

SUPREME COURT OF NEW JERSEY  
ADVISORY COMMITTEE ON  
JUDICIAL CONDUCT

DOCKET NO: ACJC 2007-096

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IN THE MATTER OF :  
: **PRESENTMENT**  
:  
SYBIL M. ELIAS, :  
JUDGE OF THE MUNICIPAL COURT :  
:

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The Advisory Committee on Judicial Conduct ("Committee" or "ACJC") hereby presents to the Supreme Court its Findings and Recommendation in this matter in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's Findings demonstrate that the charges set forth in the Formal Complaint against Sybil M. Elias, Judge of the Municipal Court ("Respondent"), have been proven by clear and convincing evidence, and its Recommendation is that Respondent receive public discipline.

On September 12, 2007, the Committee issued a Formal Complaint against the Respondent, which alleged that on December 1, 2006, Respondent engaged in an impermissible *ex parte* communication with a litigant who was a defendant in a case before the municipal court; discharged judicial duties in disposing of the municipal court case in the face of a conflict

of interest; and improperly determined the case and dismissed a ticket off the record and not in open court, in violation of Canons 1, 2A, 2B, 3A(6) and 3C(1) of the New Jersey Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. The Respondent filed an Answer to the Formal Complaint on November 13, 2007, certifying its truthfulness, in which she admitted certain factual allegations of the Formal Complaint and denied others. She also offered a Statement in Mitigation.

The Committee held a formal hearing on February 14, 2008. Respondent appeared with counsel and testified. The Presenter offered witnesses who testified. Exhibits were offered by both parties and accepted into evidence, as was a set of joint Stipulations. See Stipulations of Parties Dated February 14, 2008 (marked as "J-1").

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

## I. FINDINGS

### A. **Background**

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1997. At all times relevant to these matters, Respondent served as a Municipal Court Judge for the Cities of East Orange and

Irvington. Respondent held and continues to hold these positions on a part-time basis. See J-1 at ¶2.

On December 1, 2006, Respondent presided over a municipal court matter involving Patrice Davis venued in the East Orange Municipal Court. J-1 at ¶6; see also State v. Patrice Davis, Summons No. C-364267. It is uncontested that Respondent and Ms. Davis share a personal relationship. J-1 at ¶10. On the date in question, Ms. Davis appeared in the East Orange Municipal Court in response to a Summons issued to her by the East Orange Police Department following a traffic accident. J-1 at ¶7. Prior to the commencement of that day's court session, Ms. Davis met with Municipal Prosecutor Derrick Griffin, Esq. to discuss her case. Id. at ¶8. Following the meeting, Prosecutor Griffin recommended, via a handwritten note on the court's file, that Ms. Davis's ticket be dismissed with court costs. Id.

After her meeting with Prosecutor Griffin, but before Respondent took the bench, Ms. Davis met with Respondent in her chambers. J-1 at ¶9. Prosecutor Griffin was not present for this meeting. Id. Inconsistent versions of what transpired during and subsequent to the meeting in chambers were offered to the Committee. What is not in contention, however, is the following: (1) during the meeting in Respondent's chambers in which Prosecutor Griffin was not present, Respondent discussed Ms. Davis's ticket with her (Id. at ¶10); (2) at some point

thereafter, Respondent dismissed Ms. Davis's ticket without court costs and without the further involvement of the Prosecutor (Id. at ¶11); (3) the record from the court session conducted by Respondent on December 1, 2006 does not reflect Respondent's disposition of Ms. Davis's ticket (Id. at ¶13); and (4) Respondent allowed Ms. Davis to leave the Courthouse prior to the start of the court session without having placed Respondent's dismissal of Ms. Davis's summons on the record in open court (Id. at ¶12).

