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September 13, 2024

By Hand Delivery

Heather J. Baker, Clerk
Supreme Court of New Jersey, Office of the Supreme Court Clerk
Richard J. Hughes Justice Complex
25 Market Street, 8th Floor, North Wing
Trenton, New Jersey 08625

**Re: IMO Douglas H. Hurd, A Presiding Judge of the Superior Court
Supreme Court No. 089838
D-5-24**

Dear Ms. Baker:

This firm represents Respondent, Hon. Douglas H. Hurd, P.J.Cv., in this matter. Enclosed for filing please find the original and nine copies of the following documents:

1. Submission in Response to the Supreme Court's Order entered September 6, 2024;
2. Request for Oral Argument; and
3. Certification of Filing and Service.

Please stamp one copy of the enclosed documents as "filed" and return the filed copy in the self-addressed, stamped envelope provided. Thank you.

Respectfully submitted,



Thomas P. Scrivo

Encls.

cc: Maureen G. Bauman, Esq. ACJC Presenter
Daniel J. Burns, Esq., ACJC Presenter
Candace Moody, Esq. ACJC Executive Director

SUPREME COURT OF NEW JERSEY
D-5 September Term 2024
No. 089838

IN THE MATTER OF	:	DISCIPLINARY ACTION
DOUGLAS H. HURD,	:	
A PRESIDING JUDGE OF THE	:	ON ORDER BY THE SUPREME
SUPERIOR COURT	:	COURT OF NEW JERSEY
	:	DATED SEPTEMBER 6, 2024
	:	
	:	DOCKET NO.: ACJC 2023-140
	:	
	:	Before: Supreme Court of New
	:	Jersey Advisory Committee on
	:	Judicial Conduct
	:	
	:	ORAL ARGUMENT REQUESTED
	:	

BRIEF ON BEHALF OF RESPONDENT HON. DOUGLAS H. HURD, P.J.Cv.

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TABLE OF ABBREVIATIONS

Emails and Policy Documents

“**Ref. Email**” = Acting Administrative Director Glenn A. Grant’s referral, by email, dated January 24, 2023, to the ACJC, subject line – “Allegations of Potential Misconduct by Judge Douglas Hurd”

“**Remote Work Policy**” = August 26, 2021 Broadcast Message and Remote Work Program for Judiciary Staff – effective September 7, 2021 from Chief Justice Rabner and Acting Administrative Director Grant

“**Law Clerk Policy**” = April 19, 2024 Memorandum issued by Supreme Court to all judges and justices in New Jersey related to update to law clerk remote work policy

“**Revised Remote Work Policy**” = April 22, 2024 Memorandum issued by Acting Administrative Director Glenn A. Grant revising the remote work policy for law clerks and judges’ secretaries

Interview Transcripts

1T = Laurie Conway, Judicial Secretary – April 12, 2023

2T = Respondent – Hon. Douglas H. Hurd, P.J.Cv.– April 28, 2023

3T = Hon. Robert T. Lougy, A.J.S.C. – July 6, 2023

4T = Nancy Nocella, Civil Division Team Leader – March 22, 2023

PRELIMINARY STATEMENT

During the COVID-19 pandemic—a period in which the Judiciary, its law clerks, and secretaries worked remotely like most of the country’s workforce—L.C., the long-time, valued secretary of Respondent Hon. Douglas H. Hurd, P.J.Cv. (“Respondent”), moved out of state. With the move approved by the State, L.C. asked for Respondent’s permission to periodically work remotely upon returning to the courthouse post-pandemic. Concerned over losing such a dedicated team member – and recognizing L.C.’s ability to remain productive in her role – Respondent granted L.C.’s request. Unbeknownst to Respondent, however, judges did not have the discretion to grant such a request under the remote work policy in effect at the time. That said, on the periodic days L.C. worked remotely, Respondent’s chambers continued to exceed expectations. Indeed, no evidence exists in the record that any litigant, attorney, or member of the public was adversely impacted by L.C.’s remote work. Further, when Respondent’s Assignment Judge notified him of the alleged policy violation—an issue that he characterized as a mere “management disagreement”—Respondent immediately instructed L.C. to return to work at the courthouse, which she did.

As will be demonstrated below, no scenario exists where the above set of facts rises to the level of a violation of the Code of Judicial Conduct, and therefore, the Court should dismiss the Complaint.

