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| IN THE MATTER OF<br>RICHARD M. SASSO<br>JUDGE OF THE MUNICIPAL COURT | SUPREME COURT OF NEW JERSEY<br>ADVISORY COMMITTEE ON<br>JUDICIAL CONDUCT<br>DOCKET NO.: ACJC 2007-162<br>PRESENTMENT |

The Advisory Committee on Judicial Conduct, pursuant to Rule 2:15-15(a), presents to the Supreme Court its Findings that the charges set forth in a Formal Complaint against Richard M. Sasso, Judge of the Municipal Court, have been proven by clear and convincing evidence and its Recommendation that the Respondent be permanently disqualified from holding or securing future judicial office.

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1980. At all times relevant to these matters, Respondent served as a part-time judge in the Municipal Courts of Warren Township, Bridgewater Township, Bound Brook Borough, and Watchung Borough. Effective January 23, 2008, Respondent resigned from these offices.

On March 13, 2008, the Advisory Committee on Judicial Conduct issued a Formal Complaint charging Respondent, Municipal Court Judge Richard M. Sasso, 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).

On April 7, 2008, Respondent, through counsel, filed his Answer to the Formal Complaint in which he admitted certain factual allegations but denied others. On October 29,

2008, the Committee conducted a Pre-Hearing Conference and issued an Order dated November 3, 2008 setting forth the parties' stipulations, admissions of fact, and agreement regarding the introduction into evidence of certain documents. On November 7, 2008, Respondent entered into additional stipulations that obviated the appearance of certain witnesses at the Formal Hearing. The Committee held a Formal Hearing on November 10 and 12, 2008. Witnesses were called and testified, and Respondent testified on his own behalf.

This matter was initiated before the Committee by several grievances. A special counsel to Warren Township referred to the Committee the Warren Township Municipal Prosecutor's complaints about Respondent's conduct towards her and other individuals appearing before Respondent. The Municipal Prosecutor also filed a grievance with the Committee, recounting these and additional complaints. The Municipal Prosecutor of Watchung, who also served as 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 and further referred to complaints made by the Court Administrator in the Watchung Municipal Court about Respondent's conduct.

These grievances became the basis of the Formal Complaint charging Respondent with misconduct. Count I of the Complaint charges that Respondent took the bench under the influence of drugs and/or alcohol on two separate occasions, December 6, 2006 and April 17, 2007. Count II alleges that Respondent created a disturbance while a patron at a public establishment, Torpedo's Go-Go Bar, by identifying himself to employees as a judge, making threatening statements, and refusing to leave. The Complaint charges in Count III that Respondent repeatedly misused Rule 1:2-4(a) to sanction attorneys and litigants unfairly for appearing late to court. Count IV asserts that Respondent behaved discourteously and

intemperately towards persons in municipal court. Respondent was charged in Count V with misuse of the contempt power under Rule 1:10-1. Count VI alleges that Respondent abused his sentencing authority by giving preferential treatment to high school students. The charge in Count VII alleges Respondent violated Rule 1:15-1(b) by serving as counsel to a municipal entity.

FINDINGS

The standard of proof in judicial disciplinary matters is clear-and-convincing evidence. Rule 2:15-15(a). "Clear-and-convincing evidence is that which produce[s] ... 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." In re Seaman, 133 N.J. 67, 74 (1993) (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. at 84). Moreover, unlike in a civil or criminal proceeding, the Rules of Evidence are not binding on the Committee. Rule 2:15-14(e).

The testimony of the various witnesses at the Formal Hearing and the documentary evidence presented establish clearly and convincingly the basis for the Committee's Findings and Recommendations.

A.

As related in Count I, on December 6, 2006, Respondent presided over the evening court session in the Bridgewater Municipal Court. After Respondent failed to appear in court on time that evening, by 5:00 p.m., the Prosecutor tried unsuccessfully to reach Respondent on his cell phone. Respondent eventually appeared in court almost an hour late. Respondent was visibly impaired. His condition alarmed both the Bridgewater Municipal Prosecutor and the Court

Administrator. They observed that Respondent's speech was slow and slurred, and it appeared that Respondent was under the influence of medication and/or alcohol. The smell of alcohol on Respondent's breath was detected. It was clear to the Prosecutor that Respondent had consumed some alcohol.