Respondent was asked to explain her conduct surrounding her disposition of Ms. Davis's ticket on four separate occasions subsequent to the ticket's dismissal: (1) by memorandum dated December 11, 2006 from Judge Ernest R. Booker, Chief Judge for the City of East Orange Municipal Court (see P-5); (2) by letter dated April 10, 2007 from the Committee (see P-9); (3) through Respondent's Answer to the Committee's September 12, 2007 Formal Complaint; and (4) through her testimony on February 14, 2008 at the Committee hearing. Three witnesses to the events of December 1, 2006, James Moss, Deputy Court Administrator for the East Orange Municipal Court who was assigned to Respondent's courtroom on the day in question, Municipal Prosecutor Derrick Griffin who was also assigned to Respondent's courtroom on the day in question, and defendant Patrice Davis, provided accounts

of that day. The Committee considered each of these explanations in detail in making its Findings.

**B. The Charge of *Ex Parte* Communication with a Litigant**

It is uncontested that Respondent and Ms. Davis met privately in Respondent's chambers prior to the December 1, 2006 court session. J-1 at ¶9.

Respondent alleged that the meeting in chambers was initiated by East Orange Deputy Court Administrator James Moss informing her that she had a "special visitor" and "coyly ask[ing her] if he should bring the special guest in to speak with [her] before [she] get [sic] settled and prepare [sic] to take the bench." P-10; see also Transcript from February 14, 2008 Hearing ("Tr.") at 13:23 to 14:14. Respondent related that when Mr. Moss finally made her aware of the identity of the "special guest," she "had no idea, nor any reason to think that Ms. Davis had a matter scheduled to be heard before [her] on that day..." P-10. According to Respondent, it was not until after she and Ms. Davis "exchanged pleasantries" and had a personal discussion in chambers that Ms. Davis informed her of the "tickets that the prosecutor already reviewed and recommended for dismissal." Id.

Mr. Moss testified that, prior to the start of court on December 1, 2006, Ms. Davis was seated in the courtroom and asked if she could say hello to Respondent. Tr. 95:11-22; 143:9

to 144:21. He stated that, in response, he told Ms. Davis he would check and took her court file back to Respondent in her chambers. Tr. 95:11 to 96:12. According to Mr. Moss, he held up Ms. Davis's file to Respondent (to which the traffic ticket was stapled) and stated, "this person wants to say hello." Tr. 96:11 to 97:10; Tr. 151:1-3; see also P-1. Mr. Moss related that Respondent indicated her assent and instructed Mr. Moss to "bring her around." Tr. 98:6-9. He further testified that he left the file containing Ms. Davis's ticket, with the Prosecutor's recommended disposition noted on the jacket, on Respondent's desk when he left the chambers to get Ms. Davis. Tr. 99:3-15; Tr. 151:9-21; see also P-3.

After he brought Ms. Davis into Respondent's chambers, Mr. Moss testified he left and was not present for any part of Respondent and Ms. Davis's meeting and "didn't see Miss Davis anymore." Tr. 99:17 to 100:12; Tr. 100:10-17; Tr. 101:9-12. Similarly, Mr. Moss declared that he did not hear from Respondent again until he was "summoned that the Judge was ready to go to court." Tr. 100:13-22.

Ms. Davis also offered testimony about her private meeting with Respondent in her chambers. Although Ms. Davis admitted having a conversation with Respondent in chambers before the start of court on December 1, 2006, she testified that the conversation was initiated by "some guy maybe the clerk" who

approached her to ask if she wanted to go back and see Respondent. P-13 at ACJC 076. Ms. Davis denied having initiated contact with court staff to ask if she could see Respondent in chambers. Id. at ACJC 080-81. She testified that, at some point during her conversation with Respondent in chambers, it was clear to her that Respondent "knew [her] matter was listed on her calendar." Id. at ACJC 085.

The Committee finds that Respondent deliberately engaged in an impermissible *ex parte* communication with a litigant concerning a pending matter in violation of Canon 3A(6) of the Code of Judicial Conduct. Canon 3A(6) provides that judges shall "neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding."

Here, it is determined that Ms. Davis had a court matter relating to a traffic ticket before Respondent on December 1, 2006, and that Respondent and Ms. Davis discussed the matter in Respondent's chambers prior to the commencement of court. (Respondent, in fact, stipulated to these facts: see J-1 at ¶¶6-7; ¶¶9-10.) It is further uncontested that the Prosecutor was not present for this discussion. Id. at ¶9. Respondent herself acknowledged at the hearing that her communication with Ms. Davis in chambers constituted an impermissible *ex parte* communication. Tr. 18:23 to 19:5.

