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Advisory Committee on Judicial Conduct
Administrative Office of the Courts
Hughes Justice Complex
25 West Market Street
P.O. Box 037
Trenton, New Jersey 08625

Re: In the Matter of Wilson J. Campbell
Docket No. ACJC 2008-317

WILSON CAMPBELL SUMMATION

Dear Committee Members:

This office represents Wilson J. Campbell relative to the above matter. Kindly accept this letter brief as the defense summation following the December 16, 2009 hearing.

PRELIMINARY STATEMENT

The New Jersey Judiciary EEO policy (hereinafter "EEO policy" or "Judiciary policy") permits consensual dating relationships between judges and judiciary employees.

The issue to be decided in this matter is whether the Advisory Committee on Judicial Conduct (hereinafter "ACJC" or "the Committee") may find by clear and convincing evidence that Canon 1 of the Code of Judicial Conduct (hereinafter "the Code") (requiring judges to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved) and Canon 2A of the Code (requiring judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) were violated by Judge Campbell when he engaged in a consensual dating relationship with A.K., a judiciary employee. We submit that there is no conflict between the Judiciary EEO policy and the Code. Further, since the Code is silent on the matter and the Judiciary policy specifically allows such relationships, we submit that the Committee cannot find that Judge Campbell violated the Code by "clear and convincing" evidence.

FACTUAL BACKGROUND

The undisputed facts of this matter are that Judge Campbell, while a part-time Municipal Court Judge in Jersey City, became involved in an intimate relationship with A.K., a bailiff. At the time of the relationship A.K., a former college professor and high school teacher with a Masters Degree in English from Rutgers University, was 33 years old and Judge Campbell was 37 years old. Both A.K. and Judge Campbell were single and unmarried during the entirety of the relationship. A.K. and Judge Campbell both considered themselves to be accomplished, intelligent and mature adults. A.K. was at least equally involved in initiating the relationship, if not more so, than Judge Campbell.

The Jersey City Municipal Court consists of six courtrooms (three on each floor). Judge Campbell was assigned to Courtroom 6 which specifically handled parking tickets.

It is undisputed that during the course of their relationship, A.K. was employed by Jersey City as a bailiff in the municipal court and, at times, worked in Judge Campbell's court. Her duties included maintaining courtroom decorum and interacting with the public.

The relationship between Judge Campbell and A.K., which was borne out of mutual respect, lasted less than three months. It is noteworthy that the relationship extended beyond intimacy. Judge Campbell genuinely cared for A.K. and respected her as a person. However, no interaction of a personal intimate nature ever occurred between Judge Campbell and A.K. in the Municipal Court building. The personal aspects of their relationship occurred only during non-work hours on weekends. The relationship was consensual and there has never been an allegation of sexual harassment made against Judge Campbell by A.K.

ARGUMENT

I. THE NEW JERSEY JUDICIARY EEO POLICY ALLOWS CONSENSUAL DATING RELATIONSHIPS BETWEEN JUDGES AND JUDICIARY EMPLOYEES; THEREFORE, SUCH RELATIONSHIPS IN NEW JERSEY CANNOT FORM THE BASIS FOR A VIOLATION OF GENERIC JUDICIAL CANONS.

Consensual dating relationships between judges and judiciary employees are allowed under the Judiciary's EEO policy. Both the July 3, 2007 Judiciary EEO Policy (specifically titled, "Judiciary Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination") authorized by Philip S. Carchman, Acting Administrative Director (in effect at the time of the events alleged in this matter) (EXHIBIT A) and the October 28, 2008 revisions authorized by the Hon. Glenn A. Grant, Acting Administrative Director (EXHIBIT B), provide in pertinent part:

Policy on Consensual Dating in the Workplace: Consensual dating relationships between Judiciary employees are generally not the Judiciary's business. However, when the two people currently or previously involved in such relationships work as supervisor and subordinate, the supervisor must promptly inform his or her immediate superior of the personal relationship so that the Judiciary may take action to change the reporting relationship between the individuals. This is necessary in order to eliminate any appearance of, or actual, impropriety in the workplace. For justices, judges and Judiciary employees subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., failure to give proper notice to the supervisor's immediate superior may result in the denial of legal representation and indemnification by the State in the event that a discrimination or sexual harassment lawsuit is filed in connection with the relationship.

Judiciary EEO Policy, dated July 3, 2007.

The foregoing excerpt makes a number of concepts evident. First and foremost, the Judiciary is not in the business of regulating or otherwise interfering with consensual dating relationships. Second, the consensual dating relationships between Judiciary employees were meant to include judges, because judges are specifically referenced by paragraph on consensual dating. Third, when a dating relationship develops between a supervisor and a subordinate, it is the responsibility of the supervisor to report the relationship to his or her superior. Fourth, in the event of a failure to report such a relationship, and in the event a lawsuit shall arise as a consequence of the relationship, the consequence to the supervisor is that he or she may be denied legal representation and indemnification by the State. Thus, there is no standard of "strict liability" that exists for a judge engaging in a consensual dating relationship with a judiciary employee.

It is a noteworthy distinction that Judge Campbell, as acknowledged in the Complaint filed against him, did not serve as A.K.'s supervisor.¹ Judge Campbell had

¹ See Paragraph 6 of the Complaint stating, "[Judge Campbell], although not [A.K.'s] direct supervisor, exercised supervisory control over her in his capacity as the municipal court judge in the courtroom to which [A.K.] was assigned as the bailiff." Clearly, Judge Campbell was not A.K.'s direct supervisor.

no role in hiring A.K. and certainly had no authority to fire or suspend her. Moreover, Judge Campbell had no authority to determine A.K.'s assignments, to promote A.K. or to determine her compensation. Furthermore, Judge Campbell did not rate or evaluate A.K. for purposes of her job performance. Those matters were handled by A.K.'s supervisor, the chief bailiff. Judge Campbell had no actual supervisory capacity over A.K. and certainly never endeavored to exert any influence either on A.K.'s behalf or against her interests.

