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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

1210133

Judge John Randall "Randy" Jinks

v.

Alabama Judicial Inquiry Commission

**Appeal from Alabama Court of the Judiciary
(No. 57)**

BOLIN, Justice.

The Alabama Judicial Inquiry Commission ("the JIC") filed a complaint against Judge John Randall "Randy" Jinks ("Judge Jinks"), the Probate Judge for Talladega County, alleging that he had violated

1210133

the Alabama Canons of Judicial Ethics by frequently exhibiting an inappropriate demeanor, by inappropriately using a work-assigned computer and a work-assigned cellular telephone, and by abusing the prestige of the Office of Probate Judge. The Alabama Court of the Judiciary, ("the COJ") found that the evidence supported some of the charges alleged and removed Judge Jinks from office. Judge Jinks appealed.

Facts and Procedural History

Judge Jinks took office as the Probate Judge of Talladega County in January 2019. Several employees of the probate office that had been hired by the previous probate judge remained employed by the probate office after Judge Jinks took office. Those employees complained that Judge Jinks had made racist and racially insensitive statements in the office, had made sexually inappropriate comments in the office, had used profanity and displayed anger in the office, and had used the prestige of his office to advance the interests of others. Other employees did not have any significant concerns with Judge Jinks's behavior in the office or Judge Jinks's behavior toward other employees.

On March 3, 2021, the JIC filed a three-count complaint against Judge Jinks in the COJ, charging Judge Jinks with violating Canons 1, 2, 2.A., 2.B., 2.C., 3.A.(3), and 5.C.(4), Alabama Canons of Judicial Ethics. The Canons of Judicial Ethics ("the Canons") that Judge Jinks is charged with violating read as follows:

"Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary

"An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed as applied to further that objective."

"Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

"A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

"B. A judge should at all times maintain the decorum and temperance befitting his office and should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

"C. A judge should not allow his family, social, political, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness at any hearing before any court, or judicial or governmental commission."

"Canon 3. A Judge Should Perform the Duties of His Office Impartially and Diligently

"....

"A. Adjudicative Responsibilities.

"....

"(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his discretion and control. "

"Canon 5. A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict With His Judicial Duties

"....

"C. Financial Activities

"....

"(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone if it reflects expectation of judicial favor."

The complaint asserted the following three counts:

Count No. 1: "On numerous occasions, by engaging in and/or displaying the inappropriate demeanor alleged in Paragraphs 3 through 86, separately and severally, i.e., around staff, attorneys, and others, engaging in and displaying racially insensitive demeanor, sexually inappropriate demeanor, other inappropriate demeanor about women, inappropriate expression of anger, use of and allowance of profanity, and/or other conduct unbecoming the judicial office, Judge Jinks violated one or more of the following Alabama Canons of Judicial Ethics: [Canons 1, 2, 2.A., 2.B., 2.C., and 3.A.(3)]."

Count No. 2: "On numerous occasions, by inappropriately using and/or allowing someone to inappropriately use the work-assigned, password-protected computer and/or the county's password-protected cellular telephone assigned to Judge Jinks, as alleged in Paragraphs 14 and 99 through 108, separately and severally, i.e., to view an online-sales website for adult sex items and clothing, receive and/or send an offensive text with an image of a mother nursing her infant, view and/or save sexually provocative images of women, save multiple images of himself posing in a swimsuit, view a dating website for mature singles and a list of top dating websites, view at a loud volume an uncensored video with profanity and racial slurs, and/or permit a newly-released convicted felon to possess, use, and/or save 'all kinds' of images on the county's password-protected cellular telephone for several days, Judge Jinks violated one or more of the following Alabama Canons of Judicial Ethics: [Canons 1, 2, 2.A., 2.B.]."

Count No. 3: "By engaging in conduct alleged in Paragraphs 109 through 124 and 125, separately and severally, i.e., seeking the prosecutor's approval to the early release of Ms. [Rebecca Tanner] from her criminal sentence, requesting attorneys who practice before him to help Ms. [Tanner], allowing his relationship with Attorney [Robert] Echols to influence his judicial conduct or judgment or give the appearance thereof, conveying and/or permitting Attorney [Robert] Echols to convey the impression that he is in a special position to influence him or give the appearance thereof, and/or using court letterhead and his judicial title to seek financial help for a friend, Judge Jinks has violated one or more of the following Alabama Canons of Judicial Ethics: [Canons 1, 2, 2.A., 2.B., 2.C., 5.C.(4)]."

Following a trial, the COJ, on October 29, 2021, entered a unanimous judgment finding, in part:

"As to the allegations in Count No. 1 of the [JIC]'s complaint, this Court unanimously finds that the [JIC] proved by clear and convincing evidence that Judge Jinks violated Canons 1, 2.A, 2.B, and 3.A.(3) by displaying racist conduct when he asked an attorney -- in the presence of a probate office employee -- if he knew about an acronym for a racial epithet involving the 'N word,' when he asked [probate-office employee] Darrius Pearson if he was a drug dealer when Pearson purchased a new vehicle, when he was recorded in the workplace saying, 'Y'all got to quit burning s*** down' because 'you will need something to burn down after Trump gets elected to a second term, sons of bitches,' and when he engaged in other conduct. Although at least one comment alleged as improper in the complaint, in which Judge Jinks allegedly asked Pearson if he had been marching during a Black Lives Matter protest during the workday, was arguably a question that could be asked by a supervisor such as Judge Jinks pursuant to the policy manual, the other listed

comments and some unlisted comments were completely inappropriate. Although the complaint alleges 'racially insensitive demeanor,' this Court is of the opinion that Judge Jinks's conduct rose above racial insensitivity.

