

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2019-277

IN THE MATTER OF
STEVEN BRISTER,
JUDGE OF THE MUNICIPAL COURT

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PRESENTMENT

The Advisory Committee on Judicial Conduct (the "Committee" or "ACJC") hereby presents to the Supreme Court its Findings and Recommendation in this matter in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's findings demonstrate that the charges set forth in the Formal Complaint issued against Steven Brister, Judge of the Municipal Court ("Respondent"), concerning his inappropriate commentary to a male defendant appearing before him during a video hearing concerning domestic violence charges, have been proven by clear and convincing evidence, and that by engaging in such conduct, Respondent violated Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.2, and Canon 3, Rule 3.5 and Rule 3.6(A) and (C) of the Code of Judicial Conduct. As a result of these findings, and for the reasons stated herein,

the Committee respectfully recommends that Respondent be suspended from his judicial duties, without pay, for a period of one month.

I. PROCEDURAL HISTORY

This matter was referred to the Committee by Essex County Assignment Judge Sallyanne Floria and concerns certain inappropriate statements Respondent made while presiding over the matter of State of New Jersey v. Brian Culley held on February 21, 2019 in the Newark Municipal Court. See P-1.

The Committee authorized an investigation into this matter, which included a review of the audio of the subject court proceeding, which lasted for approximately 23 minutes. In addition, on July 30, 2019, Respondent appeared, with counsel, before the Committee for an informal conference and provided testimony attempting to explain the basis for his statements and responded to inquiries from the Committee and his counsel.

On October 22, 2019, the Committee issued a Formal Complaint against Respondent, charging him with having engaged in conduct that violates Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.2, and Canon 3, Rule 3.5 and Rule 3.6(A) and (C) of the Code of Judicial Conduct when he made inappropriate statements in open court that were disparaging to women, had the potential to create the appearance of a gender bias, and demonstrated discourteous and undignified behavior which detracted from the dignity of the court.

On November 29, 2019, Respondent filed a verified Answer to the Committee's Formal Complaint, wherein Respondent admitted each of the factual allegations and conceded that the language Respondent used was injudicious and violated the cited canons of the Code of Judicial Conduct. Respondent described his comments as "well-meaning but undeniably misguided." Answer at ¶13.

Pursuant to Rule 2:15-13(a), the Presenter, by way of letter dated January 17, 2020, provided to Respondent, through his counsel, the documents that would be relied upon to sustain the disciplinary charges asserted in the Formal Complaint. Respondent did not provide discovery, but on February 4, 2020, proffered two (2) character letters submitted by former municipal court judges on Respondent's behalf. The Committee denied the admission of these character letters into evidence pursuant to Canon 2, Rule 2.4 of the Code, which prohibits judges (including former judges) from offering testimony as character witnesses in judicial disciplinary matters. See T3-18 to T7-14¹. The Committee provided Respondent the opportunity to offer substitute character letters. Towards that end, Respondent submitted two (2) new character letters; the first from Respondent's sister, Candace M. Watson, and the second from Respondent's professional colleague, Kenneth J. Hall, Esq.

¹ "T" refers to the transcript of the Formal Hearing held on September 2, 2020. The number following the "T" refers to the page of the transcript being referenced and the number(s) following the page number refers to the line(s) thereon being referenced (i.e. "T3-18" refers to the September 2, 2020 hearing transcript at page 3, line 18).

On September 2, 2020, the Committee convened a remote Formal Hearing via Zoom. Presenter called one witness - Ms. Masiel Valentin, Esq., a part-time municipal court public defender for the City of Newark ("PD Valentin") who was present in court on February 21, 2019 and heard Respondent's commentary directed towards her client. Respondent appeared at the Formal Hearing, with counsel, and testified about the February 21, 2019 proceeding and acknowledged the impropriety of his comments. Respondent did not call any witnesses to testify. The exhibits offered by Presenter were admitted into evidence. See Presenter's Exhibits P-1 through P-7. Respondent offered no exhibits into evidence.

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

II. FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1985. See Formal Complaint and Answer at ¶1. At all times relevant to this matter, Respondent served as a part-time judge in the City of East Orange Municipal Court, a position he continues to hold, and also serves as an acting judge in the City of Newark Municipal Court on an as-needed basis. Id. at ¶¶2-3.

On February 21, 2019, while Respondent served as an acting judge for the City of Newark's municipal court, Respondent presided over a matter involving a defendant who had multiple charges pending against him. Id. at ¶5. At the time of the proceeding, the defendant was incarcerated at the Essex County Correctional Facility and appeared before Respondent via video conference link. See Formal Complaint and Answer at ¶5; see also P-6. PD Valentin, along with the municipal prosecutor and court employees, were present in court. During the proceeding, Respondent made comments about the defendant's multiple domestic violence matters and stated the following:

I'm going to tell you like I tell a lot of people with this same charge because all of these charges are the same. We as men -- and I can speak to you as man, because I'm a man, as well, we get frustrated with the women human beings because we try to straightened out a creation because they was created with a curve, but we as men, we think we are above creation, and we can straighten it out. No matter how much you try, or how you try to straighten out that curve, you can never do it. We get frustrated, and then - but in our frustration you can't come at them like you're Mike Tyson, and they're in the ring like they're Leon Spinks. You can't do it. You can't punch, you can't hit. At best, you treat as if you're holding a feather, just to let them know you're the man, and you're in control. But on each one of these five complaints it said you went at 'em like Mike Tyson.

