

IN THE MATTER OF

RICHARD M. SASSO
JUDGE OF THE MUNICIPAL COURT

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO. ACJC 2007-162

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A. C. J. C.

PRESENTER'S LEGAL MEMORANDUM

Candace Moody, Esq.
Presenter
Advisory Committee on Judicial Conduct

I. INTRODUCTION

This matter was initiated before the Advisory Committee on Judicial Conduct (the “Committee”) by three individuals. First, Robert Podvey, Esq., a member of the law firm Podvey, Meanor, Catenacci, Hildner, Coccoziello & Chattman, P.C., in his capacity as special counsel to Warren Township, referred to the Committee the complaints of Michelle D’Onofrio, Esq., then the Municipal Prosecutor of Warren Township, about Respondent’s conduct towards her and other individuals appearing before Respondent in his capacity as a municipal court judge.¹ Second, Ms. D’Onofrio filed her own grievance with the Committee, which restated the complaints she had expressed to Mr. Podvey about Respondent and included new claims of misconduct against Respondent. See P-1. Third, Raymond Stine, Esq., then the Municipal Prosecutor of Watchung, Alternate Prosecutor for the Townships of Warren and Bridgewater, filed a grievance with the Committee about Respondent’s conduct towards attorneys and litigants in Respondent’s capacity as a municipal court judge. See P-3. Mr. Stine’s grievance also referenced complaints made by Pamela Steeves, the Court Administrator in the Watchung Municipal Court, about Respondent’s conduct while serving as a municipal court judge. Id.

The Committee conducted an investigation and on March 13, 2008 issued a Formal Complaint charging Respondent with violating Canons 1, 2A, 3A(1), 3A(3), and 5A(2) of the Code of Judicial Conduct and with misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(1) and (6). These charges relate to the following conduct:

- **Count I:** taking the bench under the influence of drugs and/or alcohol on two separate occasions (December 6, 2006 and April 17, 2007);

¹ Respondent resigned from his positions as judge of the Municipal Courts of Warren Township, Bridgewater Township, Bound Brook Borough and Watchung Borough effective January 23, 2008. See P-6.

- **Count II:** abusing his judicial office while a patron at Torpedos Go-Go Bar (the “Establishment”) by identifying himself to employees of the Establishment as a judge and making threatening statements to those same employees after he was denied further service because of his refusal to follow the Establishment’s policy regarding bar tabs;
- **Count III:** repeatedly misusing the provisions of Rule 1:2-4(a) to sanction attorneys and litigants unfairly for appearing late to court;
- **Count IV:** behaving discourteously and in an intemperate manner towards those who appeared before him in municipal court;
- **Count V:** abusing his contempt power under Rule 1:10-1 by failing to follow the strict requirements of Rule 1:10-1, which resulted in the incarceration of a defendant without due process and the imposition of a sanction against another defendant who Respondent also threatened with incarceration if the sanction was not paid immediately;
- **Count VI:** giving preferential treatment to high school students who appeared before him merely because of their status as high school students; and
- **Count VII:** violating Rule 1:15-1(b) by serving as counsel to the Watchung Chemical Engine Company (a.k.a the Watchung Volunteer Fire Company).

On April 7, 2008, pursuant to an extension of time, Respondent, through counsel, filed his Answer to the Formal Complaint in which he admitted certain factual allegations, but denied others, including: having taken the bench “under the influence of drugs and/or alcohol” and “in an impaired” condition; identifying himself as a judge and making threatening remarks while in Torpedo’s Go-Go Bar; behaving discourteously and in an intemperate manner towards those appearing before him; and abusing his contempt powers.

On October 29, 2008, following the exchange of discovery, the Committee conducted a Pre-Hearing Conference, which resulted in the issuance of an Order dated November 3, 2008 that memorialized the parties’ stipulations, admissions of fact, and agreement regarding the admittance into evidence of certain documents at the Formal Hearing. At the Pre-Hearing Conference, Respondent maintained his denial of the factual allegations referenced above, with

the exception of the allegation that he identified himself to the employees of Torpedo's Go-Go Bar as a judge, which he then admitted. Thereafter, on November 7, 2008, Respondent entered into a set of stipulations (the "Stipulations") in which he admitted having taken the bench under the influence of prescription medication and/or alcohol and to being impaired, as well as to behaving discourteously and in an intemperate manner towards those appearing before him, and abusing his contempt powers. See Stipulations dated November 7, 2008, marked as Exhibit J-1, at ¶¶4-6, ¶¶11-20. The Stipulations eliminated the need for the Presenter to call certain witnesses to appear and testify at the Formal Hearing.

The Committee held a Formal Hearing on November 10, 2008 and November 12, 2008, at which the Presenter offered four witnesses: the Honorable Yolanda Ciccone, A.J.S.C.; the Honorable Robert F. Schaul, P.J.M.C.; Christine Guardigli of Torpedos Go-Go Bar; and Philip Augustine of Torpedos Go-Go Bar. Respondent testified on his own behalf at the hearing. At the conclusion of the hearing, the Committee, pursuant to Rule 2:15-14(g), instructed the parties to file closing briefs with the Committee by December 3, 2008. The Presenter files this brief for the Committee's consideration.

The testimony of the various witnesses at the Formal Hearing and the documentary evidence presented to the Committee clearly and convincingly demonstrates that Respondent engaged in egregious misconduct while a municipal court judge, both on and off the bench, that demonstrates a severe lack of judgment, judicial temperament, and in the case of Torpedo's Go-Go Bar, a willful misuse of office, that is both prejudicial to the administration of justice and brings the judicial office into disrepute. Respondent's misconduct strikes at the heart of the public's confidence in the integrity and impartiality of the judiciary and requires public discipline.

II. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1980. See Respondent's Answer to the Formal Complaint at ¶1. At all times relevant to these matters, Respondent held the position of Judge of the Municipal Courts of Warren Township, Bridgewater Township, Bound Brook Borough and Watchung Borough. Respondent held these positions on a part-time basis. See Exhibit J-1 at ¶2.

Effective January 23, 2008, Respondent resigned from his positions as judge of the Municipal Courts of Warren Township, Bridgewater Township, Bound Brook Borough and Watchung Borough. See Exhibit J-1 at ¶3.

A. Count I: Impairment on the Bench

On two occasions, in the span of *less than five months*, Respondent presided over court while under the influence of a cocktail of vicodin and alcohol, which caused Respondent to exhibit slurred and slowed speech and on one occasion required the cancellation of a subsequent court session. See Exhibit J-1 at ¶¶4-6. In an egregious display of bad judgment, Respondent mixed his prescription vicodin with alcohol, despite knowing of the warnings (although failing to read them) against such a mixture, and did so on two evenings when he was to preside over court. 1T51-8 to T52-5.² Respondent concedes that he should not have taken the bench in the condition he was in on either date. 1T37-24 to 1T38-3; 1T43-16 to 20. Such conduct violates Canon 1 (requiring judges to uphold the integrity and independence of the judiciary) and Canon 2A (requiring judges to avoid impropriety and the appearance of impropriety in all activities) of the Code of Judicial Conduct, constitutes misconduct in office in violation of Rule 2:15-8(a)(1)

² 1T refers to the transcript of the proceeding of November 10, 2008; 2T to the proceeding of November 12, 2008.

and is prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

1. Impairment on December 6, 2006

Respondent admits that on December 6, 2006 he presided over the evening court session in the Bridgewater Municipal Court while under the influence of both prescription medication, *i.e.* vicodin, and alcohol. See Exhibit J-1 at ¶4. Respondent further admits that although he was scheduled to preside over the evening court session in the Bound Brook Municipal Court, that court session was cancelled due to his impaired condition. Id. at ¶5.

Respondent's visibly impaired condition that evening alarmed both the Bridgewater Municipal Prosecutor Christopher Bateman and Court Administrator Audrey Lipinski. Prosecutor Bateman, a seasoned municipal court prosecutor of eighteen years, testified that after Respondent failed to appear in court on time that evening, *i.e.* by 5:00 p.m., he became concerned and tried unsuccessfully to reach Respondent on his cell phone. See P-9 at T7-4 to 21.³ Respondent eventually appeared in court almost an hour late without offering any explanation to his court staff or any apology to those people in the courtroom who had been left waiting by his unexplained absence. Id. at T8-17 to T9-5; see also P-10 at T10-4 to 6; T10-19 to T11-24. Upon Respondent's arrival in court, Prosecutor Bateman and Administrator Lipinski noticed that Respondent's speech was slow and slurred and it appeared to both Prosecutor Bateman and Administrator Lipinski that Respondent was under the influence of medication and/or alcohol. See P-9 at T9-15 to 24; see also P-10 at T12-12 to 19. It was clear to Prosecutor Bateman that Respondent, before whom he had prosecuted for approximately five years, had

³ "T" refers to the transcript associated with the exhibit being referenced. The number following the "T" refers to the page of that exhibit being referenced and the number(s) following the page reference refers to the line(s) being referenced (*i.e.* "P-9 at "T7-4" refers to exhibit P-9 at page 7, line 4).

consumed some alcohol before taking the bench that evening. See P-9 at T4-9 to 12; T12-14 to 16; T13-6 to 8. Administrator Lipinski, in fact, **smelled alcohol on Respondent's breath**. See P-10 at T21-11 to 17. Prosecutor Bateman felt "very uncomfortable" with Respondent taking the bench that evening, however he was reluctant to "turn...[his]...judge in." See P-9 at T13-15 to T14-4.

