

D-95-10
(068033)

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2010-151

IN THE MATTER OF

MAX A. BAKER,
JUDGE OF THE SUPERIOR COURT

:
:
:
:
:
:

PRESENTMENT

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

On August 4, 2010, the Committee issued a Formal Complaint in this matter, which accused Respondent of inappropriately shouting at a *pro se* litigant and of directing disrespectful and insulting remarks to her that also created the impression he was not impartial in violation of Canons 1, 2A, and 3A(3) of the Code of Judicial Conduct. Respondent filed an Answer to the

Complaint on August 26, 2010 in which he admitted certain of the factual allegations of the Formal Complaint and denied others.

The Committee held a formal hearing in this matter on January 20, 2011. Respondent appeared with counsel and offered testimony in his defense. Respondent called two witnesses to testify on his behalf as well. The Presenter and Respondent jointly offered exhibits, and Respondent separately offered exhibits, all of which were accepted into evidence. See J-1 through J-5 and R-1 through R-3. The Committee also accepted into evidence a set of Stipulations agreed to by the parties. See Stipulations of Parties filed on January 15, 2011 ("Stipulations").

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

I. FINDINGS

A. Factual and Procedural Background

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1974. Stipulations at ¶1. At all times relevant to this matter, Respondent served as the Presiding Family Division Judge of the Superior Court in Atlantic County. Id. at ¶2. Effective July

1, 2010, Respondent was transferred to the Atlantic County Criminal Division. Id.

On December 31, 2009, Respondent presided over the matter of D.P. v. M.P., Docket Nos. FV-01-1010-10 and FV-01-1012-10, concerning cross-complaints filed by Ms. P., Plaintiff, and Mr. P., Defendant, for restraining orders against each other. Id. at ¶¶3-4. Both Mr. P and Ms. P. appeared before Respondent *pro se*. Id. at ¶5.

On the day in question, after Respondent granted Ms. P.'s request for an adjournment to provide her the opportunity to obtain counsel, Mr. P. brought up the fact that he had not seen the couple's four-year old child for approximately one week. Id. at ¶6; J-2 at T2-6 to T3-17. After asking Mr. P. several questions about his living arrangements, Respondent asked Ms. P., "Why shouldn't [Mr. P.] see his daughter?" J-2 at T5-20 to 23. Respondent thereafter instituted a temporary visitation schedule for Mr. P., which was set to expire on January 7, 2010, the day of the parties' next court date. Stipulations at ¶7.

When Ms. P. indicated that her daughter was "not used to being with her father" for the length of time scheduled, Respondent asked Ms. P. why she would have a problem allowing her daughter to spend time with her father when she had "no problem sending [her] daughter to a preschool where the first day she went, she was with total strangers." J-2 at T13-4 to

19. The dialogue between Respondent and Ms. P. continued as follows:

MS. P.: You don't need to yell at me, please.

THE COURT: Ma'am, don't talk. You've got a problem with your daughter seeing her father?

MS. P.: Yes, I do, yes, I do, Your Honor, yes, I do.

THE COURT: Well, ma'am, let me tell you something.

MS. P.: I do.

THE COURT: You need some serious help.

MS. P.: Okay.

THE COURT: Because you have no clue what it is to be a parent.

MS. P.: Okay. He has a severe mental illness.

THE COURT: Ma'am, keep your mouth quiet. When I talk, you listen. Don't you dare talk back to me. I don't know who you think you're talking to, but you do not dare talk back to me. You understand that?

MS. P.: Yes.

THE COURT: Then obey it. I'm not some friend of yours out on the street. I'm a Superior Court judge that demands the respect of my position, and you will give it to me. And you will not convince me that it's okay for your daughter to go spend time with strangers, but can't with her own father, because you know what you forgot? Let me remind you. There's only one reason why he's her father, that's the decision you made.

MS. P.: And it was a bad one.

THE COURT: Ma'am - - so, what does that tell me about your judgment? If you made a bad decision choosing him as a father, why should I believe anything about your judgment today? Well, you just admitted, you've got bad judgment.

MS. P.: I made a mistake. We all make mistakes, I'm human.

THE COURT: And you're making a huge mistake when you tell me today that you don't think your daughter deserves to be with her father.

MS. P.: I didn't say she doesn't deserve to be with her father, I'm just saying the length of time, that's all I'm saying. She's not used to that.

THE COURT: But, it's okay for her to go to preschool and spend five hours with total strangers.

MS. P.: They're not total strangers. It's school.

THE COURT: The first day, did she know her teacher?

MS. P.: No, she didn't.

THE COURT: Then that's a total stranger, isn't it?

MS. P.: She has to go to school.

