FILED
AUG 18 2023
A.C.J.C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2023-218

IN THE MATTER OF GARY N. WILCOX JUDGE OF THE SUPERIOR COURT	VERIFIED ANSWER TO THE COMPLAINT

GARY N. WILCOX, JSC, by way of Verified Answer to Complaint says:

1. Respondent admits the allegations contained in paragraph 1 of the Complaint and, prior to his appointment as a Superior Court Judge, Respondent had an unblemished record as a lawyer having previously served as an Assistant United States Attorney for the District of New Jersey and in private practice.

2. Respondent admits the allegations contained in paragraph 2 of the Complaint.

3. More specifically as to the allegations in paragraph 2 of the Complaint, Respondent was appointed to the Bench in 2011. That followed his being nominated by then Governor Christie, the recommendations of the Judicial and Prosecutorial Committee (JPAC) as possessing the requisite qualifications to serve as a judge, being vetted and approved by the New Jersey Senate Judiciary Committee and a confirmation vote by the full Senate.

4. After serving an initial seven-year term, the foregoing process was repeated in 2018 when the Respondent was renominated by Governor Murphy and confirmed for reappointment and tenure by the New Jersey Senate.

5. Prior to the Respondent's reconfirmation, an extensive examination was conducted by the Governor's Office, JPAC and the Senate of his performance record, and his unblemished record of public service as a New Jersey Superior Court Judge.

6. The Respondent's reappointment process thereby demonstrated that he upheld the integrity of the judiciary in that he was free from personal bias, decided cases based on the law and facts free of prejudice and unswayed by partisan interests, public clamor or fear of criticism and that he acted with impartiality. Referencing JPAC Manual, Guidelines For Reviewing Qualifications for Original Judicial Office In The State of New Jersey and Guidelines For Reviewing Qualifications Of Candidates For Judicial Reappointment In the State Of New Jersey.

7. The Respondent's reappointment also demonstrated:

a. That he knew and understood the law.

b. That he communicated effectively.

c. That he complied with continuing legal education requirements.

d. That he worked effectively with other judges of the court.

e. That he was prepared and attentive and exercised appropriate control over all proceedings.

f. That he exhibited appropriate judicial temperament.

g. That he was diligent.

h. And that he had the requisite physical and mental abilities to enable him to perform his essential judicial functions.

8. The Respondent intends to produce fact witnesses from the Bench and Bar at hearing who have worked with him, appeared before him, and otherwise have first-hand knowledge of him and his performance as a member of the judiciary to establish the above.

9. Prior to the subject Complaint, the Respondent had an unblemished record as a judge.

10. The Respondent's superior in his county of venue recognized the exemplary public service Respondent provided as a judge. These recognitions included such comments as follows:

a. May 17, 2022, following the Respondent's affirmance by the Appellate Division in State v. Ordanny German, "Called out by name as thorough and thoughtful! Nice way to start a Tuesday morning. Congratulations!"

b. December 20, 2021, "As we round the corner to 2022, it has not gone unnoticed that your work ethic has left days on the proverbial 'vacation table.' ... Let me in the very least just say that your dedication to the Bergen Vicinage is what makes us respected statewide."

c. December 15, 2020, following the Respondent's affirmance by the Appellate decision in State v. Travis Wilson, "Congratulations! Just confirms that our collective decision to have you trying criminal cases is the right one."

d. March 20, 2018, in response to the Respondent's affirmance in State v. Kirill Bulatkin "Congratulations for a nicely done opinion and the Appellate Division's recognition of affirmance substantially 'for the thoughtful reasons expressed by Judge Wilcox.'"

11. Additional congratulations were conveyed by the Respondent's superior for affirmances of decisions in:

a. State v. Hempstead, September 8, 2021

b. State v. Jeffrey Desir, December 22, 2020

c. State v. Mercado-Vasquez, March 18, 2021

d. T.S v. P.T., December 22, 2020 (affirmed in part, remanded in part).

e. Shah v. Shah, September 20, 2017

f. Fusaro v. Fusaro, July 20, 2016

g. Morcos v. Morcos, May 31, 2017.

h. Drees v. Drees, March 23, 2023

i. State v. Kim, May 15, 2019.

j. Sevintuna v. Tosun, April 18, 2023.

k. State v. Henriquez, September 21, 2020.

l. State in the Interest of D.L., February 17, 2017.

