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A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2013-037

IN THE MATTER OF

MELANIE D. APPLEBY
JUDGE OF THE SUPERIOR COURT

FORMAL COMPLAINT

Tracie H. Gelbstein, Disciplinary Counsel, Advisory Committee on Judicial Conduct ("Complainant"), complaining of Superior Court Judge Melanie D. Appleby ("Respondent"), says:

COUNT I

1. Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1994.

2. At all times relevant to this matter, Respondent served as a full-time Judge in the Superior Court of New Jersey, and was assigned to the Family Division in the Ocean County Vicinage.

3. On or around May 3, 2012, Respondent received a letter from her ex-husband Christopher Donohue ("Donohue") wherein he challenged his obligation to continue to pay for their son's educational expenses ("Child Support matter").

4. Respondent spoke about the Child Support matter with her secretary who recommended Frank A. Louis ("Louis") of the law firm Louis & Judge to represent her interests.

5. Respondent was familiar with Louis as a local family law attorney in Ocean County, and knew that Louis had matters pending before her at the time of her secretary's recommendation.

6. Respondent agreed to speak with Louis, and on May 8, 2012, Respondent met with Louis in her judicial chambers to discuss his representation of her in the Child Support matter.

7. Respondent brought the May 3, 2012 letter with her to the initial consultation to show Louis.

8. Respondent and Louis discussed Donohue's letter and the details of her divorce, but the discussion primarily focused on Louis's concern with the conflict of interest created by his legal representation of Respondent.

9. Louis told Respondent that while he wanted to help her with the Child Support matter, he did not want his assistance to result in his name being added to Respondent's conflict list.

10. Louis concluded the initial meeting by telling Respondent "let me see if I can work something to see whether I can still appear in front of you."

11. After the initial consultation, Respondent, at the request of Louis, sent him the property settlement agreement

between Respondent and Donohue to support her position in the Child Support matter.

12. Respondent also communicated with Louis through email and telephone calls regarding the Child Support Matter.

13. At no time did Respondent consult with any other attorney regarding the representation of her interests in the Child Support matter.

14. After discussing the Child Support matter with Respondent, Louis contacted a friend Mark Biel ("Biel") of the law firm Biel, Zlotnick & Feinberg located in Atlantic County to ask him if he would represent Respondent in the Child Support matter.

15. Biel declined to represent Respondent telling Louis that his workload prevented him for taking on new matters from Ocean County.

16. Biel, however, agreed to send out a basic letter of representation on behalf of Respondent, and authorized his paralegal to send to Louis his law firm stationery for Louis to use to prepare a draft of that letter for Biel's review and signature.

17. Louis obtained from Biel's paralegal the law firm stationery for Biel, Zlotnick & Feinberg, but never spoke to Biel again about drafting a letter.

18. Louis drafted a response to Donohue's May 3, 2012 letter that set forth Respondent's legal position ("Draft Letter").

19. On June 21, 2012, Louis sent a copy of the Draft Letter to Respondent for her review and approval.

20. The Draft Letter was not typed on Louis's law firm stationery and did not contain a signature line. Instead, at the top of the first page of the Draft Letter were the words, typed in large capitalized and bolded letters, "**BIEL LETTERHEAD.**"

21. Respondent believed that Louis had prepared the Draft Letter.

22. On June 22, 2012 Respondent sent to Louis her edits to the Draft Letter with a note that summarized those edits and indicated "I love the letter just as it is, and do not choose to go the route of the alternate proposal at this time."

23. Louis incorporated Respondent's edits, and on June 26, 2012, Louis sent the finalized letter to Donohue with a copy to Respondent ("Final Letter").

24. The Final Letter incorporated all of Respondent's edits, but it was printed on the law firm stationery of "Biel, Zlotnick & Feinberg" and purportedly signed by the named partner "Mark Biel."

25. Biel never reviewed or authorized the Final Letter, and did not sign it.

26. Respondent had never met with Biel, and had never spoken to Biel about her legal interests in the Child Support matter.

27. Respondent also never spoke to Biel after receiving the Final Letter that he purportedly signed on her behalf.

28. Donohue retained an attorney to represent him in the Child Support matter, and provided that attorney with the Final Letter.

