D-5-14
(074945)

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2013-037

IN THE MATTER OF MELANIE D. APPLEBY, JUDGE OF THE SUPERIOR COURT	**PRESENTMENT**

The Advisory Committee on Judicial Conduct (the "Committee") 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 Melanie D. Appleby, Judge of the Superior Court ("Respondent"), have been proven by clear and convincing evidence. As a consequence of these Findings, the Committee recommends Respondent be suspended from the performance of her judicial duties, without pay, for a period of one month.

I. PROCEDURAL HISTORY

This matter was initiated with the filing of an ethics grievance against Respondent by her ex-husband, Christopher Donohue, on October 2, 2012. See Presenter's Exhibits at P1. Mr. Donohue augmented his ethics grievance by letter dated

February 5, 2013 to which he attached additional documentation in support of his claims against Respondent. See Presenter's Exhibits at P2. In his grievance and supplemental correspondence, Mr. Donohue detailed a series of events involving Respondent and Frank A. Louis, Esq. which he contended evinced Respondent's conflict of interest with Mr. Louis on a date several months earlier than that reported by Respondent, and during a period of time when Mr. Louis was appearing before Respondent in various matters docketed in the Family Part of the Ocean County Superior Court. In addition, Mr. Donohue inferred that Respondent was involved with Mr. Louis in the concealment of that conflict, which included the transmission of a letter to Mr. Donohue's counsel surreptitiously authored by Mr. Louis on the law firm stationery of Biel, Zlotnick & Feinberg, P.A. that bore the forged signature of attorney Mark Biel.

The Committee conducted an investigation into Mr. Donohue's allegations and, as part of that investigation, interviewed five individuals, including Respondent. P9 - P14. In addition, the Committee collected and reviewed documentation relevant to Mr. Donohue's allegations. P3 - P8; P15 - P19.

On November 4, 2013, the Committee issued a Formal Complaint against Respondent, consisting of two counts, in which Respondent was charged with three separate acts of judicial misconduct. In Count I, Respondent was charged with two ethical

improprieties: (1) creating a conflict of interest with an attorney appearing before her - Frank A. Louis, Esq. -- by meeting with that attorney in her chambers to solicit his legal representation in a personal matter, in violation of Canons 1, 2A, 5A(1), and 5A(3) of the Code of Judicial Conduct; and (2) facilitating or acquiescing in the concealment of that conflict of interest in violation of Canons 1, 2A and 5A(2) of the Code of Judicial Conduct. In Count II, Respondent was charged with engaging in a conflict of interest by failing to immediately disqualify herself from any matters in which Mr. Louis was involved, in violation of Canons 1 and 2A, and 3C(1) of the Code of Judicial Conduct.

Respondent filed an Answer to the Complaint on November 21, 2013 in which she admitted the essential factual allegations of the Complaint to the extent those facts related to her conduct, with some clarification, and admitted creating and engaging in a conflict of interest with Mr. Louis as alleged in Counts I and II, but denied any intent to do so, and denied that such conduct violated Canons 5A(1) and 5A(3) of the Code of Judicial Conduct. In respect of the remainder of the allegations in Count I, Respondent, though admitting she "should have known" that Mr. Louis was representing her interests in her personal matter, denied "consciously" recognizing that fact, and denied "intentionally" facilitating or acquiescing in the concealment

of her conflict with Mr. Louis in violation of Canons 1, 2A and 5A(2) of the Code of Judicial Conduct.

On May 12, 2014, Presenter and Respondent filed with the Committee a set of Stipulations in which Respondent again admitted her conduct as alleged in both counts and conceded to its impropriety vis-à-vis her role in creating and engaging in a conflict of interest with Frank A. Louis, Esq. in violation of Canon 3C(1) of the Code of Judicial Conduct. Consistent with her Answer, however, Respondent did not concede that such improprieties violated Canon 5A of the Code of Judicial Conduct or that she facilitated or acquiesced in the concealment of that conflict.

The Committee convened a Formal Hearing on May 29, 2014 at which Respondent appeared, with counsel, and offered testimony both in mitigation and defense of the asserted disciplinary charges. In addition, the Presenter called Frank A. Louis, Esq. as a witness with regard to Respondent's conduct in facilitating or acquiescing in the concealment of a conflict as alleged in Count I of the Formal Complaint. Exhibits were offered by the Presenter and Respondent all of which were admitted into evidence, as were the Stipulations previously referenced. See P1 thru P19; see also R1 thru R44; Stipulations filed May 12, 2014. Both parties submitted post-hearing briefs, which were filed on June 20, 2014 and considered by the Committee.

After carefully reviewing all of the evidence, the Committee makes the following findings, supported by clear and convincing evidence, which form the basis for its recommendation.

II. FINDINGS

A. Stipulated and Uncontested Facts

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1994. Stipulations at ¶1. At all times relevant to this matter, Respondent served as a Judge of the Superior Court of New Jersey, assigned to the Chancery Division, Family Part, in the Ocean County Vicinage, a position she continues to hold. Id. at ¶2. Respondent has served in this capacity for three years, having first been appointed to the Superior Court in July 2011. 1T4-1-15.[1]

The salient facts germane to this judicial disciplinary matter are uncontested and the subject of a Stipulation, as is Respondent's misconduct in creating and engaging in a conflict of interest with Frank A. Louis, Esq. Those facts are as follows. During the first week of May 2012, Respondent received a letter from her ex-husband, Christopher Donohue, dated May 3, 2012, in

[1] "1T" refers to the Transcript of Interview of Respondent conducted on May 8, 2013, which is designated as P9 in the record.

which he sought Respondent's agreement to voluntarily terminate Mr. Donohue's child support obligations in respect of their son, whose graduation from college was imminent (the "Donohue Letter"). Stipulations at ¶¶3 - 6; see also P3. In that letter, Mr. Donohue made reference to the terms of the couple's Property Settlement Agreement, which he construed to relieve him of his child support obligations for their son following his graduation from college and ensuing emancipation. P3. Feeling extremely anxious and upset by the Donohue Letter, which she construed as a "warning" from her ex-husband, and believing a response was necessary, Respondent promptly sought legal representation to assist her in responding to the Donohue Letter. Stipulations at ¶7; see also 2T38-1 to 2T39-20.[2]

Shortly thereafter, on Monday, May 7, 2012, two business days subsequent to her receipt of the Donohue Letter, Respondent, through her secretary, arranged to meet with Frank A. Louis, Esq. Stipulations at ¶¶8, 11-12. The stated purpose of that meeting was to discuss the Donohue Letter and Mr. Louis's possible representation of Respondent in respect of that matter, which would necessarily include his crafting a rejoinder to the Donohue Letter on Respondent's behalf. Stipulations at ¶¶8, 11-12; see

[2] "2T" refers to the Transcript of Interview of Respondent conducted on May 30, 2013, which is designated as P10 in the record.

also P4. Immediately prior to initiating this meeting, Respondent was aware that Mr. Louis served as counsel of record in two pending matrimonial cases assigned to her court. Stipulations at ¶10. Respondent was, in fact, familiar with Mr. Louis given his status as a senior member of the New Jersey State Bar and a seasoned family law practitioner with an office in Ocean County. Stipulations at ¶9.

Respondent nonetheless met with Mr. Louis in her chambers on Tuesday, May 8, 2012, to discuss with him the Donohue Letter and to seek his legal representation. Stipulations at ¶13. During that meeting, to which she brought the Donohue Letter, Respondent and Mr. Louis discussed the letter, the legal issues raised by virtue of that letter, and the details of her divorce from Mr. Donohue. Id. at ¶¶14-15. For his part, Mr. Louis raised with Respondent directly his concerns about the conflict of interest created in the event he undertook to represent her, and openly expressed to Respondent his desire to avoid being added to her disqualification list, all of which Respondent acknowledged during the course of their discussion. Id. at ¶¶16-17; see also 1T22-2 to 1T24-21; 3T12-20 to 3T13-3; 3T23-18 to 3T24-19.[3] Mr. Louis had, at that time, a conflict with two of the four Family Part judges in Ocean County and did not want to add Respondent as

[3] "3T" refers to the Transcript of Interview of Frank A. Louis, Esq. conducted on March 15, 2013, which is designated as P11 in the record.

an additional conflict. 3T12-20 to 3T13-3. Given these concerns, Mr. Louis offered to "work something" out whereby he would assist Respondent with the legal issues raised by the Donohue Letter, as she had requested, while still maintaining his ability to appear before Respondent on behalf of his other clients. Id. at ¶18; see also 2T11-1-12. By all accounts, this offer included Mr. Louis's assistance in identifying and securing alternate counsel to represent Respondent. 2T35-1-23; 3T15-25 to 3T16-17. Respondent, indeed, expressly understood Mr. Louis's offer to include *two* significant elements: (1) help in identifying and securing alternate counsel; and (2) assent to draft a letter on her behalf in reply to the Donohue Letter as a means by which to secure alternate counsel, which would then be used by alternate counsel when representing Respondent. 1T57-17 to 1T58-3; see also 2T35-1-11; 2T44-2 to 2T47-13. Following this exchange, Respondent's meeting with Mr. Louis ended. Stipulations at ¶18.

