

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING JUDGE,

SC14-985

GISELE POLLACK, NOS. 13-633,
14-151, 14-187

FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS
OF THE HEARING PANEL, FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

Pursuant to the Florida Constitution, art v, §12(a)(1), (b) and (c) and Florida Judicial Qualifications Commission (“FJQC”) Rules, the FJQC Hearing Panel submits these Findings, Conclusions, and Recommendations to the Florida Supreme Court.

The Course of Proceedings

On May 22, 2014, the Investigative Panel of the FJQC filed a notice of formal charges against the Honorable Gisele Pollack, a Broward County Judge for the 17th Judicial Circuit. The charges allege that Judge Pollack, while under the influence of alcohol: (1) on December 17, 2013, took the bench while impaired; (2) on March 19, 2013, took the bench while impaired (after execution of a stipulation with the JQC investigative panel); and (3) on May 1, 2013, walked away from the

RECEIVED, 1/5/2015 11:18:41 AM, Clerk, Supreme Court

substance abuse program in which she was enrolled, became intoxicated, involved in a motor vehicle accident, and was arrested and charged **inter alia** with DUI.

Judge Pollack's answer admitted the facts alleged, and that her acts violated Canons 1, 2A, 3A, 3B(4) & 5A of the Code of Judicial Conduct. By way of mitigation, she asserted that her actions "were caused by, and as a result of, a dependency upon alcohol that incapacitated her and for which she has sought, and is successfully receiving, treatment and therapy." Judge Pollack urged the appropriate sanction was "reprimand with special conditions" which addressed her disability, and that, save for her struggle with alcohol, her record as a lawyer and judge was exemplary.

During the pendency of these proceedings, Judge Pollack was suspended without pay by order of the Florida Supreme Court.

Alan A. Bookman, Esq. chaired the FJQC Hearing Panel, which conducted a final hearing on November 13 and 14, 2014. Six commissioners were present during the hearing and deliberations. In addition to Chairman Bookman, the panel included the Hon. Robert Morris, the Hon. Michelle Morley, Michele K. Cummings, Esq., Harry R. Duncanson (lay member) and Jerome S. Osteryoung, Ph.D (lay member).

Alex Williams, Esq. (JQC assistant general counsel) represented the JQC Investigative panel. Judge Pollack was represented by J. David Bogenschutz, Esq., and Eric Schwartzreich, Esq. Lauri Waldman Ross served as counsel to the Hearing Panel.

The parties executed a “Stipulation of Facts for Final Hearing,” and supplied exhibits for the Hearing Panel’s consideration.¹ All of the exhibits were admitted without objection. (T. 11).

Findings of Fact

Gisele Pollack first began struggling with alcoholism in 1980, during her last year of law school. (T. 292). Upon graduation, she joined her father’s Miami-based law practice. (T. 290-91). In 1982 or 1983, she entered a one month residential treatment program in Summit, New Jersey, and remained clean and sober for several years. (T. 292-93).

Ms. Pollack accepted a position with the Broward County Public Defender’s office in 1986. After a relapse in 1990, the public defender’s office performed an intervention, and gave Ms. Pollack a choice between treatment and resignation. She resigned, remained “in denial,” and returned to her father’s law firm. (T. 291-

¹ References are to original stipulation (Stip. ____), trial exhibits (JQC Ex.____; Resp. Ex. ____) and transcript of final hearing (T. ____), which have been forwarded to the Florida Supreme Court.

92). Shortly thereafter, she phoned a judge in the middle of a jury trial, reported she was under the influence of alcohol, and was unable to represent her client or appear in court at the time. When that judge reported her to the Florida Bar, Ms. Pollack sought treatment, and signed a three year contract with Florida Lawyer's Assistance ("FLA"). (T. 291-92; 324). After a full year of sobriety, in 1993 she returned to the Broward County Public Defender's office where she remained without incident. (T. 291-92).

In the course of her employ by the public defender's office, Ms. Pollack was assigned to felony drug court. (T. 249-51). She was one of two public defenders juggling approximately 1400 cases, and had a lot of responsibility. She (and others she worked with) was praised for doing a tremendous job with very few resources. (T. 251-52).

