IN THE FLORIDA SUPREME COURT

Case No. SC03-1846

INQUIRY CONCERNING A JUDGE NO. 02-466
RE: JUDGE JOHN K. RENKE, III

On Review of the Findings, Conclusions and Recommendations by the Hearing Panel of the Judicial Qualifications Commission

JUDICIAL QUALIFICATIONS COMMISSION'S ANSWER BRIEF

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PREFACE

The Judicial Qualifications Commission is referred to herein as "the JQC." The Honorable John K. Renke, III is referred to herein as "Judge Renke." This matter is before this Court on review of the Findings, Conclusions and Recommendations by the Hearing Panel of the JQC entered on November 17, 2005 (hereinafter "Findings and Conclusions"). Judge Renke's brief filed in response to this Court's January 31, 2006 Order is referred to herein as the "Renke Brief." References to the official transcript of the final hearing in this matter are designated by the prefix "T," followed by the volume and page number.

STATEMENT OF THE CASE

This matter is before the Court on the Findings, Conclusions and Recommendations of the Hearing Panel of the JQC. On November 17, 2005, that body recommended that Judge Renke, currently a circuit court judge for the Sixth Judicial Circuit, be publicly reprimanded and fined $40,000 for conduct during his 2002 election campaign for the judgeship he now holds. The background is as follows:

On October 23, 2003, the Investigative Panel of the JQC filed a Notice of Formal Charges against Judge Renke. There were originally eight formal charges. After answer, the Investigative Panel and Judge Renke entered into a stipulation pursuant to Rule 6(j) of the JQC Rules and on April 29, 2004, that stipulation and Findings and Recommendations of Discipline were filed with this Court. The Investigative Panel recommended a $20,000 fine, one month's unpaid suspension and a public reprimand. By Order dated July 8, 2004, this Court "rejected" the recommended disposition and the matter was "returned to the Commission for further proceedings on the merits of the issues of misconduct as well as the appropriate discipline." Thereafter, Amended Formal Charges were filed whereby certain charges were dropped and other charges were added.

The matter was tried to the Hearing Panel of the JQC on September 6 through 9, 2005, in Clearwater, Florida. The charges for which the Hearing Panel found Judge Renke guilty are as follows:[1]

COUNT ONE: "John Renke, a judge with our values"

During the campaign, in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii) you knowingly and purposefully misrepresented in a campaign brochure, attached hereto as Exhibit A, that you were an incumbent judge by describing yourself as "John Renke, a Judge With Our Values" when in fact you were not at that time a sitting or incumbent judge.

PANEL RULING: Guilty as charged. (It is noted that the actual brochure did not capitalize "Judge With Our Values" but instead stated "a judge with our values").

COUNT TWO: "Chairman of SWFWM"

During the campaign, in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii), you knowingly and purposefully misrepresented in the same brochure (attached hereto as Exhibit A) your holding of an office in the Southwest Florida Water Management District by running a picture of you with a nameplate that says "John K. Renke III Chair" beneath a Southwest Florida Water Management District banner, when you were not in fact the Chairman of the Southwest Florida Water Management District.

PANEL RULING: Guilty as charged.

COUNT THREE: "Supported by the Firefighters"

During the campaign, in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii), you knowingly and purposefully misrepresented in the same brochure (attached hereto as Exhibit A) your endorsement by the Clearwater firefighters by asserting that you were "supported by our areas bravest: John with Kevin Bowler and the Clearwater firefighters" when you did not then have an endorsement from any group of or any group representing the Clearwater firefighters.

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[1] Because the Hearing Panel found Judge Renke not guilty of Charges 4 and 5, those charges have not been included in this summary.

PANEL RULINGS: Guilty as charged.

COUNT SIX: "Handling Complex Civil Trials"

During the campaign, in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii), you knowingly and purposefully misrepresented your experience as a practicing lawyer and thus your qualifications to be a circuit court judge. In the Candidate Reply you authored which was published by and in the St. Petersburg Times, which is attached hereto as Exhibit C, you represented that you had "almost eight years of experience handling complex civil trials in many areas." This was knowingly false and misleading because in fact you had little or no actual trial or courtroom experience.

PANEL FINDING: Guilty as charged.

COUNT SEVEN: "Broad Civil Trial Experience"

During the campaign, in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii), you knowingly and purposefully misrepresented your experience as a practic ing lawyer and thus your qualifications to be a circuit court judge, as well as your opponent's experience, by asserting in a piece of campaign literature, which is attached hereto as Exhibit D, that your opponent lacked "the kind of broad experience that best prepares someone to serve as a Circuit Court Judge" and represented to the voting public that the voters would be "better served by an attorney [like you] who has many years of broad civil trial experience." This was knowingly false because your opponent had far more experience as a lawyer and in the courtroom and in fact you had little or no actual trial or courtroom experience.

PANEL FINDINGS: Guilty as charged.

COUNT EIGHT: "Unlawful Campaign Contributions"

During the campaign, in violation of Canon 1, Canon 2A and Canon 7A(3)(a) and §§ 106.08(1)(a), 106.08(5) and 106.19(a) and (b), Florida Statutes, your campaign knowingly and purposefully accepted a series of "loans" totaling $95,800 purportedly made by you to the campaign which were reported as such, but in fact these monies, in whole or in substantial part, were not your own legitimately earned funds but were in truth contributions to your campaign from John Renke II

(or his law firm) far in excess of the $500 per person limitation on such contributions imposed by controlling law.

PANEL FINDING: Guilty as charged.

COUNT NINE: "Deliberate Misrepresentation Pattern"

During the campaign, in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii), you made a deliberate effort to misrepresent your qualifications for office and those of your opponent as detailed in Charges 1 through 7, supra, which cumulative misconduct constitutes a pattern and practice unbecoming a candidate for and lacking the dignity appropriate to judicial office, which had the effect of bringing the judiciary into disrepute.

PANEL FINDING: Guilty as charged.

The Findings, Conclusions and Recommendations by the Hearing Panel of the Judicial Qualifications Commission were filed with this Court on November 17, 2005. The Court issued an Order to Show Cause on December 1, 2005. Judge Renke replied on December 20, 2005, stating that he "does not contest the Judicial Qualifications Commission Hearing Panel's recommendation for the imposition of a public reprimand and a $40,000 fine," and requesting the Court "to accept the Hearing Panel's recommended sanction." But, "[i]n the event the Court considers rejecting the recommended sanction," Judge Renke sought to preserve his "opportunity to contest the factual findings." On January 31, 2006, this Court entered an Order advising that the Court has made no decision as to whether to accept or reject the recommended discipline and providing Judge Renke an

opportunity to contest the factual findings of the Hearing Panel and to address the appropriateness of the recommended discipline.

STATEMENT OF FACTS

Judge Renke currently is a circuit court judge in the Sixth Judicial Circuit, sitting in Pasco County. (T:1:45). He was elected in September 2002. (T:1:46). Judge Renke was 32 years old during the campaign. (Id.). His opponent was Declan Mansfield, who Judge Renke knew had practiced law 20-25 years as of 2002. (T:1:72). Judge Renke graduated from law school and was admitted to the Florida Bar in 1995, and practiced law continuously as an "independent contractor" in his father's law office until he was elected circuit court judge. (T:1:46).

Judge Renke's father is John K. Renke, II. (Id.). The senior Renke has been a Florida attorney since 1979 and previously had practiced in Michigan. (T:2:163). He has practiced law continuously as a sole proprietorship in New Port Richey since 1979. (T:2:163-164). The senior Renke has substantial experience with political campaigns, having served 6 years as a member of the Florida House of Representatives. (T:2:165-166). Going into the campaign, he was well aware of the $500 limit on individual contributions imposed by Florida law. (T:2:169).

