D-26 September Term 2017
080232

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

Before Judges Messano, Silverman-Katz, and Thornton, specially designated.

Daniel F. Dryzga, Jr., Assistant Attorney General, argued the cause for the presenter (Gurbir S. Grewal, Attorney General, attorney; Mr. Dryzga and David W. Burns, Deputy Attorney General, on the briefs).

Peter R. Willis argued the cause for respondent.

On November 9, 2017, the Supreme Court filed an order to show cause why Superior Court Judge Liliana S. DeAvila-Silebi (respondent) should not be removed from office pursuant to Rule 2:14 and N.J.S.A. 2B:2A-1 to -11. The accompanying complaint incorporated findings of fact made by the Advisory Committee on Judicial Conduct (ACJC), which, after conducting a hearing and considering the testimony and documentary evidence adduced before it, issued a presentment. R. 2:15-15(a). The ACJC concluded by clear and convincing evidence that respondent had violated Canon 1, Rule 1.1, and Canon 2, Rule 2.1 and Rule 2.3(a) of the Code of Judicial Conduct (the Code), and recommended her removal from office. Ibid.

The Court appointed this panel to conduct a hearing, take evidence and report its findings. See N.J.S.A. 2B:2A-7; In re Yaccarino, 101 N.J. 342, 350-51 (1985) (discussing panel's authority to conduct a hearing "and issue a report that includes its findings of fact and recommendations"). Over the course of several days, the panel heard from twenty-eight witnesses and received documentary evidence, the most significant of which, as detailed below, was never introduced before the ACJC. Based upon the evidence, the panel finds the following facts beyond a reasonable doubt and concludes beyond a reasonable doubt that cause exists for respondent's removal from office. N.J.S.A. 2B:2A-9.

I. FINDINGS OF FACT

Background

Prior to taking the oath of office in 2008 as a Superior Court judge, respondent was a judicial clerk in the Bergen Vicinage and an assistant prosecutor in the Bergen County Prosecutor's Office (BCPO). Immediately prior to becoming a judge, respondent served as section chief of the BCPO's Special Victims' Unit, responsible for the investigation and prosecution of sexual crimes and child abuse (6T8).[1] Assistant prosecutors,

[1] 1T = Transcript dated April 24, 2018
2T = Transcript dated April 25, 2018
Footnote continued on next page.

investigators and medical experts who worked with respondent, and defense counsel who were her adversaries, uniformly praised respondent's fairness, integrity, and compassion for victims (4T37-4T41;4T116-4T118;5T10-5T12;5T18;5T23;5T38;5T52;6T6-6T7;6T12).

Respondent served briefly in the Civil Division before becoming Presiding Judge (PJ) of the Criminal Division in 2010. According to her Assignment Judge at the time, Peter E. Doyne, now retired, respondent "served with diligence" in this role and was "seemingly fulfilling her duties" (4T9-4T10). Attorneys who appeared before respondent while she served as Criminal PJ also praised her performance, work ethic and reputation for integrity (5T18-5T19;5T23-5T24;5T47;5T52-5T53;6T12).

As her reappointment process loomed, and as Judge Doyne was about to retire, respondent requested a transfer to the Passaic Vicinage "to explore complex commercial and medical malpractice matters" (P-3). In an email that set forth changes throughout the vicinage upon his April 30, 2015 retirement, Judge Doyne announced that another judge in the Bergen Vicinage would

---

3T = Transcript dated April 26, 2018
4T = Transcript dated May 7, 2018
5T = Transcript dated May 8, 2018
6T = Transcript dated May 9, 2018
P-1 = Presenter's exhibits (seriatim)
R-1 = Respondent's exhibits (seriatim)

replace respondent as Criminal PJ effective May 1, 2015. Ibid. The Chief Justice effectuated respondent's reassignment by order dated April 22, 2015 (P-4).

Respondent had a full sentencing calendar scheduled in the Bergen Vicinage on Friday, May 1, and Judge Doyne sought and received permission from the Acting Administrative Director to delay respondent's actual transfer to the Passaic Vicinage until Wednesday, May 6, 2015, allowing her to pack her chambers over the weekend (P-2;P-31). On May 2, 2015, respondent notified the incoming PJ that she had left the keys to chambers with her criminal team leader (P-5). Laura Simoldini, Bergen Vicinage Trial Court Administrator, witnessed Vicinage workers load respondent's belongings onto a moving van on Monday, May 4, and respondent's entire staff were reassigned to other duties effective that day (3T24-3T27). No witness testified to seeing respondent in the Bergen County Courthouse after May 1, 2015. As of Friday, May 8, 2015, respondent was conducting hearings on the record in the Passaic Vicinage's Civil Division (P-32;P-35).

