The Supreme Court of the State of Louisiana

IN RE: JUSTICE JEFFERSON D. HUGHES III

No. 2021-O-00771

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IN RE: Judiciary Commission of Louisiana - Applicant Other; Justice Jefferson D. Hughes III - Applicant Other; Joint Petition for Consent Discipline;

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June 30, 2021

Joint petition for consent discipline accepted. See Ruling of the Court.

SJC

JTG

JBM

PDG

Weimer, C.J., dissents and assigns reasons.

Hughes, J., recused.

Crain, J., recused.

Supreme Court of Louisiana
June 30, 2021

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Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2021-O-0771

IN RE: JUSTICE JEFFERSON D. HUGHES III

JUDICIARY COMMISSION OF LOUISIANA

CRICHTON, J., *joined by* GENOVESE, J., MCCALLUM, J., AND GRIFFIN, J.[*]

This matter arises from a Joint Motion for Consent Discipline filed by respondent, Justice Jefferson D. Hughes III, an Associate Justice of the Supreme Court of Louisiana, and the Judiciary Commission of Louisiana ("Commission"). For the reasons that follow, we accept the Motion for Consent Discipline, publicly censure respondent, and order him to reimburse costs to the Commission.

JOINT PETITION FOR DISCIPLINE BY CONSENT

Respondent has been a judicial officer since 1991. He first assumed office as an Associate Justice of this Court on February 1, 2013, and currently holds this position. Before the institution of formal proceedings, the Commission and respondent filed a joint petition for discipline by consent, including a joint memorandum and joint stipulation of facts, pursuant to the requirements of Supreme Court Rule XXIII, § 30.[1]

The events at issue arise from the fall 2019 run-off election for Louisiana Supreme Court District 1, between candidates then-Judge William Crain and Judge Hans Liljeberg. Leading up to the election, respondent received telephone calls from individuals regarding the amounts being paid to campaign workers on the Crain campaign. Respondent thereafter reviewed campaign finance reports filed on behalf

[*] **Hughes, J. and Crain, J., recused.**

[1] On November 4, 2019, the Office of Special Counsel received a complaint from attorney Richard Ducote regarding the general facts set forth herein. On December 26, 2019, the Commission authorized an investigation concerning respondent and these allegations.

of Crain's campaign. Though he recognized some of the names on the reports, he knew Johnny Blount, a former Hammond city councilman, better than the others.

Though respondent had not seen Mr. Blount for several years, on October 30, 2019, respondent went to the home of Mr. Blount to discuss the Supreme Court race, and specifically discussed the amounts of money being paid to campaign workers for the Crain campaign.[2] During their conversation, respondent communicated to Mr. Blount that he believed Mr. Blount could receive more money for his services from the Liljeberg campaign. Respondent thereafter left his card, which included an updated telephone number, with Mr. Blount.

Respondent and the Commission stipulate that this discussion left Mr. Blount with the impression that respondent was attempting to change Mr. Blount's support from Judge Crain to Judge Liljeberg. Further, this meeting and discussion constituted interference with and/or had the potential to interfere with the working relationship between a judicial candidate and one of his campaign workers during a highly contested campaign for a seat on the same Court on which respondent serves.

After his conversation with respondent, Mr. Blount signed an affidavit attesting that respondent offered him $5,000 to support the Liljeberg campaign.[3] Several news articles concerning their October 30 meeting, including a photograph of Mr. Blount's affidavit regarding this "offer," were published on November 1, 3, and 7, 2019 in THE TIMES-PICAYUNE | THE NEW ORLEANS ADVOCATE. The news articles reported negatively on respondent's conversation with Mr. Blount and portrayed the judiciary in a negative light.

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[2] Respondent first went to the home of Henry Jackson, whom he has known for many years. Mr. Jackson is related to Mr. Blount by marriage. When speaking to Mr. Jackson about the Supreme Court race, Mr. Jackson informed respondent that he had changed his support from Judge Crain to Judge Liljeberg. Before leaving, respondent asked Mr. Jackson how to get in touch with Mr. Blount; Mr. Jackson contacted Mr. Blount by phone, and respondent thereafter went to see Mr. Blount at his home.

[3] The parties' joint submission states that this allegation is "unsubstantiated."

Respondent acknowledges that his conduct and subsequent events flowing from it undermined the public's confidence in the integrity, independence, and impartiality of the judiciary and brought the judiciary into disrepute. Respondent accordingly acknowledges the imposition of discipline is appropriate.

The parties stipulate that by his conduct as set forth above, respondent violated Canons 1 (a judge shall uphold the integrity and independence of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety in all activities), 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 7B(1) (a judge or judicial candidate shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity, and independence of the judiciary), and 7F (a judge shall not engage in unauthorized partisan political activity) of the Code of Judicial Conduct. For this misconduct, the parties propose that respondent be publicly censured and be required to pay $2,068.72 in costs incurred by the Commission in investigating this matter.

