



## I. PROCEDURAL HISTORY

This matter was initiated when the Committee received a grievance from Newark municipal court litigant Linda J. Lacey ("Ms. Lacey"). See P-1. In her grievance, Ms. Lacey complained that Respondent improperly incarcerated her in the Essex County Jail, where she remained in custody from December 16, 2016 through January 7, 2017, for a total of 23 days. P-1, ACJC 0004 - 0007. Ms. Lacey also complained generally about the manner in which Respondent treated her over the course of his processing of her petty disorderly persons offense in the matter entitled State v. Linda Lacey (the "Lacey matter").<sup>1</sup>

The Committee investigated Ms. Lacey's allegations, and, as part of that investigation, requested and received Respondent's written comments, required Respondent's attendance at an informal conference, and convened a second informal conference to elicit information from the Honorable Anthony J. Frasca, Presiding Judge of the Municipal Courts for the Essex Vicinage ("Judge Frasca"). P-6; P-7. In addition, the Committee collected and reviewed audio recordings from the Newark Municipal Court.

On November 27, 2018, the Committee issued a Formal Complaint charging Respondent with engaging in conduct in contravention of

---

<sup>1</sup> Complaint No. S 2016-013877 emanated from a landlord-tenant matter, which was pending in the Superior Court. The complaining witnesses were Ms. Lacey's then-landlords, who alleged she damaged their property.

Canon 1, Rule 1.1 and Rule 1.2, and Canon 2, Rule 2.1 of the Code of Judicial Conduct by unjustly depriving Ms. Lacey of her liberty without due process of law for 23 days.

On December 20, 2018, Respondent, through his counsel Robert Ramsey, Esq., filed an Answer<sup>2</sup> to the Committee's Formal Complaint. Therein, Respondent admitted certain allegations and offered clarification regarding other allegations, but denied violating the cited Canons of the Code of Judicial Conduct.

On June 10, 2019, Respondent notified the Committee of his decision, through counsel, to waive his right to a formal hearing as provided in Rule 2:15-14. On June 11, 2019, Presenter and Respondent, through counsel, jointly filed with the Committee their agreed upon Stipulations regarding the salient facts under consideration. The Stipulations reflect Respondent's admission that his abuse of the contempt power in the matter of State v. Lacey constituted a violation of Canon 1, Rule 1.1 and Rule 1.2, and Canon 2, Rule 2.1 of the Code of Judicial Conduct. See ¶¶19-23; See also Presenter's Exhibits P-1 through P-7. After a careful review of the record, the Committee makes the following findings,

---

<sup>2</sup> Respondent's Answer included a supplemental filing, which contains a description of Respondent's understanding of the law related to contempt of court as of the time he processed the subject case. The supplement also contains additional information related to Respondent's denials to the violations as expressed in his Answer to paragraphs 23 through 27 of the Formal Complaint.

supported by clear and convincing evidence, which form the basis for its recommended discipline.

## II. FINDINGS

### Undisputed Facts

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 2000. Stipulations at ¶1. At all times relevant to this matter, Respondent served as a judge of the Municipal Court of the City of Newark, a position to which he was appointed in 2012 and continues to hold. Id. at ¶2. The facts and circumstances relevant to this ethics matter and Respondent's attendant ethical breaches, are undisputed.

On November 17, 2016, in Newark Municipal Court, Respondent presided over a proceeding involving a petty disorderly persons charge in the matter of State v. Lacey, which stemmed from a landlord-tenant dispute between Ms. Lacey and her landlords. Id. at ¶3; P-2. After Respondent's interactions with counsel for the parties, which consisted of protracted discussion concerning an unrelated issue regarding the landlords' claim that Ms. Lacey was unwilling to permit them to show their for-sale apartment to potential buyers, Respondent expressed his belief that Ms. Lacey may "have some mental condition." Id. Respondent then stated to Ms. Lacey that if he "feel[s] as though [Ms. Lacey is] disrespecting the court, [he'll] hold [her] in contempt . . . send [her] to the county . . . and have them do an evaluation . . . ."

Id. Later in the proceeding, Respondent observed Ms. Lacey "violently yank" a pen out of a court employee's hand. Id. at ¶4; P-2. Respondent reacted by telling Ms. Lacey, "you're not gonna disrespect my staff member." Id. at ¶4; P-2. Respondent told Ms. Lacey that he was going to order a psychological evaluation and stated to Ms. Lacey, "you must have some mental condition ma'am. You've been disrespectful." Id. Respondent then ordered his court officer to take Ms. Lacey "in the back," referencing the holding cell located behind the judge's bench, and advised her that he intended to hold a contempt hearing at a later date to address her conduct in snatching his court employee's pen. Id. at ¶5; P-2.

