

D-143-11  
(071022)

SUPREME COURT OF NEW JERSEY  
ADVISORY COMMITTEE ON  
JUDICIAL CONDUCT

DOCKET NO: ACJC 2011-122

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IN THE MATTER OF

**PRESENTMENT**

MARQUIS D. JONES, JR.,  
JUDGE OF THE SUPERIOR COURT

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The Advisory Committee on Judicial Conduct ("Committee" or "ACJC") hereby presents to the Supreme Court its Findings and Recommendation in this matter, in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's Findings demonstrate that the charges set forth in the Formal Complaint against Marquis D. Jones, Judge of the Superior Court ("Respondent"), have been proven by clear and convincing evidence. The Committee recommends that Respondent be suspended from the performance of his judicial duties, without pay, for a period of four months. The Committee further recommends the following conditions as a prerequisite to Respondent's resumption of his judicial duties: Respondent be required to participate actively in rehabilitative programs, approved by the Supreme Court, to address his issues with alcohol, including an evaluation by a qualified medical professional for admission

into and the successful completion of an in-patient treatment program; and to submit to the Supreme Court, on a periodic basis, medical reports documenting his progress while in treatment. We further recommend that Respondent's failure to fulfill these conditions result in the imposition of more severe discipline.

On January 18, 2012, the Committee issued a Formal Complaint in this matter, which accused Respondent of inappropriately touching multiple female probation officers and an employee of a local establishment in Toms River, New Jersey, without their consent, and of making several inappropriate and sexually suggestive remarks to those women while inappropriately attending a holiday party hosted by the Ocean County chapter of the Probation Association of New Jersey, in violation of Canons 1 and 2A of the Code of Judicial Conduct.

Respondent filed an Answer to the Complaint on February 6, 2012 in which he admitted the factual allegations of the Complaint, but claimed to have no recollection of engaging in the alleged misconduct. Respondent attributed his inappropriate behavior on that evening, which he contends was unintentional and inadvertent and for which he has apologized, to his overindulgence in alcohol while at the holiday party. Thereafter, Respondent wrote a letter to the Committee dated April 22, 2012 in which he waived his right to a Formal Hearing

in this matter and reiterated his regret for engaging in the aforementioned misconduct. R-1.

In deliberating on this matter, the Committee considered the exhibits of both the Presenter and Respondent, which constitute the record and include, among other things, the transcripts of the interviews with the victims, witnesses and those with knowledge of Respondent's conduct while at the holiday party, as well as the transcript of the Informal Conference with Respondent, which was conducted on December 1, 2011. See P-1 through P-32; see also R-1. After carefully reviewing this 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**

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1995. See Answer at ¶1. At all times relevant to this matter, Respondent served as a Judge of the Superior Court of New Jersey, assigned to the Family Division in the Ocean Vicinage, a position he continues to hold. See Formal Complaint at ¶2; see also Answer at ¶2.

The salient facts in this matter, including Respondent's misconduct, as alleged in the Formal Complaint, and its

impropriety are not in dispute. On December 3, 2010, Respondent attended a "Holiday Happy Hour" hosted by Local 106 of the Probation Association of New Jersey ("PANJ") at Christopher's Pub in Toms River, New Jersey (the "Holiday Party"). See Answer at ¶3; see also P-6. PANJ is a professional association and labor union, which represents the interests of probation officers and their supervisors in New Jersey.<sup>1</sup>

By all accounts, the Holiday Party was given for the exclusive benefit of PANJ members, the majority of whom were surprised by Respondent's presence at the party that evening. P-8 at T4-20 to T5-3; P-9 at T9-1-2, T39-19-22; P-10 at T5-23-25; P-10 at T5-23-25, T8-21-25; P-12 at T34-13-15; P-13 at T11-7-12; P-14 at T7-17-19; P-18 at T10-12-22; P-19 at T5-1-3, T25-11-21, T11-12-13; P-21 at T10-7-17; P-24 at T10-5-12; P-25 at T5-6-13, T7-16-25, T9-21-24; P-26 at T20-4 to T21-15. Indeed, both the facility at which the PANJ Holiday Party was held and the food served at that party were paid for by PANJ Local 106 at no cost to its members. P-6; P-9 at T5-12 to T6-5; P-10 at T4-7-19; P-11 at T4-16-25; P-19 at T5-7-16; P-25 at T5-22 to T6-8. Attendees

