

**BEFORE THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION**

INQUIRY CONCERNING A JUDGE,
THE HONORABLE MARK BLUMSTEIN
JQC NO. 22-484

SC22- _____

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FINDINGS AND RECOMMENDATION OF DISCIPLINE

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

After an inquiry which included sworn testimony by Judge Blumstein before the Investigative Panel of the JQC, the Commission has now entered into a Stipulation for Discipline with Judge Blumstein in which he admits that his conduct as alleged in the Notice of Investigation and discussed herein was inappropriate and should not have occurred. He further admits and acknowledges that his conduct violated Canons 1, 2A, 7A(3)(a), 7A(3)(b), and 7A(3)(e)(II) of the Code of Judicial Conduct.

Factual Findings

The United States Department of Defense (“DoD”) has long issued directives on the appropriate use of military indicia by current and former service members running in an election for a civilian office. Among the many DoD regulations, the

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current Department of Defense Directive (DoDD) Number 1344.10, in effect since 2008, permits a candidate to use a photograph of the candidate wearing his or her military uniform provided that (1) the picture is not the “primary graphical representation” in the campaign advertisement (DoDD 1344.10 - 4.3.2.1) , and (2) that a photograph of the candidate in uniform “...must be accompanied by a prominent and clearly displayed disclaimer that neither the military information nor photographs imply endorsement by the Department of Defense or their particular Military Department...” (DoDD 1344.10 - 4.3.1.2).

Additionally, Chapter 106.143(1) of the Florida Statutes requires campaign advertisements to “prominently” include certain information about the advertisement and the candidate.

Prior to his election to the Circuit Court for the 11th Judicial Circuit in 2016, Judge Blumstein served for over twenty years with the U.S. Navy Judge Advocate General’s Corps. In his 2016 judicial campaign, Judge Blumstein utilized campaign advertisements featuring a primary graphic of him wearing a Navy uniform in violation of DoDD 1344.10. Additionally, some of those advertisements did not include a prominent and clearly displayed disclaimer as required by DoDD 1344.10.

The U.S. Navy Judge Advocate General Corps reviewed the campaign materials used by Judge Blumstein’s campaign and sent him a letter in the closing

days of the 2016 election, counseling and advising him that his campaign materials must conform to DoD instructions, including DoDD 1344.10.

During his 2022 judicial re-election campaign, Judge Blumstein used advertisements that depicted him in uniform as the primary graphic. The Commission found, and Judge Blumstein agreed that the disclaimer required by DoD regulations, and Florida law were not “prominently” and “clearly” displayed on the advertisement. In fact, the writing was so small that it appeared, from a short distance away, to be a solid line as opposed to words or text.

A photograph of one such advertisement, a billboard sign affixed to a light pole next to a busy road, was reviewed by the Panel and authenticated by Judge Blumstein. That photograph is included with these Findings and Recommendation as Exhibit 1. The 2022 billboard sign depicted in Exhibit 1 is nearly identical to billboard signs Judge Blumstein used in his 2016 campaign. The only significant difference appears to be that the 2022 signs use the term “RE-ELECT”.

In his testimony before the Investigative Panel, Judge Blumstein clarified that in the picture he is wearing an authentic Naval officer cover (cap) and a generic non-Navy issue black suit, white shirt, and black tie. The Commission, however, believes that the fact Judge Blumstein was only wearing part of his military uniform is a distinction without a difference. The Commission notes that because the photograph was cropped from at the upper chest, and because the of the quality of the image it

would be almost impossible to discern a difference between the suit he wore in the photograph and the Service Dress Blue Uniform used by the U.S. Navy. Wearing an authentic officer's cover makes the illusion complete.¹ Finally, Judge Blumstein conceded that he intended to convey to voters that he was in uniform. Thus, for the purposes of this analysis, the Commission considers him to have been depicted "in uniform."

The billboards used by Judge Blumstein in 2022, as shown in Exhibit 1, violate the DoD regulations in two ways. First the picture of Judge Blumstein in his uniform is not only the "primary graphic" (which is prohibited); it is, in fact, the only graphic on the advertisement. Judge Blumstein has agreed and admitted that his advertisement did not comport with the DoD regulations in this regard. Next, while the advertisement in question does technically include the text of the disclaimer and text required by DoD regulations and Chapter 106 of the Florida Statutes, the Commission finds, and Judge Blumstein agrees and admits that the font is so small that it is functionally not present to any but the most careful of examination and would not have been visible to drivers passing the sign.² It certainly does not comply with the requirements that the text be "prominent" and "clearly displayed."