PROCEDURAL HISTORY

On January 30, 2024, the Advisory Committee on Judicial Conduct (“ACJC”) filed a complaint against Respondent under Docket Number ACJC 2023-140, alleging Respondent violated the following Canons of the Code of Judicial Conduct: (i) Canon 1, Rule 1.1, requiring judges to observe high standards of conduct to preserve the integrity and independence of the Judiciary; (ii) Canon 2, Rule 2.1, requiring judges to avoid impropriety and the appearance of impropriety; and (iii) Canon 2, Rule 2.3(A), requiring judges to avoid lending the prestige of their office to advance the private interests of others. (Complaint (“Compl.”)). On February 12, 2024, Respondent filed his Answer and following discovery, a remote hearing was scheduled for July 31, 2024. Respondent requested an in-person hearing, which was granted and scheduled for December 18, 2024.

On September 6, 2024, this Court asserted plenary jurisdiction over this matter under Article VI, Section 2, Paragraph 3 of the New Jersey Constitution, and ordered that all pending ACJC proceedings, including the ethics hearing, be stayed. The Court further ordered that the ACJC provide the existing record and directed the parties to provide written submissions.

RELEVANT FACTS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1994. (Compl. ¶ 1; Answer (“Ans.”) ¶ 1). At all

times relevant to this matter, Respondent served as a Presiding Judge of the Superior Court of New Jersey, assigned to the Civil Division in the Mercer Vicinage, a position he continues to hold. (Compl. ¶ 2; Ans. ¶ 2).

Beginning in March 2020, the work of the courts was done remotely in response to the COVID-19 pandemic. (Compl. ¶ 3; Ans. ¶ 3). The Judiciary instituted a remote work program (“Remote Work Policy”) effective September 6, 2021, which was the subject of a Broadcast Message to all Judiciary Staff on or about August 26, 2021. (Remote Work Policy). The Policy stated, “Except for judicial law clerks and judge’s secretaries, all Judiciary staff in good standing are eligible for remote work days, with managers to decide individual requests based on operational need.” (Ibid.)

In late 2021, L.C., Judge Hurd’s longtime secretary, moved out of state, pursuant to an approved exemption from the residency requirement. (Compl. ¶ 14; Ans. ¶ 14). For some period, L.C. periodically worked remotely with Respondent’s authorization. (Compl. ¶ 15; Ans. ¶ 15). The remote work was primarily allowed for weather-related issues and was limited and periodic, amounting to no more than three to six days per month. (Ans. ¶ 17; 1T17:9-18). Respondent knew L.C. was excluded from the Remote Work Policy, but he believed he had the discretion as her manager to allow for periodic remote work. (Compl. ¶ 16; Ans. ¶ 16). If not for L.C.’s demonstrated work ethic and proven track record of accessibility, Respondent

expressed that he would not have authorized her periodic remote work. (2T16:22 to 17:1, 17:6-13, 21:3-9). In December 2022, L.C.'s periodic remote work came to the attention of the Hon. Robert T. Lougy, A.J.S.C., and on January 3, 2023, Judge Lougy informed Respondent of the policy violation. (2T20:4-11). Respondent immediately instructed L.C. that she could no longer work remotely, and the behavior stopped. (Id. at 22:5-10). Although it is undisputed that L.C. stopped working remotely at this time, Acting Administrative Director of the Courts, Glenn A. Grant, J.A.D. (Ret.), referred these and other more serious allegations of supposed judicial misconduct to the ACJC for review on January 24, 2023. (Ref. Email).

On or about April 19, 2024, Chief Justice Stuart Rabner issued a memorandum directed to the Judiciary indicating that henceforth law clerks would be permitted to work remotely four days per month with advance approval from their judge. On April 22, Judge Grant issued a memorandum which also extended that remote policy to all judges' secretaries.

LEGAL ARGUMENT

POINT I

RESPONDENT'S CONDUCT DID NOT VIOLATE THE CODE OF JUDICIAL CONDUCT

At the outset, this matter began as an investigation into much more serious allegations, whether Respondent violated certain judicial canons based on the falsification of timekeeping records. According to the initial referral by Acting

Director Grant, Respondent permitted L.C. to work remotely and to perpetuate this plan, Respondent supposedly signed timesheets falsely indicating that L.C. was working in chambers each day. Further still, the initial referral claimed (without basis) that Respondent involved administrative staff, as surrogates, in this purported falsification scheme. A thorough investigation, however, revealed no such conduct. In fact, interviews with critical witnesses, including Respondent, L.C., Judge Lougy, and others confirmed that Respondent never personally approved L.C.'s timesheets. (2T8:7 to 9:8; 4T:6-8). In fact, the investigation revealed that it was Civil Division staff (not Judges) who regularly approved time sheets for the Judges (including Judge Lougy) without their involvement. (4T6:13 to 7:10; 3T30:24 to 31:3). Based on the investigation, the ACJC Complaint asserts only one count against Respondent, claiming that he abused the power and prestige of his judicial office for the benefit of his secretary by permitting her to work remotely in violation of Judiciary policies prohibiting remote work for judges' secretaries. (Compl. ¶ 18). In short, because the more serious allegations in Acting Director Grant's referral proved to be unfounded, the Complaint does not allege the falsification of any timekeeping records—a far cry from where this investigation began.

