D-26-17 (080232)

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2016-001

IN THE MATTER OF LILIANA S. DeAVILA-SILEBI JUDGE OF THE SUPERIOR COURT	**PRESENTMENT**

The Advisory Committee on Judicial Conduct (the "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 Count II of the Formal Complaint against Liliana S. DeAvila-Silebi ("Respondent"), Judge of the Superior Court, relating to Respondent's misuse of her judicial office to advance the private interests of a litigant have been proven by clear and convincing evidence.

The Committee's findings and the evidence in the record also demonstrate, clearly and convincingly, that while misusing her judicial office, Respondent misrepresented to a local police department the material facts and circumstances on which her intercession on behalf of that litigant was predicated, as charged in Count I of the Formal Complaint, and, moreover, was dishonest

in all material respects when testifying before this Committee in defense of these charges.

Respondent's intentional misconduct, as charged in the Formal Complaint, constitutes a serious violation of the Code of Judicial Conduct for which significant public discipline, short of removal, would ordinarily be warranted. Respondent's demonstrable and pervasive dishonesty during these ethics proceedings, however, which included a manufactured defense, signifies a complete departure from the honor and integrity demanded of every jurist and essential to the continued viability of the judicial office. For this reason, the Committee respectfully recommends that proceedings be instituted to remove Respondent from judicial office in accordance with Rule 2:14-1 and N.J.S.A. 2B:2A-1 to -11.

I. PROCEDURAL HISTORY

This matter was initiated by a referral from Passaic County Assignment Judge Ernest M. Caposela who was apprised of potential misconduct on Respondent's part by Essex County Assignment Judge Sallyanne Floria. P-1. Judge Floria referred the matter to Judge Caposela upon receipt of a complaint from Essex County Superior Court Judge Michael Casale, who reported that on May 9, 2015 Respondent inappropriately interceded with the Fort Lee Police Department ("FLPD") on behalf of a litigant in an Essex County Family Part matter concerning a visitation dispute over which Judge Casale was then presiding and about which Respondent was not

otherwise involved. Ibid. Judge Casale, who learned of Judge DeAvila-Silebi's intercession following receipt of a motion filed after the event by the aggrieved litigant in that Family Part matter, stated that during the subject telephone call Respondent "instructed [the FLPD] to assist/escort the mother to obtain custody of her child [who was visiting with his father]."

The Committee conducted an investigation into this matter and, as part of that investigation, interviewed seven individuals, including Respondent, who also appeared before the Committee at an Informal Conference on May 11, 2016. See P25 thru P27. In addition, the Committee collected and reviewed documentation relevant to its consideration of this matter. See P2 thru P24.

On October 20, 2016, the Committee issued a two count Formal Complaint against Respondent charging her with conduct in contravention of Canon 1, Rule 1.1, and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct relating to her alleged misuse of the judicial office to advance the private interests of a litigant and her associated misrepresentations to the FLPD.[1]

[1] Formerly Canon 1 and Canons 2(A) and (B) of the Code of Judicial Conduct. The revised Code of Judicial Conduct to which we cite and refer in this Presentment was adopted on August 2, 2016 and effective September 1, 2016, after Respondent's underlying conduct occurred. There were no substantive changes, however, to Canons 1 and 2 which would have affected the charges in the Complaint, and Respondent did not claim otherwise or that the matter should have proceeded with reference to Canons that were no longer in effect at the time of the Complaint or hearing. We find the amendments to be immaterial in this case.

Respondent filed an Answer to the Complaint on November 9, 2016 in which she admitted certain factual allegations, with some clarification, denied others and denied violating the cited Canons of the Code of Judicial Conduct.

The Committee convened a Formal Hearing on March 22, 2017, which was continued to April 26, 2017 when it concluded. Respondent appeared, with counsel, and offered testimony in defense of the asserted disciplinary charges as well as that of three witnesses. The Presenter called two witnesses in support of the asserted disciplinary charges and four rebuttal witnesses. Exhibits were offered by the Presenter and Respondent, all of which were admitted into evidence. See Presenter's Exhibits P-1 thru P27; see also Respondent's Exhibits A thru M. Presenter and Respondent, with leave of the Committee, filed post-hearing briefs on May 15, 2017, which were 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.

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1992. See Formal

Complaint and Answer at ¶1. At all times relevant to this matter, Respondent was assigned as a Superior Court Judge in the Civil Division in the Passaic Vicinage, a position to which she was formally assigned effective May 1, 2015 and continues to hold. P-3; P-4. Immediately prior to her assignment in the Passaic Vicinage, Respondent served as the Presiding Judge of the Criminal Division in the Bergen Vicinage from September 1, 2010 to April 30, 2015. Ibid; see also Formal Complaint and Answer at ¶2; 1T59-17 to 1T60-1; 1T61-8-12; 1T62-11 to 1T63-10.[2] Prior thereto, Respondent served in the Civil Division in the Bergen Vicinage from June 16, 2008 to August 31, 2010. See Formal Complaint and Answer at ¶2.

At Respondent's request and despite her reassignment effective that day, she was permitted to preside over what would be her final sentencing calendar in the Criminal Division in the Bergen Vicinage on Friday, May 1, 2015, immediately prior to the transfer of her belongings by Bergen County Court operations personnel to the Passaic County Courthouse on Monday, May 4, 2015. P-2; see also 1T58-10 to 1T59-22, 2T19-3-13.[3] Respondent returned to her prior chambers in the Bergen County Courthouse on one other

[2] "1T" refers to the Transcript of Formal Hearing, In re DeAvila-Silebi, ACJC 2016-001, dated March 22, 2017.

[3] "2T" refers to the Transcript of Formal Hearing, In re DeAvila-Silebi, ACJC 2016-001, dated April 26, 2017.

occasion, Saturday, May 2, 2015, to prepare paperwork for the incoming Bergen County Presiding Criminal Division Judge. P-5; see also 2T19-14 to 2T20-2; 2T21-14 to 2T22-20. Respondent logged her first time sheet in Passaic County on Monday, May 11, 2015. See Respondent's Exhibit C.