John K. Renke, II was very involved in his son's campaign. (T:2:165). Judge Renke described his father as his closest advisor and campaign manager.

(T:1:47-49). The senior Renke also was the campaign's principal contact with the Mallard Group, a campaign consulting firm run by Jack Hebert that was hired to advise the campaign, prepare campaign literature and do bulk mailings. (T:1:47-48). Nevertheless, the majority of the campaign literature was prepared by Judge Renke and his father. (T:1:47). Both father and son were aware of the Judicial Canons and Florida's campaign finance restrictions throughout the campaign (T:1:47-48), and Judge Renke saw the campaign mailers and brochures in some form before they were distributed to the public. (T:1:48).

Judge Renke's campaign raised and spent $105,800. (T:1:78-79; See also JQC Exhibits 12 and 14). He received only $10,000 in public contributions, but financed the campaign with $95,800 in personal loans made to the campaign on May 12, 2002 ($6,000), June 19, 2002 ($40,000) and September 5, 2002 ($49,800). (T:1:78-79). The loans were made with money paid to Judge Renke by his father for the purpose of financing the campaign, and coincided closely in time with payments from his father. Judge Renke testified he did not know where his father got the money to pay him. (T:1:79;128-129). Specifically, the $6,000 paid to Judge Renke by his father on June 15, 2002 went directly into the campaign, as did subsequent payments of $40,000 on June 17, 2002, $35,000 on September 2, 2002 and $14,800 on September 5, 2002, for a grand total of $95,800. (T:3:302-303).

Overall, in 2002 Judge Renke received gross income of $166,736.50 from his father's law practice. (T:1:80). Yet the firm's total gross receipts in 2002 were only $296,682. (T:2:190-191). Thus, Judge Renke was paid 56% of the total gross receipts of the law firm in 2002, even though the firm had two attorneys besides Judge Renke (associate Thomas Gurran and the senior Renke), support staff, an office to maintain and general overhead of at least 30 to 40%. (T:6:885-886). Judge Renke's net income from his father's law firm in 2002 was $140,116. (T:1:80). Judge Renke's net income in each of the five prior non-election years was: $18,608 in 1997; $15,328 in 1998, $11,480 in 1999, $12,682 in 2000 and $35,987 in 2001. (Id.). To avoid repetition, the balance of the pertinent facts are set forth in the context of the specific charges addressed in detail below.

SUMMARY OF ARGUMENT

The Hearing Panel's factual findings are supported by clear and convincing evidence, an intermediate standard of proof that is more than a preponderance but less than a reasonable doubt. In re Kinsey, 842 So. 2d 77 (Fla. 2003); In re Graziano, 696 So. 2d 744 (Fla. 1997). This standard may be satisfied even if the evidence is in conflict. Frazier v. Security Investment Corp., 615 So. 2d 841 (Fla. 4th DCA 1993). When supported by such evidence, the findings are entitled to great weight and presumptive force. See Kinsey, supra.

Judge Renke attacks the Hearing Panel's factual findings, claiming that there was insufficient evidence to support the Hearing Panel's findings of guilt as to those charges where he was found to have made knowing misrepresentations and the additional charges where he engaged in improper campaign finance activities. All of these counts are supported by the admissions of Judge Renke and strong circumstantial evidence which, under the Code of Judicial Conduct, are appropriately considered. The contention that the Hearing Panel took the language in the campaign brochures out of context or that the misrepresentations were not knowingly made is belied by Judge Renke's own testimony and the text of the brochures in question. And the trial testimony clearly and convincingly supported the Hearing Panel's conclusion that Judge Renke knowingly was involved in evading the campaign finance laws.

Judge Renke also contends that the application of Canon 7 to his campaign conduct violates his First Amendment rights. This contention is without merit. There is no constitutional protection for knowingly false and misleading speech. The applicable portion of Florida's Canon 7 proscribes knowingly or purposefully making subjective misstatements and not objective misstatements as did the flawed Canons of a few other states. This Court's decision of In re Kinsey is adequate precedent for the application of Canon 7 to the campaign statements here in question.

The Hearing Panel saw and heard the witnesses, evaluating their testimony and credibility. Based on substantial, competent evidence, the Hearing Panel found Judge Renke guilty of several serious charges, yet recommended discipline reflecting consideration of mitigating factors. The Hearing Panel's findings thus are fully supported, its recommended discipline is reasonable and both should be affirmed.

ARGUMENT

I. THE HEARING PANEL PROPERLY FOUND JUDGE RENKE GUILTY OF CHARGE NO. 1 BECAUSE THE EVIDENCE CLEARLY AND CONVINCINGLY ESTABLISHED THAT HE KNOWINGLY MISREPRESENTED HIS STATUS DURING THE CAMPAIGN.

Charge No. 1 was based on a campaign brochure distributed by the Renke campaign. (See JQC Exhibit 1; T:1:49). A picture on the front of the brochure shows Judge Renke, his wife and two young children. (Id.). In large letters, the caption superimposed beside the picture identifies Judge Renke as "a judge with our values." (Id.). At that time, of course, Judge Renke was not a sitting judge. (Id.). Even Judge Renke acknowledged that an uninitiated reader could conclude that he was an incumbent judge and it could be misleading without the context, although he denied that someone looking at it might assume he was then an incumbent judge. (T:1:48-50).

Jack Hebert of the Mallard Group, the campaign consultant, testified that someone looking at JQC Exhibit 1 could conclude that Judge Renke in fact already was a judge. (T:5:700). Jack Hebert acknowledged that the brochure could have said that Judge Renke would be a "judge with our values" rather than saying he was "a judge." (T:5:740). He also testified that Florida Statute § 106.143(5) expressly prohibits all political ads for non-incumbents from using the word "re-elect," and he was familiar with that statute when the "judge with our values" flyer was prepared. (T:5:702-703). The statute carries this prohibition because "re-elect" implies incumbency and a candidate cannot falsely represent to the public that he or she is an incumbent. (T:5:703).

Thus, the Hearing Panel properly concluded that Judge Renke was guilty as charged on Charge No. 1. The words "John Renke is a judge with our values" flatly asserted incumbency, which was obviously knowingly false. See Findings and Conclusions, p. 25.

Judge Renke now argues that "a judge with our values is susceptible to different interpretations" and that "the text" of the "entire political circular represented" him "as an attorney and not a sitting judge." (Renke Brief, pp. 37-38). But calling oneself a "judge" in large letters on the front of the brochure is not reasonably "susceptible of different interpretations." (Id. at p. 37). In re Kinsey, 842 So. 2d 77 (Fla. 2003), makes clear that neither the voters nor the

Hearing Panel were obligated to analyze the entire text in determining whether this was a knowing misrepresentation, and indeed, the brochure in its entirety does not absolve Judge Renke of responsibility for such an obvious, knowing misrepresentation.

II. THE HEARING PANEL PROPERLY FOUND JUDGE RENKE GUILTY OF CHARGE NO. 2 BECAUSE THE EVIDENCE CLEARLY AND CONVINCINGLY ESTABLISHED THAT HE KNOWINGLY MISREPRESENTED THAT HE WAS CHAIRMAN OF THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT.

In JQC Exhibit 1, Judge Renke appears in a picture sitting at a dias beneath a large Southwest Florida Water Management District ("SWFWMD") banner or sign with a name plate in front of him that reads "John K. Renke, III, Chair" and with an accompanying caption that reads "protecting our interests, John serving on" SWFWMD. (T:1:51-53). It is undisputed that Judge Renke was not and never had been chairman of SWFWMD, and indeed there was and is no such position. (Id.). In truth, Judge Renke had been chairman of a subsidiary Basin Board, as well as a planning subcommittee, not chairman of SWFWMD as the brochure represents. (T:1:52).