"This Court also unanimously finds that the [JIC] proved by clear and convincing evidence that Judge Jinks violated Canons 1, 2.A, 2.B, and 3.A.(3) by displaying a sexually inappropriate demeanor. Although this Court does not find that the [JIC] proved all of its allegations of sexually inappropriate demeanor, this Court finds that Judge Jinks did display sexually inappropriate conduct when, for example, he showed a subordinate a sexually explicit video in the workplace.

"As to the allegations in Count No. 2 of the complaint, this Court finds that the [JIC] failed to prove by clear and convincing evidence that Judge Jinks violated Canons 1, 2.A, and 2.B.

"As to the allegations in Count No. 3 of the complaint, this Court unanimously finds that the [JIC] proved by clear and convincing evidence that Judge Jinks violated Canons 1, 2.A, 2.B, and 2.C by seeking an Assistant District Attorney's approval of the early release of [Rebecca] Tanner from her criminal sentence, by requesting attorneys who practice before him to help Tanner secure an early release from her criminal sentence, and by using court letterhead and his judicial title to seek financial help for a friend.

"This Court, however, finds that the [JIC] failed to prove by clear and convincing evidence that Judge Jinks allowed his relationship with Attorney Robert Echols to influence his judicial conduct or to give the appearance thereof. The [JIC] also failed to prove that Judge Jinks conveyed and/or permitted Echols to convey the impression that he was in a special position to influence him or give the appearance

thereof. Thus, this Court finds that Judge Jinks did not violate Canon 5.C.(4).

"Accordingly, this Court finds that Judge Jinks violated

"• Canon 1, by failing to uphold the integrity and independence of the judiciary;

"• Canon 2.A., by failing to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

"• Canon 2.B., by failing to, at all times, maintain the decorum and temperance befitting his office and by failing to avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute;

"• Canon 2.C., by allowing relationships to influence his judicial conduct, by lending the prestige of his office to advance the private interests of others; and

"• Canon 3.A.(3), by failing to be patient, dignified, and courteous to ... lawyers, and others with whom he deals in his official capacity."

The COJ unanimously agreed to remove Judge Jinks from office. Judge Jinks timely appeals.

Scope of Review

"The Court of the Judiciary is a constitutionally created court with limited jurisdiction. Ala. Const. 1901, Amend. No. 581, § 6.18 [now Art. VI, § 157, Ala. Const. 1901 (Off. Recomp.)] (proclaimed ratified June 19, 1996). It can decide only cases involving charges brought against judges by the

Judicial Inquiry Commission. § 6.18(a) [now § 157(a)]. 'A judge aggrieved by a decision of the Court of the Judiciary may appeal to the Supreme Court [of Alabama]. The Supreme Court shall review the record of the proceedings on the law and the facts.' § 6.18(b) [now § 157(b)]."

Moore v. Judicial Inquiry Comm'n of Alabama, 891 So. 2d 848, 855 (Ala. 2004).

Standard of Review

"The applicable standard of review for an order from the Court of the Judiciary is that the evidence must be clear and convincing. That is, "orders of the Court of the Judiciary are entitled to a presumption of correctness if the charge is supported by 'clear and convincing evidence.'" In re Sheffield, 465 So. 2d 350, 355 (Ala. 1984) (quoting In re Samford, 352 So. 2d 1126, 1129 (Ala. 1977)). With regard to questions of law, this Court's review is de novo. Rogers Found. Repair, Inc. v. Powell, 748 So. 2d 869, 871 (Ala. 1999)(quoting Ex parte Graham, 702 So. 2d 1215 (Ala. 1997)). However, factual findings of the Court of the Judiciary based on ore tenus evidence are presumed correct, and '[the Court of the Judiciary's] judgment based on those findings will not be disturbed unless the appellate court, after considering all the evidence and all reasonable inferences that can be drawn therefrom, concludes that the judgment is plainly and palpably wrong, manifestly unjust, or without supporting evidence.' Boggan v. Judicial Inquiry Comm'n, 759 So. 2d 550, 555 (Ala. 1999). In the absence of specific factual findings, 'this court will assume that the trial court made those findings necessary to support its judgment, unless such findings would be clearly erroneous and against the great weight and preponderance of the evidence.' 759 So. 2d at 555 (quoting Powers v. Judicial Inquiry Comm'n, 434 So. 2d 745, 749 (Ala. 1983)). Further, in reviewing an appeal from a judgment of the Court of the Judiciary finding the judge guilty of the

charges against him or her, the Supreme Court 'must consider the evidence ... in the light most favorable to the Judicial Inquiry Commission, the prevailing party.' Boggan, 759 So. 2d at 555.

"Our review is also guided by the Supremacy Clause of the United States Constitution: 'This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.' U.S. Const., art. VI, cl. 2."

