BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA
CASE NO.: 02-466

INQUIRY CONCERNING JUDGE JOHN RENKE III; SUPREME CT. CASE NO. SC03-1846
_____/

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS
BY THE HEARING PANEL OF THE JUDICIAL QUALIFICATIONS COMMISSION

The Hearing Panel of the Judicial Qualifications Commission ("JQC") respectfully submits the following Findings, Conclusions and Recommendations pursuant to Article V, § 12(a)(1), (b) and (c), of the Florida Constitution.

Judge John Renke III, a Circuit Judge of the Sixth Judicial Circuit of Florida, was charged by the Investigative Panel of the JQC with certain violations of the Code of Judicial Conduct and the Florida Statutes governing judicial elections. The violations charged relate exclusively to the conduct of Judge Renke and the members of his immediate family during his successful campaign in the 2002 election for the circuit court position in Pasco County, Florida. In this campaign, Judge Renke defeated attorney Declan Mansfield. The Investigative Panel contends that Judge Renke made several serious misrepresentations during his campaign and that he also accepted and used an unlawful campaign contribution in the amount of $95,800. (August 24, 2005 Charges Counts 1-9).

Judge Renke has now served as a Circuit Court Judge for almost three years since January of 2003. His conduct while in office is not directly questioned in the formal charges after his election. (T. 666-670,843).[1]

Judge Renke was served with a Notice of Formal Charges by the JQC of October 12, 2003, and initially attempted to resolve the matter by agreement. A formal Stipulation and recommendation by the Investigative Panel was filed with this Court pursuant to Article V, § 2 of the Florida Constitution and Rule 6(j), of the JQC Rules. At that time the charge on an illegal campaign contribution had not been filed. The recommendation was for a $20,000 fine, a 30-day suspension without pay and a public reprimand. By order of July 8, 2004, this Court rejected the recommended disposition and returned the case to the JQC for further consideration at which point the formal charges became the responsibility of the JQC Hearing Panel.

The charges were then amended by the Investigative Panel and a further charge concerning an alleged improper $95,800 contribution to the Renke campaign was added. This financial charge became Count 8 of the Second Amended Formal Charges of

[1] To avoid confusion it should be noted that Mr. John Renke II is a New Port Richey trial attorney who is the father of Judge John Renke III and acted as his campaign manager. (T. 48).

August 24, 2005. The Hearing Panel allowed the amendment over objection by order of March 15, 2005.

The matter proceeded to a hearing before the Hearing Panel beginning on September 6, 2005. (T. 4). At this hearing the prior stipulation was not presented to the Hearing Panel. The Hearing Panel received and considered full evidence on all issues. The Hearing Panel did not consider or rely upon the previous Stipulation concerning campaign misrepresentations. The alleged misrepresentations were contained in four different brochures and other campaign literature which are Exhibits A, B, C and D attached to the Formal Charges.

The charges which proceeded to hearing were set out in the Notice of Second Amended Formal Charges of August 24, 2005. These charges are here stated in the separate counts with added subtitles and quoted in full. Following each charge is the ruling by the Hearing Panel.

CHARGE:

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 SWFWMD

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.

PANEL RULING: Guilty as charged.

COUNT FOUR: "real judicial experience as a hearing officer"

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 judicial experience when you described yourself as having "real judicial experience as a hearing officer in hearing appeals from administrative law judges," when your actual participation was limited to one instance where you acted as a hearing officer and to other instances where you were sitting as a board member of an administrative agency.

PANEL RULING: Not Guilty.

COUNT FIVE: Supported by "Public Officials"

During the campaign, in violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii), you knowingly and purposefully misrepresented your endorsement by Pinellas County public officials in a campaign flyer attached hereto as Exhibit B, when you listed a numbers of persons, including Paul Bedinghaus, Gail Hebert, John Milford, George Jirotka and Nancy Riley as such, when they in fact were not Pinellas County public officials of a private, partisan political organization to with, the Pinellas County Republican Party.

PANEL RULING: Not Guilty.