In an egregious display of bad judgment, Respondent insisted on taking the bench impaired, ignoring the concerns of Prosecutor Bateman who had been warned by multiple police officers in the courtroom that night that they would arrest Respondent if he tried to drive himself home. Id. at T9-22 to T10-24. Prosecutor Bateman was so concerned about Respondent's visibly impaired condition that he cancelled the subsequent court session in Bound Brook and arranged for a ride home for Respondent. Id. Respondent admits that his wife drove him home that evening and further admits that due to his impaired condition the court session in the Bound Brook Municipal Court was canceled. See Exhibit J-1 at ¶¶4-5.

Consistent with Prosecutor Bateman's testimony, Public Defender William Cooper, who has served in that capacity for twenty years, while not in the Bridgewater Municipal Court that evening, spoke subsequently with a police officer who was present in the courtroom that evening. The officer told Public Defender Cooper that: "... the judge had – was exhibiting signs of intoxication and that one of the supervisors was very upset with the judge and actually was threatening to arrest him for driving while intoxicated." See P-25 at T3-4 to 13; T19-1 to 15.

While Respondent has made much of the fact that no evidence was presented to indicate that he mishandled a case that evening, he neglects to mention that there were no contested cases scheduled to be heard that evening, only plea agreements, first appearances, adjournments, and postponements. See P-9 at T14-7 to 18. Likewise, while Respondent makes much of the fact

that no litigant complained about the handling of their case that evening, he neglects to mention that aside from Prosecutor Bateman, there were only pro-se litigants in the courtroom who were not familiar with the judge or his normal demeanor. Id. at T16-16 to T17-6. Prosecutor Bateman, in fact, testified that if there had been other attorneys in the courtroom that evening Respondent's impaired condition would have been more noticeable because they see the judge on a weekly basis. Id.

2. Impairment on April 17, 2007

Despite having previously suffered the effects of mixing prescription vicodin with alcohol, Respondent admits that on April 17, 2007 he again presided over a court session, this time in the Warren Municipal Court, while under the influence of prescription medication (i.e. vicodin) and alcohol. See Exhibit J-1 at ¶6. Again, due to his impaired condition, Respondent needed to be driven home from court that evening. Id.⁴

Respondent's visibly impaired condition on April 17, 2007 alarmed the Warren Municipal Prosecutor Michelle D'Onofrio, Court Administrator Lisa Reuter, and Deputy Court Administrator Debbie Campanelli, and concerned the Public Defender William Cooper and Warren Police Chief Russell Leffert, who wrote a report about the incident. See P-13.

Prior to the start of court that evening, Deputy Administrator Campanelli asked Respondent to sign a court document; however, Respondent was unable to sign his name. See P-24 at T9-8 to 12. Thereafter, during Respondent's opening remarks, Administrator Reuter, who at that time had worked with Respondent in the Warren Municipal Court for approximately ten years, and Deputy Administrator Campanelli, who too had worked with Respondent in the

⁴ Gary DiNardo, a friend of Respondent and the Deputy Mayor in Warren in 2007 (he is now the Mayor in Warren) drove Respondent home that evening from court. See P-13; see also P-18, T27-21 to T28-5; see also P-23 at T29-10 to 16; T32-7 to 11.

Warren Municipal Court for approximately ten years, noticed that Respondent was slurring his words, speaking very slowly, and not making much sense. See P-18 at T3-1 to 8; T10-5 to 15; see also P-24 at T11-16 to 25; T12-1 to 25. Administrator Reuter testified: “[M]y heart and gut knew something was terribly wrong because he’s – usually, he flies, you know, through the opening remarks very quickly.” See P-18 at T10-12 to 15. She was, in fact, very concerned: “I was – my heart sank. I was really upset.” Id. at T11-18 to 20. “I felt like, you know, that sinking, oh, my God, what is going on, and I knew – I just was very very upset for him, for what was happening, as well as, you know, the court is my main concern. And I just saw this, like crumbling.” Id. at T23-10 to 14. Administrator Reuter was so concerned that she contacted Warren Police Chief Russell Leffert. Id. at T11-22 to 25 to T12-1 to 5; see also P-13.⁵ Administrator Reuter reported to Chief Leffert that: “There’s something terribly wrong, I don’t know what’s wrong with the judge. You need to come up here and help me. I don’t know what to do.” See P-18 at T12-1 to 4.

In response to the call from Administrator Reuter, Chief Leffert responded to the courtroom and had Administrator Reuter pass Respondent a note requesting that Respondent take a recess to speak with Chief Leffert. See P-13. Based on his personal observations of Respondent that evening, Chief Leffert found Respondent’s demeanor to be a bit “spacey/melancholy” and he asked Respondent to cancel the court session. Id.; see also 1T41-10 to 24. While not mentioned in Chief Leffert’s report, both Administrator Reuter and Deputy Administrator Campanelli testified that they could hear both men raise their voices during the meeting and observed Respondent to be visibly upset when he left the meeting with Chief

⁵ Prosecutor D’Onofrio was also alarmed by Respondent’s conduct that night and she too called Chief Leffert for assistance stating “we have a problem.” See P-13. She felt that Respondent was slurring his words and indicated to Chief Leffert that a defense attorney had made a comment to her alluding to the Judge’s condition. Id.

Leffert. See P-18 at T14-23 to T15-12; see also P-24 at T6-11 to T7-7. Chief Leffert's report, when compared with Mark Krane's memorandum (P-15) detailing his understanding of the events of that evening, and Administrator Reuter's testimony (P-18) about the events of that evening, leaves out a great many details. The lack of detail in Chief Leffert's report and his statements aimed at explaining away Respondent's misconduct (e.g. ". . . maybe his behavior was due to medications that the Judge was taking for his severe back problems and medications for the current cough/cold he had") (P-13), may be attributed to the longstanding friendship between Chief Leffert and Respondent, to which Respondent made reference during the hearing. 1T40-22 to 1T41-9.

Respondent's impairment that evening was also obvious to Public Defender Cooper who was in the courtroom that evening. He testified unequivocally that Respondent "was under the influence of something." See P-25 at T12-7 to 8. Mr. Cooper described Respondent's mannerisms as "overly exaggerated." Id. at T6-3 to 11.

Respondent's visibly impaired condition on April 17, 2007 set in motion a chain of events that involved multiple township officials and court personnel, including: the Warren Township Police Department, Prosecutor D'Onofrio, Township Administrator Mark Krane, Presiding Municipal Court Judge Robert Schaul, and Assignment Judge Yolanda Ciccone.

- Chief Leffert wrote a report to Township Administrator Mark Krane detailing his knowledge of the incident. See P-13.
- Prosecutor D'Onofrio notified both Presiding Municipal Court Judge Robert Schaul (P-16) and Township Administrator Mark Krane (P-14) about her knowledge of the incident.
- Mark Krane met with Respondent and Chief Leffert to discuss the incident and subsequently wrote a memo to the "file" regarding the incident. See P-15.

- Judge Schaul reported Respondent's conduct to Assignment Judge Yolanda Ciccone who then met with Respondent to discuss the incident. See P-17; 2T9-22 to 2T10-18.

On April 18, 2007, Presiding Judge Schaul listened to the audio recording of Respondent's opening remarks during the court session on April 17, 2007 and found Respondent's speech to be "slurred, and the contents of the opening statement, the mandatory opening statement, to be rambling and disjointed." 2T61-17 to 19. Judge Schaul then met with Assignment Judge Ciccone and advised her of Respondent's second impairment on the bench. 2T67-1 to 6. Following her meeting with Judge Schaul, Assignment Judge Ciccone met with Respondent and urged him to take a leave of absence and enroll in a drug rehabilitation program. 2T11-18 to 24. Respondent refused to follow Judge Ciccone's advice. 2T12-4 to 9.

The Committee, in fact, has not been given any assurances by Respondent that if given another opportunity to sit as a judge in New Jersey he would not again misuse alcohol and/or medication. While Respondent has presented some evidence that he has sought the help of trained professionals to address his misuse of prescription medication, he admits that he has not taken any steps to address his use of alcohol. 2T197-5 to 10.

3. Respondent's Asserted Defenses

Respondent makes a two-fold argument in defense of his having taken the bench impaired on two occasions: (1) the "no harm, no foul defense" – Respondent argues that since no one complained about the handling of their case on either date and no evidence was presented that a case was improperly disposed of on either date, that his impairment on the bench is somehow irrelevant and did not violate the Code of Judicial Conduct⁶; and (2) Respondent argues that

⁶ Contrary to Respondent's argument in his Legal Memorandum of November 4, 2008, Respondent's impairment on both occasions was not the result of a disease or injury, but rather

while his speech was slurred and slowed as a result of his mixing vicodin with alcohol, the Committee should disregard this evidence because no medical testimony has been offered to demonstrate that his ability to perform his judicial duties on these two occasions was impaired. See Respondent's Legal Memorandum, dated November 4, 2008, at p. 26. Respondent would have the Committee believe that while he was unable to operate a motor vehicle, he was nonetheless able to dispense justice.

With respect to Respondent's first defense, it matters not whether any litigant complained about the handling of their case or whether any case was, in fact, handled improperly. 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.' For that reason, Canon 1 also explains that '[a] judge should 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.'" In re Mathesius, 188 N.J. 496, 520 (2006) (internal citations omitted). Canon 2A 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." Code of Judicial Conduct, Canon 2A. The Commentary to Canon 2 recognizes that "[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. As recognized by the New Jersey Supreme Court, adherence to this principle is of the utmost importance, especially in our municipal courts where the greatest number of people are exposed to the judicial system. In re

his irresponsible behavior in mixing vicodin and alcohol. See Respondent's Legal Memorandum, dated November 4, 2008, at p. 25.

Santini, 126 N.J. 291, 298 (1991); See also In re Murray, 92 N.J. 567, 571 (1983); In re Hardt, 72 N.J. 160, 166-167 (1977).