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<sup>1</sup>The probation department is under the authority and part of the Judiciary. See N.J.S.A. 2A:168-5 to -13, 2C:45-1 to -4; see also Rule 1:34 (classifies probation officers as "Supporting Personnel of the Courts"); Rule 1:34-4 (providing that all probation officers are "responsible to and under the supervision of the Chief Probation Officer of the county who shall be responsible to and under the supervision of the judge designated by the Assignment Judge to be responsible for the administration of the probation department in the county. . . .").

were only expected to pay for their beverages. Id. While PANJ members were permitted to bring guests to the Holiday Party, any member who brought a guest was required to pay a ten dollar admission fee for that guest. P-20 at T11-14-21.

Those who attended the Holiday Party were invited to do so by either a member of the Executive Board of Local 106 (the union representing probation officers) or a member of the Executive Board of Local 206 (the union representing supervisory personnel in the probation department) each of whom had circulated an email invitation to their membership. P-6; P-20 at T3-6-24; P-21 at T3-1 to T4-4. Although not included on the email distribution list to which the invitation was attached, Respondent was verbally invited to the Holiday Party by one of the probation officers from the Child Support Enforcement Unit who was a PANJ member and very familiar with Respondent having appeared before him on a weekly basis in the course of her job duties as a probation officer. P-6; P-23 at T6-2 to T8-10; see also Answer at ¶7. There were several other probation officers from the Child Support Enforcement Unit at the Holiday Party who were similarly acquainted with Respondent. P-23 at T11-12 to T12-21; P-24 at T6-16 to T7-16; P27 at T4-10 to T5-3; see also Answer at ¶6.

Respondent did not pay to attend the Holiday Party either as a guest or otherwise, but only paid for his drinks, which were

numerous. See Formal Complaint at ¶7; see also Answer at ¶7; P-19 at T12-1-12. His total bar bill for that evening, with tip, was \$114.50, and included, among other alcoholic beverages, several orders of Jack Daniels whiskey, Amstel Light beer, Vodka, Patron tequila, and Baileys liqueur. P-5. Although Respondent claimed he bought several of those drinks for others, he acknowledged becoming intoxicated while at the Holiday Party. See Answer at ¶5; see also P-4. His intoxication that evening was readily apparent to several people at the Holiday Party, some of whom witnessed him drinking alcohol and presumed him to be intoxicated based upon his erratic behavior. See Answer at ¶8; see also P-10 at T9-17-19, T10-8 to T11-12; P-12 at T21-10-18; P-15 at T23-16-18; P-20 at T22-6-18; P-24 at T19-11-18; P-26 at T19-7-12; P-28 at T14-5-6; P-29 at T18-7-24; P30 at T10-3-6; and P-31 at T15-13-24.

Respondent, while at the Holiday Party and admittedly intoxicated, inappropriately touched five female probation officers and one female employee of Christopher's Pub over various parts of their bodies, including their breasts and buttocks, without their consent.<sup>2</sup> See Answer at ¶8; see also P-9

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<sup>2</sup>To preserve the privacy interests of the victims in this matter and in accordance with the New Jersey Supreme Court's directive in In re Seaman, we have excluded from this Presentment the names of the victims. In re Seaman 133 N.J. 67, 75 (1993) (directing that "judicial-disciplinary cases involving . . . activities that humiliate or degrade those with whom a judge

at T19-7 to T20-12; P-16 at T17-12 to T21-13. Respondent's conduct in this regard was witnessed by numerous individuals at the Holiday Party and became the subject of much gossip in the days following the event. P-12 at T12-19 to T14-6, T14-25 to T19-13, T34-2-22; P-14 at T17-16 to T21-10, T22-4-8, T22-22 to T25-6, T28-17 to T31-25, T34-14 to T36-23, T37-17 to T39-5; P-16 at T13-9 to T21-13, T23-6-22, T24-6-12; P-17 at T12-7 to T14-2; P-19 at T10-14 to T11-24, T13-1-23, T18-3 to T19-23, T22-16-22, T27-16 to T28-5; P-20 at T13-10 to T22-5, T23-11 to T24-9, T26-1-13; P-30 at T10-23 to T11-25, T14-12 to T17-23, T23-23 to T24-18; P-31 at T12-10 to T13-24; T14-8-12.

