) was detained in a Federal trial in Miami before the Honorable Lenore Nesbitt. (T. 162-63). He could not attend a docket sounding and asked attorney Karl Beckmeyer to attend in his stead. (T. 164). When Mr. Beckmeyer attended the docket sounding, Judge Shea "lost it." (T. 163). He was emotional and appeared not to listen. (T. 164). Without giving the attorney time to explain, Judge Shea announced that he was "removing Mr. Fenn as an attorney" for the defendant. (T. 164). Beckmeyer described the Judge's actions as "irrational, unfounded [and] completely baseless." (T. 164).

In the case of State v. Gonzalez, Assistant State Attorney (ASA) Gina McClure gave instructions to a police detective pursuant to Judge Shea's direction to limit his testimony to avoid any mention that the police had been engaged in a search for cocaine. (T. 613-14). The detective violated those instructions by disclosing the cocaine search, and thereby causing a mistrial. (T. 613-15). The defense then moved to dismiss the charge based on prosecutorial misconduct. (T. 615). Judge Shea made two public statements that ASA McClure had done nothing wrong. (T. 622; 625; 735). Judge Shea also told McClure and ASA Luis Garcia in an off-the-record sidebar that McClure had done nothing wrong. However, he said in that sidebar that "he had trouble with the Sheriff's office" and this particular officer and that he wanted the office to understand this problem. (T. 625).

The order actually entered on the defense motion to dismiss

was personally written by Judge Shea and was directly at odds with his public pronouncements. (T. 626). Judge Shea dismissed the case and found Ms. McClure guilty of intentional prosecutorial misconduct. (T. 626). Moreover, Judge Shea personally delivered the order to Luis Garcia, who was not counsel of record on this case. (T. 738). Judge Shea had a conversation with Garcia when visiting with him in Garcia's office. (T. 741-42). Mr. Garcia told the Judge that he was going to have to ask him to recuse himself in all cases involving the specific officer. Garcia asked, "How do you want me to handle this?" and Judge Shea told him to do it in writing. (T. 739-40).

Shortly after the order of dismissal for prosecutorial misconduct, the State Attorney Mr. Zuelch placed a call to Judge Shea who refused to take the call. (T. 2869-73). This became the basis for many arguments that the State Attorney was out to get Judge Shea because he had refused to take a call from Mr. Zuelch who was a powerful official. The Panel rejects this theory as not supported by the evidence.

On March 18, 1996, Judge Shea attacked Mr. Garcia in correspondence, accusing him of improper ex-parte communications, which arose from the prior conversation in Garcia's office which Judge Shea had initiated. (T. 735). Judge Shea perceived Garcia's request as personal criticism. (Resp. Ex. 238). Judge Shea wrote on March 18, 1998, that "Your implication to me that the Court engaged in improper conduct reflects a continuation of a pattern of disrespect for the Court.... (Resp. Ex. 238). He added that:

> It is inappropriate and borders on the unethical for an attorney to directly criticize or complain to the Judge of his ruling outside of proper argument, with all parties present, or to tell the Judge "that's what the court of appeals are for", as you stated to me ex-parte at a side bar during other criminal proceedings (Resp. Ex. 238).

Judge Shea concluded this letter by severing contact with the State Attorney's office "due to your actions as set out in this letter" and warning Mr. Garcia that:

> The Code of Judicial Conduct has been recently amended to allow a Judge who may have knowledge of improper conduct of an attorney to bring this to the attorney's direct attention rather than filing a formal bar complaint. I have done this with both you and Mr. Zuelch, as well as a member of the Public Defender's Office, when I felt it was appropriate. However, please be advised [that] any further misrepresentations made by you or your office toward this Court, any further violations of Rule 4-3.5(b), or other conduct I determine to possibly constitute an ethical breach, shall immediately be filed with the [sic] Florida Bar in Miami for appropriate action. (Resp. Ex. 238).

Judge Shea circulated this accusatory letter to Garcia's superior, State Attorney Kirk Zuelch, the Public Defender, and the Honorable Richard Payne, then Chief Judge. (Resp. Ex. 238).

One week later, ASA Gina McClure phoned Judge Shea's Judicial Assistant to determine the proper date for jury selection in another case because of an error in one of Judge Shea's orders. (T. 628). The error was undisputed, but Judge Shea overheard part of the phone conversation and took the position that McClure was attempting to *ex parte* him. (T. 629-639). He used the opportunity to attack ASA McClure in open court and again in writing warning that "the minute I have to file a bar complaint against any

attorney for any reason, that attorney cannot appear in my courtroom...." (T. 629-639; Resp. Ex. 163, p. 4).

