

JUDGES

Judges: Discipline

In re Barnes,
2 So. 3d 166 (Fla. 2009)

A judge violates the Florida Code of Judicial Conduct by injecting himself into controversies on behalf of defendants who are likely to appear before him, by publicly attacking fellow judges, and by failing to follow proper channels when calling attention to other judges' alleged misconduct.

FACTS AND PROCEDURAL HISTORY

In 2004, St. Lucie County Commissioner Clifford Barnes ran for election as a county court judge in part because he believed St. Lucie's jails were overcrowded. After winning the election, Judge Barnes began serving in criminal court. His rulings in first appearances quickly generated disagreements with other St. Lucie judges. For example, when Barnes released a registered sexual predator accused of violating probation on his own recognizance, the chief judge removed Barnes from presiding over first appearances.

In July 2006, Barnes filed a formal petition for a writ of mandamus in the Fourth District Court of Appeal in which he named himself as petitioner and the St. Lucie public defender, state attorney, and sheriff as respondents. The body of the petition cited the chief judge and several circuit and county judges as additional respondents. The substance of the petition sought to compel the respondents to comply with Barnes' interpretation of Florida law concerning pretrial release. The petition alleged that the respondent judges had violated the U.S. and Florida Constitutions, as well as various Florida statutes and rules of judicial procedure.

The state judicial oversight body, the Judicial Qualifications Commission (the "JQC"), investigated Barnes' actions and, in March 2007, filed a seven-count amended notice of formal ethics charges against him. Barnes admitted that he had taken the actions described above, but denied that his conduct violated the judicial code. After a two-day public hearing, the JQC found Bar-

nes guilty on four counts: failing to maintain impartiality, practicing law while serving as a judge, making public attacks on judicial colleagues, and failing to follow proper channels regarding his belief that other judges had committed acts of misconduct. The JQC recommended discipline in the form of a public reprimand and costs.

Meanwhile, the Fourth District never took action on mandamus petition, which Barnes ultimately dismissed voluntarily. Yet Barnes challenged the JQC's findings and recommendations in proceedings before the Florida Supreme Court.

ANALYSIS

The state Supreme Court reviews JQC findings of fact on the "clear and convincing evidence" standard. If the JQC's findings meet this standard, the Court gives them great weight. However, the Court has the ultimate power and responsibility to resolve ethics charges against state court judges. Notably, the Court's goal in reviewing JQC proceedings is not to inflict punishment but to assess a judge's present fitness to serve as an impartial judicial officer.

As to the JQC's finding that Barnes had violated the Code of Judicial Conduct, Canons 1, 2, and 3 by filing the mandamus petition, the Court agreed that his actions amounted to a failure to maintain impartiality. The Court stated that while Barnes may have had good intentions in filing his petition, he injected himself into controversies on behalf of defendants who were likely to appear before him at arraignment.

The Court also upheld the JQC's finding that Barnes violated Canons 1 and 2 by mounting public attacks against his fellow judges, noting that Barnes had admitted that his mandamus petition constituted a detailed criticism of his colleagues and that he was motivated by "anger, frustration, and aggravation with his fellow judges." *In re Barnes*, 2 So. 3d at 173. The Court stated that while Barnes' criticism of other judges would not warrant discipline if presented in another context, the filing of the petition "clearly crossed the line between what is appropriate and what is not." *Id.* at 174.

Next, the Court upheld the JQC's finding that Barnes violated Canons 1 and 2 by not following proper channels regarding other judges' alleged misconduct. Instead, Barnes chose to go pub-

lic with his dispute against the other judges even though it was questionable whether the Fourth District Court of Appeal actually had jurisdiction to grant Barnes' requested relief.

On the charge that Barnes engaged in the practice of law while serving as a judge, the Court disagreed. The JQC had argued that Barnes' mandamus petition clearly asserted his position as a sitting judge and that the public defender is the proper officer to file such a petition. Barnes countered that he had acted pro se, as judges are allowed to do. In the end, the Court found a lack of clear and convincing evidence to sustain the JQC's conclusion on this charge.

As to the JQC's recommended discipline, the Court ordered Barnes to appear for a public reprimand and be assessed the costs of the proceedings, noting: "While we encourage judges to be active in seeking to improve the administration of justice, the strident and harsh manner of attack embraced by Judge Barnes combined with his choice of a public forum to attack particular judges and their practices clearly separates this case from legitimate attempts to improve the law. Such harsh public condemnation can only undermine public confidence in the justice system." *Id.* at 175.

SIGNIFICANCE

Various ethics codes govern Florida elected officials at the state and local level. State court judges are no exception, and whether elected or appointed they must adhere to the Florida Code of Judicial Conduct.

RESEARCH REFERENCE

- 46 Am. Jur. 2d *Judges* § 20 (2006).

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