The personal accounts of the women victimized by Respondent while at the Holiday Party and those of the witnesses depict Respondent as "flirtatious" and "overly friendly" with various women that evening, and recount multiple acts of offensive touching by Respondent, leaving those he victimized and those who witnessed it feeling very uncomfortable. P-9 at T19-7 to T20-12, T21-4-14, T27-15 to T28-4; P-10 at T11-22 to T13-1, T15-1 to T16-25, T25-13-19; P-12 at T12-22 to T13-8; P-13 at T8-5 to T10-7, T17-13-15, T22-14 to T25-24, T26-14-16, T31-7-11; P-15 at

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comes into contact, should preserve the anonymity of the alleged victim."). Similarly, given the uncontested nature of the allegations against Respondent, we felt it unnecessary to identify publicly the names of the witnesses to Respondent's conduct, though they are known to Respondent.

T10-19 to T12-25, T19-1-6; P-28 at T9-11-19, T15-20 to T17-2; P-29 at T10-5 to T11-25.

The offensive touching was extensive and varied and included instances in which Respondent was reported to have done the following: grabbed a female probation officer at her waist, "uncomfortably low," and kissed her on the cheek (P-10 at T15-5 to T16-25; P-15 at T20-23 to T21-24); placed his left arm on another female probation officer's shoulder and swiped the flat of his right hand down her chest (P-9 at T19-7 to T21-14); held another female probation officer's hand by the pinky (P-15 at T10-6 to T15-21); touched the buttock of another female probation officer (P-13 at T22-14 to T24-25); hugged for an "uncomfortably" long period of time a female probation officer as she left the party (P-28 at T15-20 to T16-19); pulled the hand of a cocktail waitress out of her pocket and caressed it, and a short time later grabbed that same waitress' wrist to study her tattoo. P-29 at T11-3-25.

A sheriff's officer who witnessed Respondent's behavior that evening also recounted instances in which he observed Respondent attempt to kiss multiple women on their necks, cheeks and mouths, without their consent. P-30 at T11-3-9. It was this officer's perception that these women were made to feel "plainly uncomfortable" by Respondent's advances. Ibid. He indicated further that in the days following the Holiday Party

Respondent's behavior became the topic of much discussion among those who attended the event and many were shocked by his conduct. Id. at T23-23 to T24-18.

In addition, Respondent made several inappropriate and sexually suggestive remarks to a number of women that evening who were, likewise, made uncomfortable by his conduct. Those remarks included the following: instructing a female probation officer to call him after normal business hours to discuss her career, which the officer interpreted as sexually suggestive (P-13 at T13-6 to T17-15, T19-10-18); asking a cocktail waitress to turn around one more time presumably so he could gawk at her (P-29 at T10-13 to T11-2); telling the married female probation officers that he "had no use" for them (P-10 at T10-13-19; P-28 at T9-2 to T10-1); and asking other female probation officers if they were lesbians. P-13 at T20-2-25.

One of the female probation officers inappropriately touched by Respondent that evening described her encounters with him as unforgettable. P-13 at T21-16-17, T30-23-25. Another victim, a cocktail waitress at Christopher's Pub, characterized her interactions with Respondent as "creepy" and found him to be "too close for comfort." P-29 at T12-14-16, T21-21 to T22-2. A third victim related that she pretended to have a boyfriend to discourage Respondent from talking with her and because she did not want him to "hit" on her. P-15 at T16-18 to T18-22. A

fourth victim described Respondent's behavior that evening as that of a "college kid." P-28 at T24-16-17.

A female probation officer who witnessed Respondent's conduct indicated that she and her co-workers discussed the events of that evening on the following Monday and simply "couldn't believe that, . . ., this type of behavior not only happened, but happened by a Superior Court Judge." P-20 at T18-1-3. Similarly, a probation officer who did not attend the Holiday Party stated that "the talk in the office was rampant . . . several people were . . . saying . . . the judge was inappropriate with large amounts of people." P-14 at T37-17-22.

The stories that circulated throughout the Ocean County Probation Department about Respondent's behavior that evening included instances in which Respondent was reported to have grabbed women's arms and buttocks, against their will, and groped other women while dancing with them. Id. at T38-1-5. Respondent's conduct ultimately became the "office joke" in the probation department. P-28 at T22-8-9. "We kind of joke around about like, you know, oh, he grabbed your butt and grabbed your boob . . . ." Id. at T22-9-11.

