SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2017-059

IN THE MATTER OF WILFREDO BENITEZ JUDGE OF THE MUNICIPAL COURT	**PRESENTMENT**

The Advisory Committee on Judicial Conduct (the "Committee" or "ACJC") hereby presents to the Supreme Court its Findings and Recommendation in this matter in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's findings demonstrate that the charges set forth in the Formal Complaint issued against Wilfredo Benitez, Judge of the Municipal Court ("Respondent"), which relate to Respondent's inappropriate use of his judicial office along with his use of profane language directed at New Jersey State Troopers, have been proven by clear and convincing evidence. As a result of these findings, the Committee respectfully recommends that Respondent be publically censured for his misconduct.

I. PROCEDURAL HISTORY

This matter was initiated after the Committee received a referral letter dated November 16, 2016 from Amy K. DePaul, Trial

Court Administrator for the Essex Vicinage. P1. Annexed to the referral letter was a copy of a driving while intoxicated ("DWI") complaint issued against the Respondent on November 12, 2016 by New Jersey State Trooper Justin Kearns, as well as a copy of Respondent's completed "Judge's Personal or Family Member Involvement in Litigation Report." Ibid. Respondent was formally charged in Teaneck Township Municipal Court with committing the offense of operating a motor vehicle under the influence of liquor or drugs in violation of N.J.S.A. 39:4-50.

The Committee conducted an investigation into this matter and, as part of that investigation, obtained documentation from the New Jersey State Police, including the "Drinking Driving Report," "Drinking Driver / Operator Questionnaire," "Alcohol Influence Report Form," (P-4) and a certified copy of the dashboard camera video filmed from a camera mounted in the police vehicle that captured the events of the early morning of November 12, 2016 (P-5).

The Committee monitored the processing of the DWI charge against Respondent. On May 11, 2017, after presiding over the trial, the Honorable Roy F. McGeady, P.J.M.C. of the Bergen Vicinage, found Respondent "not guilty." The court held that the State did not prove beyond a reasonable doubt that Respondent operated a motor vehicle while under the influence of an intoxicant. The "not guilty" finding was made after Judge McGeady

excluded the results from the breathalyzer (i.e. Alcotest 7110 MK111-C) because of the New Jersey State Trooper's noncompliance with proper protocol for the testing. Specifically, the officer failed to ensure that the pre-test monitoring period for an accused person was uninterrupted for the required length of time. As a result of the officer's failure to comply with established procedure for proper administration of the test, the results were deemed inadmissible at trial, as it could not be found that the results were adequately reliable. Therefore, the State was limited to prosecuting its case based on observational evidence only, which was found to be insufficient for the State to sustain its burden of proof.

By way of letter dated August 24, 2017, the Committee requested that Respondent provide written comments concerning the propriety of his conduct on the early morning of November 12, 2016, which included his inappropriate interaction with New Jersey State Troopers as evidenced by his reference to his judicial position, his requesting from them a "courtesy," and his belligerent use of vulgar, false, and threatening language directed towards law enforcement. See P-2.

In response, Respondent provided a letter to the Committee dated August 31, 2017. See P-3. Therein, Respondent addressed "the propriety of his words and actions." See P-3 at 1. First, he claimed that his request for a courtesy "pertained not to being

charged with DWI, but rather the physical act of being handcuffed, patted down and Mirandized." Id. at 2. Furthermore, Respondent also stated "that [he] took umbrage at being treated like a common criminal. . . ." Ibid. Additionally, Respondent acknowledged that "[w]hile the imbibing of alcohol and being awakened from a deep slumber no doubt influenced [his] appearance, words and acts, in the end [he] hold[s] [himself] accountable." Ibid.

On January 24, 2018, the Committee issued a Formal Complaint against Respondent, charging him with having engaged in conduct which violates Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct as a result of his use of profanity directed towards New Jersey State Troopers, his multiple references to his judicial office and his request for preferential treatment.

Respondent filed a "Verified Answer" to the Committee's Formal Complaint on February 9, 2018, wherein Respondent admitted certain factual allegations, offered clarification regarding some allegations, denied others and denied violating the cited Canons of the Code of Judicial Conduct.

Pursuant to Rule 2:15-13(a), the Presenter, by way of letter dated March 6, 2018, provided to Respondent, through counsel, a copy of all discovery that would be relied upon to sustain the disciplinary charges asserted in the Formal Complaint.