As for the remaining allegations of the Complaint, the record demonstrates that Respondent's conduct does not violate the Code of Judicial Conduct. Like the Complaint here, the complaints in In re Isabella, In re Palmer, and In re DeBello,

charged members of the Judiciary with violations of Canon 1, Rule 1.1 and Canon 2, Rules 2.1 and 2.3(A) of the Code of Judicial Conduct. In those three cases, however, the underlying conduct was far more egregious and impactful on the reputation of the Judiciary compared to the “management disagreement” which sparked this investigation.

In In re Isabella, Judge Isabella received an admonishment after he used his judicial stationery to seek contributions from his local board of education to pay for his stepson’s summer camp. 217 N.J. 82, 82 (2014) (Adopting Presentment of ACJC 2011-361). Additionally, Judge Isabella also assisted his wife in the preparation of a lawsuit against the father of her children. Ibid. In In re Palmer, Judge Palmer appeared at the Somerset County Courthouse to discuss his child support obligations and the emancipation of his child. 235 N.J. 446, 446 (2018) (Adopting Presentment of ACJC 2017-229). Throughout his conversations with court staff, he repeatedly mentioned his status as a judge, noting that he sat in Ocean County, and made inappropriate comments to court staff. Ibid. As for Judge DeBello, he was censured for an inappropriate personal relationship with a former law clerk where they discussed their feelings for one another and exchanged other unfitting messages through Judge DeBello’s judiciary email. 201 N.J. 147, 147 (2009) (Adopting Presentment of ACJC 2008-116). Further, Judge DeBello assisted the former clerk in trying to secure employment, including making various calls to the Deputy Public

Defender for the Northwest Region of the Office of the Public Defender. Ibid. Critically, Judge DeBello's Assignment Judge met with Judge DeBello to discuss the inappropriate messaging, but the conduct persisted. Ibid.

The facts of these three cases could not be more inapposite from the allegations here. First, although Respondent had knowledge of the policy when he authorized L.C.'s remote work, he only did so based on an honest belief that judges could exercise such discretion to effectively manage their chambers. (2T16:22 to 17:5). Anecdotally, it is difficult to imagine that Respondent was the only judge in a judiciary of more than 400 Superior Court judges to allow a secretary or clerk to periodically work remotely. Even Judge Lougy acknowledged that "other judges or secretaries worked remotely historically." (3T36:19-23).

Second, by authorizing L.C.'s remote work, Respondent did not threaten the integrity or impartiality of the Judiciary, nor did he advance the private interests of L.C. in any substantial way. The record is devoid of any evidence that L.C.'s productivity or performance suffered while working remotely. In fact, the evidence suggests that L.C. was more productive and just as accessible during her remote work. (1T33:18-24, 34:15 to 35:18; 2T12:16 to 13:2). According to Judge Lougy, Respondent is responsible for approximately "60 percent of the division's motion load every cycle," and the uploading of all Orders and other administrative work associated with that volume is borne by L.C. (3T30:6-16). This is no small feat.

According to Civil Division Team Leader Nancy Nocella, L.C.'s remote work "never affected our workflow. . . . I never had to pick up the phones, upload orders . . . she took care of everything it was like she was working, everything." (4T11:7-15; see also 4T17:2-5). As emphasized by Respondent, had L.C.'s performance suffered, he never would have allowed her to work remotely, but in fact, L.C.'s output only increased:

I just want that to be crystal clear that she was never out there skiing or gallivanting. I send her stuff all day long and whether it's 7:30 in the morning, I'm the first one here at work, one of the last one's to leave, she's responding.

[2T12:16-20, 16:25 to 17:1.]

Third, as soon as Judge Lougy notified Respondent that L.C.'s periodic remote work might be violative of Judiciary policy, corrective action was taken. (Id. at 22:5-10). Unlike in In re DeBello, where the conduct continued, Respondent immediately informed L.C. that she could no longer work remotely, and L.C. worked from the courthouse every day thereafter.

Tellingly, after notifying Respondent that his conduct violated Judiciary policy, Judge Lougy did not refer this matter to the ACJC. Instead, Judge Lougy identified this situation as a "management disagreement," noting that he has "the highest respect for [Respondent] as a Judge." (3T19:7-10). Accordingly, it cannot be credibly argued that Respondent's conduct rises to the level of a violation of the Code of Judicial Conduct.