Though the subject of intense office gossip in the weeks following the Holiday Party, the women victimized by Respondent were extremely reluctant to and, in fact, did not complain about their encounters with him that evening due to his status as "a

judge." P-7 at T7-25 to T8-13; P-9 at T42-21 to T43-12; P-13; P-10 at T26-18 to T27-9; P-13 at T18-12 to T19-9, T32-19 to T33-24, T35-9 to T37-4; P-14 at T25-13 to T27-8; P-15 at T29-20-24. Several assistant chief probation officers who were not present at the Holiday Party, but overheard the office gossip, however, reported the substance of those discussions to the Ocean County Probation Division Manager, who is not a PANJ member and was also not present at the Holiday Party. P-7 at T3-17-23, T6-11-22, T7-7-12. The reports received by the Division Manager universally characterized Respondent's behavior while at the Holiday Party as "inappropriate" and "shock[ing]" given his status as a Superior Court judge. Id. at T6-11-22; T7-7-24; see also P-20 at T17-20 to T18-8. At the direction of Assignment Judge Vincent J. Grasso, the Division Manager prepared a report memorializing his conversations with his assistant chief probation officers and a supervisor in the probation department concerning Respondent's conduct that evening, which was ultimately referred to the Committee for investigation. P-1; P-7 at T10-11-14.

Respondent was initially questioned by the Committee about his conduct while at the Holiday Party by letter dated July 28, 2011. P-3. In his attorney's letter of response, dated October 3, 2011, counsel stated that Respondent recalled going to the Holiday Party, to which he was invited by a probation officer,

and of having "a great time." P-4. Counsel claimed, however, that Respondent was unaware of PANJ or that PANJ was hosting the Holiday Party. Id. Counsel indicated that Respondent had a specific recollection of speaking with many people while at the Holiday Party, both male and female, and of "trying to be as friendly as possible." Id. Respondent admitted, through his counsel, to being intoxicated while at the Holiday Party, which Respondent claimed rendered him unable to recall all of the events of the evening, particularly the conduct for which he is charged. Id. Counsel conceded, however, that Respondent was "not in a position to specifically rebuke any unintentional, but inadvertent, physical contact with any of the females." Id. Respondent denied, however, through his counsel, any "intentional," "inappropriate" touching and further denied intentionally making suggestive comments to the women with whom he spoke. Id. Counsel further stated that Respondent had issues with alcohol of which Respondent was aware prior to the Holiday Party and for which he was seeking treatment. Id.

Subsequently, at Respondent's request, he appeared before the Committee, with counsel, on December 1, 2011 for an Informal Conference, pursuant to Rule 2:15-11. P-32 at T2-11-14. On that occasion, Respondent expressed remorse and regret for his conduct while at the Holiday Party. Id. at T4-24 to T5-3. He acknowledged a breach of his obligation under the Code of

Judicial Conduct to maintain high standards of personal conduct. Id. at T6-2-10. He stated that he believed his "biggest mistake" that evening was his decision to drink alcohol "given everything that was going on" and what he was "dealing with at that particular time." Ibid. He explained that he made the decision to drink alcohol that evening "to be sociable" and "because of the season . . . , the jovial aspect of it" and conceded that he "had not fully comprehended until then, . . . , how out of control it could be." Id. at T12-16 to T13-7. Despite his admitted intoxication that evening, Respondent drove himself home from the Holiday Party. Id. at T19-5-8.

As a consequence of the various incidents at the Holiday Party, Respondent claimed to have renewed his efforts to address his issues with alcohol. Id. at T11-6-25. At the time of the Informal Conference, it had been approximately one year since the Holiday Party and two years since he had begun treatment for his issues with alcohol; yet, Respondent testified that he had only stopped drinking four months prior to the Conference. Id. at T15-8-17.

Finally, prior to its consideration of this matter, the Committee requested an update from Respondent regarding what, if any, efforts he had made to address his issues with alcohol, which he provided to the Committee, through counsel, by letter dated April 22, 2012. See R-1. Included with this letter was

documentation detailing Respondent's progress in addressing his issues with alcohol, which the Committee has considered in its review of this matter.

