

D-105-13 (074278)

SUPREME COURT
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2009-301

IN THE MATTER OF

HAROLD P. COOK, III,
FORMER JUDGE OF
THE MUNICIPAL COURT

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PRESENTMENT

The Advisory Committee on Judicial Conduct ("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 Harold P. Cook, III, Former Judge of the Municipal Court ("Respondent"), have been proven by clear and convincing evidence. The Committee recommends that Respondent be censured with the further condition that he be permanently barred from holding or securing future judicial office.

I. PROCEDURAL HISTORY

This matter was initiated with the filing of an ethics grievance against Respondent by a former client and business partner regarding conduct specifically related to Respondent's law practice and business dealings. The business dealings

concerned real estate and development of property in Yonkers, New York. The Committee conducted an investigation into those allegations which tangentially lead it to consider issues which were not contained in the initial grievance. As part of that subsequent investigation, interviews were conducted and the Committee collected and reviewed documentation relevant to Respondent's private business practices, including the representation of police officers by Respondent's law firm and political contributions which were made by Respondent and/or his business entities, while Respondent was serving as a Municipal Court Judge.

On May 19, 2011, the Committee issued a Formal Complaint against Respondent, consisting of three counts. Count 1 charged Respondent with allowing his municipal court positions, of which he served in a part time capacity in the Borough of North Haledon, Haledon, Ringwood and Wanaque, to be severely compromised by his interests in and affiliations with various limited liability companies which became the subject of forty-three lawsuits. In some of those lawsuits, it was alleged that Respondent engaged in fraudulent conduct in an attempt to avoid his judgment creditors, and demonstrated a pattern of uncooperativeness with opposing counsel, by failing to file answers, failing to return telephone calls, ignoring discovery requests, failing to appear for scheduled depositions and failing

to produce discovery. In addition, Respondent was charged with having breached his fiduciary duties to his investors and to having fraudulently transferred his real property, in violation of Canons 1, 2A and 5A(2) of the Code of Judicial Conduct. It was alleged that Respondent's judicial office was further compromised by garnishments which were placed against his municipal court wages to satisfy his personal judgments in violation of Canons 1, 2A and 5A(2). Lastly, Respondent was charged with the failure to report his involvement in those lawsuits as required by Administrative Directive #4-81, in violation of Canons 1, 2A and 3B(1).

Count II charged Respondent with making various political contributions, personally, through his law firm, and through two of his limited liability companies, while serving as a municipal court judge in violation of Canon 7A(4) of the Code of Judicial Conduct.

Count III charged Respondent with the violation of Rule 1:15-1(b) and Rule 1:15-4(a) and (b), and Canons 1 and 2A of the Code of Judicial Conduct for permitting an attorney employed by his law firm to represent Paterson police officers in civil and criminal matters involving the officers' conduct in their official capacities while Respondent served as a municipal court judge in the same county.

Respondent filed an Answer to the Formal Complaint on July 11, 2011 in which he admitted certain factual allegations of the Formal Complaint and denied others.

Respondent, through counsel, waived his right to a Formal Hearing by letter dated November 7, 2013 and requested an opportunity to submit a written submission, which the Committee granted. On November 6, 2013, Presenter and Respondent filed with the Committee a set of Stipulations. See Stipulations, filed on November 6, 2013. Presenter subsequently moved into evidence, without objection, exhibits. See P1 thru P47. Prior to the Committee's deliberations and with its express approval, both parties provided written submissions in support of their respective positions, which were filed on February 18, 2014 and considered by the Committee. Respondent's counsel also submitted an additional letter dated February 24, 2014 clarifying the disposition of four of the matters that were the subject of litigation.