The undisputed facts that Respondent knowingly presided over court, twice, while under the influence of a cocktail of vicodin and alcohol, and in an impaired condition, and was perceived by the prosecutors and court administrators in both courtrooms to be impaired, and in one instance smelled of alcohol, undoubtedly violates Canons 1 and 2A of the Code of Judicial Conduct. Such conduct brings disrepute upon Respondent and the judiciary as a whole and is incompatible with the Code of Judicial Conduct. Such conduct also constitutes misconduct in office in violation of Rule 2:15-8(a)(1) and is prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

With respect to Respondent's second defense, it is not necessary in these administrative proceedings to demonstrate, through medical testimony, that Respondent's ability to perform his judicial duties on these two occasions was impaired.⁷ The mere fact that Respondent gave the appearance of being impaired, as is apparent from the testimony of Prosecutor Bateman, Administrators Lipinski and Reuter, and Deputy Administrator Campanelli, is itself a clear violation of Canons 1 and 2A of the Code of Judicial Conduct. "[T]he canons evidence concern not only for the reality of judicial integrity, but for the appearance of that reality. It is obvious from the canons of the *Code of Judicial Conduct* that integrity — in both actuality and appearance — can be maintained only if judges demonstrate probity, impartiality, and diligence." In re Seaman, 133 N.J. 67, 96 (1993). Respondent, in fact, concedes that the

⁷ Medical testimony of the kind suggested as necessary by Respondent in this disciplinary proceeding is not required to prove a case of driving under the influence under N.J.S.A. 39:4-50, which carries the higher burden of proof beyond a reasonable doubt. See State v. Johnson, 42 N.J. 146, 166 (1964) (lay testimony is all that is required to prove a charge of driving under the influence of an intoxicating liquor).

appearance of a judge “with slurred speech and slow speech” is improper. 1T38-22 to 25. Respondent’s conduct in taking the bench on two occasions while under the influence of vicodin and alcohol, exhibiting slurred and slowed speech, and creating at least the perception of being impaired to the point where he could not operate a motor vehicle, clearly demonstrated a lack of integrity on the part of Respondent, which, in turn, impugned the integrity of the judiciary as a whole in violation of Canons 1 and 2A of the Code of Judicial Conduct.

Moreover, the evidence in the record clearly and convincingly demonstrates, without the necessity of medical testimony, that Respondent’s ability to perform his judicial duties on these two occasions was, in fact, impaired. The standard of proof in judicial disciplinary matters is clear-and-convincing. Rule 2:15-15(a); see also In re Seaman, supra, 133 N.J. at 74 (1993) (“Clear-and-convincing evidence is that which produce[s] . . . 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 at issue.”) (citations and internal quotations omitted). In a judicial disciplinary proceeding, even uncorroborated evidence can satisfy the standard of clear-and-convincing. In re Williams, 169 N.J. 264, 273 n.4 (2001) (citing In re Seaman, 133 N.J. 67, 84 (1993)). Unlike in a civil or criminal proceeding, the Rules of Evidence are not binding on the Committee. Rule 2:15-14(e). Moreover, unlike in a criminal proceeding, the purpose of judicial discipline “is not penal in nature . . . but rather serves to vindicate the integrity of the judiciary.” In re Yaccarino, 101 N.J. 342, 386-87 (1985). “The single overriding rationale behind our system of judicial discipline is the preservation of public confidence in the integrity and the independence of the judiciary.” In re Seaman, supra, 133 N.J. at 96 (1993) (citing In re Coruzzi, 95 N.J. 557, 579 (1984)). Consequently, the New Jersey Supreme Court has stated that the “primary concern in

determining discipline is . . . not the punishment of the judge, but rather to ‘restore and maintain the dignity and honor of the position and to protect the public from future excesses.’” In re Williams, supra, 169 N.J. at 275 (2001) (citing In re Buchanan, 100 Wn.2d 396, 669 P.2d 1248, 1250 (1983)).

The evidence of Respondent’s impairment and its impact on his ability to perform his judicial duties on these two occasions is clear, direct, and significant, without the need for medical testimony. That evidence consists of the following:

- Respondent stipulated to the fact that the court session in Bound Brook Municipal Court on December 6, 2006 was canceled due to his impaired condition. See Exhibit J-1 at ¶5. It is illogical to suggest that Respondent could perform his judicial duties in one court, despite being under the influence of vicodin and alcohol, but could not perform those same duties in a subsequent court on the same evening;
- Police officers in the courtroom on December 6, 2006 believed Respondent to be too intoxicated to operate a motor vehicle. See P-9 at T9-22 to T10-24;
- Respondent was unable to sign his name to court documents on April 17, 2007. See P-24 at T9-8 to 12;
- Chief Leffert, in his Internal Investigation Worksheet, states that on April 17, 2007 Respondent was slurring his words and his demeanor was “spacey/melancholy.” See P-13;
- The testimony of Prosecutor Bateman, Administrators Lipinski and Reuter, and Deputy Administrator Campanelli, all of whom have worked with Respondent for many years, confirms that on both days Respondent’s speech, throughout both court sessions, was audibly slow and slurred. Prosecutor Bateman and Administrator Reuter also expressed grave concern over Respondent’s decision to preside over court on those days. See P-9 T13-15 to T14-4; see also P-18 at T11-19 to 20; T23-11 to 14; and
- Respondent’s speech during his opening remarks on both days, as evidenced by the audio recordings (P-7, P-11), is slurred, slow, and disjointed. Presiding Judge Robert Schaul reviewed the audio recording of Respondent’s opening remarks on April 17, 2007 and found Respondent’s speech to be slurred and his remarks disjointed and disorganized. See P-17.

B. Count II: Abuse of Office -- Torpedo's Go-Go Bar

Eight months after Respondent's meeting with Assignment Judge Ciccone about his second impairment on the bench, Respondent was involved in yet another alcohol related incident, this time inside Torpedo's Go-Go Bar in Bound Brook, New Jersey. This incident required police intervention due to Respondent's disorderly conduct inside the bar and his refusal to leave the bar. See P-28 (ACJC000156-157)

Respondent admits to the following facts:

- On November 29, 2007, Respondent was a patron at Torpedo's Go-Go Bar in Bound Brook, New Jersey. While in Torpedo's, Respondent identified himself to the bartender as a Bound Brook judge. Respondent was physically removed from Torpedo's. See Exhibit J-1 at ¶7.
- In response to a telephone call from Torpedo's, the Bound Brook police came to the bar and transported both Respondent and his companion to the police station to permit them to make arrangements for a ride home due to their presumed level of intoxication. Id. at ¶8.
- Once at the Bound Brook Police Station, Respondent called Russell Leffert, the Warren Township Police Chief, for a ride home. Chief Leffert drove Respondent and his companion home from the police station that evening/morning. Id. at ¶9. While Respondent attempts to draw a distinction between "Russell Leffert Chief of Police" and "Russell Leffert his childhood friend," the public does not draw such a distinction. Rather, the public's perception is that the Chief of the Warren Police Department picked up a Warren Municipal Court Judge from the Bound Brook Police Station because the judge was too intoxicated to drive himself home after being physically removed from a go-go bar. It is precisely the public's perception of the integrity and impartiality of the judiciary that these disciplinary proceedings are designed to protect. See In re Yaccarino, 101 N.J. 342, 386-87 (1985).

Additionally, the evidence in the record before the Committee clearly and convincingly establishes the following facts:

- Respondent, who arrived at Torpedo's after midnight with a companion, had one beer before indicating to the bartender, Christine Guardigli, that he wished to start a bar tab. Torpedo's has a policy that any patron wishing to start a bar tab must provide his/her driver's license along with his/her credit card. Respondent

refused to furnish his driver's license to Ms. Guardigli and became irate with her. See P-26 at T4-18 to 25; T5-5 to 21; T7-23 to T8-9; see also 2T128 to 2T129-11.

- In response to Ms. Guardigli's request to see Respondent's driver's license, Respondent did much more than identify himself to her as a Bound Brook judge, although making such a statement in and of itself would have been an inappropriate use of his office and a violation of the Code of Judicial Conduct. Ms. Guardigli testified, both during her interview with staff to the Committee and during the Formal Hearing, that after she requested Respondent's license to start the bar tab, Respondent made the following statements to her in a very loud and angry voice:
 - **"Do you know who I am? I'm the Bound Brook Judge."** See P-26 at T9-14 to 16; T12-10 to 17; see also 2T129-6 to 11.
 - **"I've left you guys alone for, oh, three years and I – I'm not – this is bullshit."** See P-26 at T9-16 to 18; see also 2T129-6 to 11.
- In addition to his verbal assault on Ms. Guardigli, which was loud enough to draw the attention of the other patrons in the bar, Respondent also slammed his hands down on the bar. See P-26 at T9-18 to 19, T20-25 to T21-3; see also 2T128- 11 to 16.
- Another customer in the bar, whom Ms. Guardigli believed knew Respondent, tried, unsuccessfully, to calm him down. See P-26 at T9-19 to 23; see also 2T128-14 to 16.
- In response to Respondent's angry outburst, Ms. Guardigli moved all of the bottles off the bar, asked for Manager Philip Augustin, and had two of the bar's bouncers stand near Respondent. See P-26 at T9-15 to 16; T11-19 to 21; T12-10 to 17; T13-17 to 20; see also 2T128-17 to 23.
- Mr. Augustin was advised by Ms. Guardigli that Respondent, who claimed to be a judge, was becoming **"nasty"** with her, was refusing to provide his driver's license to start a tab, and was **"dropping his name or something. 'You don't know who I am.'"** See P-27 at T6-2 to 8.
- When Mr. Augustin approached Respondent to speak with him about the bar's policy regarding tabs, Respondent became **"nasty"** with Mr. Augustin and started to threaten Mr. Augustin in an angry and belligerent tone:
 - **"Well, I don't have to do that. You don't know who I am. I'll do whatever I want."** See P-27 at T6-10 to 18.
 - **"Do you know who I am? I can make problems for you."** See P-27 at T7-18 to 19; T11-3 to 7; see also 2T144-19 to 22.