Ms. Pollack was open about being in treatment or recovery for alcoholism. (T. 72; 216-17). In 2004, she was elected to the Broward County court bench. (T. 289). During her first year, Judge Pollack handled both civil and criminal matters (in a satellite division), was transferred to the general criminal division (where she juggled two full divisions) and spent stints in juvenile and felony drug court (by appointment as a circuit judge). (T. 289-90).

Drug courts are a type of problem-solving court of recent vintage, designed to rehabilitate, rather than punish. (T. 254-55). Similar courts include mental health, and veterans' courts, which were created in recognition of special needs, which can be dealt with more effectively by means other than punishment. These types of courts are used as a coercive factor so offenders obtain treatment and lead more productive lives without the burden of a criminal conviction. (T. 53; 68-71; 148; 150; 254-55; 488).

With the help of others, Judge Pollack successfully promoted and assisted in creating Florida's first criminal misdemeanor drug court. (T. 79-80). In 2005, Judge Pollack was assigned to preside over this court. (T. 290).

Persons arrested for qualified misdemeanors are given the opportunity to transfer to drug court if they qualify for the program. At the time of first appearance (arraignment) in drug court, personnel with BSO Day reporting (a division of the Broward County sheriff's office responsible for case management and supervision) explain the program to the defendant, who then appears before the judge. The defendant is given the option of entering the program, accepting a plea offer, or returning to the original criminal court for trial. (T. 54-56). The misdemeanor drug court program lasts six to twelve months. Enrollees report to case managers or supervision specialists who follow their progress. They are

randomly urine tested, and have to go for substance misuse evaluation to determine the need for treatment. If treatment is required, they are referred to one of several treatment providers for treatment sessions. They have to attend 12 step meetings and write a paper on their experiences while drug free. They report back periodically to Judge Pollack who reviewed their progress. (T. 54-56). In the ordinary course, Judge Pollack had the authority to discharge them from the program upon successful completion (with dismissal of pending charges), continue them in the program, or continue them in the program with extra conditions. (T. 57-58). Judge Pollack was known for giving those who appeared before her multiple chances to stay clean and sober. (T. 58).

Judge Pollack typically called problem-free cases (involving those colloquially referred to as “Allstars”) first on the docket, providing additional incentive for compliance. She called “generally satisfactory” cases next, while problem cases (which might involve exiting the program, changes of plea and sentencing) were left to the end, to be addressed with the assistant state attorney present. (T. 32-33).

Judge Pollack abstained from the use of alcohol and maintained complete sobriety for approximately eighteen years. (Stip., ¶8; T. 292).

In 2009, Judge Pollack's personal life took a "nose dive" when her 20-year old son Scott, a college student, became disabled after what was supposed to be a routine hernia operation. (T. 325-27; JQC Ex. 15). Scott has since had four surgeries, and had to leave college. He is in constant pain, cannot walk, sleep or work, and is on a Dilaudid pain pump. Scott lives with Judge Pollack who cares for him full time when she is not at work. (JQC Ex. 15).

On December 31, 2012, Judge Pollack suffered a relapse. (T. 217-19; 244). Deborah Eisinger, one of the judge's friends, phoned to wish her Happy New Year, and found her distraught on the phone. She drove to the judge's home, sat outside until she gained admittance, and stayed with her all night. Ms. Eisinger, in agreement with Scott, and the judge's mother (who also lived with her), finally phoned in an emergency and Judge Pollack was transported to the hospital. (T. 217-22).

On January 5, 2013, the judge entered an intensive three month residential treatment program for alcoholism at the University of Florida/Shands-Florida Recovery Center ("Shands"). (T. 221-22; Stip., ¶10). Ms. Eisinger drove Judge Pollack directly from the hospital to Shands, where she remained through April 5, 2013, and completed the program. (T. 222; 295; Stip, ¶10).

On September 26, 2013, Judge Pollack's mother died. (JQC Ex. 15). In October 2013, Judge Pollack suffered another relapse and secretly began to drink. (T. 296-98; 333; 366).² Matters came to a head on December 17, 2013, when Judge Pollack, for the first time ever, took the bench impaired. (T. 297-98; 321).

