

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2017-181

IN THE MATTER OF :
: PRESENTMENT
: CHRISTINE JONES-TUCKER,
: JUDGE OF THE MUNICIPAL COURT :
:

The Advisory Committee on Judicial Conduct ("Committee") 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 and the evidence of record demonstrate that certain of the charges set forth in the Formal Complaint against Christine Jones-Tucker, Judge of the Municipal Court ("Respondent"), have been proven by clear and convincing evidence.

Accordingly, the Committee recommends that Respondent be censured for her misconduct as delineated in the Formal Complaint.

I. PROCEDURAL HISTORY

Former Camden City Municipal Prosecutor Kristina M. Bryant initiated this matter with the filing of an ethics grievance against Respondent in February 2017. Ms. Bryant accused

Respondent of behaving unethically in three material respects -- engaging in a pattern of *ex parte* communications with various Camden City municipal prosecutors, treating her and other municipal employees discourteously and creating a conflict of interest with counsel in the matter of State v. Derek Heimstra, which was pending before Respondent at the time of these events.

Camden County Assignment Judge Deborah Silverman Katz separately referred to this Committee Respondent's inappropriate conduct with counsel in the Heimstra matter, as well as two unrelated incidents; one involving Respondent's interaction with a City official and the other involving her interactions with municipal court personnel. In conjunction with that referral and consistent with the authority granted Assignment Judges under Rule 1:33-4, Judge Silverman Katz, on March 23, 2018, issued an order temporarily suspending Respondent from serving as the Chief Judge of the Camden City Municipal Court, without compensation, for a two-week period, effective March 24, 2018. P-10. Judge Silverman Katz vacated that order on April 9, 2018. P-11.

The Committee consolidated Judge Silverman Katz's referral with Ms. Bryant's grievance and investigated the allegations in each collectively. As part of that investigation, Committee staff interviewed six individuals and twice requested from Respondent her verified written comments vis-à-vis these

allegations, which Respondent, with the assistance of counsel, provided to the Committee.¹ See P-2 thru P-5. In addition, the Committee collected and reviewed documentation and an audio recording relevant to these allegations. See P-6 thru P-11.

On July 11, 2018, the Committee issued a one count Formal Complaint against Respondent charging her with conduct in contravention of Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.5 and Rule 3.8 of the Code of Judicial Conduct. These charges relate to Respondent's course of conduct between December 27, 2016 and January 6, 2017 while presiding over the matter of State v. Derek Heimstra in the Camden City Municipal Court.

Respondent, through counsel, filed an Answer to the Complaint on July 23, 2018 in which she admitted all of the factual allegations contained in the Complaint, but denied violating the cited canons of the Code of Judicial Conduct.

The Committee convened a Formal Hearing on November 28, 2018. Respondent appeared, with counsel, and offered testimony in defense and mitigation of the asserted disciplinary charges, as well as that of one fact witness - John S. Sitzler, Esq. - and two character witnesses - part-time Camden County Metro Police Officer Pascal Chavanon and Camden City Municipal Court

¹ The record before the Committee does not contain the transcripts of every witness interviewed during the Committee's investigation, though Respondent was provided with copies of each in discovery.

interpreter Jamie Reyes. Respondent's counsel made a proffer as to two additional character witnesses - Camden County Metro Police Officer Stephen Garcia and Camden City Municipal Court Clerk Ana Ingram -- who, if called, would reportedly testify in a similar fashion to that of Officer Chavanon and Mr. Reyes. T14-15 to T15-5; T22-1 to T23-25.² The Presenter, though intending to call two witnesses - Camden County Assignment Judge Deborah Silverman Katz and Camden County Municipal Presiding Judge Robert T. Zane - called neither as the Committee deemed their testimony unnecessary, and, instead, relied on documentary evidence and an audio recording to substantiate the charges. T20-17-T25-11. The Presenter and Respondent offered exhibits, all but one of which, i.e. P-1, were admitted into evidence.³ See Presenter's Exhibits P-2 thru P-12; see also Respondent's Exhibits R-1 thru R-4. T31-15 to T35-22; T185-21 to 191-17.