The parties stipulate that in mitigation, respondent did not engage in a pattern of misconduct; the conduct did not occur in the courtroom; and respondent was not acting in his official capacity. In addition, respondent has been fully cooperative throughout the duration of this matter. He is remorseful and has accepted responsibility for the negative light his conduct brought upon the judiciary, and he has committed to refrain from such conduct in the future. In aggravation, the ethical violations were serious and brought the judiciary into disrepute, and respondent is an experienced judicial officer who "should have known better."

Based on the foregoing, and considering the applicable jurisprudence,[4] the parties urge the Court to accept the joint petition and publicly censure respondent.

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[4] In support of the proposed sanction, the parties cite *In re: Shea*, 02-0643 (La. 4/26/02), 815 So. 2d 813, in which this Court publicly censured a municipal court judge for improper political conduct. Our review of the facts *Shea* indicate it is distinguishable, as Judge Shea's misconduct

DISCUSSION

This Court is vested with exclusive original jurisdiction in judicial disciplinary proceedings by La. Const. art. V, § 25(C). Supreme Court Rule XXIII, § 30 sets forth a formal procedure for the discipline of judges by consent.

The joint motion for consent discipline is filed in this Court under seal. Supreme Court Rule XXIII, § 30(a). The petition must include stipulations of fact, conditional admissions of rules violated, the mental elements involved, the harm occasioned by the judge's conduct, the existence of any aggravating and mitigating factors, and an acknowledgement by the judge that he or she consents to the agreed upon discipline. *Id.* The Commission may file a sealed memorandum in support of the proposed discipline. *Id.*, § 30(c). If the Court determines the recommended discipline is appropriate and enters an order of discipline, all pleadings filed with the Court, with the exception of the sealed memorandum, shall become public, unless otherwise ordered by the Court. *Id.*, § 30(e).[5]

While the parties have stipulated to respondent's violations of Canons 1, 2, 2A, 7B(1), and 7(F) of the Code of Judicial Conduct, the misconduct is centered on Canon 7, which provides, in pertinent part:

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involved making contributions from his excess campaign funds to candidates for public office based upon a sincere belief that such donations were permissible.

The parties also note that sitting judges in other jurisdictions have been disciplined for involvement in political campaigns. *See In re Turner*, 573 So. 2d 1 (Fla. 1990) (judge reprimanded for active involvement in son's judicial campaign); *In re Codispoti*, 438 S.E.2d 549 (W. Va. 1993) (judge censured for involvement in wife's judicial campaign); *Public Admonition of Minter* (Texas Comm'n on Judicial Conduct, 6/2/99) (judge admonished for endorsing candidate judge favored to replace judge in office and paying for and placing political advertisements on behalf of candidate); *In re DeFoor*, 494 So. 2d 1121 (Fla. 1986) (judge publicly reprimanded for aiding campaigns of two friends by developing campaign strategies, identifying campaign issues, attempting to publicize statistics reflecting negatively on incumbent, and privately lobbying members of legal community); *In re Katic*, 549 N.E.2d 1039 (Ind. 1990) (judge suspended for 30 days for outwardly opposing candidate for office, influencing party's choice of primary candidates, leading candidate search, and personally encouraging candidacy of certain individuals).

[5] The Court is not required to accept the recommended discipline, but may reject it totally or conditionally reject it. Supreme Court Rule XXIII, § 30(f). If rejected, the conditional admissions shall be considered withdrawn, and the joint motion and all other filings and materials shall remain sealed. *Id.*, § 30(f)(2).

> B. A Judge or Judicial Candidate Shall:
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> (1) maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary;
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> * * *
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> F. Other Partisan Political Activity. A judge shall not engage in any other partisan political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law or by this Code.

The obvious intent of Canon 7 is to preserve public confidence in the independence and impartiality of the judiciary by limiting a judge's participation in partisan political activity. *See* ABA Model Code of Judicial Conduct Canon 4, Rule 4.1, cmt. 3 (2020) ("Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence."). Commentators, however, have suggested judges are not prohibited from ***privately*** endorsing or opposing candidates for public office. *See, e.g.*, Raymond J. McKoski, *The Political Activities of Judges: Historical, Constitutional, and Self-Preservation Perspectives*, 80 U. PITT. L. REV. 245, 291 (2018). *See also* Annotated Model Code of Judicial Conduct 505 (Am. Bar Ass'n 3d ed. 2016) ("The Model Code does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.").

The parties here have stipulated that respondent intended his conversation with Mr. Blount to be private. Nonetheless, as respondent himself acknowledges, his statements had the potential to interfere with the Crain campaign's relationship with Mr. Blount. Mr. Blount believed respondent was attempting to change his support to Judge Liljeberg, causing him to execute an affidavit detailing respondent's actions, which was later reported in the media. Given the unusual nature of the conversation, combined with respondent's status as a member of the Court which was the subject of the election, as well as the contentious nature of the campaign, it

should have been reasonably foreseeable to respondent that Mr. Blount might publicize the conversation. Once the conversation was in fact made public, it resulted in negative media articles and harmed the public's confidence in and respect for the integrity, independence, and impartiality of the judiciary. Considering all of these factors, we conclude the stipulated facts establish the sanctionable misconduct and establish violations of Canons 1, 2, 2A, 7B(1), and 7(F).