Jack Hebert testified that although his candidate actually was chairman of the Basin Board, the ad did not say that and no such caveat appears anywhere therein. (T:5:710). This materially misleading picture, like all of the photographs in the campaign literature, was provided to Jack Hebert by the Renkes. (T:5:711-

712).[2] Jack Hebert also testified that he would have done the SWFMD photo and caption differently today for obvious reasons. (T:5:740-741).

Other than his misplaced reliance on Weaver v. Bonner, 309 F.3d 1312 (11th Cir. 2002), Judge Renke does not meaningfully contest the Hearing Panel's finding of guilt on this charge. (See Renke Brief, pp. 41-42). He points out other mistakes in the same brochure, but does not contend that this picture and caption were a mistake. (Id.). Instead, Judge Renke baldly asserts he "did not intend" to mislead (id. at 43), but all of the evidence is to the contrary.

Judge Renke also argues that the prominently displayed picture shows what the public would have seen if they had observed him "on the job." (Renke Brief, p. 39). Yet this argument is entirely unresponsive to the Hearing Panel's findings. Judge Renke's knowing depiction of himself as Chairman of SWFWMD was an obvious attempt to convey to the public that he was the chair of an important governmental entity. In Kinsey, supra, this Court condemned such form and content that misleads and confuses the voters, even if the photograph depicts a true

[2] Although Judge Renke does not expressly blame his father for the various charges, his brief repeatedly suggests that his father was responsible for many of the campaign problems. Of course, Canon 7A(3)(a) expressly requires a candidate to "encourage" family members to adhere to the standards applicable to the candidate. Subsection (b) requires a candidate to discourage those subject to his or her control from conduct prohibited by the Canons. And subsection (c) provides that a candidate for judicial office "shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the sections of this Canon."

setting. In re Kinsey, 842 So. 2d at 90. Here, of course, there is no dispute that presenting Judge Renke as the "chair" of SWFWMD was false.

The Hearing Panel thus properly concluded that "Judge Renke is guilty as charged under Count 2" because he "deliberately attempted to convey to the public that he was Chair of this important governmental entity, the Southwest Florida Water Management District." Findings and Conclusions, p. 26.

III. THE HEARING PANEL PROPERLY FOUND JUDGE RENKE GUILTY OF CHARGE NO. 3 BECAUSE THE EVIDENCE CLEARLY AND CONVINCINGLY ESTABLISHED THAT HE KNOWINGLY MISREPRESENTED THE SUPPORT OF THE CLEARWATER FIREFIGHTERS.

In JQC Exhibit 1, Judge Renke appears in a picture with a small group of firefighters with a caption that reads "supported by our areas' bravest: John and Kevin Bowler and the Clearwater firefighters." (T:1:53). It is undisputed that Judge Renke never sought or received the support of the Clearwater firefighters' union, and no other pre-existing group or organization of Clearwater firefighters ever supported or endorsed him. (T:1:54). Indeed, the only firefighters who supported him were Mr. Bowler and the small group of individuals shown in the picture. (Id.). Yet the campaign flyer falsely asserted that Judge Renke was supported by the "Clearwater firefighters." (JQC Exhibit 1).

Jack Hebert testified that he knew when he prepared the ad that there was a recognized firefighters union in Clearwater, Judge Renke had not received an

endorsement from any group or collective of Clearwater firefighters and only Kevin Bowler and the few individuals in the picture supported Judge Renke. (T:5:705-707). Nevertheless, the campaign ad reads the "Clearwater firefighters" support Judge Renke. (Id.).

Jack Hebert acknowledged that they could have said "some" Clearwater firefighters or "these firefighters" supported Judge Renke, or that Kevin Bowler and the other firefighters shown did so, and that would have been honest. (T:5:707-708). Mr. Hebert also effectively admitted that the Renke campaign could no more represent that it had the support of the "Clearwater firefighters" collectively than an individual candidate could take a picture with a congressman and then represent to the voting public that they were supported by the federal government. (T:5:708-709).

Accordingly, the Hearing Panel found that the campaign brochure attempted to create the impression that Judge Renke had been endorsed by "the Clearwater firefighters," and properly concluded "that this was also an intentional misrepresentation" thus "Judge Renke is guilty as charged on Count 3." Findings and Conclusions, p. 27.

IV. THE HEARING PANEL PROPERLY FOUND JUDGE RENKE GUILTY ON AMENDED FORMAL CHARGE NOS. 6 AND 7 BECAUSE THE EVIDENCE CLEARLY AND CONVINCINGLY ESTABLISHED THAT HE KNOWINGLY MISREPRESENTED HIS TRIAL EXPERIENCE AS A PRACTICING ATTORNEY.

Judge Renke was admitted to the Florida Bar in 1995. (T:1:46). He practiced as an "independent contractor" in his father's law office until he was elected to the circuit court bench in 2002. (Id.). At final hearing, Judge Renke admitted that the only case he had tried himself in 7 years of practice was a non-jury small claims vertical blinds case in county court. (T:1:61-62). Judge Renke's entire individual trial experience consisted of two extremely brief bench trials, the vertical blinds case and one incapacity proceeding where he put his father on the stand. (Id.). In all other matters, his father was trial counsel and he was just assisting. (T:1:62;82).

Judge Renke never examined a witness in a jury trial, never had been on his feet in a jury trial, and his father always acted as lead counsel addressing the jury, questioning the witnesses and arguing to the court. (T:1:66-67). Judge Renke acknowledged that he was essentially a behind-the-scenes attorney at his father's law office. (T:1:70). His father always was the first chair, his father signed all pleadings, and if Judge Renke was in court, he would be secondary to his father who did the talking. (Id.; T:1:70 and 82).

Judge Renke knew that his opponent, Mr. Mansfield, was older and had practiced far longer. (T:1:72-73). Indeed, he knew that Mr. Mansfield had practiced 20-25 years as of 2002, versus Judge Renke's 7 years of practice with his father's office. (T:1:72). Judge Renke knew that Mr. Mansfield had practiced both personal injury and criminal law for decades. (T:1:75-78). Judge Renke had no criminal experience whatsoever. (T:1:66-67).

Judge Renke's testimony at final hearing stands in stark contrast to the representations he made to the voting public during the 2002 campaign. In the campaign flyer admitted into evidence as JQC Exhibit 4, the gravamen of Charge No. 7, Judge Renke represented that his opponent lacked "the broad experience that best prepares one to serve as a circuit court judge" and informed voters that they "would be better served by an attorney who has many years of broad civil trial experience in the courtroom." (JQC Exhibit 4). This was knowingly false based on Judge Renke's own testimony, as the Hearing Panel properly concluded in finding him guilty as charged on Charge No. 7. See Findings and Conclusions, pp. 29-30.

In his Candidate Reply published in the St. Petersburg Times on September 7, 2002 (JQC Exhibit 3), the gravamen of Charge No. 6, Judge Renke represented that he had "almost eight years of experience handling complex civil trials in many

areas." (T:1:58-59). This was knowingly false given his very limited experience, and in particular his clear lack of any meaningful trial experience.

More damning still is Judge Renke's testimony regarding his appearance before the St. Petersburg Times Editorial Board before his Candidate Reply was published on September 7, 2002. (JQC Exhibit 3). Judge Renke admitted to the Editorial Board that he had not handled any trials as first chair himself, and that his trial experience was in truth very limited. (T:5:806-808). Yet in the Candidate Reply Judge Renke subsequently published in the same newspaper, he made the same false representation that he previously had disclaimed before the Editorial Board, that is, that he had "almost eight years of experience handling complex civil trials in many areas." (JQC Exhibit 3).

