SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2009-050

IN THE MATTER OF SETH I. DAVENPORT, FORMER JUDGE OF THE MUNICIPAL COURT	**PRESENTMENT**

The Advisory Committee on Judicial Conduct (the "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 demonstrate that, with the exception of Respondent's involvement in certain lease negotiations, the charges set forth in Count I of the Formal Complaint against Seth I. Davenport, former Judge of the Municipal Court of Montville Township ("Respondent"), have been proven by clear and convincing evidence.[1] The Committee's Findings also demonstrate that the charges set forth in Count II of the Formal Complaint have not been proven by

[1] Though the Committee does not find, by clear and convincing evidence, that Respondent violated Rule 1:15-1(b) in respect of his involvement in certain lease negotiations as discussed generally in Count I of the Complaint, we do find that Respondent's conduct in those negotiations created the appearance of impropriety in violation of Canons 1 and 2A of the Code of Judicial Conduct.

clear and convincing evidence. The Committee recommends that Respondent be publicly reprimanded for his conduct as delineated in Count I of the Formal Complaint.

On March 23, 2011, the Committee issued a Formal Complaint in this matter, which accused Respondent of two separate ethical violations: (1) acting as counsel for the Mayor of Montville Township, John Rosellini, in four personal legal matters over a two-year period between 2003 and 2004 while Respondent was also serving as Montville Township's Municipal Court judge, in violation of Rule 1:15-1(b) of the New Jersey Rules of Court and Canons 1 and 2A of the Code of Judicial Conduct; and (2) exhibiting a lack of candor when executing a certification in October 2006 in an unrelated matter in which Respondent stated inaccurately that he had ceased his representation of Mr. Rosellini after his appointment to the Montville Municipal Court, in violation of Canons 1 and 2A of the Code. Respondent filed an Answer to the Complaint on May 2, 2011 in which he admitted certain factual allegations of the Formal Complaint, clarified others and denied violating Rule 1:15-1(b) or Canons 1 and 2A of the Code.

On December 21, 2012, Presenter and Respondent filed with the Committee a set of Stipulations in which Respondent, with one notable exception, concedes both the accuracy of the factual

allegations in Count I of the Complaint and the concomitant charges of judicial misconduct leveled against him. Specifically, Respondent stipulates to representing then Montville Mayor John Rosellini while also serving as Montville's Municipal Court judge in three of the four legal matters alleged in Count I of the Complaint in violation of Rule 1:15-1(b) and Canons 1 and 2A of the Code of Judicial Conduct.[2] As to the fourth legal matter, Respondent denies representing then Mayor Rosellini in lease negotiations with The Learning Experience ("TLE"), a limited liability company which sought to lease space in a property owned by Mr. Rosellini, located at 323 Changebridge Road in Montville, for use as a daycare facility (the "TLE Lease Negotiations" or "Lease Negotiations").

In respect of Count II of the Complaint, Respondent stipulates to the inaccuracy of his certification ("Certification") in the matter of South Salem Street Assoc., LLC, et al. v. The Planning Board of the Township of Montville and the Township of Montville, Docket No. L-3369-04, but denies any intent to deceive. Specifically, Respondent concedes that

[2] There is a reference in Count I of the Complaint to Respondent's representation of then Mayor Rosellini in the sale of property located at 323 Changebridge Road in Pine Brook, New Jersey. The evidence in the record indicates that this transaction occurred in 2002, prior to Respondent's judicial appointment. P-16. Accordingly, the Committee dismisses this allegation.

his Certification is inaccurate vis-à-vis his statement that he "completely ceased" his representation of then Mayor Rosellini following his appointment to the Montville Municipal Court in January 2003. Respondent, however, denies "knowingly" executing a false certification, claiming that at the time he signed it he was relying on his "good-faith recollection." Rb2.[3]

The Committee conducted a Formal Hearing in this matter on January 16, 2013. Respondent appeared with counsel and offered testimony in his defense concerning the remaining allegation in Count I that he represented then Mayor Rosellini in the TLE Lease Negotiations, and the charge in Count II that he lacked candor when executing his Certification in the South Salem Street Assoc. matter. The Presenter called one witness - TLE President Richard Weissman - who testified about his interactions with Respondent during the TLE Lease Negotiations and his impression that in those interactions Respondent was acting as counsel to and speaking on behalf of the property owner, Mayor John Rosellini. Exhibits were offered by both parties and accepted into evidence, as were the Stipulations previously referenced. See P-1 through P-34; see also R-1 through R-13; Stipulations, filed December 21, 2012. Both

[3] Consistent with Rule 2:6-8, references to the Presenter's and Respondent's post-hearing briefs will be designated as "Pb" and "Rb" respectively. The number following this designation signifies the page at which the information may be found.

parties submitted post-hearing briefs, which were considered by the Committee.

On January 24, 2013, following the Formal Hearing, Respondent, through counsel, provided the Committee with excerpts from the following documents: (1) the interview of John Rosellini conducted by staff to the Committee on November 12, 2009 (P-32); correspondence from Ronald Shaljian, Esq. to the Committee dated June 23, 2009 (P-6 at ACJC 0226); and letters of character submitted on behalf of Respondent (R-3 to R-10). These materials were previously admitted into evidence at the Formal Hearing and were considered by the Committee.