THE COURT: Ma'am, is that a total stranger?

MS. P.: Yes.

THE COURT: So, she is with total strangers. The first day she went to school, she didn't know anybody, but that was okay with you. You didn't think twice about it.

MS. P.: Yes, I did. I did it because - -

THE COURT: But you did it anyway, didn't you?

MS. P.: I didn't have a choice at the time.

THE COURT: Sure, you had a choice.

MS. P.: I had to go to work. . . .

THE COURT: So, you want to punish your daughter by keeping her away from her father.

MS. P.: I don't want to punish my daughter, I just want to make her feel comfortable.

THE COURT: She's going to feel comfortable because she's going to be with her grandfather and her father.

MS. P.: Okay.

THE COURT: And, you know what, that's good for your daughter and if you don't believe that, you have no clue what it is to be a mother. . . .

MS. P.: As long as - -

THE COURT: Ma'am, don't talk back to me. Who do you think you are? Any parent that takes steps to limit the other parent's time with the child doesn't qualify to be a parent. You want to do what's good for your daughter, encourage her to go spend time with her father. That's her father. Not a stranger. He has equal rights, as you. You don't get any preference because you're her mother. And if you made a mistake, too bad. We're not going to punish your daughter today because of your poor judgment, and I'm not going to allow your poor judgment to continue. You understand that?

MS. P.: Um hum.

THE COURT: When you come back on the 7th, you'd better hope that we don't hear there's been a problem with these three short periods of time, because if it was up to me, I was going to allow him to have your daughter from now until next Wednesday.

MS. P.: She wouldn't go.

THE COURT: Oh, yes, she would. Oh, yes, she would. Because you don't understand, when I order it, it happens. It's not a request of you, it's an order. You know what happens if you disobey a court order? Ma'am, do you know what happens?

MS. P.: Yes, I understand what happens.

THE COURT: You'll be sitting over there with this guy right here. This is not a request. I am telling you, it will happen.

MS. P.: Okay, Your Honor.

THE COURT: And I am telling you - -

MS. P.: Okay.

THE COURT: - - there will be consequences if you interfere with it. We understand each other?

MS. P.: Yes.

THE COURT: All right. . . . Sir, enjoy your time with your daughter.

J-2 at T13-22 to T18-15.

Subsequently, Ms. P. filed a grievance with this Committee concerning her foregoing interaction with Respondent. J-3. Ms. P. complained that Respondent acted in an "agitated and irate" manner, treated her unfairly and unprofessionally, and attempted to "belittle [her] with his authority." Id. at ACJC 05. She indicated she believes Respondent was "taking sides" in the case and discriminated against her. Id.

Respondent responded to Ms. P.'s accusations both in a March 16, 2010 letter to the Committee and during his Formal Hearing conducted on January 20, 2011. J-4 and January 20, 2011 Transcript of Formal Hearing ("Formal Hearing Transcript"). In his letter, Respondent admitted that his tone as directed to Ms. P. was "harsh" and loud, and that he spoke to Ms. P. "in an inappropriate manner." J-4 at ACJC 020. He further asserted, however, that the incident was an "aberration," and that he "must have felt that Ms. P. was either talking back . . . or otherwise being disrespectful to the Court. I did not want

anyone who was waiting to be heard to feel they could be disrespectful with the Court." Id.

Respondent again discussed his encounter with Ms. P. during his January 20, 2011 Formal Hearing before the Committee. Prior to testifying on his own behalf, Respondent called two witnesses, Seetha Holmes and Loretta Brewster, both of whom offered testimony, based on their dealings with Respondent, regarding Respondent's heavy and difficult caseload in Family Court, his consistently courteous demeanor, his grave concern for the welfare of the children over whose cases he presided, and the atypicality of his behavior as directed to Ms. P. See Formal Hearing Transcript at T17-22 to T20-23; T25-2 to T32-16.

Respondent thereafter testified. He first indicated that, on the day of the December 31, 2009 proceeding, he felt that Ms. P. was purposefully and unjustifiably attempting to thwart Mr. P.'s ability to see his child. Id. at T39-18 to 40-9. Respondent explained that it was his "judicial philosophy" to do everything "in [his] power to make sure that both parents spend as much time as possible with their children," absent allegations of abuse, which Respondent stated were not present in the underlying case. Id. at T40-23 to T41-19. He admitted he failed to probe Ms. P. as to why she had a "problem" with Mr. P.'s extended visitation with their daughter but offered that the restraining order papers lacked abuse allegations. Id. at

T64-2 to 25. He admitted that, in hindsight, it as a "mistake" on his part not to provide Ms. P. the opportunity to give her reasons for having difficulty with the visitation schedule he devised. Id. at T68-3 to 12.