12. In response to the allegations in paragraph 3 of the Complaint, the Respondent created a personal TikTok account on his personal device and maintained it unrelated to anything he did as a judge.

13. This was done during the period of shut down and isolation caused by COVID.

14. He had begun to hear about TikTok as a popular way to connect. His understanding was that you could listen to segments of songs from popular artists that were lip synced and posted by others. That other person's song segment could be replayed and against that person's song backdrop one could create their own video that would be posted for comment.

15. Since this activity seemed like silly, harmless, and innocent fun, the Respondent opened his account out of curiosity to explore this new phenomenon.

16. His intent always was to separate his personal use of TikTok and anything anyone viewed on that account from his actual personal life and what he did as a judge.

17. As a way to further protect against a link between his actual identity and his use of the account, the Respondent created the identity identified in paragraph 3 of the Complaint.

18. To the Respondent's knowledge, TikTok did not prohibit the creation of such a persona as a way to retain anonymity when using that platform.

19. It always seemed to the Respondent that many, if not most users adopted an identity different from their actual identity and that was unique to their use of their TikTok account.

20. Some of these identities even included what looked like the use of fake photos and avatars.

21. Consequently, the Respondent did not believe that his use of a different TikTok identity was improper since he believed user expectation was that posting ordinarily was not done under a person's actual identity, but rather under, in effect, a stage name.

22. Indeed, the Respondent's objective always was to separate his actual personal life and professional life from anything to do with his TikTok use.

23. Initially, the Respondent simply viewed listened to TikTok postings of others and scrolled down on those while he was on his own personal time.

24. The Respondent also learned that he could simply post ordinary short videos.

25. Respondent admits the allegations in paragraph 3 of the Complaint that he posted 40 videos between Aprill 11, 2021 and March 4, 2023.

26. These ranged from cheering at sporting events to views of vacation videos with the Respondent's son..

27. The Respondent also created short video clips where he mimicked recognized artists by lip syncing to portions of their songs or just including the songs in the background. These portions were copied from videos already posted by other people.

28. As to paragraph 4 of the Complaint, Respondent admits to utilizing the platform, but does not consider himself an expert in its use and in customizing an account.

29. Respondent admits videos were posted as "public".

30. He did not pay attention to any "public" designation.

31. He did not know the significance of what "public" meant in TikTok's posting context.

32. The Respondent believed the setting allowed viewing beyond himself to include family, friends and people who sought to connect with him who he permitted.

33. Respondent does not recall setting or intending to designate as "public" the video clips that he posted or whether that was some sort of a default setting.

34. He never intended for the postings to be seen by the public at large.

35. Later, he did change the designation on many videos to "Friends only" or "Followers only", but does not recall when, why or how he learned to do that.

36. In any event, the Respondent admits that he did not ensure that his postings were unavailable to TikTok users generally.

37. The record reflects that few people from the overall TikTok user population viewed the videos before they were taken down and many of those viewers were personal friends, those befriended through TikTok and family.

38. As to paragraph 5 of the Complaint, Respondent admits that some of the subject videos were accessible to TikTok users generally.

39. The Complaint does not identify when or how this matter was brought to Committee's attention.

40. The Complaint does not identify that this matter was brought to the Committee by a member of the public or that a member of the public linked or had the capacity to link the Respondent's TikTok persona to his actual identity other than his family or friends and people with his private social circle. He does not believe any of them reached out to the Court or the Committee.

41. Consequently, the Complaint does not identify that a member of the public expressed a belief or reaction that any posting demeaned the Respondent's judicial office or the judiciary in general, held either in disrepute or created a lack of confidence in same.