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 Facts Concerning Count I

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1980. Stipulations at ¶1. At all times relevant to this matter Respondent has served as a part-time municipal court judge in North Haledon, Haledon, Ringwood and Wanaque.¹ Id. at ¶2. Effective June 10, 2011 Respondent took a voluntary leave of absence without pay from each of his four judicial positions pending the resolution of this matter. Id. at ¶4. Respondent was not reappointed as a municipal court judge in Haledon or Ringwood. Id. at ¶5. Respondent resigned from his judicial positions in North Haledon and Wanaque effective October 22, 2013. Id. at ¶6; see also Exhibit P3, Letters of Resignation.

At all times relevant to this matter, Respondent held an interest in more than fifty limited liability companies (the "LLCs") which were in the business of purchasing and developing and/or selling real estate located in New Jersey and New York. Stipulations at ¶¶12. 13. Respondent personally guaranteed several of the loans provided to the LLCs. Id. at ¶15. Beginning in 2008, the LLCs defaulted on a number of the outstanding loans resulting in the filing of forty-three lawsuits

¹ Respondent served as a part-time Municipal Court Judge in North Haledon beginning in 1988, in Wanaque 1991, Ringwood since 1993 and in Haledon since 2000. Stipulations at ¶2.

in the Superior Court of New Jersey against the LLCs, Respondent in his capacity as personal guarantor of some of the loans, and others. Id. at ¶¶16. 17.

In one matter, John Kleinert ("Kleinert") had a monetary claim against Respondent as guarantor of a certain note between Morris Avenue Commons LLC and Kleinert in the amount of \$355,000.00 that would become due on March 31, 2010. Id. at ¶18. On November 18, 2009, Kleinert filed a Complaint for Fraudulent Transfer of Property in Passaic County² alleging that Respondent transferred his interest in property located at 210 Oakwood Avenue, North Haledon, New Jersey ("210 Oakwood Avenue property")³ to his wife by deed dated August 16, 2008 for \$1.00 at the time that Respondent was indebted to Kleinert. Id. at ¶19; see also Exhibit P6, Complaint on Fraudulent Transfer of Property at ACJC 001911-1921. Kleinert later amended that action, which was then pending in Bergen County, to add an allegation that Respondent also transferred his interest in property located at 323 Iroquois Avenue, Beach Haven, New Jersey ("Beach Haven property")⁴ to his wife by deed dated August 16, 2008 for \$1.00 and in property

² The Complaint was subsequently transferred to Bergen County. Stipulations at ¶19.

³ Respondent stipulated that he owned with his wife a single family home located at 210 Oakwood Avenue, North Haledon. Stipulations at ¶11.

⁴ Respondent stipulated that he owned with his wife a beach house located at 323 Iroquois Avenue, Beach Haven, New Jersey. Stipulations at ¶11.

located at 886 Belmont Avenue, North Haledon, New Jersey ("886 Belmont Avenue property")⁵ to two LLCs by deeds dated April 30, 2009 for \$1.00 at the time that Respondent was indebted to Kleinert. Stipulations at ¶20; Exhibit P6 at ACJC 001922-1927, ACJC 001996-2001.

On April 30, 2010, Kleinert filed a lawsuit in Monmouth County ("Monmouth County matter") against Respondent, as personal guarantor, after Morris Commons LLC defaulted under the terms of the \$355,000.00 note, which resulted in the entry of summary judgment on October 1, 2010 against Respondent in the amount of \$355,000.00 plus interest, fees and costs. Stipulations at ¶¶21. 22.

On October 4, 2010, the Chancery Division, Bergen County,⁶ entered an order, upon the parties amicable resolution of the matter, finding that Respondent's interest in the 886 Belmont Avenue property, the 210 Oakwood Avenue property, and the Beach Haven property were all attachable by Kleinert, subject to judgment levy and execution, and to the extent that Kleinert obtained judgment against Respondent in the Monmouth County matter. Id. at ¶23, see also Exhibit P-6 at ACJC 003522-3523.

⁵ Respondent stipulated that until October 15, 2010 he was a named partner of the law firm "Perconti & Cook LLC" ("the Firm") with offices located in two condo units at 886 Belmont Avenue, North Haledon, New Jersey. Stipulations at ¶7.