Again, beyond attempting to rely on Weaver v. Bonner, supra, to justify this misconduct, Judge Renke only asserts that saying "trial" instead of "litigation experience" was a mistake, and he had "broader" litigation experience then his opponent. (Renke Brief, pp. 45-47). Yet there was and is an obvious material difference between the truth that Judge Renke's experience consisted of preparing cases as a behind-the scenes lawyer at his father's office, and his representation to the voters that he had "almost eight years of experience handling complex civil trials in many areas." (JQC Exhibit 3; T:1: 58-59). The same is true of the

repeated misrepresentation that Judge Renke "had many years of broad trial experience in the courtroom." (JQC Exhibit 4).

V. THE HEARING PANEL PROPERLY FOUND JUDGE RENKE GUILTY ON COUNT 9 BASED ON A PATTERN AND PRACTICE OF MISREPRESENTATION CONSTITUTING CUMULATIVE MISCONDUCT UNBECOMING TO A JUDICIAL CANDIDATE AND THE DIGNITY OF JUDICIAL OFFICE.

The Hearing Panel found Judge Renke guilty of Count 9 based on cumulative misconduct in Counts 1, 2, 3, 6 and 7. Findings and Conclusions, p. 30. As explained in detail above, Judge Renke knowingly, purposefully and repeatedly misrepresented his status, background, support and professional qualifications and experience to obtain the office he now holds. Thus, he engaged in cumulative misconduct constituting a pattern of behavior unbecoming a candidate and entirely lacking the dignity appropriate to judicial office. See, e.g., In re Graham, 620 So. 2d 1273, 1276 (Fla. 1993) (an accumulation of incidents can be considered together to show a pattern of conduct unbecoming a member of the judiciary); In re Kelly, 238 So. 2d 565, 566 (Fla. 1970) (same).

Judge Renke now argues that the Hearing Panel "erred in determining" that his "conduct constituted a cumulative pattern of misconduct," asserting that the misrepresentations resulting in the finding of guilt on Charges 1, 2, 3 and 7 "were made in two brochures out of many campaign representations." (Renke Brief, p. 36). Yet the Renke campaign only distributed three brochures and two were filled

with deliberate misrepresentations. That he did not misrepresent his experience in his candidate reply in the Tampa Tribune as blatantly as in his candidate reply in the St. Petersburg Times hardly establishes that the Hearing Panel "erred" on Count 9.

VI. THE HEARING PANEL PROPERLY FOUND JUDGE RENKE GUILTY OF FINANCING HIS CAMPAIGN WITH ILLEGAL CAMPAIGN CONTRIBUTIONS BECAUSE THE EVIDENCE CLEARLY AND CONVINCINGLY ESTABLISHED THIS CONDUCT.

Judge Renke's campaign raised and spent $105,800. (T:1:78-79. See also JQC Exhibits 12 and 14). He received only $10,000 in public contributions, but financed the campaign with $95,800 in personal loans made to the campaign on May 12, 2002 ($6,000), June 2002 ($40,000) and September 5, 2002 ($49,800). (T:1:78-79). The loans were made with money paid to Judge Renke by his father, and closely coincided in time with payments from his father, but Judge Renke testified he did not know where his father got the money to pay him. (T:1:79;128-129). Specifically, the $6,000 paid to Judge Renke on June 15, 2002 went directly into the campaign, as did subsequent payments of $40,000 on June 17, 2002, $35,000 on September 2, 2002 and $14,800 on September 5, 2002, for a grand total of $95,800. (T:3:302-303). Judge Renke admits that these payments were made to and did fund the campaign. (Renke Brief, p. 2).

Margaret Renke (Judge Renke's mother and John K. Renke, II's wife) who wrote the checks to her son that he used to finance the campaign, testified that the $95,800 "was paid out piecemeal" to cover campaign expenses as they arose. (T:4:621). She testified that although they could have written him a single check, the checks actually were issued to meet campaign expenses as they arose, the money was paid when her son needed it and "at that point in time, of course, he needed it for the campaign." (T:4:621-622). If "during the campaign an expense arose, we would pay him a portion of his pay to cover that." (T:4:621). Margaret Renke made the $40,000 check to Judge Renke dated June 17, 2002 (JQC Exhibit 82) payable to Judge Renke and his wife Michelle jointly because Michelle was the campaign treasurer, a "big chunk of money" was due to the political consultant, and they wanted it deposited and it was Michelle Renke who went to the bank. (T:4:628-630).

Overall, in 2002 Judge Renke received gross income of $166,736.50 from his father's law practice. (T:1:80). Yet the total gross receipts of the Renke law firm in 2002 were $296,682. (T:2:190-191). Thus, Judge Renke was paid 56% of the total gross receipts of the law firm in 2002, even though the firm had two attorneys besides Judge Renke, support staff, an office to maintain and general overhead of at least 30 to 40%. (T:6:885-886). Subtracting a very conservative (indeed unrealistic) 30% for overhead, Judge Renke received 82% of the law

firm's total gross receipts in 2002, according to Judge Renke's own compensation expert (Jerry Phelps, Director of LOMAS). (T:6:886-887).

Judge Renke's net income from his father's law firm in 2002 was $140,116. (T:1:80). Yet Judge Renke's net income in the non-election years was: $18,608 in 1997, $15,328 in 1998, $11,480 in 1999, $12,682 in 2000 and $35,987 in 2001. (Id.). The only reasonable conclusion to draw from this payment history is that he was paid far more in 2002 precisely because he needed the money for the campaign and not because this rate of pay was a legitimate obligation due and owing to Judge Renke in 2002.

A. The Renkes' Contradictory Testimony Regarding Judge Renke's Compensation Confirms That This was an Unlawful Scheme to Circumvent Chapter 106.

The Renkes initially asserted (and Judge Renke testified at trial) that the tremendous increase in Judge Renke's income in 2002 was the result of his receiving his share of contingency fees that were earned in 2002. (See JQC Exhibit 22; T:1:81-82). The senior Renke testified that he never had a written contract with his son or any other attorney who ever worked for him. (T:2:172). They did, however, have a verbal agreement whereby he paid his son an hourly wage of $9.00 to $11.00 an hour, plus Judge Renke would receive 20% of the fees where the firm recovered more than $10,000 in total fees. (T:2:173).

The senior Renke denied that there was anything discretionary about what he would pay under the verbal "contract," and he could not change the 20% figure at his discretion. (T:2:175-176). He also described his arrangement with his son as an enforceable contract upon which Judge Renke could have sued him if he failed to pay in accordance with the purported parole terms. (T:2:174).

Judge Renke, however, expressly contradicted the senior Renke by testifying that what he was paid in 2002 was entirely a matter of his father's discretion. (T:1:152-153). It was totally his father's call and Judge Renke's only remedy was to hit the road. (Id.). Judge Renke makes this same admission in his brief. (Renke Brief, p. 4). Tellingly, Judge Renke also testified that the timing of the payments (that were used to fund the campaign) in 2002 were equally his father's decision, and that his father made the payments to him as he needed money for the campaign. (T:1:153).

Jerry Phelps, Judge Renke's expert, acknowledged that the "compensation system" for Judge Renke was "entirely unclear" based on Judge Renke's own witnesses' testimony. (T:6:877-878). This was so because "Mrs. Renke said one thing, Judge Renke said another" and "his father may have said something else." (T:6:878). Mr. Phelps testified that the Renke family contradicted themselves regarding the terms of the fee sharing arrangements: "It would appear they contradicted themselves." (T:6:879). And indeed, Mr. Phelps admitted that the

Renkes contradicted themselves even regarding the verbal agreement on splitting the Triglia/Cusumano fees; it starts at 20%, then it becomes 40% but the senior Renke testified it was 50%. (T:6:879). Mr. Phelps further testified that he had never seen compensation like Judge Renke's in a law firm in his 23 years with the Florida Bar. (T:6:884-885).