Presenter and Respondent, with leave of the Committee, filed post-hearing briefs on January 7, 2019, which the Committee considered.⁴ After carefully reviewing the evidence, the Committee makes the following findings, supported by clear

² "T" refers to the Transcript of Formal Hearing, In re Tucker, ACJC 2017-181, dated November 28, 2018.

³ The Presenter withdrew exhibit P-1 from evidence. T31-15-20.

⁴ Consistent with Rule 2:6-8, references to the Presenter's and Respondent's post-hearing briefs are designated as "Pb" and "Rb," respectively. The number following this designation signifies the page at which the information is located.

and convincing evidence, which form the basis for its recommendation.

II. FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1984. See Formal Complaint and Answer at ¶1. At all times relevant to this matter, Respondent served as a full-time municipal court judge in the City of Camden, a position to which she was appointed in June 2013, and continues to hold. Id. at ¶2. Effective August 2016, Respondent was named Chief Judge of the Camden City Municipal Court. Ibid.

The facts pertinent to this judicial disciplinary matter are uncontested and concern Respondent's conduct over the course of an eleven-day period between December 27, 2016 and January 6, 2017 while interacting with counsel by email and in open court in the matter of State v. Derek J. Heimstra. Id. at ¶¶3-25.

John S. Sitzler, Esq., of Sitzler and Sitzler in Hainesport, New Jersey, represented the defendant, Derek J. Heimstra, and Kristina M. Bryant, Esq., the assigned Camden City Municipal Prosecutor on the Heimstra matter, represented the State of New Jersey. P-6; T159-18 to 160-22.

Respondent initially addressed counsel in the Heimstra matter on November 1, 2016 and again on December 20, 2016 at which time Respondent scheduled the matter for a conference on

January 3, 2017 to assign a trial date. T162-22 to T163-16; see also Formal Complaint and Answer at ¶4. Respondent advised counsel on December 20, 2016 that if they provided the court with their witnesses' availability prior to January 3, 2017, counsel would not need to appear before Respondent that day. See Formal Complaint and Answer at ¶4.

On Wednesday, December 27, 2016, Ms. Bryant emailed Respondent, in what would be the first in a series of emails between them, to advise of her witnesses' availability for trial and that of the defendant's expert. Id. at ¶5. Respondent, on that same day, replied by email to Ms. Bryant to advise that the Heimstra trial was scheduled for February 24, 2017. Id. at ¶7. Ms. Bryant subsequently notified Mr. Sitzler, by email, of the trial date. Id. at ¶8.

On Friday, December 30, 2016, Respondent rescheduled the Heimstra trial for February 22, 2017 due to her unavailability on February 24, 2017 and notified Ms. Bryant and the Camden City Municipal Court Director, by email, of the change in the trial date, with a copy to the Court Administrator, several Camden City municipal prosecutors and the City attorney. Id. at ¶¶9-10.

Ms. Bryant, on Saturday, December 31, 2016, emailed Respondent and the individuals copied on Respondent's email to advise of the defendant's expert's unavailability for trial on

February 24, 2017 and provided Respondent with four alternate dates on which the expert would be available. Id. at ¶12.

