

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2017-229

IN THE MATTER OF :
: **PRESENTMENT**
:
JAMES W. PALMER, JR. :
JUDGE OF THE SUPERIOR COURT :
:
:

The Advisory Committee on Judicial Conduct ("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 and the evidence of record demonstrate that the charges set forth in the Formal Complaint against James W. Palmer, Jr., Judge of the Superior Court ("Respondent"), relating to Respondent's misuse of his judicial office in a personal matter, have been proven by clear and convincing evidence.

Accordingly, the Committee respectfully recommends Respondent be censured for his misconduct as delineated in the Formal Complaint.

I. PROCEDURAL HISTORY

Ocean County Assignment Judge Marlene Lynch Ford referred this matter to the Committee on March 24, 2017 following her

receipt of information from Somerset County Assignment Judge Yolanda Ciccone concerning Respondent's possible misuse of the judicial office on March 21, 2017 while interacting with judiciary personnel at the Somerset County Courthouse, Probation Department, about a personal Family Part matter. Judge Ciccone was advised of Respondent's conduct by a Chief Probation Officer who indicated that Respondent had identified himself to Probation Department staff as a judge and specifically mentioned his familiarity with the Honorable Hany A. Mawla, J.A.D., who was then the Presiding Family Part Judge in the Somerset vicinage.

The Committee investigated this matter and, as part of that investigation, Committee staff interviewed five individuals. See P1 thru P5. In addition, the Committee requested and received Respondent's written comments in respect of this matter.

On January 16, 2018, the Committee issued a Formal Complaint against Respondent charging him with conduct in contravention of Canon 1, Rule 1.1, and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct relating to his alleged misuse of the judicial office to advance a private interest. Respondent filed a Verified Answer to the Complaint on February 22, 2018 in which he admitted certain factual allegations, with some clarification, denied others and acknowledged that his conduct, as alleged in the Complaint, created the appearance of impropriety, though he

denied violating the cited Canons of the Code of Judicial Conduct.

On July 9, 2018, Respondent, through counsel, waived his right to a Formal Hearing on the charges set forth in the Formal Complaint. See Letter of Mitchell J. Ansell, Esq., countersigned by Respondent, dated July 9, 2018, which is a part of the record. In conjunction with that waiver, Respondent, through counsel, filed with the Committee on July 13, 2018 a letter brief addressing the recommended quantum of discipline. See Letter of Mitchell J. Ansell, Esq., dated July 10, 2018, complete with attachments, which is a part of the record. Respondent's counsel advocates for the imposition of a private reprimand. Ibid. Presenter, likewise, filed with the Committee on July 17, 2018 a letter brief addressing the appropriate quantum of discipline. See Letter Brief of Maureen G. Bauman, Esq., dated July 6, 2018, which is a part of the record. Presenter advocates for the imposition of a public reprimand.

On July 16, 2018, Presenter and Respondent jointly filed with the Committee a set of Stipulations in which Respondent conceded to engaging in the charged conduct and the attendant violations of the Code of Judicial Conduct in respect of that behavior. Exhibits were offered by the Presenter and admitted into evidence, without objection. See Presenter's Exhibits P-1

through P-8. The Committee considered this matter at its meeting on July 25, 2018.

After carefully reviewing the evidence, the Committee makes the following findings, supported by clear and convincing evidence, which form the basis for its recommendation.

II. FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1985. See Stipulations at ¶1. At all times relevant to this matter, Respondent served as a judge of the Superior Court assigned to the Civil Division in the Ocean vicinage, a position he continues to hold. Id. at ¶2. Respondent was appointed to the Superior Court on January 14, 2009 at which time he was assigned to the Family Division in the Burlington vicinage, a position he held until February 22, 2010. Ibid. Thereafter, Respondent was transferred to the Criminal Division in the Burlington vicinage, where he remained until August 31, 2014 when he was transferred to the Civil Division in the Ocean vicinage. Ibid.