This incident resulted in Judge Shea imposing an absolute prohibition as to supposed "*ex parte*" contacts. The Panel does not view a lawyer calling a judge's judicial assistant to check on an apparently erroneous date in an order as any sort of prohibited *ex parte* contact. Judge Shea should not have threatened ASA McClure with a "bar complaint" for her phone call. Judge Shea acted inconsistently. He found it proper to contact attorneys such as Beckmeyer and Mulick for his personal reasons and to discuss the Guidance Clinic with Dr. Rice, while at the same time accusing counsel of ethical violations for innocuous contacts with his office staff over scheduling matters.

In State v. Hendricksen, Judge Shea ordered the State Attorney to personally report to him why he was nolle prossing a case. (T. 747-51; Resp. Ex. 164 & 165). Judge Shea intended to punish the State Attorney's office for criticism which he alone perceived. Following the Hendricksen hearing, Judge Shea asked attorney Garcia to stay behind and told him that he, Garcia, had "started fabricating things since [the] Gonzalez [ruling] and that if [Garcia] didn't straighten up he could make things hard for our office like this order [in Hendrickson]." (T. 752).

Judge Shea acted vindictively. At his 6(b) hearing on March 27, 1998, he attributed the charges against him to "fabrication" by the State Attorney's office. (Hearing p. 10). The Notice of Formal Charges was subsequently filed May 1, 1997, and contained charges

mentioning these Assistant State Attorneys by name.

On May 4, 1998, Judge Shea issued a press release, reiterating that he had "expected something like this" for three years from the State Attorney. (Shea Depo. Ex. 1). That same day, Luis Garcia filed a specific motion to recuse the Judge on all of the State's cases because of bias and prejudice. (T. 1395-99). The Judge denied the motion. (T. 1399).

In his treatment of counsel as detailed here, Judge Shea violated Canons 1, 2 and 3 of the Code of Judicial Conduct. His actions went beyond the mere appearance of impropriety and prejudice and reached the level of actual impropriety.

Charge 21. Hostility Toward Other Judges

Charge 22. Public Hostility Over Court Reporters

Charge 23. Private Hostility in Judge Meetings

Charge 26. Securing information on Pending Case

21. In or about Thanksgiving 1997, in open court you criticized your fellow judges, Chief Circuit Judge Taylor and Circuit Judge Wayne Miller, stating inter alia "those Key West judges do not know what they are doing," and further evidencing disrespect for Judge Taylor with facial gestures. On other occasions you have criticized these judges and County Judge William R. Ptomey and County Judge Ruth Becker in open court. As to Judge Ptomey, you stated that he was not qualified and does not have your knowledge of the law.

22. In a memorandum to Chief Judge Sandra Taylor dated November 29, 1997, you falsely stated that you were not given appropriate notice that a matter involving court reporter services would be considered at the regular meeting of judges held on November 7, 1997. You improperly, for self-aggrandizement, sought to involve third parties in a internal dispute on a court administrative matter, by publicly disseminating your distorted version of events to a local bar association, and publicly continuing this dispute by sending a letter concerning the subject to the Clerk of the Supreme Court of Florida and the Chair of the

Local Rules Advisory Committee, with a copy to the local bar association.

23. At a regular meeting of the judges of the circuit held on December 5, 1997, you verbally attacked Chief Judge Taylor and Judge Ptomey, denigrated Chief Judge Taylor, and stated that you had shared your negative opinions of the Monroe County judiciary with judges throughout Florida. You continued to act disrespectfully toward your colleagues, thereby disrupting the meeting and preventing a civil dialogue on the agenda. You then departed in a rude and belligerent manner prior to the conclusion of the meeting.

26. On August 14, 1995, you improperly sought ex parte to secure information about the case of Hendrix v. Muller from a neighbor, one of the litigants, Deputy Clerk Leslie Inks.

Findings:

As to Charges 21 and 26, the Panel finds a lack of clear and convincing evidence and these charges are dismissed.

As to Charge 22, due to the lack of clear and convincing evidence, the Panel is unable to determine whether Judge Shea's statement in his memorandum to Chief Judge Sandra Taylor of November 19, 1997, that he had not been given appropriate notice that court reporter services would be considered at a regular meeting of judges held on November 7, 1997, was false. As to the balance of Charge No. 22, the Panel does find that Judge Shea involved third parties in an internal dispute on an administrative matter involving court reporters by publicly disseminating his version of the events in question to the local bar association and by sending a letter concerning the subject to the clerk of the Supreme Court and the Chair of the Local Rules Advisory Committee along with a further copy to the local bar association. (T. 1094-99).