Moore, 891 So. 2d at 855 (footnote omitted).

Discussion

I. Whether the Findings of the COJ are Supported by Clear and Convincing Evidence

Judge Jinks argues that the evidence presented at trial by the JIC did not meet the "clear and convincing" standard of proof justifying the findings and conclusions reached by the COJ and the sanction imposed by the COJ. Clear and convincing evidence is "[e]vidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion." § 6-11-20(b)(4), Ala. Code 1975.

A. Count No. 1¹

As to the allegations contained in Count No. 1 of the JIC's complaint, the COJ found that the JIC had proved by clear and convincing evidence that Judge Jinks had violated Canons 1, 2.A., 2.B., and 3.A.(3) by displaying racist conduct when he asked an attorney -- in the presence of a probate-office employee -- if he knew about an acronym for a racial epithet involving the "N word"; when he asked probate-office employee Darrius Pearson if he was a drug dealer when Pearson purchased a new vehicle; and when he was recorded in the workplace saying: "Y'all got to quit burning s*** down" because "you will need something to burn down after Trump gets elected to a second term, sons of bitches." The COJ expressly found that this behavior rose above mere racial insensitivity.

The COJ also found that the JIC had proved by clear and convincing evidence that Judge Jinks violated Canons 1, 2.A., 2.B., and 3.A.(3) by displaying a sexually inappropriate demeanor, specifically when he showed a subordinate a sexually explicit video in the workplace.

¹The COJ found that the JIC had failed to prove the allegations contained in Count No. 2 of the complaint. Therefore, we will pretermitt any discussion regarding that count.

1. Racist and Racially Insensitive Demeanor

Pearson, one of two African-Americans employed in the probate office during Judge Jinks's tenure, testified that he had witnessed Judge Jinks make inappropriate racial comments. Testimony was presented from other probate-office employees indicating that, on multiple occasions, Judge Jinks referred to African-Americans as "they," "them," or "those people." Brandie Martin, a probate-office employee, testified that, once, after she had assisted an African-American couple with a marriage license, Judge Jinks asked her: "What did their black asses want?" Tess Daniel, the probate office's deputy chief clerk, testified that, on one occasion, Judge Jinks mouthed the "N" word to her.

Mark Owsley, an attorney who has practiced law in Talladega County since 1984, testified that he had known Judge Jinks for approximately 30 years. Owsley testified that, on one occasion, he was in Judge Jinks's chambers before a hearing when the conversation turned to vehicles and vehicle acronyms. Owsley testified that Judge Jinks asked him if he knew what P-O-N-T-I-A-C² stood for. Owsley stated that

²The meaning of the acronym P-O-N-T-I-A-C is racist in nature, and the words represented by the letters in the phrase can be found in Volume 9 of the record at page 144 of the reporter's transcript.

he immediately stopped Judge Jinks and said: "Whoa, I don't think we need to go there." Owsley stated that, although Judge Jinks did not actually say the "N" word, Owsley thought that Judge Jinks was going to say it and was apprehensive enough that he felt the need to stop Judge Jinks from saying it. After the complaint was filed in this case, Judge Jinks appeared on a morning talk show on a local television station to address the allegations made against him.³ While discussing the charges made against him, Judge Jinks admitted to the exchange with Owsley regarding the P-O-N-T-I-A-C acronym, but he stated that "if I share a racial slur with you that I've learned, that's not using a racial slur."

Pearson testified that, in May 2019, he had an exchange with Judge Jinks regarding a new vehicle that Pearson had recently purchased. Pearson testified that Judge Jinks stated to him: "I seen that car. I can't even -- I'm the judge and I can't even afford a Mercedes. What you doing, selling drugs?" Pearson stated that this comment was made to him in the main area of the probate office. The statement was heard by other probate-office employees. Jessica Gaither, a probate-office employee,

³A transcript of Judge Jinks's appearance on the television talk show was admitted into evidence by the COJ and is contained in the record.

1210133

testified that she considered the statement to be a racist statement because, she said, Pearson, one of only two African-American employees in the office, was singled out by Judge Jinks and was racially stereotyped by the comment. In his answer, Judge Jinks admitted to making this statement to Pearson, but he denied that the statement was racist or that it contained racial innuendo.

Pearson testified that Judge Jinks had commented on the well-publicized murder of George Floyd, an African-American man, by a Caucasian police officer, stating that "he [didn't] see why everybody was so upset about him getting killed." Gaither testified that, regarding the murder of George Floyd, Judge Jinks had stated that he "didn't understand what the big deal was. It was just one person." Gaither testified that Judge Jinks had referred to the Black Lives Matter protesters that had protested in the wake of the George Floyd murder as "those sons of bitches." In August 2020, Judge Jinks was overheard in a telephone conversation discussing a "meme" or cartoon depicting Black Lives Matter protests and describing the caption of the "meme" as stating: "Y'all got to quit burning s*** down because ... you son[s]-of-bitches is ...going to need something to burn down after Trump gets re-

elected for a second term." In his answer, Judge Jinks admitted to making this statement regarding the "meme" and stated that, although it was made during a private and personal conversation, it should not have "been overheard in the workplace."