Respondent denied calling Ms. P. a "bad parent," insisting that "had I not raised my voice and acted the way I did - had I done it - spoken in a calm manner the way I'm doing now, but said the exact same thing, I wouldn't be here." Id. at T45-6 to 16. He asserted he was merely attempting to convey to Ms. P. that "[a]ny parent who attempts to keep a child away from the other parent doesn't understand what it is to be a parent. That harms the child." Id. at T46-1 to 6. Respondent further denied threatening Ms. P. with incarceration, although he admitted he could understand how she could have perceived his conduct as threatening in nature. Id. at T45-6 to 18. He conceded that when he told Ms. P. she would be "sitting over there with this guy," if she failed to comply with his Order, he was pointing to a shackled prisoner seated in his courtroom. Id. at T61-2 to 10; T45-18 to 25.

Respondent admitted that at least some of the language he directed to Ms. P., as well as his demeanor, behavior, and tone of voice, were "inappropriate," and he noted that he apologized to Ms. P. Id. at T44-25 to 45-5; T59-9 to 18. Respondent again described his interaction with Ms. P. as an "aberration" and a

result of being "burned out" from his long service as a Family Court Judge. Id. at T48-18 to T49-2. Respondent discussed the significant pressures he faced as the Presiding Family Division Judge, including an increased caseload and decreased staff. Id. at T47-11 to 21.

B. Analysis

The Formal Complaint in this matter charged Respondent with inappropriately shouting at Ms. P. and with directing remarks to her that were insulting and disrespectful and which created the appearance that he was not impartial in violation of Canons 1, 2A, and 3A(3) of the Code of Judicial Conduct. We find that the Complaint's charges have been proven by clear and convincing evidence, and, consequently, that Respondent's conduct violated the cited Canons.

Canon 1 requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary are preserved. Canon 2A directs that judges conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. The commentary to Canon 2 of the Code of Judicial Conduct provides that judges "must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny." Canon 3A(3) requires that judges be patient, dignified, and courteous to litigants,

jurors, lawyers and others with whom the judge deals in an official capacity.

Respondent concedes that the manner in which he spoke to Ms. P. was "discourteous and demonstrated an inappropriate level of patience in violation of Canon 3A(3) of the Code of Judicial Conduct." Stipulations at ¶8. The Committee appreciates Respondent's candor as well as his acknowledgment of the impropriety of his conduct. We are also particularly mindful of the serious and significant pressures Respondent was under not only as a long-time Family Court judge but as the Presiding Family Court Judge for both Atlantic and Cape May Counties. We credit the testimony offered by Ms. Holmes and Ms. Brewster, as well as Respondent himself, that his conduct on December 31, 2009 was an aberration and not indicative of Respondent's characteristic behavior on the bench.

That being acknowledged, we simply cannot overlook or minimize the extreme and excessive nature of the numerous remarks Respondent directed to Ms. P. and the manner in which he made them. We initially note that the audio recording of the December 31, 2009 proceeding was instrumental to the Committee's determination that Respondent's conduct violated the concerned Canons of the Code of Judicial Conduct. Labeling Respondent's tone as "harsh" is a considerable understatement when measured against the recording of the proceeding. Respondent's tone of

voice, as directed to Ms. P., was hostile, angry and antagonistic. The volume of his voice was loud and, in our view, appropriately characterized as yelling. There was no evidence of similar or inappropriate conduct on the part of Ms. P., such as might provoke Respondent's extreme reaction to her. We understand and concur with Ms. P.'s interpretation of the tenor of Respondent's conduct as "very agitated and irate."

Unfortunately, the impropriety of the encounter between Respondent and Ms. P. did not end there. It was, in fact, grossly aggravated by the substance of Respondent's comments to Ms. P. In this regard, Respondent informed Ms. P. that she needed "some serious help," and that she had "no clue what it is to be a parent." He went on to express incredulity at Ms. P.'s concern regarding the length of time her daughter was to spend with "her father" since Ms. P. sends her daughter to preschool where, according to Respondent, she "spend[s] five hours with total strangers." He accused her of having "poor judgment" and of wanting "to punish" her daughter. When Ms. P. attempted to explain herself, Respondent directed the following statements to her: (1) "[K]eep your mouth shut;" (2) "When I talk, you listen;" (3) "Don't you dare talk back to me. I don't know who you think you're talking to, but you do not dare talk back to me;" and (4) "I'm not some friend of yours out on the street. I'm a Superior Court judge that demands the respect of my

position, and you will give it to me." Finally, he pointed out a shackled prisoner present in his courtroom, warning Ms. P. that she would be "sitting over there with [that] guy" if she refused to comply with his visitation order.