On May 9, 2018, the Presenter and Respondent, through counsel, filed with the Committee their agreed upon Stipulations regarding the salient facts under consideration in this matter.

The Committee convened a Formal Hearing at the Richard J. Hughes Justice Complex on May 23, 2018. Respondent appeared, with counsel, and offered testimony for mitigation purposes and in defense of the asserted disciplinary charges. No witnesses were called, as the Presenter and Respondent agreed by way of stipulations to all material facts. Exhibits were offered by the Presenter and Respondent, all of which were admitted into evidence. See Presenter's Exhibits P-1 through P-6; see also Respondent's Exhibits R-1 through R-2. After carefully reviewing all of the evidence, the Committee makes the following findings, supported by clear and convincing evidence, which form the basis for its recommended discipline.

II. FINDINGS

A. Undisputed Facts

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1993. See Formal Complaint and Verified Answer at ¶1. At all times relevant to this matter, Respondent served as a part-time judge in the Municipal Courts of the City of East Orange and the Township of Belleville, positions he continues to hold. Id. at ¶2.

On November 12, 2016, at 2:13 A.M., two New Jersey State Troopers found Respondent asleep in the front seat of his motor vehicle, which was parked in the shoulder of the westbound side of Interstate Route 80 in the Township of Teaneck, Bergen County, New Jersey. Stipulations[1] at ¶¶3-4. At that time, New Jersey State Troopers Justin Kearns and Danny Kim were on patrol in the Teaneck area and noticed the vehicle parked in the shoulder. Ibid. The vehicle's hazard lights were flashing. See P-5. Upon approaching the vehicle and after physically shaking Respondent to wake him up, Trooper Kearns asked Respondent "what's going on?" P-6 at 2:24. Respondent, evidently disoriented from having been woken up, advised Trooper Kearns that he was going home. P-6 at 2:25. During the encounter, Respondent advised law enforcement officers that he was dropping his daughter off at school, but later advised that he was dropping his son off at school. Trooper Kearns then directed Respondent to step out of his car and to keep his hands at his side. P-6 at 3-4. In response to Trooper Kearns asking Respondent where he lived and where he was coming from, Respondent stated "I'm a judge." P-6 at 4:9. When asked why he was parked on the

[1] There are some minor and immaterial discrepancies between the language contained in the Stipulations agreed to by Presenter and Respondent and the language contained in the "Transcript of NJSP Video Stop" admitted into evidence as Exhibit P-6. In dealing with any inconsistencies between the language used in the Stipulations and that of the Transcript, the Committee has decided, in fairness to Respondent, it will defer to and rely upon the language contained in the Stipulations.

side of the road in the shoulder, Respondent replied that the officer had "asked [him] to pull over." P-6 at 4:19-22. Thereafter, Trooper Kearns asked Respondent whether he had anything to drink or had taken any drugs before he had driven his vehicle or since he pulled over. See P-4; See P-5; Stipulations at ¶5. Respondent replied to Trooper Kearns's questions by answering, "not at all, sir." P-6 at 5:3-15.

Next, Trooper Kearns performed field sobriety tests with the Respondent, including the "walk and turn" test and the "one leg stand" test. P-6 at 6; See P-4 at 2-3. Respondent's performance on the field sobriety tests, along with the odor of alcohol emanating from the Respondent's breath, caused Trooper Kearns to place the Respondent under arrest for driving while intoxicated. Stipulations at ¶7; See P-4. Trooper Kearns retrieved his handcuffs, at which time Respondent objected to Trooper Kearns' use of same. Stipulations at ¶8. The following exchange occurred:

> **RESPONDENT**: I mean, what are you trying to do? I mean (indiscernible) University. I'm a judge, I mean, I'm not.
>
> **TROOPER KEARNS**: Okay, turn around.

Ibid. Then, Trooper Kearns told Respondent to stop moving because he was under arrest. The following exchange occurred:

> **TROOPER KEARNS**: You're under arrest right now.
>
> **RESPONDENT**: For what, sir?
>
> **TROOPER KEARNS**: For driving while intoxicated.

RESPONDENT: I'm driving . . . I'm driving . . .

TROOPER KEARNS: Stop.