Several police officers in the courtroom that night warned the Prosecutor that because of Respondent's impaired condition, they would arrest Respondent if he tried to drive himself home. Respondent insisted on taking the bench. Because of Respondent's condition, the Prosecutor cancelled the subsequent court session in Bound Brook and arranged for a ride home for Respondent. Respondent was driven home by his wife.

Respondent was scheduled to preside in the Warren Township Municipal Court on the evening of April 17, 2007. Respondent was visibly impaired prior to the commencement of court and was unable to sign his name to a court document. The Warren Municipal Prosecutor, the Court Administrator, the Deputy Court Administrator, the Public Defender and, later, Warren Police Chief Russell Leffert were all concerned about his condition. It was observed that Respondent "was under the influence of something." During Respondent's opening remarks, the Administrator noted that Respondent was slurring his words, speaking very slowly, and not making much sense. She contacted and complained to the Warren Police Chief Leffert that something is "terribly wrong . . . with the judge."

Respondent's impaired condition is revealed by the audio recording of his opening remarks during the court session. As described by Presiding Judge Robert Schaul, Respondent's speech was "slurred, and the contents of the opening statement, the mandatory opening statement to be rambling and disjointed." Judge Schaul conferred with Assignment Judge Yolanda Ciccone and advised her of Respondent's second impairment on the bench. Assignment

Judge Ciccone then met with Respondent and urged him to take a leave of absence and enroll in a drug rehabilitation program. Respondent failed to follow Judge Ciccone's advice.

Respondent knowingly presided over court, twice, in an impaired condition while under the influence of medication and alcohol. The evidence, including Respondent's acknowledgement of taking pain medication and alcohol consumption, inescapably supports this conclusion. See State v. Johnson, 42 N.J. 146, 166 (1964) (observing that lay testimony is all that is required to prove a charge of driving under the influence of an intoxicating liquor). Moreover, Respondent indisputably gave the appearance of being impaired while in the performance of judicial duties. See In re Seaman, supra, 133 N.J. at 96 ("[T]he canons evidence concern not only for the reality of judicial integrity, but for the appearance of that reality.").

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 states 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."

Respondent's actions in taking the bench on two occasions while under the influence of medication and alcohol constitute judicial misconduct. Such conduct brings the judiciary into disrepute, impugns the integrity of the judiciary, and plainly weakens and undermines public confidence in the judiciary in clear violation of Canons 1 and 2A of the Code of Judicial Conduct. Such conduct also constitutes misconduct in office contrary to Rule 2:15-8(a)(1) and is prejudicial to the administration of justice, bringing the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

B.

Count II charges Respondent with misconduct in a public establishment in Bound Brook, known as Torpedo's Go-Go Bar.

The evidence clearly and convincingly establishes that Respondent arrived at Torpedo's after midnight on November 29, 2007 with a companion. He had previously consumed some alcohol. He then consumed one beer at Torpedo's and indicated to the bartender that he wished to start a bar tab. Torpedo's has a policy, which was explained to Respondent, that any patron wishing to start a bar tab must provide a driver's license along with a credit card. Respondent refused to furnish his driver's license and, according to the Torpedo's bartender, became irate, exclaiming in a very loud and angry voice:

> "Do you know who I am? I'm the Bound Brook Judge."
>
> * * *
>
> "I've left you guys alone for, oh, three years and I - I'm not - this is bullshit."

Respondent also slammed his hands down on the bar. His conduct drew the attention of the other patrons in the bar. One of them tried, unsuccessfully, to calm him down. As a result of Respondent's angry outburst, the bartender moved all of the bottles off the bar, asked for the manager and had two of the bar's bouncers stand near Respondent. The bartender informed the

manager that Respondent 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.'"

The manager approached Respondent to speak with him about the Bar's policy regarding tabs. Respondent became "nasty" and started to threaten the manager 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."
>
> * * *
>
> "Do you know who I am? I can make problems for you."