After carefully reviewing all of the evidence, the Committee made factual determinations, supported by clear and convincing evidence, which form the basis for its Findings and Recommendation.

I. FINDINGS

A. Factual and Procedural Background

This matter was referred to the Committee by the Honorable Michael Winkelstein, P.J.A.D. (ret.) following an Appellate Division decision in which he participated in the matter of South Salem Street Assoc., LLC v. Planning Board of the Township of Montville, No. A-5401-06T3. P-1. In his letter of referral, Judge Winkelstein referenced several allegations that were made

against Respondent, who was not a party to that litigation, by the plaintiffs in the South Salem Street Assoc. matter. Id. Specifically, the plaintiffs in that matter alleged that Respondent, "who [had] previously represented the Mayor," should have "disqualified himself from hearing a complaint Montville Township filed against the plaintiffs." Id. Judge Winkelstein and his colleagues on the Appellate panel "determined that the allegations against . . . [Respondent were] . . . sufficiently serious to warrant a referral" to the Committee, however "the court [took] no position" with regard to the merit, if any, of plaintiffs' allegations. Id.

The Committee conducted an extensive investigation into these allegations, which included, inter alia, interviewing Respondent and Mr. Rosellini, and collecting documents relevant to Respondent's representation of then Mayor Rosellini in various personal legal matters while Respondent was serving as Montville's Municipal Court judge. This judicial ethics matter followed.

1. Uncontested Facts

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1984. Id. at ¶1. At all times relevant to the instant proceeding, and for a total of approximately seven years between January 1, 2003

and April 30, 2010, Respondent served as the Montville Municipal Court judge, a position he no longer holds. Id. at ¶¶2, 4; see also 1T94-13-17. Respondent has not previously been the subject of a judicial ethics complaint. Stipulations at ¶3.

When Respondent was initially appointed to the Montville Municipal Court and for a period of two years thereafter, between January 2003 and December 31, 2004, John Rosellini served as the Mayor of Montville Township and Chairman of the Township Committee. Stipulations at ¶5. Mr. Rosellini's term as mayor spanned several years, beginning in January 1995 for a one year term and commencing again in January 1997 for a seven year term that ultimately concluded on December 31, 2004. Ibid.

The salient and uncontested facts pertinent to the allegations and disciplinary charges contained in Count I of the Complaint, with the exception of the TLE Lease Negotiations about which there was extensive testimony offered at the hearing, are largely uncontested and the subject of a Stipulation. Notably, Respondent concedes that the conduct to which these facts relate evince his violation of Rule 1:15-1(b) and Canons 1 and 2A of the Code of Judicial Conduct. Stipulations at ¶15.

Immediately prior to Respondent's appointment to the Montville Municipal Court, he represented then Mayor Rosellini

in Mr. Rosellini's capacity as the Executor of his mother's Estate ("Estate Matter"), for which he billed Mr. Rosellini. Stipulations at ¶6; see also R-1; 1T100-3-9. On January 2, 2003, having been appointed to the Montville Municipal Court, Respondent wrote to one of his adversaries in the Estate Matter to address outstanding issues in that case. P-3.[4] At that time, Respondent advised counsel that he would no longer be representing Mr. Rosellini in the Estate Matter, and indicated to counsel that the matter would be transferred to Ronald Shaljian, Esq. of Boffa, Cammarata & Shaljian, effective January 7, 2003. Ibid. Thereafter, on or around July 23, 2003, Mr. Shaljian began representing Mr. Rosellini in the Estate Matter. P-5; see also P-6. The six month gap in time between Respondent's withdrawal as counsel for Mr. Rosellini and Mr. Shaljian's substitution was due largely to Mr. Rosellini's failure generally to address the Estate Matter. Id.

Respondent, nevertheless, continued to represent then Mayor Rosellini, intermittently, for a period of two years *after* his judicial appointment in Montville. ¶8(a-c). His representation

[4] There is a discrepancy in the record between the date of this letter as it appears in Exhibit P-3 (i.e. January 2, 2003) and the date referenced by the parties in the Stipulations (i.e. December 27, 2002). This discrepancy, however, does not materially affect the Committee's consideration of the allegations at issue in this matter. For the sake of consistency, the Committee has decided to defer to the date that exists on the copy of the actual letter marked as Exhibit P-3.

of Mr. Rosellini at that time concerned three legal matters: (1) the sale of property owned by his mother's Estate located at 136 Changebridge Road in Montville, New Jersey on January 17, 2003; (2) the sale of a home owned by Mr. Rosellini and his wife located at 1707 Bay Boulevard in Lavallette, New Jersey in August 2004; and (3) the satisfaction of a mortgage under which John Rosellini was the mortgagor on a property located at 101 Coleman Avenue in Lavallette, New Jersey in August 2004. Stipulations at ¶8(a-c); see also P-4; P-7 to P-15; 1T98-4 to 1T104-1. Respondent claims that he neither charged Mr. Rosellini for this work nor opened a file in any of these matters. 1T99-16 to 1T100-2.[5] His testimony in this regard is uncontroverted.