Further, Respondent was fully aware of the legal nature of Ms. Davis's business prior to the *ex parte* meeting. Mr. Moss provided credible and consistent testimony that he held up and exhibited the file containing Ms. Davis's ticket to show Respondent who wanted to speak with her in chambers, and that he left Ms. Davis's file in Respondent's chambers when he went to get Ms. Davis to bring her into chambers. This testimony is not refuted or undermined by Ms. Davis's unsupported claim that "someone" approached her to ask if she wanted to see Respondent in chambers. P-13 at ACJC 084. Moreover, Respondent's claim that she invited Mr. Moss into chambers once she discovered that Ms. Davis had a court matter before her is refuted by both Mr. Moss and Ms. Davis. See Tr. 100:10-17; P-13 at ACJC 086. The Committee notes that Ms. Davis testified that she and Respondent spoke of the pending ACJC grievance involving Respondent before Ms. Davis was contacted for information by the Committee. P-13 at ACJC 084.

In addition to finding that the conversation between Respondent and Ms. Davis constituted an *ex parte* communication strictly prohibited by Canon 3A(6), the Committee also concludes that Respondent's private conversation with Ms. Davis concerning a pending matter violated Canons 1, 2A and 2B of the Code of Judicial Conduct, as well as Rule 2:15-8(a)(6) of the New Jersey Court Rules.



### C. The Charge of Conflict of Interest

Prior to holding her present judicial positions, Respondent was employed as an Assistant Prosecutor with the Essex County Prosecutor's Office from 1998 through 2002. J-1 at ¶3. For one year during that time period, Respondent was supervised by then Essex County Assistant Prosecutor Patrice Davis. Id. at ¶4.

Respondent and Ms. Davis became friendly during their professional relationship and remained "good friends." Tr. at 12:16-18. Respondent testified she was a guest in Ms. Davis's home approximately a dozen times while Respondent was employed at the Essex County Prosecutor's Office. Tr. 12:10-15; see also J-1 at ¶5. In September 2003, Ms. Davis served as a guest speaker at Respondent's municipal court swearing-in ceremony, while Respondent served as the Mistress of Ceremony at Ms. Davis's retirement celebration in 2004. J-1 at ¶5; see also Tr. 12:5-9. Respondent credits Ms. Davis with having had significant involvement in Respondent's professional development. J-1 at ¶4. Ms. Davis also acknowledged the friendly relationship between herself and Respondent. See P-13 at ACJC 076-077.

Respondent's personal relationship with Ms. Davis was apparently well known to others. Judge Booker, in his December 11, 2006 memorandum to Respondent in which he requested Respondent explain her actions on December 1, 2006, specifically

asked Respondent to detail why she handled a matter that involved "a personal friend or former supervisor, all of which relationships were well known to the Court staff and Prosecutor involved." See P-5.

Derrick Griffin, Esq., the municipal prosecutor working in Respondent's courtroom on December 1, 2006, testified that, upon seeing Ms. Davis in Respondent's courtroom that day, he recognized her as an assistant county prosecutor for Essex County against whom he had litigated several cases. Tr. 207:1-6; Tr. 209:2-6. Prosecutor Griffin assumed that Respondent and Ms. Davis were friends based upon his understanding that prior to becoming a municipal court judge, Respondent worked at the Essex County Prosecutor's Office with Ms. Davis, his belief that Ms. Davis may have been Respondent's former supervisor at the Essex County Prosecutor's Office, and his personal knowledge that Ms. Davis appeared at Respondent's municipal court swearing-in ceremony. Tr. 209:10-23.