The Events of May 8 and 9, 2015, and Referral to the ACJC

Vivianne Chermont and Franklin Ferrer are the parents of a son, E.F., born in 2010. Judge Michael R. Casale, now retired, presided over their divorce trial and numerous post-judgment motions that followed entry of the December 2013 Judgment of

Divorce (JOD) in the Essex Vicinage (1T47-1T49;R-24). Judge Casale's April 12, 2013, pendente lite order granted Chermont parenting time during the week, Ferrer parenting time every weekend from Friday night to Monday morning, and both parents two consecutive weeks of parenting time during the summer months (R-22). The JOD modified this schedule, granting Ferrer parenting time every Wednesday night and every other weekend from Friday evening to Monday morning. The JOD also provided, "the parties shall alternate holiday parenting time on a schedule agreed between them" (P-11;R-23). Orders entered on February 28 and November 14, 2014, left the schedule essentially intact. Ibid. As Judge Casale noted, based solely upon the JOD, it was impossible to determine whether Ferrer or Chermont was entitled to parenting time on any given weekend, including the weekend of May 8-10, 2015 (1T54-1T55). Of particular note, May 10, 2015, was Mother's Day.

On Friday, May 8, 2015, at approximately 8:30 p.m., Chermont arrived at the Fort Lee Police Department (FLPD), claiming no one had dropped E.F. off at her home in Newark as expected and required (P-10). She supplied the address of the home of Ferrer's mother, where Ferrer was living and E.F. was

staying.[2] Police Officer Stephen Dominick was dispatched to that address to check on the child's welfare (1T201).

Dominick explained the reason for his visit to E.F.'s grandmother, observed the home was orderly and that E.F. was fine, although emotionally upset at the prospect of leaving his grandmother to return to his mother (1T205;P-10). Ferrer was not home, but when police reached him by phone, Ferrer claimed he was utilizing his two weeks' consecutive parenting time. Dominick returned to FLPD headquarters, told Chermont that E.F. was fine, refused her request to take the child from his grandmother and advised Chermont to resolve the parenting time dispute in court (P-10).

At 8:50 a.m. on the morning of May 9, 2015, respondent called FLPD using her personal cell phone and spoke to Sergeant Michael Ferraro on a recorded line (P-17;P-17A).[3] Respondent identified herself as a judge and told Ferraro she

> got a phone call from an attorney involving an emergent matter . . . 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 . . . and therefore . . . they filed this emergent

[2] This was not the first time police were involved in Ferrer's and Chermont's parenting time disputes. See P-18 through P-23; R-6 (police reports regarding separate incidents between August 2012 and March 4, 2015).

[3] Ferraro is now a lieutenant with FLPD (2T6).

> application. So, I'm on emergent duty. And I saw the court order and she is supposed to have the child this weekend . . . 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 somebody can just call the house and say . . . the child has to come outside because she went there and they won't open the door and I just don't want any . . . altercations . . . .
>
> [(P-17 at 2-3;P-17A) (emphasis added).]

Ferraro told respondent to have the client report to FLPD and he would arrange for an escort. When Ferraro asked respondent "[w]here are you [a] judge," she answered, "I'm in Bergen but I'm also assigned in Passaic County . . . . But I'm on emergent duty this weekend" (P-17 at 4) (emphasis added). Respondent told Ferraro she would "call the attorney and tell them [to] meet you at the [FLPD]." Ibid. Ferraro had never received such a call from a Superior Court judge and "figured this must be pretty important" (2T11). He interpreted respondent's request as: "the child was at the residence of the father's and . . . there was a court order that . . . the mother was required to have the child and we were to assist to make that happen." Ibid.

FLPD dispatched Police Officer Anthony Kim to accompany Chermont to Ferrer's mother's house. Kim and another officer

took E.F. from his grandmother and returned to FLPD headquarters with the child and Chermont, after which, Chermont left with E.F. (P-11). Ferrer appeared at FLPD headquarters approximately two hours later, irate and questioning why police removed E.F. When told it was pursuant to a judge's order, Ferrer wanted to know which judge had called FLPD and ordered the child's removal (2T18).

Ferrer and Chermont appeared before Judge Casale on August 7, 2015, to address Ferrer's request for make-up parenting time (P-24). In support of his motion, Ferrer included an FLPD report that mentioned respondent's name and her involvement in the May incident. Id. at 8.

Judge Casale questioned Jared A. Geist, the attorney who represented Chermont at the hearing, about respondent's involvement (4T142). Geist told Judge Casale, "Judge Silebi was a personal friend" (P-24 at 8). When the judge expressed alarm at this revelation, Geist quickly said respondent was a "character reference" for Chermont, and Chermont wanted to speak and "clarify" the relationship. Id. at 9.