David Jaroslav was employed by the Broward County State Attorneys' office, and served as the only misdemeanor drug court prosecutor assigned to Judge Pollack's division for 6 ½ years. (T. 29-30). Mr. Jaroslav had appeared before Judge Pollack on thousands of cases, believed she was fair and professional, and generally held her in high esteem. (T. 30-31; 59-60).

On December 17, 2013, Mr. Jaroslav arrived from another court towards the end of Judge Pollack's docket, and immediately noticed that the judge was "not herself;" he believed she was under the influence of alcohol. Mr. Jaroslav observed that Judge Pollack spoke slowly, slurred her words, and appeared distracted and unable to hear what was said. (T. 35-36; 40-41).³ Mr. Jaroslav did not know how to handle the incident and did not report it to his supervisors. Judge Pollack was escorted off the bench by her judicial assistant. She asked her judicial

² While on vacation, Judge Pollack picked up another person's drink by mistake, got the taste of alcohol in her mouth, and testified "that's all an alcoholic needs to start off to the races again." (T. 296).

³ Mr. Jaroslav's perception was corroborated by a sound recording of the morning's proceedings. (JQC Ex. 16).

assistant for her car keys. In light of the judge's condition, however, the judicial assistant did not believe the judge should be driving. (Stip. ¶11).

On December 19, 2013, this incident was reported in the Fort Lauderdale Sun Sentinel. Judge Pollack acknowledged in the article that she had suffered a relapse, and would be spending her upcoming vacation in an intensive outpatient treatment program. (JQC Ex. 12). After the news became public Mr. Jaroslav was "taken to the woodshed" by his supervisors, and warned to report any further incidents. (T. 51-52; 61-62; 136). Judge Pollack's friends were relieved, believing that public knowledge would lift the weight of guilt off Judge Pollack's shoulders, and aid in her recovery. (T. 242).

On December 18, 2013, Judge Pollack had called Dr. Richard Seeley (a well-known psychiatrist and addiction treatment specialist) seeking help. (T. 416). Dr. Seeley met with Judge Pollack on December 20, 2013, and advised her to return to extended residential treatment. Judge Pollack refused, insisting on intensive, outpatient treatment. (T. 418-19; 443-45).⁴

⁴ Judge Pollack explained that she had a sick son at home, and inpatient treatment was difficult, "like being in custody" and watched 24 hours a day, seven days a week. (T. 300-01).

On December 23, 2013, Judge Pollack entered and completed intensive outpatient treatment for alcohol dependency and major depression at Satori Waters, in Fort Lauderdale, Florida. (Stip. ¶12, T. 302; 331-32; 418).

The FJQC Investigative Panel issued a notice of investigation to Judge Pollack relative to the December 17, 2013, incident on the bench and, on January 13, 2014, she appeared personally, acknowledging her actions were “a result of an alcohol abuse problem that [she] recognizes and admits.” (JQC Ex. 1; Stip. ¶13). Judge Pollack agreed she would never again take the bench under the influence of alcohol. (T. 303).

On February 10, 2014, Judge Pollack submitted a written response to the FJQC notice of investigation. She explained she’d been largely successful previously with the help of Alcoholics Anonymous (AA), but that recent events in her personal life had triggered a relapse. (JQC Ex. 15).

Judge Pollack also advised the Investigative Panel of the following curative efforts she had taken to maintain sobriety: (1) she had contacted Dr. Richard Seeley for assistance; (2) she had entered Satori Waters; and (3) she had voluntarily signed a three year contract with Florida Lawyers Assistance, Inc. (“FLA”). (JQC Ex. 15).

