

IN RE: JUDICIAL INQUIRY COMMISSION'S REPORT ON HIS HONOUR LOGAN BRODERICK, Resident Circuit Judge, Third Judicial Circuit, Sinoe County, Republic of Liberia.

In re Judicial Inquiry on Logan Broderick [2000] LRSC 28; 40 LLR 263 (2000)

Heard: November 16, 2000. Decided: December 21, 2000.

1. Article 75 of the Liberian Constitution vests in the Supreme Court the authority to make rules of court for the purpose of regulating the practice, procedures and manner by which cases shall be commenced and heard before it and all other subordinate courts.
2. The Supreme Court has the authority to prescribe a code of ethical conduct for lawyers appearing before it and all other subordinate courts as may be necessary to facilitate the proper discharge of the court's functions.
3. The rules and code of conduct promulgated by the Supreme Court for regulating the practice before the courts cannot contravene any statutory provision or any provision of the Constitution.
4. Article 75 of the Constitution does not prohibit, prevent, or bar the Supreme Court from establishing administrative rules, regulations, and guidelines to govern the behaviour of judicial officials whose behaviour tend to either enhance and sustain the image and integrity of the judiciary or bring the judiciary into disrepute or erode the effective administration of justice and public confidence in the judiciary.
5. The Chief Justice, as the administrative head of the Judicial Branch of the Government is responsible for the general supervision thereof, which includes the assignment of judges, financial and administrative support, and the management and general supervision of all personnel of the judiciary.
6. The power of whether or not to investigate a judge and subsequently determine whether or not to institute impeachment proceedings is an administrative determination which rests squarely with the administrative authority of the judiciary and is not vested in the Executive Branch of the Government.
7. The administrative authority to suspend a judicial official from office rests in the Judicial Branch of the Government.
8. The judiciary cannot acquiesce in any interference by the Executive Branch in the affairs of the judiciary, which would be a violation of the constitutional provision regarding the separation of powers provided for by Article 3 of the Constitution.
9. Liberia is a unitary sovereign state divided into counties for administrative purposes and has a republican form of government with three separate coordinate branches: The Legislative, the Executive and the Judicial.

10. Consistent with the principle of separation of powers and checks and balances, no person holding office in one of the branches of the government shall hold office in or exercise any of the powers assigned to either of the other two branches, except as otherwise provided by the Constitution; and no person holding office in one of the said branches shall serve on any autonomous public agency.

11. The constitutional principle of separation of powers does not and cannot authorize one branch of the government to establish internal administrative rules, guidelines, standards, and procedures for another branch in the exercise by the pattern of its authority to make or take administrative decisions and actions.

12. All judges, clerks, and ministerial officers of the courts of Liberia shall be under the administration of the Judicial Branch of the Government.

13. It is unconstitutional for the Legislature to enact a statute granting power and authority to the President of Liberia to suspend judges from office, and any such legislation is detrimental to the safety and happiness of the citizens of Liberia and is void ab initio.

14. The administrative authority of the judiciary is vested in the Supreme Court, not only under statutory enactment, but it is also an inherent constitutional duty vested in the Court to perform when the behaviour of judicial officials and other employees tend to bring the judiciary into disrepute, impair its image and integrity, or erode public trust and confidence in that Branch.

15. While judicial officials must be accorded the due respect that their elevated positions deserve, they must also be accountable and subject to scrutiny when the need arises.

16. To achieve objectivity and transparency, guidelines, standards and procedures must be established which will ensure a nature of due process, and substantial predictability of the administrative determination of whether or not to recommend impeachment and/or prosecution of a judicial official.

17. The administrative authority which the Supreme Court inherently possesses includes taking disciplinary action against judicial officials.

18. Each department or branch of the government must exercise its own delegated powers and unless otherwise limited by the constitution, each exercises such inherent power as will protect it in the performance of its major duty. One branch or department may not be controlled or embarrassed by another branch unless the constitution so ordains.

19. The doctrine of separation of powers and the independence of each branch to carry out its constitutional function carries with it the responsibility to cooperate with the other branches to accomplish the purposes of the constitution.

20. It is within the prerogative of the judiciary to submit administrative rules, regulations, standards, guidelines and/or procedures to the Legislature for enactment. However, the Supreme Court has the inherent power and authority to establish administrative standards and rules, and all officials and employees who are amenable to the judiciary are expected to be guided by such administrative rules and standards.