⁶ For convenience, the Superior Court shall be herein after called the County Court of the County in which the case was venued.

On January 7, 2011, Kleinert filed a second Complaint for Fraudulent Transfer of Property in Ocean County ("Ocean County matter") alleging that Respondent and his wife transferred the Beach Haven property for a second time from his wife to his wife and daughter by deed dated April 8, 2010 for \$1.00 with the intent to hinder, delay or defraud Kleinert as a creditor and prevent Kleinert from collection of monies due. Stipulations at ¶24; Exhibit P-9 at ACJC 00694-703. On April 15, 2011, the Ocean County Court granted summary judgment and found that Respondent, his wife and his daughter fraudulently transferred the Beach Haven property in violation of New Jersey's Fraudulent Transfer Act, and voided the April 8, 2010 deed of transfer. Stipulations at ¶25; Exhibit P-10, Transcript of Hearing and Decision, T12:17-T:19-14. Respondent filed a Motion for Reconsideration which was denied by the Ocean County Superior Court. Exhibit P-11, Motion for Reconsideration at ACJC 000834-849; Exhibit P-12, Transcript of Hearing and Decision at ACJC 005421-5423; P-13, Order Denying Motion at ACJC 000855. Respondent filed an appeal of the Monmouth and Ocean County judgments which he later withdrew after reaching a monetary settlement with Kleinert. Stipulations at ¶26.

After obtaining judgment in the Monmouth County matter, Kleinert served Respondent with an information subpoena to collect on his judgment, but Respondent failed to respond. Id.

at ¶27. On November 12, 2010 the Monmouth County Court found that Respondent violated Kleinert's rights by his failure to respond and ordered Respondent to supply the information within a certain period of time. Id. at ¶28; see also Exhibit P7 at ACJC 000884-885. Respondent did not comply with the November 12, 2010 Order, so on January 7, 2011, the Monmouth County Court found that Respondent violated Kleinert's rights for a second time and authorized Kleinert to levy upon Respondent's property interests. Stipulations at ¶¶29. 30; Exhibit P7 at ACJC 000874-875. The Court also ordered a garnishment on Respondent's judicial wages which he received from the four municipalities. Stipulations at ¶31; Exhibit P8 at ACJC 003520-3521.

In addition to the various LLCs, Respondent was also part owner of Jefferson Loan Company ("Jefferson Loan") having a 60% ownership interest and serving as corporate officer and director. Stipulations at ¶33. In 2006, Jefferson Loan decided to cease operations and voluntarily liquidate its assets to pay down its debt owed to Valley National Bank and its debenture holders. Id. at ¶36. Charles and Carol Sachs ("Sachs") were holders of debentures issued by Jefferson Loan in the amount of \$71,000, and between July 1, 2002 and September 26, 2005, the Sachs renewed their debentures on five separate occasions. Id. at ¶¶37. 38.

After unsuccessfully attempting to collect on their debentures, the Sachs filed a Complaint on April 15, 2008 in the

Hudson County Superior Court against Jefferson Loan, Respondent and Sean Caposella⁷ for breach of contract and breach of fiduciary duty. Id. at ¶40; see also Exhibit P17, Amended Complaint at ACJC 001237-1246. On January 24, 2011, the Hudson County Court found that Respondent and Caposella breached the fiduciary duty they owed to Sachs by failing to disclose the poor financial condition of Jefferson Loan to Sachs in a timely manner. Stipulation at ¶42; Exhibit P18, Transcript of Bench Trial Decision, T12-14. On February 4, 2011, the Hudson County Court awarded Sachs \$71,000.00 plus interest and ordered the garnishment of Respondent's judicial wages which he received from the four municipalities. Stipulations at ¶43; Exhibit P19. Respondent moved for reconsideration which was denied by the Hudson County Court. Exhibit P20, Transcript of Motion for Reconsideration. The Sachs subsequently served upon Respondent an information subpoena, which Respondent ignored, and which caused the Hudson County Court to issue an order on April 29, 2011 finding Respondent in violation of litigant's rights and ordering him to respond within a certain time period and pay attorney's fees. Stipulations at ¶¶44. 45; Exhibit P22. Respondent failed to comply with the April 29 Order, so on June

