BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE, NO. 99-10, MATTHEW E. MCMILLAN	:	CASE NO. 95,886

STIPULATION

In this disciplinary proceeding, the Investigative Panel of the Florida Judicial Qualifications Commission and Judge Matthew E. McMillan present the following Stipulation to this Court pursuant to Article V, § 12, *Florida Constitution*, and Rule 6(j) of the Florida Judicial Qualifications Commission Rules, as amended:

1. The aforementioned rule provides that "the Investigative Panel may reach agreement with a Judge on discipline or disability, and such stipulation shall be transmitted by it directly to the Supreme Court, to accept, reject, or modify in whole or in part."

2. Judge McMillan admits the conduct alleged in the following portions of the Notice of Formal Charges, a copy of which is attached hereto as Exhibit 1, the impropriety of that conduct, and does not contest said charges.

3. Judge McMillan acknowledges that he made inaccurate and misleading statements during his judicial campaign, including specifically statements regarding the work ethic and sentencing practices of the incumbent judge in criminal cases. He accepts full responsibility for having made those statements and admits they

EXHIBIT A

should not have been made; however, he denies that he knowingly made any false or misleading statements or intended to misrepresent any material facts. He believes that when errors were brought to his attention, he sought to correct them.

> **Charge No. 1** - During the campaign, in violation of Canon 1, Canon 2(A), Canon 3(b)(5), Canon 7(A)(3)(a), and Canons 7(A)(3)(d)(i) - (ii), you distributed a piece of campaign literature entitled, "*A Fellow Police Office Speaks Out*," in which you stated that "Judge Brown has never been a friend to law enforcement in the Courtroom," and further invited law enforcement officers to "imagine a judge who [would] go to bat for [them]." In that same literature, you also stated that law enforcement officers had the opportunity to "support a fellow police officer who has been there and [would] go to bat" for them as opposed to simply pledging or promising the faithful and impartial performance of your duties in office. A true and correct copy of this literature is attached hereto as Exhibit A.
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> **Charge No. 2** - In violation of Canon 1, Canon 2(A), Canon 3(b)(5), Canon 7(A)(3)(a) and Canons 7(A)(3)(d)(i) - (ii), in the same campaign literature referenced in paragraph 1, you suggested that you would show bias or partiality toward law enforcement by not suppressing evidence; not overturning convictions; not reducing bail bonds; and not giving lenient sentences, as opposed to simply pledging or promising the faithful and impartial performance of your duties in office.
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> **Charge No. 3** - During the campaign, in violation of Canon 1, Canon 2(A), and Canon 7(A)(3)(a), you . . . [1] asserted that your opponent, Judge George Brown, the incumbent, asserted pressure upon law

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[1] In the original Notice of Formal Charges, Charge No. 3 included an allegation that Judge McMillan violated Canon 7(A)(3)(d)(iii) of the Code of Judicial Conduct, which prohibits a judge or candidate for judicial office from "knowingly misrepresenting the identity, qualifications, present position or other fact concerning the candidate or an opponent . . . ." The phrase "falsely or misleadingly" was originally contained in Charge No. 3 because of the proof requirement of Canon 7(A)(3)(d)(iii). As part of this Stipulation, the Commission has dismissed all charges based on alleged violations of Canon 7(A)(3)(d)(iii) of the Code. *See also* ¶ 3, *infra* at 5.

enforcement officers for preferential treatment for his children when they were arrested.

Charge No. 4 - During the campaign, in violation of Canon 1, Canon 2(A), Canon 3(b)(5), Canon 7(A)(3)(a) and Canons 7(A)(3)(d)(i) - (ii), you stated in a letter to the Honorable Earl Moreland, State Attorney for the Twelfth Judicial Circuit, on which you copied the media, that you would "always have the heart of a prosecutor." At a minimum, statements of this nature erode public confidence in the integrity and impartiality of the judiciary and commit or appear to commit you with respect to issues that may come before the court. A true and correct copy of this letter is attached hereto as Exhibit B. You echoed this same theme in other campaign literature when you stated that you would not "rubber stamp" deals reached between prosecutors and defense attorneys and that you anticipated *defense attorneys would not be happy with you as judge*.

Charge No. 6 - During the campaign, in violation of Canon 1, Canon 2(A), Canon 7(A)(3)(a), and Canons 7(A)(3)(d)(i) - (ii), you published a brochure entitled, "*16-Year Judge Brown Treats Crime Like a Part-Time Problem*," and made other campaign statements, including statements in a submission to the editorial board of *The Bradenton Herald*, in which you engaged in a continued and . . . attempt to foster the impression that the incumbent was not working as a full-time judge or was otherwise not maintaining a full-time work schedule. For example, in the brochure entitled, "*16-Year Judge Brown Treats Crime Like a Part-Time Problem*," you . . . misrepresented[2] the hours per week that the incumbent worked as well as the days off that the incumbent took by giving the false or misleading impression that the incumbent took 86

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[2] In the original Notice of Formal Charges, Charge No. 6 included an allegation that Judge McMillan violated Canon 7(A)(3)(d)(iii) of the Code of Judicial Conduct, which prohibits a judge or candidate for judicial office from "knowingly misrepresenting the identity, qualifications, present position or other fact concerning the candidate or an opponent . . . ." The phrase "deliberately misrepresented" was originally contained in Charge No. 6 because of the proof requirement of Canon 7(A)(3)(d)(iii). As part of this Stipulation, the Commission has dismissed all charges based on alleged violations of Canon 7(A)(3)(d)(iii) of the Code. *See also* ¶ 3, *infra*, at 5.

days "off from court" in 1996 and 84 days "off from court" in 1997. A true and correct copy of this brochure is attached hereto as Exhibit D.