In a series of four closely timed email responses, beginning at 10:54 p.m. on December 31, 2016 and continuing in quick succession at 10:56 p.m., 10:59 p.m. and 11:09 p.m., Respondent, admittedly frustrated, replied to Ms. Bryant and those copied on her initial email in an overtly aggressive and at times disjointed manner, the impropriety of which Respondent now concedes. Id. at ¶13; T142-8 to T145-17. Those responses were as follows:

- 10:54 p.m.: We need a certification as to unavailability with reference to the designated trial counsel and experts b4 changing the date. thank you. I am not scheduling a special date like last Friday which was a complete waste of court resource time. Too bad. That is the trial date. Get with the program.
- 10:56 p.m.: Court rules say dais have priority. Follow the rules.
- 10:59 p.m.: Your last message was you would send the appropriate subpoenas. What changed?
- 11:09 p.m.: Not a game. Trial is 2/22/17. You agreed to send subpoenaed trial date. Not a game. Not a game. That is the trial date. Not a game. This is the trial date. No more repeats of what happened this past Friday. Not a game. That is the date, you agreed to send revised dates. That is the scheduled trial date. Sick of this. Respect for the city if [sic] Camden. Respect for our court.

Ibid.; see also P-3 at email attachments.

Ms. Bryant replied to Respondent's series of emails on Sunday, January 1, 2017, at 6:09 p.m., as follows:

I was attending seminars and when I said I would send subpoenas when I reloaded [sic] at defense counsels [sic] email of experts [sic] availability dates is when I sent you the email that their expert wasn't available that date. I have no issue with whatever date you assign as trial date. In no way do I believe this is a game.⁵

Id. at ¶14.

On January 2, 2017, at 4:25 a.m., Respondent replied by email to Ms. Bryant on which she again copied the Camden City Municipal Court Director and the Camden City Court Administrator, and forwarded a copy to Camden City counsel Marc Riondino. Id. at ¶¶16-17. In this early morning email,

⁵ Ms. Bryant emailed Camden City counsel, Marc Riondino, at 6:23 p.m. that evening as follows:

Good evening. I am not sure if you have read judge tickers [sic] emails the first one on Friday changing a trial date. I initially responded saying I would resend subpoenas. Then I realized after seminars were over and I was home at 8:30 p.m. Friday night I emailed Judge tucker [sic] advising the defense expert is not available on the date she relished [sic] the trial for. Today I received a series of emails that frankly I found to be disrespectful and condescending. Please advise how I handle this situation without making the situation worse.

Id. at ¶15.

Respondent was again overtly aggressive towards Ms. Bryant, stating:

Not having a repeat of last week. This is it [sic] a game in have already scheduled the trial for Wed 2/22. Last time I am sending you this message. This is is [sic] not a game. Respect for this court. Respect for the city.

Id. at ¶16.

Several minutes later, at 4:32 a.m., Respondent emailed Ms. Bryant, Mr. Riondino and the Court Director stating:

They can come in with their proofs of trial availability . . . proofs as to cases and docket dates Tues wed [sic] or Fri of the coming week. Otherwise I will see all of you on 2/22.

Id. at ¶18.

In response, Ms. Bryant advised Respondent, by email, on Thursday, January 5, 2017, that Mr. Sitzler would appear in the Camden City Municipal Court on Friday, January 6, 2017, "to address the trial date . . . [in the Heimstra matter] . . . per [Respondent's] directive." Id. at ¶19. In advance of his appearance before Respondent, Mr. Sitzler filed a motion seeking a firm trial date. Ibid.; P-6 at T2-11 to T3-5.

The next morning, January 6, 2017, Ms. Bryant and Mr. Sitzler appeared, as directed, before Respondent to address the trial schedule in the Heimstra matter. P-6; see also Formal Complaint and Answer at ¶20. Following a protracted colloquy

between Respondent and counsel on that issue, Mr. Sitzler requested from Respondent copies of those emails between Respondent and Ms. Bryant about which he had become aware and on which he was not copied concerning the Heimstra trial schedule. Ibid.; P-6 at T9-25 to T10-2. Despite having exchanged those emails with Ms. Bryant only four days earlier from her Camden City email account, Respondent disclaimed any knowledge of them to Mr. Sitzler and directed that he seek such "confidential" emails from the Court Director, stating:

I'm not sure what e-mails you're referring to, but you're going to have - if you're making a request for confidential e-mails of the Court, you're going to have [sic] make that request at the window to the Court Director.