P-5 at 3-3-20.

PD Valentin testified that when Respondent made the above remarks, she "really couldn't believe [she] was hearing that in a courtroom." See T14-24 to T15-1. PD Valentin also testified that she felt Respondent's statements were "highly inappropriate" and that they demonstrated a gender bias. T15-13-24. PD Valentin testified that she felt Respondent's comments undermined the judicial process, particularly because the matter involved domestic violence charges. T16-25 to T17-15. When the February 21, 2019 hearing concluded, PD Valentin alerted her supervisor about Respondent's remarks, which she found offensive. T17-18 to T18-20. Thereafter, on April 22, 2019, when the Honorable Anthony J. Frasca, Presiding Judge of the Municipal Courts for the Essex Vicinage, along with Alfred Restaino, Municipal Division Manager, conducted an in-session visitation of the Newark Municipal Court, PD Valentin also reported to them her view that the comments made by Respondent during the State v. Culley matter were sexist and disparaging to women. T18-21 to T19-12; see also P-1.

During the Informal Conference held on July 30, 2019, the Committee questioned Respondent about what exactly he meant when he said that men try to straighten out the curve with which women were created. See P-6 at 12-14 to 13-24. Respondent described his language as a "poor choice of words" and admitted that his comments stemmed from his personal religious belief concerning "creation from a higher power." Ibid. Respondent expressed that the "curve"

he referenced relates to the biblical origin story in which Eve² was created from the rib of Adam.

Throughout this matter, Respondent has consistently acknowledged the impropriety of his statements. P-4 at ¶7; see Answer at ¶10; see also T23-9 to T32-18. Specifically, Respondent has recognized that his comments, which drew distinctions between males and females and inferred an inequality between them, were inappropriate. Respondent explained that when he made the comments at issue, he was attempting "to relate something to the defendant" regarding the multiple domestic violence allegations pending against the defendant, since it was Respondent's belief that the parties would be seeking dismissal of the charges. See T24-9-22. Respondent testified that although his intent was to let the defendant know that he could not use physical force against anyone, Respondent's "wording was inappropriate." T25-12-13.

Respondent conceded that his conduct was injudicious and transgressed the cited canons of the Code of Judicial Conduct. Respondent argued, however, that through additional education and mentoring, he could mold his behavior to conform to the high standards applicable to all jurists. See Answer at ¶¶9-10. In this regard, Respondent detailed his various educational endeavors to

² Although Respondent explicitly stated during the Committee's Informal Conference that ". . . Adam was created from the curved rib of a man," Respondent clarified in paragraph 8 of his verified Answer that he intended to state that "Eve was created from the rib of a man."

date, including his study of relevant disciplinary case law, his successful completion of multiple CLE courses that focused primarily on judicial ethics, the training and counseling he received from his presiding judge, and his ongoing private counseling with a former municipal court judge on maintaining a bias-free courtroom. See Answer, ¶¶13-18; see also P-4 at ¶¶8-15.

III. ANALYSIS

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

In this judicial disciplinary matter, Respondent has been charged with failing to observe the high standards expected of jurists, failing to avoid impropriety and to act in a manner that promotes public confidence in the Judiciary, allowing outside relationships or interests to influence his judicial conduct or judgment, behaving in an undignified and discourteous manner, failing to be impartial, and using words which manifest bias in

violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.2, and Canon 3, Rule 3.5 and Rule 3.6(A) and (C) of the Code of Judicial Conduct.

We find, based on our review of the evidence of record, that these asserted disciplinary charges have been proven by clear and convincing evidence and that Respondent's remarks during the February 21, 2019 hearing violated the cited canons of the Code of Judicial Conduct for which public discipline is warranted.

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

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

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

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of

impropriety and must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

Code of Judicial Conduct.

Canon 2, Rule 2.2, requires judges to decide cases according to the law and the facts and to not permit family, social, political, financial or other relationships or interests to influence their judicial conduct or judgment.

Canon 3, Rule 3.5, requires judges to treat all those with whom they interact in an official capacity, including litigants, jurors, witnesses, lawyers, and others, with courtesy, dignity and patience.

Canon 3, Rule 3.6(A), requires judges to be impartial and prohibits discrimination based on race, creed, color, sex, gender identity or expression, religion/religious practices or observances, etc.