No clarification occurred during the hearing, but in support of a subsequent motion to transfer venue, Chermont claimed Geist was "mistaken" because she had no "personal relationship" with respondent (R-20). Before the panel, Geist

testified Chermont had told him that she (Chermont) had "given her phone to a friend," not that respondent was her "friend" (4T145).[4]

Judge Casale notified his Assignment Judge in the Essex Vicinage of respondent's contact with FLPD on May 9, 2015 (P-1). Judge Ernest M. Caposela, Assignment Judge for the Passaic Vicinage, subsequently referred the matter to the ACJC, which began its investigation. Ibid.

Respondent's Explanation of Her Conduct

The preceding factual findings are largely undisputed. Respondent elected not to testify before the panel, but transcripts of her testimony on three prior occasions were admitted in evidence.

A. November 5, 2015 interview under oath with the ACJC Executive Director and investigator (P-25).

Respondent emphasized that she did not start her judicial assignment in Passaic County until May 11, 2015, and that she was "in transition" between May 2 and May 11, 2015 (P-25 at 9-15). Respondent's call to FLPD on May 9 was prompted by a phone

[4] Neither the Attorney General nor respondent called Chermont as a witness at the hearing. However, the ACJC presentment, incorporated into the complaint, makes clear that Chermont claimed she had given her phone to a friend who made a call on her behalf to an unidentified person in an attempt to secure custody of E.F.

call she received earlier that morning: "[S]omebody called me and then I, in turn, must have called the [FLPD] with whatever decision was made on the emergent application." Id. at 19. When asked who called her, respondent said that she did not know whether it was "an attorney . . . the [FLPD] . . . [or] the sheriff's department." Ibid. She later stated that "either an attorney, a sheriff's department or the prosecutor's office or a local police department" called her. Id. at 22-28.

Respondent described the call as an emergent application involving a Mother's Day weekend parenting time dispute. Id. at 19-21. At three other points, respondent said the "application" was emergent because "it was something to do with Mother's Day" and "tickets or . . . trips or whatever . . . they were going to do would not be available by Monday" so "they couldn't just wait until Monday" to go to court. Id. at 24, 35, 57. Respondent denied knowing that the call involved a pending matter venued in Essex County, and stated that if she had known that, it "would have been the end of the phone call." Id. at 20. Respondent said someone read a court order to her making it clear that the child's mother was to have custody that weekend. Id. at 26. Respondent stated she would "get calls all the time," even when she was not assigned emergent duty, because many attorneys,

police departments and the Sheriff's Office had her personal phone number. Id. at 30.

Respondent denied knowing Chermont. Id. at 39. Once told that Chermont claimed she had volunteered in chambers "doing filing," respondent denied remembering her and added the interns were hired by "the team leader, the law clerk or the secretary because they really worked with them" and that "half the time" respondent did "not know their names." Id. at 43-45.

The investigators played the recording of respondent's call to FLPD. Although she had not testified specifically about the possibility of "altercations" before hearing the recording, respondent now said that "something must have been mentioned . . . by the attorney about an altercation or the possibility of it" since she had expressed that concern to FLPD. Id. at 61-62. She also stated that hearing the recording "confirm[ed] . . . it was an attorney" who called her and read her the court order. Id. at 61-63. Respondent also remembered that the attorney was male and acknowledged she "misspoke" when she told FLPD that she had actually seen the court order. Id. at 63-64, 70.

B. May 11, 2016 informal conference with the ACJC at which respondent was not under oath (P-26).

Consistent with her prior interview, respondent reported she remained "in transition" between the Bergen and Passaic

Vicinages until May 11, 2015 (P-26 at 3-9). With respect to Chermont, respondent reiterated that she had "no personal relationship" with her, although she "wouldn't be surprised" if Chermont "may have been an intern of [hers]." Id. at 10-11.

Respondent again stated that a phone call from a male attorney triggered her May 9, 2015, call to FLPD, although she could not recall the attorney's name. Id. at 4-5, 14. She initially stated that the attorney "said this is the number that I got from the sheriff's department." Id. at 14. Later, respondent said that she "just assumed" the attorney got her phone number "from the local police department, from the sheriff's department or from the prosecutor's office." Id. at 22.

The attorney read an order to respondent, never saying it involved a pending matter in the Essex Vicinage, but "it was clear . . . that the mother needed to have custody" based upon the order. Id. at 5-6. Respondent noted the attorney "mentioned . . . there was some kind of altercation, there was problems with the child coming out from the home," and he was concerned about the child's well-being. Id. at 6, 18, 22.