42. Correspondingly, the Respondent is unaware that any TikTok users beyond family and friends linked the videos to Respondent's actual identity or that he was an actual judge prior to the filing of the Complaint.

43. Respondent does believe that the matter was first brought to the Committee's attention by his supervisor sometime after the last March 4, 2023 video post.

44. However, the Respondent does not know when the courts actually received first notice of his posts and who provided such notice. If, as alleged, the posted videos were readily available to the public, then presumably that would have included court personnel.

45. If the court's first viewing and notice was the Respondent's April 11, 2021 post, and if it advised him then of even a concern of a possible violation relating to the Canons, he would have immediately stopped, as he did when the matter was first raised with him after the March 4, 2023 post.

46. The Respondent does not raise these points as an excuse for the use of inappropriate content or appearance, nor for not recognizing that the videos could be seen by members of the

public and somehow linked to the Respondent thereby having the potential to create in such person a negative view of the Respondent's office or the judiciary.

47. However, it was, perhaps, a lost opportunity not solely attributable to the Respondent to avoid any harm from linkage to him.

48. Respondent admits in part the allegations in paragraph 6 of the Complaint. However, the subject screen shot from July 22, 2021 also contained the limitation "Friends only".

49. As to paragraph 7 of the Complaint, the Respondent admits that it refers to 11 postings as inappropriate. However, the subparagraphs in paragraph 7 only identify six of the 40 clips posted.

50. All postings were sent to a relatively small number of people, many of whom, depending on the clip, were family, friends and those in the Respondent's TikTok circle.

51. The Complaint generally and paragraph 7 specifically do not raise objections to the remaining 29 postings over the subject two-year period.

52. Therefore, this response is limited to those six videos specifically identified in the Complaint and addressed in the Complaint.

53. Paragraph 7 and its subparagraphs base the claimed violations on either the videos content or Respondent's physical appearance in the cited videos.

54. The Complaint does not claim a violation in posting videos on TikTok or lip syncing categorically to a particular music genre. The Complaint does not appear to object to the use of the cited language by the Respondent or his appearance in private setting or within the confines of family and friends. It does not allege such content or appearance in that context to be violations of the Canons. It is their publication beyond those confines that the Complaint views as problematic.

55. As to the content in those six identified seconds long clips, the Respondent admits that they contained inappropriate language or appearances for a judge to use or display in public and that some members of the public could view the contents as bringing disrepute to the judiciary.

56. The Respondent recognizes that now and with the benefit of hindsight would not have made and posted them. Nor will he ever post again.

57. He did not consult the Court's social media guidelines in advance, although there are no specific guidelines as to or other guidance specific to TikTok videos. Nor did he seek clarification or guidance.

58. He realizes and acknowledges that he should have and should have given his conduct and their potential impact more thought.

59. As a judge, the Respondent admits that he should have been more sensitive to being subject to constant public scrutiny.

60. The Respondent also admits that he should have recognized the possible negative impact if that public scrutiny pierced his effort to protect the privacy of his postings.

61. As a result, the Respondent should have recognized a restriction against posting the subject videos regardless of whether such restriction might be viewed as burdensome by the ordinary citizen.

62. As to the criticized content, the lyrics came from the popular Hip Hop genre recorded by recognized commercial artists. These songs and their lyrics are played on the radio and can be commercially purchased or downloaded by anyone.

63. Some of the songs and artists have been nominated for recognized music industry awards, and some several times.

64. Indeed, on August 11, 2023, ABC's Good Morning America (GMA) featured Hip Hop artists and music in its Central Park Concert Series broadcast to celebrate the genre's Fiftieth Anniversary. The genre is also referred to as street music because of its rough edge and believed beginnings in the Bronx, New York.

65. In its broadcast, GMA featured Busta Rhymes as a recognized commercial artist in the genre. The same artist featured in one of the videos at issue.

66. Thereafter on August 13, 2023, the New York Times Magazine featured Hip Hop under the title: "Can't Knock The Hustle 50 years of an American art form".