As a result of these threatening remarks, the manager asked one of the employees in Torpedo's to call the police. The manager asked Respondent to leave, which Respondent refused to do. Consequently, the manager, along with two bouncers, forcibly removed Respondent from the bar. In the process, Respondent ripped off the ledge of the bar.

Four Bound Brook police vehicles responded to the 911 call from Torpedo's. At least one of the police officers recognized Respondent as a judge in the town. Respondent, in fact, told one of the officers that he had identified himself to the manager as a judge. The manager told the officer that he was afraid to sign a complaint against Respondent because he feared that Respondent would use his position as a judge to retaliate against him.

The police transported Respondent and his companion to police headquarters to arrange for a ride home because both men were intoxicated. Respondent "was intoxicated, absolutely," according to one of the police officers. It was noted in the Bound Brook Police Investigation Report that the men "were transported to police H.Q. to make arrangements for a ride home due to their level of intoxication."

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 acting in disregard of the law and accepted standards of public conduct. A judge whose conduct in public creates such an impression generates genuine concerns and serious doubts about his overall judgment, temperament, demeanor, and fairness that reflect on and derogate from his capacity to discharge his judicial responsibilities. See In re Williams, supra, 169 N.J. at 278. Such conduct and the impressions it engenders adversely reflect not only on the judge personally but on the judge in his judicial role and more generally on the judiciary and the justice system. The inappropriate and unseemly behavior undermines the integrity, impugns the impartiality and detracts from the competence of the judiciary; it weakens the public's confidence in the judiciary, in violation of Canons 1 and 2A of the Code of Judicial Conduct. Such conduct casts the judiciary into disrepute in violation of Canon 5A(2), which requires judges to conduct their extra-judicial activities in a manner that does not demean the judicial office.

Respondent's conduct, in addition, constituted an abuse of the judicial office to advance a personal interest of the judge, in violation of Canon 2B, which provides, in part, that judges should not "convey ... the impression that they are in a special position of influence." During the episode, as noted, Respondent several times pointedly referred to his judicial position and made threatening remarks, hinting at retaliation against the bar. The mention of Respondent's judicial office and the implied threat to use his position were intended to avoid producing documents necessary to obtain credit and to run a tab. Respondent's reference to his judicial status constituted a grossly improper use of the judicial office to advance a private and personal interest. See In re Samay, 166 N.J. 25, 32-33 (2001). Such a misuse of the judicial office is not

trivialized or ameliorated because its ulterior purpose was petty and picayune – in this case, to avoid the inconvenience of complying with a public establishment's service policy toward patrons. Although the Complaint against Respondent did not specifically charge Respondent with violating Canon 2B, the evidence clearly demonstrates Respondent's violation of that Canon and, consequently, the Complaint is deemed amended to charge misconduct in violation of Canon 2B in conformity with the evidence presented at the hearing. See Rule 2:15-14(h).

Respondent's actions, his public misconduct and abuse of his judicial office, not only violate Canons 1, 2A, 2B and 5A(2) of the Code of Judicial Conduct, they constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

C.

Counts IV and V charge Respondent with engaging in intemperate conduct and abusing the contempt powers in several matters.

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. Respondent held Ms. Sears in contempt of court and sentenced her to immediate incarceration in the Somerset County Jail for ten days. The following day, Respondent released Ms. Sears from jail after she apologized to Respondent for her conduct. 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.

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 informed Respondent that she was present in the courtroom. Respondent then held Ms. Brown in contempt of court and ordered her incarcerated in the Somerset County Jail. Respondent's conduct towards her was also disrespectful, discourteous and intemperate.

In another matter, on August 8, 2007, Respondent presided over 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 accused Ms. Bombelyn of making threatening statements to court staff, which Ms. Bombelyn denied repeatedly. Respondent then sanctioned Ms. Bombelyn $500 for contempt of court. Ms. Bombelyn filed an appeal of the sanctions. The Superior Court disapproved of Respondent's actions in not following the proper procedures when holding someone in contempt, noting the failure to issue the necessary Order to Show Cause pursuant to Rule 1:10-2, and dismissed the $500 in sanctions. The Superior Court further admonished Respondent for his intemperate conduct, for refusing to acknowledge Ms. Bombelyn's explanation as to what occurred and for failing to develop an adequate basis for either initiating a contempt proceeding or imposing sanctions.