Respondent initially said the attorney never told her about Chermont's visit to FLPD headquarters the night before. Id. at 5. She contradicted herself shortly thereafter:

> But [the attorney] was explaining that . . . Chermont[] had already done that the day before on May 8th, and he said something about some kind of problem but he didn't say May 8th. I have now learned that it's May 8th, but at the time he was saying that the mother had already tried to do that. She had already resorted to the police.
>
> Now I thought it meant all the same day, but now that I look at the police report it was the day before. So he said something about I'm getting involved because the mother already tried to get the police's help. The police would not help because they need confirmation, hence why I'm calling you. But all these little details that it was the day before, that it was Judge Casale, that's what I learned when I read the police report.
>
> [Id. at 16-17.]

By taking the emergent call on May 9, 2015, respondent "thought [she] was just helping a fellow judge out" and "wanted to make sure that . . . if the custody order was going to be enforced that the child not be exposed to any violence." Id. at 6, 19.

C. April 26, 2017 formal hearing under oath before the ACJC (P-27).

Although she was never designated the on-call emergent duty judge when she served as PJ, attorneys would call respondent directly in criminal matters to set bail, or on "domestic violence cases," or "if someone needed to leave the jail in order to attend a funeral" (P-27 at 15-16). Respondent

acknowledged that she was not on the emergent duty schedule for the week of May 4-11, 2015, in the Essex, Bergen or Passaic Vicinages. Id. at 86-88.

Respondent claimed "the very, very first time that [she] heard intern and the word Chermont" was during her November 2015 interview with ACJC staff. Id. at 41. Respondent did not recall Chermont at all and denied speaking with "the mother of the child" on May 9, 2015. Id. at 41, 121. She denied reviewing Chermont's intern application, referring her to the Judiciary, interviewing her for the position, or ever seeing her in the courtroom. Id. at 50, 129, 132. Respondent denied taking action on May 9, 2015, to help "a former intern." Id. at 51-52.

Respondent took notes during the May 9, 2015 call but threw them away because she did not realize she would need them and there was no place to store them in her Passaic Vicinage chambers (P-12;P-27 at 26, 56-57, 94, 126-27). She denied asking the caller what judge signed the order, where the case was venued, whether the caller "had tried another judge" before calling her, or how the caller obtained her phone number (P-27 at 29-30, 34). Respondent could not recall whether she asked who the parties were, but recalled being told "the child was in

Bergen County," which is why she handled the matter. Id. at 30-31, 39-40.

Although she acknowledged that the caller never made an "emergent application," respondent testified that she "ha[d] to tell [FLPD] that it [was] an emergent application because if they don't have the resources or the manpower to do it, they're entitled to tell me that and then I may have to take alternative action." Id. at 29, 115. Respondent also acknowledged that she never saw a court order before calling FLPD, but knew the caller read from one, "because we all know [how] court orders read." Id. at 8, 116.

Respondent believed the April 12, 2013, order was the one the caller read to her. When reminded that order granted Ferrer weekend parenting time, respondent said she "was concerned that the mother might go back there because she had not seen the child for the whole week and . . . the matter was escalating and . . . there was a potential for violence." Id. at 63. Despite having reviewed all the orders in the Ferrer/Chermont matrimonial file, respondent continued to display confusion over the parenting time schedule in effect on May 9, 2015. Id. at 104.

For the first time, and after hearing Chermont's testimony before the ACJC, respondent claimed the attorney relayed text

messages to her during the incoming May 9, 2015, call. Id. at 27-28, 35, 103-04. She explained why they supported her directive to FLPD to assist the mother with obtaining weekend parenting time:

> . . . I can't remember exactly what the text messages said, but it was the text messages I recall is what confirmed for me that the child had been with the father the weekend of May 1st, May 2nd, and May 3rd. So according to the court order, he should have returned the child that Monday on May 4th to school, but he didn't. And now it was going into a second consecutive weekend that he was going to have the child. And according to the court order, he only gets the child for a whole week or during the week, Monday through Friday, in the summertime. But during the school year he only gets the child every other weekend.
>
> [Id. at 27-28.]

Respondent testified she "remember[ed] specifically that the child . . . had been removed from the school for a whole week," which raised concerns in her mind about domestic violence between the parties. Id. at 8-9. Given respondent's domestic violence training, this fact constituted a "red alert." Id. at 9.

Despite her earlier emphasis on enforcement of the parenting time terms contained in another judge's order, respondent now emphasized that the situation "wasn't about the custody" at all but "about the fact that the child was taken,"

that the mother "didn't know where the child was for this whole week," and that he was "not in school." Id. at 28-29, 108, 137. Respondent defended her call to FLPD by explaining that "whatever [she] sensed based on all the information that [she] received in that phone call turned out to be correct," given the parties' contentious relationship. Id. at 10, 92-93, 97-98. Respondent claimed her intervention on May 9, 2015, was warranted under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, because "the judge has the responsibility to act . . . to ensure the safety of everyone and that's what I was doing" (P-27 at 11).