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 an 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 practicing 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 FINDING: 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 Statues, 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 party, 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 Record

The pleadings, including the charges, are already before the Court in the file designated as SC03-1846. The transcript of the testimony before the Hearing Panel is in six volumes and will be designated as (T. ____), with the appropriate volume and page number. The documentary evidence was for the most part stipulated to. The JQC Exhibits are contained in two notebooks

designated as "Judicial Qualifications Commission List/Exhibits" Book 1 and Book 2. (T. 5,6). The Exhibits offered by Judge Renke are contained in a notebook designated as "Judge Renke's Trial Exhibits." (T. 5,6). Other exhibits admitted during the actual hearing are contained in a fourth notebook designated as "Hearing Panel Exhibits." Ten large demonstrative placards were also shown throughout the hearing and are available for the court's review if necessary. Certain deposition testimony was admitted and reported by the court reporter and is a part of the hearing transcript. In addition, the depositions of attorneys, James B. Thompson, Robert Pierce Kelly and Declan Mansfield, were stipulated into evidence. Twenty affidavits as to the good character of Judge Renke were offered and received by the Hearing Panel.

Pre-Hearing Rulings

There were various pre-hearing rulings by the Panel Chair. The amendments to the charges were allowed over objection.

JQC subpoenas against attorney John Renke II were objected to by him and production of most of the law firm's billing records were sharply disputed. A number of the objections were sustained but most of the records were produced after several hearings.

A JQC subpoena addressed to the St. Petersburg Times Newspaper and its reporter was served and met with a motion to quash based on the qualified immunity reporter's privilege under Section 95.5015, Florida Statutes (2003). The reporter did not testify. The subpoena was withdrawn during the actual hearing after the Panel expressed its view that the testimony was unnecessary and possibly bared by the statute. (T. 159,160).

Judge Renke filed Motions for Summary Judgment on all charges. These motions were denied by order of August 24, 2005, on all charges except 4 and 5. The motions were reserved as to Charges 4 and 5 and Judge Renke has been found not guilty on these two charges.

The Hearing and the Panel's Findings

The hearing occurred in the Historical Courthouse in Clearwater, Florida, on September 6, 7 and 8, 2005. The location was at the request of Judge Renke. The Panel was composed of Judge James R. Wolf, Chair, Judge Peggy Gehl, lay members Reverend Randolph Bracy and Shirlee Bowne' and attorneys John P. Cardillo and Dale R. Sanders. Attorney John Beranek was counsel to the Hearing Panel. The Investigative Panel which acts as the Prosecution was represented by attorneys Marvin Barkin and Michael Green. (T. 7). General Counsel Tom MacDonald assisted the prosecution throughout the hearing.

Judge Renke was represented by attorney Scott Tozian and attorney Gwen Hinkle. (T. 5).

All proceedings, except for the Hearing Panel deliberations, were transcribed by the court reporter and the parties and this Court have been furnished with full copies of the transcript. Judge Renke was present in the courtroom throughout the entire hearing and testified twice. (T. 45,778).

The findings of guilt contained in these Findings, Conclusions and Recommendations were each determined by at least a two-thirds vote of the six member Hearing Panel in accordance with Article V, § 12(b) of the Florida Constitution and Rule 19 of the Judicial Qualifications Commission's Rules. In the view of the Hearing Panel, each of the affirmative findings herein are supported by clear and convincing evidence in accordance with In re: Henson, 2005 WL 2522502 (Fla. 2005); In re: Ford-Krause, 703 So. 2d 269 (Fla. 1999); In re: Graziano, 696 So. 2d 744, 753 (Fla. 1997); and In re: Davey, 645 So. 2d 398, 404 (Fla. 1994). The vote of the six member Panel met the two-thirds requirement of the Florida Constitution and JQC Rules but there were instances when a finding of guilt was less than unanimous.

The prosecution presented the testimony of eight witnesses including Judge John Renke III, attorney John Renke II, and

attorneys Stephen Mezar, Matthew Ellrod, Declan Mansfield, Thomas Gurran, James Thompson and Pierce Kelly. The defense presented thirteen witnesses including William Bilenky, Stephanie Carter, Robert Lichter, Edward Triglia, Michelle Renke, Margaret Renke, James Parker, John Hebert, Thomas Todd, Judge John Renke (recalled), Steven Sidney, Millicent Athanason and J.R. Phelps. All of the witnesses were examined and cross-examined by counsel and then questioned in considerable detail by the members of the Hearing Panel.