2. Sexually Inappropriate Demeanor

Although the COJ stated in its judgment that it did not find that the JIC had proved all of its allegations of sexually inappropriate demeanor, it did specifically find that Judge Jinks had engaged in sexually inappropriate conduct when he showed a subordinate a sexually explicit video in the workplace. According to Pearson, he and Judge Jinks were in the basement of the courthouse working on "poll books" when Judge Jinks received a video on his cellular telephone. Pearson testified that Judge Jinks then stated to him: "[D]on't tell nobody but look at this." Pearson stated that he momentarily looked at the video, which depicted women dancing with their breasts exposed. Pearson testified that he refused to watch the rest of the video and continued to do his work. However, Pearson stated that Judge Jinks sat down and continued to watch the video. Judge Jinks discussed this incident during his appearance on the television talk show, admitting that showing Pearson

the video was a lapse in judgment. However, he also justified it by stating that "it was two guys" together.

3. Inappropriate Display of Anger and Use of Profanity

Judge Jinks was also charged in Count No. 1 of the complaint with the inappropriate expression of anger and the use of profanity in the probate office, behavior that could support the COJ's determination that Judge Jinks violated Canons 1, 2.A., 2.B., and 3.A.(3). Although the COJ did not make express findings as to this particular charge, "this court will assume that the trial court made those findings necessary to support its judgment, unless such findings would be clearly erroneous and against the great weight and preponderance of the evidence." Boggan v. Judicial Inquiry Comm'n, 759 So. 2d 550, 555 (Ala. 1999).

The evidence indicated that, in July 2020, Judge Jinks placed a sandwich and produce in a brown paper bag, all of which he then placed in the office refrigerator. Subsequent to Judge Jinks placing the bag containing the sandwich in the refrigerator, Pearson announced to the probate-office staff that he was going to clean out the office refrigerator to make room for food that had been provided to the probate-office staff while they worked on an election. Pearson stated that, as he was cleaning

1210133

out the refrigerator, he came across a brown paper bag that contained a sandwich and some "rotten produce." Pearson testified that he asked those employees in the office at the time if the bag belonged to any of them and that, when no one claimed it, he threw the bag away.

The following day, Judge Jinks went to the office refrigerator to retrieve his sandwich and discovered that it was not there. Judge Jinks then exploded in a tirade, slamming the refrigerator door and exclaiming loudly: "We have a damn thief in this office. I can't have s*** in this office." Judge Jinks angrily "stormed off" and went to the office of Lawana Patterson, the probate office's chief clerk, and proclaimed that they were going to have a staff meeting because someone had stolen his sandwich. Judge Jinks returned to the kitchen area, where Gaither asked him if he had located his sandwich, and Judge Jinks replied: "Well, hell no. I'm surprised you are going to bring that the hell up again. I can't have s*** in this office. We have a damn thief in this office."

Althia White, a probate-office employee, testified that, during this incident, she was assisting a customer at the front counter. White testified that she and the customer could hear Judge Jinks "cussing" from the back of the office. White stated that, because of Judge Jinks's

behavior, she took the customer's information and address and told him that she would mail him his completed paperwork that she was assisting him with so that she could quickly get the customer out of the office. A few days after the incident with the sandwich, Judge Jinks sent the probate-office staff a lengthy e-mail at 1:03 a.m., again expressing his anger and resentment about the sandwich being "stolen." Judge Jinks admitted to the occurrence of this incident on the television talk show and in his answer.

4. Summary

Regarding the charges contained in Count No. 1, the COJ heard testimony from numerous witnesses and admitted a number of exhibits into evidence. The COJ found that Judge Jinks presented credible evidence regarding a possible bias against him and a power struggle within the probate office. Judge Jinks also presented evidence from a number of witnesses that depicted him in a more positive light than the above-discussed testimony. Judge Jinks attacks much of the above-discussed testimony, describing his comments as being exaggerated, taken out of context, or as not racist at all, because, he says, they were made with no racist intent. However, the COJ heard the testimony and

observed the witnesses, and its factual findings based on ore tenus evidence are presumed correct if they are supported by clear and convincing evidence. Moore, 891 So. 2d at 855. Viewing the evidence in a light most favorable to the JIC, as we must, we conclude that the allegations contained in Count No. 1 are supported by clear and convincing evidence, and the COJ's findings as to that count are due to be affirmed. Moore, 891 So. 2d at 855.

B. Count No. 3

As to the allegations contained in Count No. 3 of the complaint, the COJ found that the JIC had proved by clear and convincing evidence that Judge Jinks had violated Canons 1, 2.A., 2.B., and 2.C. for seeking an assistant district attorney's approval of the early release of Rebecca Tanner from her jail sentence by requesting that two attorneys, who regularly practiced before him, help Tanner secure an early release from her sentence. The COJ also found that Judge Jinks had violated the aforementioned Canons by using probate-court letterhead and his judicial title to seek financial help for a friend. The COJ found that the JIC had failed to prove the remaining allegation contained in Count No. 3 by clear and convincing evidence.

Judge Jinks met Tanner while she worked as a waitress in a local restaurant. In December 2019, Tanner pleaded guilty to a charge of unlawful possession of controlled substances. Tanner had also been charged with two probation violations stemming from two prior convictions. Tanner was ordered to serve a 65-month split sentence, pursuant to which she was required to serve 8 months in jail, with the remaining 57 months suspended. Tanner also received two years of probation.