Approximately two years later, on October 27, 2006, in connection with unrelated litigation in the matter of South Salem Street Assoc., LLC, et al. v. The Planning Board of the Township of Montville, et al., to which Respondent was not a party, Montville's counsel asked Respondent to execute a certification (the "Certification") declaring, among other

[5] Whether Respondent charged Mr. Rosellini for the legal work he performed on Mr. Rosellini's behalf or performed that work pro bono is immaterial to the issue in Count I concerning Respondent's violation of Rule 1:15-1(b). See In re Di Sabato, 76 N.J. 46 (1978) (finding that the proscription imposed by paragraph 1:15-1(b) applies to unpaid representation by the judge of members of his immediate family).

things, that he did not represent John Rosellini while he was serving as the Municipal Court judge in Montville and Mr. Rosellini was serving as Montville's mayor. Stipulations at ¶9. In compliance therewith, Respondent executed the Certification in which he incorrectly avowed that he had "completely ceased" representing Mr. Rosellini after his appointment to the Montville Municipal Court. P-2 at ¶3. Respondent concedes that his Certification in this regard is inaccurate given his subsequent representation of then Mayor Rosellini while Respondent was Montville's Municipal Court judge. Stipulations at ¶11.

2. Interview of Respondent

Respondent was interviewed by the Committee about his conduct in this matter on October 5, 2010. P-31. During that interview, Respondent was shown several of the various documents that now comprise the record in this matter. At that time, Respondent admitted representing then Mayor Rosellini in the three legal matters previously referenced, and to the impropriety of his conduct in that regard. P-31 at 6T65-2 to 6T70-1.[6] Although Respondent denied representing Mr. Rosellini in the TLE Lease Negotiations, he nonetheless conceded that his conduct

[6] "6T" refers to the Transcript of Interview of Respondent, conducted on October 5, 2010, which is designated as P-31 in the record.

during those negotiations created the appearance that he was representing Mr. Rosellini, which he likewise acknowledged was improper. Id. at 6T42-1-10; 6T51-19 to 6T52-4.

3. Formal Hearing

The issues addressed at the hearing in this matter were twofold: (1) whether Respondent represented Mr. Rosellini in the TLE Lease Negotiations, which he contests; and (2) Respondent's state of mind when he signed the Certification in which he incorrectly attests to ceasing all representation of Mr. Rosellini following his appointment to the Montville Municipal Court in January 2003.

In respect of the first issue, the Committee heard testimony from Richard Weissman, President of TLE, and Respondent. We are further informed about this issue by several documents in the record; namely, the transcripts of the interviews of Respondent, John Rosellini, Richard Weissman and Ronald Shaljian, Esq., all of whom were interviewed between September 2009 and October 2010, as well as the documents and correspondence generated as a consequence of either this ethics matter or the TLE Lease Negotiations. P-6; P-17 to P-34; R-2; R-11 to R13.

Mr. Weissman testified that he is the President of TLE, a company which he created, and has served in that capacity since its formation in 2002. 1T17-12-20. TLE is a "national company

of childcare centers, both franchise and company owned," with approximately 180 locations throughout the country. 1T16-16-18; 1T22-3-9. In its normal course of business, TLE leases space from a property owner who, as the landlord, is responsible under the terms of the lease to develop the property in accordance with TLE's specifications and deliver it to TLE for TLE's use as a daycare facility. 1T18-20 to 1T19-2. Mr. Weissman, in his capacity as TLE's President, drafted the standard TLE lease agreement used in 2003, negotiated its terms with the property owners, and executed the lease agreements on behalf of TLE. 1T19-21-24; 1T21-2-8; 1T22-10-16. Since 2002, Mr. Weissman has negotiated four hundred such leases on TLE's behalf. 1T21-20 to 1T22-1.

In or around March 2003, Mr. Weissman was made aware by his "in-house broker," Nick Vanella, and Mr. Rosellini's broker, Karl Benedikt, of an opportunity to lease space for a TLE daycare facility in a property solely owned by Mr. Rosellini located at 323 Changebridge Road in Montville (the "Changebridge Property" or the "Property"). 1T20-3-22; 1T23-2 to 1T24-15; see also P-17. Mr. Weissman, consistent with TLE's standard procedures, evaluated the Changebridge Property to determine its feasibility, if any, for use as a TLE daycare facility and ultimately decided to pursue the Property. 1T24-18 to 1T25-4.

Mr. Weissman, thereafter, issued his standard lease agreement to Mr. Benedikt who was to provide it to Mr. Rosellini for his review. 1T29-1-19. Mr. Benedikt subsequently advised Mr. Weissman that Respondent would be negotiating the terms of the lease agreement. 1T29-21 to 1T30-10.

In respect of Respondent's involvement in those Lease Negotiations, Mr. Weissman testified that though he did not recall Respondent stating explicitly that he was representing then Mayor Rosellini in the TLE Lease Negotiations, Mr. Weissman understood that Respondent was representing Mr. Rosellini as well as the Landlord, Small Towne, LLC, in those negotiations. 1T30-11-14; 1T89-25 to 1T90-5; see also P-17; P-30 at 2T11-25 to 2T12-8[7]; P-33 at 3T10-4-8.[8] This testimony is consistent with Mr. Weissman's testimony on this issue during his deposition in the South Salem Street Assoc. matter in February 2011. P-34 at 4T18-9-12.[9]

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[7] "2T" refers to the transcript of the Deposition of John Rosellini, conducted on August 17, 2006, in the South Salem Street Assoc. matter, which is designated as P-30 in the record.