Accordingly, the burden of informing the judiciary of the relationship as contemplated by the above excerpt is inapplicable since A.K. reported to the chief bailiff (her supervisor), not Judge Campbell. Before and after the relationship, A.K.'s supervisor has remained the same, the chief bailiff. However, assuming *arguendo* that Judge Campbell had an obligation, actual or implied, to report the relationship, the consequence of his failure to do so is the denial of legal representation or indemnification by the State in the event of a lawsuit by A.K.² Significantly, nowhere in the Judiciary EEO policy is there any indication that a potential consequence for the failure to report a relationship would be either severance from employment, judicial discipline, or action against one's professional license.

In the case of In re Henry Broome, D14-2007, the New Jersey Supreme Court held that Judge Broome's failure to report the fact that he was a defendant in a civil lawsuit as required under a Judiciary administrative reporting policy, did not warrant public discipline. In that case, the administrative policy stated, in part, "[p]ersonal

Further, apart from the necessary interaction attendant to the general operation of a courtroom, and apart from the responsibility of a judge to maintain order in his court, Judge Campbell did not have supervisory control over A.K. A.K. was not a permanent member of Judge Campbell's court and Judge Campbell certainly had no authority over A.K. when she was assigned to other courts or to other departments.

² No such lawsuit has been filed nor has A.K. made any claim that Judge Campbell sexually harassed her.

involvement by any judge in any type of litigation should be the subject of an official report.... A report should be filed not only in matters where the judge is personally named but also in those in which the judge is a party in interest.”³ The Supreme Court refused to impose public reprimand as suggested by the ACJC and dismissed that charge against Judge Broome.⁴

Of further significance is the fact that nowhere in the Judiciary policy is a failure to report a consensual dating relationship deemed “misconduct,” nor is the existence of a dating relationship between a judge and a court employee deemed “misconduct.” This is in stark contrast to the language in the same policy that relates to sexual harassment. Regarding sexual harassment, the Judiciary EEO policy clearly states, “Sexual harassment is illegal, an abuse of authority and, if engaged in by a Judiciary employee, *will be deemed to constitute misconduct.*” (emphasis added) (EXHIBIT A) In this matter, there has *never* been an allegation of sexual harassment alleged against Judge Campbell by A.K. or any other employee of the judiciary. The relationship that A.K. had with Judge Campbell was purely consensual.

With respect to general privacy rights, the New Jersey Supreme Court has explicitly articulated and broadly defined a right of privacy that protects individuals from unwarranted intrusion into matters of intimate personal concern. See In re Grady, 85 N.J. 235, 249-50 (1981); In re Quinlan, 70 N.J. 10, 40 (1976), cert. denied sub nom., Garger v. New Jersey, 429 U.S. 922, 97 S. Ct. 319, 50 L. Ed. 2d 289 (1976). The Court has held that the right to privacy in consensual adult sexual relations is protected under New

³ see Administrative Directive 4-81 (September 26, 1988).

⁴ Although no reprimand was issued based upon his failure to report the lawsuit, Judge Broome was nevertheless subjected to public reprimand for violations (based on other conduct) of Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct as well as Rules 2:15-8(a)(6), 7:3-2 and 7:6-2(a)(1). In the Matter of Henry G. Broome, Jr., Judge of the Municipal Court, 193 N.J. (2007).

Jersey's State Constitution. State v. Saunders, 75 N.J. 200, 214 (1977). Employer policies prohibiting consensual relationships between supervisors and subordinates may violate the employees' state constitutional rights to privacy. See Slohoda v. United Parcel Service, Inc., 193 N.J. Super. 586 (App. Div. 1984). Voluntary dating relationships in the workplace do not constitute workplace discrimination. See Erickson v. March & McLennan Co., Inc., 117 N.J. 539 (1990). Furthermore, "sex is not congruent with sexual misconduct" based on consensual dating relationships in the workplace, even when those relationships are between superiors and subordinates. See K.S. v. ABC Professional Corp., 330 N.J. Super. 288 (App. Div. 2000). The foregoing cases suggest why the Judiciary does not punish its employees for engaging in dating relationships or failing to report consensual dating relationships. Such punishment would violate a judiciary employee's constitutional privacy rights.

The Code is silent on the matter and it does not state that it is improper for a judge to engage in a consensual dating relationship with a judiciary employee. Alternatively, the New Jersey Judiciary has clearly stated its position on the matter in the Judiciary EEO policy, which allows for dating relationships between judges and judiciary employees. Moreover, the New Jersey Supreme Court has determined that dating relationships are covered under the privacy clause of the New Jersey State Constitution. Therefore, the Committee cannot find that Judge Campbell violated the Code by clear and convincing evidence for engaging in a dating relationship with A.K.

II. NEW JERSEY HAS NEVER SUBJECTED ITS JUDGES TO FORMAL ETHICS COMPLAINTS BASED ON DATING RELATIONSHIPS WITH JUDICIARY EMPLOYEES, AND SHOULD NOT DO SO NOW ABSENT THE FILING OF A FORMAL COMPLAINT OF SEXUAL HARASSMENT AGAINST A JUDGE OR THE JUDICIARY CHANGING ITS POLICY ON CONSENSUAL DATING RELATIONSHIPS.

The subject case represents the first time in New Jersey that a judge is charged with an ethics violation for engaging in a consensual dating relationship with a judiciary employee absent a claim of sexual harassment. Judge Campbell is not the first member of the judiciary to have become involved in a relationship with another judiciary employee, but he is the first to receive an ethics complaint for such a relationship. Such dating relationships between judges and court employee are perhaps rare, but they are not unheard of.

This very scenario was experienced at the highest level of our judicial system when Mary Fowler, who had served as secretary to William J. Brennan, Associate Justice, United States Supreme Court⁵, for twenty-five years, became his wife in 1983 following the death of Justice Brennan's first wife to whom he was married for fifty-four years. Justice Brennan's colleagues on the Supreme Court learned of his marriage to Mary Fowler by way of an office memo from him stating simply, "Mary Fowler and I were married yesterday and we have gone to Bermuda."⁶ Appropriately, Justice Brennan faced no adverse professional consequences as a result of the personal courtship with his secretary and later wife. Query whether the ACJC would charge that Justice Brennan

⁵ Justice Brennan had previously served as the Assignment Judge of Hudson County and an Associate Justice of the New Jersey Supreme Court.

