

IN THE SUPREME COURT OF THE  
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE,  
THE HONORABLE STEPHEN MILLAN  
No. 2017-570

SC 18-\_\_\_\_\_

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**FINDINGS AND RECOMMENDATION OF DISCIPLINE**

The Florida Judicial Qualifications Commission (the “JQC”) served a Notice of Investigation on 11th Judicial Circuit Judge Stephen Millan, pursuant to Rule 6(b) of the Florida Judicial Qualification Commission Rules.

In this judicial disciplinary matter, the Investigative Panel of the Commission has alleged, and Judge Millan has admitted that he made inappropriate racially disparaging remarks on two occasions, and conducted an inappropriate ex-parte communication with a defense attorney, in violation of Canons 1, 2, 3B(4), 3B(5), and 3B(7), of the Code of Judicial Conduct, as set forth in the Notice of Formal Charges and Stipulation, submitted herewith.

**Use of Racially Disparaging Language**

The Commission has found, and Judge Millan has acknowledged that, on two occasions, he used slurs and other demeaning language to describe criminal defendants, and other members of the public.

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In the first instance, Judge Millan used the epithet “*moolie*” to describe an African-American defendant during a one-on-one conversation in chambers between the judge and the defendant’s attorney. Approximately one year after the conversation Judge Millan was advised the attorney had reported it. The attorney reported the judge’s comment to their supervisor but did not register a formal complaint because the attorney did not have any independent corroboration of the conversation. Later, when reporting this incident to the Commission,<sup>1</sup> Judge Millan stated that while he does not have any independent recollection of this conversation, he “does not deny the allegation,” and in fact, has “no reason to believe the allegation is false.” Judge Millan also states that “I cannot honestly say that I did not utter the terribly offensive word. I am embarrassed and genuinely sorry.”

By way of explanation, Judge Millan stated that he is of Italian and Puerto Rican descent, and that as a “youngster growing up in a mixed neighborhood in New York...it was not unusual for my friends and I to occasionally use slur words when referring to others, including our friends and ourselves.” He continues stating, “times certainly have changed, and in this regard for the better. I know full well that today, the use of any slur is inappropriate, especially for a judge...”

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<sup>1</sup> Judge Millan did self-report this incident after being informed of the allegation by the Administrative Judge (who had found out about the allegation during a meeting with the attorney’s supervisor).

In the second incident, occurring approximately one year after the first, Judge Millan, during a break with attorneys in his chambers, instructed his bailiff to return to the courtroom and retrieve his wallet, because, “I don’t trust it in there with those thugs.” The defense attorney, who was the same one involved in the first episode, believed that the judge was referring to his client or his client’s family and friends who were present in the courtroom. The attorney protested the judge’s comment by stating, “Judge, they’re good people.” According to the attorney, Judge Millan did not apologize, and offered no clarification or explanation. Judge Millan told the Commission that he “thought” he made a clarification in response to the attorney’s remark, however, he was not positive. He also told the Commission that the comment was not directed at the defendant or anyone else in *his* courtroom, but rather, it was directed at unspecified others, in other courtrooms near his. The Commission believes that the judge’s comment was directed at either the defendant or the defendant’s family and friends, as the only other people present in Judge Millan’s courtroom at the time were court personnel, and corrections officers.

Canon 2A requires that judges, “...shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” The commentary to Canon 2 states that, “Irresponsible or improper conduct by judges erodes public confidence in the

judiciary.” The commentary to Canon 1 also states that, “...violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.”

Canon 3 further provides that, “A judge shall be patient dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judges deals in a official capacity...” Canon 3B(4); “A judge shall perform judicial duties without bias or prejudice.” Canon 3B(5).

The use of racially derogatory and demeaning language to describe litigants, criminal defendants or members of the public, even behind closed doors or during off-the-record conversations, erodes public confidence in a fair and impartial judiciary. The Commission is unswayed by Judge Millan’s testimony that he gained familiarity with the use of certain racial slurs during his youth. The Commission is similarly unpersuaded by Judge Millan’s explanation that he had known the defense attorney for a long time, and was, perhaps, “too comfortable” in his dialogue with the attorney.

The Commission has found, and Judge Millan has agreed, that his use of racially demeaning and derogatory language violated Canons 1, 2, and 3.

### **Ex-parte Phone Call**

Canon 3B(7) states that, “A judge shall not initiate, permit, or consider ex-parte communications...” Several days after the “thugs” comment, Judge Millan

made several attempts to contact the defense attorney by telephone. When Judge Millan and the attorney finally made contact, the attorney specifically told Judge Millan that he was uncomfortable having a conversation without the prosecution being present. Judge Millan ignored that protest and proceeded to talk about no less than six of the attorney's cases currently pending before Judge Millan. Judge Millan told the attorney that he would "help him out," by setting the cases for plea hearing. Judge Millan testified that he was concerned about the slow progress of the cases, and that his offer to "help" by setting the cases for a hearing was intended to move the cases forward. Two of the cases were actually set for a hearing after this conversation. Judge Millan acknowledges that the attorney told him he was uncomfortable during the conversation, but the judge persisted with the discussion because he felt it was permissible to discuss scheduling matters.