[8] "3T" refers to the Transcript of Interview of Richard Weismann, conducted on September 3, 2009, which is designated as P-33 in the record.

[9] "4T" refers to the transcript of the Videotaped Deposition of Richard Weissman, conducted on February 23, 2011, which is designated as P-34 in the record.

Indeed, when Mr. Rosellini was questioned about the Lease Negotiations at his deposition in the South Salem Street Assoc. matter in August 2006, he testified that he had engaged Respondent as his counsel to "review the contract," and that Small Towne, LLC, of which he was a member, was created by Mr. Rosellini for purposes of the Lease Negotiations, i.e. Small Towne, LLC would be the Landlord under the Lease. P-30 at 2T8-7-25; 2T24-16 to 2T25-1. Mr. Rosellini denied, however, that Respondent represented him or Small Towne, LLC in the TLE transaction subsequent to the execution of the Lease. P-30 at 2T30-11-19.[10]

Mr. Rosellini reiterated his testimony as to the formation of Small Towne, LLC when interviewed in this matter on November 12, 2009. P-32 at 5T10-7-12; 5T37-1-9.[11] At that time, Mr. Rosellini also stated that Respondent incorporated Small Towne, LLC and was its Registered Agent in May 2003. Id. at 5T10-13-

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[10] While the Certificate of Formation for Small Towne, LLC listed "Donnald Wheler" as the "Members/Managers," the evidence in the record indicates, clearly, that Mr. Rosellini was also a member of that LLC. P-30 at 2T8-7-25; 2T24-16 to 2T25-1; P-32 at 5T10-7-20; P-18.

[11] "5T" refers to the Transcript of Interview of John Rosellini, conducted on November 12, 2009, which is designated as P-32 in the record.

20; see also P-18.[12] Mr. Rosellini, however, was evasive when asked if Respondent represented him in the Lease Negotiations. Initially, he denied any such representation, but when confronted with his own deposition testimony in the South Salem Street Assoc. matter he responded, vaguely, that Respondent "reviewed [the Lease] for [Donald] Wheeler and [he] was with Mr. Wheeler." P-32 at 5T11-2-5; 5T33-4-5.

The conduct of Mr. Weissman and Respondent during the Lease Negotiations lends support to Mr. Weissman's testimony that he believed, at the time, Respondent was representing Mr. Rosellini and Small Towne, LLC in those negotiations. As revealed in the record, Mr. Weissman interacted almost exclusively with Respondent during the Lease Negotiations and did not speak with Mr. Rosellini. P-20 to P-25; see also 1T33-19-24. Specifically, Mr. Weissman testified and Respondent did not dispute that the "only parties" involved in the Lease Negotiations were he and Respondent. 1T30-9-10. Mr. Weissman and Respondent had several conversations in July of 2003 concerning the terms of the Lease. 1T30-23 to 1T31-12. As a consequence of those discussions,

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[12] Mr. Rosellini's testimony when interviewed on November 12, 2009 that Respondent prepared the documents to incorporate Small Towne, LLC in 2001 or 2002, is contradicted both by the Certificate of Formation for Small Towne, LLC, which was filed on May 14, 2003, and by the fact that the Lease Negotiations to which the LLC relates occurred in 2003. P-18; see also P-20 to P-26.

changes were made to the Lease after which Mr. Weissman provided Respondent with a corrected version of the Lease, by email, on July 17, 2003 for execution. P-20; see also P-21[13]; 1T31-23 to 1T32-10. Respondent subsequently returned the corrected version of the Lease to Mr. Weissman with Mr. Rosellini's initials on each page and his signature as the Landlord, Small Towne, LLC, on the signatory page. P-22; see also P-23. The Lease was fully executed on July 24, 2003.[14] P-22. Notably, as part of the Lease, there was a Notice provision indicating that:

> The address for Landlord for all purposes of the Lease and for all notices . . . shall be:
>
> Small Towne, LLC
> C/o John Rosellini
> 323 Changebridge Road
> Montville, NJ 07045

Shortly thereafter, on August 28, 2003, Mr. Weissman corresponded with Respondent concerning his "clients'" failure to perform under the terms of the Lease. P-24. Consistent with

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[13] The name of the LLC identified at the top of the letter marked P-21 is "Group W Holdings, LLC," which was TLE's former corporate name, the full title of which was actually "Group W Holdings LLC d/b/a The Learning Experience."