⁶ Sources: (1) A Justice For All, William J. Brennan, Jr. and the Decisions that Transformed America, Kim Isaac Eisler, p. 265 (2) <http://www.arlingtoncemetery.net/brennan.htm>

acted unethically when he courted and later decided to marry Ms. Fowler, his legal secretary?⁷ We submit the answer is a resounding NO.

However, judges have been subjected to ethics charges for relationships with judiciary employees when there is a sexual harassment claim made against the judge. The four known reported cases are: In re Subryan, 187 N.J. 139 (2006) (judge suspended for two months without pay for unacceptable conduct in workplace arising out of his unwanted overtures toward his law clerk) (*ACJC complaint filed after sexual harassment complaint*), In re Seaman, 133 N.J. 67 (1993) (judge suspended for sixty days without pay for his unwanted advances toward his law clerk) (*ACJC complaint filed after sexual harassment complaint*), In re Brenner, 147 N.J. 314 (1997) (municipal judge issued a private reprimand for conduct including hugging and kissing a cashier which, although not unwelcomed and, therefore, not sexual harassment, was nevertheless inappropriate and thus brought embarrassment upon himself and his office) (*ACJC complaint filed after two sexual harassment complaints*), and In re Hyland, 101 N.J. 631 (1985)(judge issued public reprimand after secretary claimed she was sexually harassed and untimely terminated for not submitting to the judges advances)(*ACJC complaint filed after complaint of sexual harassment*). In two of the four reported cases, In re Hyland and In re Brenner, judges received reprimands where complaints of sexual harassment were filed, but later deemed only partially credible.

Concerning In re Hyland, supra, the case on which the ACJC relies for the subject Complaint against Judge Campbell, Judge Hyland's secretary complained that she had

⁷ The references to this personal aspect of the life of Justice Brennan, arguably one of the most respected and influential jurists of the twentieth century to sit on the High Court, is made for analogy purposes and also to offer a framework within which the proper perspective of Judge Campbell's conduct can be obtained.

been subjected to sexual harassment by him and further alleged that she was ultimately dismissed by him when she rejected his unwelcomed advances. Judge Hyland's secretary alleged that on one specific occasion she escaped from Judge Hyland by climbing through a bathroom window after being informed that the judge had arranged a "three way." Judge Hyland's overall actions with respect to his secretary brought his position as a judge into disrepute. Although certain claims by the complainant were deemed not credible, other allegations were admitted by Judge Hyland. Specifically, Judge Hyland acknowledged having exchanged sexually explicit materials with the complainant and had further acknowledged having engaged in sexual relations with her on two occasions and having made plans, which were abandoned, for a third encounter. Judge Hyland also admitted that certain inappropriate conduct, such as viewing the sexually explicit materials, occurred in his chambers.

The Committee found, by clear and convincing evidence, that Judge Hyland's conduct of exchanging sexually explicit gifts and engaging in sexual relations with the Complainant constituted a violation of Canon 1 of the Code of Judicial Conduct, which requires a judge to maintain high standards of conduct so that the integrity and independence of the judiciary may be preserved. Moreover, Canon 2A, which requires a judge to conduct himself at all times in such a manner that promotes public confidence in the integrity and impartiality of the judiciary, was violated. Accordingly, Judge Hyland's conduct was deemed to have brought the judicial office into disrepute and, therefore, he was subject to public reprimand.

Regarding In re Brenner, supra, two court employees lodged sexual harassment complaints against Judge Brenner. The complaints alleged, among other things, that

Judge Brenner felt a court employee's buttocks, touched court employees inappropriately against their will and frequently attempted to give court employees unwelcome kisses while at court. In one specific incident, it was alleged that Judge Brenner put his arms around a court employee and drew her close to him while pressing himself up against her and passionately kissing her. At one point, he stopped to ask her if she used "non-smear lipstick." That incident occurred in public. Judge Brenner admitted to the kissing incident, although his version of the facts differed from that of the complainant. To aggravate matters, Judge Brenner was married at the time of the alleged incidents, and he served as the sole judge assigned to his court.

The Committee found, by clear and convincing evidence, that Judge Brenner violated the Judicial Cannons based on the fact that he admitted to kissing the court employee in public and based on the fact that his overall actions at court served as a basis for the two sexual harassment complaints that were lodge against him. The Supreme Court followed the Committee's recommendation of a private reprimand against Judge Brenner.

Of the two cases, In re Hyland and In re Brenner, both are clearly distinguishable from the case at bar. In particular, numerous allegations of sexual harassment were made against Judge Brenner and Judge Hyland, but no such complaints were made against Judge Campbell. Judge Brenner was married at the time of the alleged incidents, while Judge Campbell was single when he engaged in his relationship with A.K. Judge Brenner and Judge Hyland publicly displayed outward affection towards court employees, while Judge Campbell displayed no public affection towards A.K. or any other court employee.

At a minimum, a sexual harassment complaint must precede the filing of an ethics complaint regarding a personal relationship between a judge and a judiciary employee. Otherwise, there would be no consistent and identifiable basis on which to proceed against a judge. Should an ethics complaint be filed when a judge and a judiciary employee get married? Does such a complaint become an issue if the judge and the employee end the relationship? Would there be a basis for a complaint if a judge and a judiciary employee wed and later decide to divorce? Do the foregoing matters place the judiciary in disrepute or are they private matters that should be dealt with privately. We respectfully suggest the latter.

We submit that the Committee cannot find that Judge Campbell violated the Code by clear and convincing evidence since there was no claim of sexual harassment made against him and the Judiciary policy specifically allowed for the type of consensual dating relationship that he engaged in with A.K.

III. IN ONE RARE AND EXTREME CASE A JUDGE'S OUTRAGEOUS ACTS IN A RELATIONSHIP WITH A SHERIFF'S OFFICER WARRANTED DISCIPLINE NOT BASED ON THE RELATIONSHIP, BUT BASED SOLELY ON THE JUDGE'S OWN ACTIONS

Fifteen years after Hyland, our Supreme Court considered In the Matter of Judge Rosemarie R. Williams, 169 N.J. 264 (2000). In that case, Judge Williams, who at the time was sitting in Mercer County, had been engaged in a romantic relationship with Alfred Wesley Bridges, an employee of the Mercer County Sheriff's Office. The relationship, however, had ended prior to April 14, 2000. That night, while dining at a restaurant in Ewing Township, Judge Williams encountered Bridges who was accompanied by a female acquaintance. Judge Williams confronted the couple,

demanding they leave the establishment. Judge Williams then confronted the couple again in the parking lot.