67. That issue recognized that Hip Hop music, along with its rough-edged approach to lyrics, has crossed cultural lines and is having a significant impact and influence on American music art, especially among young people.

68. The Respondent admits that he listens to the genre and selected some of the video shorts from among the songs and artists he recognized and previously listened to.

69. The Respondent never endorsed any language or message behind any of the clips of lyrics or the songs.

70. He did not endorse any of the artists, their lifestyle or their views.

71. Therefore, when the Respondent posted the subject videos, he did not appreciate, but should have, that the lyrics and songs excerpts would be deemed by some as inappropriate in this context as well as the excerpts used.

72. The videos were created in the moment. Someone's video made an impact on the Respondent, its song excerpt was extracted by him and applied to meaningless mimicry by the Respondent.

73. The Respondent's conduct was not the product of aforethought. There was no design, no intent. It was a simple exercise in what was believed to be innocent fun. He never intended any harm, let alone to himself or the judiciary.

74. The Respondent can assure the Committee and the Court that he never intended to bring the judiciary into disrepute.

75. Indeed, none of the postings were directed at anyone or had anything to do with any case or party before him.

76. They were not made while performing judicial duties.

77. They began during a time of the court's shut down and a period of sustained down time and isolation.

78. As noted above, TikTok was advertised as a new trend and seemed to be a way to have anonymous silly fun. A way to connect with the outside world that by April 11, 2021 had been sporadically cloistered and stressed. Consequently, Tik Tok seemed to become a popular distraction from the COVID crisis.

79. As also noted above, the Respondent was allured to it and started, as many people did, by simply installing the platform and to simply have fun watching other's clips.

80. In that vein, the Respondent admits the allegation in paragraph 7.a.i. of the Complaint that the portion of the Rihanna song in the clip contained the words stated and that same was posted in Chambers after hours.

81. The song was posted because of the music and to have fun lip syncing. It was not posted because of any meaning, nor was the post directed anywhere, at anyone or anything.

82. Respondent admits the allegation in paragraph 7.a.ii. of the Complaint. Again, while on his own time, the respondent was viewing other videos and selected the clip because he

had heard the song and liked the music. He was not trying to convey inappropriate language or convey any imagery and he was not seeking to convey any message from the lyrics.

83. Respondent admits the allegations in paragraph 7.a.iii of the Complaint. Again, while this video was made and posted in chambers, and should not have been because of how it might be viewed if linked to the Respondent, it was not an endorsement of the artist's views, lifestyle, or the lyrics. It was simply a song Respondent recognized and listened to.

84. While Respondent posted the video clip, his only audience focus was himself and having a little fun with the song clip on his own time. As with all the clips, they were a personally focused activity.

85. Respondent was in no way trying to generate or reach a broad audience.

86. This is reflected by the varied nature of the videos (most of which are not at issue) and Respondent's sporadic and occasional posting over the two-year period.

87. This is also reflected by the scant number of followers referenced in the Complaint when compared with millions of TikTok users.

88. Respondent admits the allegations contained in paragraph 7.b. of the Complaint as to the location, song and the artist referenced.

89. Respondent denies that the lyrics referenced were contained in the video clip.

90. Although the Respondent admitted that he listens to this genre, he did not endorse the song's meaning, the artist's lifestyle, or its lyrics in the subject clip.

91. Indeed, other genres have generated popular songs by artists who have criminal backgrounds or lyrics about objectionable or even abhorrent conduct.

92. For instance, Country Music has its share of outlaws. Rock has its share of racy lyrics and Pop does too ("Let's Get Physical" by Olivia Newton John and "Afternoon Delight" by Starlight Vocal Band) to name a few.

93. Yet, such artists and songs remain popular.

94. Those who listen to them, sing them, or even lip-sync to them are not adopting any messaging or lifestyle of the artist or song.

95. The Respondent can assure the Committee and the Court that no adoption of any messaging was intended here nor was it directed toward anyone or had anything do with his judicial function.

96. Nevertheless, as noted, the Respondent recognizes and acknowledges the inappropriate perception and disrepute to the judiciary those otherwise permissible activities can create when done by a judge.