Canon 3C(1) of the Code of Judicial Conduct requires that judges disqualify themselves from matters in which "their impartiality might reasonably be questioned." The Committee finds that substantial reasons existed for Respondent to have disqualified herself from considering Ms. Davis's matter. Both Respondent and Ms. Davis testified that they were "good friends," and Respondent also characterized Ms. Davis as a

"mentor." Tr. 56:9-11. Both had official and notable roles in important events in each other's lives. Respondent related that the conversation she had with Ms. Davis in chambers on December 1, 2006 included highly personal topics concerning their respective health, housing and marriage situations, indicative of the familiarity and closeness of their relationship. Tr. 13:7-20.

The Committee further finds significant and credits the observation of Judge Booker that Respondent's relationship with Ms. Davis was "well known to the Court staff and the Prosecutor involved." See P-5. The knowledge of those with whom Respondent worked of the personal relationship between Respondent and Ms. Davis goes to the heart of Canon 3C(1) and demonstrates that Respondent's actual, as well as apparent, impartiality was reasonably questioned in this case. The vital importance of the manner in which the public perceives judicial acts cannot be overstressed. See State of New Jersey v. Tucker, 264 N.J. Super. 549, 554 (App. Div. 1993) ("There must be an appearance of impartiality which fosters the confidence of litigants in the justice system. Any questions concerning that impartiality threaten the integrity of our judicial process.").

Further, as was recently made clear by the Acting Director of the Administrative Office of the Courts, "A municipal court shall not dispose of a complaint issued to a judge or an

employee of that municipal court or to an immediate family member of a judge or employee of that municipal court, except if the matter is disposed of without any court appearance through the violations bureau. When the Assignment Judge receives notification of any such complaint..., the Assignment Judge will take appropriate action to reassign or transfer the case... ." See Directive 02-08 of the Acting Director of the Administrative Office of the Courts.

Although Ms. Davis is not a family member of Respondent, Canon 3C(1) of the Code of Judicial Conduct dictates that Respondent should have recused herself from the matter given her personal relationship with Ms. Davis. The Committee finds that while the Directive of the Acting Director establishes a per se conflict of interest concerning members of the judge's family and municipal court employees, it, in no way, circumscribes the types of relationships that can give rise to a judicial conflict of interest. The close friendship between Respondent and Ms. Davis necessitated Respondent's recusal from the Davis matter. The Committee underscores Respondent's concession that her continuation in the case and her ultimate disposition of the matter constituted a conflict of interest.

By failing to terminate the proceeding and recuse herself and by continuing to consider the matter substantively, Respondent fostered the public perception that she was

subverting the law to benefit a friend. It is that perception, which the Committee finds was created in this matter, that Canon 3C(1) is designed to prevent.

The Committee concludes that Respondent engaged in an impermissible conflict of interest when she discussed the substance of Ms. Davis's ticket with her in chambers and disposed of the ticket at some time later that day. The Committee determines that at whatever point the conversation between Respondent and Ms. Davis turned to Ms. Davis's traffic ticket, Respondent's failure to terminate the conversation and completely recuse herself amounted to Respondent's knowing participation in a conflict of interest in violation of Canon 3C(1), as well as in violation of Canons 1, 2A and 2B of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules.

**D. The Charge of Improper Disposition of Ticket**

The following facts regarding the disposition of Ms. Davis's ticket are undisputed: (1) Ms. Davis's ticket charging her with failure to produce proof of insurance was dismissed without costs; (2) Respondent personally handled the disposition of Ms. Davis's ticket; (3) Respondent permitted Ms. Davis to leave the Courthouse prior to the commencement of the December 1, 2006 court session; and (4) the disposition is not reflected on the record of Respondent's December 1, 2006 court session. The

varying versions of the circumstances surrounding Respondent's dismissal of Ms. Davis's ticket do not alter these facts.

1. Respondent's Accounts of Ticket Disposition

In neither her December 11, 2006 reply memorandum to Judge Booker nor her April 24, 2007 letter to the Committee did Respondent dispute that her disposition of Ms. Davis's ticket was not on the record. See P-6 and P-10. Rather, in her memo to Judge Booker, Respondent focused on her decision not to impose court costs on Ms. Davis and, in this regard, provided that "court costs were not imposed upon Ms. Davis's file because she was granted permission to leave by this Court." P-6. She further indicated this decision was consistent with other decisions she made that day regarding similarly-situated defendants. Id. Finally, she provided that "Ms. Davis indicated that she had to leave and I granted her permission to do so, base [sic] upon the Prosecutor's recommendation on the face of the file." Id.

