D-106-15 (077532)

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2015-001

IN THE MATTER OF DENNIS M. BAPTISTA, JUDGE OF THE MUNICIPAL COURT	**PRESENTMENT**

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 Dennis M. Baptista, Judge of the Municipal Court ("Respondent"), have been proven by clear and convincing evidence for which the Committee recommends Respondent be censured.

I. PROCEDURAL HISTORY

This matter was initiated on receipt of correspondence from Richard R. Uslan, Esq., counsel to Respondent, on August 28, 2014 in which Mr. Uslan notified the Committee of two motor vehicle summonses that had been issued to Respondent by the New Jersey State Police on August 22, 2014, the first of which charged Respondent with Driving While Intoxicated ("DWI") in

violation of N.J.S.A. 39:4-50 and the second with Failure to Maintain Lane in violation of N.J.S.A. 39:4-88b. P-1. The Committee monitored the status of Respondent's DWI matter - State v. Dennis Baptista, Summons Nos. E-14-003279, E-14-003280 - in the Hunterdon County Superior Court, Criminal Part, until its conclusion on February 3, 2015 at which time Respondent pled guilty to a first offense DWI.[1] P-2; P-6. The remaining charge of Failure to Maintain Lane was dismissed on motion of the State. P-6.

While the Baptista matter was proceeding through the Superior Court, the Committee investigated the circumstances surrounding Respondent's arrest for DWI, which included interviewing the arresting police officer and the State Trooper who administered the Alcotest to Respondent, as well as reviewing the State Police Department's records relating to Respondent's arrest. P-3 through P-5. During the course of that investigation, the Committee learned of Respondent's apparent attempt to use his judicial office to gain an advantage during his encounter with the State Police. P-3 at T10-24 to T11-10.

The Committee subsequently requested Respondent's written comments in respect of his DWI arrest and conviction and his

[1] In accordance with its longstanding practice, the Committee withheld consideration of Respondent's DWI charge and related misconduct pending the Superior Court's resolution of its attendant court proceedings.

alleged abuse of the judicial office. P-7; P-8. In reply, the Committee received correspondence from Respondent's ethics counsel, Robert Ramsey, Esq., who advised that Respondent was "prepared to acknowledge his DWI" conviction and was not in "a position to deny" the allegation related to his abuse of the judicial office given "his level of intoxication" when arrested. P-9.

Accordingly, on October 29, 2015, the Committee issued a Formal Complaint against Respondent charging him with conduct in contravention of Canons 1, 2A and 2B of the Code of Judicial Conduct relating to his DWI conviction and his misuse of the judicial office for personal gain. Respondent's counsel filed a letter in lieu of a formal Answer to the Complaint on November 16, 2015 in which counsel "admit[ted] and stipulate[d] to all [of] the factual allegations set forth in the Complaint. . . ." In addition, counsel expressed Respondent's "most sincere apology to the judiciary, the judges of his vicinage and his family for any embarrassment his misconduct may have caused."

On January 6, 2016, Respondent, through counsel, waived his right to a Formal Hearing on the charges set forth in the Formal Complaint and again acknowledged his misconduct in respect of those charges. See Letter Brief of Robert Ramsey, dated January 6, 2016, made a part of the Record. The Committee considered this matter at its meeting on February 23, 2016.

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

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1985. See Formal Complaint at ¶1. At all times relevant to this matter, Respondent served as a part-time judge in the Phillipsburg Municipal Court, a position he continues to hold. Id. at ¶2.

The facts and circumstances germane to this ethics matter and Respondent's attendant ethical breaches as a consequence of those circumstances, as alleged in the Formal Complaint, are undisputed. Respondent admits and the evidence demonstrates, clearly and convincingly, that on August 22, 2014, at approximately 7:20 p.m., Respondent drove his vehicle westbound on Interstate 78 ("I-78") in Clinton Township, Hunterdon County, while under the influence of alcohol, resulting in his arrest and conviction for a first offense DWI. See Formal Complaint at ¶¶3; 14; see also P-2, P-6, P-9 and P-10.

Respondent concedes that in driving while intoxicated in violation of N.J.S.A. 39:4-50, he failed to respect and comply with the law and impugned the integrity of the Judiciary in

violation of Canons 1 and 2A of the Code of Judicial Conduct. P-9; see also Letter of Robert Ramsey, Esq. in lieu of a formal Answer to the Complaint, filed on November 16, 2015.