Count 8 -- The Contribution Exceeding $500

The findings and conclusions on this count are stated here out of order and before the findings on Counts 1-7 and 9. This presentation is adopted because it provides the necessary background and factual context concerning the Renke family, the Renke law firm and the election of John Renke III which occurred in September of 2002. Judge Renke took office in 2003.

The Renke family is a close one and four members of the family testified at the hearing. The senior member of the family, attorney John Renke II began practicing law in Michigan in 1971 and moved to Florida in 1979. (T. 162). He located in New Port Richey and has always practiced there as a trial lawyer. Mr. Renke has considerable experience in Florida elections and served in the Florida Legislature for six years.

(T. 165). His trial practice is varied but he often represents litigants in disputes concerning home owner's associations in retirement communities which may also have family units.

The Renke law firm is different than most Florida firms in that it is not a corporation nor is it is partnership. (T. 164). Mr. Renke totally controls everything about the firm and signs almost every pleading and letter. (T. 70,82,85). (T. 70-72). The firm had few employees and the details of their work was totally controlled by Mr. Renke II. Mr. Renke handles every hearing and trial with rare exceptions. Attorneys Thomas Gurran and son John Renke III were the only attorneys working for the firm and they both worked without written contracts. (T. 83,172). Each attorney was required to pay their own withholding taxes and insurance. (T. 139,171,205-207,247).

John Renke III attended undergraduate school at the University of Florida and law school at Florida State University in Tallahassee. Upon graduation John Renke III was married with one child. Although he and his wife wanted to remain in Tallahassee, Mr. Renke II convinced them that his health was poor and that his son should return to New Port Richey and join the firm. (T. 571). John Renke and his wife did return to New Port Richey. John Renke III then began his career as a lawyer with the Renke firm which lasted for approximately seven years

until he was elected as a circuit judge in 2002. The Renke firm was the only place he ever worked.

The evidence overwhelmingly indicated that he was underpaid throughout these years and he and his family functioned very close to the financial line. (T. 573,611-613,645,816). John Renke II set his son's compensation at $9.00 to $11.00 per hour. There were no benefits such as health insurance. (T. 139,140). Mr. Renke II always classified the attorneys working for him as "independent contractors" and they were required to pay their own withholding tax and all insurance costs. Thus John Renke's net compensation was less than $11.00 per hour but he was promised by his father that he would also be paid 20% of the recovery in the firm's larger cases. The larger cases were to be those in which the earned and collected fee was over $10,000. (T. 172,173).

Despite working by the hour, John Renke III generally did not keep contemporaneous time records. (T. 84,87,89,122,123). As indicated, in addition to his hourly compensation he was supposed to be entitled to 20% of all of the amounts collected in the larger cases. (T. 173). There was disputed evidence on whether this percentage fee was always paid. He was also to receive the full fee less costs on cases he brought in on his own. (T. 174). There were only four such cases. (T. 579,580).

Judge Renke's tax records showed his net income after taxes and expenses for all of his years of practice as follows:

1995	$10,941
1996	$16,020
1997	$18,600
1998	$15,325
1999	$11,480
2000	$12,682
2001	$35,987
2002	$140,116

(T. 80). The amount for 2002 was based on total compensation before taxes of $166,000 in that year. During 2002 he campaigned for and was elected as a circuit judge on September 2, 2002. Assuming that he devoted at least one full month to the campaign he actually worked for the firm for no more than seven months before his election in 2002.

Judge Renke's compensation arrangements were an informal unwritten understanding between father and son along with Mrs. Margaret Renke. (T. 83). All of the firm bookkeeping was done by Mrs. Margaret Renke, the wife of Mr. Renke II, who worked full-time without being paid a salary at all. (T. 594). She had occupied this position for 24 years. (T. 594). John Renke II stated that he had always intended to retire soon and to have his son take over his firm. (T. 177). Similar promises by John Renke II occurred for the several years before 2002 and there were frequent disagreements about whether his son's pay was fair. (T. 574,575). He stated that if his son had not been

elected in 2002, he would have become a 50/50 partner in the "next year." (T. 177). Mr. Thomas Gurran was the only other attorney and he worked part-time and was paid solely by the hour at $20.00 per hour. Gurran was not entitled to any percentage of any recovery. Mr. Gurran had health problems and thus limited his hours. (T. 463).

