D-37-14
(075270)

SUPREME COURT OF N.J.
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2013-222

IN THE MATTER OF ANTONIO INACIO, 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 the allegation that Respondent created the appearance he was attempting to curry favor with a Garwood Borough Councilman as alleged in Count I of the Formal Complaint, the charges set forth in the Complaint against Antonio Inacio, Judge of the Municipal Court ("Respondent"), have been proven by clear and convincing evidence. As a consequence of these Findings, the Committee recommends Respondent be reprimanded for his ethical improprieties as delineated in Counts I and II of the Complaint, and that the subset of charges set forth in Count I concerning Respondent's creation of an appearance of impropriety in respect

of a Garwood Borough Councilman be dismissed without the imposition of discipline.

I. PROCEDURAL HISTORY

This matter was referred to the Committee by Union County Assignment Judge Karen M. Cassidy, A.J.S.C. and concerns Respondent's use of his judicial stationery to seek from the Juvenile Conference Committee ("JCC") a modification of its Agreement/Court Order in respect of a Garwood Borough juvenile charged with possession of alcohol (the "JCC matter"). P-1.[1] The father of that juvenile is a Garwood Borough Councilman ("Councilman X"), the same borough in which Respondent serves as a municipal court judge. Stipulations at ¶¶5-7, ¶27. Judge Cassidy learned of Respondent's involvement in the underlying JCC matter from the presiding judge of the Family Part in the Union County Superior Court. P-1.

The Committee investigated Respondent's conduct in respect of the JCC matter and, as part of that investigation, interviewed three individuals - the juvenile and her parents. P4 thru P6. As a consequence of that investigation, the Committee

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[1] Consistent with the confidentiality provisions governing all JCC proceedings, and to preserve the privacy interests of the individuals involved in the underlying JCC matter, the pleadings in the instant matter refer to the juvenile involved and her parents using pseudonyms. See Rule 5:25-1(e). We continue this practice in our Presentment, referring to the juvenile's father as "Councilman X," her mother as "mother," and the juvenile as "Councilman X's daughter" or the "Councilman's daughter."

became aware of Respondent's apparent involvement as counsel of record to Councilman X in a private legal matter while Respondent was also serving as a municipal court judge in Garwood Borough. The Committee collected documentation relevant to Respondent's conduct in both instances, and requested and received from Respondent his written comments as to each. P-2; see also P-3.

On December 3, 2013, the Committee issued a two-count Formal Complaint against Respondent. In Count I, Respondent was accused of attempting to use the power and prestige of his judicial office to advance the private interests of Councilman X's daughter in violation of Canons 1, 2A and 2B of the Code of Judicial Conduct. The conduct that precipitated this charge concerned Respondent's use of his judicial stationery to write a letter to the JCC concerning Councilman X's daughter's JCC matter, over which Respondent lacked jurisdiction, in an attempt to intercede in that JCC matter and alter the terms of the JCC Agreement/Court Order to which the Councilman's daughter was bound. It is further alleged in Count I that Respondent's conduct in this regard "created the appearance that he was attempting to curry favor with the Councilman in violation of Canon 2B of the Code of Judicial Conduct." In Count II, Respondent was accused of serving as counsel to Councilman X in a private legal matter while also serving as a municipal court

judge in Garwood Borough, in violation of Canons 1 and 2A of the Code of Judicial Conduct and Rule 1:15-1(b) of the New Jersey Court Rules.

Respondent filed an Answer to the Complaint on December 23, 2013 in which he admitted the essential factual allegations of both counts, with some clarification, and admitted, in part, the allegations of judicial misconduct asserted in each. Specifically, as it relates to Count I, Respondent admitted that his conduct in "attempting to assist" Councilman X's daughter "could clearly be perceived as a violation of Canons 1, 2A and 2B of the Code of Judicial Conduct," but denied any intent to violate the Code, and specifically denied any actual attempt to use his judicial office to advance the interests of the Councilman's daughter. Respondent, likewise, admitted that by interjecting his judicial office into the JCC matter in response to Councilman X's inquiry, he "could clearly have created an appearance of impropriety as alleged" in Count I. In respect of Count II, Respondent admitted that his conduct in representing Councilman X while also serving as a municipal court judge in Garwood Borough violated the proscriptions against such conduct contained in Rule 1:15-1(b), and constituted a breach of his ethical obligations under Canons 1 and 2A of the Code of Judicial Conduct, but again denied any intent to do so.

On July 21, 2014, Presenter and Respondent filed with the Committee a set of Stipulations in which Respondent again admitted the essential factual allegations of both counts. Those Stipulations, though devoid of any reference to the ethical violations attendant to the factual allegations charged in Count I of the Formal Complaint, contain an acknowledgement of wrongdoing vis-à-vis Count II, namely that Respondent violated Rule 1:15-1(b) by representing Councilman X while also serving as a judge in the Garwood Municipal Court.