Upon hearing on the Star Radio of Monrovia that the District Attorney of Juarzon, Sinoe County, had threatened to sue the Resident Judge for Sinoe County, Judge Logan Broderick, for refund of expenses incurred in medical treatment for an injury sustained when he tried to stop a physical fight between the resident judge and a local magistrate, the Chief Justice of the Supreme Court addressed communications to the several parties involved in the altercation requesting that they submit their observations as to what had transpired. Following the submission of responses as requested by the Chief Justice, a Judicial Inquiry Commission was constituted and given the mandate to proceed in keeping with the Judicial canons.

Judge Broderick refused to submit to the Commission, contending that the Commission was illegally constituted, that the Commission lacked jurisdiction over his person and his office as a commissioned circuit judge, and that the Supreme Court was not legally competent to create and constitute a judicial Inquiry Commission. The Commission therefore reported to the Chief Justice that it could not proceed with the matter in view of the objections raised by judge Broderick and his refusal to submit to the jurisdiction of the Commission. Where-upon the Chief Justice ordered that the Commission's report be placed on the Supreme Court docket for consideration.

During the arguments, Judge Broderick challenged the authority of the Supreme court to establish canons to govern the behaviour of judges and to investigate judges, stating that article 75 of the Constitution did not vest such authority in the Court, and that where the need arose to investigate a sitting judge or to determine whether or not to proceed with impeachment proceedings or prosecution, the past practice had been for the appropriate authority of the Executive Branch to approach the Chief Justice who, in turn, would order the judge to submit to the investigation by the Ministry of Justice. The Judge also contended that the Chief Justice was without the authority to suspend a sitting circuit judge from office.

Following the hearing of the matter, in which the Supreme Court, sitting en banc, seconded the assistance of amici curiae, the Court rejected the contentions and challenge raised by the respondent judge regarding its authority and the authority of the Chief Justice. The Court held that article 75 of the 1986 Liberian Constitution, not only did not prevent and prohibit the Court from establishing administrative rules, regulations and guidelines to govern the behaviour of judicial officials to prevent the effective erosion of the administration of justice and public confidence, but that under the inherent powers granted the Court by virtue of its administrative authority, it had the prerogative to promulgate such rules and regulations, to promulgate the challenged Judicial Canons, to establish the Judicial Inquiry Commission, and to suspend sitting judges pending a determination of whether they should be prosecuted or impeached, or to take other disciplinary actions against judicial officials. The Court opined that under the constitution-al provision governing the separation of powers of the branches of the government, the judiciary alone had the prerogative to determine whether a judge should be suspended or not, and that any exercise of such powers by the Executive Branch would be unconstitutional and illegal. The Court said that in like manner the Legislature did not have the constitutional authority to enact any law which vests in the President the authority to suspend judges from office and that such law would be unconstitutional.

The Court also opined that the Chief justice, as the administrative head of the judiciary, had general supervisory powers over the judiciary, including the assignment of judges, financial and administrative support, management of judges and other judicial personnel. Concluding that it had the authority to set up the Judicial Inquiry Commission, under the inherent powers

vested in it, the Supreme Court mandated the Commission to proceed with its investigation and that Judge Broderick submits himself to the jurisdiction of the commission.

Henry Reed Cooper and Frederick D. Cherue served as amici curiae. Judge Logan Broderick appeared for himself, along with Ismeal P. Campbell.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

This is a matter to determine the validity of the Judicial Canons which were declared effective commencing January 22, 1999 by the Supreme Court of Liberia.

From the onset we think it necessary to define the following words to give clarity to the context within which they are being used herein:

1) Canons - A law, rule, or ordinance in general... A criterion or standard of judgment. A body of principles, standards, rules, or norms. BLACK'S LAW DICTIONARY 207 (6th ed. 1990).

2) Canons of Judicial Ethics - Standards of ethical conduct for members of the Judiciary (such were initially adopted by the American Bar Association and later by most states. Ibid., p 208.

3) Commission - A board or committee officially appointed and empowered to perform certain acts or exercise certain jurisdiction..." Ibid., p. 272.

4) Amicus Curiae - Pl. Amici Curiae. "one who... when a judge is doubtful or mistaken as a matter of law, may inform the court. The phrase means one who gives information to the court on some matters of law in respect of which the court is doubtful."