RESPONDENT: What are you gonna do? I mean come on, really?

TROOPER KEARNS: I'm trying to fix your wrist so it...

RESPONDENT: Really?

TROOPER KEARNS: Stop moving.

RESPONDENT: Do what you have to do. I mean seriously.

TROOPER KEARNS: I'm trying to fix your wrist.

RESPONDENT: I'm not a fucking drug addict. I'm not a drunk. I can't believing you're doing this.

Id. at ¶9. Next, while Trooper Kearns was double locking the handcuffs, the following exchange took place:

TROOPER KEARNS: Stay right here. Hold on one second. Sir, Mr. Benitez. Hold on.

RESPONDENT: I'm not going to do anything, sir.

TROOPER KEARNS: We're just trying to lock this.

RESPONDENT: You know that. You know that. I'm a fucking judge. I would never do anything to hurt you, man. Come on.

TROOPER KEARNS: We're trying to lock the handcuffs so they don't get tighter when you sit.

RESPONDENT: You're wasting your time. You know you are.

TROOPER KEARNS: Okay.

RESPONDENT: You know you are.

Id. at ¶10. Respondent continued to object to Trooper Kearns' use of handcuffs and the exchange continued as follows:

> **RESPONDENT**: You're not going to give me any courtesy? None?
>
> **TROOPER KEARNS**: What courtesy?
>
> **RESPONDENT**: It really hurts, bro.
>
> **TROOPER KEARNS**: That's why we locked it so it wouldn't get tight on you. You were fighting us."
>
> **RESPONDENT**: I was fighting you? Really?

Id. at ¶11. Thereafter, Trooper Kearns advised Respondent of his Miranda warning. In response, Respondent stated, "[y]ou're wasting your time and you know it. I'll fight you. You know you're being a dick. I will fucking fight you." Id. at ¶12.

Thereafter, the Troopers transported Respondent in the backseat of the police vehicle to the New Jersey State Police Totowa Sub-Station, where Respondent voluntarily submitted to two Alcotest inspections for blood alcohol content. As explained in further detail above, on May 11, 2017, Respondent was found "not guilty" of driving while intoxicated as reflected on the Municipal Court of Teaneck's Notice of Disposition of same date.

B. Respondent's Defenses

Prior to the issuance of the Committee's Formal Complaint, Respondent communicated a portion of his original defense through

his August 29, 2017 written correspondence to the Committee concerning his behavior on the early morning of November 12, 2016. See P-3. Therein, Respondent specifically stated that he was "portrayed [in the Committee's August 24, 2017 letter requesting his written comments] as having been uncooperative with these officers and worse yet, having tried to avoid being charged with DWI by referring to [his] judicial office." Id. at 1; See P-2. He states that "[m]ost respectfully, nothing could be further from the truth." P-3 at 1. Respondent then stated that "[i]t was not until [he] was handcuffed, tightly, and patted down that [he] advised the Troopers of [his] judicial position - not in an attempt to avoid a possible DWI charge, but rather to express how unnecessary it was to search [him] and shackle [his] wrists." Id. at 2. Additionally, Respondent explained in his August 29, 2017 letter that he never interfered with the police officers' investigation, nor did he try to dissuade the officers from doing their jobs. See P-3. He expressed that by answering any and all questions asked of him, and by participating in the field sobriety tests administered, he was entirely cooperative with the officers throughout the events of November 12, 2016. Id.

In his Answer, Respondent again expressed that his intention in identifying himself as a judge was "to convey that the handcuffs were unnecessary since he was a [j]udge and he was not going to harm [the police officers] in any way." ¶12. Respondent also stated

that his reference to "courtesy" was intended only to apply to the officer's use of handcuffs. ¶13.

At the hearing, however, Respondent presented a defense that differed from his original defense. He claimed that the reason he referenced his judicial position to the officers was so that they were aware of his status as a "professional" so that they would not feel threatened by him. He expounded upon his defense by explaining that his intention was to allay any concerns that the officers may have had regarding their safety.

III. ANALYSIS

The burden of proof in judicial disciplinary matters is clear-and-convincing evidence. Rule 2:15-15(a). Clear-and-convincing evidence is that which "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence, so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts in issue." In re Seaman, 133 N.J. 67, 74 (1993) (citations and internal quotations omitted).

