

David Corrigan, Esq. (025831979)
The Corrigan Law Firm
54B West Front Street
Keyport, New Jersey 07735
Attorneys for Respondent, the Hon. John F. Russo, J.S.C.

Amelia Carolla, Esq.
Reisman Carolla Gran & Zuba LLP
19 Chestnut Street
Haddonfield, New Jersey 08033
Attorneys for Respondent, the Hon. John F. Russo, J.S.C.

**SUPREME COURT OF NEW JERSEY
D-100 September Term 2018
082636**

**IN THE MATTER OF

JOHN F. RUSSO, JR.,

A JUDGE OF THE SUPERIOR COURT

OF THE STATE OF NEW JERSEY**

**NOTICE OF MOTION TO DISQUALIFY
THE HON. STUART RABNER, CHIEF
JUSTICE OF THE SUPREME COURT OF
NEW JERSEY AND TO VACATE CHIEF
JUSTICE RABNER'S JULY 17, 2019
ORDER APPOINTING A THREE-JUDGE
PANEL TO HEAR THE ABOVE MATTER**

TO: Hon. Stuart Rabner,
Chief Justice
Supreme Court of New Jersey
R.J. Hughes Justice Complex
Supreme Court Clerk's Office
P.O. Box 970
Trenton, NJ 08625-0970

Daniel F. Dryzga, DAG
Office of the Attorney General
Department of Law and Public Safety
Division of Law
25 Market Street
Trenton, NJ 08625-0112

David W. Burns, DAG
Office of the Attorney General
Department of Law and Public Safety
Division of Law
25 Market Street
Trenton, NJ 08625-0112

PLEASE TAKE NOTICE that on a time and place to be set by this Court, David F. Corrigan, Esq., of The Corrigan Law Firm, and Amelia Carolla, Esq. of the firm Reisman Carolla Gran & Zuba LLP Counsel for Respondent, Hon. John F. Russo, Jr., J.S.C. shall move for an Order (1) disqualifying the Hon. Stuart Rabner, Chief Justice of the Supreme Court and (2) Vacating the July 24, 2019 Order appointing the three-judge panel to hear the removal proceedings of Respondent, Hon. John F. Russo, Jr., J.S.C.

PLEASE TAKE FURTHER NOTICE that Respondent shall rely on the brief and certification and exhibits attached to this motion.

PLEASE TAKE FURTHER NOTICE Respondent requests oral argument.

Respectfully Submitted,



David F. Corrigan, Esq.
THE CORRIGAN LAW FIRM
54B West Front Street
Keyport, New Jersey 07735
Attorneys for Respondent,
Hon. John F. Russo, Jr., J.S.C.

Dated: September 19, 2019

David Corrigan, Esq. (025831979)
The Corrigan Law Firm
54B West Front Street
Keyport, New Jersey 07735
Attorneys for Respondent, the Hon. John F. Russo, J.S.C.

Amelia Carolla, Esq.
Reisman Carolla Gran & Zuba LLP
19 Chestnut Street
Haddonfield, New Jersey 08033
Attorneys for Respondent, the Hon. John F. Russo, J.S.C.

IN THE MATTER OF

JOHN F. RUSSO, JR.,

A JUDGE OF THE SUPERIOR

COURT OF THE STATE OF NEW

JERSEY

SUPREME COURT OF NEW JERSEY

D-100 September Term 2018

082636

CERTIFICATION OF DAVID F. CORRIGAN
IN SUPPORT OF MOTION TO DISQUALIFY
THE HON. STUART RABNER, CHIEF
JUSTICE OF THE SUPREME COURT OF
NEW JERSEY AND TO VACATE CHIEF
JUSTICE RABNER'S JULY 17, 2019
ORDER APPOINTING A THREE-JUDGE
PANEL TO HEAR THE ABOVE MATTER

I, David F. Corrigan, of full age, certify as follows:

1. I am an attorney at law of the State of New Jersey, attorney for the Hon. John F. Russo, Jr., J.S.C., in the above referenced action. I submit this Certification with exhibits in support of Judge Russo's motion to disqualify the Hon. Stuart Rabner, Chief Justice of the Supreme Court of New Jersey and to vacate the three-judge panel that was appointed to hear the above matter.