"An amicus curiae is a bystander, usually a lawyer, who interposes and volunteers information upon some matters of law in regard to which the judge is doubtful or mistaken, or upon a matter of which the court may take judicial cognizance." Id.

Amicus curiae is one not a party to the proceedings who advises or informs the court, or who is allowed to appear to protect an interest he represents. "See In re C. L. Simpson [\[1961\] LRSC 23](#); , [14 LLR 429](#), text at 432 (1961).

Secondly, we believe it is also appropriate at the onset to give a historical perspective of the judicial canons for the governance of the conduct of judges. During the seating of the current membership of the bench and the simultaneous opening of the October, A. D. 1997 Term of the Supreme Court, the Chief Justice, Her Honour Gloria M. Musu-Scott speaking for the Supreme Court, constituted the Canons and Law Review Committee and appointed the members thereof. The membership of the committee included:

- 1) Counsellor Henry Reed Cooper - Chairman
- 2) Counsellor Francis Johnson-Morris - Co-Chairman
- 3) Counsellor Jonathan Williams - Member

4) Counsellor David A. B. Jallah - Member

The basic working tool of the Committee was a draft document presented to the Supreme Court in 1993 by the Rules Committee appointed by former Chief Justice, James G. Bull. Members of the Rules Committee included:

- 1) Counsellor Henry Reed Cooper - Chairman
- 2) Counsellor Frederick D. Cherue - Member
- 3) Counsellor David D. Kpomakpor - Member
- 4) Counsellor Frank W. Smith - Member
- 5) Circuit Judge M. Wilkins Wright - Member
- 6) Counsellor David A. B. Jallah - Member
- 7) Counsellor Charles Walker Brumskine - Member
- 8) Counsellor Luvenia Ash-Thompson - Member (distant)

In 1998 the Canons and Law Review Committee presented a draft report to the Supreme Court. The Supreme Court held a five-day seminar with judges, magistrates, lawyers and law students as participants. Comments, discussions, contributions and recommendations made by the participants at the seminar were incorporated into the report. The Canons and Law Review Committee presented a second draft to the Supreme Court, also in 1998, for the Court's final consideration. After due consideration, the "Rules for Procedures in the Courts, Code for the Moral and Ethical Conduct of Lawyers and Judicial Canons for the Moral and Ethical Conduct of Judges" were declared effective and in full force as of January 22, 1999, replacing those rules which were in existence prior to that date.

We shall now proceed with the determination of the contro-versy now at hand.

On August 9, 1999, at 6:30 p.m. and 7:30 p.m. respectively, the Star Radio of Monrovia, Liberia included in its regular news broadcast the following news item:

"The District Attorney of Juarzon, Sinoe County has threatened a lawsuit against the resident judge. Johnson Noah wants Judge Logan Broderick to refund expenses for the treatment of an injury he sustained. Johnson Noah said he sustained the injury when he tried to stop a fight between Judge Broderick and a local magistrate. Our Sinoe correspondent said Judge Broderick and the magistrate fought last month in Greenville. He said the fight started when the magistrate rejected a guilty ruling against him by Judge Broderick. Our correspondent said the judge has left Sinoe to file the complaint with the Chief Justice."

In a letter dated August 30, 1999, and addressed to Judge Broderick, the Chief Justice requested him to give his observations and reaction to the said news story. Judge Broderick in a letter dated September 2, 1999 submitted his reaction and observations and we quote relevant portions thereof:

"Your Honour, I was very pleased and considered myself fortunate when I received your said request of August 9, 1999; because on the same August 9, 1999, I was approached by many acquaintances, prominent persons of Sinoe and in Monrovia, about said Star Radio news broadcast. They expressed their concern because they know that as a circuit judge, with court officers to maintain order in court and to protect the judge, I could not fight a magistrate as mischievously broadcasted against me by Star Radio.

...Your Honour, I sincerely contest that the aforesaid news broadcast on me is false and misleading....I further respectfully wish to prove that the whole broadcast by Star Radio on me is false and misleading, and that the Star Radio lacks the ethics and [sense of responsibility] expected of a radio station; and in this regard the Star Radio then and there, not having due regard for the authority, honour, dignity, and respect I am entitled to as resident circuit judge for the Third Judicial Circuit Court, Sinoe County, Republic of Liberia.