Respondent and Mr. Louis did not communicate again about the Donohue Letter until June 21, 2012, more than six weeks after their initial meeting on May 8, 2012. P5; see also 3T19-11-17. During this six week lull, Respondent did not solicit legal representation from any other attorneys in respect of the Donohue Letter or speak with Mr. Louis about the status of his efforts to secure alternate counsel on her behalf. 1T28-6-25; Stipulations at ¶21. Respondent's notable silence in this regard continued

despite Mr. Louis's appearance before Respondent on June 19, 2012 as counsel to the defendant in the matter of Cornick v. Cornick, Docket No. FM-15-557-12W.[4] Stipulations at ¶¶37-38; see also P16.

On June 21, 2012, following their six weeks of silence and without so much as a preamble, Mr. Louis's office transmitted to Respondent an email to which was attached a draft letter in response to the Donohue Letter ("Louis Letter"). P-5; see also Stipulations at ¶¶22-23. Respondent, having anticipated receipt of such a letter from Mr. Louis, knew instinctively that he had drafted it, and understood that her review and approval was necessary before the letter could be finalized. Stipulations at ¶¶23-24; see also 3T26-23 to 3T27-19.

The Louis Letter lacked the conventional formatting of a business letter, appearing on plain stationery rather than law firm stationery and without an address, complimentary close, or signature line. Id. at ¶25. At the top of the letter were the words "**BIEL LETTERHEAD**" prominently displayed in capitalized and bold typeface. Id. at ¶¶25-26. Respondent, having not spoken with Mr. Louis prior to her receipt of the Louis Letter and being

[4] At this appearance, Respondent heard from Mr. Louis and opposing counsel in the Cornick matter, and took testimony from the parties regarding a settlement agreement, after which Respondent entered a Final Judgment of Divorce. Stipulations at ¶¶39-40.

wholly unfamiliar with Atlantic County attorney Mark Biel, Esq., did not appreciate the meaning of Mr. Louis's reference to "**BIEL LETTERHEAD**," and did not inquire of Mr. Louis as to its meaning. Id. at ¶27; see also 2T6-13-21.

In the body of the Louis Letter, which consisted of five pages, Mr. Louis challenged Mr. Donohue's position as to the termination of child support vis-à-vis the couple's son, raised legal arguments in opposition to Mr. Donohue's position as to emancipation, including citations to relevant case law, and raised new issues concerning Mr. Donohue's financial obligations to the couple's daughter. P5. In addition, Mr. Louis provided two alternate conclusions to the Louis Letter, presumably expecting Respondent to choose one. Ibid. The first possible conclusion encouraged Mr. Donohue to seek counsel and demanded that he provide Respondent's counsel with financial information. Ibid. The second option provided for a global resolution of the couple's child support issues and again sought an exchange of financial information. Ibid.

Respondent reviewed and edited the Louis Letter and on the following day, June 22, 2012, emailed a revised copy of that letter to Mr. Louis. Stipulations at ¶28. In her reply email, Respondent explained her edits to Mr. Louis, thanked him for writing it, and concluded with the following remark: "I love the letter just as it is, and do not choose to go the route of the

alternate proposal at this time." P5; see also Stipulations at ¶28. A few hours later, Mr. Louis emailed Respondent seeking Mr. Donohue's address, which Respondent provided to him that same evening in a reply email. P6.

Four days later, on June 26, 2012, Respondent received from Mr. Louis, via email, an identical copy of the Louis Letter with Respondent's edits incorporated, which had evidently been mailed to Mr. Donohue in response to his letter of May 3, 2012, i.e. the Donohue Letter. P7. This version of the Louis Letter, however, appeared on the law firm stationery of "Biel, Zlotnick & Feinberg," and was purportedly signed by Mark Biel, Esq. ("Biel Letter"). P7; see also Stipulations at ¶29-31.

Prior to receiving from Mr. Louis a copy of the Biel Letter, Respondent had neither met nor spoken with Mr. Biel about the issues raised in the Donohue Letter, or provided him with any related documentation. Stipulations at ¶¶32-33; see also 1T33-20 to 1T35-3; 2T6-20; 2T12-18-19. Likewise, subsequent to her receipt of the Biel Letter, which she recognized to be identical to that of the Louis Letter, Respondent never spoke with Mr. Biel or questioned Mr. Louis as to how Mr. Biel became involved in representing her legal interests. 2T31-23 to 2T32-10; 2T47-1-13. Respondent's notable silence in this regard continued despite Mr. Louis's subsequent appearance before Respondent as counsel for the plaintiff in the matter of Kelly v. Kelly, Docket No. FM-15-

798-12W, on July 17, 2012. Stipulations at ¶¶41-42.[5] Indeed, to this day, Respondent has *never* spoken with Mr. Biel about the Biel Letter, or with Mr. Louis about Mr. Biel's prior involvement, if any, in representing her interests in that matter, or his compensation for doing so. Stipulations at ¶34; see also 4T18-17 to 4T-9.[6]

On July 18, 2012, Mr. Biel received a telephone call from Catherine Tambasco, Esq., who had been retained by Mr. Donohue following his receipt of the Biel Letter. P1 at attachment 3; see also 4T8-17 to 4T10-2. Mr. Biel, having not been retained to represent Respondent and having not received a single document related to the Donohue Letter, including the letter itself, was taken aback by Ms. Tambasco's telephone call. Ibid; see also 4T10-16 to 4T12-5; 4T24-23 to 4T25-7. Prior to speaking with Ms. Tambasco, Mr. Biel was, in fact, completely unaware of the existence of the Biel Letter and the legal issues to which it related. 4T8-12 to 4T10-2; 4T28-4-12. He had not so much as opened a file on Respondent's matter. Ibid. At Mr. Biel's

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[5] The Kelly matter involved complex issues related, in part, to defendant's medical records and personnel file, which required Respondent to enter both consent and protective orders between July 17, 2012 and July 20, 2012. Stipulations at ¶¶42-47; see also P17.

[6] "4T" refers to the Transcript of Interview of Mark Biel, Esq. conducted on July 8, 2013, which is designated as P14 in the record.

request, Ms. Tambasco faxed to him a copy of the Biel Letter along with the documents relevant to Respondent's divorce from Mr. Donohue. P1 at attachment 3; see also 4T9-20 to 4T10-25.

Several weeks earlier, Mr. Louis had telephoned Mr. Biel to discuss Mr. Biel's possible representation of Respondent in respect of the Donohue Letter. 4T6-4 to 4T7-21. Though reluctant to represent Respondent, Mr. Biel acceded to Mr. Louis's request for a copy of his stationery on which it was understood that Mr. Louis would draft a letter of representation for Mr. Biel's review and signature. Ibid.; see also 4T7-22 to 4T8-11. Mr. Biel heard nothing further from Mr. Louis thereafter concerning Respondent's personal matter and assumed it had been resolved. 4T8-12 to 4T10-2; 4T28-4-12.

On July 19, 2012, Mr. Biel wrote to Mr. Louis enclosing a copy of the Biel Letter and advising Mr. Louis of his telephone discussion with Ms. Tambasco. P14 at attachment "P-3;" see also 4T14-5 to 4T16-20. In that letter, Mr. Biel conveyed to Mr. Louis his discomfort with the "process" employed by Mr. Louis (i.e. his unauthorized dissemination of the Biel Letter), and suggested Mr. Louis speak with Respondent. P14 at attachment "P-3;" see also 4T17-15 to 4T18-6.

