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Via USPS Priority Mail Overnight (Return Receipt)
Justices of the Supreme Court of New Jersey
R.J. Hughes Justice Complex
Supreme Court Clerk's Office
P.O. Box 970, 25 Market Street
Trenton, New Jersey 08625-0970

Re: In the Matter of Carlia M. Brady, Judge of the Superior Court
Docket No. ACJC-2013-281

Dear Justices:

Respondent, the Honorable Carlia M. Brady, J.S.C. ("Respondent"), offers this Letter Brief, in lieu of a more formal brief, in support of her Motion Pursuant to Rule 2:15-16 to Dismiss, or in the Alternative, to Modify the Recommendation of Removal, set forth in the Advisory Committee on Judicial Conduct's ("ACJC") Presentment. This Motion is currently due for filing on November 18, 2019. While Respondent refers to and incorporates by reference the arguments contained in her post-hearing briefs in the ACJC matter, see Rb, Respondent further adds the following.

THE PRETEXT

On June 11, 2013, Respondent's nightmare began. She was wrongly arrested, falsely charged and maliciously prosecuted by the Woodbridge Township Police Department ("WTPD"). See Brady Certification ("BC"), Exh. A. The known perpetrators of this corruption include Brian Murphy ("Murphy"), Sean Grogan ("Grogan"), Walter Bukowski ("Bukowski"), James Mullarney ("Mullarney"), and Robert Bartko ("Bartko"). Id. The WTPD charged Respondent with violations of the hindering statute for knowingly failing to contact law enforcement of the whereabouts of a fugitive, Jason Prontnicki ("Prontnicki"), see P-1 and BC, Exh. B (emphasis added), despite being in possession of exculpatory evidence that Respondent placed two calls to the WTPD and provided Prontnicki's whereabouts. P-7 and P-8.

As a direct result of the WTPD's false arrest and charges, on June 12, 2013, Chief Justice Stuart Rabner ("Rabner") issued an Order suspending Respondent from performing her judicial duties, without pay, and referred the matter to the ACJC "for appropriate action." BC, Exh. C. In 2015, the Complaint-Warrants issued by WTPD were dismissed and superseded by an Indictment. P-2. Of relevance, count one of the indictment accused

Respondent of official misconduct. The ACJC essentially plagiarized the allegations of the WTPD's dismissed Complaint-Warrants, and also accused Respondent for "knowingly" failing "to enforce an arrest warrant for Jason Prontnicki by failing to adequately notify the Woodbridge Police Department of Jason Prontnicki's intended appearance or appearance at her residence." P-1, P-2, and CB, Exh. B.[1] On September 11, 2017, the Appellate Division affirmed the underlying motion judge's dismissal of the official misconduct count. State v. Carlia M. Brady, 452 N.J. Super. 143 (App. Div. 2017). After being maliciously prosecuted for fifty-seven months, and losing approximately seven-hundred-eighty-three-thousand-seven-hundred-fifty-dollars ($783,750.00) of gross lost pay later, see BC at ¶ 8, the remaining charges against Respondent were dismissed by Somerset County Assistant Prosecutor, Brian Stack ("Stack"), based on lack of evidence. BC, Exh. D. On March 6, 2019, Rabner properly reinstated Respondent to active judicial duty and pay. Id., Exh. E. However, "the referral of the matter to the Advisory Committee on Judicial Conduct for appropriate action" remained in effect. Id.

[1] The ACJC Presentment failed to include to P-1 a second Complaint-Warrant issued by the WTPD on June 11, 2013 and, thereby, the ACJC failed to consider same. See Presentment at p. 2. Since the allegations in this omitted WTPD Complaint-Warrant are also material to the issues in this Motion, Respondent prays that this Court admits and considers same as part of its anticipated painstaking *de novo* review of the record, in the interest of justice.

The ACJC filed its Formal Complaint against Respondent, and like the State in the underlying criminal case, plagiarized the WTPD's discredited official misconduct allegations. R-1. Then, the ACJC utilized the same law enforcement witnesses who falsely arrested Respondent to now attempt to support their agenda to remove Respondent from office. See Presentment. In order to support its unjust agenda, the ACJC tramples upon the Constitution by imputing an executive branch police function into the Code of Judicial Conduct ("the Code"), see Presentment and In re P.L. 2001, Chapter 362, 186 N.J. 368, 372, 392 (2006), as well as conflates overwhelming evidence which shows that Respondent in fact conformed her conduct to the high standards required of a judge.

The Presentation was filed on September 17, 2019, immediately on the heels of Respondent's September 11, 2019 filing of a Complaint against the WTPD for violating her civil rights ("Civil Rights Complaint"), BC, Exh. A, and clearly invites this Court to violate the Constitution by imposing upon Respondent, retrospectively, and all judges, prospectively, the unprecedented duty to perform an executive branch police function, vis-à-vis enforcing arrest warrants. Due to the profound impact on the judicial and executive branches which may result from this Court's decision, Respondent

prays that each Justice of this Supreme Court perform her/his own painstaking *de novo* review of the totality of the evidence, see In re Williams, 169 N.J. 264, 271 (2015), rather than rely upon the ACJC's conflated analysis and findings which clearly reflect that the Committee's failure to do so themselves. As will be shown below, the evidence fails to demonstrate by "clear and convincing evidence" that Respondent violated the Code vis-à-vis her "repeated failure over the course of a two-day period to notify the Woodbridge Township Police Department of her then live-in boyfriend's known whereabouts...and his expected presence and departure from her home," pursuant to Rule 2:15-15. See In re Seaman, 133 N.J. 74, 75 (1993).

Thereby, any punishment by this Court against Respondent, based upon the adoption of the ACJC's reasoning and findings, which has no basis in the Code and violates the Constitution, and were not proven by clear and convincing evidence, serves only as pretext to steal Respondent's approximately $783,750.00 back pay. Accordingly, justice requires that this Court dismiss the Presentment in its entirety and end the corruption perpetrated by the WTPD.

POINT I

JUDGES ARE NOT COPS

The ACJC does not allege that Respondent made any affirmative misrepresentations to the police. See Presentment at p. 1. Rather, the ACJC's allegation are based on non-affirmative conduct or omissions to act, as distinguished from affirmative conduct or acts of commission. Id. Therefore, the ACJC's Presentment, finding it a violation of the Code for a judge's failure to adequately notify law enforcement of the whereabouts of a person against whom an arrest warrant has been issued, implicitly imputes into the Code a non-discretionary duty for judges to perform an executive branch function, the enforcement of an arrest warrant, vis-a-vis adequately notifying law enforcement of the whereabouts of a fugitive. See In re P.L. 2001, Chapter 362, 186 N.J. 368, 372, 392 (2006). Since the bedrock of the Code is that judges conduct themselves at all times to preserve the "integrity, impartiality and independence of the judiciary," see the Code, Cannon 1, Rule 1.1, any duty, ethical or otherwise, requiring judges to perform an executive branch function violates this core principle. In re P.L. 2001, Chapter 362, 186 N.J. 368, 372, 392 (2006). Consequently, any duty requiring judges to enforce arrest warrants, vis-à-vis adequate notification to law enforcement of the whereabouts of a person against whom a warrant

has been issued, does not and cannot exist in the Code. Id. See also See State v. Brady, supra., 452 N.J. Super. 143, 167-8 (App. Div. 2017).

Whether or not the Appellate Division's dismissal of the official misconduct charge against Respondent, based on the finding that there is no duty in the Code, or otherwise, collaterally estops a breach of judicial ethics finding by the ACJC in this matter, is of no moment. See Presentment at pp. 45-46. The bedrock separation of powers principle of our federal and state constitutions certainly do. Id. at 378 citing to Hayburn's Case, 2 U.S. 409, 437 (1792) and Mt. Hope Dev. Assocs. v. Mt. Hope Waterpower Project, L.P., 154 N.J. 141 150 (1998). This principle is codified in the Constitution of the State of New Jersey:

> The powers of government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

See the Constitution of the State of New Jersey, Article III, Paragraph 1. See also the Constitution of the United States of America, Article III, Paragraph 1. This Court has found that, while the purpose of the separation of powers

doctrine is not to create three "watertight" governmental compartments, stifling cooperative action among the executive, legislative and judicial branches, the aim is nevertheless "to guarantee a system in which one branch cannot 'claim[] or receive[] an inordinate power." P.L., supra., 186 N.J. at 379. Therefore, to assure the proper functioning of our constitutional scheme, this Court has held that "no deviation from the...separation of powers [doctrine] will be tolerated which impairs the essential integrity of one of the [three] branches of government." Id. citing to Massett Bldg. Co. v. Bennett, 4 N.J. 53, 57 (1950).

In light of this Court's intolerance to any usurpation of power by one branch from another branch, any argument that a judge's duty, ethical or otherwise, to enforce an arrest warrant does not require the judge to execute the warrant by actually arresting Prontnicki, lacks sufficient merit to warrant extensive discussion. Whether a judge is required to use a telephone or handcuffs makes no difference since any duty to enforce an arrest warrant obligates a judge to perform an executive branch police function, no matter how slight the obligation. As such, even if any such duty involves only adequate notice to law enforcement, and does not require actual physical

arrest, this is not a meaningful distinction that renders this Court's ruling in the P.L. case nugatory. Brady, supra., 452 N.J. Super. at 168.

There is be no doubt that judges are the quintessential members of the judiciary. Since even probation officers are members of the judiciary, certainly both play a "vital role in the administration of justice, both in the criminal and civil courts." P.L., supra., 186 N.J. at 386. Thus, this Court's mandate that probation officers cannot perform "traditional police functions," to further its "steadfast" rule that probation officers avoid any perception of being on law enforcement's side in conducting court business, see id., applies even more so to judges. This Court has stated, "...through its decisions and directives, the Supreme Court has made clear that the special role of the judiciary in our constitutional scheme requires that there be no entangling alliances between law enforcement and judiciary employees." Id. at 388 (emphasis added). Accordingly, this Court has declared that ""[i]t is the duty of ... law enforcement agencies **to execute arrest warrants** ... **Those are executive, not judicial, branch functions**." Id. at 391 (emphasis added).

Since this Court struck down the statutes which unconstitutionally placed law enforcement duties upon the judiciary, see P.L., supra., 452 N.J.

Super. at 392, then so too must it also strike down the ACJC's unconstitutional Presentment which invites this Court to impose upon all judges the executive branch function of enforcing warrants, twenty-four-seven, 365 days a year, vis-a-vis adequately notifying law enforcement of the whereabouts of any person with a warrant issued against him/her. As this Court has found, such a duty is "completely irreconcilable with ... the separation of powers under Article III." Id. at 392. Of course, if probation officers cannot execute warrants, and cannot even be perceived as being on the side of the police, because they are members of the judicial branch, see id., it is painfully obvious that judges, quintessential members of the judicial branch, also cannot have any duty to enforce warrants or be perceived as being on the side of the police. This Court has sworn that it will not tolerate any impairment of "the essential integrity" of the all the branches of government (including its own judicial branch) and safekeep "the proper functioning of our constitutional scheme." Thus, this Court must limit its exercise of "its own exclusive authority over the State's court system" by refraining from imposing an executive branch duty upon its own members, vis-à-vis any ethical or legal ruling obligating judges to enforce warrants. To

do so will certainly wreak havoc upon the very Constitution this Court is sworn to uphold. Id. at 379 and 392-3.