On September 24, 2007, Respondent presided over State v. Mike Roberson in the Watchung Borough Municipal Court. Mr. Roberson returned to court after Respondent had imposed a fine on him pursuant to his guilty plea. At that time, Respondent expressed to Mr. Roberson that he had already explained the fines to him "in English" and that "[m]unicipal court judges aren't asked to explain their conduct to defendants on the rebound when they leave

the Violations Bureau." Respondent's conduct towards Mr. Roberson was sarcastic, discourteous and intemperate.

As charged in Count V, the findings and determinations of the Superior Court in the Sostre case establish Respondent's abuse of the contempt power. The evidence further establishes an egregious abuse of the contempt powers in the Brown and Sears matters. Further, the evidence demonstrates that the conduct Respondent displayed when dealing with Ms. Brown, Ms. Bombelyn and Mr. Roberson, as he admits, was inappropriate, intemperate, disrespectful and discourteous, as charged in Count IV. The Committee was also confronted with other credible evidence that Respondent's general demeanor on the bench was often abrasive, immoderate and impatient.

The Supreme Court emphasized in In re Bozarth, 127 N.J. 271, 280-81 (1992), that a municipal court judge's "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." Canon 3A(3) requires judges to be patient, dignified and courteous to litigants, lawyers, and all those with whom they deal in an official capacity. See In re Albano 75 N.J. 509, 514 (1978) ("[I]t is a judge's obligation to see that justice is done in every case that comes before him. This includes ... the exhibiting at all times of proper 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.") The personal pressures Respondent claims he endured as a result of a severe painful back injury neither fully explain nor excuse his misconduct. See In re Sadofski, 98 N.J. 434, 441 (1985); In re Giles, 196 N.J. 456 (2008) (adopting ACJC Presentment [ACJC 2006-162] at pp. 7-8).

Respondent's misconduct under Counts IV and V 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).

D.

Count VII charges Respondent with the representation of a municipal entity. Respondent concedes that while a municipal court judge, he consulted with the Watchung Chemical Engine Company from time to time on various matters, including formation of its by-laws, without compensation. Respondent is listed as the company's "attorney" on company documents.

Rule 1:15-1(b) prohibits a municipal court judge from acting as an attorney for the municipality or any agency or officer of the municipality. The test for what constitutes an adjunct agency of the municipality depends on their interrelationships and interactions. Cf. In re Supreme Court Advisory Committee on Professional Ethics Opinion No. 697, 188 N.J. 549, 558, 565-66 (2006) ("[T]he test is whether the agency is subject to the municipal government's budgetary, membership, or decision-making control," noting further, the Code of Judicial Conduct has retained the "appearance of impropriety standard.")

The Company is known as the "Borough of Watchung Volunteer Fire Department." The Code of the Borough of Watchung designates the Company as the agency responsible for providing fire protection services in the Borough. According to the Company's Constitution and By-Laws, the Company is separated into two departments. It is clear they are interrelated. Both departments occupy the same municipal building: the "Firematic" side (the "Fire Department") and the "Administrative" side. The building in which the Company is located is owned by the Borough. The Company does not pay rent to the Borough for its use of the building. The "Firematic" side "operates under municipal auspices and funding in providing fire protection and prevention and is provided an annual operating and capital budget." P-58. "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. P-60. "The Fire Department elects its Chief and Assistant Chief who are then appointed by the Mayor and Council." P-58. The names of all new members in the Company must be reported to the Mayor and Council for approval. Id.

The evidence fully demonstrates that the Watchung Chemical Engine Company is an adjunct agency of the municipality of the Borough of Watchung. Respondent's conduct in acting as counsel to the Company 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 that is prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15- 8(a)(1) and (6).

E.