P-6 at T10-3-8; see also Formal Complaint and Answer at ¶¶13, 21.

Following this exchange, Respondent instructed Mr. Sitzler to provide to the court, within ten days, a list of possible dates for the Heimstra trial before concluding the matter that day. P-6 at T10-10 to T11-4. Respondent, thereafter, heard several unrelated matters before directing Ms. Bryant to return to the courtroom to discuss the Heimstra matter. P-6 at T11-6-17; see also Formal Complaint and Answer at ¶22. Though acknowledging Mr. Sitzler's absence from the courtroom, Respondent, nonetheless, addressed Ms. Bryant *ex parte* about the Heimstra matter, during which she expressed to Ms. Bryant her

knowledge of the emails to which Mr. Sitzler referred moments earlier and her "grave concerns" about his request for copies of those emails, stating:

The Court has grave concerns about Mr. Sitzler's requests and why he would even make such a request considering they are from my personal emails to you. Have grave concerns about that and I believe this puts me in both a conflict of interest with him and with you. I do not expect you to prosecute any further cases in my Court until this matter's resolved.

You and Mr. Sitzler will hear from the Court Director as to which judge this case will be assigned to.

You're excused.

P-6 at T11-6-17; see also Formal Complaint and Answer at ¶23.

The tone of Respondent's remarks to Ms. Bryant on this occasion was not only aggressive, in a manner reminiscent of the very emails at issue, but also accusatory, i.e. accusing Ms. Bryant of behaving inappropriately when she informed Mr. Sitzler of the existence and substance of the subject emails. We find these remarks unjustified, demeaning and inappropriate, and to constitute a sharp departure from the decorum expected of every jurist. As Respondent now concedes, Mr. Sitzler had an absolute right to those emails, which Respondent transmitted using her official email account, as they were neither personal nor confidential but public in nature and concerned Mr. Sitzler's

client whose matter was then pending before Respondent. T132-20 to T133-16.

Shortly after Respondent's *ex parte* exchange with Ms. Bryant on January 6, 2017, Respondent emailed the Camden City Municipal Court Director, Court Administrator and the City attorney, at 11:04 a.m. that morning, as follows:

Today Fri 1/6/7 [sic] following attorney John Sitzler's motion for a firm trial date in a DUI case he requested copies of my emails concerning the case. I directed him to make his request at the Information window. I object to the provision of any emails from me concerning this case or any other. As I am opposing him in this matter he will have to be assigned to another judge to avoid any potential conflicts. In addition he could have only made a request for the emails based on information from Prosecutor Bryant. Based on this I requested that she return to my courtroom, which she did and I advised her that based on what transpired in the Heimstra case - until those matters are resolved she is not to prosecute any cases in my court as I am declaring a conflict with her. I do not want her prosecuting cases in my court. I feel her actions are prejudicial to the court. Please adjust the prosecutors schedules accordingly. Thank you.

P-12; see also Formal Complaint and Answer at ¶24.⁶

⁶ Respondent, though admittedly aware that there can be no expectation of privacy in respect of emails sent from or received on her City email account and cognizant that the subject emails concerned scheduling in a pending court matter, inexplicably characterized her emails with Ms. Bryant to court personnel and to Ms. Bryant directly as "confidential" and "personal." P-6 at T10-3-8; P-12. Premised on this erroneous characterization, Respondent again accused Ms. Bryant of behaving improperly by disclosing the very existence of those

In contrast to her statement to Ms. Bryant, on the record, on January 6, 2017 and her email to Camden City Municipal Court personnel and the City's attorney that same day acknowledging a conflict with Mr. Sitzler, Respondent, when initially questioned by the Committee in June 2017 and throughout these proceedings, denied a conflict with counsel. P-2; P-3 at p.5; see also Formal Complaint and Answer at ¶25. Respondent, rather, claimed that as "Chief Judge [she] assigned the Heimstra matter to another Judge simply because [she] did not want the defendant to feel because of the scheduling issues there was any negativity to him." P-3 at p.5; see also Formal Complaint and Answer at ¶25.