...It happened that sometime in July 1999, a complaint was filed before the Third Judicial Circuit Court, in Greenville, Sinoe County, by a defendant in a criminal case before Acting Stipendiary Magistrate Charles Seeboe of the Greenville Magisterial Court, in Greenville City, Sinoe County. Magistrate Seeboe was thereafter cited to appear before my court at a fixed time and date to answer in summary proceedings the complaint against him. Magistrate Seeboe, in keeping with said summons, appeared and filed his returns. At a certain stage of the hearing of the summary proceedings, and when Magistrate Seeboe was presenting his side of the case, he suddenly got angry and told the court to proceed with its final ruling. Time being far spent, the court then and there suspended the matter for ruling on the following day.

Then and there, Magistrate Seeboe became furious and demanded the clerk of court, Mayson Kumeh, to immediately give him copies of the last records of the minutes that the clerk was still closing, although I had not gotten my copy of the minutes/record due to the fact that the clerk was closing the minutes. The magistrate continued his clamorous show, and at the same time persons were passing from the front door of the temporary court room through the side door near which I had my bench and was sitting.

Seeing how persons were passing out of the side door and then entered again, I told the bailiff at the door to close the side door. Suddenly a man whom I was told later was district attorney for Juarzon, Sinoe County, forcibly pushed the door and entered the court room with rage and noise.

Seeing that the court bailiffs could not stop the ugly acts of both Acting Stipendiary Magistrate Charles Seeboe and the alleged district attorney for Juarzon, the probate clerk, Mrs. Amelia Dunbar, wasted no time in calling in a police lieutenant who was patrolling and who quieted the situation.

The court had been ordered adjourned when Magistrate Seeboe started his commotion in open court. On the following day after the call of the summary proceedings, which was assigned for ruling, the court asked Magistrate Charles Seeboe to show cause why he should not be held in contempt of court for his aforesaid misbehavior, but he presented no satisfactory defense. Then and there the court was satisfied that Acting Stipendiary Magistrate Charles Seeboe was liable in contempt of court for his acts . . . and was fined a certain amount to be paid within a definite time or else disciplinary action would be recommended against him to the Chief Justice of the Supreme Court of Liberia. Magistrate Seeboe, then and there, excepted to the court's judgment and prayed for an appeal which was

noted by court. The matter of the contempt was suspended, and thereafter the main matter of summary proceedings was proceeded with.

The Court upheld the complaint of the petitioner in the summary proceedings and ruling was given in his favor against the respondent, Acting Stipendiary Magistrate Charles Seeboe of the Greenville Magisterial Court, to which ruling there was no exception. The matter was then and there suspended. There was calm in court throughout the day of these two rulings.

As for the district attorney for Juarzon, Sinoe County, if he is the Johnson man mentioned by Star Radio, I did not know him until the time of said incident, that he had left his post in Juarzon, about thirty-five (35) miles from Greenville, and was wrongly practicing law in the Magisterial Court of Greenville, Sinoe County. Perhaps this is why he joined Acting Stipendiary Magistrate Charles Seeboe in the commotion aforesaid. I could not get the name of said district attorney from any at the time of said incident, and I had instructed the clerk of court to get his name to cite him before the court for contempt proceedings for his ugly action as aforesaid.

The facts are expressed in the minutes of court, and if Star Radio were sincere in its radio broadcasting, it could have also obtained its facts from the records from the clerk of court. Star Radio, like some other news media perhaps, is of the misconception that it can misuse with impunity the good name, honour and reputation of the resident circuit judge of the Third Judicial Circuit Court, Sinoe County, because of the poor facilities we have in our possession now to administer justice..."

The Chief Justice, Her Honour Gloria M. Musu-Scott, also directed the court administrator to request the acting stipendiary magistrate of the Greenville Magisterial Court, His Honour Charles B. Seeboe, and Mr. Johnson K. Noah, said to be the district attorney of Juarzon Statutory District, Sinoe County, to also send their respective observations and reactions into the Chambers of the Chief Justice.

The acting stipendiary magistrate of the Greenville Magisterial Court, in a letter dated September 30, 1999 informed the Chief Justice that the incident as reported by Star Radio did occur. We herein quote the relevant positions of the acting stipendiary magistrate's letter.

"Below are my observation and reactions of the said news cast of August 9, 1999 at 0630 and 0730 GMT, respectively:

On July 2, 1999, a writ of arrest was issued against one A. Bah Sayoo, defendant, of the City of Greenville, Sinoe County, for the crime of 'endangering the welfare of a child' as said writ was prayed for by the prosecution, led by the county attorney for Sinoe county, Attorney Albert C. Dweh.