[14] The Lease related strictly to the Changebridge Property and did not include any franchise agreement with TLE, which, if necessary, would have been completed in a separate and subsequent transaction. 1T38-11-15. Mr. Weissman, however, indicated that this TLE location would not be a franchise, but rather would be operated by TLE directly under a subsidiary formed for that purpose and identified on the Lease as "TLE at Montville, LLC." 1T19-13-20; 1T41-20-25; see also P-22.

the Notice provisions of the Lease, Mr. Weissman copied "Small Town, LLC [sic], c/o John Rosellini," on that correspondence. Id. Similarly, on October 1, 2003, Mr. Weissman again corresponded with Respondent and, consistent with the Notice provisions of the Lease, "Small Towne, LLC c/o John Rosellini," concerning issues with the modifications to be made to the Changebridge Property and the designated architect to be retained by the Landlord under the Lease for that purpose. P-25. Respondent's involvement with the Lease continued through August 2004 when he was directly involved in retaining the designated engineering professionals required under the Lease to prepare plans for the necessary renovations to the Changebridge Property, which the Landlord was obligated under the Lease to fund. P-26 to P-29.

Though Respondent in his closing brief to the Committee stressed the fact that Mr. Weissman's memory when interviewed in 2009 was unclear with respect to the timeframes during which certain meetings occurred and documents were signed relative to the TLE Lease Negotiations, the Committee finds this argument largely unpersuasive. Rb9; Rb17 to Rb19. Mr. Weissman's inability to recall in specific and minute detail those events, which, at that time, had occurred six years earlier, is not material to the issues before this Committee and does not

detract from the consistency and overall credibility of Mr. Weissman's testimony.[15] Notably, when Mr. Weissman was interviewed by telephone in 2009, he did not have the benefit of any documents to refresh his recollection, but was able to clarify his memory and, by extension, his testimony when provided with the relevant documentation during that interview. P-33; see also 1T70-20-25; 1T71-22 to 1T72-1.

At the hearing and when interviewed in 2010, Respondent denied representing Mr. Rosellini in the TLE Lease Negotiations, though he conceded, when interviewed, that his conduct in those negotiations created the appearance that he was representing Mr. Rosellini, which he conceded was "improper." 1T111-9-22; see also P-31 at 6T21-24 to 6T27-21; 6T42-1-10. According to Respondent, he represented three individuals - Donald Wheeler, Scott Serafin and Tony Condurso (the "Wheeler Group") -- in a related transaction between Mr. Rosellini and the Wheeler Group wherein the Wheeler Group would purchase the Changebridge Property from Mr. Rosellini after he had successfully secured TLE as the tenant on the Property. 1T106-5 to 1T107-23; see also P-31 at 6T21-24 to 6T27-21. Respondent explained that the

[15] We note the irony of Respondent's attempts to portray Mr. Weismann as incredible due to his faulty memory when Respondent relies on his own poor memory in defense of his conduct in signing a false certification in October 2006, as detailed in Count II of the Formal Complaint. Rb20.

Wheeler Group had approached him "sometime in early 2003" initially to ascertain his interest in financing with them the purchase of the Changebridge Property from Mr. Rosellini for the development of a daycare center on that site. 1T106-5 to 1T107-3. Respondent's explanation is, to a limited degree, supported by Mr. Shaljian who indicated in a letter to the Committee dated June 23, 2009 that "sometime in 2003, Mr. Rosellini" requested Mr. Shaljian's representation "in a . . . matter concerning the sale of a building at 323 Changebridge Road, Montville, owned by Olympia Properties LLC, an entity controlled by Mr. Rosellini. The sale was to Donald Wheeler and others." P-6.

The Wheeler Group's purchase of the Changebridge Property was dependent upon Mr. Rosellini's ability to meet two conditions: (1) secure a lease with TLE; and (2) obtain all of the necessary governmental approvals to construct the TLE daycare facility on the Changebridge Property. 1T107-13-19. Respondent ultimately declined the Wheeler Group's offer to partner with them in the purchase and development of the Changebridge Property, but agreed to represent them in the Lease Negotiations. 1T106-13-17. It is unclear, however, in what capacity the Wheeler Group's interests were, if at all, involved in the Lease Negotiations given their lack of any ownership

interest in the Property at the time of those negotiations.[16] There is no documentation or other evidence in the record that supports Respondent's testimony concerning the purported involvement of Scott Serafin and Tony Condurso in the Lease Negotiations. By all accounts, however, at the end of 2004, the only individuals remaining in the transaction with TLE were John Rosellini and Donald Wheeler whose intent it was to continue with the Lease as partners. 1T121 to 1T122-11; see also P-6; P31 at 6T24-20 to 6T25-1; 6T33-22 to 6T34-19. Indeed, Mr. Shaljian indicated in his letter to the Committee that "[s]ometime in 2004, . . ., Mr. Rosellini advised . . . that the sale [of the Changebridge Property] fell through and [Mr.

[16] Respondent contends that Mr. Weissman knew of and met with Mr. Wheeler during the Lease Negotiations and prior to its execution, which Mr. Weissman denies. 1T111-9-20. Mr. Weissman contends that he first met Mr. Wheeler in late 2003, after the Lease had been executed, in connection with Mr. Wheeler's offer to provide, on behalf of Mr. Rosellini, the funds necessary to retrofit the existing building on the Property in conformity with TLE's specifications. 1T45-15 to 1T48-6; see also P-25. The only document in the record on which Mr. Wheeler's name appears in connection with the Lease Negotiations is a fax he apparently sent to Nick Vanella and on which Mr. Weissman is copied, dated September 15, 2003. R-13. This document purports to be a timeline detailing Mr. Wheeler's understanding of the anticipated progress of the Landlord in meeting its obligations under the Lease, and supports Mr. Weissman's contention that Mr. Wheeler did not become involved in the business transaction until after the Lease was executed. P-13. Mr. Wheeler's name also appeared on the Certificate of Formation for Small Towne, LLC, filed on May 14, 2003, which was prior to the execution of the Lease. P-18. Mr. Weissman, however, denied having seen this document prior to John Rosellini's execution of the Lease in July 2003. 1T64-6 to 1T66-16.