- Once Respondent began making these threatening remarks, which made Mr. Augustin uncomfortable, Mr. Augustin asked one of the employees in Torpedo's to call the police. See P-27 at T7-3 to 5; T7-18 to 22, T8-20 to 24; T10-19 to T11-2; see also 2T145-4 to 2T146-7.
- At the time Respondent made these threatening remarks, Mr. Augustin knew from his conversation with Ms. Guardigli that Respondent was claiming to be a judge. See P-27 at T7-25 to T8-6. Respondent, in fact, told Officer Jannone that he identified himself to Mr. Augustine as a judge. See P-28 at "Supplementary Investigation Report" p.3 (ACJC000160).
- Mr. Augustin asked Respondent to leave, which Respondent refused to do. 2T131-4 to 5; 2T146-20 to 24. Consequently, Mr. Augustin, along with two bouncers, then forcibly removed Respondent and his companion from the bar. In the process, Respondent ripped off the ledge of the bar. See P-26 at T15-6 to 20; see also P-27 at T12-16 to 25; P-30 at T39-5 to 8; 2T131-4 to 12; 2T139-2 to 16; 2T147-1 to 16; 2T148-15 to 16.
- Four police vehicles responded to the 911 call from Torpedo's. See P-30 at T6-4 to 18. At least one of the responding police officers, Officer Joseph Petruccelli, previously testified in his official capacity before Respondent when Respondent was sitting as a municipal court judge. Id. at T8-14 to T9-14. Officer Petruccelli immediately recognized Respondent as a judge in the town. Ibid.
- Once outside of Torpedo's, the police transported Respondent and his companion to police headquarters to arrange for a ride home because both men were intoxicated. See P-28 at "Investigation Report" at p. 2 (ACJC000157).
- Mr. Augustin told Officer Petruccelli that he was afraid to sign a complaint against Respondent because he was afraid that Respondent would use his position as a judge to retaliate against Augustin. See P-30 at T22-9 to 16.
- Although Respondent denies causing damage to the bar, he nonetheless reimbursed the owner of Torpedo's, Larry Cowlan, for the cost incurred by Torpedo's to have the piece of the bar that Respondent ripped off replaced. See P-29 at T25-9 to 15.

Respondent claims that he told Ms. Guardigli that he was a judge and that he did not want to relinquish his driver's license with his personal information on it (i.e. home address). 2T179-23 to 2T180-4. However, both Ms. Guardigli and Mr. Augustin testified unequivocally that at no time did Respondent indicate to either of them his reason for refusing to provide his driver's

license. See P-26 at T22-16 to 25; see also P-27 at T12-2 to 5; see also 2T127-20 to 22; 2T133-2 to 8; 2T144-15 to 17. The Committee is thus left with a credibility determination. In this regard, Ms. Guardigli's and Mr. Augustin's testimony have a greater indicia of credibility than does Respondent's testimony for several reasons:

- Both Ms. Guardigli and Mr. Augustin have never wavered from their testimony on this issue. See P-26 at T22-16 to 25; see also P-27 at T12-2 to 5; see also 2T127-20 to 22; 2T133-2 to 8; 2T144-15 to 17.
- Conversely, Respondent did not tell the police at the scene that evening the version of events he now offers to the Committee. Rather, he simply told the police at the scene that "He entered the bar to have a few 'drinks', and the next thing he knew he was being escorted out." See P-28 "Investigation Report" at p. 1 (ACJC000156); see also P-30 at T14-6 to 12. Respondent remained silent while at police headquarters. See P-30 at T27-11 to 22; T28-1 to 8.
- Similarly, while speaking with Chief Leffert on the telephone from police headquarters, Respondent did not tell the Chief the version of events he now offers to the Committee. See P-31. Rather, during his taped telephone conversation with Chief Leffert, Respondent appeared confused about why he was escorted from the bar. Id.
- Although Respondent had a companion with him at Torpedo's that evening, a Mr. Edward Walsh, who could have presumably substantiated Respondent's version of events, Respondent did not call Mr. Walsh to testify about the events of that evening.
- Neither Ms. Guardigli nor Mr. Augustin has any reason to lie about the events of that evening as they have nothing to gain or loose in this disciplinary proceeding. Respondent, however, has his reputation and potentially his ability to seek future judicial appointments at stake in this proceeding.

Respondent, in fact, has previously lied about his altercation at Torpedo's Go-Go Bar to Assignment Judge Ciccone. 2T18-5 to 2T19-16.

Similarly, Respondent appears incredible when he claims he was not intoxicated while in Torpedo's Go-Go Bar that evening. The police report prepared by the responding police officer, Officer Petruccelli, states that both Respondent and his companion were intoxicated: "Sasso and Walsh were transported to police H.Q. to make arrangements for a ride home due to their level of

intoxication.” See P-28 “Investigation Report” at p. 2 (ACJC000157). Officer Petruccelli testified before staff to the Committee that **Respondent “was intoxicated, absolutely.”** See P-30 at T14-13 to 18.

Moreover, the representations made at the Formal Hearing regarding Officer Michael Jannone’s purported statement that Respondent was not intoxicated that evening are simply wrong. A review of Officer Jannone’s “Supplemental Investigation Report” does not substantiate those representations. See P-28 “Supplemental Investigation Report” (ACJC000158-161). In fact, Officer Jannone was not one of the responding police officers at Torpedo’s that evening. Rather, Officer Jannone conducted a supplemental investigation into the matter almost eleven hours after the incident had occurred. See P-28 (ACJC000156 and ACJC000158). Notably, when commenting on Respondent’s condition that evening, Officer Jannone expressed skepticism about Mr. Augustin’s claim to him that Respondent was not intoxicated, since Torpedo’s, like all bars, is subject to liability if they serve an intoxicated individual.

I asked . . . [Mr. Augustin] . . . certain questions of did you feel . . . [Respondent] . . . was intoxicated. And my personal opinion is we have a very stringent line on establishments serving intoxicated people. . . . And if somebody walks in intoxicated, they should be refused a drink. And the bouncer’s answer to me at that – for that question was no, because he would’ve never made it past the doorman if he was intoxicated. So whether that’s the truth or not or a standing answer that now it’s like an ABC violation for serving or having served intoxicated people or not, I can’t really get a good feel for that one.

See P-29 at T8-17 to T9-3.

While Respondent conceded at the Formal Hearing that it would have been more prudent of him to have simply left the bar when he was asked for his license as opposed to engaging in the above referenced altercation with the Torpedo’s staff, he also testified that his only regret

about this incident was the fact that he had cursed. 2T191-12 to 24. It appears that Respondent, even in the face of disciplinary charges, does not appreciate that both in his public and private life he, as a judge, must behave in a manner that is above reproach. The Commentary to Canon 2 of the Code of Judicial Conduct is instructive in this regard:

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.

The Commentary emphasizes the special role that judges play in our society and the significance of their public comportment. Although citizens, including judges, are entitled to their privacy, judges do not enjoy the same measure of personal freedom accorded private citizens. “[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).

At the urging of Presiding Judge Schaul, Respondent called Assignment Judge Ciccone in January 2008 to advise her of the incident at Torpedo’s Go-Go Bar. 2T81-12 to 17; see also 2T15-12 to 25. After receiving notification from Respondent about the incident at Torpedo’s, Judge Ciccone obtained the police report and determined that Respondent had lied to her about the incident. 2T18-5 to 2T19-16. Judge Ciccone characterized Respondent’s conduct while at Torpedo’s Go-Go bar as the “last straw” in a pattern of misconduct by Respondent. 2T20-14 to 17. With the approval of the Honorable Philip Carchman, J.A.D., the then Acting Administrative

Director of the Courts, and Chief Justice Rabner, Judge Ciccone met with Respondent in January 2008 and advised him that he had to either resign or retire from the municipal court bench, or he would be removed. 2T20-11 to 2T22-23. During the meeting with Respondent, Judge Ciccone expressed her outrage about the Torpedo's incident: "I told Judge Sasso that I felt that his behavior was injurious to the judiciary as a whole. . . . [T]his incident in Torpedo's went beyond anything that had previously happened. It had nothing to do with medical issues, it had nothing to do with some people not liking him on the bench or anything like that." 2T21-13 to 15, 22-25. As he did before the Committee, Respondent, when speaking with Judge Ciccone during their meeting in January 2008, failed to appreciate the impropriety of his conduct. "He did not believe that this was any – this incident was a big deal at all" 2T22-11 to 12.

Respondent appears incapable of appreciating the fact that any reference to his office in a private context, in conjunction with expediting a matter that is wholly private in nature and unrelated to his official duties, is improper and violates the strictures governing judicial conduct. See In re Sonstein, 175 N.J. 498 (2003) (municipal court judge disciplined for writing a letter on judicial letterhead to another municipal court judge about his parking matter pending before that judge); In re Samay, 166 N.J. 25, 32-33 (2001) (ruling that municipal judge's use of the initials "J.M.C." in a private letter was an intentional misuse of his judicial office for personal gain and necessarily diminished public confidence in the judiciary); In re Murray, 92 N.J. 567 (1983) (determining that municipal judge improperly used the power and prestige of his office by sending letter, which identified his office, on behalf of a client to another municipal judge); In re Anastasi, 76 N.J. 510 (1978) (finding that municipal judge inappropriately sent letter on behalf of former client to the New Jersey Racing Commission on official letterhead in an attempt to use the power and prestige of his office for private purposes).