29. On July 18, 2012, Donohue's attorney naturally reached out to Biel to discuss the Child Support matter, at which time Biel told the attorney that he did not represent Respondent and knew nothing about the Final Letter.

30. By consulting with Louis about the Child Support matter, providing him with personal information related to that matter, and reviewing and editing the Draft Letter prepared by Louis that directly responded to Donohue's May 3, 2012 letter, Respondent knew or should have known that Louis was representing her in the Child Support matter, and that the Final Letter that she received on Biel's stationery with his purported signature was Louis's attempt to conceal the conflict of interest between Respondent and Louis, which concealment she facilitated, or

acquiesced in, in violation of Canons 1 and 2A of the Code of Judicial Conduct.

31. By her conduct in facilitating Louis's concealment, or acquiescing in it, Respondent demeaned the judicial office in violation of Canon 5A(2) of the Code of Judicial Conduct.

32. By her conduct in consulting with Louis about the Child Support matter knowing that he had cases pending before her, and thereby creating a conflict of interest with Louis, Respondent cast reasonable doubt on her capacity to act impartially as a judge and interfered with the proper performance of her judicial duties in violation of Canons 5A(1) and (3) of the Code of Judicial Conduct.

COUNT II

33. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

34. Louis represented the defendant-husband in Cornick v. Cornick, Docket No. FM-15-557-12W ("Cornick matter") that was filed in Ocean County and assigned to Respondent.

35. On June 19, 2012, Louis appeared before Respondent in Ocean County court for an uncontested divorce hearing in the Cornick matter.

36. At that June 19 appearance, Respondent heard from Louis and opposing counsel, took testimony from the parties,

found that the parties' divorce agreement was voluntary and knowing and fair and equitable for both parties, and entered an order of divorce.

37. Louis represented the plaintiff-wife in the matter of Kelly v. Kelly, Docket No. FM-15-798-12W (Kelly matter) that was filed in Ocean County and assigned to Respondent.

38. On July 17, 2012, Louis appeared before Respondent in Ocean County court for an early settlement conference on the Kelly matter.

39. At the conclusion of that conference, Respondent signed a consent order that required the parties to choose a mediator and submit to mediation for review and resolution of all issues in the Kelly matter.

40. The following day, on July 18, 2012, Louis wrote to Respondent requesting her review, execution and filing with the Superior Court a consent order in the Kelly matter for the release of defendant-husband's personnel file.

41. In that same letter, Louis also requested Respondent to review, execute and file with the Superior Court a proposed form of order for the release and protection of the defendant-husband's medical records.

42. On July 20, 2012, Respondent entered the order for the release and protection of defendant-husband's medical records as

well as the consent order for release of defendant-husband's personnel file.

43. On September 4, 2012, Respondent sent a memo to the Assignment Judge advising that she had a conflict with Louis and his law firm, and requested that Louis be added to her list of conflicts.

44. Respondent's communications with Louis regarding the Child Support matter and Louis's assistance in representing her interests therein created a clear conflict of interest that required Respondent's immediate disqualification from any court proceeding involving Louis.

45. By failing to immediately disqualify herself from court proceedings and by continuing to preside over cases in which Louis was involved, Respondent engaged in a conflict of interest in violation of Canon 3C(1) of the Code of Judicial Conduct.

46. By engaging in a conflict of interest, Respondent also violated Canons 1 and 2A of the Code of Judicial Conduct.

WHEREFORE, the Complainant charges that Respondent, Superior Court Judge Melanie D. Appleby, violated the following Canons of the Code of Judicial Conduct:

Canon 1, which requires judges to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved;

Canon 2A, which requires judges to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

Canon 3C(1), which requires judges to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned;

Canon 5A(1) which requires judges to conduct extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge;

Canon 5A(2) which requires judges to conduct extra-judicial activities so that they do not demean the judicial office; and

Canon 5A(3) which requires judges to conduct extra-judicial activities so that they do not interfere with the proper performance of judicial duties.

DATED: November 4, 2013

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