Judge Pollack's response was supported by multiple documents. In a letter dated February 7, 2014, Dr. Seeley opined that Judge Pollack "is currently solidly grounded in 12 step recovery, and is receiving more than adequate monitoring and care to ensure that she will continue to be successful in maintaining her sobriety." (JQC Ex. 15, Ex. V). In a letter dated February 10, 2014, Nancy Ewing, the Program Director and Primary Therapist at Satori Waters, wrote that Judge Pollack had "successfully completed the IOP level of treatment." Ms. Ewing indicated that Judge Pollack's progress was "going well" as evidenced by her "increased insight into family of original issues as they pertain to [Judge Pollack's] recent lapse in recovery, and ... significant increase in self-worth ..." She opined that the judge's "prognosis for continuing recovery is good based on [her] overall success in treatment and level of commitment." (Stip., ¶12; JQC Ex. 13; JQC Ex. 15, Ex. III). In a letter dated February 10, 2014, Judith Rushlaw, the assistant director of FLA confirmed Judge Pollack's execution of a three year contract, which required "complete abstinence from mood altering substances, regular attendance at an attorney support group, random urine testing, and regular contact with a FLA volunteer designated as her monitor." Ms. Rushlaw noted Judge Pollack's compliance with the contract to date, and added that "All indications are that Judge

Pollack is committed to recovery and rehabilitation, and is doing well.” (JQC Ex. 15, Ex. IV, T. 336).

On March 3, 2014, the JQC Investigative Panel and Judge Pollack executed a written stipulation for formal charges to be held in abeyance for three years, pending compliance with the FLA contract and monitoring “unless circumstances dictate that further action is required.” Judge Pollack stipulated to “totally refrain from the use of alcohol,” to “continue her relationship with [FLA],” “to not take the bench if ... impaired,” and to a procedure whereby the Chief Judge of her circuit would designate a fellow judge to personally meet with her each morning before beginning her judicial duties to determine that she was not under the influence. (JQC Ex. 4; T. 334-35).

At the time Judge Pollack signed the stipulation, she intended to comply. (T. 303; 367). On the evening of March 18, 2014, however, Judge Pollack became irritated because her son did not acknowledge her when she came home. She responded by going to the liquor store, buying a bottle, and drinking throughout the night. She then drove herself to work the next morning. (T. 306; 360-61).

On March 19, 2014, Judge Pollack again took the bench impaired to preside over drug court. (T. 306; 360-61). Once again, she appeared distracted, had problems remembering things said moments earlier, and slurred her words. (T. 46-

47). Mr. Jaroslav was the prosecutor in the courtroom and was “surprised and shocked” to find Judge Pollack on the bench in this condition. (T. 47). This time, per instruction, he e-mailed and texted his supervisors at the State Attorney’s Office, asking them to come to Judge Pollack’s courtroom. (T. 47-48). When these supervisors arrived, Judge Pollack was slumped over to the side of her chair, her speech was garbled, slurred and “sing-songy” and she called both supervisors (whom she knew) by the wrong names. (T. 137-39; 152-54; JQC Ex. 16). These supervisors then left to contact their own supervisors. (T. 140). One of the supervisors, Melissa Steinberg (a veteran prosecutor), testified that she had never previously appeared before a judge in the criminal division who was physically impaired. (T. 155).

Mr. Jaroslav sought leave to be excused from the courtroom at the docket’s end, but Judge Pollack refused permission, an “extremely unusual” event. Instead, she demanded to know what Mr. Jaroslav had texted his supervisors, and accused him of running to the newspapers back in December. (T. 48-50) Mr. Jaroslav was not the source of the December 19, 2013, Sun Sentinel story. Judge Pollack had been so informed previously. In her impaired state, however, the judge called Mr. Jaroslav a “Rat,” and a cold “heartless son of a bitch.” (T. 50). The judge did not deny making such statements, but recalled little that happened. (T. 307-09).

The Assistant State Attorney supervisors alerted County Court Administrative Judge Sharon Zeller, that they believed Judge Pollack was impaired. Judge Zeller personally escorted Judge Pollack out of the courtroom and another judge was called in to handle Judge Pollack's afternoon docket. (T. 141-42; 309-10; Stip. ¶15).