When Respondent identified himself to Ms. Guardigli as a judge and implied to her that in his position as a judge he had treated the bar more favorably than other similarly situated entities, and when Respondent threatened Mr. Augustin, Respondent purposefully and knowingly abused his office and in so doing impugned the integrity and impartiality of the judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct, and demeaned the judicial office in violation of Canon 5A(2). Respondent's actions also constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

Respondent's disorderly conduct while in Torpedo's Go-Go Bar, resulting in his removal from the bar and the intervention of the police, created, at the very least, the impression that he was out of control. A judge who creates that impression raises serious doubts about his judgment, balance, and objectivity, all of which are essential in the exercise of his judicial responsibilities. Such conduct and the impressions it engenders impairs the integrity expected of a judge in violation of Canons 1 and 2A of the Code of Judicial Conduct, demeans the judicial office in violation of Canon 5A(2), and undermines the public's confidence in the judiciary.

Respondent's reliance on In re Rivera-Soto, 192 N.J. 109 (2007) for support of his argument that his conduct while at Torpedo's does not require severe public discipline is misplaced.⁸ While Respondent is correct that the facts between the Rivera-Soto matter and this matter are completely dissimilar, those dissimilarities actually weigh in favor of the imposition of harsher discipline against Respondent than that imposed upon Justice Rivera-Soto. Respondent's conduct was more egregious than that of Justice Rivera-Soto. Unlike Justice Rivera-Soto:

⁸ See Respondent's Legal Memorandum, dated November 4, 2008, at p. 30

- Respondent is charged with seven counts of misconduct, including, but not limited to, impairment on the bench on two occasions, abuse of office, abuse of the contempt power, misuse of court rules, and intemperate conduct.⁹
- Respondent expressed partiality in his position as a judge, i.e. by claiming that he had left the bar alone for three years.
- Respondent threatened the bar manager with adverse action if the manager compelled Respondent to produce his license, i.e. by stating “Do you know who I am, I can make problems for you.”
- Respondent’s disorderly conduct while in Torpedo’s Go-Go Bar, in plain view of other patrons, required police intervention and ultimately resulted in Respondent being transported to police headquarters due to his level of intoxication.
- Respondent’s altercation at Torpedo’s was his third alcohol related incident in less than a year.
- Respondent has not accepted responsibility for his actions while in Torpedo’s Go-Go Bar or expressed regret for the public perception his actions created.
- Contrary to Respondent’s representations, the Committee has previously considered Respondent’s conduct in a matter involving Respondent’s interpretation of N.J.S.A. 39:3-40. While the Committee decided against disciplinary action, it did notify Respondent, in writing, of the Committee’s disagreement with Respondent’s conduct and the Committee’s intention to refer the matter to the Municipal Court Services Department of the Administrative Office of the Courts for further clarification. See ACJC 2004-271.

C. Count III: Misuse of Rule 1:2-4(a)

It is undisputed that Respondent imposed sanctions on individuals who appeared before him in municipal court pursuant to Rule 1:2-4(a). See Exhibit J-1 at ¶10. As charged in the

⁹ While this case involves multiple acts of misconduct, the New Jersey Supreme Court has recognized that even a single act of misconduct may warrant severe public discipline. 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. . . .”).

Formal Complaint, these sanctions, which were imposed repeatedly upon defendants and lawyers alike for appearing late to court, constituted a misuse of Rule 1:2-4(a).¹⁰

Rule 1:2-4(a) allows for the imposition of specified sanctions in certain circumstances:

If without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party on the call of a calendar, on the return of a motion, at a pretrial conference, settlement conference, or any other proceeding scheduled by the court, or on the day of trial, or if an application is made for an adjournment, the court may order any one or more of the following: (a) the payment by the delinquent attorney or party ... of costs, in such amount as the court shall fix, to the Clerk of the Court made payable to 'Treasurer, State of New Jersey,' or to the adverse party; (b) the payment by the delinquent attorney or party ... of the reasonable expenses, including attorney's fees, to the aggrieved party ...; or (d) such other action as it deems appropriate.

Respondent's use of Rule 1:2-4(a) was improper in two respects: (1) the sanctions imposed were arbitrary, having no relation to any costs incurred by the court or by a party to the action; and (2) the imposition of sanctions for appearing late to the initial call of the calendar violates the spirit of In re Bozarth, 127 N.J. 271 (1992).

1. Sanctions Imposed Were Arbitrary

The Appellate Division has recognized that "[g]enerally, financial sanctions, other than those imposed pursuant to R. 1:10-1 and 10-2, are limited to orders requiring reimbursement of the fees and expenses of a party." Wolfe v. Malberg, et al., 334 N.J. Super. 630, 637, 760 A.2d 812, 815-816 (App. Div. 2000) (citing e.g. R. 1:10-3; R. 4:10-3; Rule 4:23-1(c); R. 4:23-2(b);

¹⁰While Respondent does not tolerate late comers to his court, absent notice that the person will be late, he does not hold himself to the same standard. Rather, when he was almost an hour late to court in Bridgewater on December 6, 2006 Respondent admittedly did not call to notify the court and the citizens sitting in court that evening awaiting his arrival that he would be late. 1T101-15 to 24.

Canino v. D.R.C. Co., 212 N.J. Super. 620, 515 A.2d 1267 (App. Div. 1986); and Ridley v. Dennison, 298 N.J. Super. 373, 380-81, 689 A.2d 793 (App. Div. 1997)).

In Wolfe, supra, the Appellate Division specifically recognized that “[i]n appropriate circumstances a court may impose court costs under R. 1:2-4(a). Id. (citing Oliviero v. Porter Hayden Co., 241 N.J. Super. 381, 390-91, 575 A.2d 50 (App. Div. 1990)). Similarly, the Supreme Court of New Jersey has set forth guidelines a court should consider in assessing the appropriate sanction for the violation of an order or court rule. See Gonzalez v. Safe and Sound Security Corp., et al., 185 N.J. 100 (2005) (the court must consider whether the plaintiff acted willfully and whether the defendant suffered harm, and if so, to what degree).

Rule 1:2-4(a) has not been interpreted to provide a court with the discretion to impose sanctions unaffiliated with either costs incurred by the court or by a party as a result of the defendant’s or counsel’s tardiness at the call of the list. Rather, in those cases in which sanctions have been imposed on parties or their counsel under Rule 1:2-4(a), the sanction imposed has consisted of either court costs or the expenses/attorney’s fees of the aggrieved party as provided for by subsections (a) and (b) of Rule 1:2-4(a). See Oliviero v. Porter Hayden Co., 241 N.J. Super. 381 (App. Div. 1990)(court sustained imposition of defense counsel fees and court expenses on counsel for inconveniences and expenses attendant to an aborted three-day trial engendered by counsel’s conduct.); State v. Audette, 201 N.J. Super. 410, 414 (App. Div. 1985) (noting the appropriateness of an order requiring the delinquent party, even if the State in a criminal action, to pay the adversary’s actual expenses incurred in his abortive appearance.); Audubon Volunteer Fire v. Church Const. Co., 206 N.J. Super. 405 (App. Div. 1986); Connors v. Sexton Studios, Inc., 270 N.J. Super. 390 (App. Div. 1994).

Similarly, in the two cases relied upon by Respondent in support of his use of Rule 1:2-4(a) – State v. Kordower, 229 N.J. Super. 566, 552 A.2d 218 (App. Div. 1989) and Cedar Wright Gardens v. Lodi Borough, 14 N.J. Tax 182 (App. Div. 1994) – the Appellate Division affirmed the imposition of costs as an appropriate sanction under Rule 1:2-4(a) for a failure to appear timely and ready to proceed on peremptory trial dates. In Kordower, the Appellate Division affirmed the imposition of a \$100 penalty under Rule 1:2-4(a) for the defendant’s failure to appear timely for the continuation of a trial already in progress. In Cedar Wright Gardens, the Appellate Division affirmed a \$500 sanction on an attorney who was not prepared to proceed to trial on a peremptory trial date. The \$500 sanction was imposed as a condition for reinstatement of the matter on the trial list. Cedar Wright Gardens, 14 N.J. Tax 182 (App. Div. 1994).¹¹

Respondent misused Rule 1:2-4(a) to impose arbitrary sanctions on defendants and lawyers who appeared late to the call of the list that were wholly unrelated to any costs incurred by the court or to any costs incurred by a party to the action. The Committee has been provided with seven examples of Respondent’s imposition of these arbitrary sanctions, ranging in amounts between \$150 and \$500. See P-32 through P-37; see also P-39 through P-44, P-46. Respondent does not attribute these sanctions to any costs incurred by the court or to any costs incurred by a party as provided for in Rule 1:2-4(a). 1T85-14 to T86-13. Rather, when asked the basis for the amount of the sanction, Respondent testified that the sanction was always imposed pursuant to subpart (d) of Rule 1:2-4(a) (“such other action as it deems appropriate”). 1T88-14 to 23. Respondent’s imposition of such arbitrary sanctions under the catchall provision of Rule 1:2-4(a)

¹¹ Respondent’s reliance on Mandel v. UBS/PaineWebber, Inc., 373 N.J. Super. 55 (App. Div. 2004) is misplaced. When discussing a judge’s “inherent authority” to impose sanctions, the Mandel court was referring only to the enforcement of the rules of court regarding discovery, not to situations involving sanctions under Rule 1:2-4(a). See Respondent’s Legal Memorandum, dated November 4, 2008, at p. 6.

is not supported by the case law and is contrary to the generally recognized limits on the imposition of financial sanctions to the costs and fees of the aggrieved party.