The Committee convened a Formal Hearing on July 31, 2014 at which Respondent appeared, with counsel, and offered testimony both in mitigation and defense of the asserted disciplinary charges. Exhibits were offered by both parties and admitted into evidence, as were the Stipulations previously referenced. See P-1 thru P-6; R-1 thru R-5; Stipulations filed July 21, 2014. Both parties submitted post-hearing briefs, which were considered by the Committee.

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

II. FINDINGS

A. Stipulated and Uncontested Facts

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1985. Stipulations at ¶1. At all times relevant to this matter, Respondent served as a part-time judge in the Municipal Courts of the Borough of Garwood, and the Townships of Clark and Scotch Plains, positions he continues to hold. Id. at ¶3. Respondent has served continuously in the Clark Municipal Court since his appointment in 1994, and in Scotch Plains and Garwood since his appointments in 2006 and 2011, respectively. Id. at ¶2; see also 1T18-13 to 1T19-6.[2]

The facts pertinent to this judicial disciplinary matter are uncontested and the subject of a Stipulation, as is Respondent's violation of Rule 1:15-1(b), as alleged in Count II of the Formal Complaint. As to Count I, Respondent admits and the evidence demonstrates that in or around February 1, 2013 Respondent was approached by Garwood Borough Councilman X, with whom he has been acquainted professionally for more than two decades, concerning the Councilman's minor daughter who, "at the end of 2012," had been taken into police custody by the Clark Police Department and charged with underage possession of alcohol. Stipulations at

[2] "1T" refers to the Transcript of Formal Hearing, In re Antonio Inacio, J.M.C., ACJC 2013-222.

¶¶6,7, and 11; see also 1T20-23 to 1T22-6; 1T26-2-16; 2T7-15 to 2T11-12.[3] Councilman X sought Respondent's advice concerning the propriety of the punishment his daughter ultimately received for that charge, which included, *inter alia*, her mandatory attendance at two meetings of Alcoholics Anonymous ("AA"), for which she was required to provide proof of attendance. Stipulations at ¶¶5, 10-11; see also P-1 at "ACJC0002;" 1T26-8-16; 2T10-18 to 2T14-24; 2T15-20 to 2T18-10. The Councilman believed this punishment to be excessive. 2T12-8-18; 2T16-20 to 2T17-4.

The circumstances that occasioned this punishment are as follows. The Councilman's daughter attended a "high school party" in Clark, New Jersey where alcohol was present. 3T6-3-17.[4] Clark Township police officers interrupted the party and ultimately charged Councilman X's daughter with possession of alcohol in violation of N.J.S.A. 2C:33-15A ("Possession, consumption of alcoholic beverages by persons under legal age; penalty"). P-1; see also 3T6-23 to 3T6-3 to 3T7-2.

Shortly after being charged, Councilman X's daughter appeared before the JCC, accompanied by her mother, to "discuss

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[3] "2T" refers to the Transcript of Interview of Councilman X, conducted on May 21, 2013, which is designated as P-4 in the record.

[4] "3T" refers to the Transcript of Interview of Councilman X's wife/mother of Councilman X's daughter, conducted on May 21, 2013, which is designated as P-6 in the record.

the circumstances of her . . . offense."[5] Stipulations at ¶8. Thereafter, on January 29, 2013, the JCC submitted to the Superior Court, Family Division, for its approval, a fully executed "Agreement/Court Order" containing the signatures of Councilman X's daughter, her mother and the Chairperson of the JCC (the "parties"), in which the parties expressed their mutual agreement to the JCC's recommended dismissal of the charge against the Councilman's daughter conditioned on her fulfillment of certain obligations intended "to aid in her rehabilitation." Id. at ¶9; see also P-1 at "ACJC0002." Included in those conditions was a requirement that Councilman X's daughter attend two AA meetings. P-1 at "ACJC0002." The Agreement/Court Order was approved by the Superior Court on February 1, 2013, and the requisite order adopting the JCC's recommendations was executed by the court that same day. Stipulations at ¶10; see also P-1 at "ACJC0002."

In response to the Councilman's query concerning the propriety of requiring his daughter to attend two AA meetings as part of her punishment, Respondent offered to investigate the matter and speak personally with Councilman X's daughter about the dangers of underage drinking and driving. Stipulations at

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[5] The JCC is a confidential court-approved diversionary program that operates as an "arm" of the New Jersey Superior Court's Chancery Division, Family Part, from which it is referred cases involving juvenile offenders. Rule 5:25-1 et seq.; see also Stipulations at ¶8.