In her response to the April 10, 2007 inquiry from the Committee, Respondent explained that, upon realizing she had engaged in a conflict of interest, she called Deputy Court Administrator Moss into chambers, while Ms. Davis was still present, to confirm that Ms. Davis's ticket had been recommended for dismissal. P-10 at ACJC 041. She said she then "instructed Mr. Moss to remind [her] to discuss the matter with the State

because [her] intention was to have the other Judge sitting on December 1<sup>st</sup> hear Ms. Davis's [sic] matter." Id. Respondent related she never did refer the case to another judge due to the volume of cases she handled that day and Mr. Moss's failure to remind her. Id. at ACJC 041-042. According to Respondent, by the time Mr. Moss prompted her to dispose of the Davis matter, her court session had been adjourned and the other sitting judge had already left for the day. Id. Finally, she explained she granted Ms. Davis permission to leave the Courthouse "due to the emotional nature of our meeting, because both court rooms were crowded and busy, she is a professor and presumably had class, and more importantly, the allegations against her were recommended for dismissal." Id.

Respondent claimed for the first time in her Answer to the Committee's Formal Complaint that "to the best of her recollection, she placed her disposition of the ticket on the record..." See Answer at ¶11. In the Answer's Statement in Mitigation, Respondent continued as follows: "The Respondent never adjudicated Ms. Davis's ticket in chambers, contrarily, the ticket was adjudicated on the bench, at the end of the Court day, before the Court record closed. It is the Respondent's best recollection that Respondent did place on the record her disposition of Ms. Davis' ticket." See Respondent's Answer to ACJC Formal Complaint. Respondent further related it was her

"intention out of an instinct to act conservatively, to have another judge adjudicate the matter, although she did not believe that she had an obligation under the Canons of Judicial Ethics to do so. At best the matter was analogous to an Administrative Dismissal. By the time Respondent completed her session after hearing an unusually busy calendar, however, the other judge in the courthouse had long since left for the day." Id.

With regard to her decision to allow Ms. Davis to leave the Courthouse, Respondent's Answer provided that Respondent did so "because of the prosecutor's dismissal recommendation, and because it was Respondent's intention to have another judge adjudicate Ms. Davis's ticket. Respondent recognizes that, until she had the ticket reassigned to another judge, she should not have excused Ms. Davis." Id.

During the ACJC hearing, Respondent testified that once she learned that Ms. Davis had a matter before her, she asked Mr. Moss to show her the Davis file so she could verify the Prosecutor's recommendation. Tr. 15:9-17. The Committee notes that this testimony differs from Respondent's claim in her letter to the ACJC that she asked Mr. Moss to verify the Prosecutor's recommendation. See P-10 at ACJC 041. Regarding her contention that she handled the ticket "in open court," Respondent further presented conflicting testimony. She



initially testified that as she was descending the bench after the conclusion of her court session on December 1, 2006, Mr. Moss reminded her that she had not yet disposed of Ms. Davis's matter. Tr. 23:17 to 24:2. Respondent said it was at that point that she proceeded to place the matter on the record. Tr. 24:3-6. She offered, in an attempt to explain why the record did not reveal her disposition of the matter, that the tape of that day's court session also did not contain her end-of-session statement, which she always makes to close court. Tr. 20:20 to 21:1.

Later in her testimony, Respondent again spoke of the manner in which she placed the disposition of Ms. Davis's matter on the record. She indicated that it was prior to her closing statement at the end of the court session that she "wrote out the disposition" of Ms. Davis's ticket and handed the file back to Mr. Moss or the data entry clerk. Tr. 72:6-12; Tr. 73:4-14.

Respondent's testimony about when she placed the Davis matter on the record, however, again fluctuated. She subsequently testified that it was not until after she gave her closing statement and after she believed that "the record was closed for the day" that she disposed of Ms. Davis's ticket. Tr. 76:1-18; Tr. 76:25 to 77:9. Respondent related that when she disposed of the matter at that point, she assumed it was

made a matter of record by virtue of the fact that Mr. Moss "called" the case. Tr. 74:15 to 75:10.