Respondent's arrest was the subject of a "New Jersey State Police Drinking Driving Report" and its occurrence was captured by a State Police dashboard camera affixed to the arresting officer's patrol vehicle. P-5, P-10. The Committee is further informed about the circumstances of Respondent's arrest by the testimony of the arresting police officer, New Jersey State Trooper Josh Ladao, which the Committee obtained during its investigation in this matter. P-3; see also P-5, P-10. Those circumstances, which inform our decision, are as follows. On August 22, 2014, at approximately 7:20 p.m., a passing truck driver traveling on Interstate 78 reported to the State Police the presence of an erratic driver in the westbound lanes of I-78 at or around mile marker 26.8. P-10. Trooper Ladao, on patrol that evening on I-78, observed Respondent's vehicle pass his patrol car, which was parked on the westbound shoulder of I-78 at mile marker 21.9. Id. Respondent's vehicle matched the description of the vehicle reported to the State Police by the passing motorist. Id.

Trooper Ladao followed Respondent's vehicle, which he observed drift between the right and center lanes of I-78. Trooper Ladao stopped Respondent's vehicle and questioned him

about his conduct, including whether he had consumed any alcohol that evening. Id.; see also P-5. Respondent repeatedly denied drinking any alcohol that evening and advised Trooper Ladao that he was returning home from work as a lawyer in Nutley, New Jersey. Id.; see also P-5 at T3-9 to T4-23, T5-25 to T6-1, T10-20-24, T16-1-7. Trooper Ladao, noting Respondent's slurred speech, glassy eyes, "droopy" lips and pale face, removed Respondent from his vehicle and administered three field sobriety tests, two of which Respondent failed. P-10; see also P-5 at T8-12 to T10-17, T10-25 to T-9. Prior to and during the administration of these tests, Trooper Ladao observed Respondent sway and stagger and detected an odor of alcohol on his breath. Ibid.

Given these circumstances, Trooper Ladao placed Respondent in custody and transported him to the State Police Barracks in Perryville. Id. During his arrest, Trooper Ladao and Respondent engaged in the following notable recorded colloquy:

> TROOPER LADAO: Okay. Put your hands behind your back for me.
>
> RESPONDENT: Are you going to arrest me?
>
> TROOPER LADAO: Just keep your hands behind your back.
>
> RESPONDENT: Can I say something to you?
>
> TROOPER LADAO: What's that?

RESPONDENT: You have some discretion here, don't you?

TROOPER LADAO: Absolutely. Stand by. Okay.

. . . .

TROOPER LADAO: Okay. Do me a favor, step out for me. Unfortunately, we are beyond the point. Okay.

. . . .

RESPONDENT: We're beyond the point?

TROOPER LADAO: We're beyond the point, my friend. If we need to figure something out, we'll do it, but right now -

. . . .

RESPONDENT: For me, this is worse than most people.

TROOPER LADAO: Have a seat before it gets worse.

RESPONDENT: Hold on. I'm trying to (Indiscernible).

TROOPER LADAO: Who do you work for? You work for the State, are you private?

RESPONDENT: I have a public official job that this will kill me. It will become very bad. I can't tell you because if I tell you, I can get in trouble for that. But I won't. I was on the phone with my wife, that's why I was swerving. This will kill me more than the average guy.

TROOPER LADAO: All right. Well, like I said we're beyond the point my friend. You know, I'm trying to help you out here, but you already lied to me. So I can smell it on your breath. How many drinks have you had tonight?

RESPONDENT: (Indiscernible)

[P-5 at T11-13 to T13-18.]

While en route to the Perryville Barracks, Trooper Ladao detected the odor of alcohol throughout his patrol car and again questioned Respondent about any alcohol he may have consumed that day. P-10. Respondent admitted to having had one drink at lunch. P-10. Respondent would later tell Trooper Ladao while being processed at the State Police Barracks that his last drink was "yesterday at lunch." P-10 at p.2.

On arriving at the Perryville Barracks, Respondent inquired of Trooper Ladao whether the recording equipment in the Trooper's vehicle was still activated. P-3 at T10-14 to T11-2. When the Trooper replied "no," Respondent again asked the Trooper if he was "beyond the point of discretion, I'm a judge." P-3 at T11-1-5. Trooper Ladao responded by stating, "we'll figure it out," after which he directed Respondent into the State Police Barracks. Id. at T11-8-10. On entering the Barracks, Respondent voluntarily submitted to an Alcotest, the results of which were later deemed unreliable by the State. P-6 at T4-24 to T5-23.

Respondent concedes that in identifying himself as a judge to Trooper Ladao and inquiring if the Trooper retained discretion vis-à-vis the filing of any charges, he abused the judicial office to advance his private interests in violation of Canon 2B

of the Code of Judicial Conduct. P-9; see also Letter of Robert Ramsey, Esq. in lieu of a formal Answer to the Complaint, filed on November 16, 2015.