The ACJC's cunning attempt to surmount this Constitutional impediment, by characterizing Respondent's violations of the Code as failures to be fully "cooperative" with the police, vis-à-vis "withholding relevant information" and "offering the police intentionally vague and irrelevant information" about Prontnicki's specific intended, present or past whereabouts, see Presentment at p. 56, also "...lacks sufficient merit to warrant discussion." See Brady, supra., 452 N.J. Super. at 157. While Respondent told friends it was her duty as a judge to notify police about Prontnicki's whereabouts, those statements followed her interaction with members of the Woodbridge Police Department, who incorrectly told her that this was her judicial duty. Id. Thus, as the Appellate Division found in the underlying criminal matter with respect to any violation of any such legal duty, "obviously" Respondent's "subjective belief that a duty exists," if none exists in the Code, cannot support a violation of the Code. Id.

Further, as will be shown in Point III below, the ACJC's police witnesses, who claimed to have given Respondent her call-in instructions, admitted that Respondent fully complied with their express instructions, vis-

à-vis her call to WTPD headquarters on June 10, 2013. Further, the mandatory nature of the Code is undisputed. See In re Delio, 216 N.J. 449, 467 (2004) (citing Rule 1:18, which states, "it shall be the duty of every judge to abide by and to enforce the provisions of the...Rules of Judicial Conduct..."). Accordingly, the ACJC's characterization of Respondent's alleged violations of the Code as failures to be fully "cooperative" with the police is merely a decoy to lure this Court into violating the Constitutional, vis-a-vis imposing an executive branch function upon a judicial branch member. See P.L., supra., 186 N.J. at 392.

Ironically, lest this Court selectively limits the application of an duty to enforce warrants in the Code only upon Respondent, the ACJC invites this Court to prospectively require all judges to violate the core principles of the Code. Cannon One (Rule 1.1) states that, "a judge shall participate in establishing, maintaining and enforcing, and shall personally observe, high standards of conduct so that the integrity, impartiality and independence of the judiciary is preserved. This Code shall be construed and applied to further these objectives." (emphasis added). Cannon Two (Rule 2.1) states, "a judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid

impropriety and the appearance of impropriety." (emphasis added). Cannon 5 (Rule 5.1(A) states that, "judges shall conduct their extrajudicial activities in a manner that would not cast reasonable doubt on the judge's capacity to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties." Should this Court accept the ACJC's invitation to obligate judges to enforce arrest warrants, then judges will be required to conduct themselves at all times in a manner that destroys, rather than promotes, public confidence in the "independence, integrity and impartiality of the judiciary," in direct violation of Cannon One (Rule 1.1) and Cannon Two (Rule 2.1). Further, since judges would be required to moonlight as police officers during their off hours, then judges' extrajudicial activities will actually (not merely appear to) cast clear doubt on all judges' capacity to act impartially as a judge, in direct violation of Cannon 5 (Rule 5.1(A), as well as Rules 5.1(B)(1) and (2)).

As shown, the ACJC's Presentment must be struck down based its insurmountable Constitutional impediment.

POINT II

THE WTPD DESTROYED THE ORIGINAL RECORDINGS BEFORE THEY GAVE US CLONES

The ACJC relies on the net opinion of its purported audio expert, Bruce Koenig ("Koenig"), simply because the Committee is enamored by his purported credentials. See Presentment at pp. 34-40 and N.J.R.E. 703. However, Koenig's claim, that the copies of the WTPD's recordings of Respondent's calls are authentic or clones of the original recordings, is wholly contradicted by the person who actually made said copies. Therefore, all of Koenig's opinions that the copies of the recordings are authentic is simply wrong, rendering the ACJC's finding that Respondent's claim that the ACJC altered the subject recordings as incredible also wrong.

Juan Rivera was the person who purportedly installed and maintained the WTPD's NICE System – which is the system that recorded the incoming and outgoing calls of Respondent. See Brady Cert., Exh. F at ¶¶ 1 and 2. Rivera claimed that he produced the audio specimens, now identified as CD#1 (or Q1), CD#4 (or Q4), and CD#5 (or Q5) to Respondent's criminal defense team and experts during an "extraction" process at the WTPD on August 10, 2014. Id. at ¶¶ 3 and 4. However, Rivera admitted that he never

actually provided clones or exact sector duplicates of the original recordings from the source recorder, the Motorola MCC 7500 IP Logger ("the Source Logger"), which contained the original recordings of Respondent's June 10 and 11, 2013 calls to the WTPD. Id. at ¶ 3. Rivera purportedly copied only the "files from the archive computer," which was a second-generation backup computer, not the Source Logger. Id.

While Rivera's statements were referenced extensively in the report of Arlo West ("West"), Respondent's audio expert, which Koenig reviewed, see R-49 at pp. 1-3 and 29-36 and BC, Exh. G at p. 3, at no point did Koenig even acknowledge the existence of Rivera's admissions. Id. Further, although Koenig requested and obtained other evidence referenced by West in his report, Koenig conveniently failed to request Rivera's Certification. BC, Exh. H.

Rivera's admissions are fatal to Koenig's opinions. The generally accepted methodology outlined in the peer-reviewed literature that Koenig purportedly authored and relied upon, states:

> ...it is necessary for the contributor to supply specific information, media, software, and equipment to properly conduct the examination, including...A detailed statement from the person or

persons who made the recording, describing exactly how it was produced and the conditions that existed at that time.

P-21, Exh. A at p. 664 (emphasis added) and BC, Exh. G attachment F § 4.2.2. Contrary to Koenig's belief when he authored his 2015 report, even though Koenig failed to follow the above described generally accepted methodology and ignored Rivera's representations, the undisputed evidence nevertheless renders Koenig's claim - that all of the specimens he examined on Q3, Q4 and Q5 are clones or authentic, complete, continuous and/or accurate copies of the originals - wrong. P-21 at pp. 3-5 and BC, Exh. F at ¶ 2 and Exh. G at pp. 5-6.

Koenig does not deny that neither he, nor West, performed an examination of the original recordings contained in the Source Logger, any of its purported two backup computers, or the purported network configuration at the WTPD. However, such examinations are called for when specimens are produced under the circumstances described by Rivera. See P-21 attachment A at p. 663-4 and BC, Exh. F at ¶ 4 (Respondent's criminal defense team and experts were only permitted to "observe"), Exh. G at attachment F § 4.2.2 and 4.5.1, and Exh. I. Therefore, without examining the original recordings within the Source Logger, Koenig's claim that the

proprietary .NMF specimens on Q4 "are original files, or bit-for-bit copies ("clones") of the originals" is "forensically meaningless" and constitutes a "nonconclusive scientific determination." P-21 attachment A at pp. 663-4 and BC, Exh G at p. 5 referencing attachment F §§ 4.2.2 and 4.5.1.

Based on Koenig's own definition, none of the specimens contained on Q3, Q4 and Q5 are clones or "bit-for-bit copies" of the original recordings because none of said specimens were copied from the original files contained in the Source Logger, which had simultaneously captured Respondent's calls to the WTPD as she was making them. P-21 attachment A at pp. 663-4 and BC, Exh. G at p. 5 referencing attachment F § 4.5.1 ("an original/clone file is defined as the recording that was produced simultaneously with the occurrence of the acoustic, visual and system information received by the microphone(s) or camera sensor, and not a subsequent copy"..."Submitted files that have been re-encoded into the same format or transcoded into a different format usually cannot be definitely authenticated, since many types of alterations or changes could have occurred that are not scientifically detectable.") (emphasis added). Thus, the ACJC's reliance on Koenig's "nonconclusive scientific determination" in no

way refutes Respondent's claim that she provided Prontnicki's specific whereabouts. Presentment at pp. 37-40.

Notably, the exact language that Koenig's uses is, "the designated .nmf voicemails of June 10, 2013 and June 11, 2013 on specimen Q4 were produced on a NICE digital logging system." BC, Exh. G at pp. 5-6 (Emphasis provided). Yet, he never actually stated that any of the .NMF specimens in Q4 were produced on the Source Logger, the Motorola MCC 7500 IP Logger. Id. See also BC, Exh. F at ¶ 2(d). This cagey language raises a reasonable inference that Koenig was aware of Rivera's representations, but used vague language to obfuscate the fact that none of specimens he examined came from the Source Logger.

The ACJC's findings are also problematic within its own analytical framework. The ACJC finds West's opinion that "CD#1 and CD#2 constitute competent evidence of intentional edits by the WTPD of Respondent's voice mail messages" incredible, in light of Koenig's claim that "Mr. West's analysis of these re-recordings and his ultimate conclusions are forensically meaningless." Yet, hypocritically, the ACJC ignores that Koenig agreed with West - the specimens on CD#1 and CD#2 are in fact not authentic or clones of the original audio files. See Presentment at p. 35; R-49 at pp. 3-14; and

BC, Exh. G at p. 5-6, 10 and 12; and P-21 at pp. 3-5 referencing attachment F § 4.5.3 ("an acoustic copying process, which generally consists of playing the submitted recording through the built-in loudspeaker and recording this through-the-air signal via a microphone and a separate recording device, is not an acceptable method of play back and recording for authenticity examinations. The acoustic copying process itself will introduce deleterious effects to the content of the produced copy, which can mask indications of editing...") (emphasis added). While the ACJC accepts as true that the WTPD witnesses in fact attempted to pass off inauthentic evidence, CD#1 and CD#2, as authentic, the ACJC hypocritically turns a blind eye to these same WTPD witnesses' abject lies. See Presentment at p. 40 and Point III below.

Another example of the ACJC's hypocrisy is its reliance on Koenig's criticism of West's literary references as purportedly irrelevant and/or outdated in order to find West's scientific methodology unreliable or incredible. See Presentment at pp. 35-37. However, Koenig's subject criticisms are mere Red Herrings. When Koenig admitted that he was wrong, and West was correct, there are no .NMF files in CD#3 and the specimens contained in CD#3 cannot be considered authentic copies, clones or "bit-for-

bit copies" of the originals, he implicitly confirmed that West applied the generally accepted methodology called for in the literature. See P-21 at p. 3, R-49 at p. 36; and BC, Exh. G at pp. 5 and 12. Yet, the ACJC does not acknowledge that Koenig, its touted highly credentialed audio expert, changed his initial 2015 opinion. By debunking his own conclusion that the specimens in CD#3 were "bit-for-bit copies" or clones of the original recordings, Koenig put his own credibility, as well as the ACJC's, in serious dispute. See P-21 at p. 3; BC, Exh. G at pp. 5 and 12; and Presentment at pp. 33-41.