Respondent admitted that she never involved the Prosecutor in her decisions to waive court costs or to permit Ms. Davis to leave before the matter could be called or heard in open court. Tr. 19:6-22.

2. Mr. Moss's Account of Ticket Disposition

Mr. Moss testified, upon being questioned if Respondent asked him to verify that Ms. Davis's ticket had been recommended for dismissal, that he could not "remember having that kind of conversation." Tr. 103:19-22. He likewise confirmed that the log sheet from the December 1, 2006 court session, on which he wrote the dispositions of the cases on Respondent's docket for the day, contained no written disposition of Ms. Davis's matter, which indicated to him that "the case wasn't called, the case wasn't in our courtroom." Tr. 111:18-23; see also P-4 at ACJC 008.

Mr. Moss further testified that he could not remember calling the Davis matter that day, and that Respondent "didn't instruct [him] to do anything with [the file]..." Tr. 122:9-10; 122:19-23. He testified that at some point during that day's court proceeding, he realized that the Davis file was missing and began to look for it. Tr. 120:14-17. The file, according to Mr. Moss, was eventually found on the Judge's bench, in an

area which is also utilized by court staff. Tr. 120:18 to 122:8. According to Mr. Moss, once the file was located, he and the other staff left it where it was. Tr. 185:21 to 186:1. He related that he never asked the Judge what she wanted to do with the Davis file. Tr. 188:5-23. Mr. Moss could not remember what, if anything, was said between Respondent and himself regarding the file at the end of the court session but testified that he just knew it "wasn't taken care of." Tr. 126:4-16; Tr. 189:9 to 190:1.

3. Ms. Davis's Account of Ticket Disposition

Ms. Davis testified that, once she was brought back to Respondent's chambers, the following conversation occurred between Respondent and herself:

[Respondent] said, 'What are you here for?' I told her, she said okay well did you have proof. I told her I had proof. I told her I talked to the prosecutor. She said okay. She said get out of here. We talked about some personal things that were happening in our lives at the time and I said what about the fee? She said no, it's discretionary. She said, 'I'll put it on another courts, judge's calendar.' That was it, I left.

Contrary to Respondent's testimony and written statements, Ms. Davis denied telling Respondent she had a pressing need to leave court on December 1, 2006, or that she wanted to do so. Id. at ACJC 083. In fact, Ms. Davis informed Committee staff that when she left court that day, she "went to a nail

appointment" and did not teach class as she does not "teach on Fridays." Id. at ACJC 087. She further contradicted Respondent by testifying that no one else was present in Respondent's chambers during any part of her conversation with Respondent, and that she could not recall Respondent asking her court staff to confirm that the Davis matter had been recommended for dismissal by the Prosecutor. Id. at ACJC 086.

4. Prosecutor Griffin's Account of Ticket Disposition

Prior to the start of court on December 1, 2006, Prosecutor Griffin spoke with Ms. Davis and several other people charged with the offense of failure to exhibit insurance documents and reviewed their proofs. Tr. 206:23 to 207:14. After confirming that each person had adequate proof of insurance, Prosecutor Griffin made a written recommendation to dismiss Ms. Davis's matter, as well as those of the other similarly situated litigants, with court costs. Tr. 207:9-19. When asked during the ACJC hearing why he recommended the imposition of court costs on each of these matters, Prosecutor Griffin indicated that he did so because it was statutorily permitted. Tr. 208:8-15. Prosecutor Griffin advised Ms. Davis of his recommendation to dismiss her matter with court costs, to which Ms. Davis did not object. Tr. 208:16-22. Prosecutor Griffin noted his recommendation to dismiss Ms. Davis's ticket, with court costs,

on the front of the court's file for consideration by Respondent. Tr. 211:3 to 212:8; see also P-3.