Respondent testified that after she called FLPD, she made "a one minute call back to that particular number that had called [her]," to tell the attorney to have his client meet with Ferraro. Id. at 109. Whoever the attorney was, he answered her call. Ibid. After that, respondent never spoke to anyone about her call to FLPD until August 2015 when Judge Caposela asked to speak with her. Id. at 52-53.

Respondent's Misrepresentations to FLPD

The evidence proves beyond a reasonable doubt that contrary to her representations to Sergeant Ferraro, respondent's official duties as a Superior Court judge in the Bergen Vicinage ceased prior to May 9, 2015. Whether she had finished moving

all personal items from her chambers in Bergen County by that date is irrelevant. The evidence reveals that respondent was performing her judicial duties in the Passaic Vicinage on May 8, 2015. There is no reasonable basis for her belief that she continued to have an overriding judicial responsibility to intercede in a case from another vicinage.

It is also clear beyond a reasonable doubt that respondent was not on emergent duty on May 9, 2015 (P-7;P-8). Although respondent's personal cell phone number was available to prosecutors, defense counsel and court staff during her tenure as Criminal PJ in the Bergen Vicinage, (see 1T172-1T176;4T84-4T85;4T109;4T127;5T6;5T17;6T9), there is no evidence that any attorney or court personnel ever called respondent on an emergent Family Part matter, or that respondent ever dealt with a child custody/parenting time dispute before in her judicial tenure. Moreover, respondent's conduct was inconsistent with the procedures outlined in the Emergent Duty Manual for the Family Part (P-6;3T16-3T17).

Respondent admitted that contrary to what she told FLPD, she never saw a court order at all, much less one granting Chermont parenting time for the May 8-10, 2015 weekend. Additionally, there was never an "emergent application," the procedure by which any emergent request must be made and with

which every Superior Court judge is or should be familiar (3T17-3T19;P-6).

Respondent's Relationship with Vivianne Chermont

The evidence demonstrates beyond a reasonable doubt that, despite repeated denials to the ACJC, respondent knew Chermont, who served as an intern in the Bergen Vicinage Criminal Division from February 14, 2014, to sometime in May 2014. Chermont's intern application and related paperwork demonstrates respondent referred her to the judiciary, and the Vicinage Human Resources Division specifically assigned her to respondent (P-9).

Respondent produced a number of witnesses who could not recall ever seeing Chermont inside respondent's frenetically paced courtroom, in chambers, or ever saw respondent speaking to Chermont. Simoldini, as well as respondent's law clerk and court clerk from 2014, did not recall Chermont (1T126;3T65; 4T72).

Chermont, however, was unlike most of the interns working in the courthouse who were of high school or college age. (1T125;4T68). She had finished high school in 1998, graduated from a law school in Brazil in 2005, and worked for a law firm in New Jersey in 2013 (P-9). Three Bergen County Sheriff's Officers specifically recall seeing Chermont in respondent's

courtroom during her very brief internship (2T43-2T44;2T59-2T61;2T63-2T64).

However equivocal the testimony about Chermont's presence in the courtroom may have been, other evidence not only confirmed respondent's ongoing contact with Chermont after her internship, but also demonstrated respondent's version of the events of May 9, 2015, was a complete fabrication.

The Phone Records

During her testimony at the formal hearing before the ACJC, respondent said she did not recognize the number that appeared on her cell phone when she received the call from the attorney on the morning of May 9, 2015 (P-27 at 101). The Committee requested respondent provide her "telephone records for the telephone" on which she had received the May 9, 2015 call that prompted respondent's call to FLPD (P-13). Respondent objected, claiming she did not recall which phone she had used (P-14). Respondent also told the ACJC its request was an invasion of her privacy, and the Committee should contact the "litigants and request . . . they produce" information about the attorney that had called her, and which phone he had used. Ibid. The ACJC nevertheless renewed its request (P-15).

Respondent provided the ACJC with a redacted, cropped copy of phone records from her cell phone facility for the morning of

May 9, 2015 (P-16). The list included four phone numbers, with only the time of day and duration of the call; it did not indicate whether the calls were incoming or outgoing. Ibid. Respondent told the ACJC that she did not recognize the numbers associated with the four entries, "so the[y] must be the calls." Ibid. Three of the entries were for Chermont's cell phone.

At the formal hearing, one of the Committee members asked respondent whether the four calls were incoming or outgoing (P-27 at 112). After some discussion, respondent's attorney asked her directly: "You got a phone call from someone that initiated your call to the police isn't that right, as opposed to you calling someone." Id. at 114. Respondent answered: "Right." Ibid. On July 1, 2016, about a month after she produced the heavily redacted phone records, respondent sent the ACJC an email asking "if [it was] able to find out who the male attorney was that called [her]" (R-27).