Rosellini] was . . . going to partner with Mr. Wheeler in the redevelopment of the property . . . ." P-6.

As of 2004, Respondent contends, he ceased representing Mr. Wheeler because of Mr. Wheeler's purported partnership with Mr. Rosellini on the Lease. 1T122-12 to 1T124-23. At that time, Mr. Shaljian began serving as counsel to Olympia Properties, LLC, a company wholly owned by Mr. Rosellini and the registered owner of the Changebridge Property, on the site plan application for that Property. P-6; see also P-16; R-11.

With regard to the second issue -- Respondent's state of mind when executing the Certification -- the Committee heard extensive testimony from Respondent concerning the circumstances under which he signed the Certification and his mindset when doing so. His testimony in this respect may be summarized as follows. While Respondent concedes the inaccuracy of his Certification as it concerns his representation of Mr. Rosellini following his judicial appointment, he denies having done so knowingly and with the intent to deceive. Rb2.

Respondent testified that prior to executing the Certification he did not review a single document as none existed in his office at that time. 1T126-23 to 1T127-5. The record, in fact, reveals that Respondent made no effort to confirm the accuracy of the information to which he was

attesting in the Certification prior to signing it. 1T125-17 to 1T127-19. Rather, Respondent relied exclusively on his "best recollection" of his prior representations of Mr. Rosellini, which he believed at the time was accurate. 1T127-6-22. In doing so, Respondent mistakenly recalled only one instance - the Estate Matter - in which he represented Mr. Rosellini and from which he withdrew as counsel following his judicial appointment. 1T127-25 to 1T128-17; see also P-3. He did not in that moment have a specific recollection of the three subsequent matters in which he had represented Mr. Rosellini following his judicial appointment. 1T128-5-17. As such, in certifying as he did, Respondent testified that he was referring solely to the Estate Matter, which he had specifically recalled transferring to Mr. Shaljian upon receipt of his judicial appointment. 1T134-3-7; see also P-3. Notably, the subsequent three paragraphs in the Certification relate solely to the Estate Matter. P-2 at ¶¶ 4-6.

B. Analysis

The burden of proof in judicial disciplinary matters is clear-and-convincing. 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).

The Formal Complaint in this matter charges Respondent with violating Rule 1:15-1(b) and Canons 1 and 2A of the Code of Judicial Conduct in two material respects: (1) acting as counsel to then Montville Township Mayor John Rosellini in four personal legal matters over a two-year period between 2003 and 2004 while Respondent was also serving as Montville Township's Municipal Court judge; and (2) exhibiting a lack of candor when executing a certification in October 2006 in an unrelated matter in which Respondent stated inaccurately that he had ceased representing Mr. Rosellini after his appointment to the Montville Municipal Court. We find, based on our review of the significant evidence in the record and the testimony elicited at the hearing in this matter that, with one exception, the charges set forth in Count I of the Complaint have been proven by clear and convincing evidence, and that Respondent's conduct violated Rule 1:15-1(b) and Canons 1 and 2A.[17] We further find, based on our review of the record, that the charges set forth in Count II of the

[17] As discussed more fully below, the allegation in Count I of the Formal Complaint that Respondent actually represented Mr. Rosellini in the Lease Negotiations in violation of Rule 1:15-1(b) has not been proven by clear and convincing evidence.

Complaint have not been proven by clear and convincing evidence, and that Respondent's conduct in that regard did not violate Canons 1 and 2A.

Respondent is charged with the duty to abide by and enforce the provisions of the Code of Judicial Conduct. 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 of the Code of Judicial Conduct requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary are preserved. Canon 2A directs that judges conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. The commentary to Canon 2 provides that judges "must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny." As recognized by our Supreme Court, adherence to this principle is of the utmost importance, especially in our municipal courts where the greatest numbers of people are exposed to the judicial system. 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).

Rule 1:15-1(b) places limits on the practice of law by attorneys serving as surrogates and part-time judges. Specifically, the Rule prohibits a municipal court judge from acting "as attorney for the municipality or any of the municipalities wherein he is serving or as attorney for any agency or officer thereof." This prohibition is absolute and prohibits all representation by municipal court judges of municipal officials in *both* their public and private capacities. In re Obuch, 212 N.J. 474 (2012) (publicly reprimanding a municipal court judge for violating the proscriptions of Rule 1:15-1(b) by representing the municipality's Director of Planning and Community Development in three private legal matters); see also In re Blackman, 124 N.J. 547, 554 (1991) (finding that Rule 1:15-1(b) "does not qualify or limit the terms of the prohibition", but rather prohibits *all* representation of a municipal officer by a judge, even representation involving private matters unrelated to an official's public duties).