Further, Koenig does not dispute that West applied the same generally accepted methodology and protocols called for in the literature when he applied same authentication protocols he did on the specimens in CD#1 and CD#2, on the specimens in CD#3, CD#4 and CD#5. See R-49 at pp. 4, 14, 31, 38 and 40 (evidence marking and examination of physical evidence); 9, 22, 35 and 40 (playback/conversion organization); 6, 18, 35 (critical listening); 8, 20 and 35 (spectral analysis); 9, 22, 35, 40, 41 and 42 (waveform analysis); and 4, 9,12, 26, and 31-40 (metadata analysis including audio data analysis); and 8 (ENF Analysis). See also P-21 attachment A at pp. 669-685 and BC, Exh. G attachment F §§ 4.5.1, 4.5.3, 4.5.4, 4.5.5 and

4.6. On the other hand, Koenig conveniently failed to perform any of the generally accepted methodology called for in the literature on any of the specimens in Q1 or Q2, except for metadata analysis which he claimed was meaningless anyway. BC, Exh. G at pp. 5-7 and 9-11. Contrary to the peer reviewed literature that Koenig authored and referenced, metadata analysis is not meaningless - unless it is the sole examination used to authenticate an audio file, as Koenig did with Q1 and Q2 here. P-21 attachment A at pp. 676-682 and BC, Exh G attachment F § 4.5.4 ("when identified in the metadata, ...information can be used to confirm observations made through other laboratory analysis, provide additional information that was not obvious through examination of the audio/video data itself and corroborate or refute information regarding the production of the recording...To the extent that this metadata may be easily altered irrespective of the video/audio data, the metadata analysis should not be solely relied upon when authenticating digital video/audio files") (emphasis added). Notably, by not examining Q1, Koenig was also able to summarily disavow the background conversation contained on it as "forensically meaningless," although the background conversation was undisputedly not attributed to Respondent. Thus, Koenig distanced himself from the reasonable inference raised by the background

conversation - that at least two of the WTPD's witnesses conspired to delete dialogue from the recordings of Respondent's calls. See R-47 at ¶ 5 referencing attachment A at page 2, lines 3-10 and page 3 line16; R-64; and Point III below.

West explained the details of his analysis findings with respect to all the specimens contained in all 5 CDs, as well as provided meaningful pictures of them, as called for by the generally accepted methodology. See R-48; R-49 at pp. 3-11, 14-26 and 29-43; R-64; and P-21 attachment A at p. 663 ("the description of the problems should be as complete as possible, including exact locations in the recording, types of alleged editing, scientific tests and so on"). On the other hand, Koenig simply stated self-serving conclusory statements of his findings regarding Q3, Q4 and Q5, see BC, Exh. G at p. 7, without providing the specific bases of his analyses, except of some unintelligible spectrographic findings and equally meaningless pictures of them. Id. at pp. 12-16.

The failure of Koenig to show a picture of the waveform of each of the "zero digital amplitude areas" that he claimed existed in the exact same locations West found "gaps," also puts into question the credibility of his

claim that these areas do not constitute edit "gaps." Id. at p. 10-12. Even Koenig cannot deny that:

> The strength of this [waveform] analysis is its capability to determine very accurately the relative amplitude of a digital file...
>
> ***
>
> If a digital or other type of edit is made within a spoken word, the waveform display can often reflect the abrupt effect of the alteration, especially during vocal pitching...,

see P-21 attachment A at p. 674 and BC, Exh. G attachment F § 4.5.5.2, while:

> Spectrographic analysis provides a graphic representation which can clearly illustrate certain types of record events and editing, but its use as a substitute for high-resolution waveform and narrow-band spectrum analyses can produce misleading or even false examination results."

P-21 attachment A at p. 667 (emphasis added). Since the Committee does not claim that they heard any of the audible gaps on the CDs, see and listen to R-59 thru R-64, West's waveform pictures speak louder than the "gaps"

and clearly shows the edits in waveform. Significantly, West's waveforms pictures shows the "gaps" that occurred within Respondent's spoken words and sentences – right where Koenig claims the AGC-caused "zero digital amplitude areas" should not have been. See R-49 at pp. 11, 20, 23, 24, 25, 26 and 42; R-64; and BC, Exh. G at p. 10-12. Yet, despite this compelling evidence, the ACJC nevertheless attributes credibility to Koenig solely based on his purported experience with other NICE Systems, and took his word for it – that there are no edit "gaps" in the waveforms that he allegedly looked at. See Presentment at pp. 37-38.

Another example of ACJC's hypocrisy is its use of Koenig's purported general experience with other NICE voicemail recording systems and claim that such systems cause repeated "zero digital amplitudes areas" to summarily ignore West's finding that there are no "similar gaps (or "zero digital amplitude areas") detectable on the recordings immediately prior to or following Respondent's subject voicemails" ("Exemplar Recordings"). See Presentment at pp. 36-37 (emphasis added). However, the ACJC fails to recognize the glaring fact that Koenig's general experience does not actually refute West's subject findings with respect to the Exemplar Recordings in this case. See BC, Exh. G at p. 11. Further, the ACJC displays a disturbing

level of intellectual dishonesty by summarily "accord[ing] no weight to Mr. West's notation of the absence of gaps on the other voicemail messages contained in CD#3." See Presentment at p.38 (emphasis added). The generally accepted methodology called for in the peer-reviewed literature authored and relied upon by Koenig require that he should have examined these Exemplar Recordings in order to perform a proper authentication of the specimens in Q3, Q4 and Q5. BC, Exh. G attachment F § 4.5.1 ("after all the necessary tests have been performed, conclusions are normally reached regarding the authenticity of the recording based upon the examination of the submitted file, comparison with test recordings,...and prior experience gained from examination of similar recording systems") and §4.5.5.2 ("test recordings prepared on submitted recorders can be compared to the evidential recording for similarities and differences...") (emphasis added). However, Koenig by conveniently did not examining these Exemplar Recordings, he may claim plausible deniability as same despite his admission that "BEK TEK LLC personnel have previously examined NICE recordings from the same type of recorders used for the .nmf files in this matter, and have repeatedly found zero digital amplitude areas." BC, Exh. G at p. 11. Certainly, Koenig's failure to examine the Exemplar Recordings

raises a reasonable inference that he did examine them and found what West found, no "zero digital amplitude areas" or gaps, which wholly contradicts both his general experience with NICE Systems as well as his claims of authenticity as to the evidential specimens.

With respect to Koenig's claim that the non-proprietary .WAV and .AUD files in Q3 and Q5 are clones of the proprietary .NMF files in Q4, see BC, Exh. G at pp. 5-6, Koenig admitted that there is in fact a "sync" issue between CD#4 and CD#3/CD#5, as West found. Koenig admitted that "an area of no audio information, lasting 1/20th of a second, has been added to the specimen [CD#3] and [CD#5]..." Id. at 15. However, since even Koenig cannot deny that "the alternation of even one bit of these types of recordings may result in an access or playback error, signifying that the recording has been modified from its original state," id. attachment F § 4.5.4, this data addition belies his claim that the specimens on Q3 and Q5 are "continuous" and have not been "altered or edited to add, remove, or reposition the originally-recorded information." Id. at pp. 5 and 15.

Even Rivera's credibility is questionable. Although at the time of the "extraction" process, see BC, Exh. F at ¶ 3, Rivera represented to West that the recordings contained in CD#3 were authentic copies of the original

recordings contained within the Source Logger and complied with his requests for same, it turns out that Rivera lied. R-47 at ¶ 17; R-49 at p. 29; and BC, Exh F at ¶¶ 3-4.

Stack's credibility leaves much to be desired as well. He claimed that, in response to Respondent's criminal defense team's and experts' repeated requests for "an inspection and examination of a clone copy extracted by a certified forensic computer expert from the original and back-up sources," see R-47 at ¶ 17 and R-51, he provided them with a CD that contained a "Distribution" file which "cannot be modified and includes the Media Player application to allow for playback of the files inside the distribution." BC, Exh. J at ¶ 21 (emphasis added). However, Koenig does not dispute West's finding that the "Distribution" file in Q3, that Stack claimed he provided, actually contains non-proprietary .WAV files, not proprietary .NMF files. See R-49 at p. 35 and BC, Exh. G at p.12. Yet, while this "Distribution" file can only be opened and played by the proprietary software also included in Q3 (the "NiceInformMediaPlayer.EXE – NIMP"), Koenig found that, contrary to Stack's representation, the specimens within the "Distribution" file on Q3 can be played on "a number of standard audio players." Id. Further, at no point does Koenig dispute that these non-proprietary .WAV files can be modified

and altered. R-49 at p. 38 and BC, Exh. G. Thus, it turns out that Stack lied too – he never provided any recordings copied directly from the Source Logger, as repeatedly requested by Respondent's criminal defense team and experts. See BC, Exh. F at ¶¶ 1-4 and Exh. J at ¶ 21. See also R-47 at ¶ 17.

Notably, the "Distribution" file in CD#3 actually contains a "ZIP" file prophetically entitled "ORIGINAL ARCHIVE.distribution," reflecting that all of the files Rivera produced here, as were the files contained within the "ZIP" file located on the Storage Center Server, were obtained from the purported archive computer, a non-contemporaneous secondary backup, not the Source Logger. See R-49 at pp. 35-38 and BC, Exh. F at ¶¶ 3,4 and 7.

In addition, the General Manager of Public Safety at NICE Systems, Inc., John Rennie, claimed that a recording in the NICE proprietary format (.NMF) cannot be edited, altered, deleted or modified. See BC, Exh. F at ¶ 2(c), Exhibit J at ¶ 21, and Exh. H (emphasis added). However, the NICE User Guide supplied by the WTPD reflects the contrary: NICE proprietary files (.NMF) can be modified using the "Redaction Panel" within the NICE System itself. See R-53 and R-54 NICE User Guide at pp. 34 and 38 (NICE Inform search bar depicts recordings that have been tampered and redacted

audios), 40 and 86-91. What's more, the NICE System can save and store any of these redacted audios within any of the NICE System's network computers and/or hard drives in its native proprietary (.NMF) format and/or as non-proprietary .AUD and .WAV files. See P-54 NICE User Guide at pp. 44, 91, 107-109 and WTPD Communications Manual §§ 860.2.6 and 860.4.1. See also BC, Exh. F at ¶ 2. Finally, the WTPD's NICE System can also search, replay, redact and re-save, and then duplicate onto portable media, such as a CD, any of its files (including any saved redacted .NMF file or even a tampered recording) from any of the Nice System's sources, including any of the NiceLog recorders (loggers) and its network servers or computer hard drives. See P-54 NICE User Guide at pp. 1, 5-6, 15, 17, 19-20, 30, 44, 46-48, 91, 107-109 and 113 and WTPD Communications Manual §§ 860.2.6, 860.4.1 and 860.4.3. See also BC, Exh. F at ¶ 2, 3 and 4 and Exh. H.

Of note is that Koenig's claim that the "gaps" that West found were merely "zero digital amplitude areas" made by the AGC and that this AGC did not delete any dialogue is contradicted by the evidence coming from the WTPD - Recordings from the Source Logger, the Motorola MCC 7500 IP Logger, see BC, Exh. F at ¶ 2(d), "may legitimately occur with partial or no

audio." See P-54 NICE User Guide at p. 51 (emphasis added). Therefore, West's opinion that the NICE System's AGC may have clipped dialog and has been characterized as a "Chopping Block" by Tom Owen, who is a respected forensic audio expert and peer of both West and Koenig, is borne out by the WTPD's NICE User Guide. Id. See also R-49 at pp. 29 and 31.

As shown above, West's conclusion that there are no "clones" of the original recordings of Respondent's calls contained on any of the CDs examined by both himself and Koenig is correct and consistent with the undisputed evidence coming from the WTPD itself. See R-49 at pp. 38, 43 and 44; and BC, Exh. F, Exh. J, and Exh. H. Therefore, only an examination of the original recordings contained in the Source Logger, the subject Motorola 7500 IP Logger, or clones of them, can yield forensically meaningful findings that constitute conclusive scientific determinations. See P-21 attachment A at pp. 663-4 and 669-670; R-47 at ¶ 17; R-49 at pp. 29-31; and BC, Exh F attachment F §§ 4.2.2, 4.4.2, and 4.5.1.