During the intervening week of May 4 through May 8, 2015, Respondent maintains that she was neither in Bergen nor Passaic County, but rather working from her home on outstanding opinions related to her tenure as the Bergen County Criminal Division Presiding Judge. 2T22-21 to 2T23-8; 2T23-14 to 2T24-16. Though the record does not contain any evidence to substantiate this testimony, Respondent's physical location during this time period is irrelevant to the issues before this Committee, which concern her conduct on Saturday, May 9, 2015, and her testimony before this Committee concerning that conduct.

On Saturday, May 9, 2015, Respondent telephoned the Fort Lee Police Department ("FLPD") at 8:50 a.m. and spoke with Sergeant Michael Ferraro concerning a parenting time dispute involving her former unpaid intern, Vivianne Chermont, and Ms. Chermont's ex-husband, Franklin Ferrer, whose Family Part matter was venued in the Essex County Superior Court -- Franklin Ferrer v. Vivianne Chermont Ferrer, Docket No. ESX-FM-07-1243-12[4] -- and then assigned

[4] Ms. Chermont and Mr. Ferrer share joint legal custody of the sole child born of the marriage, with Ms. Chermont designated as the

to Essex County Superior Court Judge Michael Casale. P-1; see also P-17. That telephone call was received on a recorded line at the FLPD headquarters and its substance transcribed and made a part of the record in these proceedings. See P-17.

As revealed in that transcript, Respondent identified herself as "Judge Silebi" when first addressing the desk sergeant who answered her telephone call. Ibid. The discussion thereafter turned to Ms. Chermont's parenting time dispute, though Ms. Chermont is not identified by name during that discussion. Ibid. The details of that conversation are as follows:

> **JUDGE SILEBI:** I got a phone call from an attorney involving an emergent matter -
>
> **SERGEANT FERRARO:** Okay.
>
> **JUDGE SILEBI:** -- involving his client who is supposed to have the child this weekend and the husband didn't take the child to school the whole week -
>
> **SERGEANT FERRARO:** Okay.
>
> **JUDGE SILEBI:** -- and, therefore, you know, they filed this emergent application. So I'm on emergent duty. And I saw the court order and she is supposed to have the child this weekend (emphasis added) -
>
> **SERGEANT FERRARO:** Okay.
>
> **JUDGE SILEBI:** -- based on the court order. I just don't want her going to the house by herself to retrieve the child. Is there any way that someone can go with her or -

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parent of primary residence and Mr. Ferrer the parent of alternate residence. See Respondent's Exhibit I.

SERGEANT FERRARO: Escort her?

JUDGE SILEBI: -- you know, some - or, yes, or somebody can just call the house and say, look, the child has to come outside because she went there and they won't open the door and I just don't want any, you know, altercations or -

SERGEANT FERRARO: Yeah, we could -- is she there now or -

JUDGE SILEBI: No, I told her to -- I told the attorney to hold on, that I had to call the police department first and coordinate what would be a good time for you.

SERGEANT FERRARO: Yeah. I mean, anytime that - I would prefer if she -

JUDGE SILEBI: Should she go to the police department?

SERGEANT FERRARO: Yeah, I would prefer her to come here and then we can escort her there.

JUDGE SILEBI: Yes, I think that's better, yes, because, you know, just I don't want to have any problems.

SERGEANT FERRARO: Sure.

JUDGE SILEBI: I appreciate. Should she ask for you or --

SERGEANT FERRARO: Yeah, I'll be here at the desk. I'm sorry, though, who is this calling? I didn't get a --

JUDGE SILEBI: This is Judge Silebi.

SERGEANT FERRARO: Oh, okay. Thank you.

* * *

SERGEANT FERRARO: Where are you a judge at? I'm sorry.

JUDGE SILEBI: I'm in Bergen, but I'm also assigned in Passaic County.

SERGEANT FERRARO: Bergen and - okay.

JUDGE SILEBI: But I'm on emergent duty this weekend, right.

SERGEANT FERRARO: But --

JUDGE SILEBI: So I will call them and I'll call the attorney and tell them meet you at the Fort Lee Police Department.

SERGEANT FERRARO: Yeah, sure.

JUDGE SILEBI: What should I give them?

SERGEANT FERRARO: I'm Sergeant Ferraro, so they can --

JUDGE SILEBI: Sergeant Ferraro, oh, yes, I know you.

SERGEANT FERRARO: Yes. She can come right here and then we'll escort them over and try to get that child to come out.

JUDGE SILEBI: All right. Thank you so much. I appreciate it.

SERGEANT FERRARO: You're welcome. Bye-bye.

[P-17].

Approximately forty minutes after Respondent's telephone discussion with Sergeant Ferraro, Ms. Chermont appeared at the FLPD, without counsel and without the referenced custody order, to retrieve her child. P-11; 1T113-21 to 1T114-5; 1T127-12 to 1T129-3. Ms. Chermont was not, in fact, represented by counsel during this time period and, by her own admission, did not provide the

FLPD with any documentation that day to justify her entitlement to the immediate physical custody of her child. 1T113-21 to 1T114-5; 1T128-21 to 1T129-3.

Nonetheless, and as a direct result of Respondent's telephone call to the FLPD, two Fort Lee police officers removed the child from the care and custody of his paternal grandmother, in whose care Mr. Ferrer had left the child temporarily, and returned him to Ms. Chermont. P-11. Indeed, Respondent, when interviewed in November 2015, conceded that her telephone call to the FLPD on May 9, 2015 was the impetus for the FLPD's decision to remove the child from his father's custody and subsequently place him with Ms. Chermont. P-25 at T25-10 to T26-19.

Mr. Ferrer appeared at the FLPD shortly after his child was removed from his care to contest that removal and executed an affidavit in furtherance of his position. P-11. In that affidavit, Mr. Ferrer maintained that he was utilizing his two weeks of vacation time with the child, as authorized by the Essex County Superior Court. Id. at Affidavit, p.2. As justification, Mr. Ferrer provided the FLPD with copies of several orders as well as the Judgment of Divorce, which included the referenced vacation time schedule. Id.

Contrary to Respondent's representation to the FLPD, she never reviewed the custody order upon which she allegedly relied when determining Ms. Chermont's physical custody rights, but rather

maintains that it was read to her by the so called "attorney" with whom she spoke earlier that day.[5] 2T116-8-20; see also P-25 at T62-22 to T63-20.