In early 2020, Judge Jinks contacted Vonda Felton, the Shelby County assistant district attorney who had been assigned to Tanner's case. Felton was unavailable at the time, so Judge Jinks left Felton a message identifying himself as "Judge Jinks from Talladega Probate Court" and stating that he would like to speak to her regarding Tanner's case. Felton testified that, when she returned Judge Jinks's telephone call, he again referred to himself as "Judge Jinks from Talladega Probate" and informed her that he was a "family friend" of Tanner and that "he would like for [her] to consider early release" for Tanner from the portion of her sentence that she was serving in jail. Felton testified that, at that time, Tanner had approximately four months remaining on the portion

1210133

of her sentence that she was required to serve in jail. Felton testified that Judge Jinks explained to her that he had a job for Tanner in the probate office, that Tanner wanted to be reunited with her son, and that he would make sure that she reported to her probation officer and otherwise followed the rules. Felton stated that she told Judge Jinks that Tanner's early release was not possible because the mandatory sentencing guidelines applied to Tanner's sentence and that, based on Tanner's current circumstances and criminal history, she would not be somebody that should have access to confidential information in the probate office.

After discussing the possibility of an early release for Tanner with Felton, Judge Jinks contacted two attorneys who regularly practiced before him to assist with trying to secure an early release for Tanner. Matt West testified that Judge Jinks asked him if he would speak with Tanner about her case. West testified that he spoke one time with Tanner and determined that he could not help her. Judge Jinks also discussed Tanner with Bob Echols, who explained that he had tried to get an early release for her but was unsuccessful in doing so. Echols had worked with a number of women like Tanner who had become entangled in the

criminal-justice system due to drug addiction and were wanting a new start. Judge Jinks asked Echols to visit Tanner. Echols met with Tanner in jail and decided to assist her in trying to get an early release. Echols inquired with Judge Daniel Crowson about the possibility of an early release for Tanner. Judge Crowson spoke with Felton, who was opposed to an early release for Tanner. Judge Crowson then denied Echols's request for an early release for Tanner.

Echols testified that, when Governor Ivey issued an order seeking to facilitate the release of some inmates from the county jails in response to the COVID-19 pandemic, he decided to file a motion seeking Tanner's early release. In March 2020, Echols entered an appearance on behalf of Tanner and moved the circuit court for her early release, alleging:

"Hon. Randy Jinks (the Probate Judge of Talladega County) and his family have undertaken to sponsor this Defendant, provide her a stable means of employment and a place to live for her and her four year old son. This Court has been approached on at least two occasions by attorneys pleading for the release of this Defendant. An Assistant District Attorney opposes this release.

"Judge Jinks and his family are willing to be responsible [for] this Defendant if the Court sees fit to exercise judicial discretion and release the Defendant early. The Defendant will have served almost ninety (90) per cent of her sentence.

"Releasing this Defendant early will promote the rehabilitative integration of the Defendant into society as a productive member and will place Judge Jinks and his family in a position of responsibility and authority to enhance the progress of the Defendant."

On April 3, 2020, the circuit court entered an order granting the motion for an early release after Felton agreed to it. Felton testified that she had agreed to the early release in part because Judge Jinks had requested it but also because of Governor Ivey's order.

In August 2020, Judge Jinks undertook to help a friend who was experiencing financial difficulties as the result of health problems brought on by a stroke. Judge Jinks authored a letter to a firm on official probate-court stationary, requesting that the firm purchase a life-insurance policy owned by his friend. Judge Jinks signed the letter identifying himself as the Probate Judge of Talladega County. Judge Jinks acknowledged in his answer that this conduct was improper and took full responsibility for it.

Based on the foregoing, we conclude that the COJ's findings as they relate to Count No. 3 are supported by clear and convincing evidence and are due to be affirmed.

II. Appropriateness of Sanction Imposed

A. Whether this Court Should Reject or Reduce the Sanction Imposed

Judge Jinks next argues that, assuming that this Court concludes that the allegations in the complaint were established by clear and convincing evidence, which we have, this Court should nevertheless reject or reduce the sanction imposed in this case. In Hayes v. Alabama Court of the Judiciary, 437 So. 2d 1276, 1279-80 (Ala. 1983), this Court, relying on In re Samford, 352 So. 2d 1126 (Ala. 1977), concluded that if the record shows by clear and convincing evidence that a judge has committed the offense with which he or she was charged, this Court does not have the authority to reduce or reject the sanction imposed. Judge Jinks has asked this Court to revisit this line of cases, arguing that the intent behind the current constitutional provisions applicable to the COJ is not to deprive judges in Alabama from a full and fair review of the decisions of the COJ.

In Samford, this Court reviewed a decision of the COJ, concluding that a judge had violated the Canons and removing him from office. Before Samford was decided, Alabama had recently adopted an amendment to the Alabama Constitution of 1901, which, among other things, changed the manner in which judges are disciplined. Under the

old "judicial disciplinary machinery," which existed before the constitutional amendment,

"a Judicial Commission [had] the authority '... to investigate, conduct hearings on the qualifications of judges and make recommendations to the Supreme Court in regard to the retirement, censure, suspension or removal of such judges ...' Under this 'recommendation' system,

"If, after hearing, or after considering the record and report of the masters [appointed by the Supreme Court upon the Commission's request], the Commission finds good cause therefor, it shall recommend to the Supreme Court the censure, suspension, removal or retirement, as the case may be, of the judge.