Further as to Charge 22 and 23, the Panel concludes that Judge Shea verbally attacked Chief Judge Taylor and other judges at the December 5, 1997 meeting. While candid and even heated discussions are certainly appropriate in judges' meetings, Judge Shea's conduct was disrespectful of his colleagues, disrupted the meeting and actually prevented any meaningful dialogue on the court reporter plan in question. (T. 1005-1010). Judge Shea left the meeting early in a belligerent manner. His conduct lessened respect for the judiciary and made it difficult for all members of the judiciary in the Circuit to perform their duties.

Charge 27. Disregard for Security and Keeping Firearms

27. You have ignored established court security procedures, for example by escorting an attorney in September 1997, into the branch courthouse without the required security clearance, by keeping firearms at your personal disposal, and threatening to pull these weapons on defendants.

Findings:

The Panel finds a lack of clear and convincing evidence and dismisses this charge.

Charge 28. Firearms

28. On or about February 7, 1996, without reason, you brandished * a loaded firearm in your chambers, claiming that you found that necessary because only one bailiff was present during a contempt hearing. On another occasion despite the presence of an armed bailiff you threatened to draw a firearm on a defendant who had begun to rise from a chair. *[The word "brandished" was stated by the prosecutor to have been used in error. (T.870-1). The word was amended to "threatened". (T.1237,1635).]

Findings:

The Panel finds a lack of clear and convincing evidence as to this firearms charge and dismisses same.

Charge 31. Breach of Confidence with the Chief Judge

31. You violated the confidence of Chief Judge Taylor by disclosing the contents of a confidential memorandum from her sent to you on or about August 25, 1997.

Findings:

The Panel concludes that Judge Shea is guilty of violating the confidence of Chief Judge Taylor by disclosing the contents of a confidential memorandum regarding court reporters. Judge Shea's explanation is that he did not realize the document was of a confidential nature. The Panel rejects this explanation and concludes that this extremely volatile issue resulted in Judge Taylor typing the memo personally which she then personally sent on to Judge Shea. (T. 1005-1010; 1103-4). Judge Shea's purposeful disclosure of this memo substantially lessened collegiality among the judges and diminished public confidence in the bench.

Charge 36. Threats of Attorney Fees Against the Clerk's Office

36. On June 12, 1997, you complained in writing to the Clerk of the Circuit Court Danny Kohlage regarding problems you were having with his deputies, stating without legal authority, "there appears to be a lack of quality control throughout the Clerk's office, and if necessary, I am prepared to begin the assessment of attorney's fees against the Clerk's Office directly if there is any unnecessary fee or cost burden on litigants due to the problem." When a meeting was held regarding these accusations among you, Mr. Kohlage, and others on his staff, you were not able to cite a specific instance of conduct sustaining your accusations.

Findings:

The Panel concludes that Judge Shea's threats to the clerk's

office in fact occurred and were a further outgrowth of Judge Shea's overall announced animosity against the office of the clerk. Even if Judge Shea believed there was a "lack of quality control" in the clerk's office, it was his duty as a judge to seek to remedy these problems in a constructive and positive manner. The Panel finds that he did not make such efforts and, in fact, chose instead to act in a destructive manner.

The Law Regarding Appropriate Remedies

Having concluded that Judge Shea is guilty, the Panel considers the available remedies. Fla. Const. Art. V, Section 12(a)(1) authorizes the Commission to recommend to the Supreme Court the removal from office of any judge, whose conduct during term of office or otherwise "demonstrates a present unfitness to hold office...." The Commission is also empowered to recommend judicial discipline, defined as "reprimand, fine, suspension with or without pay, or lawyer discipline." On recommendation of the Investigative Panel, the Supreme Court suspended Judge Shea in its Order dated May 9, 1998.

To impose any degree of discipline against a judge, the evidence regarding the charges against him must be clear and convincing. Inquiry Concerning Judge Davey, supra; Inquiry Concerning Judge Graziano, supra and In re LaMotte, 341 So. 2d 513 (Fla. 1977). 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." In re Kelly, 238 So. 2d 565, 569 (Fla. 1970), cert. den., 401 U.S. 962, 91 S.Ct. 970, 28

L.Ed.2d 246 (1971).

Removal from judicial office is reserved for cases involving the most egregious misconduct, as this Court will not lightly remove a sitting judge from office. See In re Berkowitz, 522 So. 2d 843 (Fla. 1988); In re Kelly, 238 So. 2d 565 (Fla. 1970), cert. den., 401 U.S. 962, 91 S.Ct. 970, 28 L.Ed.2d 246 (1971).