We now turn to a determination of whether the proposed sanction of a public censure is appropriate.[6] Article V, § 25(C) of the Louisiana Constitution sets forth four punishment alternatives for disciplining a judge: (1) censure; (2) suspend with or without salary; (3) remove from office; or (4) retire involuntarily. *See In re Lemoine*, 96-2116 (La. 1/14/97), 686 So. 2d 837, 840, *on reh'g*, 96-2116 (La. 4/4/97), 692 So. 2d 358 ("Misconduct exposes a judge to punishment, anywhere from public censure (which may ultimately result in 'removal' of the judge by the constituency that elects him) to removal from office by the Supreme Court."). A "censure" is defined in the law as an "official reprimand or condemnation." Black's Law Dictionary (11th ed. 2019).[7]

Given the unique facts of this case, our prior jurisprudence provides little guidance. *See supra,* n.4. However, we find persuasive the recent opinion of the

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[6] We note that Supreme Court Rule XXIII, § 3(a)(1) provides that the Commission, upon receiving a complaint "that is not obviously unfounded or frivolous," shall make a preliminary inquiry to determine whether further investigation of the allegations of judicial misconduct is warranted. Given that the joint stipulation states that the Commission "authorized an investigation" in this case, the Commission must have determined the allegations were not unfounded. Further, if in the opinion of a majority of the Commission, the preliminary inquiry or investigation does not disclose sufficient cause to warrant further proceedings, none shall be had. *Id.*, at § 3(c). Again, this does not appear to be the case here. Finally, the Commission had the option to "expeditiously resolve matters" that "do not warrant further proceedings" by issuing a notice to the respondent judge with: (i) a "reminder" concerning provisions of the Code of Judicial Conduct; (ii) a "caution" that the Commission regarded the judge's conduct as an ethical violation but did not consider it to be serious enough to warrant further proceedings, or (iii) an "admonishment" that the Commission regarded the judge's conduct as a "clear ethical violation." *Id.*, at § 3(d). The fact that the Commission had options in respondent's case that did not amount to a public censure factors into our decision to accept this joint petition.

[7] Similarly, in common usage, a "censure" is a "judgment involving condemnation," or "the act of blaming or condemning sternly." Merriam-Webster.com 2021, *available at* https://www.merriam-webster.com/dictionary/censure.

Florida Supreme Court in *In re: Howard*, --- So. 3d --- (Fla. 2021), 2021 WL 2006560. The issue in *Howard* was whether the judge "acted inappropriately when he attempted to dissuade a judicial candidate from running against an incumbent judge, and attempted to persuade the candidate to either run against a different incumbent judge, or to forgo the campaign altogether." *Id.*, at *1 (parentheticals omitted). *Howard*, like the instant case, was decided based on stipulations, and the judge accepted full responsibility for his conduct, cooperated throughout the investigation, and acknowledged his actions were inappropriate and should have never occurred. The Supreme Court of Florida agreed the judge should be publicly reprimanded. While the facts are distinguishable, *Howard* provides persuasive authority concluding that a public censure is appropriate under these facts.

In aggravation, we recognize respondent's position as a member of this state's highest Court and his lengthy judicial experience. However, as described above, these factors are mitigated by the fact respondent was not acting in his official capacity and believed his conversation was private in nature. Respondent has also expressed remorse for his actions. He has cooperated during the disciplinary proceedings and accepted responsibility, as demonstrated by his willingness to enter into this consent petition.

To be clear, we recognize the unique nature of this case. Respondent is the second most senior justice on this Court, which is constitutionally charged with regulating the judiciary. La. Const. art. V, § 25(C). In *In re: Huckaby*, 95-041 (La. 5/22/95), 656 So. 2d 292, 298, then-associate Justice Catherine D. Kimball, stated:

> [T]his state's constitution vests this court with the duty to preserve the integrity of the bench for the benefit of that same public by ensuring that all who don the black robe and serve as ministers of justice do not engage in public conduct which brings the judicial office into disrepute.

95-041, p.10, 656 So. 2d at 298.

Cognizant of our constitutional obligations to regulate the judiciary and to ensure that all judges of this state "serve as ministers of justice," we conclude the proposed sanction of a public censure is appropriate to address respondent's misconduct. Accordingly, we will publicly censure respondent for his misconduct and order him to reimburse all costs to the Commission. In accordance with Supreme Court Rule XXIII, § 30(e), we further order the joint pleadings filed in this matter shall become public upon the release of this opinion.

DECREE

It is ordered that the Joint Motion for Consent Discipline be accepted and that Justice Jefferson D. Hughes III be publicly censured for violating Canons 1, 2, 2(A), 7(B)(1), and 7F of the Code of Judicial Conduct. It is further ordered that Justice Hughes reimburse the Judiciary Commission of Louisiana $2,068.72 in costs.