97. This has been especially driven home at great personal expense to the Respondent and his previously excellent reputation by virtue of the linkage to him and public humiliation when the Complaint was filed and the matter became public.

98. Respondent admits the allegations in paragraph 7.c.i. of the Complaint but denies that the referenced video constitutes or should constitute a violation.

99. The video is taken out of context.

100. It was posted following a driving incident while being driven by one of Respondent's children and was made with the intent to poke fun at the nerve-wracking experience.

101. Yes, the song contained a profane word not uncharacteristic in the genre from which the clip was taken.

102. But the video was done outside the court and in the Respondent's vehicle.

103. It in no way linked the Respondent as a judge or to what he did as a judge. In context, it is perfectly reasonable for the ordinary person to conclude that anyone, even a judge, would use a profanity in an excited utterance within the context stated, albeit not to their child (who was not in the car or the video clip).

104. One can also find the word used on television and in the movies.

105. Therefore, use of the subject profanity, while admittedly vulgar, should not be deemed in the context displayed to reasonably cast dispersion on a judge or the judiciary and should not be deemed a violation. Instead, as the T-shirt in the video stated, even for a judge, the profanity in the stated context should be deemed protected free speech.

106. Respondent admits the allegations contained in paragraph 7.c.ii. of the Complaint

107. As to the allegations in paragraph 8 of the Complaint, Respondent admits that the content or appearance contained in the subset of videos specifically identified above, except for paragraph 7.c.i., including those made in the courthouse after hours, demonstrated poor judgment, a lack of respect for judicial office and a departure from the high standards expected of judges.

108. Respondent acknowledges that the admitted conduct had the capability of undermining the public confidence when a connection was made, and the matter made public.

109. Respondent represents that the subject conduct will not be repeated, that any negative impact on the public confidence is not irremediable and that the public humiliation and ridicule imposed on the Respondent by calling this matter to the public's attention through the filing of the Complaint were enough to restore any lost confidence.

110. As to the Complaint's Wherefore Clause's reference to Code of Judicial Conduct, Canon 1, Rule 1.1, the Respondent admits that he is required to observe high standards of conduct to preserve the integrity, impartiality, and independence of the judiciary. As reflected in the

Official Comment, violations of this Canon occur where conduct reflected adversely on a judge's honesty, impartiality, temperament, or fitness that constitute a failure to respect and comply with the law.

111. While the Respondent maintains that the public's perception of his integrity (honesty) on the bench, his impartiality and his independence as a judge remain intact, he recognizes that high standards go beyond those virtues and that the subject conduct had the capacity to bring the judiciary into disrepute.

112. The Respondent acknowledges that the content of some of his posts was inappropriate and not becoming of a judge.

113. Therefore, in this regard, the Respondent admits that the content contained in several of the videos was contrary to the provisions of Canon 1.1.

114. Similarly, regarding Canon 2, Rule 2.1, Respondent acknowledges that the content in several of the videos referenced above was contrary to Canon's admonition to avoid irresponsible or improper conduct.

115. As to Canon 5, Rule 5.1(A), the Respondent admits that all the subject conduct was in an extrajudicial capacity and therefore did not cast reasonable doubt under the circumstances and in their context on the Respondent's ability to act impartially or interfered with the performance of his judicial duties.

116. The Respondent does admit that the subject conduct had the capacity to demean the judicial office and therefore constitutes a departure from the requirements of Rule 5.1(A).

117. However, the Respondent contends that any negative impact from the subject conduct reaction is not irremediable.

118. The public is clearly aware of the embarrassment and humiliation that Respondent has been subjected to by the enormous press coverage resulting from the filing of the Complaint for public discipline.

119. It should be correspondingly clear that the conduct will not be repeated and that the impact on the Respondent from the publicity surrounding this matter as compared with the nature of the conduct involved is a sufficient deterrent against a repetition of such conduct and sufficient to restore whatever weakened public confidence resulted from same.