Later that evening, Judge Williams drove to Trenton where she observed Bridges and his companion entering Joe's Mill Hill Saloon. Again, Judge Williams confronted the couple. Judge Williams confronted the couple a total of three times on that night. Judge Williams then left the bar, called the police and misrepresented that Bridges had followed her to Trenton. A little while later, Judge Williams called the Mill Hill, identified herself as a police officer from Hopewell Police Department, and asked to speak to Bridges. Williams, supra.

In analyzing the conduct of Judge Williams, the Committee found that Judge Williams gave false and misleading information twice. First, when she stated to the police operator that Bridges followed her and second when she repeated that statement to police. Id. at 273. The Committee found that the actions taken by Judge Williams were irresponsible and that she did not conform her behavior to the social norms expected of ordinary citizens in our society. The Committee went on to say that she came dangerously close to impersonating a police officer and demonstrated a lack of respect for the law that she was sworn to uphold. Id. at 274. Considering whether some form of discipline was necessary and appropriate, the Supreme Court focused its attention on Judge Williams' conduct, not the nature of her relationship with Bridges. In fact, the Court specifically noted that, "On the night of April 14, 2000, Judge Williams acted in such manner as to bring disrepute on herself and on the judiciary." Id. The Court was particularly concerned with the public spectacle caused by Judge Williams' conduct and

the potential that same could cause a loss of confidence in the integrity and impartiality of the judiciary. Id.

Between the time Hyland was decided and the time Williams was decided, a shift in focus, perhaps reflective of a shift in societal values and tolerances, occurred. The Hyland Committee was particularly concerned with the impropriety of the relationship between Judge Hyland and the complainant, who alleged that she was improperly terminated when the relationship ended, and who exchanged sexual materials with the judge in chambers. The Williams Court, on the other hand, did not dwell on the question of whether it was appropriate for a judge to become romantically involved with an employee of the Sheriff's Department and, thus, did not focus on the relationship itself. Rather, the Williams Court focused its attention on the conduct of Judge Williams, and her public displays of impropriety. It was these, and not her mere involvement with Bridges, which brought disrepute to her office and undermined public confidence in the impartiality and integrity of the judiciary.

Applying In re Williams, the least analogous case in terms of the conduct involved, to the case at hand, the Committee must ask itself whether Judge Campbell, like Judge Williams, engaged in conduct that undermined the integrity of his office? The answer is no. Judge Campbell, at no time, engaged in any public conduct, let alone any conduct that could even remotely be said to bring his office into disrepute or to undermine public confidence in the impartiality and integrity of the judiciary. Consequently, the Committee cannot find that that Judge Campbell's actions violated the code by clear and convincing evidence.

IV. THE ACJC MATTER AGAINST JUDGE CAMPBELL SHOULD HAVE BEEN RESOLVED THROUGH AN INFORMAL PROCEEDING

Judge Campbell's case does not involve a claim of unwelcome advances or sexual harassment towards judiciary employees. Nor does the case at hand involve allegations of outrageous acts in public by Judge Campbell that would place the judiciary in disrepute. In fact, Judge Campbell made no public displays regarding his relationship with A.K.

Following the existence of the relationship being made known by A.K. on or about June 26, 2008, Judge Campbell was summoned and immediately responded to a meeting on June 30, 2008 with the Hon. Maurice Gallipoli, Assignment Judge, Superior Court, Hudson County, the Hon. Nestle Rodriguez, Chief Mun. Judge, Hudson County, and Joseph Davis, Court Administrator. To his credit, when asked about the relationship during this meeting, Judge Campbell admitted that same had existed and stated his position that he did not believe the relationship was a violation of judiciary policy given that the Judiciary EEO policy does not prohibit, and in fact allows for, dating relationships between judges and judiciary employees. Nevertheless, Judge Gallipoli sought Judge Campbell's resignation. Judge Campbell, nevertheless, decided not to resign. Thereafter, the ACJC Complaint was filed against him.

It is interesting to note that the ACJC interviewed A.K. on September 26, 2008, the Court Administrator on September 26, 2008, and Judge Gallipoli on January 14, 2009, but surprisingly did not interview Judge Campbell. In fact, Judge Campbell was not contacted before the ACJC filed the Complaint against him on or about February 2,

2009.⁸ Had the ACJC contacted Judge Campbell, he could have presented the Judiciary policy and his version of the facts in his defense. Unfortunately, Judge Campbell was not given that courtesy.

The New Jersey courts have determined that until the time when meritorious complaints can be separated from frivolous complaints, confidentiality in the ACJC's investigatory process is designed to protect judges from injury that might result from publication of unexamined and unwarranted complaints that may affect a judge's career before he has had a chance to fairly meet them. In re Alvino, 100 N.J. 92, 103 (1985). Even the United States Supreme Court has held that groundless claims against judges can shake the public's confidence in the judicial branch. See Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 835 (1978).

Where, as here, it is not clear that a judge's actions warrant public discipline, actions other than the filing of a formal complaint are available to the ACJC. For example, Rule 2:15-11 authorizes the Committee to conduct an informal conference with the judge and, in the Committee's discretion, the grievant. Further, the ACJC has the right to request that a Complaint be dismissed if, following a hearing, it is not proven by clear and convincing evidence that a judge has violated the Code. If an informal proceeding had been conducted in this matter, perhaps the formal complaint, as well as the unwarranted shame, ridicule and publicity attendant to same, could have been avoided.

⁸ It is worth noting that Judge Campbell was easily and readily accessible to the Committee. The relationship between Judge Campbell and A.K. became known in June, 2008. Judge Campbell remained on the bench for the eight months that lapsed between June, 2008 and the filing of the Complaint. In fact, Judge Campbell only recently resigned from the bench, in October, 2009, in order to accept another position.

CONCLUSION

The facts are that (i) the relationship between Judge Campbell and A.K. was consensual, (ii) no personal interactions ever occurred within the confines of the courthouse and (iii) Judge Campbell never engaged in any public activity whereby the integrity and impartiality of the judiciary would be undermined. Therefore, the lingering question of precisely what conduct on the part of Judge Campbell renders him subject to discipline must be addressed. More specifically, is Judge Campbell subject to discipline simply by virtue of having engaged in a romantic relationship with A.K.?