Unfortunately, despite Respondent's evidence preservation letter, see BC, Exh. L at p. 2, the WTPD destroyed all of the original recordings in the Source Logger, as well as all of its backup copies on the Storage Center Server and archive computer. See BC, Exh. F at ¶¶ 5-8. In October 2014,

the Source Logger, with the original recordings contained in it, including those of Respondent's calls, was replaced. None of this evidence purportedly still exists today. Id. at ¶ 5. Further, in May 2015, the Storage Center Server that purportedly backed up the recordings in the Source Logger, was replaced by a new server. Id. at ¶ 6. However, while said Storage Center Server still existed at the WTPD as of January 2018 and was examined by Rivera at that time, the 2013 files backed up from the Source Logger were deleted. Only the "ZIP" file containing the information that was provided to Respondent's criminal defense team and experts on August 19, 2014 was located on it. Id. at ¶ 7. However, as shown above, since all of recordings contained within that "ZIP" file came from the archive computer and not the Source Logger, the Motorola MCC 7500 IP Logger, none of the recordings contained in the "ZIP" file located on the Storage Center Server can be considered clones of the original source files. Id. at ¶¶ 2-4 and 7. Finally, Rivera claimed that the archive computer was "decommissioned in approximately 2015." Id. at ¶ 8. Therefore, even the secondary back up recordings of Respondent's calls on the WTPD System were destroyed and purportedly no longer exist.

The substantial undue prejudice this destruction of evidence has caused, and will cause, Respondent is obvious and hardly warrants comment. As evidenced by the ACJC's findings, the loss of the original recordings resulted in the loss of the physical evidence containing Respondent's exculpatory statements and her inability to effectively defend against Koenig's claim - that the specimens produced by the WTPD are clones, authentic, continuous, and complete. Thereby, Respondent was (and is) unable to effectively defend her credibility since she is unable to refute Koenig's claims of authenticity vis-à-vis examination of the original recordings within the Source Logger. Certainly, two of the results intended by the WTPD via its destruction of exculpatory evidence has been realized – the ACJC's wholesale finding of Respondent as incredible and its recommendation that Respondent be removed from her job.

While Respondent's former ACJC attorneys failed to request any remedy for the WTPD's destruction of exculpatory evidence, Respondent prays that this Court does not visit the sins of her attorneys on their client. At this time, based on the WTPD's spoliation of evidence and the substantial undue prejudice suffered by Respondent resulting therefrom, Respondent requests that this Court apply the sanction of dismissal of the ACJC

Presentment, or alternatively, level the playing field by excluding the unreliable recordings and/or accepting an adverse inference with respect to them. Robertet Flavors, Inv. v. Tri-Form Construction, Inc., 203 N.J. 252, 280-271 (2010).

As shown above, the ACJC's finding that "the weight of the credible scientific evidence offered by Mr. Koenig when compared with the evidence offered by Mr. West, that Respondent's accusation against the WTPD concerning their purported alteration of her voicemail messages" is unsupported by the evidence. The ACJC's subject finding couldn't be based on more unclear and unconvincing proofs. Even if West's opinions are wholly ignored, the WTPD's own evidence directly contradicts Koenig's authenticity opinions. Thus, the ACJC's finding that "Respondent's testimony and that of her mother accusing the WTPD of altering her voicemails incredible and the testimony of the WTPD officers denying such conduct credible," based on Koenig's wrong opinions, also suffers from the same terminal malady. Such evidence could not possibly "enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts in issue" – that Respondent did not provide the specific whereabouts of Prontnicki in her June 10, 2013 call to the WTPD, as she and her mother

testified she did. See Presentment at pp. 41 to 42 citing to Rule 2:15-15(a) and In re Seaman, supra., 133 N.J. at 74.

POINT III

OH THE TANGLED WEB THE WTPD WEAVED WHEN FIRST IT PRACTICED TO DECEIVE

All of the ACJC's law enforcement witnesses are incredible and, therefore, none of their proofs are reliable.

Let's start with the ACJC's witness, Murphy. See starting at 4T5-21. There is no dispute that Murphy was the person in charge of the investigation and approved the arrest of Respondent. See 4T9-24 to 4T10-1 and 4T27-1-3. There is no dispute that Murphy arrested Respondent based on his mistaken belief that she violated the hindering statute. See N.J.S.A. 2C:29-3. Murphy admitted that, although he believed Respondent violated the hindering statute by packing a bag and/or opening the garage door for Prontnicki, he had no actual proof that she did either of these things at the time he arrested Respondent. See 4T22-3-8, 4T24-10 to 4T25-10, 4T25-23 to 4T26-16, 4T25-23 to 4T26-16, 4T104-5 to 4T105-11, and 4T113-14 to 4T114-11. Therefore, although it is undisputed that Murphy arrested Respondent on June 11, 2013 without probable cause of any crime for failing

to "ever" contact law enforcement prior to, during the "1 hour" that, or after, Prontnicki entered in her house, or otherwise, he nevertheless caused to be issued two Complaint-Warrants accusing Respondent of the following offenses:

> ...hindering the apprehension of another specifically by knowingly obstructing and deceiving law enforcement by not immediately notifying law enforcement of Jason Prontnicki's (wanted for armed robbery) whereabouts when she had prior knowledge,

see BC, Exh. B (emphasis added), and:

> ...hindering the apprehension of another specifically by knowingly harboring Jason Prontnicki, a known fugitive (armed robbery) in her residence located at 865 Coolidge Ave. in Woodbridge for approximately 1 hour and never making any attempt to contact law enforcement...

See P-1 (emphasis added) and 4T141-7-9. There is no dispute that the these Complaint-Warrants were dismissed by the Somerset County Prosecutor's Office and superseded by an indictment which, in relevant part,

included one count of official misconduct based on the same plagiarized allegations in these Complaint-Warrants - that Respondent knowingly failed to enforce an arrest warrant for Jason Prontnicki by failing to adequately notify the Woodbridge Police Department of Jason Prontnicki's intended appearance or presence at her residence." P-2 (emphasis added). Finally, there is no dispute that the Appellate Division dismissed the official misconduct count, ruling as a matter of law that there exists "no authority supporting the contention that a judge has a non-discretionary duty to enforce" another court's warrant, including a duty to contact law enforcement authorities to provide the whereabouts of a fugitive. See Presentment at pp. 3-4 and State of New Jersey v. Carlia M. Brady, 452 N.J. Super. 143, 162-174 (App. Div. 2017).

The overwhelming evidence of Murphy's false arrest should have been sufficient for the ACJC to put his credibility in significant doubt and discredit all of the allegations against Respondent which were plagiarized from the WTPD's Complaint-Warrants. However, the ACJC, as dead set to remove Respondent as Murphy was to arrest her, instead wholly ignores Murphy's testimony, which is replete with perjurious admissions.

Murphy admitted that he was aware of Respondent's calls immediately after he arrested her. See 4T37-21 to 4T38-3. Murphy admitted that he listened to and had Respondent's calls copied onto a digital device before he brought the Complaint-Warrants to Judge Bradley Ferencz ("Ferencz"). See 4T37-21 to 4T38-9, 4T84-7-9, 4T80-20, 4T83-20-22, and 4T83-25 to 4T84-15. Yet, despite his knowledge that Respondent called law enforcement and provided Prontnicki's whereabouts, Murphy nevertheless presented the Complaint-Warrants, containing contrary facts, to Ferencz desperate to get a judge to approve his mistaken arrest of Respondent. See 4T141-7-20, 4T142-4-8, 4T143-24 to 4T144-1, 4T145-16 to 4T146-1, 4T148-17-20, and 4T173-18 to 4T174-5. Murphy admitted that he, along with Grogan, were sworn in by Judge Ferencz and provided statements under oath to support said Complaint-Warrants. See 4T143-17-20, 4T145-2-6, 4T158-23 to 4T159-8, 4T159-22, and 4T161-15 to 4T162-2. Yet, while Murphy admitted that he knew the statements in the Complaint-Warrants, that Respondent "never attempted to contact law enforcement," were inaccurate, see 4T148-25 to 4T149-7, he nevertheless told abject lies to Ferencz that the statements in the Complaint-Warrants were "accurate" and that Respondent "'never" attempted to contact law enforcement to alert them

of Prontnicki's whereabouts. See 4T145-11-23, 4T147-15-19, and 4T148-5-24. Murphy admitted that he never even mentioned the existence of Respondent's calls to Judge Ferencz. See 4T85-3-6, 4T147-15-19, 4T153-16-20, and T173-10-15 (emphasis added). Both Murphy and Grogan signed the Complaint-Warrants without correcting the admittedly false statements contained in them. See 4T141-20, 4T167-24 to 4T168-4, P-1, and BC, Exh. B.

While Murphy claims that "quite honestly he did not want to arrest" Respondent, see 4T8-8-21, 4T24-10 to 4T25-10, 4T35-2-14, 4T61-14-18 and 4T101-9-22, his conduct belies this claim. Murphy admitted that on June 11, 2013 he studied the criminal code during his 2-hour surveillance of Respondent's house in order to find charges that he can accuse Respondent of, even before Prontnicki arrived. See 4T11-1 to 4T14-11, 4T15-11-18, and 4T99-15 to 4T100-17. Ironically, despite the purported plan Murphy put in place for someone in the WTPD Communications Department to contact him should Respondent call the WTPD, he admitted that he was not made aware of Respondent's 3:30 p.m. call. See 4T23-24 to 4T24-5, 4T80-3-20 and 4T82-25 to 4T83-2. Further, after Prontnicki was arrested and prior to his arrest of Respondent, Murphy claimed that he was satisfied Respondent

failed to call to the WTPD. See 4T24-6-9. However, Murphy admitted that the only investigation that he performed to determine whether Respondent contacted the WTPD was to listen to the police radio "chatter" while studying the criminal code, conducting surveillance, and/or arresting a dangerous armed robbery suspect. See 4T13-12 to 4T14-11, 4T20-21 to 4T21-25, 4T22-23 to 4T23-23 and 4T108-21 to 4T109-1. Thus, Murphy admitted that the sole basis for his determination, that Respondent failed to call the WTPD, was his mistaken assumption that she did not call. See 4T57-14 to 4T58-18 (emphasis added).

While Grogan admitted that he observed no physical contact or "embrace" between Respondent and Prontnicki on June 11, 2013, see P-11, R-38 at 560 (lines 12-3-12), and 4T22-1 to 4T23-8 and 4T87-5-7, Murphy stated for the first and only time, before the ACJC, that he heard that there was an "embrace" on the radio chatter that day. See 4T87-2-4. He claimed that he did not mention this "embrace" to anyone, before Stack mentioned an "embrace" during the preparation for the underlying criminal trial. See 4T87-8-23 and 4T89-5-10. Incredibly, when questioned as to why he did not require Grogan to include this "embrace" in report, since he had "eyes on the house," see R-11 and 4T87-24 to 4T88-2, before he approved said report on

June 18, 2013, Murphy excused the omission as mere "mis-sites" on his and Grogan's parts. See 4T29-7-14, 4T43-9-22, 4T74-14-25, 4T87-5-7 and 4T88-12 to 4T89-10.