The facts and circumstances germane to this ethics matter and Respondent's attendant ethical breaches, as alleged in the Formal Complaint, are undisputed. Respondent admits and the evidence demonstrates, clearly and convincingly, that on March 21, 2017, Respondent appeared in the Somerset County Courthouse, Probation Department, to discuss with judiciary personnel his

child support obligations and the emancipation of his child.¹ See Stipulations at ¶5. On arriving in the reception area of the Probation Department, Respondent approached Judiciary Clerk 3, Ann Keese, introduced himself to her as "Judge James Palmer," and requested to speak with a child support caseworker. Id. at ¶¶6-7. When Ms. Keese requested identification, Respondent produced his judiciary issued lanyard, which was hanging around his neck and on which he is identified as a judge. Id. at ¶8.

Shortly thereafter, Shakemma Perkins, the caseworker assigned to Respondent's Family Part matter, greeted Respondent, who introduced himself to her as "Judge Palmer." Id. at ¶9. On advising Ms. Perkins that he sits in the Ocean County vicinage, Respondent inquired about the process necessary to emancipate his child and sought information from Ms. Perkins about his child support payments. Id. at ¶¶8-9. As to the issue of emancipation, Respondent informed Ms. Perkins that his ex-wife (i.e. the custodial parent) had supplied the Probation Department with the required consent form to emancipate his child. Id. at ¶11. Ms. Perkins, however, advised Respondent that the Probation Department had not received that consent form. Ibid.

¹ Respondent obtained a Judgement of Divorce in Somerset County in or around March 2011 at which time arrangements were made with the Somerset County Probation Department vis-à-vis Respondent's child support payments. See Stipulations at ¶4.

In respect of his child support payments, Respondent, though aware of the formal procedure to contest an increase in such payments, nonetheless informed Ms. Perkins that he wished to dispute the cost of living adjustment ("COLA") that had been applied to his child support obligation, claiming it was improper as he "had not received a raise." Id. at ¶13. Ms. Perkins advised Respondent that he would need to file a motion to contest the COLA given that his time to dispute the increase had expired, a process with which Respondent was familiar having previously contested two prior COLA's. Ibid.

Respondent's discussion with Ms. Perkins continued for twenty minutes during which time Ms. Perkins repeated, several times, the procedures to emancipate a child and contest a COLA increase. Id. at ¶14. Ms. Perkins ultimately requested assistance from senior probation officer Gladys Gomez who reviewed Respondent's case file and twice repeated for Respondent's benefit the information Ms. Perkins had previously provided to him. Id. at ¶¶14-16.

Ms. Gomez eventually requested her supervisor, Stacey DeVries, assist Respondent. Id. at ¶17. On encountering Ms. DeVries, Respondent advised her that he was a judge and again recounted his request to emancipate his child and contest the COLA increase that had been applied to his child support obligation. Id. at ¶¶17-20. As to that COLA increase, Respondent,

referring again to his lack of a pay raise, remarked to Ms. DeVries that no such increase should have been applied as "you the tax payers decided that a long time ago." Id. at ¶21.

Respondent concedes that his conduct in identifying himself as a judge to these judiciary employees created the risk that his judicial office would be an influential factor in the disposition of his Family Part matter, and, as such, impugned the integrity of the judiciary in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct. Id. at ¶22.

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).

Respondent has been charged with and concedes to violating Canon 1, Rule 1.1, and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct by inserting his judicial office into a personal Family Part matter thereby creating the appearance that

he sought preferential treatment from the judiciary personnel assisting him and the risk that his judicial office would influence the manner in which those employees attended to him.

We find, based on our review of the evidence in the record and Respondent's acknowledgement of wrongdoing, that these charges have been proven by clear and convincing evidence and that Respondent's conduct violated the cited canons of the Code of Judicial Conduct.

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, Respondent concedes and the evidence demonstrates, clearly and convincingly, that he made multiple references to his judicial office while interacting with various Somerset County Probation Department personnel on March 21, 2017 about his personal Family Part matter. Such conduct, irrespective of Respondent's professed lack of intent to do so, created the potential for Respondent's judicial office to influence the manner in which the Probation Department handled his concerns in respect of emancipation and child support.² Though there is no indication that any influence was actually exerted, the mere fact that such a potential exists constitutes a misuse of the judicial office in violation of the Code of Judicial Conduct. Cf. 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).