Count VI charges Respondent with misconduct for imposing improper motor vehicle sentences. Respondent concedes that he imposed lesser fines on high school students charged with motor vehicle violations, which he characterized as, for example, the "Warrior Discount," referring to the particular school's mascot. The evidence indicates that Respondent generally did not refer to or expressly consider any relevant sentencing factors, other then the individual's status as a high school student, when determining to impose the minimum fine or "discount."

The authority of a municipal court judge to impose fines for moving motor vehicle violations is statutory. See 51 New Jersey Practice, Municipal Court Practice Manual §20.4, at 627 (Robert Ramsey) (2008-09 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, the general sentencing

provision applicable to most moving violations in Chapter 4. Id. While the general sentencing statute (N.J.S.A. 39:4-203) provides a monetary 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 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. 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. He testified that he took the same consideration into account when sentencing indigent individuals. Respondent's testimony at the Formal Hearing, however, further indicates that he did not make any factual findings as to an individual student's ability to pay, but merely assumed, based on their status as students, that they, as a class or group, were unable to pay anything but the minimal amount of the fine. According to Respondent, "[b]ased on my knowledge and experience, I classified the group [high school students] as being a group that did not have a substantial ability to pay."

Although the evidence indicates that Respondent failed to make express references to relevant sentencing factors in imposing motor vehicle fines on defendants who were students at local high schools, the evidence does not clearly and convincingly establish that Respondent was unmindful of or indifferent to such factors when sentencing high school students. By characterizing such sentences as "discounts" based solely on the defendant's status as a high school student, however, Respondent's sentencing practice reasonably gave rise to the impression that relevant sentencing factors were or may have been disregarded. Because such a

perception was created by Respondent's sentencing practice, particularly his characterization of the fines as "discounts" for high school students, it was inappropriate.

It has not been established by clear and convincing evidence that Respondent pursued a sentencing policy that resulted in illegal or improper sentences by treating all high school students in the same fashion when imposing a fine for a motor vehicle violation, without regard to their personal circumstances and relevant sentencing criteria. Respondent has not violated Canons 1 and 2A of the Code of Judicial Conduct or engaged in 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) with regard to Count VI of the Complaint. Respondent's conduct, however, was inappropriate and created strong impressions of improper sentencing. In isolation, Respondent's conduct would warrant private discipline, such as a private reprimand, which would serve to deter its continuation.

F.

It is charged in Count III of the Formal Complaint that sanctions, which were imposed repeatedly upon defendants and lawyers alike for appearing late to court, constituted a misuse of Rule 1:2-4(a). That Rule 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 anyone 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 allegedly misused Rule 1:2-4(a) by imposing sanctions on defendants and lawyers who appeared late to the call of the list, without any regard for actual costs incurred by the court or any other party. Several cases purportedly exemplify this practice by Respondent. In three cases, State v. Aguirre, State v. Fitz, State v. Simmons, the defendants were in court on a first appearance. Despite the fact that none of these defendants caused an actual delay in the court proceedings or prejudiced any party, Respondent sanctioned Mr. Aguirre $250, Mr. Fitz $150, and Ms. Simmons $150. In another case, State v. Orellana, Respondent sanctioned the lawyer $250 and her client $150, both of whom appeared in court while the prosecutor was still conferencing cases and despite the prosecutor's recommendation to adjourn the matter. In another case, State v. Chevon, Respondent demanded the appearance in court, during the regularly scheduled court session, of the attorney who earlier that day had withdrawn his appearance on behalf of a defendant who was proceeding *pro se*. When the attorney appeared during the court session, Respondent sanctioned him $150 under Rule 1:2-4(a). In two cases, State v. Nelson and State v. Brown, Respondent not only imposed sanctions 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.

It does not appear that Rule 1:2-4(a) prohibits or disallows sanctions as a disciplinary measure for tardiness without regard to any costs that may have been incurred directly or indirectly by other parties or the court. As noted, Rule 1:2-4(a) expressly states that, "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, ... the court may order (d) such other action as it deems appropriate." Moreover, some confusion was expressed concerning the applicability of Rule 1:2-4 as a basis for lateness or tardiness sanctions without regard to any costs that may

have been incurred. For example, Presiding Judge Schaul had intervened in a matter to express the view that Rule 1:2-4 should not be used in such cases. Nevertheless, in another case, the use of Rule 1:2-4 was apparently approved.