¶¶12-13. As to the latter, Respondent invited Councilman X's daughter to the Clark Municipal Court to observe Respondent's court session scheduled for February 27, 2013. Id. at ¶14; see also 3T10-14-20. The Councilman's daughter accepted Respondent's invitation, and, accompanied by her mother, visited Respondent in the Clark Municipal Court on February 27, 2013. Stipulations at ¶18. Shortly before meeting with the Councilman's daughter, Respondent spoke with Clark Police Detective William Buczynski, the detective assigned to juvenile matters in Clark, concerning whether juveniles charged with underage drinking could observe court proceedings in lieu of attending AA meetings as a condition of punishment. Id. at ¶¶15-16. Detective Buczynski advised Respondent that while he was free to speak with the Councilman's daughter, "the ultimate decision" concerning her punishment "rested with the JCC." Id. at ¶17.

Upon their arrival at the Clark Municipal Court, the Councilman's daughter and her mother were immediately ushered into Respondent's chambers where Respondent spoke with them for approximately forty minutes about "his experience with underage drinking and driving." Id. at ¶19; see also 1T45-9-16; 3T18-1-7; 4T7-15-16.[6] That experience concerned an incident from

[6] "4T" refers to the Transcript of Interview of Councilman X's daughter, conducted on May 21, 2013, which is designated as P-5 in the record.

Respondent's youth in which two of his high school friends died in an alcohol related automobile accident. 1T27-4 to 1T31-2. After imparting to the Councilman's daughter the details of that incident and extrapolating for her benefit the lessons to be learned from it, their meeting ended and Respondent resumed his regularly scheduled court session. 3T10-14 to 3T11-15; 4T7-15 to 4T8-10.

During the whole of their conversation with Respondent, neither the Councilman's daughter nor her mother discussed with Respondent the conditions imposed on the Councilman's daughter by the JCC or sought Respondent's intercession in the JCC matter. Stipulations at ¶20; see also 3T10-14 to 3T11-15; 3T15-16 to 3T16-12; 3T19-2 to 3T20-17; 4T7-17-25. For his part, Respondent, likewise, did not offer to intercede on behalf of the Councilman's daughter in respect of her JCC matter. 3T19-2-22; 4T7-17 to 4T8-14.

On April 1, 2013, Respondent "composed a letter on his judicial stationery," the top of which bore the insignia of the Clark Municipal Court, to the Chairperson of the JCC in Garwood concerning Councilman X's daughter's JCC matter. Stipulations at ¶21; see also P-1 at "ACJC0003-0004." In the body of that letter, Respondent referenced his judicial office in three municipalities, advised the JCC Chairperson of his meeting with the Councilman's daughter and its substance, and requested the

Chairperson consider the Councilman's daughter's participation in a meeting with Respondent as an acceptable alternative to the JCC's requirement in its Agreement/Court Order that she attend two AA meetings and "obtain proof of attendance." Id. at ¶¶22-23; see also P-1 at "ACJC0003-0004." In furtherance of this request, Respondent opined in his letter to the JCC Chairperson that his retelling to the Councilman's daughter "of the tragedy that occurred in [his] life was infinitely more compelling to her than any attendance at an AA meeting would have." P-1 at "ACJC0004." Respondent signed the letter using the judicial designation of "J.M.C." (i.e. Judge of the Municipal Court) and copied Detective Buczynski on it. Stipulations at ¶26. Neither the Councilman's daughter, her mother, nor the Councilman were aware of Respondent's letter to the JCC or its contents, and were not copied on it. 4T8-11 to 4T9-8; 3T15-23 to 3T16-25; 3T17-19-25; 3T20-18 to 3T23-21; 2T23-18 to 2T24-7; 2T27-2-6; 2T28-25 to 2T31-14.

The JCC Chairperson, on receiving Respondent's letter, forwarded it to the Superior Court. P-1; see also 4T8-11 to 4T11-18. In the interim, Councilman X's daughter fulfilled her obligations under the terms of the JCC's Agreement/Court Order, including attending two AA meetings. 3T11-16 to 3T12-12; see also P-5 at "ACJC0110."

With regard to Count II of the Formal Complaint, Respondent admits and the evidence demonstrates that in or around January 2011 he served as counsel to Councilman X in a private legal matter while the Councilman served on Garwood's Town Council and Respondent served as Garwood's Municipal Court judge. Respondent concedes that in doing so he violated Rule 1:15-1(b) and Canons 1 and 2A of the Code of Judicial Conduct. Stipulations at ¶¶27-33; see also Answer at ¶¶24-34.

The facts and circumstances giving rise to the allegations in Count II are as follows. Respondent was appointed as a municipal court judge in Garwood effective January 1, 2011. Stipulations at ¶27. Councilman X abstained from voting on Respondent's judicial appointment in Garwood due to his ongoing relationship with Respondent who, at the time, was serving as counsel to Accent Electric Corporation ("Accent Electric"), a company wholly owned by Councilman X. Id. at ¶28; see also 2T3-24 to 2T4-6. Respondent served as counsel to Accent Electric in various legal matters for a period of seven years, between April 2004 and April 2011. P-3 at ¶¶4-12.