At Judge Pollack's request, a phone call was placed to Judge Melanie May, who drove to Judge Pollack's home. (T. 260-61). Judge May told Judge Pollack she had "messed up," advised her to take the high road, and enter treatment. They had a "terrible fight," and Judge May left. (T. 262). Judge Pollack continued to drink at home until a team from the Broward Sheriff's office (sent by friends who feared for her life) talked her into checking into University Hospital, where she was Baker-acted. (T. 310-12). She would only be released from the hospital by agreeing to re-enter another 90 day treatment program at Shands. (T. 312).

Ms. Eisinger and Judge May picked Judge Pollack up from University Hospital and personally drove her to Shands for another 90 days of treatment. (T. 262-63). Judge Pollack went in with a positive attitude, was clean and sober, but did not appear to be getting better. (T. 263-64). She felt angry and ashamed, hated the treatment program, and still wanted to drink. (T. 314-15). Every conversation with friends began the same way, "I hate it here. I feel like I'm in prison. I'm not

getting any better. I... ruined my life [and] I'll never be able to overcome this.” (T. 265).

On May 1, 2014, Judge Pollack “escaped” from Shands without the permission of program staff, rented a car and a phone. (T. 225; 314-15; Stip. ¶17). She stopped at a liquor store, bought “a lot” of alcohol, started drinking in the car, and headed home. (T. 315-16). Judge Pollack phoned Ms. Eisinger on the way, to tell her what she had done. Ms. Eisinger could tell that Judge Pollack was drinking and was immediately concerned. Ms. Eisinger begged her to stop and warned her not to risk her life or the lives of others. (T. 224-26). Ms. Eisinger next phoned the sheriff’s office to report Judge Pollack was driving under the influence, but no one could track her down; Judge Pollack was driving an unidentified rental car. (T. 234-35).

Shortly before midnight, Judge Pollack’s rental car rear-ended another vehicle stopped at a traffic light in Plantation, Florida. (T. 159-60). There was no evidence of braking. (T. 161). The driver of the other vehicle initially lost consciousness and was transported to the hospital by Plantation EMS after he awoke. (T. 164). Judge Pollack was treated for a forearm burn. (T. 163-64; JQC Ex. 17).

Plantation Police Officers Jeff Beauregard and Jeremy Clark separately responded to the scene. (T. 158-59). Officer Beauregard has worked for the City of Plantation Police Department eight years, four of which have been spent in the traffic unit as a DUI enforcement specialist. (T. 156). Officer Beauregard smelled the odor of alcohol emanating from Judge Pollack's vehicle. He smelled the same odor on Judge Pollack's breath, which grew stronger as she spoke. (T. 161-62). Her eyes were red, bloodshot and watery, and her speech was slurred. (T. 162). When Judge Pollack exited her vehicle at the officer's request, she was unsteady on her feet and nearly fell over. Judge Pollack also gave inconsistent answers to the officers regarding when she last ate. (T. 162).

Officer Beauregard advised Judge Pollack that the crash investigation was over, that he was conducting a criminal investigation, and requested the judge's consent to take a blood sample. Judge Pollack initially consented, but revoked consent after a second EMS unit was called, and arrived to take the sample. (T. 163-65). Once the second EMS truck departed, Judge Pollack changed her mind and offered to give blood. (T. 168). Officer Beauregard advised Judge Pollack that "This isn't a game... We did that one time. I offered you that as an option. Called them out here, and then you turned them away." (T. 169). He was concerned that Judge Pollack was stalling for time until her blood alcohol level went down. (T.

168-69). He then requested that Judge Pollack submit to field sobriety exercises. (T. 166).

Judge Pollack did not successfully complete the field sobriety exercises. (T. 166-69). In the early hours of May 2, 2014, she was arrested for DUI, DUI with bodily injury and property damage, and failure to use due care. (T. 174-75; JQC Ex. 17; Stip. ¶18). Judge Pollack's mood fluctuated; she went from crying and begging one minute, to yelling and cursing the next. (T. 171).⁵ These events were captured by dashcam video and audio from the officer's patrol car which were admitted into evidence and ultimately viewed by the Hearing Panel. (JQC Ex. 18).