The said writ was served on the defendant and returns made by the sheriff of the court. Defendant A. Bah Sayoo was brought before the court and was abreast of his constitutional rights to bail, continuance, lawyer, and not to say anything. He elected to request for continuance to consult a lawyer, which request was granted by the court. He also requested for bail and was placed on bail by entrusting him to one prominent member of his family under section 13.5 and was released to come to court the next day.

The next day, without going to the court for either preliminary examination or waiver of same, the said defendant went to the circuit court judge's house and filed a petition against me. A writ of summons for a summary proceeding was issued against me on July 6, 1999 growing out of the defendant's petition.

I appeared for the hearing of the petition on July 8, 1999 and without the petition being read to me in the court chamber session, the judge started to question me on the petition and ruled that I do not have the right to arrest the defendant for the crime of "endangering the welfare of a child" because said crime is not in the statute (please see section 16.4) of the New Penal Law of Liberia.

I excepted to the ruling of the judge on grounds that the trial was not held regularly. He refused to sign the bill of exception filed by me and became furious and left from his desk and collared me, and the following persons came to stop him not to attack me. They are Nathaniel Combay, David Sarpee, Joseph Jah, and Morris N. Koffa, who is defense counsel for Sinoe County, et al.

It was at this juncture that Johnson Noah, when he heard the noise, came from the county attorney's office in an attempt to intervene, but the resident judge, His Honour Logan Broderick, pushed the door open, which hit Johnson Noah on the mouth and got two of his teeth shaking and he sustained injuries in said mouth. The judge also uttered lots of abusive languages on all those that were present in the court room.

The county attorney who was present in his office next door also heard the noise from the court room and went on the scene and ordered his police officer assigned with him to calm down the situation that was developing in the court room. The police calmed the noise which came about as a result of the behavior of the resident judge, His Honour, Logan Broderick.

This was the situation that had developed on July 9, 1999 which brought about the publication of the said news story by the Star Radio on August 9, 1999, aired at 0630 and 0730 GMT, respectively.

Your Honour, it may be recalled that this is not the first time that the resident judge has attacked me physically. In the month of May 1998, Judge Broderick left the court room at the Administrative Building and walked downtown Greenville and attacked me in the Magisterial Court of Greenville, Sinoe County. This incident was promptly reported to your office for timely intervention.

Respectfully submitted:

Truly yours,

His Honour Charles B. Seeboe

ACTING STIPENDIARY MAGISTRATE,

GREENVILLE CITY MAGISTERIAL COURT

GREENVILLE CITY, SINOE COUNTY"

Also, Mr. Johnson K. Noah submitted his reaction and observations to the Chambers of the Chief Justice in a letter dated September 30, 1999. We quote the relevant portions hereunder:

"My observation and reaction to the said directive are as follows:

On July 9, 1999, I visited the office of the county attorney, Attorney Albert C. Dwell with my report from Juarzon District. While sitting in the county attorney's office, I heard a loud noise from the courtroom of the Third Judicial Circuit Court and proceeded to see what was happening in said court. While entering the court room, the resident judge, His Honour Logan Broderick, left from behind his desk in an attempt to attack Magistrate Charles B. Seeboe. I tried to intervene but while I was at the door, the said judge forcibly pushed the door which hit me on the month and injured me on the mouth and two of my teeth which are now shaking in my mouth. If it was not for my intervention, the resident judge would have hit the magistrate.

I left the courtroom and reported the incident to the county attorney, Attorney Albert Dweh, who was present in his office next door, and who sent his police officer assigned with him to calm the situation. The officer went and calmed the judge who was insisting to beat Magistrate Charles B. Seeboe. The county attorney went on the scene and also intervened, and appeased the judge.

The following day, the Star Radio correspondent heard the news in the city and requested me for an interview on said case. I granted his request and the interview was held. I showed him my mouth and my two teeth which were shaking in my mouth. What the Star Radio correspondent saw and heard from people who were present in the courtroom that day, which was the 9th of July 1999, was what was broadcast on the Star Radio of August 9, 1999 at 630 and 0730 GMT, respectively.

This is the substance of the Star Radio news broadcast of the said date.