2. Annexed hereto as Exhibit A, is a true and accurate copy of the July 17, 2019, Statement of Chief Justice Rabner.
3. Annexed hereto as Exhibit B, is a true and accurate copy of the July 17, 2019, Order Directing the Clerk to prepare a Complaint for Removal from Office, as well as a true and accurate copy of the Order to Issue an Order to Show Cause as to why the Hon. John F. Russo, Jr., J.S.C., should not be removed from office.
4. Annexed hereto as Exhibit C is a true and accurate copy of the July 24, 2019, Panel Assignment Order issued by Chief Justice Rabner.
5. Annexed hereto as Exhibit D, is a true and accurate copy of the August 7, 2019, Order from the Hon. Glenn Grant, J.A.D., acting Administrative Office of the Courts Director, prohibiting Judge Russo from engaging in any alternate employment during the period of his suspension without pay.
6. Annexed hereto as Exhibit E, is a true and accurate copy of the March 13, 2019, Presentment from the Advisory Committee on Judicial Conduct.

I certify that the foregoing statements are true and accurate to the best of my knowledge and belief, and that I am subject to punishment for willfully false statements.

Respectfully Submitted,



David F. Corrigan, Esq.
THE CORRIGAN LAW FIRM
54B West Front Street
Keyport, New Jersey 07735
Attorneys for Respondent,
Hon. John F. Russo, Jr., J.S.C.

Dated: September 19, 2019

IN THE MATTER OF

JOHN F. RUSSO, JR.,

BRIEF IN SUPPORT OF MOTION TO DISQUALIFY THE HON. STUART RABNER,
CHIEF JUSTICE OF THE SUPREME COURT OF NEW JERSEY AND TO VACATE
CHIEF JUSTICE RABNER'S JULY 17, 2019 ORDER APPOINTING A THREE-
JUDGE PANEL TO HEAR THE ABOVE MATTER

David Corrigan, Esq.
The Corrigan Law Firm
54B West Front Street
Keyport, New Jersey 07735

Amelia Carolla, Esq.
Reisman Carolla Gran & Zuba LLP
19 Chestnut Street
Haddonfield, New Jersey 08033

*Attorneys for Respondent,
Hon. John F. Russo, J.S.C.*

Of Counsel:

David F. Corrigan, Esq.
Amelia Carolla, Esq.

On the Brief:

David F. Corrigan, Esq.
Amelia Carolla, Esq.
Frank J. Dyevoich, Esq.

STATEMENT OF FACTS

The facts relevant to this motion are not in dispute.

On July 17, 2019, the Hon. Stuart Rabner, Chief Justice of the Supreme Court of New Jersey ("Chief Justice Rabner"), issued an extraordinary and unprecedented press release, captioned "Statement of Chief Justice Stuart Rabner" (Exhibit A). This press release centered on the pending removal case against Judge Russo (which had just been issued that very day and which Chief Justice Rabner would ultimately hear (Exhibit B) and directly tied Judge Russo to inappropriate action with regard to sexual assault matters. It also emphasize that Judge Russo was suspended without pay pending the removal proceedings. It then tied Judge Russo to the purported efforts that the Judiciary would now engage in. Styled as a Prosecutor announcing an indictment (or a politician seeking office), Chief Justice Rabner, in pertinent part, said:

The Supreme Court today entered an order and directed the Clerk of the Court to file a complaint for removal from office as well as an order to show cause In the Matter of John F. Russo, Jr., a Judge of the Superior Court of the State of New Jersey. All three documents are attached.