In three of the seven cases - State v. Aguirre, State v. Fitz, State v. Simmons – the defendants were in court on a first appearance. 1T92 to 1T94-22; see also P-34, P-37, P-46. During first appearances in municipal court a defendant is advised of the charges against him/her and read his/her rights. 1T92 to 1T93-21. The prosecutor, public defender and any witnesses are not present nor is their presence required during a first appearance. 1T93-22 to 25. The transcript of the court proceedings in Aguirre and Fitz demonstrates, and Respondent has never contested, that both defendants appeared in court while court was still in session. See P-34, P-37. Despite the fact that none of these defendants caused a delay in the court proceedings, or prejudiced any party to the action, Respondent sanctioned Mr. Aguirre \$250, Mr. Fitz \$150, and Ms. Simmons \$150. Inexplicably, while all three defendants were late to court on a first appearance, the amount of Mr. Aguirre’s sanction differed by \$100 from that of Mr. Fitz and Ms. Simmons. Respondent’s reason for the disparate treatment of Mr. Aguirre is as arbitrary as the sanction itself: “I thought that . . . [Fitz’s] . . . excuse in this particular case was a little bit better. . . .” 1T95-4 to 5. With respect to the Simmons matter, Presiding Judge Schaul had to intervene, despite having spoken previously to Respondent about his inappropriate use of Rule 1:2-4(a), and formerly direct Respondent to cease using Rule 1:2-4 to “regularly” sanction people. See P-46.

In one of the seven instances – State v. Orellana – Respondent sanctioned the lawyer (Ms. Katty Wong-Taylor) \$250 and her client (Mr. Orellana) \$150, both of whom appeared in court while the prosecutor was still conferencing cases. See P-44 at ¶2. The prosecutor on the Orellana case subsequently stated to Presiding Judge Schaul that since this was the first trial

listing for the Orellana case, he felt “the most appropriate course of action, given the entirety of the circumstances, was to request an adjournment to resolve the question of additional reports and to produce the Captain.” Id. at ¶4. Again, despite the fact that the Prosecutor sought an adjournment in the case, and despite the fact that neither Ms. Wong-Taylor nor her client Mr. Orellana caused a delay in the court proceedings, or prejudiced any party to the action, Respondent sanctioned both of them under Rule 1:2-4(a) in amounts having no relation to costs incurred by the court (of which none were mentioned by Respondent) or costs incurred by the prosecutor’s office (of which none were mentioned by Prosecutor Stine).

In one of the seven cases – State v. Chevone - Respondent demanded the appearance in court, during the regularly scheduled court session, of attorney Craig Korbin, who had earlier that day withdrawn his appearance on behalf of a defendant who wished to proceed pro-se. When Mr. Korbin appeared during the court session, Respondent sanctioned him \$150 under Rule 1:2-4(a). Again, despite the fact that Mr. Korbin’s tardiness did not delay the court proceedings, or prejudice Ms. Chevone who wished to appear pro-se, Respondent imposed a sanction against Mr. Korbin in an amount having seemingly no relation to costs incurred by the court or Ms. Chevron.

In two of the seven cases – State v. Nelson and State v. Brown -- Respondent not only imposed an arbitrary sanction against the defendants under Rule 1:2-4(a), but threatened the defendants with immediate incarceration if they did not pay the sanction, in full, before they left court. See P-32, P-36. Respondent’s threat of incarceration for failure to pay the sanction immediately is not authorized by Rule 1:2-4(a), and violates the rule of State v. De Bonis, 58 N.J. 182 (1971), which not only requires that a defendant be provided an opportunity to pay a fine in installments, but also prohibits the incarceration of a defendant for failure to pay costs.

2. Sanctions Violated Spirit of In re Bozarth

The Supreme Court of New Jersey in In re Bozarth, 127 N.J. 271 (1992) publicly disciplined Municipal Court Judge Bennett Bozarth for, among other things, his inappropriate procedure of immediately issuing bench warrants for defendants who failed to answer at the initial call of the list. In rendering its decision to publicly discipline Judge Bozarth, the Court cited with approval the following language of the Committee's Presentment to the Court:

In the Committee's opinion, the precise time of arrival is not relevant; what is relevant is that a citizen who arrived during the call was arrested and held in handcuffs on the authority of a bench warrant that was issued for her failure to appear even though she did appear, albeit some minutes late.

....

The incident involving Ms. Beckford is truly symptomatic of Respondent's slavish adherence to his own concept of rules of procedure. In his testimony before the Committee, he expressed his firm belief that R. 3:3-1 requires that if a defendant fails to appear after being duly summoned to court, a warrant for that defendant's arrest must be issued immediately.

....

The Committee finds Respondent's policy to be draconian in that Ms. Beckford, who was charged with parking a disabled car on her property in violation of a local ordinance, was arrested, forced to post bail, and detained for several hours, all because she showed up no more than twenty minutes after the start of court.

In re Bozarth, supra, 127 N.J. at 276, 278.¹² In issuing discipline, the Court stated: “The judge is the ultimate authority in the courtroom. The judge’s responsibility is to assure the existence of procedures and protocols that will inspire public confidence in the courtroom as a place of justice.” Id. at 281-282.

Like Judge Bozarth, Respondent’s policy in sanctioning late comers, no matter their excuse, represents his slavish adherence to his own concept of rules of procedure and is draconian in that defendants and lawyers alike are sanctioned, no matter what their excuse, simply because they appeared after the call of the list. Respondent’s use of Rule 1:2-4(a), far from inspiring the public’s confidence in the courtroom as a place of justice, borders on the vindictive.

For example, when justifying to Presiding Judge Schaul his sanctioning of Attorney Wong-Taylor, Respondent appears to have a personal bias against Ms. Wong-Taylor based on his previous dealings with her and uses this opportunity to inflict his own brand of justice. See P-43 (“Ms. Wong-Taylor very rarely shows up on time. . . . [I]t is my feeling and my intention that if Ms. Wong-Taylor does not show up to Court on time and fails to call which is her modus operandi, that she will be further sanctioned in accordance with R. 1:2-4.”).¹³ Although he testified that he does not follow-up to make sure that the sanctions he issues under Rule 1:2-4(a) are paid, in the case of Ms. Wong-Taylor Respondent did follow-up; he sent her a letter after the court proceeding requesting that she pay the \$250 sanction within twenty days. 1T105-17 to 21; see also P-40.

¹² Prior to the Court’s decision, Judge Bozarth changed his procedure “so that warrants for arrest do not automatically issue when the call is completed. Late comers must sign in at the clerk’s office, and warrants are not issued until after the end of the day.” In re Bozarth, supra, 127 at 277.

¹³ Notably, Prosecutor Stine did not share Respondent’s negative view of Ms. Wong-Taylor whom he described as “one of the stronger adversaries.” See P-44.

Similarly, when sanctioning Ms. Brown for appearing late due to childcare issues, Respondent borders on the vindictive: “Get her out of here, Get her out of here. Contempt of court.” See P-36 at T4-1 to 4. He threatens that: “She doesn’t leave until she pays the sanction. If she doesn’t pay the sanction Somerset County Jail, \$35 a day.” Id. at T4-6 to 8. Prior to this outburst, Respondent felt it appropriate to become sarcastic and threatening towards Ms. Brown:

THE DEFENDANT: I was here at 9:08. I was here –

THE COURT: Well it doesn’t start at 9:08. Court starts at nine. You, just like in school, were always in the front of the line. Why? Your last name is Brown. I was at the back of the line. You were at the front of the line. But for some reason you think you can come to a court of law anytime you want when it fits in with you.

THE DEFENDANT: And you know –

THE COURT: So instead of being here – and you don’t talk again while I’m talking.

THE DEFENDANT: Okay.

THE COURT: I’ll put you in jail so fast your head will spin.

See P-36 at T3-2 to 16.

In light of the Court’s decision in Bozarth, of which Respondent had knowledge, Respondent’s decision to regularly sanction defendant’s and lawyers who appeared after the initial call of the list demonstrates not only a misuse of Rule 1:2-4, but a disregard for legal precedent. See In re Sgro, 63 N.J. 538, 540 (1973) (“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.”)

Respondent’s testimony at the Formal Hearing that he stopped using Rule 1:2-4(a) in this fashion when instructed to do so by Presiding Judge Schaul does not excuse or mitigate his conduct. 1T66-6 to 9; see also P-46. By regularly imposing arbitrary sanctions on defendants

and lawyers who appeared late to court under Rule 1:2-4(a), Respondent violated Canon 2A (requiring judges to respect and comply with the law) and Canon 3A(1) (requiring judges to be faithful to the law and to maintain professional competence in it) of the Code of Judicial Conduct, and constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

D. Count IV: Intemperate Conduct

Respondent admits to being discourteous and intemperate towards Lisa Brown and Mike Roberson and to the impropriety of his behavior. See Exhibit J-1 at ¶¶11-15. Specifically, Respondent admits the following facts:

- On July 12, 2007, Respondent presided over the matter of State v. Lisa Brown in the Watchung Borough Municipal Court. Respondent issued a bench warrant for Ms. Brown's arrest when she did not respond to the initial call of her case. Following the call of the list, Ms. Brown advised Respondent that she was present in the courtroom, at which point, Respondent held Ms. Brown in contempt of court and ordered her incarcerated in the Somerset County Jail. See Exhibit J-1 at ¶11.
- Even assuming that Ms. Brown had arrived late to court, Respondent's conduct towards her was discourteous and intemperate, which was improper. Id. at ¶12.
- On August 8, 2007, Respondent presided over the matter of State v. Sostre in the Bound Brook Municipal Court. The defendant, Ms. Sostre, was represented by Patricia Bombelyn, Esq., who appeared before Respondent that day. Respondent sanctioned Ms. Bombelyn for contempt of court. Id. at ¶13.
- Ms. Bombelyn filed an appeal of the sanctions which resulted in the sanctions being vacated by the Superior Court. Id. at ¶14.
- On September 24, 2007, Respondent presided over the matter of State v. Mike Roberson in the Watchung Borough Municipal Court. Mr. Roberson returned to court after Respondent had imposed a fine on Mr. Roberson pursuant to Mr. Roberson's guilty plea. At that time, Respondent's conduct towards Mr. Roberson was discourteous and intemperate, which was improper. Id. at ¶15.