In determining whether a judge conducted himself in a manner which erodes public confidence in the judiciary, this Commission must consider the acts or wrongs themselves and not the actual resulting publicity surrounding those acts. If a judge commits a wrong which would erode confidence in the judiciary, but it does not appear that the public has learned of it or has actually lost such confidence, "the judge should nevertheless be removed." In re LaMotte, 341 So. 2d 513 (Fla. 1977). Thus, even though the public would not have been aware of much of the internal conflict created by Judge Shea but for these proceedings, that is not a defense. Moreover, conduct unbecoming a member of the judiciary may be proved by evidence of major incidents, or 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." In re Kelly, 238 So. 2d at 566. Both are present here. We find an unfortunate pattern of vindictiveness.

Charge 1, standing alone, is sufficient to warrant Judge Shea's removal from office. Judge Shea used the power of his office and verbal threats to force a law firm to withdraw from the

representation of its client. Judge Shea's threatened recusal on all of the firm's cases was specifically intended to deter and did, in fact, deter the law firm's representation. Judge Shea specifically warned the firm that his potential recusal would adversely affect the firm economically, as well as its clients, and as a result, the firm was forced to abandon its client against its will. Judge Shea also mentioned a sum of money he sought for his mobile homes, which would result in withdrawal of his threatened blanket recusal. Clearly, Judge Shea was acting with his personal financial interests in mind.

Interestingly enough, while continually denying any violation of the Code of Judicial Conduct, Jude Shea eventually stated: "And so I realize now I wish I never would have done that. I shouldn't have done it that way." (T. 2906).

A judgeship is a position of trust not a fiefdom. In re Graham, 620 So. 2d 1273, 1275 (Fla. 1993). Attorneys and others should not be made to feel that the disparity of power between themselves and the judge jeopardizes their right to justice. Graham at 1275. While the power of contempt is an extremely important power for the judiciary, it is nevertheless an awesome power and one that must not be abused. It is critical that the contempt power should "never be used by a judge in a fit of anger, in an arbitrary manner, or for the judge's own sense of justice." In re Perry, 641 So. 2d 366, 368 (Fla. 1994). Judge Shea was in office just over three years and his frequent resort to threats of contempt and to ethical referrals to The Florida Bar are a very

poor commentary on his judicial temperament.

Judge Shea used the full power of his office as a bully pulpit to punish his perceived enemies. These "enemies" included individuals such as Ms. Baptiste and others whom he perceived to have voiced criticism of him.

As in Graham, Judge Shea has spent the bulk of his defense concentrating on the perceived misdeeds and inadequacies of others. Graham at 1275, indicates such a defense is irrelevant:

> 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.

One of the more disturbing elements of this case is Judge Shea's preoccupation with his "enemies," real or imagined. One of his first acts of office was to have his chambers swept for electronic eavesdropping equipment. When no such equipment was uncovered, Judge Shea nevertheless persisted in accusing a host of different persons of bugging his chambers. These included predecessor Judge Overby, his colleague at the Plantation Key courthouse Judge Reagan Ptomey, the State Attorney's office and the Sheriff's Department. Judge Shea's willingness to take offense where none was suggested, to find hidden negative meanings in completely benign remarks, take drastic actions based upon his perceptions, his hidden agendas and use of power to "send messages" rather than administer justice, and his disregard of rudimentary notions of fairness and due process, all render him presently unfit to serve in his position as a circuit court judge.

This Commission has not hesitated to recommend removal in less

egregious cases. See In re Crowell, 379 So. 2d 107 (Fla. 1979) (judge removed from office "substantially due to his tendencies to lose his temper when confronted by the human failings and shortcomings of others ... [showing] a pattern of conduct over a long period of time, involving persistent abuse of the contempt power, which demonstrate[d] a lack of proper judicial temperament and a tendency to abuse the power of his office."); In re Graham, 620 So. 2d at 1275 (using power in the "zealous pursuit of a pure society" with motives which were acceptable, but methods which were not).

Removal is warranted, moreover, in that Judge Shea simply fails to recognize any error in his actions or their impact on others around him. Since the date he was formally charged, Judge Shea has persisted in his efforts to place everyone but himself on trial.

A judge who refuses to recognize his own transgressions is doomed to repeat them and "does not deserve the authority or command the respect necessary to judge the transgressions of others." In re Graham, 620 So. 2d at 1276; In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). As Judge Shea's testimony reflects, this is true here:

> Q. [I]s there one charge that you think you did anything wrong on, one?
>
> A. I do not feel that I violated the Code of Judicial Conduct on any of these charges. I do feel that, in the ballpark of judicial conduct, that some of the conduct could have actually been better done, as I get more experienced and I learn more, and I think I have learned and become more experienced.