While Canon 3B(7) does allow for ex-parte discussions of scheduling matters, it also requires that the judge make provision promptly to notify all other parties of the substance of communication and allow an opportunity to respond. This, Judge Millan did not do.

The attorney did file motions to disqualify Judge Millan, however those motions were denied by Judge Millan as legally insufficient because they lacked an affidavit from the client. When the attorney obtained the client affidavits, Judge Millan granted the motions to disqualify.

Judge Millan admits and acknowledges, and the Commission finds, that his conduct in initiating and conducting the ex-parte communications was improper and violated Canon 3B(7).

### **Mitigation**

The use of racist epithets by a judge is repugnant to the perception of a fair and impartial judiciary, and irreconcilable with core tenants of our justice system.

The Commission has found, and Judge Millan has agreed, that the allegations found in the Notice of Formal Charges have been demonstrated by clear and convincing evidence.

Judge Millan has admitted and acknowledged that his conduct was wrong, and he understands the impact that such conduct has on the public's perception of the judiciary. He has expressed deep remorse not only for his comments, but for the stain that his remarks brings upon his colleagues, and the judicial system in its entirety.

Where Judge Millan's recollection of these events is incomplete, or different than others' recollections, the Commission does not ascribe any intent to mislead or misdirect. Indeed, to his credit, Judge Millan readily admitted what he was able to recall, and was forthright in acknowledging that he had no reason not to believe the other allegations.

Judge Millan has also undertaken significant remedial steps to better understand, identify, and combat the serious problems that implicit and explicit bias creates in the judicial setting. At his own expense, he attended a seminar sponsored by the National Consortium on Racial and Ethnic Fairness in the Courts. In addition, Judge Millan has studied numerous scholarly articles relating to racial bias in the court system, and he has registered to attend the 2018 College of Advanced Judicial Studies where he will attend the Fairness and Diversity class, as well as the Judicial Ethics class. Each of those courses is a full day program.

Finally, there was never any allegation, nor does the Commission possess any evidence to suggest, that Judge Millan has made rulings or other decisions based on impermissible racial or ethnic bias.

### **Prior Cases**

This Court has previously sanctioned judges for using racial slurs and ethnically insensitive language. In re Carr, 593 So. 2d 1044 (Fla. 1992). In that case, Judge Carr made the following statement during a hearing in his courtroom:

Now, you can throw your Italian temper around in the bars but you don't throw them around in my courtroom. Do you understand, Mr. Orsello? I'm just as Irish as you are Dago. Do you understand? The only trouble is I'm the boss here and I've got

two cops who do anything I tell them to, including taking you to jail. Id.

Judge Carr admitted that his conduct was inappropriate and stipulated with the JQC that he should receive a reprimand for his inappropriate remarks. The Court agreed.

In In re Santora, 602 So. 2d 1269 (Fla. 1992), Judge Santora also received a public reprimand for the repeated use of racially insensitive comments in a newspaper interview. This Court also granted a petition to remove Judge Santora as Chief Judge of the 4th Judicial Circuit. In re Petition for Removal of a Chief Judge, 592 So. 2d 671 (Fla. 1992). A full recitation of the news interview with Judge Santora's numerous inappropriate comments is appended to the Court's Opinion on the Petition for Removal as Chief Judge.

In no instance should the casual use of demeaning or derogatory language be countenanced by the judiciary or be allowed to go unpunished. However, in light of the fact that Judge Millan has readily admitted to his misconduct, and has undertaken, at his own behest and expense, significant remedial education, the Commission is persuaded that Judge Millan is committed to becoming a better judge, and to identifying and educating others about the damaging effects of racial bias in the court system.



Yet, a severe sanction is still warranted to demonstrate to the public, and to remind the judiciary, that racial bias has no place in our judicial system.

### **Conclusion**

“It is not by chance that the words ‘Equal Justice Under Law’ have been placed for all to see above the entrance to this nation’s highest court. If we are to expect our citizens to treat one another with equal dignity and respect, the justice system must serve as the great example of maintaining that standard.” Powell v. Allstate Insurance Co., 652 So. 2d 354, 358 (Fla. 1995).

In light of the foregoing, the Investigative Panel of the Commission recommends to the Court that Judge Millan be suspended without pay for a period of 30-days, that he receive a public reprimand, and that he pay a \$5,000 fine, to cover the administrative costs of providing judicial coverage during his suspension.

Dated this 21st day of May, 2018.

**THE INVESTIGATIVE PANEL  
OF THE FLORIDA JUDICIAL  
QUALIFICATIONS  
COMMISSION**

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