"The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order censure, suspension, removal or retirement, as it finds just and proper, or wholly reject the recommendation.'"

Samford, 352 So. 2d at 1128. A new "judicial disciplinary machinery" was implemented by constitutional amendment in 1973, when the current "Judicial Article" was adopted, and the pertinent provisions are now found in Art. VI, §§ 156 and 157, Ala. Const. 1901 (Off. Recomp.).

This Court provided the following explanation of the present system:

"In brief, this present system provides for a Judicial Inquiry Commission, an investigatory body analogous to a grand jury,

and a Court of the Judiciary. The Court of the Judiciary is given

"... authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may be prescribed by law, for violation of a canon of judicial ethics, misconduct in office, failure to perform his duties, or (2) to suspend with or without pay, or to retire a judge who is physically or mentally unable to perform his duties.

"(b) A judge aggrieved by a decision of the court of the judiciary may appeal to the supreme court. The supreme court shall review the record of the proceedings on the law and the facts."

Samford, 352 So. 2d at 1128-29 (quoting § 157) (footnote omitted).

After outlining how the old and the new systems functioned, this Court offered a comparison of the two systems insofar as it was relevant to this Court's scope of review of a decision by the COJ:

"A comparison of the old and new systems indicates several significant changes relevant to the scope of review. Under the new Judicial Article the Court of the Judiciary does not make recommendations -- it makes orders from which the judge may appeal if he or she so desires. The Supreme Court has no power to hear additional evidence or to 'order' a sanction 'as it finds just and proper, or wholly reject the recommendation.' Rather, under this new system, the Supreme Court only reviews the record 'on the law and the facts.' It is readily apparent that the intent ... was that the decisions of the Court of the Judiciary be afforded much more weight than under the 'recommendation' system."

Samford, 352 So. 2d at 1129. Those observations led this Court to the following conclusion concerning this Court's scope of review under our current system:

"Therefore, we hold that the orders of the Court of the Judiciary are entitled to a presumption of correctness if the charge is supported by 'clear and convincing evidence.' Rule 10, Rules of the Court of the Judiciary. Our task is to determine whether the record shows clear and convincing evidence to support the order of the Court of the Judiciary."

Id. Of course, "the order[] of the Court of the Judiciary" consists of two parts: (1) a finding as to whether there has been a violation of the Canons, misconduct, or a failure to perform⁴ and, assuming the COJ determines such conduct has occurred, (2) the imposition of a sanction. This Court must review the entirety of the COJ's order, which is precisely what this Court did in Samford.

This Court concluded in Samford that "[t]he finding of the Court of the Judiciary that [the judge] is 'guilty as charged' is fully supported by clear and convincing evidence." 352 So. 2d at 1129. This Court further

⁴Under Art. VI, § 157(a)(2), Ala. Const. 1901 (Off. Recomp.), the COJ may also have to determine whether a judge "is physically or mentally unable to perform his or her duties," which could result in a suspension or forced retirement. This case, however, pertains to misconduct rather than a physical or mental inability to perform a judge's duties.

stated that "[c]lear and convincing evidence was presented which supports [the judge's] removal from office." Id. In Samford, this Court concluded that the COJ's order determining that the judge had violated the Canons was supported by clear and convincing evidence and that the sanction of his removal from office was also supported by clear and convincing evidence.

The application of § 157(a)(1) in Samford is consistent with the language used in § 157(a)(1). Section 157(a) states that "[t]he [COJ] shall have authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may prescribed by law, for violation of a Canon of Judicial Ethics, misconduct in office, [or] failure to perform his or her duties." Under § 157(a)(1), the COJ may impose a sanction only if it first determines that the JIC has established, by clear and convincing evidence, that the judge who is the subject of the proceedings violated the Canons, committed misconduct in office, or failed to perform his or her duties. Only after it determines that some violation has occurred may the COJ impose a sanction, exercising its discretion in choosing what it believes to be the appropriate sanction from the following choices: "remov[al] from office,

1210133

suspen[sion] without pay, or censur[ing] a judge, or apply[ing] such other sanction as may [be] prescribed by law." Id. Section 157(b) provides that "[a] judge aggrieved by a decision of the Court of the Judiciary may appeal to the Supreme Court." A "decision" of the COJ necessarily includes a finding that the judge committed a violation and the imposition of a sanction.

This interpretation of Samford and § 157 was applied in Powers v. Board of Control of Judicial Retirement Fund, 434 So. 2d 745 (Ala. 1983). In Powers, on review before this Court was, among other things, the COJ's decision to censure a judge and to suspend the judge from office without pay for the remainder of his term. This Court determined that the JIC had presented clear and convincing evidence demonstrating that the judge had violated the Canons. This Court went on to consider "[t]he issue of the C.O.J.'s censuring of [the judge]." Powers, 434 So. 2d at 750. After considering the evidence in the record, this Court stated: "Under the evidence adduced at trial, the C.O.J. could find [a certain] act of [the judge's] to have been intentional and worthy of censure. For that reason, and others, we find no error in the C.O.J.'s censuring of [the judge]." Id. It is clear from Powers that this Court considered itself to have the

authority to review not only the COJ's finding that the judge had violated the Canons, but also the sanction imposed by the COJ.