After Ms. Lacey was removed from the courtroom, Respondent instructed Ms. Lacey's attorney "to take an opportunity to speak with her. Reason with her. Reason with her. This is not appropriate behavior." Id. at ¶6; P-2 at pg. 34, lines 18-20. When Ms. Lacey's attorney returned to Respondent's courtroom, he advised Respondent that it was a "very emotional day" for his client and "in no way did she mean to disrespect the Court." Id. at ¶6; P-2, pgs. 35-36. After Ms. Lacey was brought back into the courtroom, Respondent stated that he had "the authority to do a number of things" but decided to release Ms. Lacey "without consequences," stating the "... next time I expect you to be much more respectful." Stipulations at ¶7; P-2 at pg. 37. Ms. Lacey replied, "I had no

intention of disrespecting the Court. And if [Respondent] feel[s] that way, I apologize." Stipulations at ¶7; P-2, at 38.

The parties next appeared before Respondent on December 16, 2016, when Ms. Lacey's attorney requested permission from Respondent to be relieved as counsel. Stipulations at ¶8, P-3. Respondent authorized the withdrawal from representation of Ms. Lacey's counsel and continued with the hearing while Ms. Lacey was self-represented. Id. After releasing her counsel, Respondent did not inquire with Ms. Lacey whether she wanted an opportunity to obtain substitute counsel or representation from a public defender. Id. Respondent proceeded to discuss with Ms. Lacey the events of her prior appearance before him on November 17, 2016 and Ms. Lacey's landlord-tenant matter pending in Superior Court. Stipulations at ¶9. He stated to Ms. Lacey:

You're being disrespectful. You're a very intelligent woman. You're a very well dressed woman. You're well put together. But you are doing nothing but playing games. We've been together too many times. And this is now ridiculous.

Stipulations at ¶9; P-3 at pg. 7, lines 16-21. Later in the proceeding, Respondent ordered Ms. Lacey detained pending a contempt hearing and stated:

Based on her actions in court over the course of time, and today just being completely disrespectful in her - - her tone, her demeanor, her body language. Just completely disrespecting the authority of the Court, and

for violating the order that I set forth. ...  
But as part of this, I'll do the psych  
evaluation.

Stipulations at ¶10; P-3, pgs. 18-21. Respondent scheduled a contempt hearing for December 23, 2016 and set Ms. Lacey to a "standard" bail of \$10,000, with a \$1,000 release option. Stipulations at ¶11; P-3 at 20. Ms. Lacey, who remained unrepresented by counsel, did not pay bail and was remanded to custody. Stipulations at ¶11. Respondent remained incarcerated in the Essex County Jail for 23 days awaiting a contempt hearing before Respondent. Id. at ¶12.

On December 23, 2016, Ms. Lacey appeared by video from the Essex County Jail. Id. at ¶13; See P-4. Respondent noted that Ms. Lacey had "been sitting [in jail] for a couple of weeks" and that the psychological evaluation he had ordered Ms. Lacey undergo while incarcerated had not been performed. Stipulations at ¶13; P-4 at pgs. 4-6. For those reasons, and due to Ms. Lacey's physical absence from the courtroom, Respondent declined to hold the contempt hearing that day and rescheduled it for January 5, 2017, then promptly rescheduled it for January 3, 2017. Stipulations at ¶13; P-4 at pg. 6, lines 13-15; See P-4 at pgs. 12-13.

On January 3, 2017, the Municipal Prosecutor, Ms. Lacey, and the Public Defender appointed to represent her appeared before Respondent. Stipulations at ¶14; See P-5. Respondent stated that he was prepared to proceed with the contempt hearing, however, the

psychological evaluation had still not been performed. Id. Respondent admitted to Ms. Lacey that she had been in custody "longer than [she] probably should have" without the requested psychological evaluation performed, and as such, he would release her from custody. Stipulations at ¶15. Respondent stated that he would not hold Ms. Lacey to any further bail and that it would not be appropriate to hold the contempt hearing. Id. "[I]n fairness I can't justify keeping her in custody a day longer, you know. And I've attempted my part, but the system hasn't worked the way it's supposed to work. So, I'm going to release her at this point." Id.; P-5 at pg. 11, lines 3-8. Later in the same proceeding, Respondent stated "... I think Ms. Lacey has suffered quite a bit already. Sat in jail, you know, the holidays, major holidays." Stipulations at ¶15; P-5 at pg. 13. Respondent subsequently dismissed the criminal complaint against Ms. Lacey. Stipulations at ¶16; P-5 at pg. 13. Ms. Lacey remained in jail for an additional four days before she was released on January 7, 2017. Stipulations at ¶17.