As the Court's order states, [b]ecause of the seriousness of the ethical violations" found by the Advisory Committee on Judicial Conduct, which Respondent accepts, "it is appropriate for the Court to consider the full range of potential discipline, up to and including removal from office.'" The attached documents therefore call for the start of formal removal proceedings against Judge Russo, which are

guided by statute and court rules. See N.J.S.A. 2B:2A-1 to -11; R. 2:14-1 to -3. The Court's order also suspends Judge Russo without pay pending the outcome of removal proceedings.

*

*

*

Sexual assault is an act of violence. It terrorizes, degrades, and induces fear in victims. Without question, it is a most serious matter in which fault lies solely with the perpetrator, not the victim. And our State has a strong interest in protecting victims of sexual assault and domestic violence. See N.J.S.A. 2C:14-13 to -21 (Sexual Assault Survivor Protection Act); N.J.S.A. 2C:25-1 7 to -35 (Prevention of Domestic Violence Act).

The accused in a sexual assault matter -- as in every case -- is entitled to a fair hearing that fully protects the person's constitutional rights and seeks to find the truth. At the same time, victims asked to relive harrowing experiences are entitled to the utmost sensitivity and respect from law enforcement and the court system. The State Constitution guarantees that right as well.¹ So do basic principles of human decency. Every effort must be made not to revictimize a victim.

The Administrative Director has assembled a group of twelve judges from different parts of the Judiciary to review and improve upon its training efforts. Today, at the direction of the Supreme Court, the Director is issuing a directive on enhanced training initiatives for judges and court staff, a copy of which is attached. The working group will continue to develop this initiative in the months ahead.

¹See N.J. Const. art. I, ¶22 ("A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system."); see also N.J.S.A. 52:4B-34 to -38 (Crime Victim's Bill of Rights).

This Statement then closes by emphasizing the matters against Judge Russo:

Attachments:

Order of the Court; IMO John F. Russo, D-100-18
Complaint for Removal from Office, IMO John F. Russo, D-100-18
Order to Show Cause, IMO John F. Russo; D-100-18

One week later, on July 24, 2019, the Chief Justice, acted pursuant to N.J.S.A. 2B:2A-7 appointed the following judges, Hon. Carmen Messano, P.J.A.D., Presiding, Hon Julio L. Mendez, A.J.S.C., and Hon. Bonnie J. Mizdol, A.J.S.C. to conduct the hearing concerning the removal of Judge Russo (Exhibit C).

This motion follows.

LEGAL ARGUMENT

POINT ONE

**CHIEF JUSTICE RABNER'S JULY 17, 2019 PRESS RELEASE VIOLATED THE
CODE OF JUDICIAL CONDUCT. HE THEREFORE SHOULD BE DISQUALIFIED
FROM ANYTHING HAVING TO DO WITH THIS CASE.**

Rule 3.10 of the New Jersey Code of Judicial Conduct provides:

A Judge shall not publicly comment about a pending or impending proceeding in any court and shall not permit court personnel subject to the judge's direction and control to do so. This rule does not prohibit judges from making public statements in the course of their official duties or from explaining to the public the procedure of the court.

This Court has noted that the canons "are to be construed broadly to vindicate their purpose of maintaining public confidence in the judicial system". In re Inquiry of Broadbelt, 146 N.J. 501, 508 (1996)

We now explain why Chief Justice Rabner's Press Release violates the Code:

1. Chief Justice Rabner committed a per se violation of this rule. It directly referred to Judge Russo's pending case. Indeed, it highlighted same by referring to the case in the beginning page of the five page statement and then stressing that the Court had just suspended Judge Russo without pay.

In the *Broadbelt* case, *supra*, this Court considered the application of the rule [3.10] to a municipal court judge who had made television appearances commentating on high profile cases in other jurisdictions that the Judge was not hearing. *Broadbelt*, 146 N.J. at 507. Despite the fact that the Judge's opinions involved matters in other states that he was not hearing, the Court found an ethical violation and upheld a sanction. It found the Canon "to be clear and unambiguous." And that "[b]y prohibiting judges from commenting on pending cases in any court, we avoid the possibility of undue influence on the judicial process. . . ." *Id.* at 511.