During the arrest of Respondent, Murphy admitted that he was always within close vicinity of Grogan and Respondent while inside her house. See 3T197-25 to 3T198-12 and 4T60-6-21. Yet, while Grogan admitted that he heard Respondent state that she called the police twice, see P-11, 3T178-25 to 3T179-14 and 4T60-22 to 4T61-13, Murphy conveniently denied hearing Respondent make these specific statements. See 4T32-13 to 4T33-10, 4T59-18-22, 4T60-22 to 4T61-13, and 4T83-20-22.

Once Murphy found out after he mistakenly arrested Respondent, that she made calls to the WTPD, Murphy again failed to correct his mistake and came up with excuses instead. See 4T74-14-25 and 4T167-6-17. Murphy told the ACJC that Respondent's June 11, 2013 call would not have changed his decision to arrest Respondent anyway, because, in his opinion, the call was not relevant as failed to include Prontnicki's intended specific whereabouts at her house later that day. See 4T103-23 to 4T104-4 and 4T114-24 to 4T115-15. Yet, even Murphy could not deny that the recordings of Respondent's June 11, 2013 call produced by the WTPD, see Point II

above, reflects that Respondent expressly referred to her June 10, 2013 call. Further, Murphy could not deny that, in her June 10, 2013 call, Respondent stated that Prontnicki returned to the house and was in Woodbridge. See 4T110-21 to 4T11-9 and 4T112-18 to 4T113-7. See also P-7 and P-8. Notwithstanding, knowing that it is a neutral judge's decision to determine the legality of his arrest of Respondent, Murphy knew he had an obligation to tell Ferencz the existence and contents of Respondent's calls, despite his own opinion of their relevance. See 4T148-5-16 and 4T148-21-24. Yet, Murphy knowingly failed to do so. See T173-10-15.

While Murphy knew that the WTPD's system makes recordings of calls and that such recordings can be copied directly from the system onto portable media, he nevertheless had Bartko's voicemails recorded from a speaker phone onto a digital recorder, See 4T83-25 to 4T84-15, 4T169-14-17, 4T172-2-6 and 4T172-7-9; and Point II above, in direct contravention to the standard operating procedure spelled out in the WTPD's Communication Policy and NICE User Guide for audio evidence collection, retention and/or distribution. See Point II citing to R-54 NICE User Guide at pp. 1, 5-6, 15, 17, 19-20, 30, 44, 46-48, 91, 107-109 and 113 and WTPD Communications Manual §§ 860.2.6, 860.4.1 and 860.4.3. See also BC, Exh. F at ¶ 2, 3 and

4 and Exh. H. Thus, not only did Murphy's deviation from the WTPD's standard audio evidence collection procedure evidence a breach of chain of custody, it also caused the recordings that he made forensically worthless and, thereby, unreliable. s

Justin Berger ("Berger") is also one of the ACJC's witnesses whose credibility leaves a lot to be desired. He works for the Somerset County Prosecutor's Office and assisted Captain John Fodor ("Fodor"), his supervisor, in the investigation of the criminal matter against Respondent. He admitted that he physically picked up the DVD containing a copy of Respondent's messages played from Bartko's voicemail on June 14, 2013 (which is undisputedly CD#1 or Q1). See 3T72-21-25, 3T-73-1-12, 3T73-25 to 3T74-7, 3T74-22-25 and 3T151-1-23. Yet, he denied being present during the copying process of this DVD, see 3T151-24 to T152-5, contrary to Fodor's report that he, Berger, Murphy and Christopher Lyons ("Lyons") (who was also undisputedly another WTPD police officer involved in the subject investigation) were present when the DVD was made. See BC, Exh. M. Notably, Fodor was not called as a witness by the ACJC's Presenter, nor was this subject report included in the Presenter's exhibits as well. See P-17. Although only the four of them were in the room at the time the DVD was

made, Berger conveniently could not identify who was speaking in the background during this copying process – although he stated that it was not him. See 3T155-17 to 3T156-20, 3T157-5-17 and 3T158-6-9. Since Berger denied he was speaking and Lyons was holding the digital recorder, and the background conversation was faint reflecting that it occurred far from the recording device, a reasonable inference is raised that Murphy and Fodor were speaking. The following is what they said:

> Male: It's not here.
>
> Male: I believe it ought to be she said that [inaudible]
>
> Male: And as far as this message, whether or not she did we've got to get rid of that.
>
> Male: [inaudible] know it isn't that. I signed it over to him.

See R-47 attachment A at page 2, lines 3-10 (emphasis added). Like Koenig, see Point II above, Berger appears to also be distancing himself from the reasonable inference raised by this background conversation – that Murphy and Fodor conspired to alter or delete portions of the recordings of Respondent's calls.

Grogan is another of the ACJC's WTPD incredible witnesses. He prepared the Complaint-Warrants against Respondent, based on his

purported surveillance and/or investigation of Respondent on June 11, 2013. See P-1; P-9; P-10; P-11; BC, Exh B; 3T166-14-20, 3T167-18 to 3T168-2, 3T177-20 to 3T178-9 and 3T219-10 to 22:20-5. Grogan admitted that he actually heard Respondent state during her arrest that she called the police twice. Further, he claimed that he confirmed that Respondent placed two calls to the WTPD before he went to Judge Ferencz. See P-11; and 3T178-25 to 3T179-14, 3T180-13-15 and 3T181-1-7. Yet, despite being aware that the statements contained in the Complaint-Warrants – that Respondent never made any attempt to contact law enforcement prior to, during, or after, Prontnicki entered her house - Grogan advocated that Ferencz execute the Complaint-Warrants "as is" anyway. See P-1; P-11; and 3T203-25 to 3T203-21 and 3T219-10 to 3T220-5. Grogan denied any recollection that he advised Ferencz even of the existence of Respondent's calls. See 3T205-9-14. Instead, he justified his own perjurious conduct by claiming that Respondent's calls to the WTPD were not relevant because she only left "voicemails."[2] See 3T217-23 to 3T218-14. Like Murphy, Grogan was

[2] The transcripts of Respondent's calls, P7 and P-8, reflect that Respondent asked to speak to Bartko directly, not be transferred to his voicemail.

desperate to have the warrants signed by a judge in order to "approve" his mistaken arrest of Respondent. See 3T219-10 to 3T220-5.

Crogan's purported observations of Respondent during his surveillance, when he had "eyes on the house," are also suspect. See 3T166-21-24. While he claimed that he could see Respondent's garage door from his vantage point, he admitted that his view of Respondent's garage was blocked by bushes. See R-27 (picture of tall privacy bushes blocking view of the garage and driveway); R-38 at 555 (lines 10-14); and 3T170-7-14, 3T170-10-17, 3T171-6-14, 3T171-15-23, 3T3T172-15-18, 3T173-12 to 3T174-21, 3T174-22 to 3T174-1, 3T177-2-8 and 3T192-10-16. Further, Grogan's statement before the ACJC, which corroborates his initial report, that he observed Respondent "in the garage" when Prontnicki walked in, see P-11 at p. 3 and 3T170-10-17 and 3T171-13-14, is inconsistent with his statement before the grand jury that Respondent was at the "threshold" of the garage and then walked into the garage with Prontnicki. R-38 at 555 (lines 10-14) and 557 (lines 18-19). In addition to his admitted distance from and blocked view of the garage, see 3T177-2-8 and 3T192-10-16, Grogan's testimony that he observed Respondent "in the garage" is also unreliable since Respondent's Mercedes was undisputedly parked inside the bay of the

open garage door, see 4T213-16 to 4T214-6, and Grogan claimed that he could only see 5 feet into the garage. R-38 at 561 (lines 3-10). Since Grogan's view of the garage was admittedly unclear, see R-27 and 3T177-2-8, his description of Respondent's attire, conduct, location, and/or countenance is unreliable.

Finally, Mullarney and Bartko are the other two ACJC witnesses whose credibility leave a lot to be desired. Respondent testified before the grand jury in 2015 that Bukowski told her of Prontnicki's warrant and instructed her to call "us" when she was clear of his whereabouts or when he returned home. See P-21 at page 69, line 21 to page 70, line 3, page 77, line 21 to page 78, line 15, and page 79, line 5 to page 79, line 24. See also 6T138-4 and 6T139-5-19. Bukowski also testified before the grand jury that he spoke with and instructed Respondent to call "us," as well as approved the "taken without consent" report after Bartko completed it. See R-38 at 573 (lines 4-13) and 574 -5 (page 26, line 14 to page 27, line 1). The hard copy of the Bartko's report was given to Respondent before she left the WTPD on June 10, 2013 and identifies Bukowski as the approving officer. See BC, Exh. N.[3]

[3] Respondent found the original report that was given to her before she left the WTPD on June 10, 2013 after receipt of her file from her former ACJC counsels. Thus, while it was not included as part of Respondent's exhibits, Respondent requests that this Court accept this material evidence at this time, in the interest of justice.

The report given to Respondent also reflects the exact time Bukowski approved it, 12:42:44 on June 10, 2013, id., which was just 7 minutes after Respondent sent her 12:36:58 text message stating, "I just found out that on 4/29 he threatened a pharmacist in old bridge with a crowbar for meds....." See R-16 at 1004.

Bukowski's testimony and the actual "taken without consent" report given to Respondent corroborates Respondent's claim that Bukowski was the person who told her of Prontnicki's warrant and gave her instructions to call "us" when she was clear of his whereabouts or when he returned home, belying the credibility of both Mullarney and Bartko who claimed otherwise. In an effort to impeach Respondent's credibility, Mullarney claimed that he was the one who instructed Respondent that, "it was incumbent upon her to report to the police if and when Jason came back with the car that he was there, in order for us to arrest him." See P-4; P-5; 3T1917 to 3T20-15, 3T22-22 to 3T23-17, 3T46-20 to 3T47-3 and 3T52-12 to 3T53-14; and R-1 at ¶ 11. Similarly motivated, Bartko repeatedly told the grand jury and ACJC that on June 10, 2013 he gave Respondent a hardcopy of the "taken without consent" report, which indicated only his name as the investigating officer and Mullarney's name as the approving officer. See P-3; R-38 at 586 (lines

1-5), 590 (lines 8-25) and 591-2 (page 43, line 11 to page 44, line 1); and 1T27-20, 1T50-3-8, 1T64-1 to 1T65-6, 1T65-7 to 1T66-10, 1T66-11-16, and 1T86-9-21. However, while the report adopted by Mullarney and Bartko as the one provided to Respondent on June 10, 2013, the report that Respondent was actually provided reflects the approving officer as Bukowski. See P-3 and BC, Exh. H. Rather than show Respondent as incredible, the Mullarney-approved report instead evidences that Mullarney altered the original on June 11, 2013 at 11:52:41, and then both Mullarney and Bartko used the altered report to support their abject lies.

As shown, the ACJC's proofs, which are based on these witnesses' perjured testimony, do not constitute clear and convincing evidence that Respondent is the one who is incredible.