A review of cases regarding public discipline against judges for consensual relationships yields NOT ONE CASE. This case is not analogous to cases where ACJC ethics complaints were lodged against judges AFTER claims of sexual harassment as in: In re Subryan, 187 N.J. 139 (2006), In re Seaman, 133 N.J. 67 (1993), In re Brenner, 147 N.J. 314 (1997), or In re Hyland, 101 N.J. 631 (1985). Nor did Judge Campbell take any action that would turn an otherwise private relationship into a public matter as in the case of In re Williams, 169 N.J. 264 (2001).

Members of the Judiciary should be allowed to rely on published policy of the judiciary when conforming their actions to meet judicial restraints. Here, the Judiciary EEO policy permits judiciary employees, including judges, to engage in consensual dating relationships. How, then, can the ACJC charge that Judge Campbell violated judicial cannons by clear and convincing evidence for doing nothing more than engaging with A.K. in the very type of consensual dating relationship allowed under the Judiciary EEO policy?

Perhaps the most illuminating way to view the issue of whether the mere existence of a relationship between Judge Campbell and A.K. violated the Code and, consequently, is properly the subject of an ethics hearing before the ACJC, is to modify the query posed. Specifically, had the relationship between Judge Campbell and A.K. not ended, but rather had it flourished and resulted in an engagement and later a wedding, would a Complaint have been filed against Judge Campbell? Clearly, the answer is no.

Here too, it is respectfully submitted, it would be inappropriate and unjust to subject Judge Campbell to discipline based upon the mere existence of his personal relationship with A.K. Judge Campbell's reputation and his career hang in the balance. He has been branded a "sexual harasser" even though there are no such facts present to support such a claim and no such complaint was filed against him. We submit that if the judiciary policy prohibited Judge Campbell from engaging in a consensual dating relationship he would not have done so.⁹ The fact is, however, the Judiciary EEO policy allows for consensual dating relationships between judges and judiciary employees. Judge Campbell and all judiciary employees should be allowed to rely on the policy of the Judiciary without fear of retribution or attacks on their character for doing what the Judiciary permits.

In deciding to dismiss a complaint filed against a judge after a formal presentment by the ACJC, the New Jersey Supreme Court stated in the case of In re Thompson, 100 N.J. 108, 118 (1985):

The ultimate answers to the questions of whether a judge is guilty of misconduct, and if so, what discipline is appropriate, are based on a judgment that turns on the particular circumstances of each case. **Not**

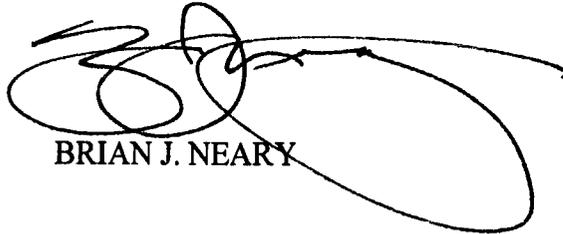
⁹ Judge Campbell was described by Chief Judge Rodriguez as "more formal" than most of the judges at the Jersey City Municipal Court.

every failure of a judge to conform to the standards of the Code amounts to judicial misconduct.

Id. (citing In re Alvino, 100 N.J. 92) (emphasis added).

For these reasons, we submit that the appropriate action to take is to dismiss the subject complaint against Judge Campbell. Even a private reprimand would punish Judge Campbell for engaging in the type of dating relationship allowed by the Judiciary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian J. Neary", with a large, sweeping flourish extending to the right.

BRIAN J. NEARY

Cc: Candace Moody, Disciplinary Counsel

"SCHEDULE A"

Judge Brenner Married, sole judge of court	ACJC Charges	Judge Campbell Unmarried, part-time judge, one of four part-time and six full-time judges	ACJC Charges
	Allegations of Sexual Harassment by Court employee A [Violation of Judiciary EEO Policy on Sexual Harassment]		Dating relationship with judiciary employee and no allegation of sexual harassment [Allowed by judiciary policy]
	Allegations of Sexual Harassment by Court employee B [Violation of Judiciary EEO Policy on Sexual Harassment]		
	Admitted to passionately kissing a court employee in public even though he was married		No public display of affection towards any judiciary employee
ACJC	Private		Public Reprimand

Recommendation	Reprimand		**Why would the ACJC seek a harsher punishment?
Supreme Court's Decision	Private Reprimand		(To Be Determined)

"SCHEDULE B"

<p>Judge Hyland</p> <p>Marital status unknown</p>		<p>Judge Campbell</p> <p>Unmarried</p>	
	<p>Alleged to have planned a "three way" with a court employee at court</p> <p>[Violation of Judicial Cannons by placing Judiciary in disrepute]</p>		<p>Dating relationship with judiciary employee and no allegation of sexual harassment</p> <p>[Allowed by Judiciary policy]</p>
	<p>Exchanged sex toys in his chambers with court employees</p> <p>[Violation of Judicial Cannons by placing Judiciary in disrepute]</p>		
	<p>Allegedly terminated court employee when relationship ended</p> <p>[Violation of Judiciary Sexual Harassment Policy]</p>		

ACJC Recommendation	Public Reprimand		Public Reprimand
Supreme Court's Decision	Public Reprimand		(To be determined)

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IN THE MATTER OF

WILSON J. CAMPBELL,
JUDGE OF THE MUNICIPAL COURT

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT
DOCKET NO.: ACJC 2008-317

ANSWER TO COMPLAINT

Respondent, Municipal Court Judge Wilson J. Campbell, by way of Answer to the Complaint filed by complainant, Advisory Committee on Judicial Conduct, respectfully represents as follows:

1. Respondent admits the allegations contained in paragraph 1 of the Complaint.
2. Respondent admits the allegations contained in paragraph 2 of the Complaint.
3. Respondent admits that A. K. was employed as a bailiff in the Jersey City Municipal Court on June 26, 2008. Respondent denies the remainder of the allegations in paragraph 3, and avers that A. K.'s medical condition, cause or treatment thereof is a private, confidential and sensitive matter between A. K. and her healthcare provider, which is prohibited from public disclosure.
4. Respondent admits the allegations contained in sentence 1 of paragraph 4. Respondent admits the allegation in sentence 2 of paragraph 4 which states that Respondent had a relationship with A. K. and denies the remainder of the allegations contained therein. Respondent states that he had a brief consensual dating relationship with A. K. that A. K.