A search of Judge Pollack's rental car yielded a plastic cup which had spilled in the passenger compartment. The car's trunk contained one half-full 750ml bottle of Stolichnaya brand vodka, two unopened 1.75L bottles of Stolichnaya brand vodka, one unopened 750ml bottle of DeKuyper Triple Sec; one unopened 750ml bottle of Chambord brand liqueur; and two unopened cans of Bluebird brand pineapple juice. (Stip. ¶18; JQC Ex. 17 and 18). The removal of these items was captured on the dashcam recorder in Officer Beauregard's patrol car before he left the scene with Judge Pollack. (JQC Ex. 18).

⁵ While impaired, Judge Pollack called the officer a heartless son of a bitch, virtually the same terms she previously directed towards A.S.A. Jaroslav. (T. 171-72).

Officer Beauregard did not know Judge Pollack previously. He learned she was a judge from Officer Clark, who indicated “[s]he’s already showing us her badge and said she wants us to take her home.” (T. 172-73). Because of his respect for the judge’s position, Officer Beauregard testified this was the hardest arrest he ever had to make. (T. 171-72).

On May 3, 2014, Judge Pollack entered High Point Hospital, where she remained until May 7, 2014, when she returned to full residential treatment at Shands. (T. 227; 266-67; 417-18; 515; Stip. ¶20). On June 6, 2014, she was accepted on scholarship by Daryl Strawberry Recovery Center, which picked her up from Shands in a “bed to bed” transfer (T. 380-82). By the time she completed the Strawberry program, Judge Pollack had 75 days of uninterrupted residential treatment. (T. 382). The Strawberry center then set up a detailed continuing care program for her to follow. (T. 387).

Judge Pollack was also referred to, and began intensive, outpatient treatment with “Recovery Unplugged,” which created an individualized treatment plan just for her. (T. 495-96). She remained in this program through October 27, 2014, during which time she was randomly tested by urinalysis and breathalyzer. (T. 502). Her tox screen was sent to a high complexity lab that tests masking agents, which can be manipulated. All tests came up negative. (T. 500).

On September 4, 2014, against the advice of counsel, Judge Pollack pled guilty (instead of “no contest”) to one count of DUI. (Resp. Ex. 6, pp.10-16; T. 338-39). She pled guilty because she wanted to accept full responsibility for her actions. (T. 341). She also apologized to the victim and the community. (Resp. Ex. 6, pp.11-12). Judge Pollack was adjudicated guilty, assessed court costs, a \$500 fine, her driver’s license was suspended for the minimum of six months, and she was sentenced to serve six months of probation, perform 75 hours of community service, and 60 days wearing a “scram” bracelet. (Resp. Ex. 6; p.14; JQC Ex. 19). Immediately afterwards, at the request of a colleague, Judge Pollack spoke publicly to drug court participants about her “fall from grace,” and what it meant to own up to the consequences of her actions. (T. 465-75; Resp. Ex. 2).

The Hearing Panel heard from multiple, highly skilled specialists in different aspects of addiction and treatment. Experts agreed that: (1) relapse is part of the illness; (2) relapse is to be expected from anyone with an alcohol dependence issue; and (3) professionals are the most difficult to treat “because they outsmart you at every turn.” (T. 283; 368; 397-98; 419-21; 426-27; 526).

Dr. Seeley, a Princeton-educated psychiatrist and addiction specialist opined that Judge Pollack had bottomed out, had no more wiggle room, had experienced a spiritual awakening, was in good recovery, and had sufficient layers in place to

maintain sobriety on the bench. (T. 423-25). Dr. Seeley admitted, however, that he had rendered a similar opinion on February 7, 2014, and was proven wrong. (T. 450).

Dr. Aldo Morales, who focuses on addiction psychiatry, has treated Judge Pollack for the last eight years. (T. 509-11). His treatment regimen for the judge currently includes medication for depression (Effexor, plus Abilify) and FDA-approved drugs to treat alcoholism (Antabuse and Naltrexone). Antabuse reacts adversely with alcohol, and acts as a deterrent, while Naltrexone diminishes the hold of alcohol. (T. 513-14). Dr. Morales also opined that Judge Pollack was doing well, motivated, and working on a strong recovery. (T. 515-18; 525). Dr. Morales' records, however, reflected that Judge Pollack was **already** on Antabuse, and had declined Naltrexone, at the time of her March 19 relapse. (T. 521-22).