Here, the threat of unfair treatment and of undermining trust in the judicial system is greater, as Chief Justice Rabner announced his opinions on a pending matter over which he, or his designees, would directly preside. As *Broadbelt* explained, this rule "prevents a judge from publicly prejudging or creating the appearance that he is prejudging any aspect of an issue that has not been finally decided." *Id.* at 505 (emphasis added). By so doing, it thereby "minimizes the risk that such comments will either unfairly prejudice individuals' rights or create a public impression that citizens are not being treated fairly because different judges may not agree as to how those citizens' rights should be decided under the law." *Id.*

2. The Press Release plainly tied Judge Russo to sexual assault victims. However, there is no evidence that Judge Russo engaged in such conduct concerning victims as opposed to those who raised such allegations;
3. Moreover, by announcing the removal order against Judge Russo, and by conflating it with the court's new anti-sexual harassment initiative, the statement manifested a prejudgment of the outcome of Judge Russo's hearing and is evidence of Chief Justice Rabner's bias toward Judge Russo and his desire to see him removed from office.
4. There was no legitimate purpose in including Judge Russo to the Press Release. By doing so, the Chief Justice went far beyond the limited exception of the rule which would permit him to make public statement in the course of his official duties. The Supreme Court issued orders regarding Judge Russo which are, of course, public. There was no purpose for Chief Justice Rabner to add to the Order, except to sully Judge Russo.

5. Chief Justice Rabner then ordered and stressed that Judge Russo had been suspended without pay pending the hearing¹. This unnecessary comment contained in a public press release strongly implied that Judge Russo was already being punished based on Judge Russo's conduct. Thus, the Chief Justice prejudged the case.

The unfairness of the Chief Justice's comments that Judge Russo was to be removed is heightened by a notable omission in his press release: not one member of the Advisory Committee, after considering all the evidence, voted to remove Judge Russo. Indeed, Justice Rabner makes no reference to the ACJC at all.

On March 13, 2019, the ACJC issued its presentment (Exhibit D). It recommended that Respondent be suspended for a period of three months, without pay, and that he be required to attend additional training upon his return on appropriate courtroom demeanor. In that Presentment, the Committee commented that Respondent's failure to acknowledge his wrongdoing as to Counts I and II suggested to them that he failed to appreciate the ethical constraints governing his judicial office and that he was susceptible to repeating this misconduct. (Presentment, p.42). In direct response, Judge Russo on March 20, 2019,

¹ The harshness of the suspension without pay order was exacerbated by the subsequent order from the Acting Administrative Office of the Courts Director, Hon. Glenn Grant (J.A.D.) (an appointee of Chief Justice Rabner) prohibiting Judge Russo from engaging in any alternative employment during his suspension without pay.

accepted the findings and recommendations of the Committee so as to take steps to accept responsibility for his actions, to show this Court that he did appreciate the ethical constraints governing his judicial office and was not susceptible for repeating this conduct.

This Advisory Committee on Judicial Conduct plays a critical role in the disciplinary process concerning Judges. Its members are the cream of lawyers and retired Judges:

Advisory Committee on Judicial Conduct

The Advisory Committee on Judicial Conduct ("ACJC") was established to conduct hearings against judges of the State of New Jersey for violations of judicial conduct. The ACJC was established in order to implement N.J.S.A. 2B:2A-10, which provides in pertinent part: "No hearing to remove a judge from office shall be held until the cause for suspension is finally decided in a tribunal in which the Judge had an opportunity to prepare his defense and was entitled to be represented by counsel. The ACJC is said tribunal.