initiated by placing several telephone calls to Respondent's home telephone. Respondent is without sufficient knowledge or information to confirm that the relationship began in April 2008 and ended in June 2008, but admits that the dating relationship occurred sometime during the stated period. Respondent states that consensual dating relationships between judiciary employees are specifically allowed under New Jersey's Judiciary Policy on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination, dated July 2007.¹ Respondent states that at the time of the relationship:

- (a) Neither A. K. nor Respondent was married,
- (b) Both A. K. and Respondent were legal adults, A. K. was approximately 32 years old and Respondent was 37 years old,
- (c) A. K. was a college graduate with a Masters Degree in English Literature from Rutgers University, and
- (d) A. K. was a former high school teacher in Jersey City.

5. Respondent denies the allegations contained in paragraph 5 of the Complaint, and states that A. K. did not serve as his bailiff during the dating relationship. Respondent further states that when his relationship began with A. K. she was not assigned to his courtroom and did not work in his courtroom. Respondent states that A. K. was assigned to specific courts by the chief bailiff and that Respondent never requested that A. K. be assigned to his courtroom. Respondent states that he presided over night court, while A. K.'s schedule rotated between the day and night shifts. Respondent states that at all times when he presided over court a minimum of three courts were in session simultaneously and under no circumstances would A. K. be

¹ See Exhibit A, Judiciary Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination, dated 3 July 2007, which states in pertinent part, "Consensual dating relationships between Judiciary employees are generally not the business of the judiciary." The Policy is publically available and posted on the New Jersey Judiciary website.

required to serve as Respondent's bailiff. Respondent states that the Jersey City Municipal Court has ten judges and more than thirty support staff, including bailiffs. The court has six courtrooms which are contained on two levels of the Jersey City Municipal Courthouse and it is one of the largest municipal courts in the State of New Jersey.

6. Respondent admits the allegation in paragraph 6 of the Complaint that states Respondent was not A. K.'s supervisor. Respondent denies the remaining allegations in paragraph 6. Respondent denies that he exercised supervisory control over A. K. in the various courtrooms to which A. K. was assigned as bailiff. Respondent avers that at all times A. K. was under the supervisory control of the chief bailiff, who directed the assignment and location of all bailiffs. Respondent admits that he exercised limited control over bailiffs assigned to his court, whose primary duties were to take documents from the court clerk, deliver those documents to defendants and maintain security over court personnel and litigants. Respondent states that as a part-time judge he does not evaluate, promote or rate A. K. or other bailiffs. Respondent states he did not exercise administrative or supervisory control over A. K.

7. Respondent admits the allegations in paragraph 7 of the Complaint. Respondent states that due to the brief nature of the dating relationship, the fact that A. K. was not assigned as Respondent's bailiff, and the fact that Respondent only served on the bench part-time, the existence of the relationship was not reported to his supervisors. Respondent states that the reporting of such a relationship was not mandatory since A. K. was not assigned as his bailiff and Respondent did not serve as A. K.'s supervisor for reporting purposes.

8. Respondent is without sufficient knowledge of the allegations in paragraph 8 relating to A. K.'s specific medical condition, cause or treatment thereof. Respondent states that A. K.'s specific medical condition is a confidential, private and sensitive matter between A. K.

and her health care provider. Respondent denies that A.K. was reassigned to a different location within the courthouse and states that A.K. still works in the position of bailiff in various courts in the Jersey City Municipal Court. Respondent admits that A.K. does not work in Respondent's court. Respondent denies that A.K. no longer works during the same hours as Respondent, and states that A. K. and Respondent worked during the same court hours as recently as January 2009.

9. Respondent denies the allegations contained in paragraph 9.
10. Respondent denies the allegations contained in paragraph 10.

WHEREFORE, Respondent respectfully requests that the Advisory Committee on Judicial Conduct recommend that the Supreme Court dismiss this Complaint in its entirety with prejudice.

DEFENSES AND AFFIRMATIVE DEFENSES

1. Respondent states that consensual dating relationships between judiciary employees, to include relationships between superiors and subordinates, are specifically allowed under published Judiciary Policy. (See Attached Judiciary Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination, dated July 3, 2007 and Revised Judiciary Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination, dated October 29, 2008 – Both policies are published and readily available on the Internet). The relationship between Respondent and A. K. was in compliance with the Judiciary's stated policy. There is nothing to suggest that Respondent's dating relationship with A. K. was anything other than consensual. Since such relationships are allowed by formal policy, the existence of such a relationship cannot form the basis of the subject Complaint which, in

essence, alleges a consensual relationship between two well-educated judiciary employees who were not in a supervisor and subordinate reporting position.

2. Respondent states that A. K. makes no claim or allegation of sexual harassment against Respondent.

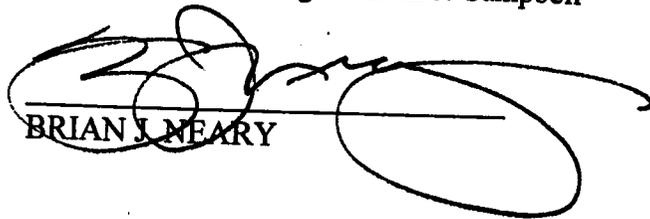
3. A. K.'s alleged reaction at the end of a consensual relationship with Respondent could not have been anticipated or expected and cannot form the basis of a valid ethics Complaint against Respondent.

4. The requisite elements to support an ethics Complaint against respondent do not exist, and the subject Complaint must be dismissed with prejudice.

5. Respondent specifically reserves the right to amend his Answer and to include additional Defenses or Affirmative Defenses after reviewing the discovery in this matter.

LAW OFFICE OF BRIAN J. NEARY
Attorneys for Respondent
Municipal Court Judge Wilson J. Campbell

By:


BRIAN J. NEARY

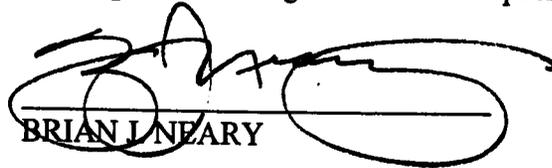
Dated: February 20, 2009

CERTIFICATION

I hereby certify that this pleading was served within the time period allowed under R. 2:15-12(c), and served upon the Advisory Committee on Judicial Conduct in the accordance with applicable court rules.