We first acknowledge Respondent's partial admission to the charges in Count I of the Complaint that he represented Montville's mayor in three personal legal matters while Respondent was also serving as Montville's Municipal Court judge, and that such conduct violates the proscriptions of Rule

1:15-1(b) and Canons 1 and 2A of the Code of Judicial Conduct. Given these admissions and the substantial evidence in the record, we find, by clear and convincing evidence, that Respondent violated Rule 1:15-1 (b) and Canons 1 and 2A of the Code when he represented Montville's mayor in three personal legal matters while also serving as Montville's Municipal Court judge.

We next address Respondent's denial of the charge that he represented Montville's mayor in the TLE Lease Negotiations. The record in this regard reveals an apparent misunderstanding between Mr. Weissman and Respondent concerning precisely whose interests Respondent was representing in those negotiations. We find Mr. Weissman credible in his assertions that he understood Respondent to be representing then Mayor Rosellini's interests in the TLE Lease Negotiations, a reasonable assumption in light of the fact that Mr. Rosellini was the sole owner of the Changebridge Property. Although Mr. Weissman's impressions are inherently subjective, the documents in the record evincing the progress of those negotiations lend great weight to Mr. Weissman's subjective viewpoint. P-17 to P-34. By all accounts, Mr. Weissman dealt exclusively with Respondent during the Lease Negotiations. Indeed, even Respondent conceded at his interview in October 2010 that his conduct in the Lease

Negotiations could lead a reasonable observer to conclude that he was representing Mr. Rosellini in those negotiations. P-31 at 6T42-1-6. The Lease was signed by Mr. Rosellini and transmitted by Respondent to Mr. Weissman after which Respondent became intrinsically involved in ensuring Mr. Rosellini's compliance under the terms of the Lease. Ibid.

We find Respondent equally credible in his contention, from which he has not waivered since his initial interview in 2010, that he was representing the members of the "Wheeler Group," and not John Rosellini, during the TLE Lease Negotiations. Mr. Shaljian, in fact, claimed that in 2003 he was representing Mr. Rosellini in his purported sale of the Changebridge Property to "Mr. Wheeler and others," which ultimately proved unsuccessful. Mr. Shaljian further confirmed that he represented Mr. Rosellini on the site plan application for construction of the TLE facility on the Changebridge Property. Finally, our credibility determination with regard to Respondent is influenced by his reputation for honesty and integrity as expressed in the several letters of character the Committee received on his behalf and which were made a part of this record.

Given this conflicting yet equally credible testimony, we cannot find by clear and convincing evidence that Respondent actually represented Mr. Rosellini in the TLE Lease

Negotiations. We do, however, find that Respondent's conduct unquestionably created the appearance that he was representing then Mayor Rosellini at a time when he was also serving as Montville's Municipal Court judge in violation of the high standards to which he is bound under Canons 1 and 2A of the Code. In so doing, we reject Respondent's contention in his closing brief that "from a 'big picture' perspective . . . any action or inaction" on his part "with respect to the [TLE] transaction proved to be of no moment" since the "deal with [the Changebridge Property] fell apart" and "any alleged deal between [TLE] and Ronald Soussa" never materialized. Rb20. The obligations and strictures delineated in the Code of Judicial Conduct and the Court Rules, which constrain Respondent's conduct both in his private practice of law and as a jurist, exist outside of and are not in any way related to the success or failure of Respondent's conduct when violating or appearing to violate those provisions. Respondent is expected to act, at all times, in a manner consistent with the integrity expected of jurists under the Code of Judicial Conduct. By creating the appearance that he was representing Montville's mayor in protracted Lease Negotiations at a time when he was also serving as Montville's Municipal Court judge, Respondent failed to meet those high standards.

We note that the apparent misunderstanding between Mr. Weissman and Respondent concerning precisely whose interest Respondent was representing in the Lease Negotiations was created largely by Respondent who failed to remain assiduous in maintaining a clear and distinct separation between his legal practice and his judicial office. Absent Respondent's haphazard approach to his professional involvement in the TLE Lease Negotiations, his conduct in that transaction would likely not now be under scrutiny. Such failures and the consequences thereof, whether intended or unintended, necessarily impugn the integrity and impartiality of the Judiciary. We remind Respondent that the Commentary to Canon 2 warns that judges "must expect to be the subject of constant public scrutiny" and so must conduct themselves, at all times, in a manner that is above reproach.

In respect of Count II, we are guided substantially in our analysis by the New Jersey Supreme Court's decision in In re Perskie, 207 N.J. 275 (2011), wherein the Court considered and rejected a charge by this Committee of a lack of candor against retired Superior Court Judge Steven P. Perskie for his admittedly inaccurate testimony before the Senate Judiciary Committee during his confirmation hearing. The Court in Perskie framed the issue this way: "[W]hether the inaccuracies were the

product of honest mistaken recollection or a deliberate attempt to mislead . . . ." Ibid.