We find Respondent's comments repugnant and offensive. They embody, in our view, a vicious and unjustified attack on Ms. P. in response to nothing more than her expressed concern as to the duration of the scheduled visits between her daughter and Mr. P. Informing Ms. P. that she has "no clue" what it is to be a parent and that she needs "serious help" reveals a breathtaking presumptuousness on Respondent's part. The record reveals that this encounter was Respondent's first meeting with Ms. P., and that Respondent failed to explore the reasons behind her concern. He therefore plainly lacked the knowledge to support the accusations he leveled against her and the right to disparage Ms. P.'s parenting skills and intelligence in the manner in which he did.¹

Respondent's remarks to Ms. P. to "shut your mouth" and "When I talk, you listen" were likewise wholly inappropriate.

¹ We are troubled by the fact that, in his March 16, 2010 letter to the Committee, Respondent attempted to justify his conduct by indicating that he "must have felt" that Ms. P. was either being disruptive or disrespectful to the Court. Neither the audio recording nor the transcript from the proceeding support this claim. Respondent himself did not take the same position during the Formal Hearing.

Such remarks and similar ones made by Respondent are crass and have no place in a court of law. We further understand Ms. P.'s interpretation of Respondent's reference to a shackled prisoner as threatening in nature. While Respondent disputes that it was his intention to threaten Ms. P., the plain meaning of his language, when coupled with his tone of voice, indicate otherwise.

We are further disturbed by Respondent's discussion regarding Ms. P.'s decision to send her daughter to preschool. Not only did we find his line of questioning in this regard both callous and denigrating, we frankly fail to see the connection between Ms. P.'s decision to send her child to school and her concern regarding the comfort of her child when around her father. Indeed, we thought it highly unfair and inaccurate of Respondent to accuse Ms. P. repeatedly of leaving her child with "total strangers." That description does not fairly characterize or encapsulate the teacher-student relationship. In this case, the remark was calculated to make Ms. P. "feel less of a person," an effect we cannot condone. Ms. P. also interpreted Respondent's conduct as "harassing" and "discriminatory."² J-3 at ACJC 05. While we do not suggest that

² It is clear that others present in the courtroom were similarly offended by Respondent's behavior since at least one "legal advocate" present in Respondent's courtroom during the

Respondent was biased in his treatment of Ms. P., we do agree that his conduct was so extreme and unnecessary that Ms. P.'s interpretation is reasonable. We simply cannot conceive of any justifiable reason for an officer of the court to speak to a litigant in the manner Respondent spoke to Ms. P. Such behavior fails to maintain the high standards of conduct expected of all judges and undermines the public's confidence in an impartial and honest judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct.

Respondent's comments further stray far from Canon 3A(3)'s mandate of judges to treat litigants with patience, dignity and courtesy. As recognized by the Supreme Court in In re Albano, 75 N.J. 509, 514 (1978),

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

(Emphasis supplied.) See also In re Mathesius, 188 N.J. 496, 525 (2006) ("[P]retulance, sarcasm, anger, and arrogance . . . have no place in the exercise of judicial duties."). Here, we believe Ms. P. was neither "heard" by Respondent nor treated

proceeding offered Ms. P. "advice" in terms of how to proceed.
J-3.

with respect and courtesy. Respondent's conduct was intimidating, disparaging, dissuasive of Ms. P.'s abilities to voice her concerns and, indeed, antithetical to the requirements of Canon 3A(3).

We conclude, for the reasons stated above, that Respondent's remarks, whether considered individually or cumulatively, violated Canons 1, 2A and 3A(3) of the Code of Judicial Conduct.

II. RECOMMENDATION

The Committee recommends that Respondent be publicly reprimanded for the conduct at issue in this matter. This recommendation takes into account Respondent's sound reputation as a diligent, effective and compassionate officer of the court. It further accounts for the great stress and pressures Respondent faced on a daily basis as the Presiding Family Court Judge of the Atlantic Vicinage.

Nonetheless, we are cognizant of the Supreme Court's dictate in In re Sadofski, 98 N.J. 434, 441 (1985), that, "No matter how tired or vexed, . . . judges should not allow their language to sink below a minimally-acceptable level. Judges, like other members of society, will occasionally have a 'bad day.' Even on such days, however, a judge must conduct court proceedings in a manner that will maintain public confidence in the integrity and impartiality of the judiciary." In this case, Respondent's

conduct was so far afield of normal and acceptable judicial behavior and demeanor that we believe that the public's confidence in an impartial judiciary suffered, mandating public discipline.

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

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

May 2, 2011

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