However, just months after Powers was decided, this Court issued its decision in Hayes, supra, which is the first time the idea was posited that this Court has no authority to review a sanction imposed by the COJ. See 437 So. 2d at 1279-80. In Hayes, on review before this Court was the COJ's decision to suspend a judge from office without pay for the remainder of his term. This Court first considered and determined that the COJ's determination that the judge had violated the Canons was supported by clear and convincing evidence. Id. This Court then considered the judge's argument that, even if this Court affirmed the COJ's decision that he had violated the Canons, the sanction imposed by the COJ was "too severe under the circumstances." 437 So. 2d at 1278. In addressing that argument, this Court cited Samford, noted its comparison of the old and the new systems of disciplining judges, and considered the language of § 157. This Court did not, however, provide any analysis of Samford or § 157. Instead, it simply stated that "[t]his court concluded in the Samford case that if the record shows by clear and convincing evidence that the charge had been committed, it did not have

the authority to reduce or reject the sanction." 437 So. 2d at 1279-80. Accordingly, this Court stated: "[W]e are of the conclusion that the charges are proven by evidence that is clear and convincing. ... Under the circumstances, we have no alternative but to affirm the actions of the Court of the Judiciary, both as to the judgment and as to the sanction." 437 So. 2d at 1280. The Hayes Court's flawed understanding of Samford led it to conclude that this Court does not have the authority to review sanctions imposed by the COJ if the charges have been proved by clear and convincing evidence.

Even after Hayes was decided, this Court did not consistently apply the flawed principle set forth in Hayes. In In re Sheffield, 465 So. 2d 350 (Ala. 1984), which was decided a little more than one year after the opinion in Hayes was released, before this Court was a decision of the COJ finding that a judge had violated numerous Canons and imposing a sanction of suspension without pay for two months. In reviewing the COJ's decision on the charges against the judge, this Court affirmed the COJ's finding of guilt as to two charges, but reversed the COJ's finding of guilt as to another charge. This Court then stated, in a section of the opinion entitled "Sentence," the following:

"We have reviewed the sanctions imposed by the court of the Judiciary in light of our reversal of one of the ethical violations found by that court. We find that two months' suspension without pay is commensurate with the two violations affirmed by this opinion. Therefore, we affirm the sentence."

Sheffield, 465 So. 2d at 359. In Sheffield, this Court clearly reviewed the appropriateness of the sanction imposed by the COJ. Since Hayes was decided, only two cases have relied upon it for the flawed principle that a sanction imposed by the COJ against a judge is not reviewable: Moore v. Alabama Judicial Inquiry Commission, 234 So. 3d 458 (Ala. 2017), and Boggan v. Judicial Inquiry Commission of Alabama, 759 So. 2d 550 (Ala. 1999). In Boggan, this Court stated that

"[t]his Court has repeatedly held that when it reviews the record of the proceedings of the Court of the Judiciary on the law and the facts, if the record shows by clear and convincing evidence that the charge or charges have been committed then this Court does not have the authority to reduce or reject the sanction imposed by the Court of the Judiciary. Hayes v. Alabama Court of the Judiciary, 437 So. 2d 1276, 1279 (Ala. 1983); Powers v. Judicial Inquiry Commission, 434 So. 2d 745 (Ala. 1983); In re Samford, 352 So. 2d 1126 (Ala. 1977)."

759 So. 2d at 555. As demonstrated by the discussion of Powers and Samford above, this Court was incorrect in stating that it has "repeatedly" held that it lacks the authority to review a sanction imposed

by the COJ; neither Powers nor Samford stand for such a flawed proposition. In his dissent in Boggan, which Justice Johnstone joined, Justice Cook noted this very thing, stating: "That proposition is nowhere stated in Powers. It is stated in Hayes, which cites Samford. However, ... Samford does not support that proposition unless it is read very broadly." 759 So. 2d at 558. Justice Cook went on to make the salient observation that, "[i]ndeed, it cannot be the law that the punitive measures imposed by the Court of the Judiciary are entirely beyond the review of this Court. If that were true, the Court of the Judiciary would be the only judicial body in the State whose rulings or actions are so insulated." Id.

We agree with Justice Cook's observations in his dissent in Boggan, and we conclude that sanctions imposed by the COJ are reviewable by this Court. The conclusion in Hayes that this Court lacks the authority to review sanctions imposed by the COJ is an improper interpretation of Samford and, ultimately, an improper interpretation of the plain language of § 157. Section 157(b) plainly gives "[a] judge aggrieved by a decision of the Court of the Judiciary" the right to appeal such a decision to this Court, and it also gives this Court the unequivocal authority to "review the record of the proceedings on the law and the facts." There is

nothing, other than the Hayes decision, barring this Court from reviewing sanctions imposed by the COJ. Accordingly, Hayes and its progeny are overruled to the extent that they hold that this Court does not have the authority to review the sanctions imposed by the COJ on a judge.