> And so within the ballpark of proper judicial conduct, sure, there's better ways to do things. As to whether or not I crossed the line and violated the Code of Judicial Conduct in any way, I have already denied that in my answer, and I stick to that denial.
>
> * * *
>
> Q. You think you've done you haven't even stepped borderline to improper conduct on any of these 37 charges.
>
> A. If you're defining improper conduct as being a violation of the Code of Judicial Conduct, I've already denied any violation of the Code of Judicial Conduct and I stand by that.
>
> As to whether or not I can improve on certain of my judicial actions and judgments and rulings and decisions and the way I run my court, and the way I administratively handle the clerks and bailiff, I probably could improve in that area. As to whether I violated the Code, I don't think so. (Depo. pp. 439-41).

The six prefatory charges are well supported by the various examples charged in the more specific allegations on which Judge Shea has been found guilty. Although at least one circuit judge testified to actual physical fear of Judge Shea, the Panel concludes that the evidence as to physical misconduct is not clear and thus no finding is made as to any physical conduct.

As to all other elements of the six prefatory charges, the Panel concludes that Judge Shea is indeed guilty. The persons who were the subject of Judge Shea's pattern of abuse and vindictiveness included fellow judges, attorneys, courthouse personnel, the Sheriff's Department, court reporters, court clerks, bailiffs, victim coordinators, judicial assistants, the Guidance Clinic of the Upper Keys and the Domestic Abuse Shelter. Although it is not specifically charged, the Office of the State Attorney

was also the subject of Judge Shea's abusive tactics but the result would be the same without this fact.

Recommendation

After consideration of all the evidence and based on the clear and convincing standard, the Hearing Panel recommends that Judge Shea be found guilty and permanently removed from office by this Court.

The Panel has considered a possible recommendation regarding "lawyer discipline" under Article V, § 12(a)(1) in the event that Judge Shea is removed from office and attempts to return to active practice as a member of The Florida Bar. The Panel declines to make any recommendation concerning "lawyer discipline."

The Panel further recommends and requests the imposition of all costs including attorneys' fees and other expenses involved in the investigation and prosecution of the case. These costs are sought pursuant to two subsections of the Florida Constitution. Article V, § 12(c)(2) of the Constitution provides "The supreme court may award costs to the prevailing party." and Article V, § 12(f)(2)j provides "The commission shall be entitled to recover the costs of investigation and prosecution, in addition to any penalty levied by the supreme court." Attorney's fees are properly a cost of the prosecution. In addition, Judge Shea's litigation tactics were often responsible for many extra hours of legal work by counsel. This matter should be remanded for determination of the amount of all costs after the Court's final decision on removal and the completion of counsel's services.

As to the issues of sanctions and bad faith litigation, the Panel denies all of Judge Shea's motions for attorney's fees and

sanctions. The several motions for sanctions and attorney's fees by the prosecution are granted. Judge Shea is found to have abused the discovery process. The Panel does not deem it necessary to detail the specific steps in this litigation warranting the imposition of sanctions because the same costs and attorneys' fees (including all special counsel fees) should be borne by Judge Shea under the normal "costs" provisions of the Constitution quoted above. It is not necessary to sanction Judge Shea by imposition of costs he will be otherwise ordered to pay and the Panel does not recommend a sanction beyond the "costs" already required by Article V, § 12(f)(2)j of the Constitution. If the Court were to conclude that attorneys' fees are not properly within the "costs of investigation and prosecution" under § 12(f)(2)j, then the Panel requests that the matter be remanded for further consideration and argument followed by a more detailed order imposing some or all of these amounts as appropriate sanctions.

March _____, 1999.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

BY:

JUDGE FRANK N. KANEY, As Chair of
The Hearing Panel, Florida
Judicial Qualifications Commission
Room 102, The Historic Capitol
Tallahassee, Florida 32399-6000
850/488-1581

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished via Federal Express to **JAMES S. MATTSON, JAMES WATTIGNY,** Mattson & Tobin, LLP, 88101 Overseas Highway, Islamorada, Florida 33037; and **LAURI WALDMAN ROSS,** Ross & Tilghman, Two Datran Center, Suite 1705, 9130 S. Dadeland Blvd., Miami, Florida 33156-7818, this _____ day of March, 1999.

JUDGE FRANK N. KANEY

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