⁷ It is stipulated that Sean Caposella ("Caposella") owned the remaining 40% interest in Jefferson Loan and held the position of corporate officer and director. Stipulations at ¶34.

24, 2011, the Court entered a second order finding Respondent in violation of litigant's rights, in violation of the April 29 court order, and it issued a warrant for Respondent's arrest. Stipulations at ¶¶46. 47; Exhibit P23. Respondent obtained a stay of the arrest warrant, at which time he complied with the subpoena and the arrest warrant was vacated. Stipulations at ¶48. Respondent appealed Sachs' judgment, but later withdrew that appeal after reaching a settlement. Id. at ¶49.

Respondent also failed to report to the Administrative Office of the Courts his involvement in any of the forty-three lawsuits filed against him personally or against any of the LLCs in which he had an interest, in violation of New Jersey Courts Administrative Directive #4-81, dated July 12, 1982. Id. at ¶¶50. 51.

B. Stipulated Facts Concerning Count II

Respondent stipulated to signing checks dated October 14, 2003 and April 22, 2004 drawn from the attorney business account of his law firm "Perconti & Cook, LLC" in the amount of \$1,000.00 and \$500.00 respectively, made payable to the "Election Fund of Senator Hank McNamara" at a time when he was serving as a municipal court judge. Stipulations at ¶52; Exhibit P43 at ACJC 004624 and 004626.

Respondent's partner, Joseph Perconti, signed a check dated May 5, 2004 drawn from the attorney business account of the law

firm "Perconti & Cook, LLC" in the amount of \$160.00, made payable to the "Election Fund of Senator Hank McNamara" and a check dated October 19, 2004 in the amount of \$500.00 drawn from the same account made payable to the "Passaic County Regular Republican Club." Stipulations at ¶¶53. 57; Exhibit P43 at ACJC 004628 and 004630.

In 2006, 2008 and 2009, Puddingstone Funding, LLC⁸ made four political contributions to various officials; specifically a \$1000.00 political contribution to Senator John A. Girgenti in 2006, a \$1000.00 donation to Senator Paul A. Sarlo on February 1, 2006, a \$500.00 donation to "Friends of Mayor Patrick Botbyl" on February 13, 2008, and a \$500.00 donation to Senator John A. Girgenti on May 2, 2009. Id. at ¶¶61-¶64; see also Exhibit P42 at ACJC 000607.

On April 12, 2000, Jefferson Loan Company, Inc. made a \$500.00 political contribution to William Gervens, Passaic County Freeholder. Stipulations at ¶65; Exhibit P42 at ACJC 000608.

C. Stipulated Facts Concerning Count III

Between 2008 and 2010, Respondent's law firm provided legal services to the City of Paterson⁹ related to the representation

⁸ Respondent stipulated that he maintained a 1/3 membership interest in Puddingstone Funding, LLC. see also Stipulations at ¶59.

⁹ The City of Paterson is located in Passaic County, which is the same county in which Respondent sat as a municipal court judge until June 10, 2011. see also Stipulations at ¶70.

of Paterson police officers in criminal and civil matters. Stipulations at ¶67; Exhibits P45, P46, P47. Specifically, James Frega, Esq.,¹⁰ appeared on multiple occasions in the Paterson Municipal Court on behalf of Paterson police officers in probable cause hearings arising from citizen complaints of criminal assault that occurred during the performance of official duties. Stipulations at ¶68; Exhibits P46 and P47. The City of Paterson directed all authorizations for Frega's representation of its officers to Respondent's law firm. Stipulations at ¶69; Exhibit P45.