In this judicial disciplinary matter, Respondent has been charged with violating Canon 1, Rule 1.1, and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct in three material respects: (1) using profane language and directing it towards New Jersey State Troopers Kearns and Kim during Respondent's arrest,

which impugned the integrity of the Judiciary; (2) identifying himself as a judge to law enforcement in an attempt to use the power and prestige of his judicial office to advance his private interests; and (3) requesting preferential treatment during his arrest when he asked whether he would receive any "courtesy" from the officer.

We find, based on our review of the significant evidence of record, that these asserted disciplinary charges have been proven by clear and convincing evidence and as such, Respondent violated the cited Canons of the Code of Judicial Conduct. Consequently, Respondent is subject to discipline.

Respondent is charged with the duty to abide by and enforce the provisions of the Code of Judicial Conduct. Rule 1:18 ("It shall be the duty of every judge to abide by and to enforce the provisions of the Rules of Professional Conduct, the Code of Judicial Conduct and the provisions of R. 1:15 and R. 1:17.")

Canon 1, Rule 1.1, requires judges to "participate in establishing, maintaining and enforcing, and . . . [to] personally observe, high standards of conduct so that the integrity, impartiality and independence of the judiciary is preserved."

Canon 2, Rule 2.1, requires judges to "act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and . . . [to] avoid

impropriety and the appearance of impropriety." As the Commentary to Canon 2, Rule 2.1 explains:

> Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

Code of Judicial Conduct.

This Commentary emphasizes the special role that judges play in our society and the significance of their public comportment. "[J]udges have a special responsibility because they are 'the subject of constant public scrutiny;' everything judges do can reflect on their judicial office. When judges engage in private conduct that is irresponsible or improper, or can be perceived as involving poor judgment or dubious values, '[p]ublic confidence in the judiciary is eroded.'" In re Blackman, 124 N.J. 547, 551 (1991). As recognized by our Supreme Court, adherence to this principle is of the utmost importance. In re Santini, 126 N.J. 291, 298 (1991); see also In re Murray, 92 N.J. 567, 571 (1983); In re Hardt, 72 N.J. 160, 166-167 (1977).

Canon 2, Rule 2.3(A) prohibits a judge from lending the prestige of the judicial office to advance "the personal or economic interests of the judge . . . ." As the Commentary to Canon 2, Rule 2.3 explains:

> It is improper for judges to use or attempt to use their position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with others, such as persons in official positions and members of the public.

Code of Judicial Conduct.

In the instant matter, the evidence presented demonstrates, clearly and convincingly, that Respondent failed to conduct himself in a manner consistent with the above referenced high ethical standards. Respondent's conduct constitutes significant violations of the Code of Judicial Conduct for which severe public discipline is warranted. We find that Respondent's reference to his judicial office to law enforcement officers constitutes an affront to the ethical precept that no one is above the rule of law.

As our Supreme Court made clear almost two decades ago, those fortunate enough to hold judicial office are bestowed with tremendous power "on the condition that [they] not abuse or misuse it to further a personal objective." In re Samay, 166 N.J. 25, 43 (2001) Indeed, each judge, upon assuming the bench, takes an oath to "'faithfully, impartially and justly perform all the duties' of judicial office." Ibid. (citing N.J.S.A. 41:1-3).

First, in light of the evidence, we simply cannot accept Respondent's initial explanation that he only referenced his judicial office for the purpose of obtaining some sort of relief

from the apparently painful handcuffs used by law enforcement officer. This flimsy explanation is flatly contradicted by his earlier reference to his judicial position, long before his actual arrest. Specifically, prior to even the administration of the field sobriety tests, Respondent stated "I'm a judge." See P-6, 4:9. It also is clear to this Committee that Respondent failed to appreciate that his initial defense constitutes, by itself, an admission of a violation of the Code of Judicial Conduct, as he sought preferential treatment in connection with his being tightly handcuffed by virtue of Respondent's capacity as a jurist.

Similarly, we find Respondent's explanation at the Formal Hearing concerning his rationale for referencing his position as a jurist deficient. If Respondent's purpose in making known to the police officers that he was a "professional" and thus, should not be perceived as a significant risk of harm to the officers' safety, Respondent could just as easily have identified himself as a lawyer instead. Therefore, we find Respondent's after-the-fact rationale to be an insufficient explanation for identification to law enforcement of Respondent's judicial office.

