D-24-11
(069351)

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2008-324

IN THE MATTER OF

LYNNE S. MULLER, FORMER
JUDGE OF THE MUNICIPAL COURT

PRESENTMENT

The Advisory Committee on Judicial Conduct ("Committee" or "ACJC") hereby presents to the Supreme Court its Findings and Recommendation in this matter in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's Findings demonstrate that the charges set forth in the Formal Complaint against Lynne S. Muller, Former Judge of the Municipal Court ("Respondent"), have been proven by clear and convincing evidence. The Committee recommends that the Respondent be publicly reprimanded.

On March 26, 2010, the Committee issued a Formal Complaint in this matter, which accused Respondent (1) of using the power and prestige of her judicial office to influence a purely private matter in violation of Canon 2B of the Code of Judicial Conduct, and (2) of inappropriately conducting herself in the presence of municipal law enforcement officers in violation of

Canons 1 and 2A of the Code of Judicial Conduct. Respondent filed an Answer to the Complaint on April 12, 2010 in which she admitted certain of the factual allegations of the Formal Complaint but denied others. She thereafter filed an Amended Answer on June 21, 2011 in which she changed many of her previous responses to the Complaint's allegations and instead stipulated to the statements set forth in Paragraphs One (1) through Nineteen (19) of the Complaint. See June 21, 2011 Amended Answer at ¶3.

The Committee held a formal hearing in this matter on June 23, 2011. Respondent appeared with counsel but did not testify. The Presenter called several witnesses and offered exhibits, which were accepted into evidence. See P-1 through P-20. Respondent offered one exhibit, which was accepted into evidence. See R-1. The Committee also accepted into evidence a set of Stipulations agreed to by the parties. See Stipulations of Parties filed on June 10, 2011 ("Stipulations").

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

I. FINDINGS

A. Factual and Procedural Background

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1992. Stipulations at ¶1. At all times relevant to this matter, Respondent served as a part-time judge in the Borough of Bergenfield Municipal Court, a position she no longer holds. Id. at ¶2.

On May 17, 2008, Sergeant Warren H. Monroe, an investigator with the State of New Jersey's Office of the Attorney General, Division of Criminal Justice, traveled to Respondent's home, dressed in a suit and tie, to serve Respondent's husband with a State Grand Jury subpoena. Formal Complaint at ¶3; Stipulations at ¶4. At the time of Sergeant Monroe's arrival at approximately 3:30 p.m., both Respondent and her husband were in their upstairs bedroom. Formal Complaint at ¶5; Stipulations at ¶5. Respondent's mother-in-law opened the door for Sergeant Monroe and told him that she was unable to climb the stairs to get Respondent's husband. Formal Complaint at ¶6. Sergeant Monroe proceeded upstairs and called for Respondent's husband by his first name. Id. Thereafter, Sergeant Monroe went back downstairs, waited for Respondent's husband and, once he came down, served him with a State Grand Jury subpoena. Id. at ¶6, ¶8; Stipulations at ¶7. Upon the request of Respondent's

husband, Sergeant Monroe displayed his State-issued identification. Formal Complaint at ¶8. He thereafter left Respondent's house. Id. at ¶¶9-10.

While her husband proceeded downstairs to greet Sergeant Monroe, Respondent placed a call to 9-1-1 on her cellular telephone to report the presence of an unknown male in her home. Id. at ¶7. Respondent's 9-1-1 call was initially directed to the Bergen County 9-1-1 Dispatch Center and then transferred to the Bergenfield Police Department. Id.; Stipulations at ¶9. By the time the call was transferred to the Bergenfield Police Department, Sergeant Monroe was no longer in Respondent's house and was standing by his car parked outside, preparing to leave. Stipulations at ¶10.

During the 9-1-1 call, Respondent identified herself as "Judge Muller" and referred to the various Bergenfield police vehicles responding to her call as "our police cars." Id. at ¶11. In response to Respondent's 9-1-1 call, Bergenfield Police Officers Thomas Miller and William Duran stopped Sergeant Monroe's car a short distance away from Respondent's home. Id. at ¶12; Formal Complaint at ¶11. Sergeant Monroe informed the officers that he had served a subpoena upon Respondent's husband and showed them his identification and badge. Formal Complaint at ¶12. The officers allowed Sergeant Monroe to leave. Id.; Stipulations at ¶13.