LAW OFFICE OF BRIAN J. NEARY
Attorneys for Respondent
Municipal Court Judge Wilson J. Campbell

By:


BRIAN J. NEARY

Dated: February 20, 2009

EXHIBIT

A

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

GLENN A. GRANT, J.A.D.
ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS



RICHARD J. HUGHES JUSTICE COMPLEX
PO Box 037
TRENTON, NEW JERSEY 08625-0037
(609) 984-0275
FAX: (609) 292.3320

October 29, 2008

To: Justices, Judges and Judiciary Employees
From: Glenn A. Grant, J.A.D. *GAG*
Subject: Revised Judiciary Policy Statement on Equal Employment Opportunity,
Affirmative Action and Anti-Discrimination

Attached is a copy of the revised Judiciary Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination which is applicable to all judges and staff who serve in the Judiciary, including the Municipal Courts. The Supreme Court approved the revised Policy Statement to address: (a) the recent statutory amendment that extends protection and prohibits discrimination based on religious practices or observances and (b) recent case law involving a religious-based hostile work environment claim. These revisions are reflected in the section of the Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination and the section on Racial/Ethnic, Religious and Other Forms of Bias, Harassment, and Hostile Work Environment.

The Policy Statement sets forth the Judiciary's unwavering commitment to the principles and goals of fairness, equality, and respect for all individuals at every level of the court system. I urge you to read the Policy Statement carefully. Compliance with the provisions of the Policy is not only a legal responsibility, it also is the right thing to do. Thank you for your cooperation and support.

G.A.G.

Attachment

cc: Chief Justice Stuart Rabner
R. Brian McLaughlin, Esq., Acting Counsel to Director
Bobby E. Battle, Chief, Judiciary EEO/AA Officer

Judiciary of the State of New Jersey
Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination

The Chief Justice and Supreme Court of New Jersey declare the following to be the policy of the New Jersey Judiciary in order to ensure equal opportunity for all Judiciary employees and applicants for employment, and in order to ensure that all court users, volunteers, attorneys, litigants, witnesses or others who come into contact with the court system are treated in a non-discriminatory manner with civility, dignity, and respect. All who serve in the Judicial Branch are responsible for implementing this policy.

Policy on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination

The New Jersey Judiciary is committed to the principles of equal employment opportunity and prohibits discrimination in hiring, promotion and terms and conditions of employment on the basis of race, creed, color, national origin/nationality, ancestry, religion/religious practices or observances, age, sex, gender identity or expression, affectional or sexual orientation, marital status, civil union status, domestic partnership status, disability or perceived disability, atypical hereditary cellular or blood trait, genetic information, and status as a veteran or disabled veteran of, or liability for service in, the Armed Forces of the United States.

Overcoming Barriers to Equal Opportunity

The Judiciary will continue to take appropriate action to remove barriers that may prevent minorities and women from full participation in the Judiciary's workforce and full enjoyment of all of the privileges of employment. An important factor in evaluating management performance is compliance with the Judiciary's policy of fair employment practices as embodied in the Judiciary's Master Plan for EEO/AA. Management will periodically review Judiciary employment practices in order to ensure that all applicants and employees and, including but not limited to recruitment, selection, hiring, training, promotions, transfers, discipline, discharge, demotion, layoffs, re-employment after layoff, job assignment, compensation, and fringe benefits.

Policy on Disabilities Affecting Court Users, Job Applicants and Employees

The Judiciary is committed to complying with the New Jersey Law Against Discrimination, and other anti-discrimination statutes applicable to the judiciary, and will not discriminate against any qualified employee or job applicant with respect to any terms, privileges or conditions of employment because of a physical or mental disability. Moreover, the Judiciary will not discharge a worker who develops a disability, including a disease such as cancer or AIDS, so long as that individual remains qualified and able to perform the essential functions of the job with or without reasonable accommodations. The Judiciary will make reasonable accommodations for all court users, employees, and applicants with disabilities, provided that the accommodations neither cause the Judiciary undue hardship, nor present a direct threat to their own health or safety, or the health and safety of others as defined under applicable law. Accommodations shall be requested by the disabled individual. This may be done by contacting the judge or Senior Manager/Supervisor in charge of the operations, services, program or activity. The individual also may contact either the local Access Coordinator or the Administrative Office of the Courts, Chief, Court Access Services at (609) 633-3902 [or (609) 292-3618 for Voice/Telecommunication Device for the Deaf (TDD)] regarding access issues or may contact the Administrator of Employee Relations at (609) 633-6536 [or (609) 777-0890 for TDD users] regarding employment issues.

Policy on Sexual Harassment

In recognition of the dignity and worth of each person who works for the Judiciary or who comes into contact with the courts, the New Jersey Judiciary promulgates this policy on sexual harassment for implementation throughout the court system. Sexual harassment is illegal, an abuse of authority and, if engaged in by a Judiciary employee, will be deemed to constitute misconduct. Sexual harassment undermines the public's confidence in the Judiciary and the integrity of employment relationships, debilitates morale and may be destructive to its victims and their associates. Accordingly, sexual harassment will not be tolerated whether it is practiced by judges, employees or non-employees, against court employees, attorneys, litigants, witnesses or others who come into contact with the court system. Managerial and supervisory personnel are required to ensure adherence to and compliance with this policy and, upon being informed of possible harassment, are required to take appropriate and immediate action in response thereto.

The New Jersey Judiciary has procedures for filing discrimination complaints, including sexual harassment complaints against judges, non-judge Judiciary employees, and non-employees, whether by Judiciary employees, attorneys, litigants, witnesses or others who come into contact with the court system. The Judiciary complaint procedures should be used for filing and addressing discrimination and sexual harassment complaints as noted in the "Filing a Complaint" section below.