120. For the reasons addressed below regarding aggravating and mitigating factors, if public discipline is warranted, a public admonition is sufficient to address the conduct and consequences of the resulting conduct asserted.

AFFIRMATIVE DEFENSES

First Affirmative Defense

121. This is a matter of first impression with unique facts where specific guidance was absent and is, therefore, undeserving of discipline. In the Matter of Ernest L. Alvino, 100 N.J. 92 (1985) and In the Matter of Phillip N. Boggia, 203 N.J. 1 (2010).

Second Affirmative Defense

122. In the event the record reflects the court was on notice of the videos before March 4, 2023, then the principles relied on In the Matter of Ernest L. Alvino for dismissal should be applied and the matter be dismissed.

Third Affirmative Defense

123. Because of the Respondent's measures taken to protect the subject postings from any linkage to the Respondent's actual identity, the limited negative impact to the judiciary and

the directed personal nature of the subject conduct, the public ridicule and humiliation to which the Respondent was subjected to by the filing of the Complaint for public discipline, these circumstances and consequences were adequate deterrents and sufficient remedial measures to restore the public trust thereby justifying dismissal action under the second part of R. 2:15-15(b).

Fourth Affirmative Defense

124. It is not alleged that a member of the public actually reviewed the subject videos, connected them to the Respondent and as a consequence viewed same as having anything to do with the Respondent's ability to carry out his duties and functions as a judge or that it caused them to lack any confidence in his ability to maintain the high standards on the bench that the record demonstrates he has shown to date since becoming a judge. Since the purpose of discipline for such extrajudicial conduct alleged to be inappropriate must be more than a theoretical possibility or speculation, the absence of such proof of an essential element of a violation warrants dismissal. Indeed, the only post Complaint public comment the Respondent is familiar with expressed a favorable opinion of the Respondent and full confidence in him. Indeed, a number of lawyers and judges have initiated efforts to contact the Respondent to offer their support and to testify on his behalf.

Fifth Affirmative Defense

125. The Respondent's conduct under these circumstances and his use of TikTok in the manner that he did was so disconnected from his actual identity and professional life that it constituted a permissible exercise of his First Amendment right to engage in such conduct on his personal device that was solely for his personal entertainment and use. It was only on the filing of the Complaint that the public was able to make any connection unlike in In the Matter of Advisory Letter NO. 3-11 and Opinion No. 12-08 of the Supreme Court Advisory Committee on

Extrajudicial Activities, 2013. There the Bergen Record had identified a link between municipal court judge Vince Sicari and his stage name Vince August. Judge Sicari had also given an interview and was scheduled to give another. He was also a regular in comedy clubs and on network television. Consequently, Judge Sicari was directed to give up one position or the other. Here, the Complaint does not identify any such linkage certainly pre-Complaint and the Respondent sought neither a side career in show business nor to create a vocation to build a public audience. By contrast, the Respondent engaged in his activities essentially for his entertainment and those of his family and friends. Thus, under the Gentile/Hinds standard discussed in In re Inquiry of Broadbelt, 146 N.J. 501, 519 (1996) as applied to these unique facts, there is neither a substantial government interest unrelated to the suppression of expression in play nor a basis to claim that the suppression is no more restrictive than necessary. Consequently, the Complaint should be dismissed on these grounds.

MITIGATING CIRCUMSTANCES

126. As set forth in Matter of Brady, 243 N.J. 395, 420-421 (2020), the following mitigating factors recognized there exist here.

127. The Respondent had an unblemished record before this Complaint was filed against him.

128. The length of Respondent's service on the bench has been more than twelve years and his service has been exemplary.

129. The Respondent's personal reputation before the public and before the courts is substantial.

130. The Respondent's commitment to overcoming his fault is already demonstrated. Upon being informed that his conduct may be viewed as inappropriate, he immediately stopped

the posts. He has only maintained the posts and platform because he has been directed to do so. As soon as he is permitted, he will erase everything.