#### 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). This standard may be satisfied with uncorroborated evidence. Id. at 84.

The Formal Complaint in this matter charges Respondent with violating Canons 1 and 2A of the Code of Judicial Conduct by inappropriately touching multiple female probation officers and an employee of the establishment at which the Holiday Party was held, without their consent, and of making several inappropriate and/or sexually suggestive remarks to several other women. We find, based on our review of the significant evidence in the record that this charge has been proven by clear and convincing evidence, and, consequently, that Respondent's conduct violated the cited canons of the Code of Judicial Conduct.

Canon 1 of the Code of Judicial Conduct requires judges to uphold the integrity and independence of the Judiciary. Canon 1 explains that "[a]n independent and honorable judiciary is indispensable to justice in our society." Judges, therefore, are expected to "participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved." Canon 2A of the Code of Judicial Conduct requires judges to respect and comply with the law and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

A judge's obligation to uphold the integrity and impartiality of the Judiciary, as required by the Code of Judicial Conduct, and the New Jersey Supreme Court's concomitant authority to discipline those judges who fail to do so, includes a judge's conduct in his/her private life. In re Hyland, 101 N.J. 635 (1986) ("[The] Court's disciplinary power extends to private as well as public and professional conduct by attorneys, and a fortiori by judges.") (internal citation omitted). As clearly elucidated in the Commentary to Canon 2, "[p]ublic 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." 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).

Respondent admits to attending the Holiday Party sponsored and hosted by officials and personnel of the Ocean County chapter of PANJ and that he, in the course of performing his judicial duties and in the discharge of his official functions, has occasion to interact with its representatives and members. He further admits to inappropriately touching multiple women while at the Holiday Party, without their consent, and to making the comments alleged, but contends this conduct was unintentional and inadvertent and the result of his overindulgence in alcohol. Respondent, nonetheless, concedes that by engaging in this conduct he has violated Canons 1 and 2A of the Code of Judicial Conduct. Given Respondent's admissions of wrongdoing, as alleged, and the overwhelming evidence in the record, we find that the charges against Respondent have been proven by clear and convincing evidence and that the conduct

implicated in those charges impugned, severely, both Respondent's integrity as a Superior Court judge and that of the Judiciary, in violation of Canons 1 and 2A of the Code of Judicial Conduct.

The Committee can not and need not reconcile Respondent's claim that he does not recall these several specific and graphic events due to the level of his intoxication that evening with his assertions that the conduct was unintentional and inadvertent. Intoxication may serve to expose and reveal intent, rather than obscure it. Regardless of his intent, Respondent's conduct was deeply offensive and exceedingly improper and included multiple instances of unwanted touching of numerous judiciary employees, as well as an employee of Christopher's Pub, and suggestive comments to several other judiciary employees. A review of the record in this case leaves little doubt about the seriousness of Respondent's misconduct and the very real consequences engendered by that misconduct.

We first note Respondent's misguided decision to attend an office party with persons who regularly appear before him in the discharge of his judicial duties. We focus specifically on Respondent's decision to drink to the point of intoxication while at that office party. Such conduct, in and of itself, calls into question Respondent's judgment and self control, and diminishes the stature of his judicial office. Respondent, by

admittedly drinking so heavily as to forget his own conduct that evening, created, at a minimum, the impression that he was out of control. A judge who creates that impression raises serious doubts about his judgment, which is an essential element in the exercise of his judicial responsibilities. Such conduct and the impressions it engenders impairs the integrity expected of a judge and the judicial office generally, in violation of Canons 1 and 2A of the Code of Judicial Conduct. This misconduct, however, is but a fraction of the ethical improprieties committed by Respondent while at the Holiday Party, the sum total of which is significantly more alarming.

While intoxicated, Respondent victimized six women, all of whom knew him to be a judge and none of whom felt comfortable in directly remonstrating against his unwanted advances because he was a judge. Those six women and the individuals who witnessed Respondent's conduct that evening were shocked that a Superior Court judge would behave in such a fashion and were made to feel extremely uncomfortable by his behavior. His conduct became the talk of the office in the days following the Holiday Party and news of his behavior ultimately reached the desk of the Ocean County Assignment Judge. By any measure, Respondent's conduct was deplorable. Such conduct by a Superior Court judge, however, is also antithetical to the high standards of conduct expected of judges in this State, deleterious to the dignity and

integrity of the Judiciary and the public's perceptions thereof, and constitutes an extreme violation of Canons 1 and 2A of the Code of Judicial Conduct. Indeed, the record reveals that Respondent's conduct caused many in attendance at the Holiday Party to question his integrity as a Superior Court judge.