Witnesses from all walks of life describe Judge Pollack as an inspiration, whose personal experience gives unique insight into the plight of those who appear before her in drug court. (T. 64; 70-73; 82; 192-93; 223; 232-33; 243; 273-74. Judge May testified that "being a judge is all important to her, and ... as a judge, she's done more good for people ... than most people in a lifetime have the opportunity to do." (T. 285; 224-25; 457-59; 503). Paul Pelling, a certified addiction counselor, added that "Sometimes people possess skills you can't teach.

And ...there are countless, countless examples of people [who] ... would not be doing well, if it wasn't for people like Ms. Pollack.” (T. 503).

At the time of the final hearing, Judge Pollack was clean and sober 195 days, and had received her six month chip from Alcoholics Anonymous. (T. 346-47; 354; 445). She (and others voicing support) indicated she had hit rock bottom with the DUI, no longer had the desire to drink, and was recommitted to remaining sober. (T. 344-45; 350-52). Judge Pollack sought additional remedial action, in lieu of removal. This included a new, five year FLA “dual diagnosis” contract with more stringent testing and FLA assuming the responsibility to report noncompliance to the FJQC or its designee. (R. 342-43; Resp. Ex. 7, ¶12 & 2). She also offered a signed (undated) resignation letter to be held by the FJQC, dated and immediately forwarded to the Governor if she ever drank again. (T. 342-45; 357).

The Hearing Panel believes that Judge Pollack is, in fact, committed to recovery. However, it cannot overlook and ignore the fact that she was equally committed when she executed the March 3, 2014 stipulation with the FJQC Investigative Panel. Judge Pollack's actions in taking the bench March 19, 2014, while impaired by alcohol, checking herself out of treatment, involvement in a DUI accident on May 1, 2014, and ensuing May 2, 2014 arrest, violated an existing

FLA contract and her prior stipulation. In addition, Judge Pollack still appears relatively fragile. Her relapse on March 19, 2014 was triggered when her son did not come out of his room to greet her. (T. 360-61). One of Judge Pollack's friends testified at this hearing that only ten days earlier she was reluctant to tell Judge Pollack she would be visiting a dying mutual friend without her, for fear of an adverse reaction. (T. 282).

CONCLUSIONS OF LAW

Canon 1 of the Florida Code of Judicial Conduct provides:

A Judge Shall 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 high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2 of the Florida Code of Judicial Conduct provides, in pertinent part:

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities

A. A judge 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.

Canon 3 of the Florida Code of Judicial Conduct provides, in pertinent part:

A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the specific standards set forth in the following sections apply.

B. Adjudicative Responsibilities

* * *

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

Canon 5 of the Florida Code of Judicial Conduct provides in pertinent part:

A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Extrajudicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

* * *

- (2) undermine the judge's independence, integrity, or impartiality;
- (3) demean the judicial office;
- (4) interfere with the proper performance of judicial duties ...

Judge Pollack clearly violated all of these provisions of the Code. She initially took the bench under the influence of alcohol on December 17, 2013. As a result of this incident, she appeared before the Investigative Panel, agreed not to drink, and signed a stipulation which gave her the chance to remain on the bench as long as she complied with its conditions. On March 19, 2014, just 16 days after multiple layers had been put in place to ensure compliance, Judge Pollack again took the bench under the influence of alcohol. “Intoxication of a judge while performing judicial duties compromises respect for the judiciary.” See In re. Doggett, 874 So.2d 805, 816 (La. 2004). A judge’s persistent intoxication on the bench results in an irretrievable loss of public confidence in the judge’s ability to carry out judicial functions. Id.

On May 1, 2014, just six weeks later, Judge Pollack left the facility in which she was enrolled for treatment and was arrested for DUI after causing an accident. Thus, the conduct at issue was not “isolated” in nature. See e.g. In re. Nelson, 95 So.3d 122, 124 (Fla. 2012); In re. Esquiroz, 654 So.2d 558, 559 (Fla. 1995); In re. Gloeckner, 626 So.2d 188 (Fla. 1993).