Respondent admitted that he improperly incarcerated Ms. Lacey in default of bail to ensure her appearance in court in a matter in which incarceration was not permitted in the absence of a summary judicial finding of contempt in the face of the Court and the filing of an appeal as required by Rule 1:10-1(e), in violation



of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct. Stipulations at ¶19.

Respondent admitted that to the extent he sought to involuntarily commit Ms. Lacey, for a psychiatric evaluation related to a purported contempt in the face of the Court, he failed to follow appropriate procedures in respect of the civil commitment process established in Rule 4:74-7<sup>3</sup> in violation of Canon 1, Rule 1.2 of the Code of Judicial Conduct. Stipulations at ¶20.

Respondent admitted that by incarcerating Ms. Lacey in default of bail for 23 days in disregard of the procedural safeguards set forth in Rule 1:10-1(e), and by not transferring the matter to another judge under Rule 1:10-2(b) and releasing Ms. Lacey on her own recognizance, he abused his contempt power and deprived Ms. Lacey of her due process in violation of Canon 1, Rule 1.2 of the Code of Judicial Conduct. Stipulations at ¶21.

Respondent admitted that by depriving Ms. Lacey of her liberty unjustly and arbitrarily in violation of the procedures set forth in Rule 1:10-1(e) and the prevailing, established case law, Respondent impugned the integrity and impartiality of the Judiciary in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct. Stipulations at ¶22.

---

<sup>3</sup>Rule 4:74-7 et seq. states that an action for commitment to treatment shall be through a screening service referral or by filing an application for a court order of temporary commitment.

Finally, Respondent admitted that to the extent he set bail on Ms. Lacey in the absence of a judicial finding of summary contempt in the face of the Court and an appeal therefrom required under Rule 1:10-1(e), Respondent violated Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct. Stipulations at ¶23.

Respondent explained that he decided to hold Ms. Lacey to a reasonable bail due to a few factors: her alleged failure to appear in court on previous occasions, her late appearance on several other occasions, her disrespectful attitude towards the court, a concern that "she would absent herself from the hearing," and because "the eviction appeared certain and her whereabouts would be in question." Stipulations at ¶18; See P-5 at pgs. 16, 28. Respondent reiterated that he was concerned Ms. Lacey "was not going to come back to court." Stipulations at ¶18.

Respondent has stipulated to the asserted factual allegations and their attendant ethical violations. His primary defense is that these actions set forth above, which formed the basis for his acknowledged violations of the Code of Judicial Conduct, do not warrant the imposition of discipline, as asserted in his Memorandum of Law dated June 10, 2018. The Committee finds this argument unpersuasive as discussed more fully below.

### 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).

In this judicial disciplinary matter, Respondent has been charged with violating Canon 1, Rule 1.1, and Rule 1.2, and Canon 2, Rule 2.1 of the Code of Judicial Conduct by his conduct in improperly incarcerating a *pro se* litigant for the purpose of obtaining a mental health evaluation and in the absence of a finding of contempt in accordance with Rule 1:10-1 et seq.

We find, based on our review of the evidence of record, that these asserted disciplinary charges have been proven by clear and convincing evidence and as such, Respondent violated the cited Canons of the Code of Judicial Conduct.

Respondent argues that his violations, when evaluated through the lens of the "Benoit / plus test" as adopted by this Court in In re DiLeo, 215 N.J. 477 (2014), do not justify an imposition of discipline because they fail to rise to the requisite level of

egregiousness or willfulness. We reject this conclusion and find Respondent's actions in abusing his contempt power more than sufficiently egregious to warrant significant public discipline. Indeed, we are struck by Respondent's evident lack of appreciation for the necessary process attendant to every contempt charge, particularly given his extensive experience in the municipal court, both as a judge and a prosecutor. In complete disregard of the appropriate courtroom procedures, Respondent misused his power to incarcerate Ms. Lacey as a means to ensure her future appearance before him, contravened the contempt procedures and Ms. Lacey's due process rights, involuntarily committed her in the county jail without adhering to the appropriate civil commitment procedures and detained her for 23 days without just cause and without the benefit of counsel whom he had relieved immediately prior to incarcerating her. Cf. In re DiLeo (finding that Respondent committed egregious legal error when he conducted a trial in which he deprived defendants of their fundamental due process rights and eliminated all indicia of impartiality).