On August 13, 2012, Mr. Louis wrote to Ms. Tambasco declaring, publicly and for the first time, his representation of Respondent in her dispute with Mr. Donohue, and setting forth his

opinion as to the relevant legal issues. P11 at attachment "FL#4." Respondent was copied on this correspondence. Stipulations at ¶35. Thereafter, on August 24, 2012, Mr. Louis wrote to opposing counsel in the Kelly matter advising that his office was "in conflict with Judge Appleby." Stipulations at ¶48; see also P18. For her part, Respondent first alerted her Assignment Judge of her conflict with Mr. Louis on September 4, 2012. P19.

B. Formal Hearing

Given Respondent's partial acknowledgement of wrongdoing as charged in the Formal Complaint concerning her creation of and engagement in a conflict of interest, and her denial of wrongdoing as it pertains to her facilitation of or acquiescence in the concealment of that conflict, the issues addressed at the hearing were three-fold: (1) whether Respondent violated Canons 5A(1) and 5A(3) of the Code of Judicial Conduct by creating and engaging in a conflict of interest with Frank A. Louis, Esq.; (2) whether Respondent facilitated, or minimally acquiesced in, the concealment of that conflict in violation of Canons 1, 2A and 5A(2) of the Code of Judicial Conduct; and (3) the appropriate quantum of discipline for Respondent's ethical infractions.

As to the first issue, the Committee heard testimony from Respondent, who again conceded her misconduct in both creating

and engaging in a conflict of interest with Mr. Louis. Specifically, Respondent testified that she created a conflict of interest when she met with Mr. Louis on May 8, 2012 to discuss his willingness to represent her in a legal dispute with her ex-husband concerning child support for their college-aged children and accepted his legal assistance in dealing with that matter. 5T109-6-21; 5T146-12 to 5T148-10.[7] Similarly, Respondent acknowledged that having created a conflict with Mr. Louis, she should not have thereafter presided over the Cornick and Kelly matters in June and July 2012, respectively, in which Mr. Louis appeared as counsel, and that by doing so she engaged in a conflict of interest. Ibid.; see also 5T120-6 to 5T121-9; 5T124-11-14; 5T138-18 to 5T139-14. Respondent's testimony in this regard corresponded substantially with the Stipulations of record in this matter. Those admissions notwithstanding, Respondent maintained that her extra-judicial misconduct did not violate Canons 5A(1) and 5A(3) of the Code of Judicial Conduct. In this regard, Respondent believed that her conduct in respect of the creation of a conflict of interest with Mr. Louis and her subsequent engagement in that conflict did not cast reasonable doubt on her capacity to act impartially as a judge or interfere

[7] "5T" refers to the Transcript of Formal Hearing, In re Appleby, ACJC 2013-037, which was conducted on May 29, 2014.

with the proper performance of her judicial duties. 5T125-24 to 5T127-2; see also Formal Complaint at ¶32; Answer at ¶32.

In respect of the second issue, i.e. whether Respondent facilitated or acquiesced in the concealment of her conflict with Mr. Louis, Respondent denied engaging in this misconduct, claiming she lacked sufficient knowledge to have done so. Specifically, Respondent testified that she was ignorant of several facts: (1) the arrangement between Messrs. Louis and Biel concerning the exchange of Mr. Biel's letterhead; (2) that Mr. Louis had signed the Biel Letter without Mr. Biel's authorization; and (3) that Mr. Louis, not Mr. Biel, sent the Biel Letter to Mr. Donohue without Mr. Biel's knowledge or consent. 5T116-13 to 5T117-4; 5T117-14 to 5T118-15. Mr. Louis's testimony in respect of this limited issue, i.e. Respondent's knowledge of Mr. Louis's interaction with Mr. Biel, corresponded largely with that of Respondent. 5T56-3-7. The remainder of Respondent's testimony on this issue was consistent with the Stipulations of record; namely that Respondent spoke only with Mr. Louis in respect of the Donohue Letter and its legal implications despite knowing of his desire to avoid a conflict with Respondent, and consented to his drafting of the Louis Letter, which was subsequently disseminated under Mr. Biel's letterhead and name. 5T153-24 to 5T167-19.

On the issue of quantum of discipline, Respondent offered testimony in mitigation of her admitted misconduct. That testimony concerned the multiple personal problems she was then confronting, which included a succession of issues with her aging parents and her marriage to her second husband, the sum total of which purportedly clouded her judgment. 5T100-11 to 5T106-15; 5T112-11 to 5T114-19; see also R1 thru R44. Those issues concerned her parent's deteriorating health and their concomitant inability to care for themselves, the condemnation of her childhood home as a consequence of her parents failure to maintain the property, her mother's failing mental health and subsequent hospitalization, her father's admission to a nursing home, and the decline of her second marriage due to her husband's alleged problems with substance abuse. Ibid. These issues caused Respondent to seek treatment from a licensed clinical social worker beginning on October 25, 2012. R40. Respondent's treatments with a licensed clinical social worker were ongoing as of May 12, 2014. Ibid. In addition, Respondent offered into evidence letters from various attorneys and members of the Ocean County community attesting to her good character. R29 thru R39; R41 thru R44.

III. Analysis

The burden of proof in judicial disciplinary matters is clear-and-convincing. Rule 2:15-15(a). Clear and convincing

evidence is that which "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence, so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the precise facts in issue." In re Seaman, 133 N.J. 67, 74 (1993) (citations and internal quotations omitted). This standard may be satisfied with uncorroborated evidence. In re Williams, 169 N.J. 264, 273 n.4 (2001) (citing In re Seaman, supra, 133 N.J. at 84).

In this judicial disciplinary matter, Respondent has been charged with three separate, though interrelated, ethical violations arising out of a single factual scenario, only one of which she contests: (1) creating a conflict of interest with an attorney appearing before her in violation of Canons 1, 2A, 5A(1) and 5A(3) of the Code of Judicial Conduct; (2) facilitating or acquiescing in the concealment of that conflict in violation of Canons 1, 2A and 5A(2) of the Code of Judicial Conduct; and (3) engaging in a conflict of interest by failing to disqualify herself timely from those court matters in which the subject attorney with whom she had a conflict was involved, in violation of Canons 1 and 2A, and 3C(1) of the Code of Judicial Conduct. We find, based on our review of the uncontroverted evidence in the record and Respondent's partial admissions of wrongdoing, that these charges have been proven by

clear and convincing evidence, and that Respondent's conduct violated the cited Canons of the Code of Judicial Conduct.

As a general matter, judges are charged with the duty to abide by and enforce the provisions of the Code of Judicial Conduct and the Rules of Professional Conduct. R. 1:18 ("It shall be the duty of every judge to abide by and to enforce the provisions of the Rules of Professional Conduct, the Code of Judicial Conduct and the provisions of R. 1:15 and R. 1:17."). This obligation applies equally to a judge's professional and personal conduct. In re Hyland, 101 N.J. 635 (1986) (finding that the "Court's disciplinary power extends to private as well as public and professional conduct by attorneys, and *a fortiori* by judges.") (internal citation omitted).

Pertinent to this judicial disciplinary matter is a review of a jurist's ethical obligations as mandated by Canons 1, 2A, 3C(1) and 5A of the Code of Judicial Conduct. 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 conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

As the Commentary to Canon 2 explains:

> Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance

> of impropriety and must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

Code of Judicial Conduct, Canon 2, Commentary.

This Commentary emphasizes the special role that judges play in our society and the significance of their public comportment. "[J]udges have a special responsibility because they are 'the subject of constant public scrutiny;' everything judges do can reflect on their judicial office. When judges engage in private conduct that is irresponsible or improper, or can be perceived as involving poor judgment or dubious values, '[p]ublic confidence in the judiciary is eroded.'" In re Blackman, 124 N.J. 547, 551 (1991).

On the issue of judicial disqualification, which is of fundamental concern in this matter, Canon 3C(1) provides that a "judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." See also Rule 1:12-1(g) (requiring judges to disqualify themselves *sua sponte* when any reason exists "which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so").

The reach of these ethical precepts to the conduct of judges in their personal lives is exemplified by the provisions of

Canon 5 of the Code of Judicial Conduct, which requires judges to conduct their extra-judicial activities in a manner that minimizes the risk of conflict with their judicial obligations. More specifically, Canon 5A compels judges to conduct all of their extra-judicial activities so as not to: (1) "cast reasonable doubt" on their "capacity to act impartially as a judge;" (2) "demean the judicial office;" or (3) "interfere with the proper performance of judicial duties."