POINT IV

THE ACJC'S MEDICAL EXPERT DECIDED THE ISSUES OF CREDIBILITY AND LIABILITY

The ACJC acknowledges that the mental state of a judge, ie. whether Respondent's evil, corrupt or lack of intent to violate the Code, is immaterial for the imposition of discipline in judicial disciplinary proceedings, see Presentment at p. 54 (citing to In re Blackman 124 N.J. 547, 552 (1991)

(finding judge's lack of intent irrelevant in judicial disciplinary matters). See also In re DeAvila-Silebi, N.J., D-26 September Term, 2017, 31 (2018) (judge's "personal motive" is "irrelevant"); In re Hardt, 72 N.J. 160, 165 (1977) ("judge's evil or correct intent was not necessary in judicial removal proceedings); and In re DiLeo, 216 N.J. 449, 468-469, 477 (2014) ("for the imposition of judicial discipline, a violation of the Code of Judicial Conduct must be proven by clear and convincing evidence and the violation must "amount to unethical behavior warranting discipline") (emphasis added). Therefore, Respondent's mental state, ie. whether she possessed *mens rea* or evil intent, is immaterial or irrelevant to determine whether she violated the Code.

That said, even had it been necessary for experts to testify in this matter in order to assist the ACJC determine a fact in issue, ie. whether or not any "stressors" affected Respondent's retrospective mental status and, thereby, affected her decision-making abilities, see N.J.R.E. 701, the ACJC's reliance on Rodgers' opinion - that Respondent is incredible and possessed the evil intent to commit violations of the Code - is nevertheless improper.

An expert witness' role is to contribute the insight of her/his specialty – here, the fields of psychiatry or psychology. S/he is not an advocate; that is

the role of counsel. Nor is s/he the ultimate trier of fact; that is the role of the jury or the judge, as the case may be. The trier of fact can be misled if the expert goes beyond what s/he can contribute as an expert. In re Hyett, 61 N.J. 518, 531 (1972).

This Court has ruled that when the expert goes beyond his/her specialty, such as when an expert uses the term "malingering," then heightened concerns that it may implicate credibility requires a medical expert's use of the term to be carefully scrutinized. Rodriguez v. Walmart Stores, Inc., 237 N.J. 36, 65 (2018). Such opinion must not be admitted or considered when it is used to "conjure up negative concepts of a person's intentionally wrongful conduct, deceit, greed, evasion of duty, or criminality." Id. citing to Rodriguez v. Walmart Stores, Inc., 449 N.J. Super. 577, 592 (App. Div. 2017) (emphasis added).

Here, the ACJC improperly relies on Rodgers' following improper credibility and ultimate liability opinions to find that Respondent violated the Code:

> Respondent claims inordinate virtue; everything that happened to her was someone else's fault; people, including the police are out to get her; she is just very naïve and believes everything she

> hears from romantic partners. This is simply not credible, and it is evident that Judge Brady cannot acknowledge exercising impaired judgment in her personal life, and does not take responsibility for any aspect of her current situation regarding the upcoming hearing.
>
> In order to help herself in this situation, [Respondent] has continually portrayed herself as blameless and naïve, but psychological testing has shown this posture to be conscious manipulation on her part.

See Presentment at p. 32 (emphasis added). Further, Rodgers improperly opined that Respondent's purported MMPI-2 validity profile testing shows "conscious attempts to influence the outcome of litigation by giving the appearance of having extremely high moral value," and, thereby, Respondent is "not credible." See 7T55-13-16 and 7T69-15 to 7T70-4.

Rodgers admitted that Respondent's test-taking attitude, as revealed by her validity scores, weakened the validity of her test results and showed an unwillingness or inability on the part of [Respondent] to disclose personal information, which resulted in an MMPI-2 profile that is unlikely to provide

useful information because Respondent is too guarded. 7T55-16-19, 7T57-7-13, 7T57-20 to 7T58-5. Since this opinion may constitute proper medical expert testimony pursuant to N.J.R.E. 401, and does not implicate Respondent's credibility as to her claimed retroactive mental state or conduct at issue, see Rodriguez, supra, 237 N.J. at 60-65, Rodgers should properly have heeded her own words and invalidated all of her test results.

Rodgers admitted that neither the MMPI-2 (her test) nor the PAI (Oropeza's test) had a norm group for judicial ethical review situations against which Respondent's validity results can be compared. Therefore, Rodgers admitted that she used the personal injury litigation norm group, which norm group is wholly distinguishable from the instant judicial ethical review situation. See 7T138-18 to 7T140-1. See also 5T199-14 to 5T102-4 and 5T111-9-19. The personal injury litigation norm group constitutes a group of people who are suing to obtain a financial gain and, therefore, may exaggerate their symptoms. In contrast, the nuclear employment norm group, which Oropeza used to compare Respondent's PAI test results, constitutes people who put their best foot forward and minimize their symptoms in order to be hired for employment. Thus, the employment norm group is comparable to the judicial ethics situation, since judges will put their

best foot forward with respect to their symptomology in order to remain in their jobs. Had Rodgers applied the correct employment norm group, proper cutoff points for the validity scores would have avoided the distorted validity test results that she encountered. See 5T199-14 to 5T102-4 and 5T111-9-19. Nevertheless, Rodgers implicitly accepted Oropeza's opinion in this regard since, although utilizing an incomparable norm group, she admitted that Respondent's validity test results from her MMPI-2 testing, as well as that of Oropeza's PAI testing, did not alter her diagnosis of Respondent's anxiety disorder. See 7T138-10-17.

However, Rodgers subverted the proper use of Respondent's MMPI-2's validity results, which purportedly showed that Respondent has "unrealistic claims of virtue" and is "giving the appearance of having extremely high moral value," to make leaps of logic, that Respondent is "simply not credible" and intentionally manipulating the results to influence the ACJC panel. Clearly, these leaps of logic are far astray from her psychiatric specialty and substantially unduly prejudicial. See 7T56-10 to 7T57-13 (Rodgers uses the term the "LIE scale") and 7T58-20-25. See also N.J.R.E. 403. In addition, Rodgers' use of the subject test results to support her opinions that Respondent was not credible when she testified before the

grand jury and the ACJC regarding her retrospective mental state and/or conduct during June 10 – 11, 2013 (ie. Respondent does not take responsibility for any aspect of her current situation) also constitutes impermissible opinions regarding the ultimate issue in this case. See N.J.R.E. 704 and State v. Cain, 224 N.J. 410, 427-428 (2016). Thus, by admitting and relying upon Rodgers' subject impermissible opinions, the Committee allowed her to usurp their function as the factfinder in determining the issues of Respondent's credibility and ultimate liability under the Code. See Presentment at pp. 33. Ironically, however, the ACJC dismisses Oropeza's proper psychological opinion, that "though Respondent has been compliant with treatment and is currently taking medication, she will likely "exhibit levels of anxiety that will manifest itself in speech and thought patterns when testifying before this Committee," as immaterial. See Presentment at pp. 24 and 25.

The ACJC's hypocrisy does not end there. The ACJC uses Rodgers' claim that "it's not possible" to render a diagnosis today as to Respondent's retrospective mental state on June 9, 10 and 11, 2013, see id. at p. 33 citing to 7T127-6 to 7T129-16, to dispose of Oropeza's opinion that "stressors" impacted Respondent's subject mental state. However, not only was

Rodgers permitted by the ACJC to provide what she calls an "impossible" opinion regarding Respondent's retrospective mental state anyway, the ACJC swallowed it hook line and sinker. See Presentment at pp. 27-28 citing to 7T128-10 to 7T129-4.

In order to support Rodgers' opinion, that Respondent's behavior during [June 10 to 11, 2013] (i.e, failing to call 9-1-1, returning home where Mr. Prontnicki "could most easily find her," inviting her elderly parents to her home), was as likely the product of Respondent's desire to protect her judicial position as it was the result of any "stressors," see Presentment at p. 33, the ACJC not only ignores Rodgers' admissions, which belie her claim, but also mischaracterizes Respondent's texts messages and transport statement, and relies on the incredible testimony of the law enforcement witnesses.

The ACJC wholly ignores that Rodger's claim, that Respondent "could have called 9-1-1," is belied by her admissions to the contrary. While Rodgers claimed Respondent suffers from a "adjustment disorder," which Oropeza opined as PTSD, see 5T74-7 to 5T76-8 and 7T73-4 to 7T74-20 and 7T77-3 to 78:14, she nevertheless agreed with Oropeza that Respondent's mental state on the dates in question was "impaired." Further, Rodgers

found the same "stressors" Oropeza found as beginning on June 9, 2013, and conceded that a "process" began at that time. See 5T74-7 to 5T76-8. See also 7T61-22 to 7T63-15, 7T73:7 to 7T78:14, 7T120-14-19, 7T120-14 through 7T121-9, and 7T127-6 through 7T129-25. Rodgers stated that the anxiety disorder she diagnosed started on the dates in question, when Respondent was experiencing "one thing was tumbling on top of another," or what Oropeza identified as "trauma and surprise and shock." Id. and 5T75-17 to 5T76-6. Thus, Rodgers called the resulting impact to Respondent's retrospective mental state as impaired judgment. See 7T61-22 to 7T63-1, 7T73:7 to 7T78:14, 7T120-14-19, 7T120-14 through 7T121-9 and 7T127-6 through 7T129-25. Accordingly, Oropeza's opinion, that the resulting impact from the stressors significantly affected Respondent's decision–making ability on June 10 – 11, 2013 - and she was caused to think irrationally - is undisputed. See 5T75-15 to 5T76-6; and 7T61-22 to 7T63-1.

While Rodgers opined that Respondent suffers from an "adjustment disorder with mixed disturbance of emotions and conduct," anxiety and depression, which "processes" or symptoms began "on June 9th, 2013 until today," see 7T61-22 to 7T63-1, 7T73:7 to 7T78:14, 7T120-14-19, 7T120-14 through 7T121-9 and 7T127-6 through 7T129-25, she admitted that there is

a "gap" in her ability to assess how the WTPD officers' conduct influenced Respondent's conduct on June 10 through 11, 2013 as well. See 7T97-6 through 7T100-17 and 7T131-10-20 (emphasis added). Thus, in relying on Rodgers's opinions, the ACJC ignores Rodgers' admission that Respondent's retrospective impaired mental state made her incapable of understanding police instructions that were not "simple." See 7T130-10 through 7T131-2. The ACJC also ignores Mullarney's observation that there was a "disconnect" between what he told Respondent and Respondent's understanding, which corroborates Rodgers' claim. 3T20-16 to 3T21-9. Further, Rodgers could not answer the Committee's own questioning as to whether Respondent's previous experience with domestic violence would have "impacted at all her ability to just call 9-1-1," even if she didn't understand what the WTPD instructed her to do. See 7T132-1 through 133. In this regard, Rodgers admitted that, although the domestic violence victims she treated were "rapid to take protective measures" once they are out of the domestic violence situation and feel that violence may occur again, she nevertheless conceded that "some people will recover better than others." See 7T95-18 to 7T96-97T132-7-20. Thus, Rodgers could not opine as to whether Respondent's previous "horrible" experience of "having your

husband pull your hair and punch you in the face" would or would not have impacted her ability to call 9-1-1," regardless of whether Respondent understood the WTPD's instruction or not. See 7T132 to 7T133-7 (emphasis added).