POINT II

THE JUDICIARY’S RECENT SHIFT IN POLICY CONFIRMS THE IMPORTANCE OF REMOTE WORK AND THE ROLE OF JUDICIAL DISCRETION

In the time between the ACJC filing its Complaint and this Court’s assertion of plenary jurisdiction, the landscape—and acceptance—of remote work in the Judiciary has changed significantly. On April 19, 2024, this Court issued a memorandum to all judges and justices in New Jersey modifying the remote work policy for law clerks. See Law Clerk Policy. The Court explained that while law clerks appreciate working side-by-side with their judges, they also value the practical advantages of remote work. Id. at 2. Recognizing the evolving landscape of today’s workforce, this Court acknowledged that modification of the remote work policy was necessary to ensure a sustainable law clerk applicant pool. Id. at 2-3. Just one business day later, on April 22, Acting Director Grant took it one step further, announcing that effective May 1, 2024, eligible judicial law clerks and secretaries have the option to work remotely for up to four days per month, subject to judicial approval. (See Revised Remote Work Policy).

These policies acknowledge the importance of remote work in the courts and properly place the discretion over this issue in the hands of judges. Critically, the April 22 memorandum issued by Acting Director Grant provides for the very discretion exercised by Respondent, stating, “The judge shall have discretion to

determine operational needs and whether a judicial law clerk or secretary can work remotely at any given time.” Id. at 2. The memorandum further provides that a judge’s secretary may work remotely if, among other things, the secretary is “able to focus on work without unreasonable distractions,” “can provide an appropriate alternate work site that includes privacy,” and can “maintain confidentiality.” Id. at 3. As demonstrated by the record, there is no evidence that L.C.’s productivity, responsiveness, or ability to maintain confidentiality waived during the discrete six-month period that she was permitted to work remotely. Accordingly, by virtue of this updated Judiciary policy—and the pronouncement by this Court as to the importance of remote work in our changing workforce—the Complaint against Respondent should be dismissed.

CONCLUSION

For the reasons set forth herein, Respondent respectfully requests that the Court dismiss the ACJC Complaint. If this matter is not dismissed, it is respectfully submitted that Respondent is entitled to a full hearing pursuant to Rule 2:15-14 prior to the imposition of any discipline.

O’TOOLE SCRIVO, LLC
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Hon. Douglas H. Hurd, PJ.Cv.

By: 
Thomas P. Scrivo

Dated: September 13, 2024

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IN THE MATTER OF
DOUGLAS H. HURD,
A PRESIDING JUDGE OF
THE SUPERIOR COURT

SUPREME COURT OF NEW JERSEY

Supreme Court No. 089838

Disciplinary Action

D-5-24

ON ORDER BY THE SUPREME

COURT OF NEW JERSEY

DATED SEPTEMBER 6, 2024

DOCKET NO.: ACJC 2023-140


Before: Supreme Court of New Jersey

Advisory Committee on Judicial Conduct

REQUEST FOR ORAL ARGUMENT

Respondent Douglas H. Hurd, P.J.Cv., through his counsel, O'Toole Scrivo, LLC, respectfully requests oral argument in the above-captioned matter.

O'TOOLE SCRIVO, LLC

By: 
Thomas P. Scrivo

Dated: September 13, 2024

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DATED SEPTEMBER 6, 2024

DOCKET NO.: ACJC 2023-140

Before: Supreme Court of New Jersey

Advisory Committee on Judicial Conduct

**CERTIFICATION OF FILING
AND SERVICE**


I hereby certify that, on the date set forth below, I caused to be served the original and nine copies of Respondent Hon. Douglas H. Hurd, P.J.Cv.'s: (1) Submission in Response to the Supreme Court's Order entered September 6, 2024; (2) Request for Oral Argument; and (3) this Certification of Service, all by hand delivery to:

Heather J. Baker, Clerk
Supreme Court of New Jersey, Office of the Supreme Court Clerk
Richard J. Hughes Justice Complex
25 Market Street, 8th Floor, North Wing
Trenton, New Jersey 08625

I further certify that, on the date set forth below, I caused to be served a copy
of the foregoing documents by electronic mail to:

Daniel J. Burns, Esq. and Maureen G. Bauman, Esq.
Advisory Committee on Judicial Conduct
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I hereby certify that the foregoing statements made by me are true. I am aware
that if any of the foregoing statements made by me are willfully false, I am subject
to punishment.


Thomas P. Scrivo

Dated: September 13, 2024