The evidence establishes that Respondent's policy in routinely sanctioning latecomers and not fully considering explanations or reasons and surrounding circumstances was an arbitrary exercise of authority. The Court, in In re Bozarth, 127 N.J. 271, 276 (1992), publicly disciplined a municipal court judge 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, criticizing the judge's "slavish adherence to his own concept of rules of procedure." It reiterated this Committee's Presentment in that case, characterizing the judge's policy "as draconian ... all because [a party] showed up no more than twenty minutes after the start of court." Ibid.

By regularly and routinely imposing arbitrary sanctions on parties and lawyers who appeared late to court, without weighing the gravity of the tardiness and without due regard for explanations or reasons or surrounding circumstances, Respondent violated Canon 2A of the Code of Judicial Conduct, which requires judges to respect and comply with the law, and Canon 3A(1), which requires judges to be faithful to the law and to maintain professional competence in it. His conduct further was prejudicial to the administration of justice, bringing the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

## RECOMMENDATION

Judicial discipline is guided by certain principles. 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 (citing In re Coruzzi, 95 N.J. 557, 579 (1984)). 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 (citing In re Buchanan, 100 Wn.2d 396, 669 P.2d 1248, 1250 (1983)).

A.

The evidence clearly and convincingly demonstrates that Respondent's ability to perform his judicial duties on two occasions was impaired. Respondent's impaired condition was caused by his mixture and ingestion of his prescription medicine, vicodin, with alcohol, despite knowing of the warnings against such a mixture. Moreover, Respondent gave the unmistakable appearance of being impaired, according to the testimony of numerous highly credible witnesses. See In re Seaman, supra, 133 N.J. at 96. ("[T]he canons evidence concern not only for the reality of judicial integrity, but for the appearance of that reality."). His conduct exhibited lack of self-control and reflected an egregious display of bad judgment, profound disregard for high standards of personal conduct, recklessness, and a poor temperament.

Respondent's actions in exercising judicial responsibility while actually or seemingly under the influence of medication and alcohol constituted misconduct that brings the judiciary into disrepute, impugns the integrity of the judiciary, and plainly weakens and undermines public confidence in the judiciary, in clear violation of the Code of Judicial Conduct. 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. Further, such conduct 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).

B.

(i)

The evidence clearly and convincingly establishes that Respondent engaged in disorderly and inappropriate conduct while in Torpedo's Go-Go Bar. That conduct was public and in plain view of other patrons. It entailed Respondent's forcible removal and police intervention and ultimately resulted in Respondent being transported to police headquarters due to his level of intoxication. Further, Respondent's altercation at Torpedo's was his third alcohol-related incident in less than a year. He conceded at the Formal Hearing that it would have been more prudent of him to have simply left Torpedo's Bar. He also testified that his only regret about this incident was the fact that he had cursed. Respondent, when speaking with Assignment Judge Ciccone during their meeting in January 2008, failed to appreciate the impropriety of his conduct. According to Judge Ciccone, "[Respondent] did not believe that this was any – this incident was a big deal at all . . . ."

The Commentary to Canon 2 of the Code of Judicial Conduct emphasizes the special role that judges play in our society and the significance of their public comportment. It explains:

> Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

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).

Respondent's disorderly conduct while in Torpedo's Go-Go Bar raises serious doubts about his overall judgment, competence, temperament and fairness, both personally and more generally with respect to his capacity to exercise judicial responsibilities. Such conduct and the impressions it engenders reflect adversely on the judiciary and the justice system. It undermines the integrity, impugns the impartiality and impairs the competence of the judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct, and undermines the public's confidence in the judiciary in violation of Canon 2A. It demeans the judicial office in violation of Canon 5A(2). It serves also to prejudice the administration of justice by bringing the judicial office into disrepute contrary to Rule 2:15-8(a)(6).