In the instant matter, the evidence demonstrates, clearly and convincingly, that Respondent failed to conduct herself in a manner consistent with these high ethical standards, and in at least one instance did so intentionally, for which public discipline is necessary.

We begin our analysis with a discussion of the conduct in which Respondent admits participating, i.e. creating and engaging in a conflict of interest in violation of Canon 3C(1) of the Code of Judicial Conduct. Respondent acknowledges that by soliciting Mr. Louis's legal counsel in a personal matter while knowing of his ongoing involvement as counsel of record in two pending matrimonial matters over which she was then presiding, Respondent created a conflict of interest with Mr. Louis for which her immediate recusal was necessary. Respondent further concedes that by failing to add Mr. Louis to her conflicts list for a period of four months, during which time

Mr. Louis assisted her with a personal matter while simultaneously appearing before her in the Cornick and Kelly matters, Respondent engaged in a conflict of interest in violation of Canon 3C(1) of the Code of Judicial Conduct.

Respondent hastens to add, however, for purposes of mitigation, that her conduct in both instances was unintentional and the byproduct of her extremely emotional state at the time, which was occasioned by the turmoil then occurring in her personal life. In addition and also by way of mitigation, Respondent contends that the conflict in which she engaged, though admittedly improper, involved matters that were "extraordinarily routine" in nature, i.e. the uncontested divorce proceeding in Cornick and her limited involvement in the Kelly matter. Rb4-6; Rb6-12.[8]

Given the uncontroverted evidence in the record relating to these charges and Respondent's admissions of wrongdoing, we reach the same conclusion, i.e. that Respondent created and engaged in a conflict of interest. We further conclude that such conduct violates Canons 1, 2A, 3C(1), 5A(1) and 5A(3) of the Code of Judicial Conduct for which significant public discipline is appropriate. We are frankly struck by

[8] Consistent with Rule 2:6-8, references to the Presenter's and Respondent's post-hearing briefs will be designated as "Pb" and "Rb" respectively. The number following this designation signifies the page at which the information may be found.

Respondent's seeming carelessness in engaging in the conduct that led to this conflict, which was at all times entirely within her purview and control.

We view Respondent's creation of a conflict with Mr. Louis self-evident considering the express purpose for her meeting with him, which by all accounts was to retain Mr. Louis's legal services in a personal matter, and in light of her admitted knowledge of his then ongoing involvement as counsel in two matrimonial matters pending before her. In meeting with Mr. Louis to discuss his possible representation of Respondent in a personal matter, Respondent assumed the status of a "prospective client" to whom Mr. Louis owed a fiduciary duty. RPC 1.18(d) (defining "prospective client" to include a "person who discusses with a lawyer the possibility of forming a client-lawyer relationship"). Specifically, as a "prospective client," Mr. Louis was constrained to refrain from using or revealing information gleaned from Respondent during that consultation. RPC 1.18(a).[9] In addition, by Respondent's own admission, Mr.

[9] Notably, such meetings, which are endemic in the legal profession, are not without consequence for the attorney involved in the meeting, irrespective of whether that meeting results in an attorney-client relationship as it did in this matter. In the event no attorney-client relationship materializes, the "prospective client" becomes a "former prospective client" to whom the attorney and that attorney's firm owe certain fiduciary duties. See RPC 1.18(b) (prohibiting, in certain circumstances, an attorney from representing a client "with interests materially adverse to those of a former

Louis assumed the added responsibility of identifying alternate counsel for Respondent and drafting a response to the Donohue Letter on Respondent's behalf, conduct which enured to Respondent's benefit.[10]

By virtue of Respondent's status as a "prospective client" to whom Mr. Louis owed a fiduciary duty, a circumstance entirely of Respondent's own making, and as a further consequence of her agreement to accept his assistance prior to publicly solidifying their attorney-client relationship, Respondent created a conflict with Mr. Louis that necessitated her immediate disqualification from any matter in which Mr. Louis was then appearing before her or in which his firm was involved. In so

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prospective client in the same or a substantially related matter"); RPC 1.18(c) (prohibiting, in limited circumstances, the attorneys associated with the disqualified attorney from representing clients with interests materially adverse to those of the former prospective client); RPC 1.18(d) (defining "former prospective client" as a "person who discusses with a lawyer the possibility of forming a client-lawyer relationship" but ultimately no client-lawyer relationship is formed"); see also O Builders & Assoc., Inc. v. Yuna Corp. of NJ, 206 N.J. 109 (2011) (defining the scope and application of RPC 1.18).

[10] We find incredible Mr. Louis's testimony that he drafted the Louis Letter for Mr. Biel's benefit. 5T41-21 to 5T42-3. It is axiomatic that Mr. Biel did not, nor was he expected to, receive a benefit from the Biel Letter. That letter was written for Respondent and without Mr. Biel's knowledge or consent. The Biel Letter, in fact, exceeded Mr. Biel's initial expectation that Mr. Louis would merely draft a letter of representation for his review and approval. 4T7-13-21. It was the Biel Letter, in fact, that thrust Mr. Biel into this disciplinary matter, a circumstance that can hardly be construed as a benefit to Mr. Biel.

doing, Respondent impugned the integrity and impartiality of the Judiciary by placing her personal concerns over her judicial obligations and causing disruption in the court's operations, in violation of Canons 1 and 2A of the Code of Judicial Conduct. Moreover, as the creation of this conflict and its resultant disruption to the court system was occasioned directly by Respondent's conduct in her personal life, and necessitated her recusal from the Cornick and Kelly matters, the latter of which Respondent had handled exclusively for the previous nine months, Respondent also violated Canons 5A(1) and 5A(3) of the Code of Judicial Conduct.

In her attempt to minimize her conduct in creating a conflict with Mr. Louis, Respondent relies erroneously on Mr. Louis's testimony at the Formal Hearing that he did not view his meeting with Respondent in May 2012 as an "initial consultation," and therefore did not do that which he would "normally" do when engaging a new client, i.e. take notes and request documentation relevant to the matter. Rb3. We attribute no weight to Mr. Louis's testimony on this issue. His stated failure to do that which he "normally" would do when speaking with a new client does not alter Respondent's status as a "prospective client," and is by no means dispositive of this issue. See RPC 1.18(d). Indeed, given Mr. Louis's stated intention to avoid creating a conflict of interest with

Respondent, and in light of his subsequent conduct in surreptitiously drafting the Louis/Biel Letters using Mr. Biel's letterhead and forging Mr. Biel's signature, we view his testimony in this regard and the conduct to which it relates with a jaundiced eye. It is sufficient that Respondent met with Mr. Louis to discuss his legal representation of her in a personal matter and that Mr. Louis understood it as such, all of which Respondent concedes evinces her creation of a conflict of interest with Mr. Louis.

Having concluded that Respondent created a conflict with Mr. Louis, we turn next to Respondent's subsequent conduct in failing to recuse from the Cornick and Kelly matters despite that conflict for a period of four months, i.e. May 8, 2012 to August 13, 2012. In evaluating this issue, we are guided by the standard first enunciated by our Supreme Court in DeNike v. Cupo, 196 N.J. 502, 514-15 (2008) for determining when and under what circumstances a conflict exists - "would a reasonable, fully informed person have doubts about the judge's impartiality." DeNike, 196 N.J. at 517. If so, then a conflict exists for which judicial disqualification is necessary. This standard applies equally to findings of actual prejudice and the appearance of impropriety or bias:

> Our rules, . . . , are designed to address actual conflicts and bias as well as the appearance of impropriety. . . . '[I]t is not

> necessary to prove actual prejudice on the part of the court[;] . . . the mere appearance of bias may require disqualification. . . . [T]he belief that the proceedings were unfair must be objectively reasonable.'

[State v. McCabe, 201 N.J. 34, 43 (2010) (citing State v. Marshall, 148 N.J. 89, 270 (1995) (citing R. 1:12-1(f)), cert. denied, 522 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997))].

Applying this standard to the circumstances at issue, we believe a reasonable, fully informed person knowing of Respondent's reliance on Mr. Louis for assistance in her personal dispute with her ex-husband would have sincere doubts about Respondent's ability to remain impartial when presiding over the Cornick and Kelly matters in which Mr. Louis was intimately involved as counsel of record. In failing to disqualify herself immediately from the Cornick and Kelly matters following her meeting with Mr. Louis, and in continuing to preside over those matters, including the issuance of a Final Judgment of Divorce in the Cornick matter and consent and protective orders in the Kelly matter, Respondent engaged in a conflict of interest in violation of Canon 3C(1) and, by this conduct, failed to uphold the integrity and independence of the Judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct. Cf. In re Sciuto, 2003 N.J. Lexis 1132 (2003) (adopting ACJC's Presentment in ACJC 2000-105 censuring retired

judge for presiding over two cases in which he had a conflict of interest due to his ongoing involvement in financial dealings with a party and the party's attorney).