After discussing with Ms. Davis her ticket and his recommended disposition, the next and last time Prosecutor Griffin saw Ms. Davis that day was when she exited the courtroom prior to the start of court. Tr. 214:9 to 215:15. Having watched Ms. Davis leave the courtroom prior to the start of court, Prosecutor Griffin subsequently asked Mr. Moss "[w]hat happened to Patrice's file." Tr. 218:4-8; 219:3-9. Mr. Moss indicated to Prosecutor Griffin that Respondent was going to take care of it. Tr. 220:1-5. At the conclusion of court that day, Prosecutor Griffin learned of the disposition of Ms. Davis's ticket when he examined the summons issued to Ms. Davis, which indicated that the ticket had been dismissed. Tr. 220:8 to 221:15; see also P-1.

Based upon his impression that "something was a little awkward on that particular day" (Tr. 222:8-10), Prosecutor Griffin spoke with Judge Booker about Respondent's handling of Ms. Davis's ticket. Tr. 221:21 to 222:12. Prosecutor Griffin was concerned about Respondent's handling of Ms. Davis's matter because he understood that the matter was not disposed of on the record and because of the apparent friendship between Ms. Davis and Respondent. Tr. 225:17-23.

5. Analysis

The Committee finds that Respondent disposed of Ms. Davis's ticket in chambers, not in open court, not on the record, and not in the presence of the Prosecutor. Respondent's conduct was highly improper and violated the Canons of Judicial Conduct and applicable administrative policies of the Administrative Office of the Courts. See Directive 02-08 of the Acting Director of the Administrative Office of the Courts (directing that the dismissal of municipal court complaints, including parking tickets, by a judge must be heard in open court and placed on the record, with notice to the prosecutor and an opportunity for the prosecutor to be heard).

The Committee concludes that whether or not Respondent attempted to place the matter on the record is insignificant. The fact remains that the disposition of Ms. Davis's ticket is not on the record of Respondent's December 1, 2006 court session nor on the court log sheet from that day. Further, the Committee finds that the actual disposition of the matter occurred when, by Respondent's own admission, she told Ms. Davis in chambers that her matter would be dismissed (perhaps by another judge), that Ms. Davis would not be held responsible for the court costs, and that Ms. Davis was therefore free to leave the Courthouse. That ruling was made in chambers and without the presence or knowledge of the Prosecutor. At that point,

whether or not it was Respondent's intention to refer the case to another judge, Respondent had effectively and improperly ruled in the matter. Even if the matter was subsequently placed on the record, the impropriety of the manner in which Respondent handled the ticket in chambers would not be neutralized or cured.

The Committee finds significant the contradicting explanations given by Respondent as to why she granted Ms. Davis permission to leave the Courthouse early and as to when she placed the matter on the record. Regarding her decision to allow Ms. Davis to leave the Courthouse early, Respondent claimed, at varying junctures, that she made that decision for the following conflicting reasons (presented in sequential order): (1) "Ms. Davis indicated she had to leave," (see P-5); (2) due to the emotional nature of her meeting with Ms. Davis, the courtrooms were crowded, Ms. Davis was a professor and "presumably had class," and based upon the Prosecutor's recommendation (see P-10); and (3) based upon the Prosecutor's recommendation and because it was Respondent's intention to have another judge hear the matter (see Respondent's Answer). In contrast, Ms. Davis testified she never told Respondent she had to leave, she does not teach on Fridays, and that she went to a nail appointment upon departing the Courthouse. Obviously, Respondent's explanations in this regard are again wholly

inconsistent, not only with each other but with Ms. Davis's testimony, as well as unsubstantiated and implausible.

The Committee emphasizes that Respondent's representation that she placed the matter on the record was not recited in either her memo to Judge Booker or her letter to the Committee. Further, Respondent was seemingly confused during her testimony about whether she placed the matter on the record prior to or subsequent to the record's closing. These inconsistencies undermine Respondent's representation that the matter was placed on the record in open court.

The Committee concludes that Respondent improperly dismissed Ms. Davis's ticket, off the record, in chambers, and without the Prosecutor's involvement. Through this conduct, Respondent violated Canons 1, 2A, 2B and 3C(1) of the Code of Judicial Conduct as well as Rule 2:15-8(a)(6) of the New Jersey Court Rules.