The ACJC is comprised of 11 members. See R. 2:15-2. The Court shall designate one member to serve as Chair of the ACJC and one member to serve as Vice Chair. The guidelines for the members of the ACJC are that at least three members shall be retired Justices or Judges of the Supreme Court or Superior Court, no fewer than three members shall be members of the Bar, and no more than five members shall be members of the public who do not hold public office of any nature. Id. The members are appointed by the Supreme Court and may be reappointed for such additional term or terms as the Court shall determine. Membership on the Committee shall terminate if a member is appointed or elected to public office or to any position considered by the Court to be incompatible with such service. All

appointments to fill vacancies shall be for the unexpired term. Id.

Currently, the ACJC Chair is Justice Virginia A. Long (Ret.). In her legal career, Justice Long Long was appointed to the New Jersey Supreme Court in 1999 and was confirmed by the Senate for a second term and granted tenure in 2006. She chaired and served as a member of numerous Supreme Court committees, including Extra-judicial Activities and Judicial Performance. She retired on March 1, 2012, when she reached the age of mandatory retirement. She was appointed to the ACJC by Governor Phil Murphy in 2018.

The position of Vice Chair of the ACJC is held by Hon. Stephen Skillman (Ret.). In his legal career, Judge Skillman was appointed to the Appellate Division, where he sat for the next 26 years, 11 of them as a Presiding Judge. He continued to serve in that court until his retirement in 2012. During his more than thirty years on the bench, Judge Skillman wrote over 3,000 opinions, of which more than 550 are published in the New Jersey Superior Court reports. Judge Skillman also served on the Supreme Court Civil Practice Committee from 1974 to 2010 and was Vice Chair of the Committee from 1999 to 2010.

Other members of the ACJC admitted to the New Jersey bar include Hon. Georgia M. Curio (a Superior Court judge in the Gloucester, Cumberland and Salem district of New Jersey), Hon. Edwin H. Stern (served on the Appellate Division of Superior Court from September 1985 to September 2010 and served as the Appellate Division's Presiding Judge for Administration from 2004 until his retirement), A. Matthew Boxer of Lowenstein Sandler LLP (Appointed as State Comptroller from 2008-2014 he oversaw a staff of more than 130 employees responsible for examining the efficiency of government programs, investigating misconduct by government officers, scrutinizing the legality of government contracts, and recovering improperly expended Medicaid funds), Vince E. Gentile of Drinker Biddle & Reath LLP (financial litigation lawyer that was appointed by the Chief Justice of the New Jersey Supreme Court in 2013), and Susan A. Feeny of McCarter & English LLP (partner in McCarter's Tax and Employee Benefits Practice Group focusing on state

and local property tax matters and redevelopment/eminent domain matters. She is a preeminent practitioner in the field and has served as the President of the New Jersey State Bar Association).

The ACJC is comprised of prestigious members of the legal community. The attorneys and retired judges have dedicated their lives to the legal community and have been recognized with countless honors and awards for their services. The Judges have been on the bench for up to 35 years and have issued over 10,000 legal opinions combined, over 1,500 of which have been published. Their understanding of the law and the role that judges play cannot be called into question. This panel of esteemed professionals has heard all of the allegations against Judge Russo, have reviewed all of the transcripts of Judge Russo's time on the bench that are called into question, and have heard arguments on behalf of Judge Russo and the State of New Jersey. After a full hearing before the ACJC, this panel determined that removal was not warranted.

(The facts set forth above are from the ACJC website and the members' own websites).

But the Chief Justices' Press Release ignores all that. The press release was obviously meant for the public. But it is misleading and unfair, ignoring the critical and undisputed fact that every member, faced with the same evidence as the Chief Justice, determined that Judge Russo should remain on the bench.

Lastly, we do note that the Chief Justice did say that:

This statement does not address the merits of the upcoming proceedings or the discipline that should be imposed. By law, Respondent has the right to a formal hearing before a three-judge panel. See N.J.S.A. 2B:2A-6, -7. Its findings will then be presented to the Court for consideration.