(ii)

The evidence further demonstrates that, in the course of this episode, Respondent abused and compromised his judicial position and office by identifying himself as a judge. Respondent, referring to his judicial position, threatened the bar manager with adverse action if the manager compelled Respondent to produce his license. Respondent's reference to his office in a context that was wholly private and personal in nature and totally unrelated to his official duties was improper and violates the strictures governing judicial conduct. In re Rivera-Soto, 192 N.J. 109 (2007) (adopting ACJC Presentment [ACJC 2007-097] at p. 9) (referring to judicial position while attempting to expedite or advance a personal family matter constitutes judicial misconduct). See also In re Williams, supra, 169 N.J. at 274 (identifying judicial position to police when relaying a private matter is improper); In re Yaccarino, supra, 101 N.J. at 389

(finding that Superior Court judge misused judicial office to further personal and family interests).

Respondent's reference to his judicial position, coupled with threatening remarks hinting at retaliation against the bar, constituted a grossly improper use of the judicial office to advance a private and personal interest in violation of Canon 2B of the Code of Judicial Conduct. It does not ameliorate such a misuse of the judicial office because its ulterior purpose was simply to avoid the inconvenience of complying with a public establishment's policy toward patrons. The reference to Respondent's judicial position to advance a private and personal purpose was highly improper, notwithstanding the purpose was petty and picayune.

Moreover, Respondent inappropriately used his judicial position in securing the intercession and assistance of Chief of Police Leffert for an incident that was purely personal and private in nature. Respondent's attempt to draw a distinction between "Russell Leffert, Chief of Police" and "Russell Leffert, his childhood friend," is specious. The public's perception is inescapable that the Chief of the Warren Police Department was summoned to pick up Respondent from the Bound Brook Police Station because he was the Warren Municipal Court Judge. Respondent secured the services of the Police Chief because of his judicial status and office.

It is the public's confidence in the administration of justice and its perception of the independence, integrity and impartiality of the judiciary that such conduct undermines. See In re Yaccarino, supra, 101 N.J. at 386-87. Respondent's conduct in misusing his judicial office violates Canon 2B and constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

C.

Respondent engaged in judicial misconduct by abusing the contempt powers and engaging in intemperate conduct in violation of Canons 1, 2A and 3A(3) of the Code of Judicial Conduct. Such conduct is prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

Further, he engaged in misconduct in creating an impermissible conflict of interest by acting as an attorney for a municipal agency in violation of Rule 1:15-1(b) and Canons 1 and 2A of the Code of Judicial Conduct. Such conduct also constitutes misconduct in office and conduct that is prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(1) and (6).

Respondent did not clearly and convincingly violate the Code of Judicial Conduct in his imposition of lighter sentences on high school students for motor vehicle violations. The appearance created by his sentencing practices was, nevertheless, misleading and confusing.

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In determining appropriate discipline, in addition to the conduct itself, consideration of aggravating and mitigating factors is relevant. Aggravating factors to be considered 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, an abuse or misuse of judicial authority, and whether the conduct has been repeated or has harmed others. In re Seaman, 133 N.J. at 98-99 (citations omitted). These considerations acquire the utmost significance, especially in our municipal courts where the greatest number of people are exposed to the judicial system. In re 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, 166-67 (1977).

Here, there exist significant aggravating factors. First, the range of misconduct at issue – most especially impairment on the bench on two occasions, inappropriate public behavior, misuse of the judicial office, abuse of the contempt power and repeated displays of intemperate conduct -- demonstrates a significant lack of integrity and probity, very poor judgment, questionable demeanor and temperament, and compromised objectivity and impartiality. Contrary to Respondent's representations at the hearing, the Committee has previously considered Respondent's conduct in a separate matter involving Respondent's interpretation of N.J.S.A. 39:3-40. Although the Committee decided against disciplinary action in that matter, it did notify Respondent, in writing, of the Committee's disagreement with his 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 In re Sasso, ACJC 2004-271.

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).