Respondent, in his closing brief, has drawn the obvious parallels between this matter and the Perskie matter. Those parallels begin with Respondent's admission that his Certification in the South Salem Street Assoc. matter was, like Judge Perskie's testimony before the Senate Judiciary Committee, inaccurate. Respondent contends, however, that, as in the Perskie matter, his false Certification was the product of an "honest mistaken recollection" and not a deliberate attempt on his part to deceive the court or the parties in that matter. In re Perskie, supra, 207 N.J. 275, 290.

The factors on which Respondent relies in support of this contention are strikingly similar to those on which the Court relied in dismissing the lack of candor charge against Judge Perskie, and constitute facts not in dispute. Specifically, Respondent refers to the more than two year lapse in time between his conduct in the TLE Lease Negotiations and his Certification. Respondent did not prepare the Certification, which was faxed to him by counsel for Montville Township. Prior to executing the Certification, Respondent did not review any documentation in connection with his prior representation of Mr. Rosellini as none existed in his office. Respondent testified

that he, in fact, did not open any files in respect of his representation of Mr. Rosellini subsequent to his judicial appointment and did not charge Mr. Rosellini in those matters. When reviewing the Certification, Respondent relied exclusively on his own recollection of his prior dealings with Mr. Rosellini while Respondent was the Montville Municipal Court judge. He testified that his recollections were limited to his representation of Mr. Rosellini in the Estate Matter, which he specifically recalled transferring to Mr. Shaljian following his appointment to the bench. He did not recall the three instances in which he had admittedly represented then Mayor Rosellini, testimony which we find credible given the limited nature of those transactions and Respondent's involvement in them. On balance, there simply does not exist in this record evidence that clearly and convincingly establishes Respondent's deliberate attempt to mislead the court or the parties in the South Salem Street Assoc. matter as to his representation of Mr. Rosellini following his appointment to the Montville Municipal Court.

We, however, disagree with Respondent's misguided contention in his closing brief that the inaccuracies to which he attested in his Certification are "of no moment" because of the Appellate Division's decision in the South Salem Street Assoc. matter,

which did not rely upon the information contained in Respondent's Certification. Rb20. Respondent both as a jurist and an officer of the court is under a continuing obligation to be candid with a tribunal. In this instance, he admittedly made no effort to assure himself of the accuracy of his Certification prior to executing it, despite the existence of multiple documents, which were readily available as evidenced by the substantial record in this matter, demonstrating its inaccuracy. We can not countenance such conduct and encourage Respondent to exercise greater care in the future when attesting to any facts before a tribunal.

Having concluded that Respondent violated the Canons of the Code of Judicial Conduct, the sole issue remaining is the appropriate quantum of discipline. As this Court is well aware, "The single overriding rationale behind our system of judicial discipline is the preservation of public confidence in the integrity and the independence of the judiciary." In re Seaman, supra, 133 N.J. at 96 (1993) (citing In re Coruzzi, 95 N.J. 557, 579 (1984)). Consequently, the "primary concern in determining discipline is . . . not the punishment of the judge, but rather to 'restore and maintain the dignity and honor of the position and to protect the public from future excesses.'" In re

Williams, 169 N.J. 264, 275 (2001) (citing In re Buchanan, 100 Wn.2d 396, 669 P.2d 1248, 1250 (Wash. 1983)).

Relevant to this inquiry is a review of both the aggravating and mitigating factors that may accompany judicial misconduct. In re Seaman, supra, 133 N.J. at 98-100 (citations omitted). The aggravating factors considered by the Court 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, and whether the conduct has been repeated or has harmed others. Id. at 98-99 (citations omitted).

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 or reparations to the victim, and whether the inappropriate behavior is susceptible to modification. See In re Subryan, 187 N.J. 139, 154 (2006) (citations omitted).

Certainly, Respondent's representation of Montville's mayor while also serving as Montville's Municipal Court judge constitutes a clear violation of the proscriptions contained in Rule 1:15-1(b). Equally problematic is that such conduct created the very real risk that members of the public would question Respondent's integrity as a jurist. Such questions

inevitably weaken the public's confidence not only in the judge, but in the Judiciary generally.

In determining the appropriate quantum of discipline in the instant matter, however, we are mindful of several mitigating factors and the absence of any aggravating factors. Respondent's misconduct in this matter, though significant, was limited in scope and duration. When confronted with his misconduct, Respondent immediately acknowledged his wrongdoing and accepted responsibility for it before this Committee. Finally, Respondent has, heretofore, enjoyed an unblemished record as a jurist and continues to garner the respect of his colleagues and associates as reflected in the letters of character submitted to this Committee on Respondent's behalf.

II. RECOMMENDATION

The Committee recommends that Respondent be publicly reprimanded for the conduct at issue in this matter. This recommendation takes into account Respondent's disregard for his ethical obligations under Rule 1:15-1(b) and Canons 1 and 2A of the Code of Judicial Conduct, as well as his failure to exercise diligence when guarding against such violations.

Our recommendation also recognizes the several mitigating factors present in this matter, not the least of which is

Respondent's acknowledgement of wrongdoing and his sincere expressions of remorse.

Accordingly, for all of these reasons, the Committee respectfully recommends that Respondent be publicly reprimanded for the conduct at issue in this matter.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

April 8, 2013

By:

Alan B. Handler, Chair