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THOMAS D. HALL
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THE FLORIDA SUPREME COURT

S.Ct. 01-2078

INQUIRY CONCERNING A JUDGE:

HON. ROBERT H. BONANNO

_____/

FJQC HEARING PANEL'S SUPPLEMENTAL REPORT AND RECOMMENDATION

The Investigative Panel of the Judicial Qualifications Commission instituted a notice of formal charges against Judge Bonanno on September 18, 2001, limited solely to the count that:

> On July 27, 2000 at 5:20 p.m. you entered the locked office of Judge Gregory Holder, and adjacent areas, at a time you knew or should have known that Judge Holder would have objected to your presence.

A sealed grand jury report, regarding Judicial Conduct in Hillsborough County was released, on June 19, 2001. (App. "A"). In it, the grand jury recommended the resignation or removal of Judge Bonanno. The grand jury found that Judge Bonanno gave "conflicting answers" to the question of when or why he was in Judge Holder's office. (App. B, p. 4). It also found that he "lost the credibility necessary for a judge" by virtue of the "incredible and conflicting accounts he had given about the incident," but could not determine "whether his observation and memory are faulty or he is just plain lying...". (App. B, p. 7).

The grand jury also cited "incontrovertible evidence" that Judge Bonanno carried on an illicit affair with a court clerk, that the two spent time together in Judge Bonanno's offices, and once

attended a judicial conference together in Ft. Lauderdale. (App. B, p. 6). It acknowledged that "a judge's private life is not public property," but that "improprieties committed on public time and public property are properly subject to public scrutiny." (App. B, p. 6). The grand jury concluded that "because of his lack of credibility and his conduct of his personal life, [Judge Bonanno] is no longer fit to be a judge." (App. B, p. 7).

A grand jury report is not itself evidence, but constitutes the jury's conclusions from the evidence. On October 25, 2001, the Supreme Court granted the Commission's motion to unseal the grand jury testimony for its use in these proceedings. See Fla. Const. Art. V, §12(a)(5). The Court also returned the case back to the Commission "for further proceedings on the merits of the issues of misconduct.

On remand, the FJQC, as well as the appropriate Investigative Panel, the Commission's Chairman, and Special Counsel have all carefully read and reread the grand jury testimony. In order to take action against Judge Bonanno for lack of candor, the Judge must receive adequate notice and an opportunity to be heard. The Commission must also prove that any lack of candor was knowing and wilful, and its burden on these charges is proof by "clear and convincing" evidence. Inquiry Concerning a Judge: Davey, 645 So. 2d 398 (Fla. 1994). The testimony presented to the grand jury is simply insufficient to meet this standard.

In his grand jury testimony, Judge Bonanno said he had two

reasons to go to Judge Holder's chambers - to discuss a family law case and to discuss the atmosphere in the courthouse. (Bonanno pp. 62-66). He talked at length about the family law case, Id. at 90-92, and stated briefly that he was at Judge Ficcarotta's office before this, dropping off statistics. Id. at 95-96. Judge Bonanno unequivocally denied being sent to Judge Holder's chambers by any third party, or being there for any other ulterior motive. (Pp. 119-20).

Judge Bonanno described the door to Holder's chambers as "ajar". (Pp. 72). Thereafter, Judge Bonanno testified that what he meant by this was that he grabbed the door handle and knocked at the same time, and the door just opened. (Pp. 66-67). His testimony on the point was equivocal because he also said the door was closed, but he grabbed the handle and "it went in." (P. 72). He also said he didn't remember the details because he wasn't paying attention. (P. 72).

Judge Bonanno told attorney T. Michael Foster that he was delivering statistics nearby. (T. 32-34). Foster saw Judge Bonanno with papers in his hand, putting one in Judge Whiltmore's basket. (T. 22). This testimony is not necessarily inconsistent and may reflect a dual purpose for Judge Bonanno being in that part of the building. In sum, the underlying grand jury evidence is equivocal at best, and does not meet the clear and convincing standard required to prove that Judge Bonanno either lied or intended to lie to the grand jury. See In re Davey, supra (evidence which is

indecisive, confused and contradictory does not meet the clear and convincing standard); see also Slomowitz v. Walker, 429 So.2d 797, 800 (Fla. 4th DCA 1983) (to meet clear and convincing standard, [t]he facts to which the witnesses testify must be distinctly remembered; the details in connection with the transaction must be narrated exactly and in order; and testimony must be clear, direct and weighty, and the witnesses must be lacking in confusion as to the facts at issue.")

The evidence of Judge Bonanno's affair with a court clerk is, in fact, "incontrovertible." They spent time in his chambers alone, traveled out of town together, and she once went with him to a judicial conference. However, this evidence reflects a private consensual affair, and no "improprieties" committed on court time or with court funds. There is **no** evidence that the two were ever intimate on court premises, that Judge Bonanno asserted any undue pressure on Joan Helms, the he used his position to further his private relationship, used public funds to support it, or that he lied about it. While an extramarital affair reflects poorly on Judge Bonanno, it does not constitute a removable offense, and warrants the same type of discipline the Commission has already recommended. See In re Flanagan, 240 Conn. 157, 690 A.2d 865 (Conn. 1997) (judge's three year consensual affair with a married court reporter assigned to his courtroom was conduct prohibited by Canons 1 and 2A, because it could lead a knowledgeable observer to question judicial integrity, and warranted public reprimand).

The Commission's original report and recommendation is hereby reconfirmed, as supplemented here.

Respectfully submitted,

By: _____
The Hon. James R. Wolf, Chairman
Florida Judicial Qual. Commission
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail this 20th day of November, 2001 to:

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