Prior to the hearing before this panel, the Attorney General subpoenaed Chermont's phone records for the months of January through May 2015 (P-33). They revealed twenty-four text messages and incoming or outgoing phone calls between Chermont's phone and respondent's cell phone between February 2, and May 9, 2015 (P-33A). One incoming call to Chermont's phone on February 25, 2015, lasted fifty minutes. Ibid.

Critically, in the evening of May 8, 2015, Chermont first texted respondent at 5:47 p.m., and then made a call to her cell phone at 8:45 p.m., less than fifteen minutes after Chermont's unsuccessful attempt to have FLPD help her remove E.F. from his grandmother's home (P-10;P-33A). More importantly, there were no outgoing calls from Chermont's phone to respondent's phone on the morning of May 9, 2015, but rather only four incoming calls to Chermont's phone from respondent's phone: 8:38 a.m. (one minute); 8:39 a.m. (nine minutes); 8:53 a.m. (one minute); and 11:44 a.m. (three minutes) (P-33;P-33A). Respondent called FLPD at 8:50 a.m. (P-17).

Prior to the hearing before this panel, respondent voluntarily produced copies of her cell phone bills for the same months. For the morning of May 9, 2015, they revealed a phone call to her voicemail at 8:36 a.m., followed by three phone calls to Chermont's phone between 8:38 a.m. and 8:53 a.m., coinciding with those on Chermont's bill (P-28). The 11:44 a.m. call, however, did not appear on the bills respondent voluntarily produced.

The Attorney General subpoenaed respondent's phone bills directly from the service provider, Verizon (P-36). The bill for the morning of May 9, 2015, reveals the 11:44 a.m. phone call from respondent to Chermont. Ibid. When one compares the

subpoenaed Verizon record with the one respondent voluntarily produced, it is obvious that some alteration occurred in the voluntarily produced bill. Instead of the 11:44 a.m. call to Chermont, the voluntarily produced bill contains an 11:47 a.m. call to another number; the time of the call stands out boldly from other calls on the page (P-28).

In summary, the phone records prove beyond any doubt that far from being strangers, Chermont and respondent were in frequent communication during the months leading up to respondent's May 9, 2015 call to FLPD. More significantly, the phone records lead to the inescapable conclusion that respondent never received a call from an "attorney," whose "emergent application" implied there was a potential "altercation" between two parents that might harm a young child. The false statements respondent made to FLPD Sergeant Ferraro on May 9, 2015, induced police to act on behalf of her former intern. Respondent repeated those false assertions, in one form or another, at every opportunity before the ACJC.

Indeed, before this panel, respondent continued to imply through the testimony of others that: her receipt of a phone call on a Saturday morning about an emergent situation was neither unexpected nor unusual; there was nothing extraordinary about an attorney calling her directly because many people had

her private cell phone number; her judicial duties in the Bergen Vicinage continued because she was "in transition"; and her concern about E.F.'s safety motivated her call to FLPD. The evidence demonstrates beyond a reasonable doubt that these assertions are pernicious extensions of a false predicate, because respondent never received any phone call from an "attorney," or anyone else, regarding a threat to E.F.'s safety on Saturday morning, May 9, 2015.

II. LEGAL CONCLUSIONS

"Every judge is duty bound to abide by and enforce the standards in the Code of Judicial Conduct." In re DiLeo, 216 N.J. 449, 467 (2014) (citing R. 1:18). "While judges are expected to adhere to the Code, every breach 'does not mean . . . that judicial misconduct has occurred, or that discipline . . . is appropriate.'" Id. at 468 (quoting In re Alvino, 100 N.J. 92, 96 (1985)). Rather, "there are two determinations to be made in connection with the imposition of judicial discipline," namely, whether there has been a proven violation of the Code and whether that violation "amount[s] to unethical behavior warranting discipline." Ibid. (citations omitted). "[D]isciplinary power is ordinarily reserved for conduct that 'is marked with moral turpitude and thus reveals a

shortage in integrity and character.'" In re Seaman, 133 N.J. 67, 97 (1993) (quoting In re Mattera, 34 N.J. 259, 270 (1961)).

Revisions to the Code took effect on September 1, 2016, i.e., after respondent's alleged misconduct, but prior to the formal hearing before the ACJC and issuance of the Presentment. Retired Justice Virginia A. Long, the principal author of the Presentment, noted the revisions made "no substantive changes . . . to Canons 1 and 2" of the Code, ACJC Presentment, at 3 n.1, and respondent did not argue before the ACJC or this panel that the current provisions of the Code should not apply. We therefore consider whether the factual findings demonstrate beyond a reasonable doubt that respondent's conduct violated Canon 1, Rule 1.1, and Canon 2, Rules 2.1 and 2.3(A).