Seven months prior to his appointment, Respondent, in his capacity as counsel to Accent Electric, obtained a judgment on behalf of the company on June 3, 2010 against Kent Construction Company, LLC. Stipulations at ¶29; see also P-3 at ¶10. In an effort to collect on that judgment, Respondent prepared and

served a Notice of Application for Wage Execution against Kent Construction on January 27, 2011, approximately one month after his appointment to the Municipal Court in Garwood. Stipulations at ¶¶27, 30; see also P-3 at ¶11. Respondent, at Councilman X's request, subsequently transferred his file in the Kent Construction matter to Gary L. Maher, Esq. on April 4, 2011, along with a Substitution of Attorney. Stipulations at ¶31; see also P-3 at ¶12. Mr. Maher filed the Substitution of Attorney with the Union County Superior Court on April 19, 2011. Stipulations at ¶32. As of April 2011, Respondent has not served as counsel to Accent Electric in any legal matters. P-3 at ¶13.

B. Written Comments

The Committee initially questioned Respondent about his conduct in this matter by letter dated June 28, 2013. His letter of response, dated July 16, 2013, largely corresponds with the Stipulations of record in this matter. P-2.

In his letter to the ACJC, Respondent expressed his "disappointment, embarrassment and humiliation" over his conduct in respect of the Councilman's daughter's JCC matter. Id. at p.1. Though acknowledging the appearance of impropriety created by his letter to the Chairperson of the JCC, Respondent explained that he did not intend "to insert" himself into the Councilman's daughter's JCC matter, but merely sought to offer an "alternative" to the requirement that she attend two AA

meetings. Ibid. His stated purpose in using his judicial letterhead when corresponding with the JCC Chairperson was to satisfy the JCC's requirement in its Agreement/Court Order that the Councilman's daughter provide proof of her attendance at two AA meetings. Id. at p.2.

In addressing the second allegation, Respondent's position is consistent with that to which he stipulated in these proceedings. Specifically, Respondent acknowledged representing Accent Electric in January 2011, a corporation wholly owned by Councilman X, and to remaining as counsel of record to Accent Electric until April 7, 2011 when he filed a request to withdraw as counsel. Respondent maintained that he has not represented Accent Electric, Councilman X or any members of the Councilman's family since that time.

C. Formal Hearing

Given Respondent's partial acknowledgement of wrongdoing as charged in Count II of the Formal Complaint[7] and his denial of wrongdoing as charged in Count I, the issues addressed at the hearing were threefold: (1) whether Respondent's use of his judicial stationery to correspond with the JCC in Garwood about the Councilman's daughter's JCC matter, over which he had no

[7] Respondent, though admitting in his Answer to the Formal Complaint that his conduct vis-à-vis Count II violated Rule 1:15-1(b) and Canons 1 and 2A of the Code, denied violating those specific Canons of the Code in respect of Count II in his post-hearing brief.

jurisdiction, violated Canons 1, 2A and 2B of the Code of Judicial Conduct, and, if so, the appropriate quantum of discipline for that ethical infraction; (2) whether Respondent's conduct of interjecting his judicial office into the JCC matter in response to Councilman's X's inquiry, as alleged in Count I, created the appearance that Respondent was attempting to "curry favor" with the Councilman in violation of Canon 2B, and, if so, the appropriate quantum of discipline for that ethical infraction; and (3) whether Respondent's conduct in representing Councilman X's company violated Canons 1 and 2A of the Code of Judicial Conduct, and, if so, the appropriate quantum of discipline for that ethical infraction.

Respondent testified before the Committee with regard to each of these issues. As to the first issue, Respondent maintained that the use of his judicial stationery in this context was permissible. 1T10-24 to 1T12-15. Indeed, Respondent testified that use of his personal stationery in this circumstance would have been "worse," as doing so would have created, in his view, a clear impression that he was attempting to "intercede" in a pending juvenile matter rather than merely offering proof of the Councilman's daughter's attendance in his courtroom. 1T36-3 to 1T37-4.

Respondent acknowledged, however, that had the JCC acted in accordance with his request, i.e. to consider his meeting with

the Councilman's daughter a suitable substitute for her attendance at two AA meetings, the Councilman's daughter would have been spared the more burdensome task of having to attend the AA meetings. 1T34-12 to 1T35-5; 1T44-19 to 1T45-8. Respondent, however, denied any intent to confer a "benefit" on the Councilman's daughter, claiming that he merely sought to impose on her a "lateral" punishment, which he believed, as he stated in his letter to the JCC, was more beneficial to her than would be her anticipated attendance at two AA meetings. 1T34-1-11; see also P-1. Respondent, nonetheless, conceded that in sending the letter to the JCC he "messed up," without elaborating further, and assured the Committee that he would not repeat that conduct in the future. 1T37-20 to 1T38-4.

