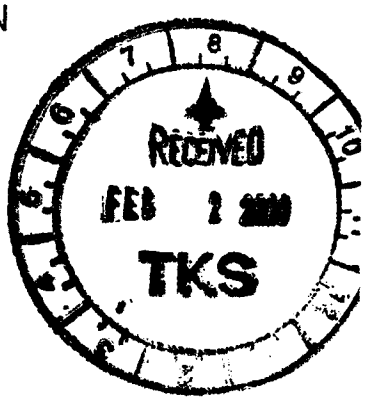
BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA



INQUIRY CONCERNING A JUDGE,
NO. 99-10, MATTHEW E. MCMILLAN

CASE NO. 95,886

CORRECTED FINDINGS AND RECOMMENDATION OF DISCIPLINE[1]

On April 5, 1999, because of information provided to the Judicial Qualifications Commission ("Commission") relating to Judge Matthew E. McMillan, a Notice of Investigation Pursuant to Rule 6(b) of the Rules of the Florida Judicial Qualifications Commission was served upon Judge McMillan. Thereafter, on June 29, 1999, the Commission served its Notice of Formal Charges against Judge McMillan.

The Commission has entered into a Stipulation with Judge McMillan in which he has admitted that during the course of the 1998 election campaign for the judgeship which he now occupies he engaged in a pattern of improper conduct in that he made pledges and promises of conduct in office; made statements that committed or appeared to commit him or reflect his predisposition to a legal position as to cases, controversies, individuals, or issues that were likely to come before him; made inaccurate or misleading representations concerning his opponent; and otherwise conducted himself in violation of Canon 1, Canon 2(A), Canon 3(b)(2), Canon 3(b)(5), Canon 3(b)(9), Canon 7(A)(3)(a), Canon 7(A)(3)(d)(i) and Canon

[1] These Corrected Findings and Recommendation of Discipline are being filed *nunc pro tunc* to January 20, 2000, to correct typographical errors.

EXHIBIT B

7(A)(3)(d)(ii) of the Code of Judicial Conduct. Examples of the campaign literature which are the subject of the Commission's Formal Charges are included as Exhibits A, B, D-G to the Formal Charges, a copy of which is attached as Exhibit 1 to the Stipulation filed by the parties.

Judge McMillan has also admitted in the Stipulation that during the campaign he: (i) 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; and (ii) made statements which inappropriately attacked the judicial system and, by the breadth of his unsubstantiated criticisms, adversely impaired the public perception of the impartiality, independence and responsibility of the entire judiciary.

Judge McMillan having admitted the charges set forth in ¶ 3 of the Stipulation, the Commission finds the facts to be as set forth in the Stipulation and dismisses all other charges. The Commission believes it is essential to take note and comment upon the circumstances of this case which could be perceived as suggesting that Judge McMillan knowingly made inaccurate statements during his campaign, including statements which deeply trouble the Commission concerning the work ethic and sentencing practices of the incumbent judge in the handling of criminal cases. Judge McMillan has submitted evidence in explanation of these matters sufficient to create factual disputes on the question of his intention, and suggesting that inaccurate statements about these matters were made negligently rather than

intentionally. This evidence includes the fact that some errors may have been made by printers or by his campaign staff, or that there may have been a bonafide misinterpretation of data. Therefore, the Commission cannot find on the present record that the evidence rises to the requisite level of "clear and convincing" so as to find that Judge McMillan also violated Canon 7(A)(3)(d)(iii) of the Code of Judicial Conduct:

> "(3) A candidate for a judicial office:
>
> * * *
>
> (d) shall not:
>
> * * *
>
> (iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;"

Were there such clear and convincing evidence of a knowing violation, the Commission might well recommend far more drastic discipline. *See In re Alley*, 699 So. 2d 1369 (Fla. 1997), in which the judge admitted before this Court by stipulation that she had knowingly made false and misleading statements during her campaign. The Commission has also considered in mitigation the fact that Judge McMillan has accepted full responsibility for his actions and the statements which were made in the campaign and has agreed to make a public apology to the citizens of Manatee County.

The Commission hopes that the severe discipline recommended herein, if ordered by this Court, will serve as an indication of the extremely serious nature of

election campaign violations of the nature seen in this case, and also present a clear declaration of the personal and non-delegable responsibility placed upon every judicial candidate to ensure the accuracy and appropriateness of his or her statements in campaign literature, speeches or other election activity.

