

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

INQUIRY CONCERNING A JUDGE,
THE HONORABLE DAVID C. MILLER
JQC NO. 2020-059

SC20-_____

FINDINGS AND RECOMMENDATION OF DISCIPLINE

The Investigative Panel of the Florida Judicial Qualifications Commission (“Commission” or “JQC”) served a Notice of Investigation dated April 20, 2020, on Circuit Court Judge David C. Miller of the 11th Judicial Circuit, pursuant to Rule 6(b) of the Florida Judicial Qualification Commission Rules. The Investigative Panel conducted a Rule 6(b) hearing on June 26, 2020, at which Judge Miller appeared, without counsel, and provided sworn testimony. At the conclusion of that hearing, the Panel determined that probable cause existed that Judge Miller had violated Canons 1, 2A, and 3B(4) the Florida Code of Judicial Conduct.¹ The Record was thereafter supplemented with the transcript and audio-

¹ Canon 1 states that, “An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.”

Canon 2A states that, “A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

Canon 3B(4) states that, “A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge’s direction and control.”

video recording of the tobacco trial across the lobby in Judge Valerie Manno-Schurr's courtroom.

Factual Findings Regarding the Conduct

On the afternoon of January 17, 2020, Judge Miller was presiding over a lengthy tobacco-related civil trial. After resumption from an extended lunch break, the trial proceedings were interrupted continuously by loud noise from the public lobby outside of Judge Miller's courtroom. The source of the sound was a result of many people congregating and not promptly disbursing from the public lobby at the conclusion of Judge William Altfield's investiture ceremony, which had occurred in the ceremonial courtroom on the same floor. The investiture, which was scheduled to end at 1:00 P.M., ran longer than expected concluding around 1:15 P.M. After the ceremony, some attendees departed while others queued to meet and congratulate the judge and his family in the ceremonial courtroom. After the ceremony, many of the attendees in the public lobby were conversing, while others were waiting for the elevators.

At 1:44 P.M. Judge Miller's trial resumed. Shortly after that, the Plaintiff and Defense lawyers, conducting the trial in his courtroom, complained that the noise from the lobby was disrupting their ability to question the witness and that they felt they were "yelling" at the witness. Judge Miller instructed his court

Bailiff to go out and try to quiet the people in the lobby. When that was unsuccessful, Judge Miller sent the Court Clerk and his Bailiff back into the lobby. That too was unsuccessful. At 1:50 P.M., after the attorneys complained a third time about the noise from the lobby, Judge Miller stepped down from the bench wearing his robe and proceeded into the lobby accompanied by his Bailiff. Several witnesses, including judges and lawyers, observed Judge Miller to be “yelling,” and waving his arms at the people in the lobby while trying to get them be quiet.

A judge conducting another tobacco trial in a nearby courtroom described her own courtroom hearing Judge Miller’s yelling from the lobby through her courtroom’s closed doors. Video from that judge’s courtroom shows that trial proceedings were underway and that the witness testifying in that courtroom required the assistance of an electrolarynx. The video also confirms that there was loud noise coming from the lobby, however, approximately ten minutes into questioning of the witness, Judge Miller’s shouted “Can I have your attention please” from the lobby, which could be heard on the video in the courtroom. Judge Miller acknowledges that once outside his courtroom he raised his voice and waved his arms trying to get the attention of everyone gathered in the lobby. When that failed, Judge Miller says he then walked from group to group with his

Bailiff, trying to explain to the people in the lobby that their conversations were disturbing the trial going on in his courtroom.

While trying to quiet the groups of people in the lobby, Judge Miller observed one person shaking her head while looking at him. Judge Miller believed she was telling him, “no,” indicating that she would not cooperate with his attempt to quiet the crowd. He acknowledged, however, that with hindsight she could have been shaking her head in disbelief over his behavior. Responding to what he believed was contemptuous behavior, Judge Miller approached the individual and shouted, “Do not shake your head at me.” Judge Miller then twice threatened the person with contempt, demanding to know, “Do you want to be held in contempt?” When the person answered that “no” she did not want to be held in contempt, Judge Miller continued to question the individual asking her name and whether she was employed in the Courthouse, before going back into his courtroom.² Two judges who were standing and conversing with the individual, who is employed by the 11th Judicial Circuit as an Assistant General Counsel, observed that she did not yell or say anything disrespectful, and, in their opinion, did not act in any way contemptuous.