Respectfully submitted:

Truly yours,

Johnson K. Noah

DISTRICT ATTORNEY/JUARZON"

STATUTORY DISTRICT/SINOE COUNTY"

The Chief Justice forwarded all three of the foregoing documents, along with a copy of the Star Radio's newscast to Associate Justice John Nathaniel Morris, Chairman of the Judicial Inquiry Commission, with the mandate to proceed in keeping with the Judicial Canons.

In a letter dated November 18, 1999, the Chairman of the Judicial Inquiry Commission informed the Chief Justice that "...His Honour Logan Broderick, Resident Circuit Judge, Third Judicial Circuit,... refused to submit to... the Commission" and raised the following legal issues:

1. That the Commission is illegally constituted;
2. That the Commission lacks jurisdiction over his person and office as a commissioned circuit judge;
3. That the Supreme Court of Liberia is not legally competent to create and constitute a Judicial Inquiry Commission
4. That in view of the above, he will not submit to the jurisdiction of the Commission.

The Chief Justice, upon being informed of the refusal of Judge Broderick to appear before the said Commission, wrote Judge Broderick a letter, dated November 30, 1999, stating that his failure to appear before the said Commission to ascertain the authenticity of the Star Radio news broadcast will leave the Chief Justice with no alternative but to suspend the said judge from office and to subsequently recommend the institution of impeachment proceedings against him.

Upon citation, His Honour Judge Logan Broderick, Acting Stipendiary Magistrate Charles Seeboe et al. appeared before the Commission on December 7, 1999. During the session, Judge Logan Broderick raised several issues, identical to the issues quoted hereinabove and contained in the Commission's letter of November 18, 1999, which issues were contained in a subsequent letter from the Commission, dated December 8, 1999, addressed to the Chief Justice. The Commission concluded its letter of December 8, 1999, as follows:

"Madam Chief Justice, the Commission submits that although Judge Logan Broderick did appear before it in obedience to your Honour's letter, reference #834/SCL-3/CJC/'99, dated November 30, 1999, and addressed to Judge Broderick, yet, in his submission before the Commission, Judge Broderick raised constitutional issues which the Commission considers itself incompetent to pass upon before proceeding with the investigation."

The Chief Justice then ordered the Clerk of the Supreme Court to place the report of the Judicial Inquiry Commission on the docket for consideration by this Court sitting en banc.

At the initial hearing of the matter, this Court appointed Counsellors Henry Reed Cooper and Frederick D. Cherue as Amici Curiae.

The paramount issue this Court must decide is, does the Supreme Court of Liberia have the authority to institute Judicial Canons for the governance of the behavior of judges and therein create a body to investigate violations thereof?

To answer this question, let us examine the oral and written arguments of Judge Broderick and his counsel, on the one hand, and that of the Amici Curiae on the other hand. Judge Broderick argued that the Supreme Court lacks the constitutional authority to establish canons to govern the behavior of judges and subsequently investigate them for any such violations. To support this argument Judge Broderick cited article 75 of the 1986 Constitution, which we herein quote:

“The Supreme Court shall from time to time make rules of court for the purpose of regulating the practice, procedures and manner by which cases shall be commenced and heard before it and all other subordinate courts. It shall prescribe such code of conduct for lawyers appearing

before it and all other subordinate courts as may be necessary to facilitate the proper discharge of the court's functions. Such rules and code, however, shall not contravene any statutory provision or any provisions of this Constitution.”

Article 75 of the Constitution, quoted above is clear and unambiguous. The article authorizes the Supreme Court to make rules and regulations to govern the practice of law and procedures in the courts of the Republic and also the ethical conduct of lawyers. The article does not prevent, prohibit or bar the Supreme Court from establishing administrative rules, regulations and guidelines to govern the behavior of judicial officials whose behavior tend either to enhance and sustain the image and integrity of the judiciary or bring the judiciary into disrepute, thereby eroding the effective administration of justice and public confidence in the judiciary.

Judge Broderick further argued that the Chief Justice did not have the authority to suspend a sitting judge from office. However, Judge Broderick did concede that "...If the Supreme Court is convinced that the alleged newscast aired by Star Radio about Judge Broderick, which form the basis of these proceedings, is correct and true, the Supreme Court should have recommended his impeachment by the Legislature..."

The amici curiae countered that the Supreme Court is an independent but coordinate branch of the government, which is vested with the judicial power of the Republic as enshrined in the Constitution. The exercise of this judicial power involves two types of authority (1) judicial authority and (2) administrative authority.