The ACJC, deadest to find that "Respondent's conduct belie Respondent's claim that she feared Mr. Prontnicki," see Presentment at p. 27, mischaracterized Respondent's text message and transport statements in order to support its claim that, "to wit, on June 10, 2013, Mr. Prontnicki gave Respondent several hours advance notice before arriving at her home," yet "Respondent did not leave her home or seek police protection." Id. at pp.27-28. See also 7T97-6 through 7T100-17 and 7T131-10-20.

Setting aside that fact that all of the ACJC's law enforcement witnesses have perjured themselves, see Point III above, the ACJC does not even acknowledge that Bartko observed that Respondent appeared stressed, nervous, excited, and/or concerned on June 10 and June 11, 2013. See 4T55-6-11 and 4T72-8-22. Nor does the ACJC mention both Oscar and Ophelia Magpantay's statements that Prontnicki abruptly pushed his way into the house on June 10, 2013 uninvited, and then Respondent immediately thereafter appeared "nervous" and "anxious," kept her distance

from Prontnicki, and told him to leave. See 4T183-1 to 4T185-7, 4T224-19 to 4T226-21, 4T227-13 to 4T228-5; and 5T10-8 to 5T11-10. See also R-14 at ¶¶ 10-13 and R-15 at ¶¶ 10-13.

While at least the ACJC does not find any of Respondent's text messages in and of themselves contain any direct evidence of admissions by Respondent of any violations of the Code, the Committee nevertheless fails to mention the text messages which expressly reflect Respondent's fear of Prontnicki during the dates in question. See R-16 at p. 995 (June 10, 2013 starting at 9:17:36 "I think I need your help. My boyfriend gave my civic to someone to use and now he won't return the car [The] guy allegedly lives in [J]ersey [C]ity I am afraid of what my car is being used for I am afraid to report it too Help"), 1000 (June 10, 2013 starting at 10:24:33 "I need your help with this please, I don't know what Jason is up to..." and starting at 10:27:43 "Jason claims he knows Bayonne "Italians", pls help me), 1001 (June 10, 2013 starting at 10:28:51 "I feel like my life is being threatened by my boyfriend and this guy" and starting at 10:58:41 "Pls help me"), 1004 (June 10, 2013 starting at 12:36:55 "I just found out that on 4/29 he threatened a pharmacist in old bridge with a crowbar for meds....." and

"Yeah WTF" in response to "Uhhhh whoa.. um get your car back and run"), and 1006 (June 10, 2013 starting at 12:46:39 "OMG") (emphasis added).

In addition, the ACJC mischaracterizes the text messages that it claims belies Respondent's fear of Prontnicki. See Presentment at pp. 27. There is no dispute that the Respondent's text messages, which the ACJC quotes, were sent by Respondent on the heels of the above cited text messages which clearly express her fear. The following text messages were undisputedly sent on June 10, 2013 at 12:23:14 and 13:37:10, respectively: "I can't have him in my house cos I wud now be harboring a criminal....I wud have to report him," and "He just called to tell me he got the car and will be bringing it home I told him he can['t] stay with me cos he has a warrant out for his arrest and I am required to notify authorities when I know someone has a warrant So I told him he must leave after he drops the car off as I must go to the police." See Presentment at pp. 12-13. See also R-16 at 1005-6. Further, the ACJC ignores that Respondent's text messages on June 11, 2013 was certainly informed by the events of June 10, 2013, ie. she had already conveyed her fear in above cited text messages on June 10, 2013, as well as notified the police of Prontnicki's whereabouts. See R-16 at 1011 (June 11, 2013 starting at 14:00:14 and 16:53:38).

With respect to the ACJC's finding that she was "unaware Mr. Prontnicki used her cell phone while he was in the garage that day incredible given her proximity to him during these events and her father's recollection of Mr. Prontnicki placing a call on a cell phone while they were standing in the garage," see Presentment at p. 15, the Committee misconstrued Oscar Magpantay's testimony that he "joined them in the garage." See Presentment at p. 14. First, Respondent does not dispute that she was aware that Prontnicki's whereabouts will be at Christopher's house during the moment Mr. Magpantay noticed Prontnicki using a cell phone on June 10, 2013. Thus, the ACJC's finding in this regard is immaterial. Nevertheless, the actual testimony of Mr. Magpantay was that he was pushed backwards (out of the garage) as he entered the threshold of the open garage door by Respondent. 4T192-10 to 4T193-12 and 4T193-18 to 4T194-9. Accordingly, Respondent was not inside the garage when Mr. Magpantay noticed Prontnicki using a cell phone. Id. The ACJC also conveniently omits Mr. Magpantay's testimony that Respondent was speaking to him outside of the garage and Prontnicki was located all the way in the back of the garage, so even he could not clearly hear what Prontnicki said on the cell phone. Id. at 4T26-9-22. The ACJC's finding that

Respondent could have seen or heard Prontnicki on his cell phone is implausible given these circumstances.

With respect to the ACJC's use of Respondent's transport statement, the Committee again mischaracterizes and takes her words out of context. First, Respondent's statement that "she did not know who to believe," see Presentment at p. 27, is on the heels of her other statements that "[Prontnicki] doesn't have a record prior to that, so its like how was I to know about this...", "I realize I'm held to higher standard but I'm doing my best", and "I'm under like a weird circumstances that I don't even know." P-15. While what the ACJC quotes may reflect Respondent's confusion as to the credulity of the police and Prontnicki, the quote certainly does not refute that she feared Prontnicki. To the contrary, that Respondent did not attempt to contact the police while in Prontnicki's presence, even to determine that he may have been telling the truth, reflects that Respondent feared that Prontnick would become aggressive anyway. Second, the ACJC takes Respondent's remark, that she was only trying "to help" Prontnicki, wholly out of context as well. See Presentment at p. 27. The complete context of this "remark" is actually:

> I can't believe this. Why would he do this to me if, why would he come to my home when I told him you can't. If there is no arrest warrant, then I'll talk to the cops. Why would he do this to me, why is he doing this to me. Oh my God. All I did was help this person. He was my boyfriend. There was never any incident before this.

R-29 at p. 2 (emphasis added). When the remark is read in its proper context, the comment clearly relates to the time when Respondent and Prontnicki were dating - which relationship Respondent ended on June 9, 2013. See R-16 at 1002 (June 10, 2013 starting at 11:37:58 "I broke up with my guy last night...."). Further, read in context, the subject remark reflects Respondent's distress, that Prontnicki entered her home uninvited and got her falsely arrested - despite Respondent's past decent treatment of him during their dating relationship. Id. and R-31 at 11 (Prontnicki states, "she said you can't be here," but "...I went in the house, I'm not gonna lie"). Finally, the remark is immaterial anyway since it does not reflect that Respondent helped Prontnicki hide or escape from the police.

The ACJC also does not acknowledge even their own law enforcement witnesses' admissions - that all the officers who interacted with Respondent

on June 10, 2013 expressly and undisputedly instructed her to call when she was clear on his location or when Prontnicki came home, which certainly informed Respondent's conduct to go home and wait for Prontnicki, despite her fear, in order to comply with the "affirmative duty" the police imposed on her. Both Bukowski and Mullarney admitted that they both specifically and expressly instructed Respondent as follows:

> ...as an officer of the Court, that it was incumbent upon her to report to the Police if and when Jason came back with the car that he was there, in order for us to arrest him.

See 3T14-9-14 and 3T16-12 to 3T17-12. See also R-1 at ¶ 11, R-38 at 573 at page 25, lines 4-13, and P-4. Bartko admitted that he told Respondent to call the cops when Prontnicki came home and never discouraged Respondent to call him directly. 2T68-22-24 and 2T77-11-20.

The ACJC's claim that Respondent understood these instructions to mean that she must call the police "before" Prontnicki arrived at her home on June 10 and 11, 2013, since Respondent admitted that she understood the instructions to mean that she was to call the police when she was aware of Prontnicki's "exact location," and not necessarily when he was in her home, see Presentment at p. 26, is based on conflated logic. See 6T145-19 to

6T146-11. In addition to the express and undisputed instructions by the police not to call until Prontnicki returned home or when she was clear on his location, Respondent's understanding of the instructions was informed by Bukowski's and Mullarney's conduct during her interaction with them on June 10, 1013 as well. Bukowski admitted to the grand jury that he did not and he would not have searched Respondent's home, even if she asked, unless Respondent told him she knew he was there. See R-38 at 578-9 at page 30, lines 7-16 and page 31, lines 5-13. Likewise, Mullarney admitted to the ACJC that he also did not to send a police escort home with Respondent. See 3T27-12-17 and 3T27-18 to 3T28-1. Further informing Respondent's conduct is that Respondent was unaware of Prontnicki's exactly location when he called her at 1:11 p.m. on June 10, 2013 to advise that he will return the car. 6T60-24 to 6T61-4 and 6T148-4-9. Therefore, on the heels of these WTPD police witnesses' express instructions and conduct, Respondent did not call until she was "clear" of Prontnicki's exact location, which was confirmed only after Prontnicki entered her home uninvited on June 10, 2013. See 6T150-8-12 and R-31 at 11. Respondent then immediately placed a call to the WTPD on June 10, 2013 at 4:36 pm, which even Mullarney admitted to the ACJC fully complied with his intention, vis-à-vis the express

instructions he gave to Respondent. See 3T19-24 to T20-15; and 6T123-11-20, 6T145-7 to 6T147-25, 6T155-9 to 6T156-2, 6T159-3-6, 6T159-23 to 6T160-25 and 6T164-5-11. See also R-38 at 473 at page 25, lines 4-13 and 477 at page 29, lines 10-21. Finally, as shown in Point I above, Respondent's breach of her own subjective belief, that she had to call before Prontnicki arrived at her home, over and above the express instructions of the police, would not be a proper basis to support a violation of the Code anyway.

Finally, Respondent's conduct after her June 10, 2013 call was not only informed by the above described events, but was also informed by Respondent's belief that Christopher was coming to her house to pick up Prontnicki's belongings on June 11, 2013. See 6T86-21 to 6T87-5, 6T89-9-16, 6T97-7-15, 6T123-11-20, 6T145-7 to 6T147-25, 6T155-1 to 6T156-2 to 6T159-6 to 6T160-25 and 6T164-5-11. See also R-31 at 11. Nevertheless, Respondent made another compliant call to the police at 3:30 pm on June 11, 2013, informed by Bartko's failure to return her prior day's call and Prontnicki remaining at large. See 6T98-18 to 6T100-6 and 6T159-9-18.

As shown, while Respondent's fear was palpably on the dates in question and reflected in the evidence, the ACJC still ignores (as does

Rodgers) that Respondent's conduct was affected by the WTPD's conduct. Notwithstanding, even if Respondent did not have any fear of Prontnicki and, thereby failed to adequately contact the WTPD, the ACJC nevertheless refuses to accept Rodger's opinion - that Respondent's mental state was "impaired" by the same "stressors" Oropeza found had begun on June 9, 2013. Therefore, Oropeza's following opinions should have been accepted by the ACJC as undisputed by Rodgers and supported by the overwhelming evidence:

> Respondent's mental state and judgment during June 10 and 11, 2013 were "significantly impacted" by a series of "stressors," which included: "fear, shock, anger and anxiety" on learning that her boyfriend with whom she was actively seeking to conceive a child had been lying to her and was a potential "felon charged with a violent crime;" sleep deprivation between the evening of June 9 and the morning of June 10, 2013 as she searched for her missing car; concern that a stranger had her car and personal information; lack of food; hormonal changes due to fertility treatments; her belief that she was pregnant with the child of Jason Prontnicki whom she now feared, and a history of prior

domestic abuse from her first marriage 15 years earlier. [Citations omitted].