² The transcript from Judge Miller’s trial indicates that he reentered his courtroom at 1:52, approximately two minutes after he left.

Conclusions Regarding Judge Miller's Conduct

Interruptions to court proceedings can create delays and other issues. Judges are given tools for dealing with serious interruptions like inappropriate outbursts from litigants, or inappropriate conduct by lawyers. The most powerful of these tools is the direct (or summary) contempt power by which a judge can summarily order the imprisonment of a person for nearly six months.

While the Commission accepts Judge Miller's explanation and evidence that the noise from the lobby was interrupting the proceedings in his courtroom, the Panel finds his behavior in the lobby fell below the high standard of conduct required by Canons 1, 2A and 3B(4). The Commission is particularly disturbed by Judge Miller's repeated threat to hold one of the people in the lobby in contempt for shaking her head in disbelief over Judge Miller's behavior.

Judge Miller had other options available for dealing with the disruption to his trial, such as taking a recess, or calling Court Administration to ask for assistance. The method he ultimately chose to employ reflected poorly on himself, and the judiciary as a whole.

The Commission concludes that these findings are supported by clear and convincing evidence.

Recommendation as to Discipline

The Investigative Panel of the Commission has now entered into a Stipulation with Judge Miller pursuant to FJQC Rule 6(k). In this Stipulation Judge Miller admits that his conduct as alleged in the Notice of Formal Charges and outlined above was inappropriate, and should not have occurred.

This Court reviews the findings of the JQC to determine “whether the alleged violations are supported by clear and convincing evidence, and reviews the recommended discipline to determine whether it should be approved.” *In re Woodard*, 919 So.2d 389, 390 (Fla.2006). Where a judge stipulates to the JQC's findings of fact, no additional proof is necessary to support the JQC's factual findings.” *Id.* at 390–91.

By way of mitigation, the Commission notes that Judge Miller is long-serving member of the judiciary, having been elected to the Circuit Court in 2000, and has no prior disciplinary record with the Court. The Commission also notes that Judge Miller has no prior discipline from The Florida Bar.

In this case, Judge Miller has admitted the foregoing for the purpose of entering into this Agreement, accepts full responsibility, and acknowledges that such conduct should not have occurred. He has cooperated fully with the JQC throughout the investigative process. Judge Miller has also agreed to avoid contact

with the Courthouse employee that he threatened with contempt, and to avoid attending investitures where that individual might be present.

The Commission also believes that it is useful to note how similar misconduct has been treated in the past. In Inquiry Concerning Judge Muszynski, this Court accepted a stipulation and publicly reprimanded Judge Bernard Muszynski for “castigating” and then threatening contempt proceedings against police officer whose police radio was interrupting the judge’s lunch at Howard Johnson’s restaurant. In re Muszynski, 471 So. 2d 1284 (Fla. 1985).

In contrast to Muszynski, Judge Miller’s conduct took place in the Courthouse, while trying to maintain order and decorum during trial proceedings. However, the fact that Judge Miller was acting within the scope of his duty as a judge is not the end of the analysis. Judges who have injudiciously exercised their authority have routinely been publicly reprimanded where the exercise of their contempt powers fell below the high standards of conduct required by the Code of Judicial Conduct.

For example, in In re Collins, 195 So. 3d 1129 (Fla. 2016), this Court ordered a judge to be publicly reprimanded and attend domestic violence and anger management courses where the judge berated and sentenced a domestic violence

victim to spend three days in jail after finding her in contempt for failing to appear at trial pursuant to a subpoena.

In ordering Judge Cheryl Aleman to be publicly reprimanded in part for inappropriately threatening to hold two attorneys in contempt, this Court wrote:

A judge's power of contempt must be exercised with care. This Court has stated that:

[O]ne of the most important and essential powers of a court is the authority to protect itself against those who disregard its dignity and authority or disobey its orders. This authority is appropriately administered through a court's power to punish by contempt. Nevertheless, although the power of contempt is an extremely important power for the judiciary, it is also a very awesome power and is one that should never be abused. [internal citations omitted].

In re Aleman, 995 So. 2d 395, 400 (Fla. 2008).

Because Judge Miller's conduct, including his inappropriate threat of contempt, plainly fell below the high standard of conduct required by the Canons and this Court, the Commission finds and recommends that the interests of justice will be well served by a public reprimand of Judge Miller.

Dated this 24th day of July, 2020.

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

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