B. Judge Renke Was Not Entitled to The Triglia/Cusumano Fees Until the Fall of 2003 But They Were Paid to Him in 2002 to Fund the Campaign.

Of the $166,000 paid to Judge Renke in 2002, $101,800 of it related to the Triglia/Cusumano cases, also known as the Driftwood litigation. (T:1:91). The total fees ultimately received by the Renke firm for this matter were $220,000, so Judge Renke was paid $101,800 or approximately 45% of the total fees. (T:1:91). The Triglia/Cusumano fees included all of the $95,800 that Judge Renke loaned to his campaign. (T:1:94-95). Yet the Triglia/Cusumano fees were not earned and could not have been disbursed to Judge Renke until September 2003, when final court approval was obtained, as explained in detail below. (T:6:875-876). And the Renkes testified that even if final court approval could not be obtained and the fees had to be returned, Judge Renke would not have been required to return his alleged $101,800 share. (T:3:308-309).

When confronted with the contradiction between having in fact paid his son 45% of the Triglia/Cusumano fees and his testimony at deposition that he had

agreed to pay his son 20% of the fees in such cases, the senior Renke asserted that he had raised his son's percentage from 20% to 45% in 2000, but denied he did so because his son was threatening to leave the firm. (T:2:177-179). Instead, the senior Renke purportedly did so because his son was not making a lot of money (T:2:179), although of course, it was the senior Renke's decision regarding what Judge Renke was paid, and he could have raised his son's compensation at any time. The senior Renke did not do so, however, until money actually was required to fund the campaign, and even then the money was paid out piecemeal as it was needed for the specific campaign expenses as they arose.

When asked why this change in the percentage from 20-45% was never mentioned during any of his three depositions or his son's day long deposition, the senior Renke asserted that the question never had been asked. (T:2:180-181). Yet the senior Renke could not point to any testimony, pleadings or any other filings where this contention was made at any time prior to the final hearing. (T:2:186-187).

Margaret Renke, who has been employed in her husband's law firm for 24 years, testified that the senior Renke agreed to split the Triglia/Cusumano fees with their son 50/50 years before 2001. (T:4:613-614). She testified that the percentage was raised to 50% because her son was having trouble making ends meet working at the law office, especially after his second child was born. (T:4:611-612). Thus,

as explained above, Judge Renke, the senior Renke and Margaret Renke flatly contradicted each other with respect to the agreement on the Triglia/Cusumano fees, including the percentage split arrangement, when the arrangement changed and why.

More importantly, Judge Renke was paid $101,800 in 2002, purportedly as his share of the fees earned in Triglia/Cusumano, even though it is indisputable that those fees were not earned until September 2003. Triglia and Cusumano were two related cases against a homeowners' association that were consolidated and settled together in 2001. (T:2:220-221). Under the terms of the Triglia/Cusumano settlement agreement (JQC Exhibit 37), the Renke firm was obligated to hold any funds in trust until there was final court approval, and if court approval was not ultimately obtained, all of the funds had to be returned and the litigation would go forward as if no agreement ever had been reached. (T:2:222-225).

Pursuant to the Triglia/Cusumano settlement agreement, the Renke firm was paid an initial $123,553.05 on March 27, 2001. (JQC Exhibit 66; T:2:216). The check was made payable to the John K. Renke II trust account. (T:2:216). The senior Renke denied that these funds were trust funds, or that he was obligated to hold the money in trust until court approval of the settlement had been obtained. (T:2:216). The senior Renke also denied that opposing counsel expected him to do so. (T:2:219-220). The attorneys opposing the Renke firm in Triglia/Cusumano,

Steven Mezer and Matthew Elrod, both testified that the senior Renke was obligated to hold the $123,553.05 and give it back if the settlement did not through and that was why the money was paid to the Renke trust account. (T:3:350-351;381-382). The senior Renke was supposed to hold the money in trust and could not take any money for himself prior to entry of a final judgment and passage of the 30 day appeal period. (Id.).

It is undisputed that final court approval in Triglia/Cusumano was not obtained until September 2003, 30 days after the entry of the final judgment by the Court on August 12, 2003. (JQC Exhibit 105; T:3:352; 381-382). Thus, at the end of September 2003, the senior Renke received an additional $97,183.54 in fees in Triglia/Cusumano. (JQC Exhibit 65; T:2:229-230). Only then did he pay Thomas Gurran $30,000 as his share of the fees in late 2003, after the final appeal period ran out. (T:2:230). Yet it is undisputed that the senior Renke paid Judge Renke his purported share of the fees ($101,000 out of a total of $221,000) in 2002, and the senior Renke knew that Judge Renke planned to use those payments for the campaign. (T:2:233-234). Significantly, the senior Renke paid his son this money out of his own funds (leaving the initial $123,000 payment in a separate account in case he had to pay it back) roughly an entire year before the fees were earned (according to Judge Renke's own expert) to fund the campaign. (T:2:217-218; 233-234; T:6:875-876; 899).

Although the Renkes sought to downplay the risk that the Triglia/Cusumano settlement agreement would fall through, Steven Mezer's and Matthew Elrod's uncontroverted testimony established that there was a very substantial risk that final court approval would not be obtained. Steven Mezer testified that there were several contingencies that had yet to occur before the Renkes would be entitled to the money. (T:3:352). It was a "precarious situation" because they could not count on the membership of the community to approve the necessary amendments to the declarations, which were essential to the proposed settlement and two thirds or 75% of the residents had to vote for it. (T:3:352-353). Board approval also was necessary to complete the settlement, and there was no assurance in 2002 that Board approval could or would be obtained. (T:3:354). In fact, some of the Board members were very much opposed to the settlement. (Id.).

Matthew Elrod testified that in 2002 there still were contingencies before the Renkes would be entitled to any fees: two thirds of the residents had to approve the settlement as did the Board and there was some opposition to it. (T:3:383-384). Ultimately, the members voted to approve the deal in May 2003, and the Board did so in June 2003. (Id.).

The senior Renke testified that he did not pay his son for Triglia/Cusumano in 2001 because there was a risk the settlement would fall through, but that risk ended when the draft motion for preliminary court approval (JQC Exhibit 89) was

done on May 1, 2002. (T:3:333-334). Steven Mezer testified, however, that even the granting of that motion was not court approval under the settlement agreement that would allow the Renkes to keep the money; "not at all." (T:3:358). Matthew Elrod testified that the motion for preliminary court approval did not eliminate the risk because neither the residents nor the Board had voted to approve the deal, and at that time the parties had not even reached agreement on what the new amendments would be, amendments that the residents and the Board had to vote to approve. (T:3:387-388).

The testimony of Jerry Phelps, Judge Renke's compensation expert, confirmed that final court approval did not occur until August 2003. (T: 6: 875-876). He also refuted the senior Renke's testimony that the initial $123,000 payment was not trust funds, testifying that Steven Mezer and Matthew Elrod were correct that those were trust funds, and the senior Renke was wrong if he testified to the contrary. (T:6: 888-889). Most significantly, Mr. Phelps unequivocally testified that the fees had not been earned when they were paid to Judge Renke in 2002, and the fees were not earned until final court approval was obtained in the fall of 2003. (T: 6: 875-876).

Thus, the Hearing Panel properly concluded that the Triglia/Cusumano fees were not "actually earned" until the fall of 2003, and thus "Judge Renke had not actually earned these fees based on a percentage of the recovery at the time of the

payment to him by his father." Findings and Conclusions, pp. 17 and 20 (relying on Faro v. Romani, 641 So. 2d 69 (Fla. 1994)).

