

SUPREME COURT OF NEW JERSEY
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PUBLIC STATEMENT

**Statement of a Majority of the Advisory Committee on
Judicial Conduct concerning the Honorable Marcia Silva,
Judge of the Superior Court**

The Advisory Committee on Judicial Conduct has received a number of identical complaints regarding a decision by Middlesex County Superior Court Judge Marcia Silva denying the State's motion for referral of charges against a juvenile from the Chancery Division, Family Part, to the Law Division for trial of the juvenile as an adult. In particular, the complaints focus on certain language in the Judge's written opinion characterizing the sexual assault at issue as "not an especially heinous or cruel offense beyond the elements of the crimes that the waiver statute intends to target." The Judge's opinion was issued

under seal on August 30, 2018 and thus was not available to the public at that time. However, the State appealed, and the Appellate Division reversed in a June 17, 2019 opinion that quoted the parts of Judge Silva's written opinion that are the primary focus of the complaints against her. Although unpublished, this opinion was publicly available, which resulted in media reports and the complaints submitted to the Committee.

Based upon its review of the complaints, the Committee asked Judge Silva to appear at an Informal Conference, in accordance with Rule 2:15-11. At the Informal Conference, the Judge thoughtfully explained her reasoning and acknowledged that the language in her opinion was inappropriate. She told the Committee that she wrote that sealed opinion solely for the parties, who "were intimately familiar with the facts of the case, not for the public[,]"" and "[h]ad I ever imagined that it would be put out to the public, I certainly would have put in there what I'm telling you today, which is that every rape, including statutory rape of a 12-year-old, is heinous[.]""

Even considering Judge Silva's comments at the Informal Conference and her 37-page written opinion that traced the history of the juvenile waiver statute and explained its operation, a majority of the Committee has

concluded that the words in that opinion were inappropriate.

The majority notes, however, that in the context of a waiver analysis, it is incumbent upon the Judge to ascertain whether the prosecutor has shown that the sexual assault was particularly egregious beyond its inherent egregiousness. Likewise, it was statutorily required that the Judge assess whether the prosecutor had shown that the harm suffered by the victim was above, beyond and in addition to the inherent harm associated with the act itself. The reason for this is that the amendments to the act intend that waiver should be the exception and not the rule, a notion that Judge Silva understood.¹ That statutory goal cannot be effectuated if the basic elements of the crime are considered sufficient to satisfy the requirements of waiver. What is needed is something more. It is

¹ In our view, the Judge was trying to follow caselaw which made clear that the amended waiver statute was ameliorative and designed to promote rehabilitation of juveniles within the juvenile justice system and to reduce the number of waivers. See State in the Interest of J.F., 446 N.J. Super. 39, 55 (App. Div. 2016) (stating the amended waiver statute "was intended to ameliorate the punitive sentencing previously meted out to adolescent offenders after waiver" and "was also intended to address the treatment needs of children"). See also State v. Bass, 457 N.J. Super. 1, 11 (App. Div. 2018), certif. denied, 238 N.J. 364 (2019) (decided after Respondent's decision; rejecting a retroactive application of N.J.S.A. 2A:4A-26.1(c)(1) but rejecting the State's argument that the statute was "without an ameliorative effect").

difficult to express such concepts. In attempting to do so, Judge Silva sacrificed sensitive and conciliatory language in favor of a more clinical, unemotional, perhaps even stoic legal evaluation of the statutory factors and the prosecutor's burden.

In view of the Judge's acknowledgment of her inappropriate choice of words and the fact that they were an integral part of her statement of reasons for denying waiver rather than a gratuitously offensive comment unrelated to the judicial decision-making process, a majority of the Committee has concluded that it should not initiate formal disciplinary proceedings against Judge Silva.

The Committee is not an Appellate Court. Its mission is to address wrongful conduct by judges that brings disrepute on the judiciary. Every debatable opinion does not fall into that category. Nor does every poor choice of words. Indeed, the Supreme Court has recognized that the imposition of discipline based on a judge's decision (even an incorrect one), or the reasons given for that decision, may pose a threat to judicial independence and therefore should be reserved for only the most extreme cases. See In re DiLeo, 216 N.J. 449, 471-78 (2014). This is not such a case.

The majority would ordinarily communicate these conclusions to Judge Silva privately. But in view of the extensive publicity the matter has received, the majority decided to issue this public statement.

In response, four Committee members have issued a statement indicating that they disagree with the majority's conclusion that the initiation of formal proceedings against Judge Silva is not warranted. Those members state that the complaints require a hearing open to the public. They have not explained the issues to be aired beyond what we have already addressed. In any event, the rules under which the Committee operates only provide for a public hearing after the Committee has found "probable cause exists for the imposition of public discipline." R. 2:15-12(a). For the reasons previously stated, a majority of the Committee does not believe the initiation of formal charges against Judge Silva is warranted under this standard.