Though pressed at length during the Formal Hearing, Ms. Chermont could not identify the order on which she relied when asserting her physical custody rights that weekend. 1T110-2-22; 1T121-10 to 1T122-17. For her part, Respondent identified an April 12, 2013 order, which was issued prior to the parties' Judgment of Divorce in December 2013, as the order on which she relied when intervening in Ms. Chermont's custody dispute. 2T10-10-15; 2T34-22 to 2T37-20; 2T58-7 to 2T63-10; see also Respondent's Exhibit M. The terms of that April 12, 2013 order, however, were rendered moot by the parties' Judgment of Divorce and, in any event, did not substantiate Ms. Chermont's parenting time claim on May 9, 2015. See Respondent's Exhibit M.

When questioned at the hearing about these proof problems, Respondent proffered an entirely different justification for her involvement, stating that her "focus wasn't on who should have

[5] Respondent rejected the suggestion that if such a court order had existed in May 2015 it would have rendered her involvement unnecessary as the FLPD could have simply relied on that order when intervening in Ms. Chermont's parenting time dispute. P-25 at T73-5 to T74-12; see also P-26 at T15-20 to T17-11. According to Respondent, neither the Bergen County Sheriff's Department nor the FLPD would have "tak[en] the word of an attorney" even one armed with a valid court order. P-25 at T74-7-12; see also P-26 at T15-20 to T17-11.

this child custody-wise, [but] the safety of the child." 2T58-7 to 2T62-22. In Respondent's view, the child's alleged absence from nursery school that week and her impression that the matter was escalating as between Ms. Chermont and Mr. Ferrer created the potential for violence. 2T62-1 to 2T63-10.

We find this explanation specious. Respondent, by her own admission when interviewed in November 2015, did not recall having any concerns about the child's safety. P-25 at T29-21 to T30-2. Moreover, if, as Respondent maintains, she was more concerned about potential violence than the parties' physical custody rights, presumably the focus of her telephone call to the FLPD that day would have been on the safety of all involved, not securing for Ms. Chermont the physical custody of her child that weekend.

Notably, Respondent and Ms. Chermont deny relying on the parenting time schedule contained in the Judgment of Divorce, which the record before this Committee reveals was the only parenting time schedule in effect as of May 9, 2015. 1T96-12 to 1T97-8; 1T121-10 to 1T122-17; 2T34-22 to 2T35-5; see also Respondent's Exhibit I; see also P-10.

The record of the divorce action contains four orders that reference parenting time, none of which are dispositive of the issue that confronted Respondent on May 9, 2015, i.e. whether Ms. Chermont was entitled to parenting time with her son that day. Those orders were:

- April 12, 2013 Order: provides that Mr. Ferrer shall "exercise parenting time . . . from Friday, at the conclusion of daycare, until Monday morning at the start of daycare." Ms. Chermont "shall exercise parenting time from Monday afternoon at the conclusion of daycare, until Friday morning when she transports him to daycare . . . each party shall have two weeks of consecutive parenting time . . . during the summer . . . ." See Respondent's Exhibit M. These provisions were replaced by the parenting time schedule contained in the subsequently issued Judgment of Divorce in Franklin Ferrer v. Vivianne Chermont Ferrer, Docket No. ESX-FM-07-1243-12. See Respondent's Exhibit I.
- December 11, 2013 Judgment of Divorce: provides that Mr. Ferrer is to have "parenting time every Wednesday after work until Thursday morning at the start of the child's day care and every other weekend from Friday after work until Monday morning at the start of the child's day care." In addition, "the parties shall alternate holiday parenting time on a schedule agreed between them and . . . shall have two weeks' vacation time every summer . . . to be likewise agreed between them. . . ." See Respondent's Exhibit I.

- February 28, 2014 Order: amends the parenting time schedule to provide that Mr. Ferrer "shall be responsible for picking up and dropping off the parties [sic] child. In addition drop off at daycare shall be by 9am. Pick up from daycare shall be at 4pm . . . ." P-10.
- November 14, 2014 Order: Denied Ms. Chermont's request to modify the parenting time arrangement. Ibid.

Before us, Ms. Chermont, though apparently believing she was entitled to her son on the weekend of May 9, 2015 as it was Mother's Day weekend, readily conceded there was no parenting time schedule in respect of holidays at that time and indeed no order provided for such a schedule. 1T95-16-22; see also Respondent's Exhibit I; Respondent's Exhibit J, Transcript of Hearing, Ferrer v. Ferrer, Docket No. ESX-07-1243-12, at T21-1-8; and Respondent's Exhibit K, *Certification of Vivianne Chermont*, at ¶37.

The only order concerning holiday parenting time in effect as of May 9, 2015 was the parties' Judgment of Divorce, which specifically delegated to the parties the task of developing a holiday parenting time schedule, something the parties were unable to accomplish even two years after their divorce. See Respondent's Exhibit K at ¶37; see also Respondent's Exhibit I.

Respondent's telephone call to the FLPD on May 9, 2015, and the officers' subsequent removal of the child from the father's custody, was the subject of a motion filed by Mr. Ferrer and heard

before Judge Casale in the Essex County Superior Court on August 7, 2015. See P-1; see also Respondent's Exhibit J. During that motion hearing, Judge Casale expressed alarm at Respondent's intercession in the Ferrer matter and noted that Ms. Chermont had interfered repeatedly with Mr. Ferrer's parenting time, ultimately depriving him of twenty-one overnight visits. See Respondent's Exhibit J at T8-8 to T20; T18-7 to T19-7; T19-14-22. As a consequence, Judge Casale awarded Mr. Ferrer additional weekend visitations to account for that missed time. Id.

On Friday, May 8, 2015, the day before Respondent's telephone call to the FLPD, Ms. Chermont first sought the FLPD's assistance in respect of her parenting time dispute and, on that occasion, brought with her the Judgment of Divorce as well as the February 28, 2014 and November 14, 2014 Orders. 1T113-2-20; see also P-10; P-27 at T8-10-21. At that time, Ms. Chermont alleged that her child was to be "dropped off at her residence on [Friday] 05-08-2015 and . . . was not," but made no mention of the child's allegedly unexplained absence from nursery school for that entire week. P-10.