D. Uncontested Facts

The record consists of uncontested evidence demonstrating that Respondent was consistently uncooperative with opposing counsel in many of the forty-three law suits that were filed against the LLCs and Respondent, by failing to file answers, failing to return telephone calls, ignoring discovery requests, failing to appear for scheduled depositions and failing to produce discovery. Exhibits P25 at T6, T9, P27 at ACJC 003750-3756, ACJC 003784-3786, P28 at ACJC 003928-3931, P29 at ACJC 00462-467, 001837-1846, 004081-4084, P30 at ACJC 003533-3558, P32 at ACJC 4037-4042, 4051-4052, P33 at ACJC 4150-4191, P34,

¹⁰ James Frega, Esq. was hired as an associate by Perconti & Cook, LLC. see also Stipulations at ¶66.

Transcript of Glenn Finkel Interview at T29-30, T36, T39-43, T45-47, P37 at ACJC 003977-3979, 4003-4008.

E. Respondent's Certification

Respondent submitted a Certification dated February 17, 2014 which was attached to his counsel's letter in lieu of brief dated February 18, 2014. See Certification, February 17, 2014. Respondent advises that he will not accept any future appointments to the bench and is prepared to enter into a consent Order regarding his permanent disqualification from future service in the judiciary. Id. at ¶1. Respondent also acknowledges responsibility for his transgressions and admits that he violated the Code of Judicial Conduct. Id. at ¶7.

Count I of the Formal Complaint alleges that Respondent engaged in fraudulent conduct, including attempts to avoid his judgment creditors, and that he was found to have fraudulently transferred his real property and to have breached his fiduciary duties to his investors, in violation of Canons 1, 2A and 5A(2) of the Code of Judicial Conduct. Although Respondent allegedly believed that he was going to amicably resolve his obligations to his creditors, in retrospect he acknowledges that he "should not have made the transfers in light of the economic circumstances I faced notwithstanding my belief at the time that these transfers did not constitute violations of any law." Id. at ¶8e. Respondent allegedly did not believe that the transfer

of the Beach Haven property would have had any impact on plaintiff Kleinert, as the property was subject to a first and second mortgage. Nonetheless, Respondent acknowledges that the transfer of the property "was a mistake notwithstanding what I believed." Id. at ¶8f.

Respondent disagrees with the Hudson County Court's finding that he breached his fiduciary duty to the Sachs, who were debenture holders of Jefferson Loan Company. Respondent filed an appeal, but subsequently withdrew it after reaching a settlement with Sachs. Id. at ¶8g.

Count I of the Formal Complaint also alleges that Respondent's judicial positions were compromised by wage garnishments that were entered against his judicial salaries. Although Respondent certifies that had no intent to violate the Code of Judicial Conduct, he acknowledges that the wage executions issued on his judicial salaries "reflected negatively on my judgeships." Id. at ¶8d.

Count I of the Formal Complaint further alleges that Respondent failed to report his involvement in litigation as required by Administrative Office of the Courts Administrative Directive #4-81. Respondent admits that he violated the directive, as he was under the impression that only litigation involving family law issues had to be reported. Id. at ¶8b.

Finally, Count 1 of the Formal Complaint alleges that Respondent was consistently uncooperative with opposing counsel in many of the forty-three law suits that were filed against the LLCs and Respondent, by failing to file answers, failing to return telephone calls, ignoring discovery requests, failing to appear for scheduled depositions and failing to produce discovery. Respondent certifies that he was "overwhelmed" in light of the economic crisis that he faced and the sheer number of matters that were pending, which manifested itself in defaults being filed and mistakes in filings. He further indicates that it was a "serious mistake" to have his law firm represent the LLCs in the lawsuits, as he did not "have the benefit of an objective evaluation of the entire situation." Id. at ¶8c. Lastly, Respondent recognizes "this is no excuse for what occurred and I realize that although it was not my intent to do so I violated the Code of Judicial Conduct." Id. at ¶8d.

