

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

BRYON R. AVEN,
Respondent.

Supreme Court Case
No. SC19-1879

The Florida Bar File
No. 2019-30,108 (18A)

CONSENT JUDGMENT AS TO DISCIPLINE TO BE IMPOSED

COMES NOW, the undersigned respondent, Bryon R. Aven, and files this Consent Judgment as to Discipline to be Imposed pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent is acting freely and voluntarily in this matter and tenders this Consent Judgment as to Discipline to be Imposed without fear or threat of coercion. Respondent is represented by counsel in this matter.

3. The disciplinary measures to be imposed upon respondent are as follows:

- A. Public reprimand to be administered by publication; and
- B. Payment of the bar's disciplinary costs.

4. The parties stipulated to findings of fact, and at the conclusion of the final hearing on September 2, 2020, the referee made additional findings of fact:

Stipulated Facts

A. Respondent is and was at all times mentioned herein a member of The Florida Bar, admitted on April 17, 2008, and is subject to the jurisdiction of the Supreme Court of Florida.

B. Respondent practiced law in Marion County, Florida, at all times material.

C. The Eighteenth Judicial Circuit Grievance Committee "A" found probable cause to file a complaint against respondent pursuant to Rule 3-7.4 of the Rules Regulating The Florida Bar, and the complaint was approved by the presiding member of that committee.

D. Respondent is currently employed as an assistant state attorney for the Fifth Judicial Circuit.

E. Respondent ran for Marion County Court Judge in the August 28, 2018 primary election, running against incumbent Judge Robert E. Landt.

F. During the course of his judicial campaign, respondent made the following statements on his campaign website:

A motion to suppress is filed when a defendant seeks a judge to order that evidence obtained by law enforcement be found inadmissible. Granting a motion to suppress requires the court to find that law

enforcement violated the rights of the defendant. Generally, law enforcement officers do an excellent job of following the law and respecting the rights of the defendant. The majority of all motions to suppress are denied.

Robert Landt has presided over 23 contested hearings involving motions to suppress. In 14 of the 23 hearings where he has ruled, he has found that law enforcement officers have violated the rights of the defendant, excluding the State from using critical evidence against the defendant. These are the same officers that appear in every other court in Marion County.

G. On his campaign website, respondent asserted that Judge Landt had the “Fewest Sentences Appealed by Defendants” and the “Most State Appeals.”

H. On his campaign website under the heading “Most State Appeals,” respondent made the following statement before listing links to state appeals against Judge Landt: “From January 2013 to present, the State Attorney’s Office has appealed the decisions of Marion County Court Judges a total of 12 times. Robert Landt has been appealed by the State ten times.”

I. On his campaign website under the heading “Fewest Sentences Appealed by Defendants,” respondent made the following statement: “Defendant’s generally appeal a judgment and sentence because of the findings made by the court of the sanctions imposed. The harsher a judge sentences defendants, the more defendants will appeal.”

J. Following the above statement on his campaign website, under the

heading “Fewest Sentences Appealed by Defendants,” respondent presented a list comparing the lesser number of times Judge Landt’s decisions were appealed by criminal defendants to the greater number of times that defendants appealed the decisions of other Marion County judges.

K. Canon 7A(3)(a) of the Florida Code of Judicial Conduct states that a candidate for judicial office “shall be faithful to the law and maintain professional competence in it, and shall not be swayed by partisan interests, public clamor, or fear of criticism.”

L. Canon 7A(3)(b) of the Florida Code of Judicial Conduct states that a candidate for judicial office “shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity, and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate.”

M. Canon 7A(3)(e)(i) of the Florida Code of Judicial Conduct states that a candidate for judicial office “shall not with respect to parties or classes of parties, cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.”

N. Canon 7A(3)(e)(ii) of the Florida Code of Judicial Conduct states that

a candidate for judicial office “shall not knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.”

Referee’s Findings of Fact

O. Respondent’s counsel argued and pointed out that respondent got caught up in a turf battle between the executive branch of government, who he worked for and represented in the Fifth Circuit, and the opposing incumbent county court judge, Robert E. Landt.

P. The referee specifically found that this is not a matter for minor misconduct as defined under the Rules Regulating The Florida Bar 3-5.1(b)(1). The misconduct resulted in prejudice in that it impugned the integrity of not only the specific incumbent judge, but more broadly the public confidence in the judiciary as a branch of government.