Mr. Ferrer, when questioned by the police on May 8, 2015, asserted "that it was his turn to watch the child" as he was "utilizing his two weeks [sic] vacation [time] with his son as authorized" by the Essex County Superior Court. Ibid. Given these conflicting statements and no definitive order addressing the

issue of physical custody that weekend, the FLPD, on confirming the child's well-being, declined to intercede, stating it "had no way of confirming" which parent was to have physical custody of the child that weekend, and advised the parties to "follow-up in family court." Ibid.

After Respondent's call to the FLPD, however, Ms. Chermont, for the first time, alleged to the responding police officers on May 9, 2015 that Mr. Ferrer had failed to take the child to daycare on Monday, May 4, 2015, as scheduled.[6] P-11. There exists no explanation in the record as to why Ms. Chermont waited five days to report her child's absence from daycare. Approximately two months later, though, on July 21, 2015, Ms. Chermont certified to the Essex County Superior Court that Mr. Ferrer, with her consent, had exercised one of his two weeks of vacation time during this period. See Respondent's Exhibit K at *Certification of Defendant in Support of Cross Motion* attached as Exhibit A to the motion papers at ¶¶30-31. Nonetheless, Ms. Chermont, by virtue of Respondent's inappropriate intercession on her behalf, secured a police escort on May 9, 2015 to remove the parties' child from his

[6] Conversely, the focus of Ms. Chermont's testimony throughout this proceeding was her belief that she was entitled to custody on the weekend of May 9, 2015 because of the Mother's Day holiday, not on a claim to missed parenting time during the week of May 4, 2015 or missed daycare sessions. 1T110-1T111-7; 1T113-2 to 1T129-18; 1T151-25 to 1T152-6; 1T152-13 to 1T153-8.

father's care, assistance the FLPD had declined to provide only the day before given the lack of a definitive parenting time schedule concerning each parent's physical custody rights that weekend. P-10; P-11.

Respondent's recall of the events that precipitated her telephone call to the FLPD on the morning of May 9, 2015 is hazy and informed almost exclusively by the evidence of record, a circumstance we find incredible given the unique set of facts at issue and the purportedly random circumstances under which Respondent claims she was induced to act.[7] P-1; see also P-25 at

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[7] The quality of Respondent's recall has fluctuated over time.

When first interviewed in November 2015, Respondent denied learning of Ms. Chermont's interaction with the FLPD on May 8, 2015 prior to her telephone call to that department on May 9, 2015. See P-25 at T25-10 to T26-8. When testifying before this Committee at an Informal Conference in May 2016, however, Respondent recalled the "attorney" advising her of Ms. Chermont's prior involvement with the FLPD, though she believed that involvement to have occurred on May 9, 2015. See P-26 at T16-16 to T17-11. Respondent's recollection fluctuated again during the Formal Hearing on April 26, 2017 when she reasserted that she did not know of Ms. Chermont's prior involvement with the FLPD on either May 8 or May 9, 2015. 2T63-21 to 2T64-6.

Respondent recalled, for the first time during her Informal Conference, that she had asked the "attorney" with whom she spoke why he had not attempted to communicate first with the emergent duty judge. P-26 at T13-20 to T14-4. Respondent claimed that the "attorney" replied with a *non- sequitur* about having obtained her telephone number from the Bergen County Sheriff's Department. Ibid. There is no evidence in the record of any involvement by the Bergen County Sheriff's Department in the Ferrer matter during this time period.

T5-14 to T8-18. Respondent's vague memory cannot be explained by the passage of time as it has persisted since Respondent was first contacted in this matter in September 2015, roughly five months after the events at issue. 2T52-18-24; see also P-1.

According to Respondent, her telephone call to the FLPD was prompted by her receipt of an earlier telephone call that morning, at 8:39 a.m., on her personal cell phone from a cell phone belonging to Ms. Chermont, which concerned Ms. Chermont's ongoing custody dispute with her ex-husband. P-16; see also 2T8-11 to 2T9-5; 2T25-6 to 2T29-7; 2T29-24 to 2T31-24. Respondent disclaims any memory of the identity of the caller, though she maintains it was an unknown male who identified himself as an attorney, and disclaims any knowledge of how the caller came into possession of her private telephone number, and any knowledge that the case involved Ms. Chermont.[8] 2T8-11 to 2T9-5; 2T25-6 to 2T29-7; 2T29-24 to 2T31-24.

During the Formal Hearing, however, Respondent denied asking the "attorney" if he had sought assistance from another judge before contacting Respondent. 2T30-23 to 2T31-15. In addition, Respondent claimed during the Formal Hearing that she was unaware of the means by which this "attorney" obtained her personal cell phone number. 2T34-6-21.

[8] We find incredible Respondent's testimony that she destroyed any notes she may have taken during this telephone call due to the alleged lack of space in her new chambers in Passaic County. 2T26-4-16; 2T93-16-22; 2T94-7-14; 2T127-1-17; see also P-12. As revealed by the record, Respondent had packed her Bergen County chambers on the weekend of May 2, 2015 and her belongings had been moved to her new chambers in Passaic County on Monday, May 4, 2015.

Though purportedly ignorant of these basic facts, Respondent, nonetheless, made no attempt during this initial nine-minute telephone discussion to confirm the caller's status as a member of the New Jersey Bar, or inquire as to the names of the parties involved in the custody dispute, or the venue in which the Family Part matter was laid, before taking judicial action. 2T29-24 to T30-22; see also P-16. Respondent, likewise, did not inquire if this "attorney" with whom she spoke had contacted any other judge before placing a call to her, and did not consider the possible impropriety of engaging in an *ex parte* conversation with an attorney about an ongoing custody dispute. 2T30-23 to 2T31-15.