Respondent maintained this position at the Formal Hearing and, on this basis, denied misrepresenting to the Committee the absence of a conflict with Mr. Sitzler, as charged in the Formal Complaint. T103-3-16; T151-22 to T152-23; see also Formal Complaint and Answer at ¶27.

When questioned by the Committee, however, about the marked disparity between her statements to Ms. Bryant and City personnel on January 6, 2017 vis-à-vis her conflict with Mr. Sitzler and her testimony to this Committee that no such conflict existed, Respondent was unable to explain or justify

emails to Mr. Sitzler. P-12. Respondent now acknowledges that all such emails are public and appropriately subject to disclosure. T132-25 to T133-16.

the discrepancy. T128-13 to T132-6. Indeed, Respondent initially conceded when testifying at the Formal Hearing to transferring the Heimstra matter due to a conflict or the perception of a conflict with counsel. T150-14 to T151-21. When pressed, however, Respondent maintained that though she did not refer to the defendant at any point when requesting a transfer of the Heimstra matter, her only reason for requesting that transfer was to avoid any concerns of prejudice on Mr. Heimstra's part and not because of a conflict with Mr. Sitzler. T151-22 to T152-24.

Similarly, Respondent was unable to explain or justify the evident disparity between her professed lack of knowledge about the precise emails to which Mr. Sitzler referred when requesting copies of them on January 6, 2017, and her clear recall of those same emails when addressing this issue with Ms. Bryant moments later on the record. T122-12 to T123-8; see also P-6 at T11-6-17. Respondent, though declining to address this discrepancy when twice questioned about it by the Committee during its investigation into these matters, testified at the hearing to feeling "taken aback" by Mr. Sitzler's request for her emails, which she claimed to have construed as an "OPRA" (i.e. Open Public Records Act) request. T97-8 to T98-9; T122-12 to T123-8, T128-1-12. When questioned further about her failure to provide those emails to Mr. Sitzler, Respondent testified that she

deferred that task to the Court Director believing the Court Director better able to provide Mr. Sitzler with a "complete package" of the requested emails. T98-3-9. In this context, Respondent denied that her reply to Mr. Sitzler - i.e. "I'm not sure what e-mails you're referring to" - was disingenuous as charged in the Formal Complaint given that she did not preclude him the opportunity to seek copies of those emails from Camden City personnel. See Formal Complaint and Answer at ¶26; P-2 thru P-5; T136-21 to T97-17 to T98-9; Rb16.

We find Respondent's testimony in both instances incredible. As to the issue of a conflict, Respondent's remarks to Ms. Bryant about the existence of a conflict with counsel mere moments after addressing the Heimstra matter on the record, and her contemporaneous comments to City personnel about that very conflict when requesting a transfer of the Heimstra matter, belies Respondent's testimony that she believed no such conflict existed. Irrespective of whether a conflict or the appearance of one actually existed, the record before this Committee leaves little doubt that Respondent deemed a conflict with counsel to exist when she requested a transfer of the Heimstra matter in January 2017.

In respect of her response to Mr. Sitzler's request for a copy of the subject emails on January 6, 2017, the record before this Committee reveals that Respondent was disingenuous when she

disclaimed any knowledge of those emails to him given her otherwise clear recollection of them moments later when addressing Ms. Bryant on the record. Indeed, Respondent's immediate reaction to Mr. Sitzler's request and her subsequent statements to Ms. Bryant and City personnel that same day are indicative of her desire to avoid producing those emails. Mere moments after disclaiming to Mr. Sitzler any knowledge of them, Respondent expressed to Ms. Bryant her "grave concerns" about Mr. Sitzler's request and notified City personnel that she, in fact, was "opposing" that request. P-6 at T T11-6-17; P-12.