There are mitigating factors. It does appear that Respondent suffered extremely serious injuries resulting from an automobile accident and has endured a continuing painful aftermath, including major surgery. His condition has required continuous treatment and medication. Respondent relies upon his medical condition as a mitigating factor. He cites In re Piscal, 177 N.J. 525 (2003), for support of his contention that his personal injury and physical condition constitute mitigating factors. Unlike that case, here, Respondent's misconduct was not an aberration that occurred within the context of serious health problems. Rather his misconduct was repetitive and continuous and involved reckless, if not deliberate, disregard for the warning

labels on his medication, which indicated that he should not mix his medication with alcohol. Respondent's medical infirmities, while real and unfortunate, do not excuse his improper exercise of judicial authority nor his abuse of the judicial office. Nor can his condition explain or overcome a continuing course of misconduct involving misuse of judicial authority and intemperate behavior. See In re Yaccarino, supra, 101 N.J. at 394 (1985) (stating judge's medical condition did not "alter the quality of respondent's breach of ethics or provide a defense in these removal proceedings."); see also In re Giles, supra, ACJC Presentment at pp. 7-8 (observing that Respondent's medical condition and family problems did not excuse misconduct.).

The circumstances surrounding Respondent's misconduct involving impairment in the performance of judicial duties, the misuse of the judicial office, and the abuse and arbitrary exercise of judicial authority, call for public discipline. Far from representing aberrational behavior or episodic lapses, Respondent's misconduct was repetitive, egregious and pronounced. By his actions, Respondent has demonstrated a consistent lack of proper judicial temperament and fitness, poor judgment and unsuitable demeanor. Such repeated and blatant misconduct impugns the integrity and impartiality of the judiciary, gravely undermines public confidence in the justice system, and seriously prejudices the administration of justice. Respondent's misconduct would warrant removal from the bench. Because he has heretofore resigned his judicial offices, it is recommended that he be permanently disqualified from holding or securing future judicial office.

The Committee points out that Respondent's derelictions in respect of engaging in a prohibited conflict of interest in representing a municipal entity and in imposing apparent special sentences on high school students for motor vehicle offenses would not, if considered in

isolation, necessarily warrant public discipline. Due to the other findings regarding Respondent, however, the Committee's recommendation as to Respondent's permanent disqualification from holding or securing future judicial office remains unchanged.

Finally, the Court's power to discipline an attorney because of misconduct in office has long been recognized. In re Mattera, 34 N.J. 259, 264-65 (1961) (observing that "the judge's role is so intimate a part of the process of justice that misbehavior as a judge must inevitably reflect upon qualification for membership at the bar."). As further explained:

> 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. Thus it may require removal from public office. It may also require criminal prosecution. Still further it may require that the roster of attorneys be cleansed of a miscreant. The remedies are not cumulative to vindicate a single interest; rather each is designed to deal with a separate need.

Id. at 266-67. Part-time municipal court judges can be subject to dual but separate discipline for misconduct that implicates their respective judicial and attorney roles. E.g. In re Korpita, D-43 September Term 2008, Order of the Supreme Court dated February 2, 2009 (recognizing that part-time municipal court judge convicted of a crime of the third degree and barred from holding public office was still subject to professional discipline as an attorney and suspended from the private practice of law for three months for violating the Rules of Professional Conduct).

Here, Respondent engaged in the private practice of law in addition to his part-time judicial responsibilities. His misconduct, including disorderly behavior in a public place prompting police involvement, strongly reflects on his professional character, fitness and trustworthiness as an attorney and implicates a breach of ethical strictures governing attorneys under the Rules of Professional Conduct. As noted in In re Principato, 139 N.J. 456, 460 (1995), "[R]espondent's conviction of the disorderly persons offense of simple assault is clear and

convincing evidence that he has violated *RPC 8.4(b)* [by committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer]." See In re Magid, 139 N.J. 449, 452 (1995) (determining that the private conduct of attorneys may be subject to professional discipline). Accordingly, it is recommended that Respondent's misconduct be considered as a basis for the imposition of discipline under the Rules of Professional Conduct.

Respectfully submitted,

**Advisory Committee on Judicial Conduct**

By: Alan B. Handler /pmN
Alan B. Handler, Chair

Dated: March 31, 2009