Ms. Chermont, for her part, disavowed any direct knowledge of the circumstances surrounding this telephone call despite it having been made on her behalf and with her cell phone. 1T117-24 to 1T125-22. According to Ms. Chermont, when she left the FLPD on May 8, 2015 she telephoned a "friend" whom she identified as Patrick Lozado. 1T117-24 to 1T118-22. Ms. Chermont claims she contacted Mr. Lozado, a citizen of Brazil, because of what she believed were his connections with local law enforcement, though she would not elaborate on the nature of those connections. 1T118-8-18; 1T119-2-19. Mr. Lozado was not an attorney and was not

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1T57-16 to 1T60-8; 1T61-8-12; 2T21-14 to 2T23-8. Presumably, any notes she may have taken of an "emergent" telephone call she received five days thereafter would have remained intact.

employed with any type of law enforcement agency at that time, but apparently worked periodically as a bartender in New Jersey where he allegedly socialized with members of law enforcement. 1T118-19 to 1T119-19.

Ms. Chermont claimed she met with Mr. Lozado at some point between May 8 and May 9, 2015 outside of "his friend's house" in Woodbridge, New Jersey, and provided him with a "court order" and her cell phone. 1T120-24 to 1T121; 1T122-20-21; 1T124-3-18. Ms. Chermont could not identify which court order she provided to Mr. Lozado, but was adamant that it was not the Judgment of Divorce. 1T121-10 to 1T122-17.

While Ms. Chermont purportedly waited in her vehicle, Mr. Lozado allegedly entered his "friend's house" with the undisclosed court order and Ms. Chermont's cell phone, and remained there for roughly thirty to forty minutes. 1T122-24 to 1T124-18. According to Ms. Chermont, when Mr. Lozado emerged from the house, he advised her that he believed her "problem" had been resolved and instructed her to return to the FLPD where she would likely obtain the assistance she sought to retrieve her child. 1T124-19 to 1T125-1. Ms. Chermont denied that Mr. Lozado disclosed to her the identity of the individual with whom he spoke on her behalf and further claimed that she did not make any inquiry of him in this regard. 1T125-2-22. According to Ms. Chermont, Mr. Lozado returned to Brazil shortly after these events and she did not remain in

contact with him or know of his whereabouts. 1T170-20 to 1T171-24.

We find Ms. Chermont's testimony and that of Respondent in respect of this telephone call incredible. It simply strains credulity to believe that Respondent, a former Bergen County Presiding Criminal Division Judge, acted on a random telephone call on her personal cell phone from an unfamiliar caller, who coincidentally used her former intern's cell phone to place that call, seeking her assistance with a matter over which she had no prior involvement, and that Respondent was wholly unaware of the caller's identity and was likewise unaware that the matter involved her former intern. Similarly, we find it incredible that Ms. Chermont was unaware that a telephone call was placed, on her behalf, to Respondent seeking Respondent's assistance with her parenting time dispute.[9]

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[9] Respondent, though disclaiming since November 2015 any knowledge of the identity of the individual who called her personal cell phone on the morning of May 9, 2015, and having failed herself to make any attempt to ascertain the caller's identity during the pendency of the Committee's investigation, initially rebuffed the Committee's request in May 2016 to review her personal cell phone records for that purpose. P-13 thru P-16. The cell phone record Respondent ultimately produced in response to the Committee's request was heavily redacted and included only those telephone calls Respondent claims were related to this matter. Ibid. That record ultimately revealed that the call to Respondent originated from Ms. Chermont's cell phone. See 2T8-11 to 2T9-5; 2T25-6 to 2T29-7; 2T29-24 to 2T31-24.

Given the totality of the circumstances, we find it more likely that Respondent knew the identity of her caller on May 9, 2015, whether that was Ms. Chermont or someone on Ms. Chermont's behalf, and likewise knew that the incident at issue concerned Ms. Chermont, a person with whom she was familiar, and that Respondent injected her judicial office into Ms. Chermont's Essex County Family Part matter intentionally to advance Ms. Chermont's interests. Indeed, that is the only explanation that would logically explain Respondent's absolute deviation from the standard procedures required of every jurist confronted with a potentially emergent matter. The converse scenario, i.e. that Respondent behaved as she did in complete disregard of all applicable procedures in response to a random telephone call from a complete stranger, is even more alarming and raises equally disturbing questions about Respondent's professional judgment and fitness to serve on the bench.[10]

We, likewise, find incredible Respondent's professed ignorance and that of her former court clerk of Ms. Chermont's very service as an intern in Respondent's chambers. The evidence of record establishes, clearly and convincingly, that Ms. Chermont served as Respondent's unpaid intern between February 14, 2014 and

[10] Despite the public nature of these proceedings, which were initiated with the filing of a Formal Complaint in October 2016, no attorney or other individual has acknowledged making the subject telephone call to Respondent on May 9, 2015.

May 2014 and that her service in this regard was known within the courthouse. See P-9; 1T45-18 to 1T57-5; 1T139-2 to 1T150-3; 1T158-15 to 1T159-14; 2T197-1 to 2T220-22. That evidence includes Ms. Chermont's application for the internship on which she noted Respondent as her referral source, Ms. Chermont's testimony concerning that internship, as well as the testimony of Bergen County Trial Court Administrator Laura Simoldoni, who confirmed Ms. Chermont's status as Respondent's unpaid intern during the relevant time period, and three Bergen County Sheriff's Officers assigned to Respondent's courtroom during the relevant time period, all of whom testified to having observed Ms. Chermont sitting in Respondent's courtroom with Respondent's staff during various court proceedings. Id.

Ms. Chermont, like Respondent, lacked credibility before this Committee. When questioned at the hearing about her application for the unpaid internship with Respondent, Ms. Chermont testified that she lied when listing Respondent as her referral source, claiming that she used Respondent's name only because she "knew" Respondent was the "head judge," not because she knew Respondent personally, and believed it would improve her chances of securing the internship. 1T139-2 to T140-1; 1T165-3-10.

Moreover, when questioned about Mr. Lozado, Ms. Chermont was extremely reluctant to provide any information, including such

mundane information as his work as a bartender in May 2015. 1T119-2-18. Ms. Chermont, in fact, testified when interviewed by staff to the Committee on July 29, 2016, that she would likely not disclose who Mr. Lozado called on her behalf on May 9, 2015, even if she knew the individual's identity, because she would not want to cause him any problems. P-27 at T21-12-18.