Policy Against Discrimination Based on Gender Identity or Expression

The Judiciary respects the individual humanity and worth of each person who comes in contact with the courts. Discrimination in any form based on a person's gender identity or expression is prohibited. Gender identity or expression is defined as having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person's assigned sex at birth. The Judiciary shall not treat job applicants, employees, or individuals who come into contact with the courts differently because of their actual or perceived gender identity or expression.

Policy Against Discrimination Based on Affectional or Sexual Orientation

The Judiciary is committed to treating all employees and court users equally, with dignity and respect. Discrimination in any form against any individual on account of his or her affectional or sexual orientation is prohibited. Affectional or sexual orientation is defined as male or female heterosexuality, homosexuality, or bisexuality by inclination, practice, identity or expression, having a history thereof, or being perceived, presumed or identified by others as having such an orientation. The Judiciary shall not treat job applicants, employees, or individuals who come into contact with the courts differently because of their actual or perceived affectional or sexual orientation.

Policy on Consensual Dating in the Workplace

Consensual dating relationships between Judiciary employees are generally not the Judiciary's business. However, when the two people currently or previously involved in such relationships work as supervisor and subordinate, the supervisor must promptly inform his or her immediate superior of the personal relationship so that the Judiciary may take action to change the reporting relationship between the individuals. This is necessary in order to eliminate any appearance of, or actual, impropriety in the workplace. For justices, judges and Judiciary employees subject to the New Jersey Tort Claims Act, *N.J.S.A. 59:1-1, et seq.*, failure to give proper notice to the supervisor's immediate superior may result in the denial of legal representation and indemnification by the State in the event that a discrimination or sexual harassment lawsuit is filed in connection with the relationship.

Policy on Racial/Ethnic, Religious and Other Forms of Bias, Harassment, and Hostile Work Environment

The Judiciary prohibits all forms of unlawful bias, harassment, and discrimination in all of its operations, including humiliating or grading jokes, insults or comments about one's race, creed, color, national origin/nationality, ancestry, religion, age, disability or perceived disability, sex, gender identity or expression, affectional or sexual orientation, or any other unlawful criteria. Harassment, coercion or intimidation of any individual based on these or other unlawful criteria is strictly forbidden. This prohibition extends to workforce management, all aspects of employment practices, the processing and adjudication of cases, and all programs, services and activities of the Judiciary. Appropriate actions, up to and including discharge, will be taken against individuals who do not adhere to this policy. Judges, managers, and supervisors are to take all necessary steps to ensure that each employee's work environment is free of all forms of unlawful bias, harassment, and discrimination.

Dissemination

This Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination will be (1) sent to all New Jersey Judiciary judges and employees, (2) distributed to new employees of the Judiciary, and (3) posted in areas visible to court users, volunteers, and job applicants.

Filing a Complaint

Employees, applicants, clients and users of the courts who have questions, problems or complaints regarding EEO, disability, sexual harassment, racial/ethnic bias, hostile work environment or other categories covered by the anti-discrimination laws may communicate their concerns to the Judge, manager or supervisor in charge of the court program or service involved. If the complainant is dissatisfied with the handling of the matter, or if the complainant prefers, the complainant may contact the local EEO/AA Officer or may pursue his or her complaint according to the New Jersey Judiciary's discrimination and sexual harassment complaint procedures, which can be obtained from the local EEO/AA Officer/Designee and/or Access Coordinator. The Judiciary EEO/AA Unit at the Administrative Office of the Courts in Trenton can be contacted by calling (609) 633-6537. All complaints, inquiries, and investigations shall be handled in a confidential manner to the greatest extent possible. All Judiciary employees are to cooperate in the internal investigation of complaints. The local EEO/AA Officer can also provide information on other options available for filing complaints under state and federal complaint procedures.

Prohibition Against Retaliation

Retaliation in any form by anyone who serves in the Judicial Branch against any person who complains about discrimination, files a discrimination complaint or who assists in the investigation of such complaints is prohibited. A charge of retaliation may be raised at any step of the complaint procedures or may form the basis of a new complaint. Retaliation may result in legal liability even though the original discrimination complaint was unfounded and dismissed. Appropriate actions, up to and including discharge, will be taken against individuals who are found to have retaliated against a complainant or against any individual who assists in the investigation of a complaint.

October 29, 2008


Hon. Glen A. Grant, Acting Administrative Director

Judiciary of the State of New Jersey
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The Judiciary will continue to take appropriate action to remove barriers that may prevent minorities and women from full participation in the Judiciary's workforce and full enjoyment of all of the privileges of employment. An important factor in evaluating management performance is compliance with the Judiciary's policy of fair employment practices as embodied in the Judiciary's Master Plan for EEO/AA. Management will periodically review Judiciary employment practices in order to ensure that all applicants and employees a in particular, persons who are members of groups that have been historically disadvantaged because of discrimination are receiving fair and equal consideration for job opportunities. Affirmative efforts to ensure fairness will be undertaken with respect to all employment practices, including but not limited to recruitment, selection, hiring, training, promotions, transfers, discipline, discharge, demotion, layoffs, re-employment after layoff, job assignment, compensation, and fringe benefits.

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The Judiciary is committed to complying with the New Jersey Law Against Discrimination, and other anti-discrimination statutes applicable to the judiciary, and will not discriminate against any qualified employee or job applicant with respect to any terms, privileges or conditions of employment because of a physical or mental disability. Moreover, the Judiciary will not discharge a worker who develops a disability, including a disease such as cancer or AIDS, so long as that individual remains qualified and able to perform the essential functions of the job with or without reasonable accommodations. The Judiciary will make reasonable accommodations for all court users, employees, and applicants with disabilities, provided that the accommodations neither cause the Judiciary undue hardship, nor present a direct threat to their own health or safety, or the health and safety of others as defined under applicable law. Accommodations shall be requested by the disabled individual. This may be done by contacting the judge or Senior Manager/Supervisor in charge of the operations, services, program or activity. The individual also may contact either the local Access Coordinator or the Administrative Office of the Courts, Chief, Court Access Services at (609) 633-3902 (or (609) 292-3618 for Voice/Telecommunication Device for the Deaf (TDD)) regarding access issues or may contact the Administrator of Employee Relations at (609) 633-6540 (or (609) 292-234 for TDD users) regarding employment issues.

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EXHIBIT

B

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/s/ Philip S. Carchman

July 3, 2007

Philip S. Carchman, Acting Administrative Director