Bergenfield Police Officers Kenneth Savage and Richard Ramos proceeded directly to Respondent's home in response to her 9-1-1 call. Formal Complaint at ¶13; Stipulations at ¶14. Officers Savage and Ramos and Respondent were already familiar with each other given the Officers' various appearances before Respondent in her official capacity as the Bergenfield Municipal Court Judge. Stipulations at ¶¶15-16.

Officer Savage interviewed Respondent, her husband, and Respondent's mother-in-law about what had transpired. Id. at ¶17. By this time, Respondent was downstairs and no longer in her bedroom. Respondent and her husband informed Officer Savage that Sergeant Monroe entered their home uninvited and knocked on their upstairs bedroom door where they were sleeping. Formal Complaint at ¶14. Respondent's husband admitted he knew Sergeant Monroe from previous dealings with him, and that he asked Sergeant Monroe to leave once Sergeant Monroe served the subpoena. Id.

Sergeant John Maggi, also with the Bergenfield Police Department, joined Officers Savage and Ramos at Respondent's home once he finished speaking with Sergeant Monroe at the site of the motor vehicle stop. Id. at 16; Stipulations at ¶18. Sergeant Maggi informed Respondent that he had allowed Sergeant Monroe to depart the motor vehicle stop, and that Sergeant Monroe's version of events differed from Respondent's version.

Stipulations at ¶¶19-20; Formal Complaint at ¶17. Respondent became upset and started yelling at Sergeant Maggi in the presence of Officers Savage and Ramos and demanded that Sergeant Monroe be arrested and brought in for questioning. Formal Complaint at ¶18. When Sergeant Maggi refused, Respondent accused Sergeant Maggi of not knowing how to do his job, of providing her less protection than that provided to the "average citizen," of mishandling the matter, and of not taking her security seriously. Id. She further stated that the security provided by the Teaneck Police Department to the Teaneck Municipal Court was better than the security provided by the Bergenfield Police Department to the Bergenfield Municipal Court. Id.

Respondent discussed the events of May 17, 2008 on several occasions. She was initially interviewed by ACJC staff and her attorney on October 24, 2008. See P-18. On April 12, 2010, she filed an Answer to the Committee's Complaint in which she denied many of the Complaint's allegations, including the fact that she "yelled" at Sergeant Maggi. See April 12, 2010 Answer of Respondent to ACJC's Formal Complaint. Two days prior to the June 23, 2011 hearing in this matter, Respondent offered and filed an Amended Answer to the Formal Complaint in which she altered her previous responses to the Complaint's allegations. In her Amended Answer, Respondent indicated that, in preparation

for the hearing, she "had the opportunity to review and discuss the available evidence with [her] attorney," and now saw fit to "stipulate to all the statements set forth in paragraphs one (1) through nineteen (19) in the complaint of March 26, 2010." See June 21, 2011 Amended Answer of Respondent to ACJC's Formal Complaint, ¶3.

Respondent did not testify at the June 23, 2011 Formal Hearing. In her post-hearing brief, however, Respondent asserts that though the "essential facts" in the case "are not in dispute between the parties in any significant way," the Committee must view the matter "in the context of the totality of the circumstances." See Respondent's Post-Hearing Brief, filed on July 26, 2011, at pp. 1-2. In this regard, Respondent maintains that "her actions were triggered by the stress of a frightening event in her own home," and that she viewed the matter as one that was "purely a public matter related to her security of [sic] a judge." Id. at 5. In Respondent's view, her admittedly "angry" and "frustrated" treatment of the Bergenfield police officers was "a natural reaction stemming from the frightening nature of the home invasion and the lack of a serious police response." Id. at 4. She asserts her conduct in no way violated the Canons of Judicial Conduct as her "spoken words and actions" occurred in "the privacy of her own home,"

and she could not have foreseen that they eventually might be made public. Id. at 5-6.