Ms. Chermont's stated reluctance in this regard coupled with her inability to explain how Mr. Lozado would have known Respondent's personal cell phone number and why he would have contacted Respondent, the very judge with whom Ms. Chermont coincidentally interned, rather than someone involved in Ms. Chermont's Essex County Family Part matter, raised serious doubts about Ms. Chermont's veracity before this Committee.

B.

Respondent, in denying any impropriety in respect of the events at issue, testified that she acted in an emergent manner on May 9, 2015 to protect a child from potential harm. 2T28-3 to 2T29-7. In Respondent's view, based on her "training" and "experience," the issue with which she was confronted in May 2015 was not one concerning custody, but rather the safety of a child who allegedly had been removed from his "normal environment" (i.e., nursery school) and kept from his mother for a week, information Respondent considered indicative of a potential "domestic violence situation." 2T28-3 to 2T29-7; 2T92-9-23.

In furtherance of her position, Respondent relies on that portion of the Superior Court of the State of New Jersey's Emergent Duty Procedures Manual (the "Manual"), Court Year 2015-2016, relating to Domestic Violence. See P-6 at pp. III-16 to III-19. Specifically, Respondent refers to the section of the Manual that concerns the setting of bail for a violation of a domestic violence restraining order and, more precisely, the provision pertaining to the necessity of a "judge's focus . . . on the protection of the victim." Id. at pp. III-17 and III-18, at *Setting Bail for a Violation of a Restraining Order*; see also 2T92-9-23. Though a view not reiterated by Ms. Chermont, Respondent, nonetheless, maintains that there existed "a potential for violence" in this matter that justified her intercession with the FLPD. 1T152-23 to 1T153-8; 1T156-15 to 1T157-4; 2T92-12-23.

This defense is fatally flawed for several reasons. First, Respondent's defense conflicts sharply with her recorded statements to Sergeant Ferraro of the FLPD wherein she indicated that she was calling concerning a custody dispute, not a potential domestic violence matter, and made no mention to the FLPD of an intent to issue a temporary restraining order (TRO) or that any previously issued TRO had been violated. P-17. Indeed, nowhere in her conversation with the FLPD did Respondent mention a concern for the safety of the child, identify either of the parties as a domestic violence victim, or in any other way suggest to the FLPD

that she was acting under the authority of the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17, et seq., a statutory framework that places specific demands on judges, and others, acting within its purview. Id.; see also 2T29-2-7.

Rather, Respondent's only justification for seeking police intervention on May 9, 2015 was to secure for Ms. Chermont the physical custody of her child that weekend without any "altercations" or "problems." P-17. Even assuming such a generic statement was sufficient to substantiate her claimed concern of possible domestic violence, Rule 5:7A and N.J.S.A. 2C:25-17, et seq. require a far more searching inquiry of the applicant, under oath, concerning the circumstances of the alleged potential harm before a TRO may be issued, and once issued a memorialization by the judge, in writing, of the specific terms of that TRO.[11]

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[11] **New Jersey Court Rule 5:7A(b). Issuance of Temporary Restraining Order by Electronic Communication:** provides for the issuance of a TRO upon the sworn oral testimony of an applicant who is not physically present (and is taken over the telephone or by "other means of electronic communication") provided that the judge or law enforcement officer assisting the applicant "contemporaneously record[s]" the applicant's sworn oral testimony via a tape-recording device, stenographic machine or "adequate long hand notes summarizing what is said." The applicant "must identify himself or herself, specify the purpose of the request and disclose the basis of the application." A TRO may issue "if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown." On issuance of the TRO, the judge must "memorialize the specific terms of the order and shall direct the law enforcement officer assisting the applicant to enter the judge's authorization verbatim on the form. . . ."

Second, even assuming the domestic violence provisions of the Manual were relevant to the Ferrer matter, Respondent failed to follow any of the procedures set forth in the Manual relating to such matters. Id. at p. III-16. The Manual cautions that "as a rule," emergent duty judges "should not . . . have to consider applications related to domestic violence." Ibid. Rather, "Municipal Court judges are responsible for hearing those matters when the Superior Court is not in session." Ibid. In this regard, the Manual instructs emergent duty judges faced with a domestic violence matter to "advise the police or other law enforcement groups making an application concerning domestic violence to contact the judge of the municipality where: the incident occurred; defendant lives; plaintiff lives; or plaintiff is sheltered, or [lastly] any other municipal court judge." Id. at pp. III-16 thru III-17. In the event a municipal court judge cannot be reached, the emergent duty judge, in accordance with the Manual, may consider a request for a temporary restraining order "over the

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N.J.S.A. 2C:25-28 Prevention of Domestic Violence Act: similarly provides for the issuance of a TRO, *ex parte*, by a municipal court judge or a judge of the Family Part of the Chancery Division of the Superior Court "when necessary to protect the life, health or well-being of a victim . . . ." This statute, likewise, permits the issuance of a TRO over the telephone pursuant to the applicable court rules. The requirements of Rule 5:7(A) track closely that which is provided in this statute.

phone," but only when "based on sworn oral testimony of an applicant (the judge must speak to the applicant)." Ibid.

In this instance, Respondent was not contacted by law enforcement, but rather was allegedly contacted by an individual purporting to be counsel to Ms. Chermont who sought to secure for Ms. Chermont, *ex parte*, the physical custody of her child that weekend, not a domestic violence restraining order. 1T124-19 to 1T125-1; 2T29-2-7. Moreover, Respondent did not attempt to authenticate any of the caller's factual representations with the sworn testimony of Ms. Chermont, as required by Rule 5:7A(b) and reiterated in the Manual. 2T25-6 to 2T28-16. Though claiming to have a concern for possible violence, Respondent did not "direct" the FLPD to issue a TRO, take the requisite "longhand notes or use a taped line" during that telephone discussion, or issue the requisite "confirmatory order." See P-6 at p. III-17; see also P-17.

Indeed, Respondent concedes that she did not issue any orders in respect of her involvement in the Ferrer matter on May 9, 2015, and purposefully destroyed any notes she may have taken while on the call with the alleged "attorney" that precipitated her intercession with the FLPD. 2T26-4-16; 2T56-14 to 2T58-6. Respondent, likewise, concedes that, contrary to what she told the FLPD, the individual with whom she spoke on May 9, 2015 did not describe Ms. Chermont's matter as "emergent" or file an "emergent

application" for relief. 2T115-4-25. Rather, Respondent chose to characterize her conversation with the "attorney" in this context. Ibid.