With respect to Patricia Bombelyn, Respondent admits that he was discourteous to her and that he should have handled the situation differently, but he appears to dispute the

impropriety of his conduct towards her. 1T120-6 to 8; 1T122-25 to 1T123-1. The Superior Court, sitting as the appellate body on Ms. Bombelyn's appeal of Respondent's sanctions, however, disapproved of Respondent's conduct. The Superior Court is clear in its chastisement of Respondent for his failure to follow the proper procedures when holding someone in contempt and for Respondent's intemperate conduct towards Ms. Bombelyn. First, the Superior Court dismissed the \$500 in sanctions and considered the contempt charge dropped by Respondent due to Respondent's failure to issue the necessary Order to Show Cause pursuant to Rule 1:10-2.

Second, while the Superior Court recognized Respondent's right to ask Ms. Bombelyn what occurred, the court criticized Respondent's conduct in refusing to accept Ms. Bombelyn's answer. "Ms. Bombelyn first denied making any threatening statement to court staff. Within moments of the proceeding beginning. She denied making [sic] statement that the judge accused her of making three or more times. None of the responses appear to have satisfied the judge. The judge should ask the attorney to respond to the issue that has risen and by doing so perhaps a contempt proceedings [sic] could be avoided." See P-50 at p. 23:14-21.

In reaching its determination, the Superior Court criticized Respondent's conduct:

. . . [Judge Sasso] cites no authority for his actions that he took on the 8th, which the Court's required to do. See In Re Militia, 159 N.J. Super 1. While important portions of the court rules which allow for sanctions without finding an attorney in contempt, Ms. Bombelyn's actions do not fall in any of those categories.

. . . It is the judge's behavior that sets the tone for the court and the proceedings. The judges are required to participate in establishing, maintaining, enforcing and should personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Id. at p. 20:24-25; 21:1-5, 18-23.

Nevertheless, at the Formal Hearing Respondent continued to deny any wrongdoing in his dealings with Ms. Bombelyn, believing his conduct was necessary and appropriate in light of Ms. Bombelyn's behavior. 1T114-9 to 19. However, Ms. Bombelyn's conduct, whether appropriate or inappropriate, does not excuse or justify Respondent's intemperate conduct. See In re Sadofski, 98 N.J. 434, 441 (1985) (frustration with a litigant or his attorney cannot translate to a judge's inappropriate behavior. The Canons of Judicial Conduct hold judges to a higher standard.)

As the Supreme Court of New Jersey has often noted:

[T]he municipal court is where 'most citizens have their sole exposure to the judicial process. The respect they have for the judiciary hinges upon that experience.' Municipal court judges are prominent in the community and their reputations are quick to spread. A reputation for sternness may be appropriate or helpful in some settings, but a judge should never attempt to cultivate such a reputation with displays of arrogance, bad temper, or disregard for the rights of defendants. Such conduct, even when used to maintain order, can erode public confidence in the judicial system.

In re Bozarth, 127 N.J. 271, 280-281 (1992) (internal citations omitted).

In this regard, In re Albano is instructive:

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

In re Albano, 75 N.J. 509, 514 (1978).

The conduct Respondent displayed when dealing with Ms. Brown, Ms. Bombelyn and Mr. Roberson was inappropriate, intemperate and failed to maintain the dignity and decorum

required of judicial proceedings and failed to foster the integrity and independence of the judiciary. See In re Sadofski, *supra*, 98 N.J. at 441 (1985) (“No matter how tired or vexed, however, judges should not allow their language to sink below a minimally-acceptable level . . . [A] judge must conduct court proceedings in a manner that will maintain public confidence in the integrity and impartiality of the judiciary.”) The personal pressures Respondent claims he has endured as a result of his back injury neither explains nor excuses his misconduct. “Although a judge may have been under great strain and frustrated with a litigant or his attorney, that sentiment should not and cannot translate to a judicial officer’s inappropriate behavior. The Canons of Judicial Conduct, to which all judges are bound, hold judges to a higher standard.” Ibid.

Moreover, Respondent’s intemperate conduct, of which there are three episodes identified in Count IV, is not aberrational. Rather, in addition to the three incidences at issue in Count IV, the evidence submitted in support of Counts III and V suggests that Respondent is frequently intemperate and discourteous to litigants and attorneys appearing before him. Such conduct violates Canons 1, 2A and 3A(3) of the Code of Judicial Conduct and is prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6), and requires the imposition of public discipline.

E. Count V: Abuse of Contempt Powers

Respondent admits to abusing his contempt powers in the two cases referenced in the Complaint. Specifically, Respondent admits to the following facts:

- On May 9, 2006, Respondent presided over the matter of State v. Tina Sears in the Warren Township Municipal Court. At the end of the court proceedings, Respondent directed his court officer to detain Ms. Sears as she was exiting the courtroom because Ms. Sears cursed at Respondent. Ms. Sears initially denied cursing at Respondent. See Exhibit J-1 at ¶16.

- Respondent held Ms. Sears in contempt of court and sentenced her to immediate incarceration in the Somerset County Jail for ten days. Id. at ¶17.
- The following day, Respondent released Ms. Sears from jail after she apologized to Respondent for her conduct. Id. at ¶18.
- Respondent abused his contempt powers under Rule 1:10-1 when he held Ms. Sears in contempt of court and immediately imposed a jail sentence on her without issuing a stay of the jail sentence for five days as required by Rule 1:10-1. Id. at ¶19.
- In State v. Lisa Brown, Respondent abused his contempt powers under Rule 1:10-1 when he held Ms. Brown in contempt of court without issuing the necessary order of contempt and certification, without affording Ms. Brown an immediate opportunity to respond, and without issuing a stay of the sanction for five days as required by Rule 1:10-1. Id. at ¶20.

During the Formal Hearing, Respondent attempted to excuse away his abuse of the contempt power by claiming that he did not fully understand it. 1T123-5 to 7; 1T131-6 to 15. Rather than excuse his conduct, such testimony reinforces the inevitable conclusion that Respondent violated Canons 1, 2A and 3A(1) of the Code of Judicial Conduct by failing to be faithful to the strict requirements of Rule 1:10-1 and by failing to maintain professional competence in the law. In addition to the clear language of Rule 1:10-1, Respondent is charged with the knowledge of Administrative Directive #8-99, dated June 22, 1999, which reminded all judges of the strict requirements of Rule 1:10-1 and the need to “apply carefully the provisions” of the Rule.¹⁴ See In re Sgro, supra, 63 N.J. at 540 (1973) (“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.”); see also State v. McNamara, 212 N.J. Super. 102, 109 (1986) (administrative directives have the full force and effect of law.)

Likewise, during the Formal Hearing Respondent attempted to justify his abuse of Rule 1:10-1 when dealing with Ms. Sears by pointing to Ms. Sears’ conduct in cursing at him.

¹⁴ Respondent was first appointed to the municipal court bench in October 1998. 1T18-19 to 22.

However, the procedures mandated by Rule 1:10-1 and Rule 1:10-2 (the “contempt rules”) do not contain an exception based upon the perceived egregiousness of the contemptuous conduct. To infer such an exception within the contempt rules would have the practical effect of rendering them a nullity. No matter how egregious the contemptuous conduct, every person appearing before a judge in New Jersey, without exception, is entitled to the process afforded under Rule 1:10-1 and Rule 1:10-2.

Respondent’s testimony on this issue demonstrates that he does not appreciate the gravity of his actions. Respondent was unapologetic for incarcerating Ms. Sears without providing her the protections required by Rule 1:10-1, and appears from his testimony to believe that the incarceration was a trivial matter since he released Ms. Sears from jail the next day. 1T127-17 to 19; 1T130-19 to 24. Imprisonment, even for one day, is a significant judicial act that should not be undertaken lightly. See In re Daniels, 118 N.J. 51, 65 (1990) (“No one can deny that the loss of liberty, next to the loss of life, is the greatest deprivation that a free citizen may suffer. In addition, imprisonment poses an extraordinary threat to the person who is imprisoned, both of violence in the prison setting . . . and the unknown and unanticipated reaction of the prisoner.”) Respondent’s disregard for Ms. Sears’ and Ms. Brown’s basic rights is alarming. As noted by Chief Justice Weintraub in In re Mattera, 34 N.J. 259, 274 (1961): “Justice is the right of all men and the private property of none. The judge holds this common right in trust to administer it with an even hand in accordance with law.”

Neither Respondent’s ignorance of the strict requirements of Rule 1:10-1 nor his release of Ms. Sears from prison the following day excuses or mitigates Respondent’s conduct. It was his responsibility to keep current with all rules of court and directives relating to his duties as a

municipal court judge, which he failed to do. Respondent thus violated Canons 1, 2A and 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6).

F. Count VI: Student Discounts

Respondent concedes that he imposed lesser fines on high school students charged with motor vehicle violations, referring to those lesser fines as the “Warrior Discount,” or other applicable school mascot discount, after consideration of sentencing factors. See Exhibit J-1 at ¶21. However, the evidence indicates that Respondent did not consider any sentencing factors, other than the individual’s status as a high school student, when determining the amount of the fine to be imposed.