B. Analysis

The Formal Complaint in this matter charged Respondent with improperly invoking her judicial office in a private matter in violation of Canon 2B of the Code of Judicial Conduct and of inappropriately treating and shouting at members of the Bergenfield municipal police force in violation of Canons 1 and 2A of the Code of Judicial Conduct. We find that the Complaint's charges have been proven by clear and convincing evidence, and, consequently, that Respondent's conduct violated the cited Canons.

Canon 1 requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary are preserved. Canon 2A directs that judges must conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. Canon 2B provides that a "judge should not lend the prestige of office to advance the private interests of others," nor should a judge "convey the impression that they are in a special position of influence." The commentary to Canon 2 of the Code of Judicial Conduct provides that judges "must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny."

It is without question that Respondent admitted to the following conduct in her June 2011 Amended Answer: (1) she yelled at Sergeant Maggi repeatedly in front of his subordinate officers; (2) she demanded that the officers arrest Sergeant Monroe after they informed her they had dismissed him; (3) she "accused Sergeant Maggi of not knowing how to do his job;" (4) she expressed incredulity "that the Bergenfield Police Department would not protect their own judge" and "that nothing bad had previously happened to her or her court staff," (5) she informed Sergeant Maggi that the Bergenfield Police Department "did not take her security seriously," and (6) she "compared the court security provided by the Bergenfield Police Department for the Bergenfield Municipal Court, which she believed to be very lax, with the court security provided for the Teaneck Municipal Court by the police force in Teaneck, which she believed to be much more stringent." See Formal Complaint, ¶18. Respondent has further conceded that all of the foregoing conduct occurred after Sergeant Monroe had left her house and driven away and after she was aware that the incident with Sergeant Monroe related to a private matter involving her husband and "did not in any way relate directly or indirectly to Respondent's status, position or duties as a municipal court judge." Id. at ¶19.

Accordingly, the only issue that needs to be determined by the Committee is whether such behavior violated Canons 1, 2A and 2B of the Code of Judicial Conduct. We are convinced it does.

With regard to the accusation that Respondent unnecessarily involved her judicial office in a private matter in violation of Canon 2B, we first underscore that in contemplating this issue, we neither considered nor do we take issue with Respondent's call to 9-1-1. We credit Respondent's representation that she was startled and frightened by hearing Sergeant Monroe's voice near her bedroom door. We accept that Respondent's decision to call 9-1-1 was prompted by the fact that she was taken by surprise and concerned for her safety. We understand Respondent's need and right at that time to remind the law enforcement officers involved that she was a judge.

Unfortunately, Respondent's references to her judicial office did not end with the 9-1-1 call. In fact, it was long after Sergeant Monroe had left her house and driven away, after Respondent was aware that Sergeant Monroe's purpose in the house was to serve an official and legitimate State Grand Jury subpoena on her husband, after Sergeant Monroe had produced his State-issued identification to her husband, and while Respondent was surrounded by Bergenfield police officers, that she made the majority of her comments involving her judicial office. Such comments, directed predominantly to Sergeant Maggi, include her

expression of disbelief that the "Bergenfield Police Department would not protect their own judge," and her accusations that she was afforded "less protection than the average citizen," that the "Bergenfield Police Department did not take her security seriously," and that the Teaneck Police Department did a better job at protecting their municipal court.

In view of this uncontroverted timeline of events, we simply cannot accept that Respondent's repeated references to her judicial office were justified or legitimate. It goes without saying that the officers involved knew exactly who Respondent was and had, in fact, recurring previous interactions with her in her official capacity. They did not need to be reminded, repeatedly, that Respondent was "their judge."