C. The Record Does Not Support the Proposition That Judge Renke's Work Efforts Justified the Compensation He Received in 2002.

Judge Renke asserts that the Hearing Panel "rejected the contention that Judge Renke's work efforts did not justify the compensation paid to him in 2002." (Renke Brief, p. 18). This is incorrect. The Hearing Panel did not need to reach that issue because it concluded he was not entitled to the $101,800 he was paid in 2002 for Triglia/Cusumano because those fees were not earned until September 2003. The record does not show that Judge Renke in fact earned the $101,800 in fees he was paid in 2002 to finance the campaign.

Notwithstanding Judge Renke attending meetings with the clients, the record shows that the senior Renke and Thomas Gurran did the real lawyering in Triglia/Cusumano. The senior Renke did the talking, all of the depositions, and was the lead counsel in both cases with whom opposing counsel had most of their dealings. (T:3:389-390:395-396). Matthew Elrod had no correspondence or dealings with Judge Renke related to the settlement agreement (T:3:389), and Steven Mezer dealt exclusively with the senior Renke regarding the settlement. (T:3:359).

While the senior Renke did all of the talking, depositions and negotiating, it was Thomas Gurran who did the drafting and related labor, not Judge Renke. In Triglia, Thomas Gurran reviewed the declaration of covenants, did a lot of legal research and wrote the winning summary judgment motion, researching it, drafting it and going to court with the senior Renke who successfully argued it. (T:3:448-449).

In Cusumano, Thomas Gurran did much research, drafted the complaint, drafted the amended complaint, and researched and prepared responses on the defendants' motions to consolidate and to dismiss for failure to prosecute. (T:3:449-450). He also did the research to oppose the association's motion for summary judgment, prepared the drafts of the amendments to the declarations which were essential to completing the settlement agreement and repeatedly corresponded with opposing counsel. (T:3:388-389; 455). By contrast, Thomas Gurran could not recall that Judge Renke wrote any briefs in Cusumano. (T:3:450).

Overall, Thomas Gurran charitably testified that he, the senior Renke and Judge Renke all did about the same amount of work on Triglia/Cusumano. (T:3:453-454). Yet it is undisputed that Judge Renke was paid $101,800 on Triglia/Cusumano out of total fees of $221,000 in 2002, but Gurran was only paid $30,000 in October 2003 as his share of the fees. When asked to explain this

discrepancy, Margaret Renke testified it was because "John was our son." (T:4:651). Findings and Conclusions, pp. 21-23. Thus, the record does not support the proposition that Judge Renke earned the "compensation paid to him in 2002." (Renke Brief, p. 18).

D. The Renkes' Explanations Regarding Judge Renke's Compensation are a Moving Target But the Violation of Chapter 106 is Clear.

The Renkes' explanation for the Triglia/Cusumano payments and the nature of the arrangement with their son were and are a moving target. Not only did they contradict themselves regarding the percentages and when Judge Renke was due to be paid, they also changed the underlying rationale for the disputed payments in 2002. The Renkes repeatedly insisted the fees had been earned and were properly paid in 2002.

When confronted at final hearing with the timing of the payments in 2002 and the fact that the fees were not earned and could not have been disbursed until the fall of 2003, they then insisted that the fees had been earned and were properly paid in 2002 because that money was payment for all the years they had underpaid their son. (T:3:308-309; T:4:636). They testified that if the Triglia/Cusumano settlement had not been completed and the initial payment had to be returned, the senior Renke bore all of the risk and Judge Renke would not have been required to return the $101,800 he was paid for Triglia/Cusumano in 2002. (T:3:308-309;

T:4:639-640). Thus, the $101,800 was a gift because there was no repayment obligation, which is a clear violation of the $500 individual contribution limitation imposed by Florida law. See Fla. Stat. § 106.08(1)(a). Indeed, Judge Renke admits before this Court that these funds were paid as needed for the campaign and that he was not required to repay them if the settlement fell apart. (Renke Brief, p. 8).

Florida Statute section 106.021(3) defines contributions as a "gift, subscription, conveyance, deposit, loan, payment or distribution of money or anything of value . . . made for the purpose of influencing the results of an election." By paying his son the $101,800 for Triglia/Cusumano in 2002 to finance the campaign, and assuming the risk of repayment in the event the fees were not ultimately earned, the senior Renke clearly violated Chapter 106. Even if the payment truly was a gift for years of alleged underpayment, it still was a gift given for campaign expenses.[3] Chapter 106 clearly prohibits providing "anything of value" in excess of $500 in "any form" for "the purpose of influencing an election." Fla. Stat. § 106.011(3). Under any reasonable interpretation of the facts, the Renkes manifestly did so, Judge Renke knowingly accepted the unlawful contributions and now must face the consequences.

[3] The Hearing Panel well may have rejected the notion of years of underpayment because evidence suggested Judge Renke may have received other forms of compensation. (See, e.g., T:6:804, wherein Judge Renke testified that he did not know where the money came from to buy his home, other than a mortgage).

Finally, Judge Renke heavily relies on In re Matter of Dalessandro, 483 Pa. 431 (Pa. 1979). (Renke Brief, p. 24). In Dalessandro, a judicial candidate was found not guilty of a campaign finance violation based on early repayment of a $35,000 debt owing to him from a family corporation, which was used for campaign funding. In Dalessandro, the issue was early repayment of a liquidated sum that actually had been previously loaned to the corporation; here the evidence does not establish that Judge Renke actually had earned 45% of the Triglia/Cusumano fees as of June 2002 when he began receiving the payments used to finance his campaign.

VII. THE HEARING PANEL APPLIED THE CORRECT LEGAL STANDARD WHEN CONSIDERING JUDGE RENKE'S ELECTION MATERIALS.

Judge Renke argues that Weaver v. Bonner, 309 F.3d 1312 (11th Cir. 2002), undermines the Hearing Panel's findings on the misrepresentation charges. According to Judge Renke, Weaver mandates the application of an "actual malice" standard to campaign misrepresentations and requires the application of the same standard for judicial elections as for legislative or other elections. (Renke Brief, pp. 27-34). Judge Renke's argument is wrong for several reasons.

First, Judge Renke overstates the scope and application of Weaver. Weaver invalidated on constitutional grounds an idiosyncratic Georgia Canon that proscribed on an objective standard negligent falsehoods in judicial campaigns.

The Weaver Court found that the First Amendment permitted regulation only of statements made with actual knowledge that they were false or with reckless disregard as to whether they were false and that the Georgia Canon impermissibly applied to statements that were misleading and omitted critical information but literally were true. Weaver further suggested that the distinction between judicial elections and other types of elections had been "greatly exaggerated" and did not justify greater restrictions on speech during judicial campaigns than during other types of campaigns.

Weaver simply is not applicable in the instant case because Florida Canon 7A(3)(d)(ii) provides a subjective standard, stating that a candidate "shall not knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent." Neither Weaver nor any other case cited by Judge Renke has invalidated this standard. Indeed, Judge Renke conceded the facial constitutionality of this portion of Canon 7, while contesting on constitutional grounds its applicability in this case in his presentation to the Hearing Panel (T. 927) and inferentially in his brief. (Renke Brief, p. 28).

Second, the Hearing Panel in the instant case found that the statements underlying the charges on which Judge Renke was found guilty simply were not true, so that Weaver's analysis would not apply in any event. The Hearing Panel found that Judge Renke's campaign statements suggesting that he was an

incumbent judge, an experienced trial lawyer with courtroom experience and the SWFTMUD Chairman and that he had the support of the Clearwater firefighters were knowingly and purposefully false or misleading.