In light of the above, the Commission finds that the interest of justice and public welfare will be adequately served by the following discipline, which it hereby recommends to this Court:

(1) Public Reprimand to be delivered personally to the Judge before the Supreme Court of Florida;

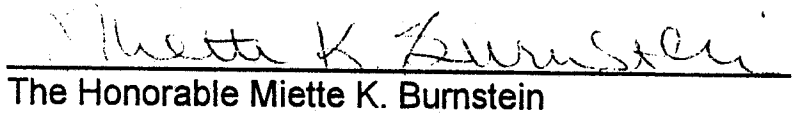
(2) Six-month suspension without pay;

(3) Public Apology to the Citizens of Manatee County in the form attached hereto as Exhibit A; and

(4) Payment of all Court Reporter's Fees incurred by the Commission:

These Corrected Findings and Recommendation of Discipline shall be entered ***nunc pro tunc*** to January 20, 2000, the date the Commission's original Findings and Recommendation of Discipline were entered.

Respectfully submitted,



The Honorable Miette K. Burnstein
Chair, Judicial Qualifications Commission
Room 102, The Historic Capital
Tallahassee, FL 32399-6000
(850) 488-1581

DATED: This 28 day of January, 2000.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **CORRECTED FINDINGS AND RECOMMENDATION OF DISCIPLINE** has been furnished by U. S. Mail to **MARVIN E. BARKIN, ESQ., and LANSING C. SCRIVEN, ESQ.**, Special Counsel, Post Office Box 1102, Tampa, FL 33601; **THOMAS C. MacDONALD, JR., ESQ.**, General Counsel, 100 N. Tampa Street, Suite 2100, Tampa, FL 33602; **JOHN R. BERANEK, ESQ.**, Counsel, Hearing Panel, Ausley & McMullen, 227 South Calhoun St., P.O. Box 391, Tallahassee, FL 32301; **THE HONORABLE HARVEY L. GOLDSTEIN,** Chair, Hearing Panel, 714 Dade County Courthouse, 73 West Flagler Street, Miami, FL 33130; and **BARRY A. COHEN, ESQ.**, Cohen, Jayson & Foster, P.A., 201 E. Kennedy Blvd., Ste. 1700, Tampa, FL 33602, this 31st day of January, 2000.

Brooke S. Kennerly

Brooke S. Kennerly
Executive Director

Supreme Court of Florida

WEDNESDAY, JUNE 21, 2000

CASE NO.: SC95886

INQUIRY CONCERNING A JUDGE, NO. 99-10	vs.	RE: MATTHEW E. MCMILLAN
Petitioner(s)		Respondent(s)

The Court has reviewed the stipulation of the Judicial Qualifications Commission and the Respondent and has determined that the interests of justice require that the recommended disposition be rejected and this matter be returned to the Commission for further proceedings on the merits of the issues of misconduct as well as the appropriate discipline. The various petitions to appear as amicus are denied without prejudice to those petitioners to seek to present evidence to the Commission as the Commission may determine to be appropriate within its rules.

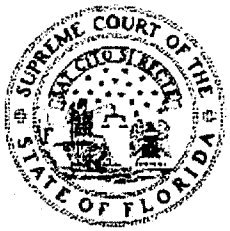
In view of the stipulation of the parties that a suspension should be imposed in this case, the Respondent is hereby directed to show cause on or before July 5, 2000, why this Court should not order an immediate suspension pending further proceedings.

DONE AND ORDERED this 21st day of June, 2000.

HARDING, C.J., and SHAW, WELLS, ANSTEAD, LEWIS and QUINCE, JJ., concur.

A True Copy
TEST:

Thomas D. Hall
Clerk, Supreme Court



sg
Served:

EXHIBIT C

HON. MATTHEW E. MCMILLAN
BROOKE S. KENNERLY
BARRY A. COHEN
JOHN BERANEK
LENA TRICHNER
THOMAS C. MACDONALD, JR.
CLAFLIN GARST, JR.
MATTHEWS, HUTTON & EASTMOORE

WILLIAM F. JUNG
ROBERT A. REMINGTON
RICARDO A. FERNANDEZ
✓MARVIN E. BARKIN
HOLLAND & KNIGHT
ERNEST S. MARSHALL
JEFFREY A. RAPKIN
JOSEPH F. MAMMINA