Pursuant to the New Judiciary Law, the Chief Justice, as administrative head of the judiciary "is responsible for the general supervision thereof." General supervision also includes and relates to the assignment of judges, financial and administrative support and the management and general supervision of all personnel of the judiciary. In short, the Amici Curiae argued that the Supreme Court has the duty and power to direct and manage the affairs of the Judicial Branch of government and in so doing has the authority to exercise control over the conduct and behavior of judges of subordinate courts, officers of court and other staff and employees of the Judiciary. The authority to exercise control over the conduct and behavior of judges also includes the power and authority to establish rules and regulation for judges and other personnel of the judiciary.

The amici curiae concluded in their written presentation that "...what we perceive is a total misconception of certain constitutional and legal concepts by Judge Broderick (and his counsel), viz independence of court, independence of judges, delegation doctrine, and separation of power..."

We shall now proceed to consider the foregoing arguments and advise among others.

It is with regrets and extreme reluctance that this Court confesses that a circuit judge does indeed have misconceptions about the legal and constitutional doctrine of separation of powers and the administrative authority of the Chief Justice and the Supreme Court. Judge Broderick and his counsel suggested to this Court during the oral arguments that in the event a need arose to investigate a commissioned judge, to determine whether or not to proceed with impeachment proceedings and/or prosecution, the practice in the past was that the appropriate authority of the Executive Branch would approach the Chief Justice. The Chief Justice would, in turn, order the judge to submit to the investigation by the Ministry of

Justice. This Court refuses to accept this argument. The argument suggests that the power as to whether or not to investigate a judge and subsequently determine whether or not to institute impeachment proceedings is vested in the Executive Branch of Government. This Court will not accept such a suggestion and totally disagrees and refuses to abdicate any portion of its administrative authority to the Executive Branch of Government. We are of the view that the acceptance of this argument is tantamount to acquiescence in the interference by the Executive Branch in the affairs of the judiciary, which would be a violation of the constitutional provision on the separation of powers, as stipulated in article 3 of the 1986 Constitution and Chapter 21.1(1) & (2) of the New Judiciary Law, which we herein quote:

"Liberia is a unitary sovereign state divided into counties for administrative purposes. The form of government is Republican with three separate coordinate branches: the Legislative, the Executive and the Judicial. Consistent with the principles of separation of powers and checks and balances, no person holding office in one of these branches shall hold office in or exercise any of the powers assigned to either of the other two branches except as otherwise provided in this Constitution; and no person holding office in one of the said branches shall serve on any autonomous public agency. LIB. CONST., art. 3 (1986).

Section 21.1 states of the administrative authority of the Judicial Branch as follows:

1. Responsibility of Chief Justice. The Chief Justice of the Supreme Court shall be the head of the Judiciary Branch of Government and he shall be responsible for the general administrative supervision thereof.

2. Judges, Clerks and Ministerial Officers. All judges, clerks and ministerial officers of the courts of Liberia shall be under the administration of the Judiciary Branch of the Government. "Judiciary Law, Rev. Code 15:21.1(1) & (2).

The Honourable Supreme Court of Liberia declared in the case *Sancea v. Republic*, [\[1932\] LRSC 10; 3 LLR 347](#) (1932), decided May, 1932, that it was unconstitutional for the Legislature to enact a statute granting power and authority to the President of Liberia to suspend judges from office. The Supreme Court stated further that any such statute is not only detrimental to the safety and happiness of the citizens of Liberia but also void and unconstitutional ab initio.

In view of the foregoing provision of the Constitution and statutory law, how can the judge and his counsel argue that the Supreme Court violated the constitutional principles of separation of powers by establishing Judicial Canons to govern the behavior of judges but yet suggest that judges are amenable to the Executive Branch. Clearly Judge Broderick is indeed confused. The members of this Court are convinced that the decision of whether or not to investigate a judge is an administrative determination which rests squarely with the administrative authority of the judiciary. Also, the administrative authority to suspend a judicial official from office rest in the Judicial Branch of Government. The Supreme Court holds that the administrative authority of the judiciary is under not only a statutory but also inherent constitutional duty to act when the behavior of judicial officials and other employees tend to bring the judiciary into disrepute, impair its image and integrity, and erode the public trust and confidence in this branch of the government.