Aside from Respondent's obvious improprieties while at the Holiday Party, we question his initial decision to attend the event, which was funded by a union and populated, almost exclusively, by probation officers and their supervisors, all of whom were members of that union. While Respondent claims to have been unaware of PANJ or the fact that PANJ was hosting the Holiday Party, his claimed ignorance in this regard is not believable and is no excuse. It is incumbent upon Respondent, as it is upon every judge in this State, to make the necessary inquiry concerning the propriety of attending any extrajudicial event, especially one attended exclusively by subordinate judiciary employees, prior to attending that event. See Rule 1:18A; see also Guidelines for Extrajudicial Activities for New Jersey Judges, Annotated, November 2007. Respondent's apparent failure to do so left him susceptible to criticism. 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 behave, at all times, above reproach.

Moreover, considering Respondent's frequent interaction with probation officers in the Child Support Enforcement Unit, we find his professed ignorance of PANJ highly suspect. Nevertheless, it should have been plainly obvious to Respondent that his attendance at that event would have been ill advised given the fact that he was invited to attend by a probation officer who appears regularly before him in the course of her official duties. Respondent's decision to attend the Holiday Party and fraternize with that probation officer, as well as others who appear before him in the course of their job duties, coupled with the fact that the event was hosted and paid for by a union of which Respondent is not a member, raises serious concerns about his judgment and creates the potential for a conflict of interest between Respondent and the Ocean County Probation Department. The risk that such conduct could create a conflict of interest or minimally the appearance of one is entirely unacceptable and contrary to the high standards of conduct espoused in the Code of Judicial Conduct and should be avoided in the future. See Code of Judicial Conduct, Canon 3C(1) ("A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . . .").

Having concluded that Respondent violated the canons of the Code of Judicial Conduct, the sole issue remaining is the

appropriate quantum of discipline. Determining discipline in a judicial disciplinary matter "requires more than establishing some instance or instances of unethical conduct." In re Seaman, supra, 133 N.J. at 98. (citation omitted). It requires "'a more searching and expansive inquiry . . . carefully scrutiniz[ing] the substantive offenses that constitute the core of respondent's misconduct, the underlying facts, and the surrounding circumstances in determining the nature and extent of discipline.'" Id. (quoting In re Collester, 126 N.J. 468, 472 (1992)); see also In re Mathesius, 188 N.J. 496 (2006).

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).

Without question, Respondent has engaged in grave misconduct, the consequences of which have been felt both in the Ocean County Probation Department and the Judiciary generally. Respondent's offensive touching of and suggestive comments to multiple women while under the influence of alcohol is repugnant behavior for which Respondent has rightly expressed his embarrassment.

In determining the appropriate quantum of discipline for such egregious misconduct, we are cognizant of several aggravating factors. First, the misconduct at issue - engaging in unwanted and offensive touching of and making suggestive comments to various judiciary employees and an employee of a local establishment while admittedly intoxicated - demonstrates a significant lack of integrity, sound judgment, and self control on the part of Respondent. It also betrays a lack of respect for other persons. As evidenced by the statements of the victims and witnesses to Respondent's conduct that evening, both his integrity and that of the Judiciary have been severely tarnished by his outrageous behavior.

Second, we are mindful of the harm inflicted on the victims in this matter, each of whom expressed feelings of shock, disbelief, and offense at Respondent's unwanted advances and

inappropriate physical contact. That harm was compounded by the very public nature of Respondent's misconduct, the stories of which have circulated throughout the Ocean County Probation Department, reaching even those who were not present at the Holiday Party.