Third, Judge Renke's suggestion that the distinction between judicial and other election campaigns should be disregarded goes beyond the holding of the United States Supreme Court in Republican Party of Minnesota v. White, 536 U.S. 765 (2002), which was the basis for the Weaver decision.

In White, the Court said:

> We neither assert nor imply that the First Amendment requires campaigns for judicial office to sound the same as those for legislative office.

Id. at 783. Thus, White does not support obviating distinctions between types of election campaigns and again Judge Renke has overstated the scope of Weaver.

There is ample precedent in this Court enforcing and applying Canon 7 and imposing discipline for knowing campaign misrepresentations. See, e.g., In re Kinsey, 842 So. 2d 77 (Fla. 2003); In re McMillan, 797 So. 2d 560 (Fla. 2001); and In re Alley, 699 So. 2d 1369 (Fla. 1997).

To the extent Weaver can be read to hold that discipline for misrepresentations in a judicial campaign that are misleading but literally true cannot be sustained and that there is no distinction between judicial and other elections, it is in direct conflict with this Court's decision of In re Kinsey, supra.

That case, decided after Weaver,[4] comes to a different conclusion with regard to such misrepresentations and is the controlling precedent in this case.[5] In Kinsey, this Court upheld sanctions for judicial campaign statements that were misleading and intended to create a false impression but literally true.

For example, this Court stated:

> The statements contained in this brochure are clearly intended to send the message that Judge Green did not revoke Grover Heller's bond, when in fact he did. Judge Kinsey asserts that her pamphlet did not make a knowing misrepresentation because the flyer included reprinted newspaper articles which detailed the complete facts of the Heller case. Upon reviewing the pamphlet, it is clear that voters were not meant to read each of the articles: the reprinted articles had very small print and most of the articles were stacked on top of each other so portions of the articles could not be read. More importantly, a voter should not be required to read the fine print in an election campaign flyer to correct a misrepresentation contained in large, bold letters. There is clear and convincing evidence that Judge Kinsey made knowing misrepresentations as to her opponent's actions on the bench in the Heller case.

Id. at 90.

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[4] Judge Renke's suggestion that the Kinsey Court did not consider Weaver (Renke Brief, p. 38 n. 4), overlooks the fact that the Respondent in Kinsey filed a Notice of Supplemental Authority on October 31, 2002, providing the Weaver decision to this Court well before the January 30, 2003 Opinion and Decision. Further, the petition for rehearing in Kinsey specifically argued that the Court had overlooked Weaver. The petition for rehearing was denied on March 26, 2003.

[5] Indeed, Judge Renke's brief concedes that much of his position is contrary to Kinsey. (See, e.g., Renke Brief, p. 38).

Addressing another misrepresentation, this Court held:

> The brochure described the facts of the case wherein Judge Green [the incumbent] released Johnson on bond after he violated a restraining order by kicking down his wife's front door and attempting to strangle her "to the point that he was charged with attempted murder."
>
> The pamphlet leaves the clear impression that Johnson had been charged with attempted murder and burglary at the time he appeared at his bond hearing. Contrary to the implication, Johnson was not charged with these crimes until *after* Judge Green ordered his bond set at $10,000. Judge Kinsey asserts that the flyer does not contain an intentional misrepresentation because the facts of the case would have supported a charge of attempted murder and burglary. We reject this argument as meritless. That Judge Kinsey has already described the facts of the case in detail, she had only one purpose for putting the later charges in the brochure -- to embellish her allegations that Judge Green made various decisions of a questionable nature while on the bench.

Id.

Both of the statements addressed above were literally true. Judge Green did release a defendant on bond after the defendant engaged in conduct that eventually led to a charge of attempted murder. By omitting the fact that the charge had not yet been filed when Judge Green granted bond, however, the brochure created a false impression in the voters' minds. And in the bond revocation matter, the true facts were hidden elsewhere in the brochure.

Thus, in both instances Kinsey necessarily held that Canon 7 applies to misrepresentations that are true statements intended to create a false impression. The Court noted that Ms. Kinsey had a purpose of putting the material in a brochure to embellish her inappropriate attacks.

For all of these reasons, Weaver's standard simply does not apply. Even assuming arguendo that it could be considered, however, the evidence below still supports the findings. Weaver prohibits not only false statements, but also those that are reckless. Weaver requires restrictions on candidate speech during political campaigns to be limited to prohibiting false statements that are made with knowledge of falsity or with reckless disregard as to whether the statement is false. The evidence below was sufficient to meet even this standard for all of the misrepresentation charges, and certainly satisfied Florida's Canon 7 requirement that they be knowingly and purposefully made.

Perhaps the best examples are the claims regarding trial experience. Judge Renke's repeated efforts to hold himself out as an experienced trial lawyer with a courtroom background were false statements made with at least reckless disregard for the truth. The misleading nature of the statements and the apparent significance of their content is so clear that the candidate's intention to mislead is obvious. Judge Renke knew of these statements at the time they were made, was directly involved in their preparation and promulgation, had the assistance of his

campaign manager, his father, a veteran of political campaigns, and was nothing less than intentionally or grossly reckless in making the misrepresentations that are the crux of the findings of guilt on charges 6 and 7. Indeed, none of the other misrepresentations that support discipline were negligent, nor were they made from ignorance. The candidate and his campaign manager well knew the rules; they reviewed and approved all literature. Judge Renke even signed and filed the candidate statement required by Canon 7F, stating that he read and understood the requirements of the Florida Code of Judicial Conduct.

In fact, the Hearing Panel made findings of intent on each charge for which Judge Renke was found guilty. Regarding Count 1, the Panel stated, "[t]he prosecution contended that this brochure was a knowing and purposeful misrepresentation . . . . The Hearing Panel has considered all of the evidence in this case. . . . [T]he Panel concludes that Judge Renke is guilty as charged in Count 1." (Findings, Conclusions and Recommendations by the Hearing Panel of the Judicial Qualifications Commission at 24-25). Regarding Count 2, "[t]he Panel concludes that this picture was prominently displayed and purposefully conveyed to the voters . . . . The Panel thus concludes that Judge Renke is guilty as charged under Count 2 and that he deliberately attempted to convey to the public that he was the Chair . . . ." (Id. at 26). Regarding Count 3, "[t]he Panel concludes that this was also an intentional misrepresentation and that Judge Renke is guilty as

charged on Count 3." (Id. at 27). Regarding Count 6, "[t]he Panel does not accept Judge Renke's explanation that he did not grasp the difference between handling a complex 'trial' and mere 'litigation' experience." (Id. at 29). Due to the similarity in charges, Count 7 reincorporates the factual finding in Count 6: "Again, Judge Renke had actually tried only one small claims court case . . . ." (Id. at 30). "Count 9 asserts a deliberate effort to misrepresent qualifications . . . . The Panel thus finds Judge Renke guilty of Count 9 . . . ." (Id.).

Moreover, the Hearing Panel acquitted Judge Renke on Count 4, specifically because of the intent requirement: "[t]he Panel concluded that the evidence on this charge was not sufficiently clear and convincing as to the state of mind or intent of Judge Renke." (Findings, Conclusions and Recommendations by the Hearing Panel of the Judicial Qualifications Commission at 27). This conclusion belies Judge Renke's statement that "the Panel's Findings failed to consider whether the Judge's campaign materials demonstrated 'actual malice'." (Renke Brief at 29); rather, the Hearing Panel acquitted Judge Renke of a charge due precisely to its consideration of the required standard.

In sum, while admitting that Canon 7 is constitutional on its face, Judge Renke argues that "the JQC has interpreted Canon 7 in an exceedingly broad manner, resulting in an unconstitutional application." (Renke Brief at 28). Because the JQC made the appropriate finding of intent for each violation, Canon

7 was not unconstitutionally applied. Ample evidence supported each finding, fully proving that the statements were knowing and purposeful.