While Respondent maintains she lacked any intent to either create or engage in a conflict of interest, the facts in this record indicate unequivocally that Respondent knew when she engaged Mr. Louis in the meeting on May 8, 2012 that he had matters pending in her courtroom. Despite that knowledge, Respondent not only met with Mr. Louis on May 8, 2012 to discuss his representation of her in respect of the Donohue Letter, but accepted his assistance in responding to that letter, and thereafter, on June 22, 2012, reviewed and approved Mr. Louis's draft response to the Donohue Letter, i.e. the Louis Letter, an identical version of which Respondent knew was mailed to Mr. Donohue as the Biel Letter on June 26, 2012. In the midst of these events, Mr. Louis continued to appear before Respondent on behalf of his other matrimonial clients, once on June 19, 2012 in the Cornick matter and again on July 17, 2012 in the Kelly matter. Though vested with this knowledge and despite Mr. Louis's continued appearances as an advocate in her courtroom, Respondent failed on each occasion to add Mr. Louis to her conflicts list, a fact we find extremely disquieting. Given this chain of events and Respondent's professed knowledge of Mr. Louis's involvement throughout, we are simply unable to

reconcile Respondent's claimed lack of intent with her repeated failures to add Mr. Louis to her conflicts list. These facts, rather, lead to the inevitable conclusion that Respondent knew or should have known, or, at a minimum, was willfully ignorant to the existence of her conflict with Mr. Louis, a circumstance wholly incompatible with the high standards of conduct to which jurists are held under the Code of Judicial Conduct. Cf. In re Skevin, 104 N.J. 476, 486 (1986) (finding in an attorney disciplinary matter that willful blindness satisfies the requirement of knowledge. A willfully blind attorney who "is aware of the highly probable existence of a material fact but does not satisfy himself that it does not in fact exist," is as culpable as the attorney who knowingly misappropriates clients' funds); see also In re Irizarry, 141 N.J. 189 (1994) (finding in an attorney disciplinary matter that willful ignorance as to the transactions occurring in an attorney's trust account will not serve as a defense to proof of what would otherwise constitute a knowing misappropriation).

This leads us to the final charge against Respondent, arguably the most serious of the three charged offenses -- her facilitation or acquiescence in the concealment of her conflict with Mr. Louis in violation of Canons 1, 2A and 5A(2) of the Code of Judicial Conduct. To substantiate this allegation, it must be established, clearly and convincingly, that Respondent

knew of her conflict with Mr. Louis by virtue of his covert involvement in her personal affairs, and assisted him in concealing that conflict, or at the very least was willfully ignorant in that regard. We find, clearly and convincingly, based on the substantial circumstantial evidence in the record, that Respondent knew or should have known of her conflict with Mr. Louis as of May 8, 2012, or at best was willfully ignorant of that conflict, and, despite that knowledge, assisted or acquiesced in its concealment. Cf. In re Johnson, 105 N.J. 249, 258 (1987) (acknowledging in an attorney disciplinary matter that "an inculpatory statement is not an indispensable ingredient of proof of knowledge, and that circumstantial evidence can add up to the conclusion that a lawyer 'knew' or 'had reason to know' that clients' funds were being invaded.").

The term "facilitate" is defined in Black's Law Dictionary as "[t]he act or an instance of aiding or helping; . . . the act of making it easier for another person to commit a crime"). Black's Law Dictionary 627 (8th ed. 2004). The term "acquiesce" is defined as "a silent appearance of consent," or alternatively as "passive compliance or satisfaction." Id. at 24. In either instance, knowledge of the conflict and its concealment is a necessary component to proving Respondent's facilitation of or acquiescence in such conduct. Id.; Cf. In re Irizarry, supra, 141 N.J. at 193-194; In re Skevin, supra, 104 N.J. at 486.

The record in this matter establishes, irrefutably, that Respondent possessed the requisite knowledge of her conflict with Mr. Louis and of his desire to avoid appearing on her conflicts list as of their meeting on May 8, 2012. Respondent, nevertheless, accepted Mr. Louis's legal assistance, without first adding him to her conflicts list, and, in so doing, facilitated the concealment of that conflict.

We first address Respondent's knowledge of her conflict with Mr. Louis as of her meeting with him in May 2012. In this regard, we incorporate by reference our prior discussion of this issue found on pages twenty-eight and twenty-nine of this Presentment. In addition, we note several pertinent facts that we believe underscore Respondent's knowledge or, alternatively, her willful ignorance of that conflict. Mr. Louis raised with Respondent the issue of conflicts during their meeting in May. Given that discussion, Respondent was clearly on notice of a possible conflict and Mr. Louis's desire to avoid that conflict, yet accepted his offer to assist her in locating alternate counsel and drafting a letter in response to the Donohue Letter.

Respondent's acceptance of Mr. Louis's assistance continued through June 2012 when she received the Louis Letter and failed to assure herself that such conduct on the part of Mr. Louis did not create a conflict for her. Respondent's deficiencies in this regard are glaring considering the substance of the Louis

Letter, which may accurately be described as a somewhat detailed legal analysis of the issues raised by the Donohue Letter. Indeed, Respondent did not press Mr. Louis at any point during the intervening six weeks between May and June 2012 concerning the propriety of his conduct in assisting her with the Donohue Letter while remaining off of her conflicts list, or his progress in doing so. Her failure in this regard continued despite her receipt of a copy of the Biel Letter on June 26, 2012, which, though identical to the Louis Letter, bore the purported signature of Mr. Biel, an Atlantic County attorney with whom she had never spoken and about whom she was completely unfamiliar. Respondent did not so much as question Mr. Louis about Mr. Biel following her receipt of the Biel Letter or communicate directly with Mr. Biel concerning his apparent involvement in her personal matter, a fact we find exceedingly peculiar.

Even assuming, arguendo, that Respondent was unaware of her conflict with Mr. Louis by virtue of her meeting with him in May 2012, Respondent knew or should have known of that conflict upon her receipt of the Louis Letter on June 21, 2012. This fact can hardly be disputed given Respondent's admitted knowledge of Mr. Louis's conduct in ghostwriting the Louis Letter for the anticipated use by alternate counsel. Such limited legal assistance by an attorney, as was done here by Mr. Louis, though

permissible, is nonetheless the practice of law, the existence of which created a conflict for Respondent that necessitated her immediate recusal from his court matters. See Advisory Committee on Professional Ethics Opinion No. 713, 191 N.J.L.J. 302 (2008) (finding it permissible for attorneys to engage in limited representation, such as the communication of a client's position to a third-party, but opining that disclosure may be required in certain circumstances, and noting the applicability of New Jersey's Rules of Professional Conduct to such situations); see also RPC 1.2(c) ("A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent"); Cf. In re Opinion No. 24 of Comm. on Unauthorized Practice of Law, 128 N.J. 114 (1992) (modifying the decision of the Committee concerning a ban on all independent paralegals in New Jersey, and finding that with proper supervision by licensed New Jersey attorneys they could remain without running afoul of the prohibition against the unauthorized practice of law).

These facts, taken together, demonstrate, clearly and convincingly, Respondent's knowledge of her conflict with Mr. Louis as early as May 2012 and no later than June 21, 2012 when Mr. Louis was actively engaged in the practice of law on Respondent's behalf. Indeed, as was noted several times during the hearing in this matter, Mr. Louis was the *only* attorney

engaged in the practice of law on Respondent's behalf throughout these several months and for many months thereafter.

We turn now to Respondent's facilitation of or acquiescence in the concealment of that conflict. Though these terms - "facilitation" and "acquiescence" - have different meanings, they each connote deceptive behavior on the part of the one engaging in such conduct for the benefit of another. As such, we see no appreciable difference between the two in respect of the severity of Respondent's alleged misconduct. Whether Respondent facilitated or acquiesced in the concealment of her conflict with Mr. Louis, she would have engaged in intentional and egregious judicial misconduct for which significant public discipline would be warranted.