On the issue of appearing to curry political favor by interjecting his judicial office into the Councilman's daughter's JCC matter, Respondent denied any actual or apparent attempt to do so. 1T7-15 to 1T8-9. In this regard, Respondent stressed three facts he believed pertinent to the Committee's consideration of this allegation; namely, that Councilman X had abstained from the Garwood Council's vote on his initial nomination to the bench thereby precluding any appearance that Respondent would benefit politically from assisting the Councilman's daughter, the Councilman did not request Respondent intercede in his daughter's JCC matter, and neither the

Councilman nor his family were aware that Respondent had written a letter to the JCC in Garwood on behalf of the Councilman's daughter. 1T23-17-24; 1T31-3-13; 1T32-11-13. We are further informed about this issue by our review of the interview transcripts of the Councilman's daughter, her mother, and the Councilman, as well as the exhibits referenced and attached to those interview transcripts. P-4 thru P-6.

In respect of the third issue, Respondent again conceded the impropriety of his conduct in continuing to represent the Councilman's company subsequent to his appointment to the Garwood Municipal Court. Such conduct, Respondent acknowledged, violated Rule 1:15-1(b), but stopped short of conceding that it also constituted a violation of Canons 1 and 2A of the Code. 1T12-16 to 1T14-15; 1T16-8 to 1T17-16. Respondent explained that this ethical breach was occasioned by a lapse in judgment. 1T24-1 to 1T25-8. We are further informed about this issue by our review of the Councilman's certification on the nature and extent of Respondent's service as counsel to the Councilman's business and his conduct in terminating that attorney/client relationship. P-3.

III. 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 fact finder 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 three ethical infractions, the first two of which he contests: (1) attempting to use the power and prestige of his judicial office to intercede in a JCC matter over which he had no jurisdiction to advance the interests of the Councilman's daughter, in violation of Canons 1, 2A and 2B of the Code of Judicial Conduct; (2) creating the appearance that he was attempting to curry favor with Councilman X by interjecting his judicial office into the Councilman's daughter's JCC matter in response to the Councilman's inquiry, in violation of Canon 2B of the Code of Judicial Conduct; and (3) acting as counsel to a company owned by Councilman X during Respondent's initial tenure as the Garwood Municipal Court judge while Councilman X was serving on Garwood's Town Council, in violation of Rule 1:15-1(b) and Canons 1 and 2A of the Code of Judicial Conduct.

We find, based on our review of the uncontroverted evidence in the record, that the conduct relating to Respondent's misuse of his judicial office in a purely private matter, as delineated

in Count I of the Formal Complaint, has been proven by clear and convincing evidence, and that such conduct violates Canons 1, 2A and 2B of the Code of Judicial Conduct. Conversely, we find that although the factual allegations set forth in Count I are uncontested, those facts do not demonstrate, clearly and convincingly, that Respondent, by his conduct, was attempting to curry favor with the Councilman, and, as such, do not constitute an adequate basis on which to conclude that Respondent committed an additional violation of Canon 2B of the Code.

We further find, based on our review of the evidence and Respondent's partial acknowledgement of wrongdoing, that the conduct at issue in Count II of the Formal Complaint has been proven by clear and convincing evidence and that such conduct violates the cited Court Rule and Canons of the Code of Judicial Conduct.

A.

As a general matter, judges are charged with the duty to abide by and enforce the provisions of the Code of Judicial Conduct and the Rules of Professional 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."). This obligation applies equally to a judge's professional and personal conduct. In re Hyland, 101 N.J. 635 (1986) (finding

that 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).

Pertinent to this judicial disciplinary matter is a review of a jurist's ethical obligations as mandated by Canons 1, 2A, and 2B of the Code of Judicial Conduct, as well as the ethical obligations applicable specifically to part-time municipal court judges, like Respondent, under Rule 1:15-1(b). Canon 1 requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary are preserved. Canon 2A directs generally that judges conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. In keeping with this mandate, Canon 2B prohibits a judge from lending the prestige of the judicial office to advance "the private interests of others."

As the Commentary to Canon 2 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).

Rule 1:15-1(b) places limitations on the practice of law by attorneys serving as surrogates and part-time judges. The Rule provides, in part, that a judge of a municipal court shall not "act 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 includes the representation by municipal court judges of municipal officials in *both* their public and private capacities. In re Obuch, 212 N.J. 474 (2013) (adopting ACJC Presentment in ACJC2010-200 reprimanding a municipal court judge for representing a municipal officer in that officer's private legal matters in violation of Rule 1:15-1(b)); 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).

B.