There is a clear logic in applying Canon 7 to the facts that were before the Hearing Panel in this case. Judicial campaigns should be fought cleanly and not with misleading campaign statements that are intended to deceive the voting public. Judicial campaigns are and should be different because judicial integrity is paramount. Judicial campaigns must reflect the honor and dignity of the office to safeguard public perception and ensure confidence in the honest application of the law. Campaigns also must be honest to assist voters in selecting those candidates most qualified for and suited to the critical role of a judge. The necessity for Canon 7A(3)(d)(ii) is exemplified by the kind of misrepresentations that were made in the instant case, misrepresentations that diminish the office and detract from the public image of the judiciary.

Judge Renke's assertion that the standards relating to bar disciplinary matters are the standards for discipline cases relating to candidates for judicial office also must be rejected. None of the cases on which he relies address situations remotely close to that before this Court. Further, this Court has held that "judges should be held to higher ethical standards than lawyers by virtue of their position in the judiciary and the impact of their conduct on public confidence in an

impartial justice system." In re McMillan, 797 So. 2d 560, 571 (Fla. 2001) (citation omitted).

Similarly, the remaining cases appearing in Part II of Judge Renke's brief are inapposite. He cites New York Times Co. v. Sullivan, 376 U.S. 254 (1964), and Dockery v. Florida Democratic Party, 799 So. 2d 291 (Fla. 2d DCA 2001), for "the principle that debate on public issues should be uninhibited . . . ." (Renke Brief at 30). First, these cases involved libel actions having nothing to do with a disciplinary proceeding. Second, Judge Renke's misstating his personal qualifications does not constitute "debat[ing] . . . public issues."

Judge Renke also cites Dockery for the proposition that "it is necessary to read the entire publication in context, not simply the offending words." (Renke Brief at 34). First, In re Kinsey, 842 So. 2d 77 (Fla. 2003), is the more recent and applicable precedent on this issue. See also Findings, Conclusions and Recommendations by the Hearing Panel of the Judicial Qualifications Commission at 26 ("However, the voters were not required to read and closely scrutinize the entire text of the brochure. See In re: Kinsey, 842 So. 2d 77 (Fla. 2003)"). Second, the Hearing Panel satisfies even Dockery's requirements by considering the publications in context. See, e.g., Findings, Conclusions and Recommendations by the Hearing Panel of the Judicial Qualifications Commission at 25 ("The Hearing Panel has considered all of the evidence in this case along

with this single statement from the cover of the campaign brochure and concludes that the clear and convincing evidence was the brochure created the impression that he was or had been a judge."); ("A majority of the Panel finds Judge Renke not guilty on this charge. Others opined that placing the office held next to the name would lead one to believe that the officers were of a partisan political party.").[6]

Finally, Judge Renke cites Demby v. English, 667 So. 2d 350 (Fla. 1st DCA 1995), for the proposition that "plaintiff's burden in proving actual malice is not to establish what a 'reasonably prudent person' would do, but to show that the defendant 'in fact entertained serious doubts as to the truth of his publication.' " (Renke Brief at 33). Again, Demby was a libel action having nothing to do with a disciplinary proceeding. Instead, Demby turned on a conditional privilege and a different concept of actual or express malice required to maintain an action against a public person. Even still, the Hearing Panel satisfied Demby's requirements by making findings of intent.

[6] Judge Renke's lament that the Hearing Panel impermissibly considered circumstantial evidence similarly must be rejected. The Code of Judicial Conduct expressly contemplates and allows for the use of such evidence. See Code of Judicial Conduct, Definitions, "Knowingly" ("A person's knowledge may be inferred from circumstances.").

VIII. THE HEARING PANEL'S RECOMMENDED DISCIPLINE IS SUPPORTED BY THE RECORD.

Under Article V, Section 12(a)(1), Florida Constitution, the JQC is authorized to recommend to this Court (a) the removal of a judge whose conduct "demonstrates a present unfitness to hold office" and (b) other discipline defined to include "reprimand, fine, suspension with or without pay, or lawyer discipline." Under Article V, Section 12(c)(1), this Court may "accept, reject or modify in whole or in part the . . . recommendations of the commission" and it may order that the judge "be subjected to appropriate discipline, or be removed from office . . . for willful or persistent failure to perform judicial duties or for other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office. . . ." "Malafides, scienter or moral turpitude . . . shall not be required for removal. . . ."

The following summary of the disciplinary aspects of this proceeding may assist this Court in determining appropriate discipline.

The original formal charges alleged six separate financial campaign misrepresentations and two instances of improper partisan activities. Based on a stipulation pursuant to Rule 6(j) of the Commission's Rules, the Commission on April 29, 2004, recommended to this Court a $20,000 fine, one month's unpaid suspension and a public reprimand. By Order dated July 8, 2004, this Court "rejected" the recommended disposition and the matter was returned to the JQC

"for further proceedings on the merits of the issues of misconduct as well as the appropriate discipline." In due course, the Investigative Panel amended the Formal Charges by deleting the charges relating to partisan activity and adding charges relating to campaign finance violations and the cumulative effect of the campaign misrepresentations.

The case was tried on the charges as amended on September 6 through 9, 2005. During final argument on behalf of the Investigative Panel, Special Counsel noted the disciplinary recommendations previously rejected by this Court, suggested consideration of the precedent of this Court's prior decisions in such matters as In re Alley, 699 So. 2d 1369 (Fla. 1997), In re McMillan, 797 So. 2d 560 (Fla. 2001), and In re Kinsey, 842 So. 2d 77 (Fla. 2003), and submitted that discipline for campaign misrepresentations should be consistent with such precedent. Counsel also suggested to the Hearing Panel that if, in addition, they should conclude that the campaign finance charges had been proven by clear and convincing evidence, that the appropriate recommendation to this Court would be removal of Judge Renke from office. (T. 922-925; 960-961).

On November 17, 2005, the Hearing Panel filed with this Court its Findings, Conclusions and Recommendations. The Hearing Panel recommended that Judge Renke be publicly reprimanded by the Court and required to pay a fine of $40,000 within twelve months after the Court's decision approving the recommendation,

and pay the costs of the proceedings. The Hearing Panel noted that it had considered imposing a larger fine ($95,800, the amount of the unlawful campaign contributions), but refrained from doing so because of various mitigating factors. The Hearing Panel noted that Judge Renke had shown himself to be a "very good circuit judge" for three years, that he is not presently unfit to serve as a judge, and that he has "extreme remorse" for the conduct of his election campaign. Further the Hearing Panel noted that Judge Renke had a "valid and reasonable expectation" of eventually receiving the funds that turned out to be an illegal campaign contribution and would have been entitled to those funds after the settlement was finally approved. The Hearing Panel concluded Judge Renke had no control over the way his father ran the law firm and its compensation system and expressed sympathy for Judge Renke because he was "underpaid" throughout his career as a lawyer. Although the Hearing Panel expressed some doubt that he would have been elected in view of the misrepresentations, the Hearing Panel recommended that "Judge Renke remain in office."

CONCLUSION

As a result of the consideration given to the matter after a full evidentiary hearing by the Hearing Panel, the JQC submits that all findings by the Hearing Panel were supported by clear and convincing evidence and that the appropriate discipline in this case should be as recommended by the Hearing Panel.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the Judicial Qualifications Commission's Answer Brief has been furnished by U.S. Mail to **Scott K. Tozian, Esquire**, Smith & Tozian, P.A., 109 North Brush Street, Suite 200, Tampa, Florida 33602-4163 this ___ day of March, 2006.

_____
Attorney

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

_____
Attorney