The authority of a municipal court judge to impose fines for moving motor vehicle violations is statutory – Chapter 4 of Title 39. 51 New Jersey Practice, Municipal Court Practice Manual §20.4, at 627 (Robert Ramsey) (2008-2009 ed.) The statutory authority under Chapter 4 of Title 39 stems from one of two sources: (1) the particular statute that was violated (e.g. N.J.S.A. 39:4-94.2(c) - provides for a fine of not more than \$100); or (2) if the particular statute does not provide the penalty to be assessed, then the fine is assessed under N.J.S.A. 39:4-203, which is the general sentencing statute of the Motor Vehicle Regulations applicable to most moving violations in Chapter 4.¹⁵ Id. While the general sentencing statute (N.J.S.A. 39:4-203), provides a range (i.e. \$50 - \$200) within which a defendant may be fined for a moving motor vehicle violation, it does not contain any guidance with respect to the appropriate amount of the

¹⁵ The statute provides that the offender of a moving motor vehicle violation, for which no penalty is provided, “shall be liable to a penalty of not less than \$50 or more than \$200 or imprisonment for a term not exceeding 15 days or both.”

fine within that range for any given violation. Id. As such, the amount of the fine to be imposed within the given range is frequently left to the discretion of the judge.¹⁶ Id.

Respondent claims that in exercising his discretionary authority to determine the amount of the fine to be imposed on high school students, he took into consideration their ability to pay as he believes he is required to do by law. See Respondent's Legal Memorandum, dated November 4, 2008, at pp. 15-18. Respondent's own testimony at the Formal Hearing, however, indicates that he did not make any factual findings as to the individual student's ability to pay, but merely assumed, based on their status as students, that they, as a group, were unable to pay anything but the minimal amount of the fine. See P-56. Respondent testified that: "Based on my knowledge and experience, I classified the group [i.e. high school students] as being a group that did not have a substantial ability to pay." 1T158-2 to 4.

In addition to treating high school students as a group when imposing a sentence for a motor vehicle violation, Respondent would also "order" that the student, himself or herself, had to pay the fine with his or her own money: "You have to pay it with your own money, so no check from anyone, no credit card." See P-56 at T3-6 to 8. When questioned about his authority for such an "order" Respondent testified: "On the authority that I'm trying to accomplish something and teach the child responsibility, the child is the defendant, not the parent. The money was to come from the defendant." 1T161-18 to 21. While Respondent's intentions may have been good, he lacked the authority to make such an "order." In so doing, Respondent

¹⁶ In some circumstances, the authorized fines for selected motor vehicle violations must be doubled (e.g. exceeding the speed limit by at least 20 miles per hour; when the violation occurs within a 65 mile per hour speed zone, a construction zone or safe corridor area) and the judge must be guided accordingly. 51 New Jersey Practice, Municipal Court Practice Manual §20.4, at 628 (Robert Ramsey) (2008-2009 ed.).

appears to have lost sight of the fact that his function as a judge is to administer justice in an unbiased fashion, not to act as a teacher to those high school students who may come before him.

Respondent's policy of treating all high school students in the same fashion when imposing a fine on a motor vehicle violation, without regard to their personal circumstances, violates Canons 1 and 2A of the Code of Judicial Conduct and constitutes conduct that is prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

G. Count VII: Representation of Municipal Agency

Respondent concedes that while a municipal court judge he consulted with the Watchung Chemical Engine Company (the "Company") from time to time on various matters, including its by-laws, without compensation. See Exhibit J-1 at ¶22. Respondent also concedes that he is listed as the Company's "attorney" on Company documents. Id.; see also P-59.

Rule 1:15-1(b) prohibits a municipal court judge from, among other things, acting as an attorney for the municipality or any agency or officer of the municipality. Rule 1:15-1(b), like all rules governing judicial conduct, is broadly construed to effectuate its purpose of maintaining the public's confidence in the judicial system. See In re Blackman, supra, 124 N.J. at 554 ("In general, rules governing judicial conduct are broadly construed, in keeping with their purpose of maintaining public confidence in the judicial system.")

While established as a non-profit corporation, in practice the Company functions as an adjunct agency of the municipality. The test for what constitutes an adjunct agency of the municipality is recounted in In re Supreme Court Advisory Committee on Professional Ethics Opinion No. 697, 188 N.J. 549 (2006): "[T]he test is whether the agency is subject to the municipal government's budgetary, membership, or decision-making control." Id. at 558

(internal citation omitted). Although the Court in Opinion No. 697 determined that this test is no longer dispositive when considering the conduct of an attorney under the Rules of Professional Conduct (“R.P.C.”) due to the absence of an “appearance of impropriety” standard in the R.P.C.’s, the Code of Judicial Conduct has retained the “appearance of impropriety standard” and therefore the test is dispositive in this situation. Id. at 565-566.

Applying the test to this situation, it is clear that the Company functions as an adjunct agency of the municipality of Watchung. As such, Respondent’s role as the Company’s attorney during a period of time when he was also a municipal court judge in Watchung violated Rule 1:15-1(b). Respondent’s claim that he was not paid by the Company for his legal advice is irrelevant. Rule 1:15-1(b) does not contain an exception for the dissemination of free legal advice by a municipal court judge to a municipal agency.

1. Municipal Government’s Budgetary Control

The Company, which is also known as the “Borough of Watchung Volunteer Fire Department,” provides the Borough with its only volunteer fire department. See P-60 at ¶4. The building in which the Company is located is owned by the Borough. Id. at ¶5. The Company does not pay rent to the Borough for its use of the building. Ibid. The Code of the Borough of Watchung designates the Company as the agency responsible for providing fire protection services in the Borough. See P-58 at ACJC000244. As provided in the Company’s Constitution and By-Laws, the Company is separated into two departments with both departments residing in the same municipal building: the “Firematic” side (the “Fire Department”) and the “Administrative” side (the “Company”). Id.; see also P-58 at “Watchung Chemical Engine Company, Inc. Constitution and By-Laws” at Article 2 “Organization” (ACJC000252). The “Firematic” side “operates under municipal auspices and funding with regard to any provision of

fire protection and prevention and is provided an annual operating and capital budget.” Id. “All vehicles, tools, equipment and gear are funded by the Borough and the [Fire] Department is housed in a building owned and maintained by the municipality.” Id. The Company is eligible to receive an annual stipend from the Borough. See P-60 at ¶6.

2. Membership

“The Fire Department elects its Chief and Assistant Chief who are then appointed by the Mayor and Council.” See P-58 at ACJC000244. According to the Company’s Constitution and By-Laws, the names of all new members in the Company must be reported to the Mayor and Council for approval. See P-58 at “Watchung Chemical Engine Company, Inc. Constitution and By-Laws” at “Article 5,” “Section 4.”

Respondent’s conduct in serving as counsel to the Watchung Chemical Engine Company, an adjunct agency of the municipality of Watchung, while also serving as a municipal court judge in Watchung Borough, violated Rule 1:15-1(b), as well as Canons 1 and 2A of the Code of Judicial Conduct and constituted misconduct in office in violation of Rule 2:15-8(a)(1).

H. Aggravating Factors/Mitigating Factors

Aggravating factors considered by the Court when determining the gravity of the misconduct and the quantum of discipline 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. In re Seaman, 133 N.J. 67, 98-99(1993) (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. In re Subryan, 187 N.J. 139, 154 (2006) (citations omitted).

Here there exist significant aggravating factors which outweigh any mitigating factors that Respondent may choose to rely upon. First, the misconduct at issue – impairment on the bench on two occasions, misuse of office, repetitive intemperate conduct, repetitive misuse of the contempt power, repetitive misuse of Rule 1:2-4(a), preferential treatment of high school students, and improperly representing a municipal agency while serving as a municipal court judge – demonstrates a significant lack of integrity and probity, a lack of independence and impartiality and has harmed those litigants who have appeared before him. Moreover, Respondent has shown no remorse or contrition for his conduct, choosing instead to use the Formal Hearing before the Committee as an opportunity to assign blame to either the defendants or the attorneys appearing before him.

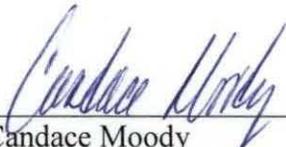
In as much as the Respondent relies upon his medical infirmities as a mitigating factor, his reliance is misplaced. Respondent's medical infirmities, while unfortunate, do not alter the quality of his knowing and voluntary breach of ethics and do not provide a defense to this disciplinary proceeding. See In re Yaccarino, 101 N.J. 342, 394 (1985) (judge's medical condition did not "alter the quality of respondent's breach of ethics or provide a defense in these removal proceedings.")

Respondent's reliance on In re Piscal, 177 N.J. 525 (2003) for support of his contention that his personal injury acts as a mitigating factor is likewise misplaced. Unlike the judge in Piscal, Respondent's misconduct was not an aberration that occurred within the context of serious health problems, but rather was the result of his deliberate disregard for the warning labels on his medication which indicated that he should not mix his medication with alcohol.

III. CONCLUSION

The circumstances of this case call for public discipline. Far from representing an aberration, Respondent's conduct was repetitive, egregious and blatant, requiring the intervention of both the Presiding Municipal Court Judge and the Assignment Judge. By his conduct, Respondent has demonstrated a consistent lack of proper judicial temperament and fitness, poor judgment, and in the case of Torpedo's, a flagrant abuse of his office. Such repeated and blatant misconduct impugns the integrity and impartiality of the judiciary and requires public discipline.

Respectfully submitted,



Candace Moody
Designated Presenter

Dated: *September 3, 2008*