Discussions between father and son had occurred in the past in which John Renke III unsuccessfully pled for more money. (T. 577,587). John Renke III had nothing in writing and the entire compensation system was at the total discretion of his father.

At some point his father learned that he was interested in finding a job elsewhere. He had interviewed with the Attorney General's Office in West Palm Beach and had a possible job offer there. (T. 121). His father advised him that he would be paid some of the fees he was already owed out of attorney's fees which had been or would be recovered by the firm in a certain series of cases. (T. 337,582,613). Discussions on compensation were renewed as the election was seen as a possibility. (T. 584).

Because his son needed the funds for the election in the year 2002, John Renke II stated that he decided to pay his son some or all of the fees he should have been paid in the past. (T. 147, 153, 611-614).[2]

---

[2] There was conflicting evidence on whether the initial 20% figure for large cases was increased to 45% or to 50%. There was also conflict on when these increases occurred. The exact percentages are not material to our decision.

The controversy in this case centers on fees connected with certain homeowner's litigation handled by the Renke firm. A series of these association cases involving plaintiffs Ms. Cusumarro and Mr. Triglia and other residents of the Timber Oaks community were litigated by the Renke firm for several years beginning in 1995 and ending in 2003. These cases became known within the firm as the "Driftwood Litigation." These Driftwood cases eventually resulted in significant settlements and attorney fees. There were disputes as to when the Renke attorneys actually earned the fees generated by these cases.

The Driftwood cases had been partially settled in a preliminary fashion in 2001. A fee of $123,553 was paid subject to it being held in escrow by Mr. Renke II and the amount being returned to the defendants if the court failed to approve the final settlement. The insurance company for the defendant made this payment to stop the accrual of further fees and interest. (T. 613). The $123,553 fee check from the Chubb Insurance Group

was dated in March 27, 2001, and was payable to the "John K. Renke, II Trust Account." (JQC Exh. 66). Mr. Renke II had requested in writing that the check be made payable to his trust account. (JQC Exh. 34). The $123,553 was to be held by Mr. Renke II until 30 days after court approval of the final settlement of the case. (T. 223-227 and JQC Exh. 37). If the settlement was not finally approved, Mr. Renke was required to return the funds which had to be kept by him in an interest bearing account. (JQC Exh. 37).

There was a real question as to whether the settlement would be completed because the Driftwood Homeowner’s Association and Board of Directors of that association had to approve various changes in the documents governing the homeowner association and then the trial court had to approve the final settlement. (T. 223-227, 340-353, and JQC Exh. 37). As an added safeguard, a 30-day period after the final order had to expire before the money would be fully available. This was intended so the payor could be sure an appeal had not been taken.

The Renkes contended the $123,552 fee had been earned in 2001 when the Chubb Insurance Co. check arrived. In fact, John Renke II did not place the money in his trust account but instead placed it in a certificate of deposit where the money remained even at the time of this JQC hearing in 2005. (T. 298). John Renke II denied that this was equivalent to holding the money in trust. Counsel for the defendants in the Driftwood litigation testified the settlement definitely contemplated

holding the funds in trust so they could be returned if the settlement did not take place and the litigation would have started over. (T. 350, 381-386). Court approval of the settlement and a vested right to the fee did not occur until 2003. (T. 231, JQC Exh. 105).

The Panel concludes that these fees were not actually earned until the firm had the completely vested right to them upon final court approval and the expiration of the time for an appeal. (T. 381-386). In addition, John Renke III did not even know where his father got the cash to pay him the $101,800 amount in 2002. He stated that he assumed it came from a firm operating account of from his father's own pocket. (T. 93).

John Renke III testified he spent a total of $105,800 on his campaign. (T. 79). The official election filings showed he received approximately $10,000 in public contributions and that he loaned his own campaign $95,800 in the form of three different loans of $6,000, $40,000 and $49,800. (T. 78,79; JQC Exh. 12). These loans came in the same incremental installments from his firm compensation as part of the total of $140,116 all in the year 2002. (T. 81). The payment summary of checks to John Renke III prepared by Margaret Renke showed five checks totaling $101,800 based specifically on the Driftwood cases in 2002. (T. 602,603; Resp. Exh. 22A). Out of his total net income of $140,116 the sum of $101,800 was attributed directly to the Driftwood fees. (Resp. Exh. 22A). Thus the cost of the campaign was $105,800 and the Driftwood fees were supposedly the basis for

$101,800 out of which John Renke, III loaned his campaign $95,800.