Addressing first Respondent's use of his judicial stationery to communicate with the JCC, we reject in the main Respondent's contention that such conduct was not only appropriate, but necessary, given his stated purpose for doing so, viz. to provide proof to the JCC of the Councilman's daughter's attendance at a meeting with him in the Clark Municipal Court. To suggest, as he does, that use of his judicial stationery in this instance was necessary given that he was communicating with "another component of the judicial system," i.e. the JCC, "in his capacity as a Judge," ignores a fact central to the analysis -- Respondent lacked the requisite jurisdiction over the Councilman's daughter's JCC matter and, as such, did not have the judicial authority to intercede in that matter as he did. Rb7.[8] That Respondent chose to invoke his judicial office when addressing with the JCC the Councilman's daughter's juvenile matter, and utilized his judicial chambers to effectuate his stated goal of instructing her on the dangers of underage drinking, does not render his conduct judicial in

[8] 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.

nature or ethically appropriate, but rather underscores its impropriety.[9]

What Respondent fails to appreciate is that use of his judicial stationery or reference to his judicial office to advance a matter that is wholly private in nature and unrelated to his official duties, as was the Councilman's daughter's JCC matter in respect of Respondent, is improper and violates Canons 1, 2A and 2B of the Code of Judicial Conduct. The law proscribing such conduct is well settled and the proscription absolute. See In re Isabella, 217 N.J. 82 (2013) (adopting ACJC Presentment in ACJC2011-361 admonishing judge for using judicial stationery to intercede in a school board matter on behalf of his girlfriend's child); In re Wright, 179 N.J. 417 (2004)(adopting ACJC Presentment in ACJC2002-111 reprimanding a municipal judge for calling the prosecutor of another municipal court to request an amendment to traffic charges filed against his secretary's nephew); In re Sonstein, 175 N.J. 498 (2003) (censuring municipal court judge for writing letter on judicial letterhead to another municipal court judge about his parking matter pending before that judge); In re Murray, 92 N.J. 567

[9] As Respondent readily conceded during the hearing, the Superior Court, Family Part, has *exclusive* jurisdiction over juvenile delinquency matters such as the one involving the Councilman's daughter. N.J.S.A. 2A:4A-24(a); State v. ex rel. J.J., 427 N.J. Super. 541, 549 (App. Div. 2012).

(1983) (reprimanding a municipal court judge for sending a letter on behalf of a client to another municipal judge in which he identified his judicial office); In re Anastasi, 76 N.J. 510 (1978) (reprimanding a municipal court judge for sending a letter on behalf of a former client to the New Jersey Racing Commission on his official stationery).

The reason for this proscription is clear. A jurist who invokes the judicial office in a private context that is wholly unrelated to the jurist's official duties creates the risk that the judicial office may influence the outcome of that private matter, and in so doing weakens the public's confidence in the integrity and independence of the Judiciary. See In re Isabella, supra, 217 N.J. 82; In re Rivera-Soto, 192 N.J. 109 (2007) (censuring the Justice for engaging in a course of conduct that created the risk that the prestige and power of his office might influence and advance his child's private interests).

Indeed, so fixed is this proscription that it has been interpreted to include not only the use of judicial stationery and oral references to the judicial office in a private context, but also the dissemination of business cards in a private matter that either identify the jurist's judicial office or reference an attorney who is later identified as a jurist, and use of the judicial designation "J.M.C." on a jurist's personal

stationery.[10] See In re Rivera-Soto, supra, 192 N.J. 109; In re McElroy, 179 N.J. 418 (2004) (reprimanding a municipal court judge for giving a friend who was a defendant in a traffic case a message on his business card to hand to the municipal prosecutor requesting a downgrade); In re Samay, 166 N.J. 25, 32-33 (2001) (finding judge's use of the initials "J.M.C." in a private letter to be a misuse of his judicial office, the effect of which diminished public confidence in the judiciary).

This leads us to a discussion of the content of Respondent's letter to the Chairperson of the JCC, which we find unequivocally "lend[s] the prestige of [the judicial] office to advance the private interests" of the Councilman's daughter in direct violation of Canons 1, 2A and Canon 2B of the Code. Respondent, using his judicial stationery and with reference to his judicial office in three municipalities, requested the JCC amend its Agreement/Court Order concerning the requirement that the Councilman's daughter attend two AA Meetings, the efficacy of which he questioned, and consider his discussion with her in his judicial chambers as an adequate substitute. By its very terms, Respondent's letter was an overt attempt to invoke his judicial office in a private matter, wholly unrelated to his

[10] Rule 1:37-3 permits the use of the abbreviation "J.M.C." only in "orders, judgments, opinions, and memoranda."

judicial office, to secure for the Councilman's daughter what may arguably be construed as preferential treatment.