Having concluded that Respondent violated Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct, the sole issue remaining is the appropriate quantum of discipline. In our consideration of this issue, we are mindful of the primary purpose of our system of judicial discipline, namely

to preserve the public's confidence in the integrity and independence of the judiciary, not to punish an offending judge. In re Seaman, supra, 133 N.J. at 96 (1993). Relevant to this inquiry is a review of both the aggravating and mitigating factors that may accompany judicial misconduct. Id. at 98-100. The aggravating factors to consider when determining the gravity of judicial misconduct include the extent to which the misconduct demonstrates a lack of integrity and probity, a lack of independence or impartiality, misuse of judicial authority that indicates unfitness, and whether the conduct has been repeated or has harmed others. Id. at 98-99.

Factors considered in mitigation include the length and quality of the judge's tenure in office, the judge's sincere commitment to overcoming the fault, the judge's remorse and attempts at apology, and whether the inappropriate behavior is susceptible to modification. See In re Subryan, 187 N.J. 139, 154 (2006). In respect of any mitigating factors, the record before us includes 11 character letters submitted by attorneys on behalf of the Respondent. We recognize and commend the Respondent's service on the bench in multiple municipal courts, including at various times the City of Bloomfield, City of Belleville, and City of East Orange, since early 2014. We also note that Respondent's disciplinary history with the Committee is unblemished. Furthermore, Respondent's testimony at the Formal Hearing

demonstrated not only his sincere feelings of remorse and contrition, but also a commitment to ensuring this sort of behavior remains an isolated incident with no likelihood of repetition.

The aggravating factors in this matter are significant. Respondent's misconduct in this instance has been aggravated by the indecent manner in which he behaved on November 12, 2016 when he abused his judicial office. His excessive use of threatening and insulting language directed at law enforcement officers during the incident constitutes an additional aggravating factor. Respondent, multiple times, challenged the arresting officers and told them he would fight them, and also continuously disrespected them through his inappropriate use of degrading and childish insults. Moreover, he provided law enforcement with false information when he misreported to them the location from where he was coming. At the Formal Hearing, Respondent advised that on November 11, 2016, the night immediately preceding the early morning incident, he was visiting with friends in New York. Importantly, he again provided false information to police officers when, on multiple instances, he denied having consumed any alcohol that night. He conceded in his letter of August 31, 2017 and at the Formal Hearing that he did in fact consume alcohol by stating that had "a few drinks" earlier that evening.

Indeed, we find that these aggravating factors demonstrated during Respondent's objectionable behavior render his abuse of the

judicial office more egregious than that of prior judicial disciplinary matters involving solely the misuse of the judicial office. See In re Inacio, 220 N.J. 569 (2015)(reprimanding judge for referencing his judicial office while using his judicial stationery to intervene in a juvenile matter concerning a municipal councilman's daughter); In re Isabella, 217 N.J. 82 (2014)(admonishing judge for using his judicial stationery to intervene in a school board matter involving his girlfriend's child); In re Rivera-Soto, 192 N.J. 109 (2007)(censuring the Justice for engaging in a course of conduct that created the risk that the prestige and power of his office might influence and advance his son's private interests); In re McElroy, 179 N.J. 418 (2004) (reprimanding a municipal court judge for giving a friend who was a defendant in a traffic case a message on his business card to hand to the municipal prosecutor requesting a downgrade of a given charge); In re Sonstein, 175 N.J. 498 (2003) (censuring municipal court judge for writing a letter on judicial letterhead to another municipal court judge about his parking matter pending before that judge); In re Murray, 92 N.J. 567 (1983) (reprimanding a municipal court judge for sending a letter on behalf of a client to another municipal judge in which he identified his judicial office); In re Anastasi, 76 N.J. 510 (1978) (reprimanding a municipal court judge for sending a letter on behalf of a former

client to the New Jersey Racing Commission on his official stationery).

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be publically censured for his conduct violative of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct. This recommendation takes into account the seriousness of Respondent's ethical infractions and both the aggravating and mitigating factors present in this case, which justify the quantum of discipline recommended.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

July 31, 2018

By: Virginia A. Long
Virginia A. Long, Chair