Canon 1 is "the bedrock principle" of the judiciary. DeNike v. Cupo, 196 N.J. 502, 514 (2008). It states: "An independent and impartial judiciary is indispensable to justice. A judge therefore shall uphold and should promote the independence, integrity and impartiality of the Judiciary." "To achieve that aim," In re Reddin, 221 N.J. 221, 227 (2015), Rule 1.1 provides:

> A judge shall participate in establishing, maintaining and enforcing, and shall personally observe, high standards of conduct so that the integrity, impartiality and independence of the judiciary is

> preserved. This Code shall be construed and applied to further these objectives.

See also R. 1:18 ("It shall be the duty of every judge to abide by and to enforce the provisions of the Rules of Professional Conduct, [and] the Code of Judicial Conduct . . . .").

Canon 2 of the Code obligates a judge to "avoid impropriety and the appearance of impropriety." Rule 2.1 states: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." "[I]rresponsible or improper conduct by judges" erodes public confidence in our judiciary. Code, Cmt. 1 on Canon 2, Rule 2.1. "Actual impropriety is conduct that reflects adversely on the honesty, impartiality, temperament or fitness to serve as a judge." Code, Cmt. 2 on Canon 2, Rule 2.1.

The Court has noted, "awesome power is bestowed upon a judge on the condition that the judge not abuse or misuse it to further a personal objective such as a vendetta or to help a friend." In re Samay, 166 N.J. 25, 43 (2001). That principle finds voice in Canon 2, Rule 2.3(A), which provides: "A judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so."

The complaint before the ACJC alleged that respondent violated these Canons and Rules by making material misrepresentations to FLPD, and by using her judicial office to influence FLPD to act on behalf of Chermont. We must decide whether the facts prove respondent violated these provisions of the Code beyond a reasonable doubt. N.J.S.A. 2B:2A-9. See Samay, 166 N.J. at 31 (defining "[r]easonable doubt . . . as 'an honest and reasonable uncertainty . . . about . . . guilt . . . after . . . full and impartial consideration [of] all of the evidence . . . . It is a doubt that a reasonable person hearing the same evidence would have'") (quoting State v. Medina, 147 N.J. 43, 61 (1996)). See also Model Jury Charges (Criminal), "Criminal Final Charge" at 2 (rev. May 12, 2014) (citing same definition).

Respondent's misrepresentations to FLPD were numerous and, in at least one instance, admitted. Although respondent told Sergeant Ferraro that she had seen the court order providing parenting time to Chermont for the weekend of May 8-10, 2015, after initiation of these disciplinary proceedings, respondent admitted she "misspoke" by claiming she saw the order. Respondent told Ferraro that she had received a phone call from an attorney who had filed an emergent application. However, respondent never received a phone call from an attorney, nor was

an emergent application ever filed. Respondent claimed to be on "emergent duty," when in fact she was not. Lastly, in an obvious attempt to justify her involvement in the matter, respondent told FLPD that she was a judge in Bergen County, while at the same time she was also assigned to Passaic County. Respondent's false and misleading statements to police are a basis for discipline. In re Williams, 169 N.J. 264, 273-74 (2001).

Respondent's attempt to justify intercession in a private dispute over parenting time resulted in repeated contradictions. She initially claimed to have intervened only to enforce another judge's order, something she believed was part of her official duties (P-25 at 72). By the time she testified at the formal hearing before the ACJC, respondent's raison d'etre for intervention was to prevent amorphous suspicions of domestic violence, again, something she believed inherent in her judicial duties (P-27 at 11). In reality, respondent's sole motive in making the May 9, 2015 phone call to FLPD was to use her judicial office to assure that Chermont, her former intern and someone with whom respondent shared more than twenty communications during the preceding three months, had custody of E.F. for Mother's Day weekend.

We find beyond a reasonable doubt that respondent violated Canon 1, Rule 1.1, and Canon 2, Rules 2.1 and 2.3(A) of the Code. Given the nature of these violations, and because "[t]he single overriding rationale behind our system of judicial discipline is the preservation of public confidence in the integrity and the independence of the judiciary," discipline is appropriate. Seaman, 133 N.J. at 96 (citations omitted).

Respondent intentionally misused her office to advantage another, thereby violating the public trust and compromising the integrity and independence of the judiciary. That alone warrants significant discipline, see, e.g., In re Batelli, 225 N.J. 334, 334-35 (2016) (municipal court judge's misuse of his office to access criminal history records for personal reasons warranted suspension), but might not warrant removal. See Samay, 166 N.J. at 41 (municipal court judge's misuse of official title in personal financial dispute did not alone warrant removal).