But that does not cure the ethical violation or the harm to Judge Russo. The point is that comments about a pending case are proscribed. And this is a pending case which will necessarily be before the Chief Justice. Thus, the simple fact is that the Chief Justice was acting akin to a Prosecutor announcing an indictment or a politician making a speech and attacking an opponent. As a Judge, he violated the Code of Judicial Conduct.

In sum, this short comment in a five-page press release does not immunize Chief Justice Rabner. The rule prohibition is not cured by those comments. First, as noted, there is a per se prohibition concerning the comments. Second, it is no defense to simply say that Judge Russo will receive a hearing. The hearing has been tainted by Chief Justice Rabner's connecting Judge Russo to sexual assault victims and then bragging that he has been suspended without pay. Thus and finally, what Chief Justice Rabner did is simply akin to saying that the Court will give Judge Russo a fair hearing and then he will be removed from office. It is intolerable and warrants Chief Justice Rabner's removal.

POINT TWO

**IN LIGHT OF THE CHIEF JUSTICE'S COMMENTS, THE ORDER APPOINTING
THE THREE JUDGE PANEL TO HEAR THE REMOVAL CASE AGAINST JUDGE
RUSOO SHOULD BE VACATED**

On July 17, 2019, the Chief Justice made objectionable comments. He made clear that Judge Russo, would soon be removed from the bench.

One week later, he appointed two current Assignment Judges and the senior Presiding Judge of the Appellate Division to sit as hearing Officers. In particular, on Sept. 28, 2011, Chief Justice Rabner appointed Julio L. Mendez to the position of Assignment Judge of Atlantic Vicinage. On April 22, 2018 he appointed Judge Bonnie J. Mizdol to the position of Assignment Judge of Bergen Vicinage. All have prominent positions solely because of the Chief Justice. And he can unilaterally take these assignments away. An Assignment Judge serves as the Chief Justice's authorized representative and "shall be the chief judicial officer within the vicinage and shall have plenary responsibility for the administration of all courts therein. . . . N.J. Court Rules, R. 1:33-4. In addition to the great bestowal of authority and prestige, elevation to the position of Assignment Judge and senior Presiding Judge of the Appellate Division is accompanied by a significant annual salary increase. See N.J.S.A. § 2B:2-4.

His assignment of these three particular Judges was pursuant to N.J.S.A. 2B:2A-7 which provides: Evidence may be taken either before the Supreme Court sitting en banc, or before

three justices or judges, or a combination thereof, specially designated therefore by the Chief Justice.

There are over 450 Judges in New Jersey. Justice Rabner could have appointed any one or a combination of three. Instead, he appointed those judge who are directly beholden to him for a continuation of their prestigious positions. The appearance of a conflict is evident. The Order should be vacated and a new panel appointed by the remaining members of the Supreme Court.

And who should be the replacement panel. We respectively suggest the following:

A. A trio of retired Judges who do not serve on a recall basis (the statute does not appear to limit Judges to "active Judges") and thus would not be beholden to the Chief Justice; or

B. The entire Supreme Court or parts thereof.

We further request the following. Judge Russo's attorneys should have the right to (a) either participate in the selection process or (b) have the right to consent to the selection. Given the existing taint, such participation will aid to insure the perception, if not reality, of the fairness of the process.

Conclusion

Justice Rabner's press release of July 17, 2019 was an unnecessary extrajudicial statement and demonstrated a clear bias against Judge Russo and a prejudgment of the outcome of his removal proceeding. The statement violated Canon 3 and Rule 3.10 of the Judicial Code of Conduct. The bias taints the three-judge panel directly appointed by Justice Rabner. Pursuant to Rule 1:12-2, the Court should grant respondent's motion to disqualify Chief Justice Rabner, vacate his order appointing the three-judge panel to hear the case, and instead appoint an impartial panel of retired judges not subject to recall after consent from respondent's counsel.

Respectfully Submitted,


David F. Corrigan, Esq.

Dated: September 19, 2019