Respondent conceded as much in his Answer to the Formal Complaint wherein he admits that the "manner" in which he attempted "to assist [the Councilman's daughter] . . . could clearly be perceived as a violation of Canons 1, 2A and 2B" of the Code. Respondent, likewise, acknowledged at the hearing that, if accepted, his request to the JCC would have conferred a benefit to the Councilman's daughter and conceded that in doing so he "messed up." We agree. By injecting his judicial office into the Councilman's daughter's JCC matter in an effort to relieve her of an obligation imposed on her by the JCC, Respondent created a significant risk that his judicial office would influence the JCC's treatment of the Councilman's daughter, a circumstance directly at odds with the proscriptions contained in Canon 2B, and one which impugns the integrity and impartiality of the Judiciary in violation of Canons 1 and 2A.

We recognize Respondent's good intentions in trying to impart on the Councilman's daughter the wisdom he has gained from his prior experience with alcohol, and are satisfied that he acted with no improper motive. We, likewise, acknowledge Respondent's sincerity in attempting to counsel young people generally about the dangers of underage drinking. These considerations, however, neither mitigate nor excuse

Respondent's misconduct. In re Blackman, supra, 124 N.J. at 552 (finding a Respondent's lack of intent irrelevant in judicial disciplinary matters); In re Isabella, supra, 217 N.J. 82 (finding that judge's good intentions did not excuse his misuse of judicial stationery).

We turn next to the allegation in Count I that Respondent, by his conduct in respect of the Councilman's daughter's JCC matter, created the appearance that he was attempting to curry favor with Councilman X in violation of Canon 2B of the Code of Judicial Conduct. While the facts underlying this charge are uncontested, those facts do not substantiate the appearance of impropriety charged in Count I and should be dismissed.

By all accounts, the Councilman's discussion with Respondent was limited to soliciting Respondent's opinion on the propriety of the JCC's requirement that his daughter attend two AA meetings. At no time did the Councilman request Respondent intercede in the JCC matter or communicate with his daughter about that matter. Rather, Respondent voluntarily met with the Councilman's daughter, discussed with her the perils of underage drinking and driving, and subsequently wrote a letter on her behalf to the JCC. Respondent neither advised the Councilman of his intention to write the letter nor provided him or his

daughter with a copy of it.[11] The Councilman and his family were, in fact, completely unaware Respondent had written a letter to the JCC prior to their involvement in the instant matter.

In addition, there is no evidence in the record to suggest that the JCC Chairperson was aware of the Councilman's political affiliation. Respondent's letter to the Chairperson makes no reference to the Councilman. Though we do not discount the obvious nexus between the Councilman's concern over his daughter's attendance at two AA meetings and Respondent's effort to excuse her from that obligation, that nexus, absent knowledge of such on the part of the Councilman or an awareness on the part of the JCC of the Councilman's involvement in that matter, is, under these facts, insufficient to establish an appearance of political pandering.

Moreover, as noted by Respondent and confirmed in the record, Councilman X abstained from the Garwood Council's vote on Respondent's initial nomination to the bench in January 2011.

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[11] Though Respondent claimed his written comments to advising the Councilman of his intention to write to the JCC, both the Councilman and his family dispute any knowledge of Respondent's intentions in this regard. P-2; 4T8-11 to 4T9-8; 3T15-23 to 3T16-25; 3T17-19-25; 3T20-18 to 3T23-21; 2T23-18 to 2T24-7; 2T27-2-6; 2T28-25 to 2T31-14. Respondent, as well, testified that he did not alert the Councilman or the Councilman's family of his intention to correspond with the JCC or provide them with a copy of his letter. 1T23-17-24; 1T31-3-13; 1T32-11-13. Given this testimony, we find that Respondent acted independently and without provocation from the Councilman.

While we recognize that such abstention, standing alone, does not preclude a finding of an appearance of impropriety, under the totality of the circumstances present here we find such a charge has not been sustained by clear and convincing evidence.

Our focus now shifts to Count II of the Formal Complaint in which Respondent is charged with violating Rule 1:15-1(b) by continuing to represent a business entity owned by Councilman X following Respondent's appointment to the Garwood Municipal Court. While Respondent concedes his impropriety in this regard, he disputes that his violation of Rule 1:15-1(b) evinces a violation of Canons 1 and 2A of the Code. Rb3. We disagree.

Rule 1:15-1(b) expressly prohibits municipal court judges from serving as counsel to the municipality in which they serve or any agency or officer of that municipality. Respondent, a twenty-year veteran of the municipal bench, was well aware of this proscription. See In re Sgro, 63 N.J. 538, 540 (1973) (finding that "all municipal court judges, even though inexperienced and part-time, are charged with knowledge of the rules and statutes governing that court and are bound to act accordingly"). Nonetheless, he continued to represent the Councilman following his appointment to the bench in contravention of Rule 1:15-1(b), and in so doing impugned both his integrity and that of the Judiciary, in violation of Canons 1 and 2A. Cf. In re Obuch, supra, 212 N.J. 474 (adopting ACJC

Presentment in ACJC2010-200 finding that a judge who violates Rule 1:15-1(b) also violates Canons 1 and 2A of the Code).