Count II of the Formal Complaint alleges that Respondent, his law firm, and two of his business entities made political contributions in violation of Canon 7A(4) of the Code of Judicial Conduct. Respondent recognizes that the contributions "should not have been made" and that he violated the Code, although at the time of the contributions, Respondent allegedly did not believe them to be improper. Id. at ¶8h.

Count III of the Formal Complaint alleges that the representation of Paterson police officers by Respondent's law firm, while Respondent held judicial office in several municipalities within the same county, violated Rule 1:15-1(b) and Rule 1:15-4(a) and (b). Respondent certifies that he was unaware of the representation until it was brought to his attention by his associate, and once he became aware, he instructed his associate to cease the representation. Respondent recognizes that the representations should not have occurred. Id. at ¶8i.

In conclusion, Respondent acknowledges that he violated the Code "in several regards" which serves as the basis for his agreement and consent to an Order of permanent disqualification. Id. at ¶9.

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 factfinder 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).

In this judicial disciplinary matter Respondent has been charged with violating Canons 1, 2A, 3B(1),5A(2) and 7A(4) of the Code of Judicial Conduct, and Rule 1:15-1(b) and Rule 1:15-4(a) and (b), by engaging in fraudulent conduct, including attempts to avoid his judgment creditors, by having been found to have fraudulently transferred his real property, by having been found to have breached his fiduciary duties to his investors, by having his judicial wages garnished to satisfy his personal judgments, by demonstrating a pattern of uncooperativeness in dealing with opposing counsel in conjunction with the ongoing litigation pending against him, by failing to report his involvement in litigation as required by Administrative Directive #4-81, by making political contributions, and by the representation of Paterson police officers in criminal matters by his law firm, while he held judicial office in several municipalities within the same county. We find, based on our review of the significant evidence in the record, 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 and Rule 1:15-1(b) and Rule 1:15-4(a) and (b).

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. Canon 3B(1) requires judges to diligently discharge the administrative responsibilities of the office. Canon 5A(2) requires judges to conduct all of their extra-judicial activities in a manner so as not to demean the judicial office. Canon 7A(4) prohibits judges from making a contribution to a political organization or candidate. Rule 1:15-1(b) and Rule 1:15-4(a) and (b), prohibit the practice of law in criminal and quasi-criminal matters by municipal court judges in any jurisdiction, and by their law partners and associates in the same county in which the judge serves as a municipal court judge.

In the instant matter, there are no facts in dispute. Respondent was found by the Ocean County Superior Court to have engaged in fraudulent conduct in violation of New Jersey's Uniform Fraudulent Conveyance Act when he transferred the interest in his property from his wife to his wife and daughter for \$1.00 with the intent to defraud Kleinert from collecting on a judgment. Specifically Respondent was found to have transferred the Beach Haven property "with intent to hinder, defraud or delay" Kleinert from collecting on a judgment. Exhibit P10 at T18:20. Respondent was given a full and complete opportunity to defend his position before the Court, including the filing of and eventual denial of his motion for

reconsideration. Although Respondent subsequently filed an appeal, which he withdrew after entering into a settlement¹¹ with Kleinert, the Trial Court's decision remains and is given conclusive effect by the Committee in this judicial ethics matter.

Respondent disagrees with the findings of the Hudson County Superior Court that he and Sean Caposella breached the fiduciary duty they owed to the Sachs by failing to disclose the poor financial condition of Jefferson Loan to the Sachs in a timely manner. Respondent filed an appeal from the trial court's order which was subsequently withdrawn after reaching a settlement with the Sachs.¹²

The Committee finds that Respondent's position regarding the alleged breach of his fiduciary duty was fully argued and considered by the Superior Court during a three-day bench trial and a subsequent motion for reconsideration, and that Respondent had the opportunity to appeal the final decision. The Committee is left with a decision of the Superior Court which was not overturned, and consequently, it gives conclusive effect to the finding of the Court.