Apart from Respondent's own testimony, there exists no evidence in the record to substantiate her professed concern for violence between Ms. Chermont and Mr. Ferrer on May 9, 2015, and no indication that she conveyed that concern to the FLPD. Indeed, based on this record, it appears that the Ferrer parenting time dispute did not rise to the level of an emergent matter for which immediate judicial action was required.

Moreover, contrary to Respondent's statement to the FLPD on May 9, 2015 that she was on emergent duty that weekend, the evidence demonstrates, clearly and convincingly, that a different Bergen County judge was assigned to emergent duty that weekend. See P-7. We find incredible Respondent's contention that in May 2015 she believed herself always to be on emergent duty as the Bergen County Criminal Presiding Judge, particularly given that as of May 1, 2015 she was no longer the Presiding Criminal Division judge in the Bergen vicinage having been reassigned to the Civil Division in the Passaic vicinage as of that date. See P-4; see also 2T15-24 to 2T16-19.

Respondent's failure to follow the very emergent duty procedures on which she claims to have relied when acting on an emergent basis, and her apparent attempt, both when speaking with

the FLPD and again when testifying before this Committee, to recast her conduct in a light wholly at odds with the facts of record, and ostensibly to conceal her misconduct, evinces Respondent's knowing and purposeful violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct.

The latter circumstance -- Respondent's demonstrably false statements to the Fort Lee Police Department and untruthful testimony before this Committee -- demonstrates a fundamental disrespect for the rule of law and the judicial disciplinary process, and reveals a disturbing lack of sound judgment and good character that is wholly inconsistent with the characteristics required to hold judicial office.

III. ANALYSIS

The burden of proof in judicial disciplinary matters is clear-and-convincing evidence. Rule 2:15-15(a). Clear-and-convincing evidence is that which "produce[s] 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).

The clear-and-convincing evidence standard may be satisfied with direct or circumstantial evidence or a combination of the

two, and by uncorroborated evidence. Id. at 84; see also New Jersey Model Jury Charge (Criminal) "Circumstantial Evidence" (January 1993) (internal citations omitted) (providing that in criminal matters the highest burden of proof - beyond a reasonable doubt - may be satisfied with circumstantial evidence alone, stating "in many cases, circumstantial evidence may be more certain, satisfying and persuasive than direct evidence.").

In this judicial disciplinary matter Respondent has been charged with violating Canon 1, Rule 1.1, and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct in two material respects: (1) abusing her judicial office to advance Vivianne Chermont's interests by interceding on Ms. Chermont's behalf with the FLPD in her Essex County Family Part matter to secure for Ms. Chermont the custody of her child on Mother's Day weekend (Count II); and (2) making material misrepresentations to the FLPD concerning the nature of the telephone call she received on Ms. Chermont's behalf vis-à-vis her physical custody rights as provided for in her Essex County Family Part matter (Count I).

We find, based on our review of the substantial evidence of record, both direct and circumstantial, 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.

Canon 1, Rule 1.1, requires judges to "participate in establishing, maintaining and enforcing, and . . . [to] personally

observe, high standards of conduct so . . . [as to preserve] the integrity, impartiality and independence of the judiciary."

Canon 2, Rule 2.1, directs judges to conduct themselves in a manner that "promotes public confidence in the independence, integrity and impartiality of the judiciary, and . . . [to] avoid impropriety and the appearance of impropriety."

Canon 2, Rule 2.3(A) prohibits a judge from lending the prestige of the judicial office to advance "the personal or economic interests of . . . others, or allow others to do so."

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). As recognized by our Supreme Court, adherence to this principle is of the utmost importance. 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 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 did so intentionally, conduct constituting a significant violation of the Code of Judicial Conduct for which severe public discipline, short of removal, would ordinarily be warranted. As will be discussed in greater detail below, however, Respondent's misconduct - the abuse of the judicial office - though itself a significant violation of the Code, has been aggravated substantially by Respondent's false and misleading testimony during these ethics proceedings, conduct so egregious as to permanently impugn the public's confidence in Respondent's integrity and honor, both of which are essential to the continued validity of the judicial office.

Respondent's intercession in Ms. Chermont's custody dispute is a matter of record as is her use of the judicial office when doing so. Indeed, Respondent does not contest these facts. Rather, Respondent attempts through careful manipulation to portray her conduct in this regard as commensurate with her judicial obligations. The evidence of record, however, reveals a far

different scenario. To wit, Respondent, on receipt of an *ex parte* telephone call on her personal cell phone from the cell phone of Ms. Chermont, her former intern, in which the caller sought Respondent's judicial intervention with the FLPD concerning Ms. Chermont's parenting time dispute, failed to take any measures to satisfy herself as to the propriety of her judicial intervention or the emergent nature of the parenting time dispute before taking judicial action.

To be certain, that call did not originate from Ms. Chermont's attorney, as Ms. Chermont herself conceded she was unrepresented during this timeframe. Whether Ms. Chermont or someone on her behalf placed that telephone call to Respondent is immaterial. Respondent's admitted failure during that nine-minute telephone discussion to confirm any of the information allegedly provided to her or to retain any notes memorializing the discussion, and her inability to cite to a single order providing for the "emergent" relief Respondent ultimately obtained for Ms. Chermont from the FLPD, and her admitted failure to enter an order or issue a memorandum memorializing her decision in that Essex Family Part matter, so exceeded the bounds of legitimate judicial conduct as to evince Respondent's intentional abuse of the judicial office for Ms. Chermont's benefit.

That Ms. Chermont obtained a benefit from Respondent's judicial intercession is likewise irrefutable. Ms. Chermont,

though having been denied any assistance from the FLPD on May 8, 2015, received a far different reception the following morning despite the absence of any apparent change in Ms. Chermont's circumstances other than Respondent's telephone call to the FLPD on her behalf.