C.

Having concluded that Respondent violated Canons 1, 2A and 2B of the Code of Judicial Conduct and Rule 1:15-1(b) as charged in Counts I and II of the Formal Complaint, the sole issue remaining for our consideration is the appropriate quantum of discipline. In this undertaking, we are mindful of our obligation to examine, with care, the facts and circumstances underlying Respondent's misconduct, including any aggravating or mitigating factors that may bear upon that misconduct. In re Collester, 126 N.J. 468, 472 (1992); see also In re Connor, 124 N.J. 18, 22 (1991); In re Mathesius, 188 N.J. 496 (2006); In re Seaman, 133 N.J. 67, 98 (1993). We are also cognizant of the primary purpose of our system of judicial discipline, namely to preserve the public's confidence in the integrity and independence of the judiciary, not to punish a judge. In re Seaman, supra, 133 N.J. at 96 (1993) (citing In re Coruzzi, 95 N.J. 557, 579 (1984)); In re Williams, 169 N.J. 264, 275 (2001).

Respondent, though admitting he acted imprudently in writing to the JCC as alleged in Count I and conceding that he violated Rule 1:15-1(b) as alleged in Count II, disputes that his conduct is deserving of discipline given that he acted with no improper motive. Alternatively, Respondent contends that

should discipline be imposed, it should not rise above the level of a public admonition. Rb3-8. In support of this argument, Respondent relies on several factors he believes mitigate his misconduct -- this matter represents the first public disciplinary complaint filed against Respondent[12], he has enjoyed a lengthy career as a municipal court judge during which time he has maintained a good reputation in the community, he has acknowledged his wrongdoing in respect of Rule 1:15-1(b) and has expressed remorse for it, and he has assured the Committee that he will not repeat this misconduct. Id. at 2-4; 6-8.

Though we acknowledge these mitigating factors, they are insufficient to justify the imposition of a public admonition for Respondent's two acts of judicial misconduct. As revealed by the record before us, Respondent intentionally inserted his judicial office into a JCC matter over which he lacked jurisdiction in an attempt to assist a Garwood Councilman's daughter secure alternate punishment, and continued to represent that Councilman following Respondent's appointment to the municipal bench in Garwood. In both instances, the proscription against such conduct has been longstanding and resolute.

Respondent's misuse of his judicial stationery in this context to communicate about a pending JCC matter with the

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[12] Respondent was privately reprimanded by this Committee in January 2011 for intemperate conduct.

Chairperson of the JCC, who was otherwise unfamiliar with Respondent and his judicial office, is akin to those judges who overtly invoked their judicial office in pending judicial matters by utilizing their judicial stationery, business cards or other indices of their judicial office with individuals who were otherwise unfamiliar with their judicial status. Cf. In re Rivera-Soto, supra, 192 N.J. 109; In re McElroy, supra, 179 N.J. 418; In re Sonstein, supra, 175 N.J. 498; In re Murray, supra, 92 N.J. 567; In re Anastasi, supra, 76 N.J. 510. In each of those instances, discipline did not fall below that of a public reprimand.

Conversely, Respondent's conduct in the instant matter differs substantially from that at issue in In re Isabella, supra, in which the Supreme Court publicly admonished a Superior Court judge for using his judicial stationery to send a facsimile to counsel for the Nutley Board of Education concerning his girlfriend's child. In that instance, the Supreme Court adopted the Committee's recommendation of a public admonition finding that the judge's misuse of his judicial stationery, though improper, was limited in scope (i.e. used as a fax coversheet), apparently inadvertent, and involved individuals who were otherwise familiar with Respondent and aware of his judicial status. See In re Isabella, supra, 217 N.J. 82. None of those factors exist here. Respondent used his

judicial stationery to communicate substantively with the Chairperson of the JCC, a virtual stranger, and did so intentionally.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be reprimanded for his violations of Canons 1, 2A and 2B of the Code of Judicial Conduct and Rule 1:15-1(b), as charged in the Formal Complaint. This recommendation reflects the Judiciary's firm policy prohibiting the use of judicial stationery or other indices of the judicial office in a private context, as well as the Judiciary's steadfast commitment to maintain a clear demarcation between the municipal bench and the municipality in which it is situated, while also accounting for the mitigating circumstances present in this matter.

The Committee further recommends that the charge set forth in Count I relating to the appearance of impropriety allegedly engendered by virtue of the Councilman's political office be dismissed without the imposition of discipline.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

December 2, 2014 By: Virginia A. Long

Virginia A. Long, Chair