We are further convinced that any legitimacy to the assertions that Respondent was fearful for her safety and that Sergeant Monroe's visit called into question "her security of [sic] a judge" had wholly dissipated by the time Respondent made her repeated references to her status and office. The fact remains that Sergeant Monroe had already left Respondent's home at the time of her statements. Further, Respondent was aware at that time that Sergeant Monroe's presence was related only to his official function as an investigator for the Division of Criminal Justice, and that Sergeant Monroe had, in fact, served her husband with a State Grand Jury subpoena. Respondent also

had been informed that the Bergenfield Police Department had investigated her claim that she and her husband were the victims of a "home invasion" and determined that claim to be meritless. Under such circumstances, we find a complete lack of evidence to support Respondent's contention that her "security" was at issue at the time she repeatedly reminded the officers that she was "their judge." In fact, the evidence strongly suggests, and we so find, that Respondent's repeated references to her judicial office were nothing more than an attempt to strong-arm the officers to act in accordance with her will in a private matter. Simply put, Respondent wanted Sergeant Monroe arrested and attempted to rely on her office to have that desire achieved.

We conclude that Respondent's belated references to her judicial office were an improper attempt on her part to use the power and prestige of her office to accomplish her personal wishes in violation of Canon 2B of the Code of Judicial Conduct. See In re Rivera-Soto, 192 N.J. 109 (2007) (adopting ACJC Presentment in ACJC 2007-097) (finding Respondent violated Canon 2B of the Code of Judicial Conduct by calling the local police chief, which "created the significant and unacceptable risk that the Respondent's judicial office could be an influential factor in the handling of a private matter relating to Respondent and his family."). See also In re Baptista, 205 N.J. 306 (2011).

We next turn to the allegation that Respondent's behavior on May 17, 2008 violated Canons 1 and 2A of the Code of Judicial Conduct. We determine that her behavior violated those Canons as well.

We found the manner and nature of Respondent's remarks to the officers in question to be disagreeable and belittling. Respondent admitted that she "yelled" at the officers. She further admitted questioning Sergeant Maggi's judgment and skill in the presence of his subordinate officers. Respondent not only suggested that the officers were not doing their jobs properly, she further intimated that their conduct was somehow more offensive because she was "their judge," and they were not doing her bidding. Respondent thought it appropriate to compare the work of the Bergenfield Police Department to another municipality's police department and suggest that the Bergenfield Police Department was inferior to that other department. Cumulatively, such conduct was not only demeaning and insulting, it was juvenile and unprofessional.

We underscore the irrelevance of the fact that the comments made by Respondent and her treatment of the Bergenfield police officers occurred "in the privacy of her own home." As made clear in the Commentary to Canon 2, judges "must expect to be the subject of constant public scrutiny." The Supreme

Court's decision in In re Blackman, 124 N.J. 547, 551 (1991), is instructive:

> [Canon 2] makes clear that judges have responsibilities with regard to their personal conduct that greatly exceed those of ordinary citizens. The Canon specifically points out that judges must accept restrictions of their personal activities that other citizens might find burdensome and intrusive. The understanding of the Canon is that judges 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, 'public confidence in the judiciary is eroded.'

(Emphasis added.)

Here too, we find that Respondent's conduct, which took place in her home, reflected negatively not only on Respondent and her judicial office but on the entire judiciary. The manner in which she treated the Bergenfield police officers in question was rude and inappropriate and failed to promote public confidence in the integrity and independence of the judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct.

II. RECOMMENDATION

The Committee recommends that Respondent be publicly reprimanded for the conduct at issue in this matter.

We find that Respondent, in the context of a purely private manner, repeatedly and unnecessarily referenced her judicial office to the officers of the Bergenfield Police Department in an apparent attempt to convince them to act in accordance with her wishes. In doing so, Respondent made a blatant attempt to rely on the prestige of her office in a private matter in violation of Canon 2B of the Code of Judicial Conduct. Moreover, when the officers in question refused Respondent's demands, Respondent proceeded to belittle and disrespect their work and competence and particularly belittled a superior officer in the presence of his subordinate officers. Respondent's behavior in this regard demonstrated an enormous lack of professionalism and courtesy. By conducting herself in such a manner, Respondent violated Canons 1 and 2A of the Code of Judicial Conduct.

Accordingly, for all of these reasons, the Committee respectfully recommends that Respondent be publicly reprimanded for the conduct at issue in this matter.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

October 19, 2011 By: Alan B. Handler

Alan B. Handler, Chair