We find that the facts in the instant matter demonstrate, clearly and convincingly, Respondent's active participation in concealing her conflict with Mr. Louis. Those facts are indeed significant. Respondent, though knowing of her conflict with Mr. Louis no later than June 21, 2012, and aware in May 2012 of Mr. Louis's desire to remain off of her conflicts list, repeatedly failed to disclose her conflict with Mr. Louis for a period of four months, ultimately doing so on September 4, 2012, but only after Mr. Louis had agreed to "formally represent" her. In failing to add Mr. Louis to her conflicts list during this time period, Respondent aided in or, at a minimum, passively

complied with the concealment of her conflict with Mr. Louis, conduct which constitutes a stark violation of Canons 1, 2A and 5A(2) of the Code of Judicial Conduct.

In denying this allegation, Respondent claims she was incapable of facilitating or acquiescing in the concealment of her conflict with Mr. Louis as she was ignorant of the facts necessary to have done so. Those facts to which Respondent refers relate exclusively to Mr. Louis's conduct when interacting with Mr. Biel. Specifically, Respondent claims she was unaware Mr. Louis: (1) obtained Mr. Biel's letterhead; (2) failed to forward a copy of the Louis Letter to Mr. Biel for his review and approval prior to inserting it onto Mr. Biel's letterhead; (3) failed to send a copy of the Biel Letter to Mr. Biel for his review and approval prior to it being sent to Mr. Donohue; (4) signed the Biel Letter on Mr. Biel's behalf without Mr. Biel's knowledge or consent; and (5) mailed the Biel Letter without Mr. Biel's knowledge or consent and without providing him a copy. Rb9. Respondent also notes that she was unaware of Mr. Biel's discussion with Mr. Donohue's counsel, Catherine Tambasco, Esq., on July 18, 2012, and equally unaware of Mr. Biel's subsequent correspondence to Mr. Louis on July 19, 2012 in respect of that discussion. Ibid.

We find these facts immaterial to our consideration of this issue. When addressing the issue of Respondent's facilitation

of or acquiescence in the concealment of a conflict, the focus must necessarily be on Respondent's knowledge of the conflict and her failure to disclose it, not the conduct of Mr. Louis.

Respondent would have this Committee believe that while she did not appreciate Mr. Louis's legal representation of her, she reasonably believed upon receipt of the Biel Letter that Mr. Biel was representing her, an attorney with whom she had never spoken and about whom she was completely unfamiliar. This position simply strains credulity and does not comport with the evidence in the record. Cf. In re Carton 140 N.J. 330 336-37 (1995) (finding an absence of evidence to substantiate the charged misconduct based, in part, on the "circumstantial incredibility of the charge" in which the charge did not "comport with common sense").

Having concluded that Respondent violated Canons 1, 2A, 3C(1) and 5A(1),(2), and (3) of the Code of Judicial Conduct as charged in the Formal Complaint, the sole issue remaining for our consideration is the appropriate quantum of discipline. In this undertaking, we are mindful of our obligation to examine, with care, the facts and circumstances underlying Respondent's misconduct, including any aggravating or mitigating factors that may bear upon that misconduct. In re Collester, supra, 126 N.J. at 472; see also In re Connor, 124 N.J. 18, 22 (1991); In re Mathesius, 188 N.J. 496 (2006); In re Seaman, 133 N.J. 67, 98

(1993). We are also cognizant of the primary purpose of our system of judicial discipline, namely to preserve the public's confidence in the integrity and independence of the judiciary, not to punish a judge. In re Seaman, supra, 133 N.J. at 96 (1993) (citing In re Coruzzi, 95 N.J. 557, 579 (1984)); In re Williams, 169 N.J. 264, 275 (2001).

Though Respondent appears to appreciate the need for judicial discipline given her admissions of wrongdoing, she argues that such discipline should not rise above the level of a public reprimand, even in the event she is found to have committed all three acts of judicial misconduct as charged in the Formal Complaint. Rb21-35. In advancing this argument, Respondent recounts several factors she contends mitigate her misconduct. Those factors include the personal strife then occurring in her life caused by several related and emotionally taxing events: her parent's failing health, the condemnation of her childhood home due to her parent's inability to maintain the property, her mother's deteriorating mental health and subsequent hospitalization, her father's admission to a nursing home, and the decline of her second marriage as a result of her husband's alleged substance abuse issues. Id. at pp. 21-23. Respondent contends that these personal issues, all of which were occurring concurrently with the events at issue here and for which she sought counseling prior to learning of this ethics

matter, clouded her judgment in her dealings with Mr. Louis concerning the Donohue Letter. Id. at 21-25.

In addition, Respondent references the various letters of character attesting to her good reputation in the Ocean County legal community, which she submitted in mitigation of these disciplinary charges, and her unblemished, albeit brief (11 months), record of service as a judge prior to this disciplinary matter. Id. at p. 23. Finally, Respondent reiterates her admissions of wrongdoing and her acceptance of responsibility for that wrongdoing before this Committee, and assures us that she will not repeat this misconduct. Ibid.[11]

Though we acknowledge these mitigating factors, and do not discount Respondent's professed emotional state during this time period as a consequence of several personal issues then occurring in her life, these circumstances do not sufficiently mitigate Respondent's egregious and intentional misconduct as recounted in this Presentment to justify a recommendation of

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[11] Respondent also makes reference to her limited involvement in the two matters in which Mr. Louis appeared subsequent to the creation of her conflict with him - Cornick and Kelly - as "non-aggravating" factors relevant to our consideration of the appropriate quantum of discipline in this matter. Rb11-12, 26. We reject this contention. It has long been held that judicial conflicts cannot be tolerated, no matter how "di minimis" the nature of the judicial act in which the conflict occurred. Rb26. See In re Newman, 189 N.J. 477 (2006) (adopting the Committee's Presentment in ACJC 2004-196 finding that judicial disqualification is appropriate even in matters involving only ministerial judicial functions).

discipline less than that of suspension. Notably, had these mitigating factors not been present, we would be recommending a longer term of suspension.

As revealed by the record before us, Respondent's misconduct was serious and its detrimental effect on the integrity and impartiality of the Judiciary significant. By her conduct, Respondent was complicit in creating and engaging in a conflict of interest, and acted with the intent to facilitate or, minimally, acquiesce in the concealment of that conflict, conduct which we find alarming.

In determining the appropriate quantum of discipline for such misconduct, we are cognizant of several aggravating factors. First, the misconduct at issue, which includes Respondent's intentional act of aiding or, at best, passively permitting the concealment of her conflict with Mr. Louis, demonstrates a significant lack of integrity and probity on the part of Respondent. In re Seaman, supra, 133 N.J. at 98 (citing In re Coruzzi, 95 N.J. 557, 572 (1984)). Indeed, the intentional concealment of that conflict renders Respondent's conduct significantly more egregious than that of previous judicial disciplinary matters involving conflicts of interest. In re Sciuto, supra, 2003 N.J. Lexis 1132 (2003) (adopting the Committee's Presentment in ACJC 2000-105 censuring retired judge for presiding over two cases in which he had a conflict of

interest due to his ongoing involvement in financial dealings with a party and the party's attorney); In re Newman, supra, 189 N.J. 477 (adopting the Committee's Presentment in ACJC 2004-196 admonishing judge for engaging in a conflict of interest by presiding over the arraignment of a defendant in municipal court while representing the defendant's spouse in a matrimonial matter involving the defendant); In re Bowkley, 195 N.J. 176 (2008) (admonishing the judge for engaging in two separate conflicts of interest); In re Miniman, 195 N.J. 276 (2008) (adopting the Committee's Presentment in ACJC 2008-072 publicly reprimanding a judge for engaging in a conflict of interest by issuing a temporary restraining order for his municipal court administrator against the court administrator's "live-in" boyfriend); In re Council, 202 N.J. 37 (2010) (adopting the Committee's Presentment in ACJC 2009-116 admonishing a judge for engaging in a conflict of interest by releasing a criminal defendant on her own recognizance despite his familial relationship to her as a second cousin); In re Perskie, 207 N.J. 275 (2011) (censuring a judge for engaging in a conflict of interest by presiding over a matter in which he maintained a business relationship with a central witness in the case and for appearing in the courtroom to which the case had been transferred on two separate occasions).

Second, such conduct harmed the litigants in the Kelly matter who, after nine months spent familiarizing Respondent with their complex family court matter, had their case abruptly transferred to a new judge. That harm cannot be minimized or overlooked given the difficulties present in that case, which included sensitive family matters relating to a suicide attempt and the release of medical and personnel records. P17; see also 5T60-2 to 5T63-12.