Judge Pollack’s further action of driving under the influence “not only violated Florida’s criminal law but also endangered the public,” thereby

undermining public confidence in judicial integrity. See In re. Sheehan, 139 So.3d 290, 292 (Fla. 2014).

RECOMMENDED DISCIPLINE

Undisputed evidence demonstrates that Judge Pollack, with the support of deeply committed friends, the very best medical care, and the finest addiction recovery programs, has waged a valiant battle against the insidious disease of alcoholism with which she has struggled for decades. We admire her resolve, commend her apparent commitment to recovery, and wish her only success in this endeavor. We owe our allegiance however, to the people of Florida, not any individual judge. In re. Sloop, 946 So.2d 1046, 1056 (Fla. 2006). Public trust and confidence in the judiciary is, and must remain, our priority. According to undisputed expert testimony, the very nature of the disease and recovery, contemplates relapse, even among the most determined.

We further recognize that alcohol is a disease. It may explain Judge Pollack's behavior but it cannot excuse it. Judge Pollack is being disciplined for her public conduct on and off the bench, not for being an alcoholic. See 42 U.S.C.A. §12114(a), (c)(1), (2) & (4); 29 C.F.R. §1630.16 (b)(1), (2) & (4); Canon v. Clark, 1994 WL 549759 (S.D. Fla. 1994)(The ADA provides that a covered entity may prohibit the use of alcohol at the workplace, hold an employee suffering

from alcoholism to the same performance standards as other employees, and does not restrict the right to terminate an employee for alcohol use, even if performance or behavior is related to an employee's alcoholism); see also Little v. Federal Bureau of Investigation, 1 F.3d 255 (4th Cir. 1993); Mararri v. WCI Steel, Inc., 130 F.3d 1180 (6th Cir. 1997); Despears v. Milwaukee County, 63 F.3d 635 (7th Cir. 1995).

We are likewise not unmindful of Judge Pollack's dedicated service to the State of Florida as a judge, or her devotion to others facing similar addictions. By clear and convincing evidence, however, we find Judge Pollack presently unfit to remain on the bench. Her past actions simply pose an unacceptable future risk. Her energy is now best utilized if focused on her sobriety, her good health, and her recovery.

Accordingly, by an affirmative vote of at least two thirds, this FJQC Hearing Panel recommends Judge Pollack's removal as a County Court Judge for the 17th Judicial Circuit. Fla. Const. art V, §12(b); FJQC Rule. 19.

Done and Ordered this 5th day of January, 2015.

FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION

By: /s/ Alan Bookman, Esq.
ALAN BOOKMAN, ESQUIRE
FJQC HEARING PANEL CHAIR
Emmanuel Sheppard & Condon, P.A.
30 S. Spring Street
Pensacola, FL 32502
ABB@esclaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail this 5th day of January, 2015 to:

Michael Schneider, General Counsel
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
1110 Thomasville Road
Tallahassee, FL 32303
mschneider@floridajqc.com

Alex Williams, Assistant General Counsel
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
1110 Thomasville Road
Tallahassee, FL 32303
awilliams@floridajqc.com

J. David Bogenschutz, Esquire
Bogenschutz, Dutko & Kroll
600 South Andrew Avenue, Suite 500
Ft. Lauderdale, FL 33301
jdblawn0515@aol.com

Eric Schwartzreich, Esquire
Schwartzreich & Associates
208 S.E. 6th Street
Ft. Lauderdale, FL 33301
eschwartzreich@floridalawyerdefenseteam.com

Frank Maister, Esquire
Ste. 925 Wachovia Tower
One E. Broward Blvd.
Ft. Lauderdale, FL 33301
frankmaister@hotmail.com

Lauri Waldman Ross, Esquire
Counsel to the Hearing Panel of the
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
ROSS & GIRTEN
9130 S. Dadeland Blvd., Suite 1612
Miami, Florida 33156
RossGirten@Laurilaw.com