Q. As a member of The Florida Bar and a declared candidate for judicial office, respondent was obligated to comply with both the Rules Regulating The Florida Bar and the Code of Judicial Conduct.

R. During the campaign, respondent maintained pages on various social media platforms, hosted a campaign website, and appeared at public forums, among other things, as a candidate for county court judge.

S. Although the campaign website was hosted by a campaign committee,

respondent acknowledged and understood that he was aware of all postings on the site, approved the format and the text, and accepted the premise that it was his responsibility to assure that the context and the messaging were ethically proper and within the rules.

T. Regarding respondent's statements about Judge Landt's rulings on motions to suppress, respondent improperly interjected personal bias, and in effect, offered a promise to the voting public that he would handle such matters differently than the current presiding judge.

U. Respondent's statements about the numbers of appeals concerning Judge Landt were misleading. The referee found that it was problematic to address that in a website with a post when there are so many other facets of appellate review. The referee found that such an assertive headline, without equally establishing full context and analysis, communicates to the voting public that the incumbent has, and shows, disfavor to the state. And in a binary choice in a campaign, in effect, the message is "I won't be such a person."

V. The combination of the headline on respondent's website landing page and the different sections taken in conjunction with the editorial, opinionated assertions made by respondent in his postings, misled the voting public and undermined public confidence in the judiciary.

W. The referee found that the evidence presented was clear and

convincing to establish that respondent expressly and intentionally implied that the incumbent judge favored criminals, disfavored law enforcement, disfavored the state attorney, and that he, as a candidate, would do differently.

X. While respondent did not fully accept responsibility for his conduct, the referee found that respondent acknowledged how one could interpret and/or view the campaign messaging in less than and below the standards that he must be held to.

5. The referee found that respondent violated the following rules and canons which provide the basis for the discipline to be imposed in this matter:

A. 3-4.3 Misconduct and Minor Misconduct. The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive nor is the failure to specify any particular act of misconduct be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or misdemeanor.

B. 4-8.2(a) Impugning Qualifications and Integrity of Judges or Other Officers. A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.

C. 4-8.2(b) Candidates for Judicial Office; Code of Judicial Conduct Applies. A lawyer who is a candidate for judicial office shall comply with the applicable provisions of Florida's Code of Judicial Conduct.

D. Canon 7A(3)(a) A candidate for a judicial office shall be faithful to the law and maintain professional competence in it, and shall not be swayed by partisan interests, public clamor, or fear of criticism.

E. Canon 7A(3)(b) A candidate for a judicial office shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity, and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate.

F. Canon 7A(3)(e)(i) A candidate for a judicial office shall not with respect to parties or classes of parties, cases, controversies, or issues

that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

G. Canon 7A(3)(e)(ii) A candidate for a judicial office shall not knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

6. The following aggravation is applicable in this matter: a pattern of misconduct [Florida's Standards for Imposing Lawyer Sanctions 3.2(b)(3)]; refusal to acknowledge wrongful nature of conduct [Standard 3.2(b)(7)]; and, substantial experience in the practice of law (admitted in 2008) [Standard 3.2(b)(9)].

7. The following mitigation is applicable in this matter: absence of a prior disciplinary record [Standard 3.3(b)(1)]; full and free disclosure to the bar or cooperative attitude toward the proceedings [Standard 3.3(b)(5)]; and, character or reputation [Standard 3.3(b)(7)].

8. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

9. If this plea is not finally approved by the referee and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

10. If this plea is approved, then respondent agrees to pay all reasonable

costs associated with this case pursuant to Rule 3-7.6(q) in the amount of **\$3,673.66**. These costs are due within 30 days of the Court order. Respondent agrees that if the costs are not paid within 30 days of this Court's order becoming final, respondent shall pay interest on any unpaid costs at the statutory rate. Respondent further agrees not to attempt to discharge the obligation for payment of the bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

11. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding may reflect adversely on any reinstatement proceedings or any other bar disciplinary matter in which respondent is involved.

12. This Consent Judgment as to Discipline to be Imposed fully complies with all requirements of the Rules Regulating The Florida Bar.

Dated this 6th day of October, 2020.

Bryon R. Aven

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Dated this 6th day of October, 2020.

/s/ Scott K. Tozian

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Dated this 6th day of October, 2020.



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