Finally, while this is the first judicial misconduct complaint filed against Respondent, it implicates an intentional disregard for the judicial office and Respondent's obligations as a jurist. As revealed in Mr. Donohue's grievance, such intentional misconduct necessarily and seriously undermines the public's confidence in Respondent's ability to serve as a Superior Court judge. To restore that confidence, Respondent must be disciplined in accordance with the severity of her misconduct.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be suspended from her judicial duties for a period of one month, without pay, for her violations of Canons 1, 2A, 3C(1) and 5A of the Code of Judicial Conduct. This recommendation takes into account the egregiousness of Respondent's three separate and serious ethical infractions, the most egregious of

which involved her intentional conduct in facilitating or acquiescing in the concealment of a conflict of interest. Such conduct greatly contravened Respondent's obligations to perform the duties of her judicial office impartially and fairly and severely impugned both her integrity and impartiality and that of the Judiciary.

This recommendation also strikes the necessary balance between the significant aggravating factors present in this case and the mitigating factors, which, though appreciable, are insufficient to justify the imposition of discipline less than that of suspension.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

September 9, 2014

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

Joined By: Hon. Edwin H. Stern, J.A.D. (Ret.); Hon. Theodore Z. Davis (Ret.); John J. Farmer, Esq.; David P. Anderson; and Karen Kessler

Justice Virginia A. Long (Ret.) did not participate.

Hon. Stephen Skillman, J.A.D. (Ret.) has filed a separate opinion, concurring in part and dissenting in part, in which Vincent E. Gentile, Esq. joins:

I agree with the Committee's conclusions that Respondent created a conflict of interest by meeting with Mr. Louis, who had matters pending before her, to seek representation in her own matrimonial matter, and also engaged in a conflict of interest by failing to disqualify herself from any matters in which Louis was involved. However, I am unable to agree with the majority's further conclusion that Respondent intentionally facilitated or acquiesced in a concealment of her conflict of interest. Therefore, I dissent from that part of the Presentment.

Initially, because the Presentment finds that Respondent "intentionally" concealed her conflict of interest with Louis, it is appropriate to discuss in greater detail the turmoil in Respondent's personal life and its effect upon her state of mind during the period of that conflict. On the same day Respondent received the letter from her former husband that led to her consulting with Louis, May 5, 2012, she received a telephone call from her father concerning a serious oil spill in her parents' home. (5T100-20 to 5T101-24).[1] As a result of this spill, there was a smell of oil and no heat or hot water in the

[1] Consistent with the citations in the majority's opinion, "5T" refers to the Transcript of Formal Hearing, In re Appleby, ACJC 2013-037, which was conducted on May 29, 2014.

home. (5T104-14-17). Respondent undertook to handle the condition in the home on behalf of her parents, who were in their 80s and in declining health. (5T101-1-2). Her efforts on their behalf, which are confirmed by substantial documentary evidence, consisted of communications with public health officials in the municipality where the home was located, an environmental clean-up company, the Department of Environmental Protection, and the insurance company that had issued her parents' homeowner's policy. (5T101-25 to 5T103-4). In an effort to get her parents to move, Respondent encouraged the municipality to condemn the house. (5T103-1-4).

Following her return to New Jersey on May 14th after attending her son's college graduation, Respondent made arrangements for her parents to move from their badly damaged home into her home (5T103-8-13). However, on the day the move was supposed to occur, Respondent's mother, whose mental health was deteriorating, refused to leave her home. (5T104-3-19). This resulted in an "ugly" scene, but Respondent and her family eventually succeeded in getting Respondent's mother out of the house. (5T104-20-24). And when she was unable to persuade her mother to move into her house, Respondent secured a condominium for her parents to reside in temporarily. (5T105-17-24).

Shortly thereafter, on May 24th, Respondent received a telephone call from a representative of Monmouth County Adult

Protective Services, who informed her that her mother had attempted to commit suicide and as a result had been taken to a psychiatric hospital. (5T105-25 to 5T106-15). During this hospitalization, Respondent was told by psychologists and social workers that her mother "may have had schizophrenia" and that she had "some dementia or beginnings of Alzheimer's." (5T114-2-5). On June 5th, Respondent's mother was transferred from the psychiatric hospital to a rehabilitation hospital. (5T1146-6-16).

On June 22nd, Respondent placed her father, whose health was also deteriorating, in a nursing home. (5T114-17-18). On that same day, she received the draft letter to her former husband that Louis had prepared. (5T160-8-12).

By the summer of 2012, when Respondent received the letter drafted by Louis with the ostensible signature of Mark Biel, Respondent was also experiencing serious marital difficulties as a result of her husband's excessive drinking. (2T24-7-21). Those difficulties culminated in Respondent filing a domestic violence complaint in mid-September and the entry in mid-October of a consent order restraining Respondent's husband from entering the marital home and agreeing to comply with "all recommendations" made by the in-patient treatment facility he had been attending. (R-25 at p. 3).

A short time later, Respondent began attending an outpatient mental health treatment facility to address the psychological stress she was experiencing as a result of her parents' deteriorating health conditions and her marital difficulties. (5T118-16 to 5T119-24).

As Respondent acknowledges, the serious personal problems with which she was dealing when she first communicated with Mr. Louis regarding the letter from her former husband and during the following four months before she added Louis to her disqualification list do not excuse her violations of the Canons of the Code of Judicial Conduct relating to conflicts of interest. However, in my view, Respondent's personal problems during this time period, and their evident impact upon her state of mind, must be taken into account in determining whether the evidence proved the charge that she intentionally facilitated or acquiesced in Louis's concealment of the conflict of interest.

This charge was not set forth in a separate count of the Complaint but rather was contained in two paragraphs of Count I, the remainder of which charged Respondent with violating Canons 5A(1) and (3) by consulting with Louis about the child support matter knowing that he had cases pending before her. Complaint, at ¶32. The first of those paragraphs, paragraph 30, alleges:

> By consulting with Louis about the Child Support matter, providing him with personal information related to that matter, and

> reviewing and editing the Draft Letter prepared by Louis that directly responded to Donohue's May 3, 2012 letter, Respondent knew or should have known that Louis was representing her in the Child Support matter, and that the Final Letter that she received on Biel's stationary with his purported signature was Louis's attempt to conceal the conflict of interest between Respondent and Louis, which concealment she facilitated or acquiesced in, in violation of Canons 1 and 2A of the Code of Judicial Conduct.

The second of those paragraphs, paragraph 31, alleges:

> By her conduct in facilitating Louis's concealment, or acquiescing in it, Respondent demeaned the judicial office in violation of Canon 5A(2) of the Code of Judicial Conduct.

The clear import of these two paragraphs is that the person who engaged in the alleged concealment of the conflict of interest was Louis and that the instrumentality of his concealment was the letter to Respondent's former husband, which Louis prepared but mailed on Biel's stationery with Biel's purported signature, and that Respondent's role in the concealment consisted solely of "providing [Louis] with personal information related to [the] matter, and reviewing and editing the Draft Letter[.]" Complaint, at ¶30. The post-hearing briefs submitted both by Respondent and the Presenter reflect this understanding of the nature of the concealment with which Respondent was charged. Respondent argued that the evidence

presented at the hearing was insufficient to establish that she was involved in Louis' concealment of the conflict:

> The formal complaint specifically alleges that Respondent "facilitated" the concealment of the conflict of interest between herself and Louis or, in the alternative, that she "acquiesced in" said concealment (Formal Complaint, paragraphs 30 and 31). By definition those very terms require proof that the Respondent had knowledge of Louis' deceptive acts. . .
>
> The proofs at the formal hearing fell far short of establishing that Respondent had any knowledge of Louis' unauthorized signing of the letter, failure to have the letter reviewed and approved by Biel and failure to send a copy of the final letter to Mr. Biel at the time it was sent to Respondent's ex-husband.

[Respondent's brief, at pp. 15-16].

Although the Presenter disagreed with Respondent's contention that the evidence was insufficient to establish this charge, her brief also indicated her understanding that the concealment charge was that Respondent had been complicit in Louis's concealment of the conflict:

> There can be no doubt that Respondent's acquiescence to Louis's concealment of his legal assistance in the Child Support matter to avoid public knowledge of his conflict demeaned the judicial office in violation of Canon 5A(2). That same behavior that resulted in what appears to be her involvement in a fraud also severely weakened the public's confidence in her integrity as a jurist and the Judiciary as a whole in violation of Canons 1 and 2A of the

Code of Judicial Conduct for which public discipline is necessary.