We simply cannot reconcile Respondent's extreme and disproportionate reaction to Mr. Sitzler's request for email communications between Respondent and Ms. Bryant concerning scheduling with Respondent's newly offered explanation that she reacted as she did out of a desire to be fully forthcoming with Mr. Sitzler.⁷ On the strength of this record, that explanation appears specious. We find these events, taken collectively, evince Respondent's lack of candor when disclaiming any knowledge of the emails to Mr. Sitzler on January 6, 2017 as charged in the Formal Complaint.

⁷ Neither the Camden City Municipal Court nor City officials provided Mr. Sitzler with a copy of the subject emails despite his written request to Respondent on January 6, 2017 for them and his subsequent issuance of a subpoena to Camden City counsel Marc Riordino for their production. P-9; T182-5-12.

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 violating Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 3, Rule 3.5 and Rule 3.8 of the Code of Judicial Conduct in five material respects: (1) treating Ms. Bryant discourteously during a prolonged email exchange concerning scheduling in the Heimstra matter and again during an *ex parte* conversation about those very emails; (2) misrepresenting to attorney John Sitzler Respondent's knowledge of those emails; (3) engaging in an *ex parte* conversation with Ms. Bryant about the Heimstra matter; (4) creating a conflict with counsel in the Heimstra matter for which Respondent's recusal was necessitated; and (5) misrepresenting to this Committee the basis for her transfer of the Heimstra matter to a different jurist.

We find, based on our review of the uncontroverted evidence in the record, that the first four charges have been proven by clear and convincing evidence and that Respondent's course of conduct with counsel in the Heimsra matter between December 27, 2016 and January 6, 2017 violated the cited canons of the Code of Judicial Conduct.

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

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, Commentary.

This Commentary emphasizes the special role that judges play in our society and the significance of their public

comportment. "[J]udges have a special responsibility because they are 'the subject of constant public scrutiny;' everything judges do can reflect on their judicial office. When judges engage in private conduct that is irresponsible or improper, or can be perceived as involving poor judgment or dubious values, '[p]ublic confidence in the judiciary is eroded.'" In re Blackman, 124 N.J. 547, 551 (1991). As recognized by our Supreme Court, adherence to this principle is of the utmost importance. In re Santini, 126 N.J. 291, 298 (1991); see also In re Murray, 92 N.J. 567, 571 (1983); In re Hardt, 72 N.J. 160, 166-167 (1977).

Canon 3, Rule 3.5, requires judges to treat all those with whom they interact in an official capacity with courtesy, dignity and patience and to require the same from "lawyers, court officials, and others subject to the judge's direction and control." Canon 3, Rule 3.8, prohibits jurists from initiating or considering "ex parte or other communications concerning pending or impending proceedings."

In the instant matter, the impropriety of Respondent's interactions with counsel while presiding over State v. Heimstra is plain. This behavior stands in stark contrast to the high ethical standards to which jurists must adhere under the Code of Judicial Conduct and, as such, warrants the imposition of public discipline.

We begin our analysis with Respondent's mistreatment of Ms. Bryant in a series of *ex parte* emails on New Year's Eve and again when engaging with her, *ex parte*, in the courtroom immediately prior to requesting a transfer of the Heimstra matter to a different jurist. Admittedly frustrated with the scheduling difficulties she encountered when listing the Heimstra matter for trial, Respondent berated Ms. Bryant in multiple emails late in the evening on December 31, 2016 and again during the early morning hours of January 2, 2017 about a scheduling issue Ms. Bryant did not create. Those emails depict a judge in an intemperate state responding belligerently to the municipal prosecutor, after-hours, about a simple scheduling issue with phrases such as, "Too bad. That is the trial date. Get with the program," "Court rules say dais have priority. Follow the rules," and repeating multiple times the phrases "not a game," "that [or this] is the trial date" and "respect for the [or this] city, respect for our [or this] court." Ms. Bryant rightly expressed to City counsel Marc Riondino, by email, on January 1, 2017 her offense at these remarks, which she characterized as "disrespectful and condescending." We agree with this characterization.