131. The respondent has freely admitted his conduct and has expressed remorse.

132. It is also clear that there is no risk that the Respondent will engage in similar misconduct in the future. Consequently, his behavior has already been modified to be in conformance with the Code of Judicial Conduct.

133. Effective December of 2019, admonition was added as the lowest level of public discipline. Before then, the lowest level was a reprimand.

134. In viewing the reprimand cases, those involved more serious consequences and situations involving a judge's misconduct in a capacity as a judge or misuse of or reference to the judge's judicial office to advance an interest.

135. Matter of Sadofski, 98 N.J. 434 (1985) (judge publicly reprimanded for inappropriate language used against litigants in the courtroom while court was in session).

136. Matter of Hazelwood, 102 N.J. 635 (1986) (judge publicly reprimanded for attempting to negotiate a settlement with a client to hide his malpractice while he was a judge and failed to inform the client that she should seek the advice of other counsel on the settlement and that he should have disclosed that the case was dismissed and the money was coming from his pocket).

137. Matter of Santini, 126 N.J. 291 (1991) (municipal judge reprimanded for contacting three public officials on behalf of a client and identifying himself as a judge).

138. Matter of Bozarth, 127 N.J. 271 (1992) (municipal court judge reprimanded for inappropriately dealing with members of the public in his court – 1. Inappropriately dealing with a defendant who was talking, 2. Trivializing another's constitutional right to counsel and 3.

Implementing an inappropriate system for tardy defendants that led to one being handcuffed to a police station chair). In Bozath, the Court criticized judges who cultivate a stern reputation through displays of arrogance, bad temper or disregard for rights which can erode the public's confidence in the judicial system. Such is clearly not the case here.

139. Matter of Carton, 140 N.J. 330 (1995) (municipal court judge reprimanded for giving legal advice in a pending criminal matter, and sending a fax to another judge before whom that matter was pending).

140. Matter of Brenner, 147 N.J. 314 (1997) (in a case involving complaints of sexual harassment, absence of clear and convincing evidence that judge's kissing a court employee was an unwanted sexual advance warranted a public reprimand).

141. Matter of Richardson, 153 N.J. 355 (1998) (municipal judge convicted of driving while intoxicated warranted a public reprimand).

142. Clearly, the facts in these reprimand cases are more egregious than here. Unlike here, they are directly connected to the performance of judicial functions, using the office for gain or conduct like drunk driving that shows a disregard for the law and endangers the public.

143. Consequently, discipline here should not be greater than a reprimand.

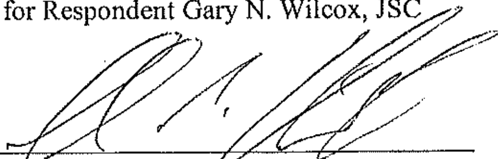
144. However, placing the conduct complained of here on the same discipline level as the foregoing cited cases would be to diminish the greater seriousness and threat posed by the conduct in those cases.

145. Indeed, by expanding the levels of discipline to include an admonition, the Court recognizes that conduct deemed inappropriate yet significantly attenuated from the performance of judicial functions should receive an admonition.

146. Accordingly, Respondent submits that if discipline is ordered, that it should be an admonition.

WHEREFORE, Respondent seeks, for the reasons stated, a finding of no violation or if a violation is determined, that no discipline be imposed as it would serve no legitimate purpose but to punish. Alternatively, if discipline is to be imposed, then it should be no greater than an admonition.

GREENBAUM, ROWE, SMITH AND DAVIS, LLP
Attorneys for Respondent Gary N. Wilcox, JSC



By: ______________________
Robert B. Hille, Esq.

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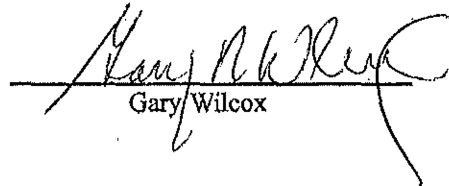
VERIFICATION OF ANSWER

I am the respondent in the within disciplinary action and hereby certify as follows:

1. I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.

2. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Gary Wilcox

Dated: August 18, 2023