These circumstances, when coupled with Respondent's false claim to the FLPD that she was on emergent duty and her admitted misrepresentations to the FLPD that the caller with whom she spoke had filed an emergent application when no such application had been filed and that Respondent had seen the custody order granting Ms. Chermont custody when, in fact, she had not, renders Respondent's abuse of the judicial office in contravention of Canons 1 and 2 of the Code of Judicial Conduct significant.

As our Supreme Court made clear almost two decades ago, those fortunate enough to hold judicial office are bestowed with tremendous power "on the condition that [they] not abuse or misuse it to further a personal objective . . . or to help a friend." In re Samay, 166 N.J. 25, 43 (2001) (removing a judge for multiple abuses of the judicial office and for providing false and misleading information to a local police force as well as the ACJC). Indeed, each judge, on assuming the bench, takes an oath to "'faithfully, impartially and justly perform all the duties' of judicial office." Ibid. (citing N.J.S.A. 41:1-3).

On the strength of this record, we are constrained to find that, consistent with Count II of the Formal Complaint, Respondent knowingly and purposefully abused her judicial office, in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct. Moreover, we find that Respondent, in furtherance of this misconduct, made material misrepresentations of fact to the FLPD to induce it to act, as alleged in Count I of the Formal Complaint, thereby further betraying the public's trust and impugning the integrity of the Judiciary, in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1.

Having concluded that Respondent violated Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct as charged in Counts I and II of the Formal Complaint, the sole issue remaining is the appropriate quantum of discipline. In our consideration of this issue, we are mindful 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 an offending judge. In re Seaman, supra, 133 N.J. at 96 (1993).

Relevant to this inquiry is a review of both the aggravating and mitigating factors that may accompany judicial misconduct. Id. at 98-100. The aggravating factors to consider when determining the gravity of judicial misconduct include the extent

to which the misconduct demonstrates a lack of integrity and probity, a lack of independence or impartiality, misuse of judicial authority that indicates unfitness, and whether the conduct has been repeated or has harmed others. Id. at 98-99.

Factors considered in mitigation include the length and quality of the judge's tenure in office, the judge's sincere commitment to overcoming the fault, the judge's remorse and attempts at apology, and whether the inappropriate behavior is susceptible to modification. See In re Subryan, 187 N.J. 139, 154 (2006).

Respondent's misconduct in this instance has been aggravated considerably by her false testimony during these ethics proceedings, conduct clearly designed to conceal from this Committee and ultimately the public her ethical breaches. Such false swearing is antithetical generally to our system of justice, and when committed by a jurist constitutes an affront to the integrity of the judicial office that all jurists are obligated to uphold, and to the public's confidence in those entrusted with its authority. This breach of trust by a member of the Judiciary who, by virtue of her office, is tasked daily with swearing witnesses and assessing their credibility, so impugns Respondent's integrity and that of the Judiciary generally that there exists no remedy short of removal to properly safeguard the public's confidence in our system of justice. Cf. In re McClain, 662 N.E.2d 935 (Ind.

1996) (removing a judge for dishonesty before the ethics panel and for manufacturing a defense in an attempt to avoid discipline).

Indeed, Respondent's false swearing permeated the entirety of these proceedings and concerned not only the circumstances of the telephone call she received on May 9, 2015 from Ms. Chermont or someone on Ms. Chermont's behalf, but also Respondent's claimed justifications for inserting herself into Ms. Chermont's matter. As to the latter, when Respondent was first questioned by this Committee about her conduct, she claimed she took "emergent" action to "enforce" a custody order issued in Ms. Chermont's Essex County Family Part matter. When Respondent was unable to produce the purported court order on which she relied, however, she altered her justification for interceding in Ms. Chermont's parenting time dispute, claiming she did so on an "emergent" basis not with respect to the issue of physical custody, but to secure the safety of Ms. Chermont's child.

There is no reasonable correlation, however, between Respondent's claimed approach to what she characterized as an "emergent" matter concerning possible domestic violence and the approach mandated by Rule 5:7(A), the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17, and the Emergent Duty Procedures Manual. Respondent's absolute disregard for these emergent procedures and her attempt in this proceeding to manipulate them for her own advantage, i.e. as part of a manufactured defense to

these ethics charges, further evinces Respondent's knowing and purposeful abuse of the judicial office and underscores the extent of Respondent's false testimony before this Committee, the latter of which renders her continued service on the bench untenable.

Indeed, Respondent's attempts to conceal her misconduct before this Committee with false and misleading testimony renders her abuse of the judicial office markedly more egregious than that of prior judicial disciplinary matters involving the misuse of the judicial office. See In re Inacio, 220 N.J. 569 (2015)(reprimanding judge for using his judicial stationery to intervene in a juvenile matter concerning a municipal councilman's daughter); In re Isabella, 217 N.J. 82 (2014)(admonishing judge for using his judicial stationery to intervene in a school board matter involving his girlfriend's child); In re Rivera-Soto, 192 N.J. 109 (2007)(censuring the Justice for engaging in a course of conduct that created the risk that the prestige and power of his office might influence and advance his son's private interests); In re Sonstein, 175 N.J. 498 (2003) (censuring municipal court judge for writing a letter on judicial letterhead to another municipal court judge about his parking matter pending before that judge); In re Murray, 92 N.J. 567 (1983) (reprimanding a municipal court judge for sending a letter on behalf of a client to another municipal judge in which he identified his judicial office); In re Anastasi, 76 N.J. 510 (1978) (reprimanding a municipal court judge for

sending a letter on behalf of a former client to the New Jersey Racing Commission on his official stationery).

In respect of any mitigating factors, the record before us is largely silent. Respondent did not provide any evidence in mitigation of these ethics charges and none is evident from the record. While we commend Respondent's dedicated service as a Superior Court Judge for the past nine years, five as the Bergen County Presiding Criminal Division Judge, her length of service, standing alone, is insufficient to mitigate her misconduct in this instance and is eclipsed by her lack of veracity in these ethics proceedings.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be removed from judicial office for her violations of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct. This recommendation takes into account the seriousness of Respondent's ethical infractions and the substantial aggravating factor present in this case, which justify Respondent's removal from judicial office.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

October 24, 2017 By: Virginia A. Long
Virginia A. Long, Chair