## II. RECOMMENDATION

The Committee finds, by clear and convincing evidence, that Respondent knowingly participated in an *ex parte* communication with a litigant through her private conversations with Ms. Davis about Ms. Davis's court matter, knowingly engaged in a conflict of interest by disposing of Ms. Davis's ticket, and improperly disposed of the traffic ticket issued to Ms. Davis by dismissing it in chambers. Such conduct collectively violated Canons 1,



2A, 2B, 3A(6), and 3C(1) of the Canons of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules.

Canon 1 of the Code of Judicial Conduct requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary is preserved. Canon 2A requires judges to conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. Canon 2B prohibits judges from allowing family, social, political or other relationships to influence their conduct or judgment, and requires judges to guard against conveying or permitting others to convey the impression that they are in a special position of influence. Canon 3A(6) prohibits judges from initiating or participating in *ex parte* conversations concerning a pending or impending proceeding. Canon 3C(1) requires judges to disqualify themselves from proceedings in which the judge's impartiality might reasonably be questioned. Finally, Rule 2:15-8(a)(6) prohibits conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

With respect to the Committee's recommendation as to the appropriate quantum of discipline for Judge Elias, a majority of the Committee determined that censure would be the appropriate recommendation, while a minority of the Committee felt that a

thirty-day suspension was merited. Accordingly, the Committee recommends censure.

In making its recommendation, the Committee was influenced by several factors. First, the Committee notes the inconsistent and conflicting versions offered by Respondent of what occurred on December 1, 2006. Although the Committee understands that Respondent may have been confused regarding some of the underlying facts, such confusion cannot excuse her conduct nor explain all of her stated inconsistencies.

Second, the Committee notes that although Respondent's disposition of the ticket was in keeping with the basic recommendation of the Prosecutor and her discretionary practice to waive court costs in similar cases, the disposition was nevertheless highly improper in terms of its procedural posture. The Committee is mindful of the Supreme Court's resolute interest in preventing and addressing potential damage to the integrity and independence of the Judiciary through allegations such as the ones at issue here. In this regard, the sensitivity with which the Supreme Court has treated matters of judicial misconduct that occur in municipal court in cases such as this cannot be overemphasized:

Nowhere can the community be more sensitive to the regularities - and irregularities - of judicial administration than at the local level. While on the grand scale of events a traffic violation may be of small

significance, the corruption of judicial administration of a Municipal Court is of paramount importance. Such conduct, visible and apparent to the community, destroys the trust and confidence in our institutions upon which our entire governmental structure is predicated. We cannot and will not tolerate members of the profession subverting judicial integrity at any level, for the damage is irreparable.

In the Matter of Spitalnick, 63 N.J. 429, 432 (1973). See also In re Samay, 166 N.J. 25, 43-44 (2001) ("Municipal courts are critical to our judicial system. ... It is the court of first and last resort for many, and for that reason, those courts are responsible 'for the popular image of the entire system.'" (citations omitted)).

Finally, the Committee is guided by the Supreme Court's warning in In re Newman, 189 N.J. 477 (2006), that the future failure of a municipal court judge to recuse himself or herself from hearing matters in the face of a clear conflict of interest would result in "the imposition of significantly more severe discipline" than the admonition imposed in that case. Although the Newman decision was issued by the Court in close proximity to the date on which Judge Elias dismissed Ms. Davis's ticket, the Committee still finds the case pertinent.

The Committee is mindful of several mitigating circumstances. Respondent is conscientious and hard working and handles a great many cases. The substantive disposition of Ms.

Davis's ticket was consistent with other similarly charged defendants. Respondent appears to be contrite and fully understanding of her dereliction. Her response and defenses to this disciplinary proceeding appear tempered as much by confusion and panic as a lack of candor or a disregard or indifference to the truth.

The Committee, therefore, respectfully submits the current Presentment to the Court with its Recommendation for Respondent's censure.

Respectfully submitted,

**ADVISORY COMMITTEE ON JUDICIAL CONDUCT**

Date: May 19, 2008

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