"The determination of appropriate discipline requires" us to consider more than "some instance or instances of unethical conduct" and "undertake 'a more searching and expansive inquiry . . . carefully scrutiniz[ing] the substantive offenses that constitute the core of respondent's misconduct, the underlying facts, and the surrounding circumstances in determining the

nature and extent of discipline.'" Seaman, 133 N.J. at 98 (quoting In re Collester, 126 N.J. 468, 472 (1992)). In recommending the quantum of discipline, we recognize "'removal is not punishment for a crime,' but rather serves to vindicate the integrity of the judiciary." Yaccarino, 101 N.J. at 387 (quoting In re Coruzzi, 95 N.J. 557, 577 (1984)); see Samay, 166 N.J. at 42 (noting removal proceedings are intended to restore the public's faith in our judiciary).

We also must consider and weigh recognized aggravating and mitigating factors. Williams, 169 N.J. at 279; Seaman, 133 N.J. at 98-101. Aggravating factors, which "serve to define the gravity of misconduct," include: (1) "the extent to which the misconduct, like dishonesty, or a perversion or corruption of judicial power, or a betrayal of the public trust, demonstrates a lack of integrity and probity"; (2) "whether the misconduct constitutes the impugn exercise of judicial power that evidences lack of independence or impartiality"; (3) "whether the misconduct involves a misuse of judicial authority that indicates unfitness"; (4) "whether the misconduct, such as breaking the law, is unbecoming and inappropriate for one holding the position of a judge"; (5) "whether the misconduct has been repeated"; and (6) "whether the misconduct has been harmful to others." Id. at 98-99.

Mitigating factors that may "bear[] on the sanction to be imposed" include: (1) whether "a matter represents the first complaint against a judge"; (2) "the length and good quality of the judge's tenure in office"; (3) an "exemplary personal and professional reputation"; (4) a "sincere commitment to overcoming the fault"; (5) whether the judge expressed "remorse and [made] attempts at apology or reparations to the victim"; and (6) an "acknowledg[ment of] wrongdoing or expressed contrition" from the judge. Id. at 100-01.

In this case, respondent's conduct on May 9, 2015, demonstrated dishonesty, perversion of her judicial authority and betrayal of the public trust. Respondent's personal motive in making the call to FLPD — helping Chermont be with her son on Mother's Day — is irrelevant. See In re Hardt, 72 N.J. 160, 165 (1977) (explaining that evil or corrupt intent was not necessary in judicial removal proceedings). Respondent's intercession exhibited a profound misunderstanding of the need for judicial independence and impartiality, and represented a patent abuse of her office. Her misconduct ignored potential harm to E.F., a five-year-old boy, taken from his grandmother's care and custody by FLPD officers acting solely because of respondent's intervention. These aggravating factors are significant.

We do not minimize respondent's excellent reputation in the legal community and the length of her unblemished public service. There have been no prior disciplinary actions against her. These mitigating factors are also weighty.

However, the "predominant interest in these proceedings is the public interest." Yaccarino, 101 N.J. at 396. Respondent has not only failed to acknowledge her wrongdoing or expressed remorse or contrition for abusing her power; her conduct throughout these disciplinary proceedings displayed additional dishonesty and transcended her right to present a defense. Seaman, 133 N.J. at 101 (noting that while the judge should not be penalized for defending himself, his actual defense, which cast blame on the victim and suggested other witnesses were lying, did not demonstrate contrition).

"Judicial misconduct . . . involving dishonesty of any kind will ordinarily require removal as the appropriate discipline." Id. at 98 (quoting Alvino, 100 N.J. at 97). Here, once her misconduct was discovered, respondent constructed a defense predicated on the false claim that she received a call from an attorney or law enforcement agency requiring her emergent intervention to enforce another court's order. Respondent perpetuated that falsehood throughout the proceedings before the ACJC, embellishing or revising it as necessary whenever she

became aware of contrary evidence. For example, when it was obvious that no order in the Ferrer/Chermont matter definitively gave Chermont custody of E.F. for the weekend in question, respondent seized on the vague statement she made to FLPD, i.e., that they needed to intervene to avoid an "altercation," and justified her involvement by falsely invoking the provisions of the PDVA. The entire house of cards crumbled, however, when respondent's and Chermont's telephone records irrefutably demonstrated the falsity of respondent's assertions.

Respondent's decision to supply "less than truthful . . . testimony before the ACJC," and obviously altered telephone records to this panel, demonstrates "a lack of respect for the law." Samay, 166 N.J. at 43. Her "disturbing" decision to perpetuate a defense without any "compunction about being less than credible" as the investigation of her conduct continued, "evidence[s] that [she] lacks the honor and integrity demanded of a judge." Id. at 45.

We are compelled to conclude beyond a reasonable doubt that respondent's continued deceitful conduct justifies her removal from office.