These stressors...caused her to think irrationally during this period. [Citations omitted]. For example, ...she construed the WTPD's instructions to call when Mr. Prontnicki returned to her home literally, i.e. "to call when he was" at her house and not before. [Citations omitted].

See Presentment at pp.25-26. Certainly, the ACJC's finding that Respondent's claim that she feared Prontnicki is incredible is contracted by the clear and convincing evidence to the contrary.

POINT V

REMOVAL IS TOO HARSH

Let us assume, for the sake of argument, the following alleged misconduct was proven by clear and convincing evidence as violations of the Code:

1. Respondent failed to notify the WTPD in advance of Prontnicki's expected presence at her home to on June 10, 2013;
2. Respondent's call to the WTPD on June 10, 2013 was inadequate because she only left a voicemail with the investigating officer,

which also did not provide the specific location of Prontnicki at his brother Christopher's house;

3. Respondent's call to the WTPD on June 11, 2013 was inadequate because she only left a voicemail with the investigating officer, which also did not provide the specific location of Prontnicki either at his brother Christopher's house or his expected presence at her home; and
4. After being falsely arrested, Respondent used the word "vetted" in order to gain preferential treatment not to be cuffed or to be cuffed in the front.

See Presentment at pp. 1 and 43-58. Respondent's misconduct does not justify even one day of the 57-month suspension without pay which she has already served, let alone removal. See In re Williams, 169 N.J. 264 (2001) and In re Reddin, 221 N.J. 221 (2015).

As this Court has found:

> ...removal, as the most severe sanction, requires misconduct flagrant and severe. That sanction is imposed rarely. Willful misconduct in office and willful misuse of office are examples of transgressions that warrant removal of a sitting judge.

Williams, supra., 169 N.J. at 276 citing to In re Samay, 166 N.J. 25, 43 (2001) (judge's misuse of power of his office by issuing a TRO and search and arrest warrants based on complaints from a close acquaintance and presiding over the arraignment after having filed criminal charges against son's gym teacher justified removal); In re Yaccarino, 101 N.J. 342, 389-90 (1985) (judge's misuse of judicial office to acquire property below market-value from a litigant, influencing municipal court proceedings involving his daughter, and holding undisclosed prohibited business interests in liquor licenses, justified removal); In re Coruzzi, 95 N.J. 557 (1984) (judge's conviction for accepting a bribe justified removal); and In re Imbriani, 139 N.J. 262, 266 (1995) (judge's guilty plea for "theft by failure to make required disposition of property received," although did not touch on his judicial office, warranted removal). See also In re Deluca, 76 N.J. 329 (1978) and In re Hardt, 72 N.J. 160 (1976) (judges' involvement in ticket fixing scheme proven beyond a reasonable doubt justified removal); In re Yengo, 72 N.J. 425 (1977) (judge's persistent bizarre misconduct on the bench rising to the level of unfitness, vis-à-vis bad treatment of a self-represented litigant, harassment of defendants using bail sanctions, inappropriate temperament, and incompetence, justified removal); In re DeAvila-Silibeli, 235 N.J. 218 (2018)

(judge's misuse of office to advance the interest of a litigant, vis-à-vis removing a five-year-old boy from his grandmother's care and custody, as well as providing false statements under oath before the ACJC and submitting altered telephone records to perpetuate her false statements, justified removal); In re Cook, III, 218 N.J. 267 (2014) (judge's fraudulent conduct, including attempts to avoid judgment creditor by fraudulently transferring property, breach of fiduciary duties to his investors, garnishing his judicial wages to satisfy his personal judgments, demonstrating a pattern of uncooperativeness with opposing counsel during ongoing litigation, failing to report his involvement in litigation required by Directive #4-81, making political contributions and representation of county litigants while holding office in the same county, justified public censure and permanent disbarment from holding future judicial office); and In re Scattergood, 224 N.J. 268 (2016) (judge's repeated and public misconduct, vis-à-vis involvement in conflicts of interest in three separate matters, improper and derogatory remarks during court proceedings, capricious administration of justice in proceedings, participation in plea bargaining of defendants, arbitrary exercise of judicial authority by confiscating the cell phone of a defendant and then being

discourteous to the same defendant, justified public censure and permanent disbarment from holding future judicial office).

Further, a suspension without pay, which Respondent had already served for 57-months, would also constitute disproportionate discipline for Respondent's misconduct when compared to this Court's treatment of other judges for much more flagrant and severe affirmative personal public misconduct. See Williams, supra., 169 N.J. at 277-80 (judge's repeated personal public altercations and affirmative misrepresentations to the police warranted only a 3-month suspension without pay; the Supreme Court found that the short discipline would suffice to send a message to the public without financially crippling the judge); In re Seaman, 133 N.J. 67 (1993) (judge's sexual harassment of his law clerk warranted only a 2-month suspension without pay); In re Subryan, 189 N.J. 139 (2006) (judge's kiss on the cheek of his law clerk warranted a 2-month suspension without pay); In re Matthesius, 188 N.J. 496 (2006) (judge's entry into a jury room during deliberations showing lack of impartiality warranted a 1-month suspension without pay); In re Collester, 126 N.J. 468 (1992) (judge's second DUI conviction warranted only a 2-month suspension without pay).

Finally, with respect to the use of a censure or public reprimand, this Court has stated:

> Censure has been imposed, for example, in cases where the misconduct involved making inappropriate comments during where the judge, without revealing his status, appeared on behalf of his son in legal proceedings, In re Di Sabato, 76 N.J. 46 (1978).

See Williams, supra., 169 N.J. at 276-77. See also In re Reddin, 221 N.J. 221 (2015) (two judges' regular public dinner meetings with a longtime acquaintance, who was indicted for official misconduct and known to be in the Mafia, justified only a pubic admonition); In re Portelli, 225 N.J. 1 (2016) (judge's complimentary remarks to a State's witness while on the stand and use of vulgarity to disparage the defense attorney while in chambers would normally warrant only a private reprimand; but since a public ACJC Complaint was filed, a public reprimand was issued anyway); In re Bowkley, 224 N.J. 144 (2016) (judge's pattern of disregarding conflicts of interest by representing litigants in the same municipality where he sat and failing to disqualify himself from litigation which conflicted with representation of another client warranted only a public reprimand); In re Inacio, 220 N.J. 569

(2016) (judge's conduct in interceding in a matter over which he had no jurisdiction to advance the interests of a Councilman's daughter and acting as counsel in said matter warranted only a public reprimand).

Here, there is no dispute that the criminal charges against Respondent were dismissed om their entirety as a matter of law and fact. See Presentment at pp. 4-5. Further, the there is no dispute that the ACJC found no evidence of a crime. See Presentment at pp. 20 ("insufficient evidence in the record to indicate that Respondent either packed this duffle bag for Prontnicki or assisted him in doing so"), and 43 ("the sole issue before this Committee is not whether Respondent, in failing to notify the WTPD of Mr. Prontnicki's whereabouts, committed a crime,") (emphasis added). Further, and significantly, other than a single reference to Respondent's judicial position, vis-à-vis her use of the word "vetted" to the police officers who undisputedly falsely arrested her, in an attempt to gain some preferential treatment not to be cuffed or be cuffed in the front, all of the Respondent's misconduct is based on purely personal private non-affirmative behavior during a very limited 27-hour period in her home, vis-a-vis Respondent's failures or omissions to adequately perform a non-existent ethical or legal duty, which were also undisputedly not required by the WTPD's express call-

in instructions. See Presentment at pp. 1-23 and 43-58, Points I, III, and IV above. In essence, due to the ACJC's picayune treatment of even the undisputed evidence, Respondent's misconduct in failing to place minute-by-minute calls to the WTPD of Prontnicki's whereabouts at her home or otherwise, which is over and above the initial report Respondent already filed with, and two calls placed to, the WTPD – which contained Prontnicki's whereabouts at her home during the 27-hours in question - the Committee was able to craft its very tenuous finding that Respondent violated the Code.

It is clear here, however, that Respondent's wholly personal non-affirmative private "misconduct" is distinguishable both in nature and degree from the affirmative public misconduct which this Court has found to justify removal, suspension, and even public censure of judges in the past. Likewise, it is also clear that Respondent did not just do nothing. Overwhelming undisputed evidence exists that Respondent conformed her conduct to the high standards of the Code by clearly cooperating with the police, see Presentment at p. 47, vis-à-vis Respondent's calls to the WTPD, which the ACJC's law enforcement witnesses admitted were fully compliant with their express call-in instructions. See Point III above. In addition, Respondent undisputedly terminated her relationship with Prontnicki even

before she filed a report with the WTPD and was told of a warrant, see 6T197-20 to 6T199-1 and R-16 at 1002, immediately kicked Prontnicki out of her home upon learning of a warrant, see also R-31 at 11, repeatedly insisted that Prontnicki turn himself in during every encounter she had with him, see 3T124-2-21, and, as the ACJC points out, went as far as returning to and staying at her home during the subject timeframe, contrary to her fear of Prontnicki, see Presentment at pp. 27 and 33, in order comply with the express instructions (and do the job) of the police. See 6T142-1-12, 6T145-19-24, 6T14525 to 6T-11, 6T85-21-23, 6T92-4-4, and 6T99-17 to 6T100-2. Further, there is no dispute that Respondent was undergoing fertility treatments during the time frame in question, which included hormone injections, see R-8; and that Respondent believed she was pregnant. See P-15, 1T73-4-16, and 3T199-8-25.

Further mitigating circumstances, which the ACJC wholly fails to apply in arriving at its unduly harsh recommendation for removal, are the following: Respondent was only on the bench for two months prior to the misconduct in question, see Presentment at p. 8; Respondent had an unblemished professional, judicial, financial and personal record prior to the misconduct at issue, as evidenced by her judicial appointment, see id.; Respondent

terminated all contact with Prontnicki after June 11, 2013, see 6T2251-21-24; Symptoms of Respondent's medical condition (whether PTSD or anxiety) began during June 9, 2013 through June 11, 2013, which impaired her mental state, see Point IV; and Respondent continues treatment for said medical condition through the present date. Id. Thus, Respondent's misconduct was clearly an isolated incident and will likely never recur again.

DO THE RIGHT THING

As shown in detail above, the overwhelming evidence reflects that Respondent conformed her conduct to the meet the high standards expected of a judge and clearly did not violate the Code. Further, the testimony and evidence coming from the law enforcement witnesses are incredible and do not constitute "clear and convincing" proofs. Further, even had Respondent violated the Code, removal, suspension and public censure constitute unduly harsh punishment for Respondent's undisputed personal private non-affirmative misconduct. Finally, since the Code does not and cannot require judges to perform any executive branch police functions, this Court must refuse to accept the ACJC's invitation to violate the Constitution by abstaining from imputing such an unprecedented obligation upon Respondent, retrospectively, and upon all judges, prospectively. This Court

must do the right thing -end the atrocity begun by the WTPD. Dismiss the Presentment in its entirety.

Respectfully,

CARLIA M. BRADY
CB/bc
Encls.

cc: Candace Moody, Esq. and Maureen Bauman, Esq. **(via USPS Priority Mail Overnight – Return Receipt)**