There was considerable conflict in the testimony as to the contingency fee arrangement between John Renke III and the law firm. The supposed applicable percentages were stated to be 20%, 45%, 50% and "a split" at different times. (T. 116-119). The Panel found it unnecessary to actually resolve this conflict in the evidence as to what the percentages were and when these percentages were to be effective. John Renke III may well have been entitled to more than he actually received in his early years of practice but the compensation of $101,800 he actually received in 2002 was asserted by the Renkes to be based solely on the still uncertain Driftwood litigation fees. All of Judge Renke's loans to his own campaign coincided almost precisely with his father's staggered payments in five checks totaling $101,800, all in 2002. (T. 128,129,131,132).

John Renke II and Mrs. Renke continually stated that they could have paid the full amount all at one time but decided to stagger the payments because there was still a "slight" risk that the settlement might not be approved. (T. 636). John Renke II thus paid him in a piecemeal fashion in accordance with what he <u>needed</u> for his judicial campaign. (T. 128,147,148,153, 621,622,645). Mrs. Renke's own list (Resp. Exh. 22A) showed five checks for the Driftwood cases in 2002 and Judge Renke used

these particular checks to loan his campaign $95,800. The loan amounts plus $6,000[3] represents the full $101,800 in the five Driftwood payments.

The Panel recognized that John Renke II gave his son an IRS Form 1099 showing a total of $166,000 as compensation in 2002 and that the son paid income tax on this amount. This total of $166,000 was paid out in weekly checks for $485.00 each along with several other checks, including the five checks designated as Driftwood payments. According to the Renkes the five Driftwood payments were disbursed to the son on an "as needed" basis for the campaign expenses. (T. 147,153,621,622). The parents however, fully intended these payments to be used in the campaign. (T. 147).

An initial $6,000 check was given to John Renke III so he could pay his filing fee for the election. (T. 147). He testified he asked for this amount to cover his filing fee and his father gave it to him knowing exactly how it would be used. (T. 147). Thus this first $6,000 amount never became a loan to the campaign fund.

Both John Renke II and his son contended that the 2002 payments were all compensation for past services over the years. The Panel concludes that the firm was not yet entitled to a

[3] This $6,000 amount is explained hereafter.

substantial amount of the fees out of which the $101,800 was paid because the final court approval of the settlement did not happen until August of 2003. Thus even though the firm was already holding $123,553 of this money, it was being held in a form of trust, and it had not yet been earned because the final settlement in the case had not been approved.[4] 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.

[4] The law on contingency fees is discussed in Faro v. Romani, 641 So. 2d 69 (Fla. 1994) and in the numerous cases applying and following Faro. Although factually dissimilar, Faro makes it clear that an attorney with a contingency fee contract will not be entitled to a fee if the contingency under the contract never occurs. Here the contingency was the actual vested legal right to the Driftwood fees by the Renke law firm which did not occur until 2003.

Judge Renke did not attempt to justify his 2002 compensation on the basis of his hourly compensation. Instead, he contended the $101,800 amount was based solely on a percentage of the Driftwood fees. (T. 91). It is noteworthy that the total $166,000 paid in 2002 was more than three times greater than <u>any</u> of the yearly income amounts which John Renke III had received in the previous seven years.

Despite contending the money had been "earned," attorney John Renke II and the bookkeeper, Mrs. Margaret Renke, essentially conceded that all of the payments to John Renke III in 2002 were made to remedy the past under-payments to him and to enable him to run for the circuit court judgeship. (T. 128,129,621,622). Thus the Renke position was that John Renke III was entitled to these amounts but they were actually paid to him at the times in question during the year 2002 to enable him to fund his campaign. (T. 129).

Judge Renke knowingly accepted the unearned fee amounts from his father and then directly loaned them to his own campaign. Each of these loans to the campaign coincided within days of the similar prior payments by the law firm. Based on the clear and convincing evidence, the Panel concludes that these were actually campaign contributions from his father.

Without these payments it is doubtful that John Renke III could have run for or been elected to his position.