Third and equally compelling, is the vulnerability of Respondent's victims. See In re Seaman, supra, 133 N.J. at 100 (finding "especially important the vulnerability of respondent's victim," i.e. his law clerk, which was deemed an aggravating factor for purposes of imposing discipline). Cf. In re Subryan, supra, 187 N.J. at 155 (stating that the judge's unwanted advance to his law clerk was unacceptable "in any workplace setting" and "particularly troubling in the context of the judge-law clerk relationship" given the "inequality inherent in that relationship."); In re Yengo, 72 N.J. 425, 438 (1977) (finding the vulnerability of the victim of the judge's abusive language, who was a litigant appearing before the judge, significant: "She (the victim) was disadvantaged and defenseless . . . whereas he was a judge and his conduct must be evaluated as such.") (emphasis in original). Though neither law clerks, as was the case in Seaman and Subryan, nor litigants as was the case in Yengo, Respondent's victims perceived themselves as similarly vulnerable and their professional relationship with Respondent similarly one-sided. The record is replete with

statements by the victims and those who witnessed the conduct of a reluctance to either rebuff Respondent's advances or complain about them thereafter due to Respondent's status as a judge, and their fear that such complaints would negatively impact their careers.

We find these perceptions reasonable and understandable in this circumstance. Respondent, while not their supervisor for employment purposes, may still be considered their superior within the Judiciary, and certainly in respect of any courtroom proceedings that require their participation as probation officers. Cf. In re Campbell, 205 N.J. 2 (2011) (finding that Respondent judge was his bailiff's "supervisor" pursuant to the broad description of that term set forth in Entrot v. BASF Corp., 359 N.J. Super. 162, 181 (App. Div. 2003)).<sup>3</sup> Respondent

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<sup>3</sup>Entrot provides that:

Our reading of Lehmann [v. Toys 'R' Us, Inc.], 132 N.J. 587 (1993), and its progeny, reviewed above, suggests that the Court, instead of requiring a litmus test depending on specific factors (e.g. power to fire or power to control daily tasks), would make the decision turn on whether the power the offending employee possessed was reasonably perceived by the victim, accurately or not, as giving that employee the power to adversely affect the victim's working life. Thus, such indicia as the power to fire and demote, to influence compensation, and to direct all job functions would be probative of supervisory status, but would not exclude other indicia. Also relevant would be any

does not shed his status as a judge when he leaves the courthouse, and certainly not in a social situation involving other Judiciary employees of a dissimilar status. Rather, he is, at all times, a member of the Judiciary who is expected to conduct himself commensurate with the high standards of conduct demanded of judges under the Code of Judicial Conduct. It goes without saying that Respondent's conduct both in drinking to excess and in mistreating numerous women while inappropriately attending the Holiday Party constitutes an affront to those high standards.

Finally, while this is the first judicial misconduct complaint filed against Respondent, it involves several breaches of proper conduct and multiple acts of offensive touching of and inappropriate remarks to numerous women, while Respondent was admittedly intoxicated. The exceptionally egregious nature of this misconduct offends not just the individuals victimized by Respondent, but the Judiciary as a whole, and seriously undermines the public's confidence in Respondent's ability to

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evidence that the alleged harasser controlled the workplace in subtler and indirect ways, as long as the effect was to restrict the victim-employee's freedom to ignore sexually harassing conduct. Essentially, this is the Dinkins [v. Charoen Pokphand USA, Inc., 133 F. Supp. 2d 1254 (M.D. Ala. 2001),] approach as opposed to the more rigid Parkins [v. Civil Constructors of Il., Inc., 163 F.3d 1027 (7<sup>th</sup> Cir. 1998),] analysis.

serve as a Superior Court judge. If that confidence is to be restored, Respondent must be disciplined in accordance with the severity of his misconduct. See In re Mattera, 34 N.J. 259, 266 (1961) ("a single act of misconduct may offend the public interest in a number of areas and call for an appropriate remedy as to each hurt. This may require removal from public office. . .").

In respect of any mitigating factors that may bear on the quantum of discipline in this matter, the record, on balance, is wanting. Certainly, Respondent's eleven years of public service in the United States Air Force and his two years of service in the National Guard, reserves, is admirable. P-4. Based on his resume, it appears he has enjoyed much success in his legal career. Ibid. Respondent is currently in his fourth year as a Superior Court judge and, as previously indicated, this complaint is the first charge of judicial misconduct to be brought against him. Further, the offensive conduct all occurred during a limited period of time, on a single evening. Though he claims no memory of the events at issue, Respondent has taken responsibility for his conduct, expressed remorse for it, and assures us that he has taken steps to avoid repeating this misconduct. See Answer at ¶8.