¹ See Service Dress Uniform, U.S. Navy HR (last visited December 1, 2022) <https://www.mynavyhr.navy.mil/References/US-Navy-Uniforms/Uniform-Regulations/Chapter-3/Male-Officer/Service-Dress/Service-Dress-Blue/>

² According to Judge Blumstein, the disclaimer found at the bottom of the advertising billboard sign depicted in Exhibit 1 reads:

As noted before, the Commission finds, and Judge Blumstein has agreed, that the billboard advertisements, shown in Exhibit 1 did not conform to DoD regulations, did not comply with Florida law. In using advertisements which he was previously warned were prohibited by DoD regulations, Judge Blumstein failed to maintain and observe the high standards of conduct required by Canon 1 and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary as required by Canon 2A. Additionally, the Commission finds that Judge Blumstein's willful disregard of DoD regulations and Florida election law violated Canon 7A(3)(a) (requiring that a judicial candidate "shall be faithful to the law..."), as well as Canon 7A(3)(b) (requiring that judicial candidates "shall ... act in a manner consistent with the impartiality, integrity, and independence of the judiciary..."). Finally, Judge Blumstein's inappropriate use of the picture of himself in uniform, without a "prominent and clearly displayed" disclaimer is exactly the kind of misrepresentation that the DoD regulations were designed to avoid (i.e. that the candidate or campaign is affiliated or endorsed by the U.S. government), and thus, runs afoul of Canon 7A(3)(e)(ii).

Recommendation

The Commission has considered the possibility that, despite his over twenty-year career as a Navy officer and lawyer with the U.S. Navy Judge Advocate General

"Pd. Pol. Adv. By the Committee to Re-Elect Mark Blumstein and Mark Blumstein, a Non-Partisan Candidate for Miami-Dade Circuit Court Judge Group 34. Not endorsed or sponsored by DoD or its affiliates. Mark Blumstein is a Retired Officer of the U.S. Navy."

Corps, Judge Blumstein may have been unaware of the extensive DoD regulations regarding the use of military indicia during his 2016 campaign. However, the Commission believes that at the point he was specifically and individually warned by the U.S. Navy Judge Advocate General Corps that his advertisements were inappropriate, he was ethically bound to take corrective action, or, at the very least, not use a nearly identical advertisement again in the next election. He chose to do neither. He candidly acknowledged that he used poor judgment in deciding to use the same billboard advertisement again in his 2022 campaign.

By way of mitigation, the Commission notes that Judge Blumstein immediately accepted responsibility for his conduct, apologized, and cooperated with the Investigative Panel of the Commission. He provided candid written and oral testimony, and expressed regret that his actions have tarnished the judiciary. Judge Blumstein has not been previously disciplined as a judge and has no disciplinary history with The Florida Bar. The Commission also notes that Judge Blumstein was not the successful candidate in the 2022 election and will leave judicial office at the end of 2022. Additionally, he has removed himself from consideration of a position being filled by the 11th Judicial Circuit Judicial Nominating Commission.

The Commission is also mindful of the scores of current and former judges and judicial candidates who have served in the armed forces and have honored their

ethical obligation to follow DoD regulations and Florida law while campaigning. While the Commission respects and appreciates Judge Blumstein's service, his lengthy military career has not provided him with a license to do what others cannot. The Commission has therefore concluded that Judge Blumstein's studied and willful disregard of DoD regulations and Florida law violated the Code of Judicial Conduct and are worthy of public rebuke.

The Judicial Qualifications Commission, therefore, finds and recommends that the interests of justice, public welfare, and sound judicial administration are best served by requiring Judge Blumstein to receive a public reprimand.

Dated this 5th day of December, 2022.