Canon 3, Rule 3.6(C), prohibits judges, in the performance of their judicial duties, from manifesting, by words or conduct, any bias or prejudice, and from engaging in harassment, *including but not limited to*, bias, prejudice or harassment on the bases specified in Rule 3.6(A), and from allowing their staff to do so.

In the instant matter, the evidence presented demonstrates, clearly and convincingly, that Respondent failed to conduct himself in a manner consistent with the above referenced high

ethical standards. We find Respondent's statements to the defendant in the State v. Culley matter to be inappropriate. The subject comments suggest to those present in court that Respondent believes men should treat women differently because of their sex. Regardless of Respondent's intent, which he claimed was to impart upon the defendant some guidance on how to more appropriately behave when experiencing feelings of frustration, the Committee finds Respondent's statements to be sexist and misogynistic, and that they had the clear potential to suggest that the judge possessed a bias against women.

The clear religious implications of Respondent's remarks are equally inappropriate and wholly misplaced in a court of law. Judges are charged with the responsibility to administer justice impartially, putting aside any biases they may have, and assessing each matter on its merits.

Respondent's disparaging comments towards women created the appearance of a bias and impugned the integrity of the Judiciary and the judicial process. These remarks tarnished the dignity and solemnity of the courtroom proceedings in violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.5 and Rule 3.6(A) and (C) of the Code of Judicial Conduct. Similarly, Respondent's integration of his personal religious beliefs into his judicial conduct violated Canon 1, Rule 1.1, and Canon 2, Rule 2.1 and Rule 2.2 of the Code.

Having concluded that Respondent violated the Code of Judicial Conduct, the sole issue remaining is the appropriate quantum of discipline. In our consideration of this issue, we are mindful of the primary purpose of our system of judicial discipline, namely, to preserve the public's confidence in the integrity and independence of the Judiciary, not to punish an offending judge. In re Seaman, supra, 133 N.J. at 96 (1993). Discipline imposed upon a judge is meant to reassure the public that judicial misconduct is neither permitted nor condoned. Id. at 97.

Relevant to this inquiry is a review of both the aggravating and mitigating factors that may accompany judicial misconduct. Id. at 98-100. The aggravating factors to consider when determining the gravity of judicial misconduct include the extent to which the misconduct demonstrates a lack of integrity and probity, a lack of independence or impartiality, misuse of judicial authority that indicates unfitness, and whether the conduct has been repeated or has harmed others. Id. at 98-99.

Factors considered in mitigation include the length and quality of the judge's tenure in office, the judge's sincere commitment to overcoming the fault, the judge's remorse and attempts at apology, and whether the inappropriate behavior is susceptible to modification. See In re Subryan, 187 N.J. 139, 154 (2006).

Respondent's conduct in this matter is aggravated considerably by his receipt of a private letter of censure on or around February 25, 2019 for similar demeanor concerns involving the appearance of a bias in favor of a litigant of Respondent's same faith. Although Respondent received the private letter of censure after he made the problematic comments at issue here, Respondent knew that the earlier matter was already pending with the Committee at the time, as he received a request from the Committee to address that earlier matter prior to the February 21, 2019 proceeding. In the earlier matter, as in the instant matter, Respondent demonstrated an alarming insensitivity in this earlier matter to the perceptions of bias engendered by his stated belief that a litigant appearing before him possessed virtuous qualities because of their shared faith.

While we appreciate Respondent's attempts to educate himself on appropriate courtroom demeanor, we remain troubled that he failed to realize the obvious impropriety of his noted commentary in this instance, as in the first, until advised of this ethics grievance. Given his repeated demeanor issues, we remain concerned about Respondent's ability to maintain appropriate courtroom demeanor, particularly given the high volume of cases in the municipal courts over which he presides.

In mitigation, we credit Respondent's remorse and attempts at apology. We also find that Respondent's comments to the defendant,

while unacceptable for the reasons explained, were made in good faith to dissuade the defendant from engaging in physical acts of violence. We find these mitigating factors, however, inadequate when weighed against Respondent's repeated unethical conduct in this instance. Weighing Respondent's repeated instances of poor demeanor and the appearance of bias engendered in each against his otherwise unblemished judicial disciplinary record and his acknowledgement of wrongdoing, we recommend Respondent be suspended from his judicial duties, without pay, for one month. Cf. In re Russo, 242 N.J. 179 (2020) (removing Respondent from judicial office for, *inter alia*, making inappropriate comments which intolerably suggested the alleged domestic violence victim was to blame).

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be suspended, without pay, for a period of one month for his conduct violative of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.2, and Canon 3, Rule 3.5 and Rule 3.6(A) and (C) of the Code of Judicial Conduct. This recommendation considers the seriousness of Respondent's misconduct, the precedent in this area, and the aggravating and mitigating factors present in this case, which together justify the quantum of discipline recommended.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

December 9, 2020

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

Paul Walker did not participate