Unassuaged by the passage of time, Respondent remained hostile to Ms. Bryant four days later when, on January 6, 2017, she addressed Ms. Bryant, *ex parte*, about those email

communications and expressed her "grave concern" over Mr. Sitzler's request for copies of them. On this occasion, Respondent's frustration took the form of an accusation directed at Ms. Bryant whom Respondent accused of behaving inappropriately when alerting Mr. Sitzler of those email communications. In an unjustified and exaggerated reaction to a perceived transgression, Respondent precluded Ms. Bryant from appearing before her "until [the] matter [was] resolved" and declared a conflict with Mr. Sitzler whose request she was "opposing."

Such an extreme and unwarranted reaction to an otherwise innocuous scheduling issue creates the inevitable impression that Respondent lacks the requisite self-control and sound judgment required of a jurist and impairs Respondent's integrity and that of the judicial office, in violation of Canons 1, Rule 1.1, and Canon 2, Rule 2.1, of the Code. Indeed, we question Respondent's mindset in choosing to engage in this excessive fashion with counsel, over email, late in the evening on New Year's Eve.

Respondent's demeaning and patronizing tone with Ms. Bryant during the course of these interactions also strayed significantly from the mandate of Canon 3, Rule 3.5, that jurists treat all those who appear before them, including lawyers, with patience, dignity and courtesy. This expectation

of professionalism among jurists has been a mainstay of the Judiciary for decades; its importance underscored by our Supreme Court four decades ago in In re Albano, 75 N.J. 509, 514 (1978), and reiterated in more recent jurisprudence.

[I]t is the judge's obligation to see that justice is done in every case that comes before him. This includes not only reaching the correct legal result in the particular case, but also the exhibiting at all times of judicial demeanor, patience and understanding. People come to the court to be heard. They have a right to expect that in presenting their grievances they will be treated with respect.

(Emphasis supplied). See also In re Sadofski, 98 N.J. 434, 441 (1985) ("No matter how tired or vexed, . . . judges should not allow their language to sink below a minimally-acceptable level"); In re Mathesius, 188 N.J. 496, 525 (2006) ("[P]etulance, sarcasm, anger, and arrogance . . . have no place in the exercise of judicial duties.").

Respondent's breach of this longstanding ethical precept requires the imposition of public discipline to restore public confidence in the Judiciary. Public discipline will also serve to instruct the public, including the several court personnel Respondent copied on her emails, and Respondent, who steadfastly denies violating the Code of Judicial Conduct, that such discourse by a jurist is intolerable and will not be condoned.

Rb14.

We consider separately the impropriety of Respondent's *ex parte* conversation with Ms. Bryant on January 6, 2017 following Mr. Sitzler's appearance in the Heimstra matter. The record in this regard establishes, clearly and convincingly, Respondent's violation of Canon 3, Rule 3.8, of the Code, which prohibits jurists from initiating or considering "*ex parte* communications concerning pending or impending proceedings." As evinced in the record, Respondent initiated an *ex-parte* conversation with Ms. Bryant, shortly after Mr. Sitzler's departure from the courtroom, during which Respondent advised Ms. Bryant of her "grave concerns" about Mr. Sitzler's request for her "personal" emails and declared a conflict with both counsel given that request.

Respondent offered no explanation or appreciation for this ethical breach during these proceedings, a fact we find to aggravate her misconduct in this instance. In failing to acknowledge this obvious impropriety, Respondent leaves open the potential for its reoccurrence and casts significant doubt on her ability generally to conform her conduct to the high ethical standards demanded of jurists.