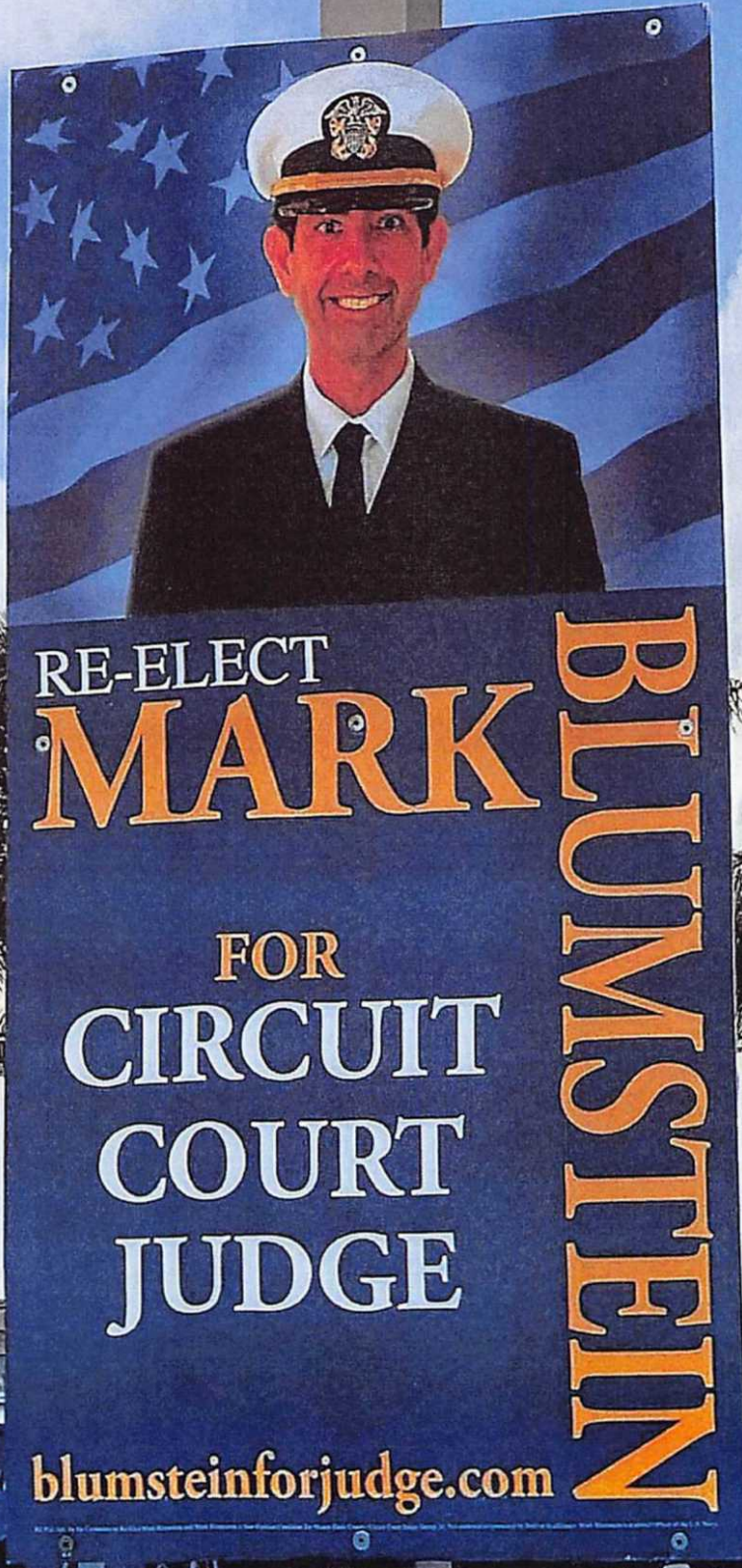
**INVESTIGATIVE PANEL OF
THE FLORIDA JUDICIAL
QUALIFICATIONS
COMMISSION**

By: /s/ Michelle T. Morley
Hon. Michelle T. Morley
CHAIR OF THE FLORIDA
JUDICIAL QUALIFICATIONS
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EXHIBIT

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A large blue campaign sign for Mark Blumstein. The top half features a portrait of Mark Blumstein, a man in a dark suit, white shirt, and dark tie, wearing a white naval officer's cap. The background of the portrait is a stylized American flag with blue stars and stripes. Below the portrait, the text reads: "RE-ELECT MARK BLUMSTEIN FOR CIRCUIT COURT JUDGE". The name "BLUMSTEIN" is written vertically in large, bold, orange letters on the right side of the sign. At the bottom, the website "blumsteinforjudge.com" is printed in orange. The sign is mounted on a metal post in an outdoor setting with palm trees and a building in the background.

RE-ELECT
MARK
FOR
CIRCUIT
COURT
JUDGE

BLUMSTEIN

blumsteinforjudge.com