To be certain, had Respondent *intentionally* abused the judicial office, public discipline of a degree substantially more severe than that recommended here would be required. Cf. In re Batelli, 225 N.J. 334 (2016) (suspending a municipal court judge for intentionally misusing his judicial office to access the criminal case history of a defendant for personal reasons).

² See In re Blackman, *supra*, 124 N.J. at 552 (finding judge's lack of intent irrelevant in judicial disciplinary matters).

Indeed, despite his lack of intent, Respondent's conduct was sufficiently disruptive and disconcerting to those involved that a supervisor in the Probation Department felt it necessary to alert Judge Ciccone about the matter who, in turn, reported the incident to Respondent's Assignment Judge. These circumstances and the inevitable impressions they engender impair Respondent's integrity and that of the judiciary generally, in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct.

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 that the primary purpose of our system of judicial discipline is 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 this instance several aggravating factors exist that bear on our consideration of the appropriate quantum of discipline. First, the misconduct at issue - misuse of the judicial office - demonstrates a lack of integrity and probity. Respondent's professed lack of intent to do so neither diminishes the impropriety of his misconduct nor mitigates the harm done to the judicial office and the public's trust in those who hold that office. In re Blackman, supra, 124 N.J. at 551 (finding that improper judicial conduct includes creating or acquiescing in any appearance of impropriety).

As the record reflects, the judiciary personnel with whom Respondent interacted that day, unaware of his subjective motives, perceived Respondent's multiple references to his judicial office as his attempt to trade on that office for his personal benefit. Ms. Gomez, when interviewed by Committee staff, testified that Respondent's repeated references to his

judicial office left her with the impression that "he was trying to see if [they] would change anything" P-1 at T17-2-10. Similarly, Ms. Perkins, when interviewed, testified that Respondent's repeated references to the fact that he was a judge left her with the impression that he expected her to "fix" his issues immediately. P3 at T15-23 to T16-2. She, in fact, felt pressured when dealing with Respondent precisely because of his repeated references to his judicial office. P-3 at T32-3-18.

Second, this matter represents the third instance in which Respondent has been the subject of discipline, the first having occurred in October 2015 when the Committee privately reprimanded Respondent for displays of arrogance and aggression towards two litigants in two separate matters. In re Palmer, ACJC 2015-231, 2015-236. Less than two years later, in January 2017, the Committee privately censured Respondent for similar discourtesies towards two other litigants. In re Palmer, ACJC 2016-241. A mere two months later, on March 21, 2017, Respondent engaged in the instant abuse of office. See In re Williams, 188 N.J. 476 (2006) (adopting ACJC Presentment to impose an enhanced discipline for a first offense DWI conviction due to the judge's prior disciplinary history, reasoning that the "burden was on [the judge] to avoid improper conduct -- of every sort -- thereafter. She failed to do so, and that failure requires an enhanced sanction."); see also In re Connor, 124 N.J. 18, 20

(1991) (stating that a public reprimand is appropriate in matters involving an initial DWI conviction only where there is "no prior record of personal, professional, or judicial misconduct.").

Respondent's continued inability to conform his conduct to the Code of Judicial Conduct over these past several years, despite his recent receipt of prior discipline and his more than nine-year tenure on the bench, necessarily aggravates his abuse of the judicial office in this instance and must be met with enhanced discipline. Cf. In re Rivera Soto, *supra*, 192 N.J. 109. Indeed, we are not persuaded, given Respondent's disciplinary history, that he yet fully understands or appreciates the ethical strictures governing the judicial office.

In respect of any mitigating factors, the record, on balance, is wanting. Respondent's "Statement of Mitigation" offers little in the way of actual mitigation evidence and, instead, recounts his lack of intent to violate the Code of Judicial Conduct. Though Respondent now acknowledges his wrongdoing, that acknowledgment is insufficient to mitigate the harm caused to the judiciary's integrity as a consequence of Respondent's abuse of the judicial office.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be censured for his violation 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 Respondent's ethical infraction, the third in as many years, and strikes the necessary balance between the aggravating factors present in this case and the sole mitigating factor, which, though present, is insufficient to justify the imposition of discipline less than that of a censure.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

September 27, 2018

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