¹¹ The settlement was reached while this ethics matter was pending.

¹² The settlement was reached while this ethics matter was pending.

Respondent admits to the remaining allegations in the Formal Complaint, i.e., that garnishments were placed against his municipal court wages to satisfy his personal judgments, that he failed to report his involvement in those lawsuits as required by Administrative Directive #4-81, that he personally, through his law firm, and through two of his limited liability companies, made various political contributions while serving as a municipal court judge, and that an attorney employed by his law firm represented Paterson police officers in civil and criminal matters involving the officers' conduct in their official capacities while Respondent served as a municipal court judge in the same county, in violation of Canons 1, 2A, 5A(2) and 7A(4) of the Code of Judicial Conduct, and Rule 1:15-1(b) and Rule 1:15-4(a) and (b). Respondent contends that he was either not aware of his responsibilities or did not intend to violate the Code of Judicial Conduct by his conduct.

Respondent's lack of intent or improper motive, however, does not excuse his misconduct. In re Blackman, supra, 124 N.J. at 552 (finding a Respondent's lack of intent irrelevant in judicial disciplinary matters). Similarly, the fact that this violation may have been the product of poor economic times, or being "overwhelmed" in the face of the filing of forty-three lawsuits against him and/or his business interests, or his bad choice of counsel is immaterial. Regardless of his intentions or

motivations, Respondent's conduct constitutes actual and egregious misconduct that justifies the imposition of severe public discipline.

The commentary to Canon 2 provides that judges "must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny." As recognized by our Supreme Court, adherence to this principle is of the utmost importance, especially in our municipal courts where the greatest numbers of people are exposed to the judicial system. In re Santini, 126 N.J. 291, 298 (1991); see also In re Murray, 92 N.J. 567, 571 (1983); In re Hardt, 72 N.J. 160, 166-167 (1977); In re Blackman, 124 N.J. 547, 551 (1991) ("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 is eroded.'").

Having concluded that Respondent has violated Canons 1, 2A, 3B(1), 5A(2) and 7A(4) of the Code of Judicial Conduct, and Rule 1:15-1(b) and Rule 1:15-4(a) and (b), 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).

In this matter Respondent is prepared to accept and consents to the issuance of an order permanently barring him from serving in any judicial capacity in the future. Respondent has submitted certifications from several individuals attesting to his good reputation in the legal and business community, and has accepted responsibility for his transgressions.

As revealed by the record before us, Respondent's misconduct was serious and its detrimental effect on the integrity and impartiality of the Judiciary is significant. Respondent engaged in misconduct which severely compromised his judicial office and diminished the public's view of his integrity. Respondent's conduct, most notably the findings of the Superior Court that he engaged in fraudulent conduct and breached his fiduciary duty to his business investors through deceptive and misleading acts, justifies Respondent's permanent disqualification from judicial service. See Alvino, supra, 100 N.J. at 97 (finding that a judge's dishonesty of any kind ordinarily warrants removal). Respondent's conduct in this matter is incompatible with the high standards of conduct expected of our judges, and absent Respondent's consent to a permanent disqualification from holding judicial office in the future, a recommendation for removal would be warranted.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be censured with the further condition that he be permanently barred from holding or securing future judicial office for his violations of Canons 1, 2A, 3B(1), 5A(2) and 7A(4) of the Code of Judicial Conduct, and Rule 1:15-1(b) and Rule 1:15-4(a) and (b). This recommendation takes into account Respondent's admissions and consent to the recommended sanction, and is consistent with Respondent's egregious misconduct that seriously weakens the public's confidence in the integrity and independence of the Judiciary, and demonstrates a disturbing lack of good judgment.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

May 1, 2014

By:

Alan B. Handler / JHK
Alan B. Handler, Chair