It is noteworthy that Mr. Thomas Gurran was also an attorney working in the Renke firm. Mr. Gurran was paid $20.00 per hour and was not entitled to any percentage of any fees. Again this was at best an oral understanding of his compensation arrangement. At one point John Renke II told Mr. Gurran that he would pay him a portion of the Driftwood fees. In fact Gurran was paid $30,000 in October of 2003 as his share of the Driftwood fees. (T. 450,451). This payment was made after the final approval which occurred in August of 2003. Mr. Gurran received no portion of the Driftwood fees in 2001 or 2002.

The expert opinions of Mr. J.R. Phelps offered by Judge Renke were not considered directly applicable. These opinions would have supported paying John Renke a regular salary based on work performed even when that work did not directly result in a fee to the firm. This was simply not the situation here because the $101,800 was asserted to be a percentage of the Driftwood recovery rather than regular salary paid to an associate.

For all of the above reasons, Judge Renke is found guilty of Count 8.

Misrepresentations in the Election Materials

Although John Renke III was stated to be an independent contractor, from his first day of practice in 1995, in fact his father controlled all of the details of his work and gave him very little responsibility in the firm's cases. (T. 64,70,82). The senior Renke had great difficulty in giving up his control over every aspect of the firm's practice. (T. 23,24,578,580). Mr. Renke II signed almost every pleading and letter which left the firm. (T. 64,578). John Renke III could not send out documents on his own. (T. 578). Mr. Renke II did all the arguments in every case and questioned every witness and took every deposition. (T. 70,82). John Renke III tried one small County Court case and never tried a Circuit Court case. (T. 72). Other than this single small case, John Renke III never made an actual argument to a judge or a jury. (T. 67). In fact, John Renke III could not remember ever making an argument in a Circuit Court case. John Renke III was at most a silent second chair lawyer. (T. 70,71,82,144). He simply assisted his father. (T. 70,71,85,87). He conceded that this was the rule of the firm and that if his father was absolutely unavailable, then Mr. Thomas Gurran might step in and present an argument at a hearing.

Counts 1-7 and 9 concern misrepresentations in the campaign materials. John Renke II arranged for the Mallard Group, a political campaign company headed by Mr. John Hebert, to do all the direct mail campaign work. (T. 48,49). The resulting brochures and other materials are the basis for Counts 1-7 and 9. John Renke III stated that he did review and approve all of the campaign material prepared by Mr. Hebert and he is certainly responsible for their content. (T. 48,49). Canon 7(3)(d)(iii) states quite clearly that a judicial candidate "shall not...knowingly misrepresent the qualifications" of the candidate or the opposing candidate.

Count 1 concerned a campaign brochure. The cover of this brochure was a photograph of the young Renke family with a statement in large yellow print surrounding the photograph. (T. 49). The text and type size were as follows:

John Renke
a judge
(Photograph) with
our
values

The prosecution contended that this brochure was a knowing and purposeful misrepresentation because it created the impression that John Renke was an incumbent judge. Judge Renke conceded that it was possible to construe this brochure as implying his

incumbency but he stated that this was not his intention. (T. 49,50). The brochure was actually created by Mr. John Hebert of the Malory Group and the words "a judge with our values" were Mr. Hebert's. (T. 685,688). Mr. Herbert stated he did not believe the voters would be led into believing John Renke III was a sitting judge and that this was not his intent. (T. 689). He did concede that a voter could "perhaps" conclude that the advertisement implied that John Renke was already a judge. (T. 700).

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 that the brochure created the impression that he was or had been a judge. The same campaign brochure stated in text that he had "real judicial experience as a hearing officer and in hearing appeals from administrative law judges." The words "John Renke a judge with our values" implied incumbency and the Panel concludes that Judge Renke is guilty as charged in Count 1.

Count 2 concerned a picture of candidate Renke in a coat and tie sitting just beneath a large banner stating "Southwest Florida Water Management District." In front of Renke was a nameplate reading "John K. Renke Chair." This picture was

prominently displayed in this piece of campaign literature and John Renke III candidly admitted that the picture was inaccurate. (T. 51). He stated that the Southwest Florida Management District does not even have an overall Chair and that he had simply been the Chair of a regional subboard. (T. 52). The Panel concludes that this picture was prominently displayed and purposefully conveyed to the voters that candidate Renke was the Chairman of the Southwest Florida Water Management District which was a public body of considerable importance in the area.