Nevertheless, Respondent has not demonstrated a real attempt to address his issues with alcohol, which he contends

was the impetus for his offensive behavior. The record, regrettably, reveals that Respondent has not accepted, fully, his need for treatment of his issues with alcohol, or a willingness on his part to do what is necessary to conquer those issues. R-1.

While he has maintained throughout these proceedings that he has been aware of his issues with alcohol since 2009 and has sought treatment for them, the record reveals that the treatment he has sought and received has been limited and of marginal success. P-4; R-1. Indeed, Respondent seems to question his own progress in treatment and the need for it. R-1. Though initially somewhat compliant with treatment prior to the Holiday Party, Respondent appears much less compliant at the present time. P-4; R-1. He, in fact, remains steadfast in his refusal to participate in any group-centered rehabilitative programs, despite the recommendation that he do so by his current treatment provider, and appears to lack the necessary support system to adequately deal with his issues. R-1. The record reveals, clearly, that Respondent's insight into and ability to contend with his issues with alcohol remains questionable. Ibid. Based on this record, we have no confidence that Respondent either comprehends, fully, the extent of his issues with alcohol or has taken adequate steps to address those issues.

We note that Respondent, while being treated for his issues with alcohol, put himself in a situation in which he would have access to alcohol and made the decision to drink despite his awareness of those issues. By his own admission, Respondent did not fully comprehend "how out of control" the situation could and did become as a consequence of his decision to drink that evening. P-32 at T12-16 to T13-7. The record, in fact, indicates that this was not the first time Respondent had indulged in alcohol despite his admitted issues with it. The bartender at Christopher's Pub indicated that Respondent was known to frequent the Pub for drinks "once or twice a month" prior to the Holiday Party. P-31 at T9-20 to T11-5. While we do not fault Respondent for failing to cure himself of his issues with alcohol, and appreciate his struggles in this regard, we cannot consider his inadequate attempts to address those issues, both before and after the Holiday Party, as a mitigating factor in this matter. We frankly see no appreciable difference between Respondent's treatment program before the Holiday Party and his treatment program after the Holiday Party, which gives us great concern.

While we accept Respondent's assertions that the origin of his misconduct in this matter is his issues with alcohol, it does not negate the serious consequences of that misconduct. See In re Collester, 126 N.J. 468, 473 (1992) (finding that the

"focus for appropriate discipline must be primarily fixed on respondent's conduct. Sympathy for one in the grip of alcoholism cannot negate the serious consequences of ensuing misconduct."). Rather, Respondent's failure to meet and defuse his issues with alcohol constitutes an aggravating factor sufficient to justify not only the imposition of harsh public discipline, but the requirement that Respondent adhere to several stringent conditions as a necessary component of that discipline. In this way, the Judiciary and the public may be assured of Respondent's future abilities to avoid repeating this misconduct. See In re Collester, supra, 126 N.J. at 476 (finding that "an individual's failure to confront and neutralize the effects of . . . [alcoholism] . . ., when evidenced in part by repeat offenses, in a judge comes perilously close to demonstrating unfitness to hold judicial office.").

## II. RECOMMENDATION

The Committee recommends that Respondent be suspended from his judicial duties for four months, without pay, and further recommends the following conditions as a prerequisite to Respondent's resumption of those duties: Respondent be required to participate actively in rehabilitative programs, approved by the Supreme Court, to address his issues with alcohol, including an evaluation by a qualified medical professional for admission

into and the successful completion of an in-patient treatment program; and to submit to the Supreme Court, on a periodic basis, medical reports documenting his progress while in treatment. We further recommend that Respondent's failure to comply with these conditions result in the imposition of more severe discipline.

This recommendation accounts for the seriousness of Respondent's misconduct, which demonstrates a disturbing lack of good judgment and self-control. We are profoundly troubled by Respondent's utter irresponsible and reprehensible behavior while socializing with members of the Judiciary and the public. We are equally troubled by Respondent's failure, both prior to and after the Holiday Party, to address adequately his issues with alcohol, which he has expressed to this Committee was at the root of his behavior.

For all of these reasons, the Committee respectfully recommends that Respondent be suspended from his judicial duties for four months, without pay, with the foregoing conditions, for his conduct in this matter.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

June 20, 2012

By:   
Alan B. Handler, Chair