B. Whether this Court Should Enumerate Objective Standards for Determining Sanctions

Judge Jinks next argues that this Court should enumerate objective standards for determining the imposition of judicial discipline in the state. Judge Jinks argues that the absence of any objective standards to be applied in determining appropriate judicial sanctions presents the risk of an abuse of power. Judge Jinks contends that some states have adopted factors to be considered when imposing judicial sanctions similar to the factors set forth in In re Judicial Disciplinary Proceedings Against Woldt, 398 Wis. 2d 482, 961 N.W.2d 854 (Wis. 2021), which included the following:

"(1) Whether the misconduct is an isolated instance or evidenced a pattern of misconduct;

"(2) The nature, extent and frequency of occurrence of the acts of misconduct;

"(3) Whether the misconduct occurred inside or outside the courtroom or courthouse;

"(4) Whether the misconduct occurred in the judge's official capacity or in his or her private life;

"(5) Whether the judge has acknowledged or recognized that the acts occurred;

"(6) Whether the judge has demonstrated an effort to change or modify his or her conduct;

"(7) The extent to which the judge exploited his or her position to satisfy personal desires;

"(8) The length of the judge's service on the bench;

"(9) Whether prior complaints were filed against the judge; and

"(10) The effect the misconduct has upon the integrity of and respect for the judiciary."

398 Wis. 2d at ___, 961 N.W.2d at 863-64.

When the citizens of this state approved Amendment No. 328, § 6.18, to the Alabama Constitution of 1901 (which, as amended, is now § 157), they empowered the COJ to hear complaints filed by the JIC against judges for, among other things, alleged violations of the Canons and also gave the COJ the authority to remove a judge from office as one of the sanctions available to the COJ on a finding that the Canons had been violated. Section 157 provides that a judge aggrieved by a decision

of the COJ may appeal that decision to this Court for a review of the proceedings on the law and the facts. Section 157 does not provide any constitutional guidance as to the factors that should be considered in reaching a decision on the appropriate sanction to be imposed upon a judge found to have violated the Canons. When a state's constitution provides removal from office as a sanction, with no guidance as to the factors to be considered, the citizens themselves have "approved this limitation on [their] ability to elect the judge of [their] choosing." In re Lowery, 999 S.W.2d 639, 662 (Special Review Tribunal appointed by Texas Supreme Court 1998).

The Canons have the force and effect of the law. In re Sheffield, 465 So. 2d 350 (Ala. 1984); Wallace v. Wallace, 352 So. 2d 1376 (Ala. Civ. App. 1977). The Commentary to Canon 1, as amended effective July 1, 2019, states, in part:

"Although judges should be independent, they must comply with the law, including the provisions of these Canons. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of the Canons diminishes public confidence in the judiciary and thereby does injury to the system of government under the law."

The Canons that Judge Jinks was found to have violated above specifically describe prohibited conduct. The Canons specifically provide removal from office as a possible sanction for violating the Canons. When § 157, which empowers the COJ to hear complaints against judges and to impose discipline upon judges, was approved by the people of this State, it contained no objective standards to be used in determining an appropriate discipline to be imposed. Although this Court has the authority to formally identify and adopt objective standards for imposing appropriate discipline upon judges through its rule-making authority over the COJ, in the case before us now we believe it proper to rely upon and consider only certain basic determining factors, such as those set out above and reiterated below, to supplement § 157 and to guide this Court's consideration of whether the sanction imposed on Judge Jinks is an appropriate sanction based on the findings that Judge Jinks had violated the Canons.

Judge Jinks argues that the sanction of removal in this case is not supported by clear and convincing evidence and that this Court should reject and reduce the sanction imposed. The record indicates that Judge Jinks made multiple racist and racially insensitive comments, engaged

in inappropriate sexual conduct, engaged in inappropriate acts of anger and use of profanity, and, on several occasions, used the prestige of his office for the benefit of others. Those acts were not isolated but occurred on a number of occasions while Judge Jinks was in the probate office acting in his capacity as the probate judge. Those acts were numerous enough to establish a pattern of objectionable behavior on the part of Judge Jinks. Additionally, we note that, on a television talk show, Judge Jinks admitted to his comments regarding the meaning of the acronym P-O-N-T-I-A-C, offering the excuse that it is not racist if he repeats something that he was told. Similarly, Judge Jinks admitted to showing an employee a sexually explicit video, but he sought to justify it by explaining that "it was two guys" together. Based on the foregoing, the COJ's sanction of the removal of Judge Jinks from office is supported by the clear and convincing evidence in the record.

III. Alleged Misconduct of the JIC

Judge Jinks argues that this Court should consider certain instances of alleged misconduct on the part of the JIC in mitigation of the sanction the COJ imposed upon him. We note that it does not appear that this issue was raised before the COJ and that it is being raised for

1210133

the first time on appeal. This Court will not address an issue raised for the first time on appeal. Brown v. Berry-Pratt, 315 So. 3d 566 (Ala. 2020).

Conclusion

After reviewing the record in this case, we conclude that the judgment of the COJ is supported by clear and convincing evidence. Accordingly, the judgment of the COJ is affirmed.

AFFIRMED.

Parker, C.J., and Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.