The text accompanying this picture stated that the Governor had appointed John K. Renke III only to the governing board of the District. 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), certiorari denied 124 S.Ct. 180 (2003). (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). This picture was selected by Judge Renke and given to Mr. Herbert for use in the brochure. (T. 711,712). 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 of this important governmental entity, the Southwest Florida Water Management District.

Count 3 concerned a campaign brochure which the Prosecution contended was an attempt to wrongfully convince the public that Judge Renke had the endorsement of "the Clearwater firefighters." The picture showed Renke on the steps of a public building surrounded by a group of men described as "the Clearwater firefighters." It was asserted that Judge Renke should not have used the word "the" even though he might have used the word "some" to designate the actual firefighters surrounding him. Judge Renke did not know how many Clearwater firefighters there were nor did he have any idea what percentage of them supported him in the election. It was uncontested that Judge Renke had not secured the endorsement of the Clearwater firefighters union or any group or organization of firefighters. (T. 54). However, the campaign brochure attempted to create the impression that he had been endorsed by <u>the</u> Clearwater firefighters. The Panel concludes that this was also an intentional misrepresentation and that Judge Renke is guilty as charged on Count 3.

Count 4 concerned the statement that Judge Renke had "real judicial experience as a hearing officer." The 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. It was established that Judge Renke once served as a hearing

officer on a case which was before the Board of the Southwest Florida Water Management District. (T. 55,56). He was specially appointed to hear one case which was a matter involving no factual disputes which proceeded under Section 120.57., Florida Statutes. The actual facts stated in Count 4 were proven but the Panel concludes that the evidence was not sufficient to find guilt on this particular charge.

Count 5 concerned Judge Renke's campaign literature where he represented he had the endorsement of certain "public officials." The brochure listed various people as public officials and some of these individuals were state committeemen and committeewomen of the Republican Party. A legal and factual issue was presented as to whether these named individuals were actually "public officials." A majority of the Panel finds Judge Renke not guilty on this charge. Others opined that placing the offices held next to the names would lead one to believe that the officers were of a partisan political party.

Count 6 concerned a Candidate Reply which was authored by Judge Renke and submitted to the St. Petersburg Times where it was published shortly before the election. (T. 58,59). This published Reply stated that Judge Renke had "almost eight years of experience handling complex civil trials in many areas." The Panel concludes that this was a false statement by Judge Renke.

Judge Renke stated that he had handled one minor case in county court on his own and that all of his other legal experience was in assisting his father. (T. 61,62,70,71,72). He stated that he had never made an actual argument. (T. 67). Judge Renke did not have "trial experience" and he admitted this statement was not accurate and that he should have said that he had "litigation experience." (T. 64-66). The Panel does not accept Judge Renke's explanation that he did not grasp the difference between handling a complex "trial" and mere "litigation experience." (T. 64-66).

Judge Renke's Answer to Count 6 admitted that the words: "handling complex civil trials" was an overstatement of his actual courtroom experience. (T. 66). Thus the Panel concludes that this campaign statement was a misrepresentation which was in fact misleading. Candidate Renke stressed throughout the campaign that he had much broader trial experience than his opponent. (T. 74,75,77,78). The Panel finds that Judge Renke had almost no trial experience and that he is guilty of Count 6.

Count 7 concerned a piece of campaign literature in which candidate Renke stated that his opponent in the judicial election did not have the kind of broad experience which was necessary for a circuit judge and that the public would instead be "better served by an attorney (like Renke) who has many years

of broad civil trial experience." Again, Judge Renke had actually tried only one small claims court case and he had never tried any circuit court cases or any jury trial. (T. 61-72). Other than occasionally being in the same courtroom with his father, Judge Renke had very little litigation experience and he certainly had no trial experience. This statement was a clear misrepresentation of an important fact as to the qualifications of Judge Renke as the candidate.

Count 8 has already been dealt with and the Panel has found that Judge Renke was guilty of accepting and using at least $95,800 which was a campaign contribution considerably in excess of the $500 limit provided by Florida law.