To further display the confusion of Judge Broderick and his counsel, they argued in their written documents filed with the Court that "in the face of Article 71 of the Constitution, the

Judicial Inquiry Commission lacks the jurisdiction to investigate judges of courts of record for misconduct, gross breach of duty, etc. If the Supreme Court is convinced that the alleged newscast aired by Star Radio of Monrovia about Judge Broderick, which form the basis of these proceedings, is correct and true, the Supreme Court should have recommended his impeachment by the Legislature..." Also in the quoted document Judge Broderick says "... If the Supreme Court is convinced...." But the question is how does the Supreme Court become convinced? Does the Chief Justice, exercising his/her authority as the administrative head of the Judicial Branch make this determination subjectively without any standards and transparency? This Court thinks not.

This Court is of the firm belief that judicial officials must be accorded the due respect that their elevated positions deserve. Equally so, all judicial officials must understand that each is accountable and subject to scrutiny when the need arises. The decision to subject a judicial official to an investigation is an administrative determination and this Court is convinced that this determination should not be subjective but objective and transparent. This Court believes that to achieve objectivity and transparency, guidelines, standards and procedures must be established which will ensure a nature of due process and substantial predictability of the administrative determination of whether or not to recommend impeachment and/or prosecution of a judicial official; or yet, take lesser administrative punitive actions. This is the premise for the institution of the judicial canons and the creation therein of a board or committee to investigate, gather the facts and circumstances and advise the Chief Justice accordingly. The Chief Justice, in consultation with the Associate Justices, will then make a decision of what course of action to pursue. This is all within the exercise of the administrative authority of the judiciary. The Supreme Court has determined that as far as judicial officials are concerned the exercise of judicial administrative authority must be done in keeping with established guidelines, rules, standards and procedures. This is the course the Supreme Court has adopted to guide the Chief Justice in the exercise of the administrative authority to recommend the commencement of impeachment proceedings against a judicial official.

Interestingly, Judge Broderick concedes that the Supreme Court has the authority to recommend impeachment proceedings against sitting judges and to suspend such judges from office pending the outcome of the impeachment proceedings, but Judge Broderick failed to tell this Court which constitutional provision vests this authority in the Supreme Court. A review of the Constitution reveals that there is no such provision. Instead, these administrative actions, which include taking disciplinary actions against judicial officials, are included in the inherent administrative power and authority of the Judicial Branch of the Government. The constitutional principle of separation of powers does not and cannot authorize one branch of government to establish internal administrative rules, guidelines, standards and procedures for another branch in the exercise by the latter of its authority to make or take administrative decisions and actions. American Jurisprudence elaborates on the theory as follows:

"...In the exercise of the powers of Government assigned to them severally, the departments (branch) operate harmoniously and independently of each other, and the action of any one of them in the lawful exercise of its own powers is not subject to control by either of the others. Each department (branch) of Government must exercise its own delegated powers and unless otherwise limited by the Constitution, each exercises such inherent power as will protect it in the performance of its major duty; one department (branch) may not be controlled or embarrassed by another (branch) department unless the constitution so ordains. Indeed the

doctrine of separation of powers and the independence of each branch to carry out its constitutional function carries with it a responsibility to cooperate with the other branches to accomplish the purpose of each constitutional provision." [16 AM JUR 2d.](#), Constitutional Law, § 298. It is within the prerogative of the judiciary to submit administrative rules, regulations, standards, guidelines, and/or procedures to the Legislature for enactment. The Supreme Court has the inherent power and authority to establish administrative standards and rules, etc. and all officials and employees who are amenable to the judiciary shall be expected to be guided by such administrative rules, standards, etc.

Therefore, this Court concludes that by the authority of the inherent administrative powers of the Judicial Branch of government, as established by articles 3, 4, 65-67 of the Liberian Constitution, and chapter 21, section 21.1(1) & (2) of the New Judiciary Law, approved 1972, the judicial canons to govern the behavior of judges declared effective on January 22, 1999 by this Honourable Supreme Court remain in full force and effect.

Wherefore, and in view of the foregoing, the Clerk is hereby ordered to send a mandate to the Judicial Inquiry Commission ordering the said Judicial Inquiry Commission to proceed with the investigation of the news broadcast made by Star Radio herein quoted, and that Judge Broderick is hereby ordered to submit to the said investigation upon citation. Costs are disallowed. And it is hereby so ordered.

Report upheld.