Canon 1, Rule 1.1, requires judges to "participate in establishing, maintaining and enforcing, and . . . [to] personally observe, high standards of conduct so that the integrity, impartiality and independence of the judiciary is preserved."

Canon 1, Rule 1.2, requires judges to "respect and comply with the law."

Canon 2, Rule 2.1, requires judges to "act at all times 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." As the Commentary to Canon 2, Rule 2.1 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.

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 . . . ." In re Samay, 166 N.J. 25, 43 (2001). Indeed, each judge, upon 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).

Respondent's purported lack of willfulness or intentionality are inadequate to serve as a sufficient basis to withhold an imposition of discipline. See In re Blackman, 124 N.J. 547 (1991) (finding judge's lack of intent irrelevant in judicial disciplinary matters). A core element of Respondent's primary defense, that he misunderstood how to apply the contempt of court

power, does not justify or negate the egregious nature of Respondent's misconduct. By virtue of his judicial office, Respondent was duty-bound and expected to adequately know and properly adhere his conduct to the rules and statutes that govern the municipal court, especially those which govern contempt proceedings. See In re Sgro, 63 N.J. 538 (1973) (finding that "all municipal court judges, even though inexperienced and part-time, are charged with knowledge of the rules and statutes governing that court and are bound to act accordingly.")

Considering our findings that Respondent violated Canon 1, Rule 1.1 and Rule 1.2, and Canon 2, Rule 2.1 of the Code of Judicial Conduct, 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.

In the instant matter, several aggravating circumstances exist. First, the misconduct at issue - which includes Respondent's cavalier attitude towards his impermissible deprivation of a *pro se* litigant's rights - reflects a level of disregard for liberty interests that demonstrates a lack of integrity and probity. Respondent's professed lack of intent to behave in such a manner neither diminishes the impropriety of his misconduct nor mitigates the harm done to the judicial office and the public's trust in those who hold that office. As the Supreme Court stated in In re Daniels, "[n]o one can deny that the loss of liberty, next to the loss of life, is the *greatest* deprivation that a free citizen may suffer." 118 N.J. 51, 65 (1990). The Daniels Court emphasized that imprisonment is a significant judicial act that should never be undertaken lightly. Id.

Respondent's misconduct is further aggravated by the ongoing nature of the harm he caused to Ms. Lacey, who spent 23 days in jail without receiving due process of law. Indeed, during Respondent's December 23, 2016 proceeding, where Ms. Lacey appeared by video from the jail, Respondent acknowledged that she had been incarcerated for a week without any progress on her case. Respondent, despite this, kept Ms. Lacey in custody, and as a

result, she was unable to continue her defense in the eviction proceeding filed against her by her then-landlords.

Factors to be 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).

In respect of any mitigating factors, the record before us contains Respondent's Certification dated June 6, 2019, wherein he described online and live training courses he completed. Therein, he also explained his efforts to better familiarize himself with the law of contempt. In addition, Respondent expressed his apology and regret for what occurred to Ms. Lacey. We recognize Respondent's approximate seven years of service to the bench, from 2012 through the present, in the Newark Municipal court and note that Respondent's disciplinary history with the Committee is otherwise unblemished.

On balance, we find these mitigating factors inadequate when weighed against the aggravating circumstances and Respondent's significant ethical misconduct in this instance, for which we recommend a two-month suspension, without pay, from judicial duties.



**IV. RECOMMENDATION**

For the foregoing reasons, the Committee recommends that Respondent be suspended from his judicial office, without pay, for a period of two months for his misconduct violative of Canon 1, Rule 1.1 and Rule 2.1, and Canon 2, Rule 2.1 of the Code of Judicial Conduct. This recommendation takes into account the seriousness of Respondent's ethical misconduct as outlined above, as well as the aggravating and mitigating factors present in this case, which justify the quantum of discipline recommended.

Respectfully submitted,

**ADVISORY COMMITTEE ON JUDICIAL CONDUCT**

August 8, 2019

By: Virginia A. Long  
Virginia A. Long, Chair