Charge No. 7 - During the campaign, in violation of Canon 1, Canon 2(A), and Canon 7(A)(3)(a) and in the same brochure entitled, "*16-Year Judge Brown Treats Crime Like a Part-Time Problem*," you . . . misleadingly[3] stated that the court system was overloaded and blamed this condition on the failure of your opponent, the incumbent, to perform the duties of his office.

Charge No. 8 - During the campaign, in violation of Canon 1, Canon 2(A), Canon 7(A)(3)(a), and Canons 7(A)(3)(d)(i) - (ii), in a packet of campaign materials you furnished to the editorial board of *The Bradenton Herald*, you . . . misleadingly[4] represented the incumbent's sentencing practices and procedures with respect to: (i) violation of probation in domestic battery cases; and (ii) prostitution cases. A true and correct copy of these materials is attached hereto as Composite Exhibit E.

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[3] In the original Notice of Formal Charges, Charge No. 7 included an allegation that Judge McMillan violated Canon 7(A)(3)(d)(iii) of the Code of Judicial Conduct, which prohibits a judge or candidate for judicial office from "knowingly misrepresenting the identity, qualifications, present position or other fact concerning the candidate or an opponent . . . ." The phrase "falsely or misleadingly" was originally contained in Charge No. 7 because of the proof requirement of Canon 7(A)(3)(d)(iii). As part of this Stipulation, the Commission has dismissed all charges based on alleged violations of Canon 7(A)(3)(d)(iii) of the Code. *See also* ¶ 3, *infra*, at 5.

[4] In the original Notice of Formal Charges, Charge No. 8 included an allegation that Judge McMillan violated Canon 7(A)(3)(d)(iii) of the Code of Judicial Conduct, which prohibits a judge or candidate for judicial office from "knowingly misrepresenting the identity, qualifications, present position or other fact concerning the candidate or an opponent . . . ." The phrase "falsely or misleadingly" was originally contained in Charge No. 8 because of the proof requirement of Canon 7(A)(3)(d)(iii). As part of this Stipulation, the Commission has dismissed all charges based on alleged violations of Canon 7(A)(3)(d)(iii) of the Code. *See also* ¶ 3, *infra*, at 5.

Charge No. 9 - During the campaign, in violation of Canon 1, Canon 2(A), Canon 3(b)(9), Canon 7(A)(3)(a) and Canons 7(A)(3)(d)(i) - (ii), you . . . misleadingly[5] misrepresented the incumbent's actions as to the sentencing of a defendant Vincent Born by giving the impression that the defendant had served no jail time when, in fact, the defendant had served a substantial number of days in jail before his guilty plea was accepted.

Charge No. 10 - During the campaign, in violation of Canon 1, Canon 2(A), Canon 7(A)(3)(a) and Canons 7(A)(3)(d)(i) - (ii), you distributed a campaign brochure entitled "*16-Year Incumbent Judge George Brown Gives Criminals a Good Deal*" in which you stated that Judge Brown is "soft on crime" because "Court records show that Judge Brown gives criminals such light sentences that of 91,000 cases, only 300 people have asked for a jury trial," thereby misleading the public concerning the effect that negotiated plea agreements have on the number of criminal cases that are actually tried, irrespective of the particular judge that is assigned to a case. At a minimum, such statements misrepresent a fact or the qualifications of the incumbent. A true and correct copy of this brochure is attached hereto as Exhibit F.

Charge No. 11 - During the campaign, in violation of Canon 1, Canon 2(A) and Canon 7(A)(3)(a), you engaged in conduct unbecoming a candidate for and lacking the dignity appropriate to judicial office, which had the effect of bringing the judiciary into disrepute, by making the statements set forth in ¶¶ 1, 2, 3, 4, 6, 7, 8, 9, and 10 of this complaint and those contained in a brochure entitled, "*Please Help Me Make Our Courts Work Better,*" a copy of which is attached as Exhibit G. These statements inappropriately attack the judicial system, and, by the breadth of your unsubstantiated criticisms, adversely impair the public

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[5] In the original Notice of Formal Charges, Charge No. 9 included an allegation that Judge McMillan violated Canon 7(A)(3)(d)(iii) of the Code of Judicial Conduct, which prohibits a judge or candidate for judicial office from "knowingly misrepresenting the identity, qualifications, present position or other fact concerning the candidate or an opponent . . . ." The phrase "falsely and misleadingly" was originally contained in Charge No. 9 because of the proof requirement of Canon 7(A)(3)(d)(iii). As part of this Stipulation, the Commission has dismissed all alleged violations of Canon 7(A)(3)(d)(iii) of the Code. *See also* ¶ 3, *infra*, at 5.

perception of the impartiality, independence and responsibility of the entire judiciary of Manatee County, Florida.

4. The Investigative Panel and Respondent have reached agreement on what both consider to be appropriate discipline. As a result, the Investigative Panel has filed Findings and Recommendation of Discipline with this Court, a copy of which is attached hereto as Exhibit 2.

5. Judge McMillan does not contest those Findings and Recommendation, and both the Investigative Panel and Judge McMillan waive oral argument, and with the Court's permission, any further response.

6. The Commission hereby dismisses all charges against Judge McMillan other than those set forth in Paragraph 2, *supra*.

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DATED this 17th day of January, 2000

and

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DATED this 17th day of January, 2000

and

STIPULATION
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DATED this 17 day of January, 2000

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Manatee County Courthouse
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DATED this 17th day of January, 2000