On February 3, 2015, Respondent appeared before the Honorable Angela Borkowski, J.S.C. in Superior Court, Hunterdon County, Criminal Part, and, based solely on the Trooper's observations, pled guilty to a first offense DWI. P-6. The remaining charge of Failure to Maintain Lane was dismissed on motion of the State. Ibid. Judge Borkowski sentenced Respondent to the mandatory three months loss of license, twelve hours of community service at the Intoxicated Driver Resource Center and $653 in fines, fees and costs. Id. at T17-1-10.[2]

III. ANALYSIS

The burden of proof in judicial disciplinary matters is clear-and-convincing evidence. Rule 2:15-15(a). Clear and convincing evidence is that which "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence, so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts

[2] Given the absence of a blood-alcohol reading, the mandatory penalties imposed under N.J.S.A. 39:4-50 for a first offense DWI were reduced to the minimum mandatory penalties provided for those drivers whose blood-alcohol content is 0.08% or higher, but less than 0.10% at the time of arrest. N.J.S.A. 39:4-50(a)(1)(i). P-6 at T-4-10.

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 two ethical infractions, neither of which he contests: (1) driving while intoxicated in violation of N.J.S.A. 39:4-50, which conduct violates Canons 1 and 2A of the Code of Judicial Conduct and (2) abuse of the judicial office to advance a personal interest in violation of Canon 2B. We find, based on our review of the significant evidence in the record and Respondent's acknowledgement of wrongdoing, that these charges have been proven by clear and convincing evidence and that Respondent's conduct violated the cited canons of the Code of Judicial Conduct.

Canon 1 of the Code 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. Canon 2B prohibits a judge from lending the prestige of the judicial office to advance private interests or conveying or permitting others to convey the impression that they are in a special position of influence.

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).

In our consideration of Respondent's first ethical infraction - driving while intoxicated - we give conclusive effect to Respondent's guilty plea and conviction under N.J.S.A. 39:4-50. R. 1:20-13(c)(1). That conviction establishes, clearly and convincingly, Respondent's misconduct in violation of Canons 1 and 2A of the Code of Judicial Conduct. See In re Connor, 124 N.J. 18 (1991) (citing In re Coruzzi, 98 N.J. 77 (1984))(finding that conclusive effect may be given to respondent's convictions

under New Jersey's motor vehicle laws and those convictions establish, clearly and convincingly, a violation of Canons 1 and 2 of the Code of Judicial Conduct); In re Collester, 126 N.J. 468, 472 (1992) (noting that "[i]n attorney and judicial disciplinary cases, the Court gives conclusive effect to the respondent's convictions of statutory crimes and offenses.") (internal citations omitted).

Turning next to Respondent's abuse of the judicial office, we again note Respondent's admission of wrongdoing in this regard and his concomitant violation of Canon 2B of the Code of Judicial Conduct. Indeed, Respondent's recorded remarks to the arresting officer evince that he knew when speaking with that officer that his reference to the judicial office was wrong and in violation of Canon 2B of the Code of Judicial Conduct. Such conduct and the impressions it engenders also necessarily 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.

We are thus left to determine the appropriate quantum of discipline for Respondent's two ethical infractions, both of which are serious. 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 on that misconduct. In re

Collester, supra, 126 N.J. at 472; see also In re Connor, supra, 124 N.J. at 22; In re Mathesius, 188 N.J. 496 (2006); In re Seaman, 133 N.J. 67, 98 (1993).

We are equally cognizant of the significant policy concern implicated by Respondent's misconduct and its import, i.e. the firm commitment of this State to eradicate drunk driving. See In re Collester, supra, 126 N.J. at 472-473 (stating that the Supreme Court "firmly endorse[s] the governmental commitment to the eradication of drunk driving as one of the judiciary's own highest priorities."); see also In re Connor, supra, 124 N.J. at 21. (stating that "[w]e do not view offenses arising from the driving of an automobile while intoxicated with benign indulgence. They are serious and deeply affect the safety and welfare of the public. . . . They are not victimless offenses").

It is within this context that we evaluate Respondent's misconduct, beginning with a discussion of the aggravating factors present in this case, which are substantial. Respondent, when questioned by Trooper Ladao during the motor vehicle stop, falsely denied consuming any alcohol that evening and continued with that denial when questioned again at the State Police Barracks. Such conduct not only bespeaks a disregard for the rule of law, but strongly suggests that Respondent was attempting to obstruct justice, a circumstance of significant concern when committed by the ordinary citizen and

considerably more egregious when committed by one who is charged with upholding and preserving the rule of law. Cf. In re Collester supra, 126 N.J. at 473 (finding judge's false statements to police to constitute an aggravating factor for purposes of discipline).