[Presenter's brief, at pp. 14-15].

The Presentment does not find that Respondent committed the only act of concealment alleged in the Complaint, which was that "Respondent knew or should have known . . . that the Final Letter that she received on Biel's stationery with his purported signature was Louis's attempt to conceal the conflict of interest between Respondent and Louis, which concealment she facilitated, or acquiesced in," Complaint, at ¶30, but instead finds that Respondent herself committed an act of concealment by "failing to add Mr. Louis to her conflicts list[.]" Presentment, at p. 34. After reciting the facts Respondent relied upon in defending against the charge that she facilitated or acquiesced in Louis's concealment of the conflict by means of the letter to her former husband under the Biel letterhead with Biel's purported signature, the Presentment states: "We find these facts immaterial to our consideration of this issue." Presentment, at p. 35. The Presentment then goes on to say: "When addressing the issue of Respondent's facilitation or acquiescence in the concealment of a conflict, the focus must necessarily be on Respondent's knowledge of the conflict and her failure to disclose it, not the conduct of Mr. Louis." Presentment, at pp. 35-36. However, Mr. Louis's conduct with

respect to Biel's purported letter to Respondent's former husband was in fact central to the only act of concealment by Respondent alleged in the complaint.

It is at least arguable that the Committee's finding, without prior notice to Respondent, that the Respondent committed an act of concealment different from the one alleged in the complaint constitutes a violation of administrative due process. See H.E.S. v. J.C.S., 175 N.J. 309, 321-23 (2003). However, without addressing that issue, I believe the Committee should confine itself, in the exercise of its discretion, to the concealment charge alleged in the Complaint.

I would conclude that that concealment charge was not proved by clear and convincing evidence. To be sure, there were suspicious circumstances in this case. Respondent was aware from the time of her first meeting with Louis on May 8th that he was anxious to keep his name off of her disqualification list. She was also aware that the letter to her former husband ostensibly authored by Biel was the same, word for word, as the letter Louis had drafted and she had approved with her edits. In addition, Respondent was well-aware that she had never had any form of communication with Biel. Under these circumstances, a reasonable person with Respondent's background should at least have suspected, even assuming Biel's signature was genuine, that the form of the communication to her former husband was designed

to conceal Louis's role in providing her with legal services. However, in view of the clear and convincing evidence standard that governs fact-finding by the Committee, see In re Perskie, 207 N.J. 275, 289-90 (2011), and the extreme emotional turmoil from which Respondent was suffering at the time as a result of her parents' deteriorating health and her marital difficulties, I would conclude that the evidence does not support a finding that Respondent intentionally facilitated or acquiesced in Louis's conduct to conceal the conflict.

This brings me to the issue of the appropriate quantum of discipline. In my view, it should be emphasized that Respondent's conduct that the Presentment finds violated the Code of Judicial Conduct persisted over a period of nearly four months and consisted of a number of discrete acts, which need to be separately analyzed.

I agree with the Committee's conclusion that, as Respondent now concedes, even her initial May 8th conversation with Louis created a conflict of interest because of the extent of personal information she communicated to him and the fact that she solicited his representation rather than simply asking him for a suggestion as to the name of an attorney who might represent her. However, if this conversation and Respondent's failure to disqualify herself from matters in which Louis was involved following the conversation were the sole basis for the findings

of Respondent's violations of the Code, I would conclude that a public reprimand would be sufficient discipline.

But whatever uncertainty or ambiguity Respondent may have perceived in Louis's role should have ended when Respondent received his draft letter to her husband on June 22nd and approved that letter with her edits later that day. Regardless of whether that letter was sent under Biel's or Louis's signature, it should have been obvious to Respondent at this point that Louis had provided her with legal services that required her to disqualify herself from any matter in which he was involved. Nevertheless, Respondent failed to add Louis to her disqualification list until more than two months later. And during the interim period, Respondent presided over another matter in which Louis represented a party, which she acknowledges was improper, even though the matter was uncontested and her role was purely ministerial.

Furthermore, even though I do not believe the evidence presented at the hearing was sufficient to prove the charge that Respondent facilitated or acquiesced in Louis's effort to conceal the conflict of interest through the letter on Biel's stationery with his purported signature, it seems to me appropriate to consider, in determining the appropriate quantum of discipline, that Respondent should have been aware Louis was engaged in some form of machinations to avoid being added to her

disqualification list, and that Respondent should have immediately terminated the conflict upon her receipt of the Louis-drafted letter on June 22nd by adding him to her disqualification list. Her failure to do so constituted a serious violation of the Code of Judicial Conduct. Therefore, I join in the Committee's recommendation that Respondent should be suspended for one month.

Hon. Edwin H. Stern, J.A.D. (Ret.) has filed a separate concurring opinion in which John J. Farmer, Esq. and David P. Anderson, Jr. join:

There seems to be no dispute that the two count complaint against Respondent filed after the Committee's initial investigation alleges three charges: (1) creating a conflict of interest by meeting with Mr. Louis while he had matters pending before Respondent; (2) facilitating or acquiescing in the concealment of the conflict; and (3) failing to add Mr. Louis to Respondent's disqualification list and hearing matters in which he represented a party. The first two charges flowed from the wording of count one, and the third charge was embodied in count two. The separate opinions as to the disposition of these charges may well be only of academic interest because the entire Committee agrees on the recommended discipline of a one-month suspension, and are essentially based on the same fact finding. Whether or not the claim of facilitating or concealing the conflict was proven by the governing standard of clear and

convincing proof, even the concurring and dissenting opinion of Judge Skillman comes to the same recommendation because "in determining the appropriate quantum of discipline," it was clear "that Respondent should have been aware Louis was engaged in some form of machinations to avoid being added to her disqualification list" and that Respondent should have added Louis to her disqualification list by June 22, 2012. (op. at 52-53).

In light of Judge Skillman's articulate and thoughtful partial dissent, however, I believe a few additional comments are in order:

From the outset Respondent acknowledged "[she] created a conflict by meeting with Mr. Louis and engaged in a conflict by having him appear before [her]" in the Cornick and Kelly matters. (5T9-9-13). See also Respondent's Answer to the Complaint. While Respondent insisted throughout the proceedings "that the presenter [did] not have sufficient evidence to prove by clear and convincing proof that the judge either facilitated, acquiesced, or tolerated in [the] deception" of Mr. Louis, she admitted the conflicts alleged in both counts of the complaint. (5T22-21-25). The Respondent's opening followed the Presenter's opening in which the Presenter noted the admissions by Respondent but that she denied "the third act of misconduct, that she was involved in the concealment of that conflict of

interest." (5T5-11-13). The Presenter added that she would "demonstrate that the judge did participate or at the very least acquiesced in the concealment of Mr. Louis' conflict of interest so that he could help her with her legal matter in a way that allowed Mr. Louis to continue appearing before her." (5T5-16-20).

Moreover, the parties entered into "Stipulations of Fact" filed in advance of the hearing and considered as evidence in the matter. In paragraph 17 thereof, it was stipulated that at the meeting of May 8 in Respondent's chambers, "Louis told Respondent that while he wanted to help her with the Child Support matter, he did not want his assistance to result in his name being added to Respondent's conflict list." And significantly, in light of everything that followed including Respondent's failure to add Louis to her disqualification list when she received the draft letter from him, "Louis concluded the initial meeting [with the judge] by telling Respondent 'let me see if I can work something to see whether I can still appear in front of you.'" Stipulations at ¶18.

To me, the issues in dispute were clear, and the inferences clearly and convincingly point to the conclusion that Respondent did not disqualify herself in either matter in which Mr. Louis appeared before her after May 8, and did not put his name on her disqualification list over a considerable period of time,

because of his stated desire not to be disqualified from handling cases before her. Thus, in my view irrespective of the number of charges asserted in the two counts of the complaint, all allegations were proved by clear and convincing evidence.

Even though there were only two counts of the Complaint and Respondent acknowledged the conflicts referred to in both, the dispute over the issue of the concealment of the conflict with Mr. Louis may well impact on the quantum of discipline to be imposed. To me, the serious and unfortunate personal circumstances this respected jurist faced at the time should be considered in mitigation, and they were presented in mitigation -- not in defense. I therefore join in the recommendation of the Committee that Respondent be suspended for one month.