Count 9 asserts a deliberate effort to misrepresent qualifications for office based upon the previous charges. This charge included Counts 1-7 and Judge Renke has been found not guilty on Counts 4 and 5. The Panel concludes that Judge Renke is also guilty on Count 9 because he did engage in cumulative misconduct constituting a pattern unbecoming a candidate and lacking in the dignity appropriate to judicial office which brought the judiciary into disrepute. The Panel thus finds Judge Renke guilty of Count 9 based on the cumulative misconduct in Counts 1,2,3,6 and 7.

Recommended Penalty

The Panel has considered at length the appropriate discipline for Judge Renke. After thorough deliberation, the Panel unanimously rejected removal from office and instead the Panel respectfully recommends that Judge Renke be publicly reprimanded by this Court and required to pay a fine of $40,000 within 12 months after the Court's decision approving this Recommendation. In addition, Judge Renke should be required to pay the costs of these proceedings.

The Panel seriously considered imposition of a fine in the amount of $95,800, which was the amount of the unlawful contribution to his own campaign. We refrain from recommending this amount as a fine because of various mitigating factors.

Initially, Judge Renke has shown himself to be a very good circuit judge. He was immediately assigned to the Family Law Division in his circuit. This turned out to be a double division and Judge Renke had a much higher than normal case load. (T. 666,670). The undisputed evidence was that Judge Renke has done an excellent job in this division and many lawyers were very concerned about his election because they knew he had no real background in the area of family law. However, various practitioners gave testimony that Judge Renke has been an excellent judge in this division. (T. 661,769,840). He has

a reputation for being extremely patient with litigants and for fully explaining his rulings which are well received by both lawyers and litigants. The Panel believes that Judge Renke has been a very good judge for three years and the Panel thus strongly holds that he is not presently unfit to serve as a judge. See In re: Kinsey, 842 So. 2d 77, 92 (Fla. 2003), cert. denied, 54 U.S. 825 (2003).

In addition, the Panel believes that Judge Renke has extreme remorse for all of what occurred during his election. Judge Renke frankly admitted that if he had it all to do over again he might simply put his name before the public and not campaign in any fashion.

It is also an important mitigating factor that Judge Renke had a valid and reasonable expectation of receiving the funds which eventually turned out to be an illegal campaign contribution. The Panel concludes that Judge Renke would have been entitled to these same funds after the settlement in the Driftwood litigation was finally approved in the calendar year 2003. Although Judge Renke and his father certainly cooperated in the election, Judge Renke himself had no control over the way his father ran the law firm and the less than generous compensation system. The Panel also has sympathy for Judge Renke because he was underpaid throughout his seven year career

as a lawyer. Unlike many lawyers who leave a lucrative law practice to go on the bench, Judge Renke was absolutely not in that position.

Thus, the Panel recommends that Judge Renke remain in office and be fined and publicly reprimanded. The recommendation is consistent with past JQC election violation cases concerning Canon 7. See In re: Kinsey, supra, In re: Rodriguez, 829 So. 2d 857 (Fla. 2002), In re: Pando, 903 So. 2d 902 (Fla. 2005) and In re: Gooding, 905 So. 2d 121 (Fla. 2005).

SO ORDERED this 17th day of November, 2005.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

By: /s/ James R. Wolf

JUDGE JAMES R. WOLF,
Chairman, Hearing Panel,
Florida Judicial Qualifications Commission
1110 Thomasville Road
Tallahassee, Florida 32303
850/488-1581
850/922-6781 (fax)

Copies furnished in accordance with the attached list.

John Beranek
Counsel to the Hearing Panel
Ausley & McMullen
P.O. Box 391
Tallahassee, Florida 32302
(850) 224-9115
(850) 222-7560 (fax)

Scott Tozian
Counsel to the Judge
109 N. Brush Street
Suite 200
Tampa, FL 33602-4163
(813) 273-0063
(813) 221-8832 (fax)

Marvin Barkin
Michael K. Green
Special Counsel
P.O. Box 1102
Tampa, FL 33601-1102
(813) 223-7474
(813) 229-6553 (fax)

Thomas C. MacDonald, Jr.
General Counsel
1904 Holly Lane
Tampa, Florida 33629
(813) 221-2500
(813) 258-6265 (fax)

Brooke Kennerly
Florida Judicial Qualifications
  Commission
1110 Thomasville Road
Tallahassee, Florida 32303
(850) 488-1581
(850) 922-6781 (fax)