Having failed to avoid arrest with false claims of sobriety, Respondent misused his judicial office in a further attempt to forestall a DWI charge. His conduct in this regard represents the *second* time Respondent has abused his judicial office while interacting with law enforcement, the first of which resulted in his receipt of a public reprimand by the Supreme Court on April 7, 2011. In that instance, Respondent solicited the assistance of the Phillipsburg Police Department, whose officers routinely appear before him in the Phillipsburg Municipal Court, to advance his interests in a private matter involving his son. See In re Baptista, 205 N.J. 316 (2011). Respondent's repeated abuse of the judicial office necessarily aggravates his misconduct in this instance and must be met with enhanced discipline. Cf. In re Bowkley, 2016 N.J. Lexis 56, 224 N.J. 144 (2016) (adopting Presentment of Committee in ACJC 2013-265 in which judge's repeated failure to avoid conflicts was deemed an aggravating factor for purposes of discipline).

We, likewise, acknowledge the existence of two mitigating factors in this matter -- Respondent's expression of remorse and

acknowledgment of wrongdoing -- which, though present, do not adequately account for the harm done to the Judiciary's reputation as a body of integrity by virtue of Respondent's misconduct. That misconduct, when coupled with the aggravating factors present in this matter, justify the imposition of a censure.

Though Respondent has acknowledged both his misconduct and the need for enhanced judicial discipline, namely a censure, we find his stated justification for that discipline faulty and in conflict with standing precedent. Respondent theorizes that judicial discipline for DWI violations is *sui generis*, to wit only a prior DWI conviction or aggravating factors directly related to the subject DWI conviction may serve to enhance discipline for a subsequent DWI conviction, exclusive of any prior disciplinary matters that may exist in a jurist's disciplinary history. Rb2.[3] In support of this theory, Respondent relies erroneously on the matter of In re Williams, 188 N.J. 476 (2006), in which Judge Williams was censured for a first offense DWI conviction following a previous suspension from judicial office for conduct in her personal life unrelated to alcohol.

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[3] Consistent with Rule 2:6-8, "Rb" refers to Respondent's hearing brief.

The Supreme Court, however, in adopting the Committee's Presentment in the Williams matter, specifically relied on the Judge's prior disciplinary history to enhance the quantum of discipline from a public reprimand to a censure.[4] The Committee reasoned that the "earlier discipline put [Judge Williams] on notice that she had to conform her conduct to the accepted norms. The burden was on her to avoid improper conduct -- of every sort - thereafter. She failed to do so, and that failure requires an enhanced sanction." In re Williams, ACJC 2006-100, Presentment at p. 4; see also In re Connor, supra, 124 N.J. at 20 (stating that a public reprimand is appropriate in matters involving an initial DWI conviction where there is "no prior record of personal, professional, or judicial misconduct.").

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[4] In matters involving a jurist's first conviction under N.J.S.A. 39:4-50 for DWI, where there is an absence of any aggravating factors, the resulting discipline has been a public reprimand. See In re Justice Robert Clifford (February 7, 1990 Statement of the Supreme Court); In re Lawson, 124 N.J. 280 (1991); In re Richardson, 153 N.J. 355 (1998); In re D'Ambrosio, 157 N.J. 186 (1999); In re Frese, 170 N.J. 415 (2002); In re Jones, 199 N.J. 118 (2009).

In matters involving a jurist's second DWI conviction or a first DWI conviction is accompanied by conduct that aggravates the underlying ethical infraction and constitutes an additional violation of the Code of Judicial Conduct, the resulting discipline has been censure. In re Tourison, 199 N.J. 121 (2009); In re Annich, 130 N.J. 538 (1993); In re Connor, 124 N.J. 18 (1991); In re Sasso, 199 N.J. 119 (2009); In re Williams, 188 N.J. 476 (2006).

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be censured for his violations of Canons 1, 2A, and 2B of the Code of Judicial Conduct. This recommendation takes into account Respondent's two ethical infractions, both of which impugned the integrity of the Judiciary and one of which constitutes Respondent's second abuse of the judicial office. This recommendation also strikes the necessary balance between the significant aggravating factors present in this case and the mitigating factors, which, though present, are insufficient to justify the imposition of discipline less than that of a censure.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

April 11, 2016

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