This ethical breach also implicates Canon 1, Rule 1.1 and Canon 2, Rule 2.1, which require jurists to maintain and enforce high standards of conduct and to avoid impropriety and the

appearance of impropriety to preserve the integrity, impartiality and independence of the Judiciary.

We next consider Respondent's evident creation of a conflict of interest with Ms. Bryant and Mr. Sitzler in the Heimstra matter by virtue of Ms. Bryant's disclosure to Mr. Sitzler of the subject email communications, to which Respondent attributed some wrongdoing on Ms. Bryant's part, and Respondent's stated opposition to Mr. Sitzler's request for copies of those emails. We need not resolve whether an actual conflict existed by virtue of these circumstances, but rather whether Respondent created what she deemed to be a conflict with counsel. The record on this point is unequivocal. Respondent acknowledged to Ms. Bryant directly and to court staff, through email, the existence of a conflict with counsel, which she attributed to her email communications with Ms. Bryant.

Having raised the specter of a conflict on January 6, 2017, Respondent may not now disclaim its existence for purposes of defending against these ethics charges. The illegitimacy of such disclaimers is evident in the record and only heightens the impropriety of Respondent's underlying misconduct in creating the conflict of interest for which her recusal became necessary. Cf. In re Appleby, 220 N.J. 27 (2014) (adopting ACJC presentment finding, in part, that a judge's intentional concealment of a

conflict amplifies the impropriety of that misconduct and is deserving of greater discipline).

Respondent's conduct in creating a conflict in the Heimstra matter, or minimally the appearance of one, violates her ethical obligations under Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct for which enhanced public discipline is warranted.

Lastly, the Committee concludes that the charge that Respondent made misrepresentations to this Committee concerning the basis for her transfer of the Hemistra matter to a different jurist has not been proven by clear and convincing evidence.

Having concluded that Respondent violated Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 3, Rule 3.5 and Rule 3.8 of the Code of Judicial Conduct, the sole issue remaining is the appropriate quantum of discipline. In our consideration of this issue, we are mindful that the primary purpose of our system of judicial discipline is to preserve the public's confidence in the integrity and independence of the judiciary, not to punish an offending judge. In re Seaman, 133 N.J. 67, 96 (1993). 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).

There exist in this instance two significant aggravating factors. First, Respondent's misconduct, which includes a fundamental lack of professionalism when administering her court calendar, demonstrates a lack of respect for the ethical constraints to which she, like every jurist, must adhere.

Second, Respondent has remained steadfast in her refusal to acknowledge any wrongdoing in her interactions with counsel in the Heimstra matter and to accept responsibility for it, despite the uncontroverted evidence of that wrongdoing in the record. Having failed to accept such responsibility, we remain concerned about Respondent's appreciation for the ethical constraints attendant to the judicial office and her commitment to adhere to those constraints.

In respect of any mitigating factors, we recognize Respondent's otherwise unblemished judicial disciplinary history since assuming the bench in June 2013 and her more than five years of dedicated service to the Camden City Municipal Court, the last two of which as the Chief Judge. In addition, we acknowledge the testimony of Respondent's two character witnesses - part-time Camden County Metro Police Officer Pascal Chavanon and Camden City Municipal Court interpreter Jamie Reyes -- both of whom testified to Respondent's appropriate judicial demeanor on the bench. We, likewise, acknowledge Respondent's proffer that two additional character witnesses were prepared to testify in a similar fashion to that of Officer Chavanon and Mr. Reyes.

These mitigating factors, however, when weighed against the conduct at issue and the significant aggravating factors present in this case, are insufficient to mitigate the harm caused to the Judiciary by Respondent's course of conduct in this matter.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be censured for her conduct in contravention of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 3, Rule 3.5 and Rule 3.8 of the Code of Judicial Conduct. This recommendation takes into account Respondent's ethical infractions and the

aggravating factors present in this case, which justify the quantum of discipline recommended.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

June 28, 2019

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

David P. Anderson, Jr. did not participate.