

SUPREME COURT OF NEW JERSEY  
ADVISORY COMMITTEE ON  
JUDICIAL CONDUCT

DOCKET NO: ACJC 2016-135

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IN THE MATTER OF	:	
	:	PRESENTMENT
DEBORAH M. GROSS-QUATRONE,	:	
JUDGE OF THE SUPERIOR COURT	:	

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The Advisory Committee on Judicial Conduct (the "Committee") 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 and the evidence of record demonstrate, clearly and convincingly, that Deborah M. Gross-Quatrone, Judge of the Superior Court ("Respondent"), surreptitiously recorded three meetings with her Assignment Judge and, as to the final meeting on December 21, 2015, did so despite her Assignment Judge's direction to the contrary, as was charged in Count II of the Formal Complaint. As to that December 21, 2015 meeting, the Committee's findings and the evidence of record demonstrate, clearly and convincingly, that Respondent subsequently denied recording the meeting, as was charged in Count II of the Formal Complaint.

The Committee's findings and the evidence of record also demonstrate that though Respondent used her judicial secretary to perform personal tasks on judiciary time, as was charged in Count III of the Formal Complaint, that evidence does not establish, clearly and convincingly, that such conduct violates Canon 5, Rule 5.1(B)(3), of the Code of Judicial Conduct.

Lastly, the Committee's findings and the evidence of record demonstrate, clearly and convincingly, that Respondent's 2015/2016 law clerk started her employment with the Judiciary early, in contravention of judiciary policy, as was charged in Count I of the Formal Complaint. Respondent's knowledge of that policy, however, was not established by clear and convincing evidence. Accordingly, this administrative failure does not constitute conduct warranting judicial discipline.

As a consequence of these findings, the Committee recommends Respondent be suspended from the performance of her judicial duties, without pay, for a period of two months. The Committee further recommends that the remaining charges against Respondent, as set forth in Counts I and III, be dismissed without the imposition of discipline.

## I. PROCEDURAL HISTORY

This matter was referred to the Committee by Bergen County Assignment Judge Bonnie J. Mizdol and concerned the early start date of Respondent's 2015/2016 law clerk in violation of judiciary policy. The Committee learned of Respondent's conduct as alleged in Counts II and III of the Formal Complaint and the circumstances related to each during its investigation into this matter.

The Committee's investigation included the interviews of twenty-eight individuals, the majority of whom are court employees, as well as Respondent.<sup>1</sup> In addition, the Committee collected and reviewed documentation relevant to these allegations. See Presenter's Exhibits P1 thru P47.

On March 6, 2017, the Committee issued a three count Formal Complaint against Respondent charging her with conduct in contravention of Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 5, Rule 5.1(B)(3) of the revised Code of Judicial Conduct<sup>2</sup>

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<sup>1</sup> The record before the Committee does not contain the transcripts of every court employee interviewed during the Committee's investigation, though Respondent was provided with copies of each in discovery.

<sup>2</sup> The Supreme Court adopted the revised Code of Judicial Conduct to which we cite and refer in this Presentment on August 2, 2016, with an effective date of September 1, 2016. Though Respondent's conduct predates the adoption of the revised Code of Judicial Conduct, the changes made to Canons 1 and 2 of the Code were not substantive and, as such, do not affect the charges in the Complaint. As to Canon 5, the revised Code

relating to her surreptitious recordings of meetings with her Assignment Judge, her associated misrepresentations in respect of that conduct, use of her judicial secretary to perform personal tasks, and her 2015/2016 law clerk's early start date.

Respondent filed an Answer to the Formal Complaint on April 4, 2017 in which she admitted certain factual allegations, with some clarification, denied others and denied violating the cited canons of the Code of Judicial Conduct. Respondent filed an Amended Answer to the Complaint on October 30, 2017 in which she altered her prior admission of surreptitiously recording a meeting with her Assignment Judge on December 14, 2015 to a denial.

Following four adjournments, each at Respondent's request, the Committee convened a Formal Hearing on January 8, 2018, which continued for two consecutive days - January 9 and 10 - until its conclusion. Respondent appeared, with counsel, and offered testimony in defense of the asserted disciplinary charges as well as that of five witnesses. In addition, Respondent, with leave of the Committee, filed affidavits from

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added, in part, Rule 5.1(B)(3) relating to the prohibition against the use of "court premises, staff, stationary, equipment or other resources for extrajudicial activities . . . ." That Rule includes an exception for "de minimis or other incidental personal use of judiciary equipment or facilities . . . ." Though absent from the original Code, the New Jersey judiciary has never condoned jurists' use of judicial resources for personal use.

two other witnesses. The Presenter called five witnesses in support of the asserted disciplinary charges. The Presenter and Respondent offered exhibits, all of which were admitted into evidence. See Presenter's Exhibits P1 thru P47; see also Respondent's Exhibits R1 thru R53.

Due to a defective memory card in the Marantz digital recorder used to record Respondent's testimony on January 8, 2018, the digital recorder captured only a portion of Respondent's testimony, which has been transcribed and made a part of the record in this matter. Respondent, in conjunction with her counsel and in cooperation with the Presenter, elected to attempt to reconstruct that portion of Respondent's testimony not captured by the Marantz digital recorder in lieu of re-testifying before the Committee. Counsel were ultimately unable to agree on a final reconstruction of the record.

Respondent, though again offered the opportunity to re-testify before the Committee, elected to defer to the Committee the reconstruction of her testimony. In this undertaking, the Committee considered counsel's respective reconstruction efforts, as well as its own notes and the partial transcript of Respondent's testimony of January 8, 2018 in arriving at its findings in respect of Respondent's testimony. Counsel's proffered reconstruction efforts are a part of the record in this matter and are identified as the "Reconstructed Record."

Presenter and Respondent, with leave of the Committee, filed post-hearing briefs on June 1, 2018, which the Committee considered. After carefully reviewing the evidence, the Committee makes the following findings, supported by clear and convincing evidence, which form the basis for its recommendation.

## II. FINDINGS

### A.

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1990. See Formal Complaint and Verified Amended Answer at ¶1. At all times relevant to this matter, Respondent served as a judge of the Superior Court in the Bergen vicinage assigned to the Family Division, a position she held until the first week of January 2016. Id. at ¶2. Prior thereto, Respondent was assigned to the Family Division in the Passaic vicinage, where she served for approximately four months beginning on March 3, 2015 and concluding on July 3, 2015. Id. at ¶2. Effective January 11, 2016, Respondent was assigned to the Civil Division in the Essex vicinage where she remains. Id. at ¶3; R23.

During Respondent's assignment in the Bergen vicinage, which spanned approximately six months beginning on July 6, 2015 and concluding on the first week of January 2016, Respondent had

two successive law clerks. 1T25-16-23;<sup>3</sup> see also P40A at T4-17-22; T5-18-23; Formal Complaint and Verified Amended Answer at ¶2.

Respondent's first law clerk, who began the 2014/2015 clerkship term (i.e. August 25, 2014 thru August 31, 2015) mid-year, following Respondent's appointment to the Superior Court on March 3, 2015, moved with Respondent from the Passaic vicinage to the Bergen vicinage on July 6, 2015.<sup>4</sup> 1T25-10-23. The 2014/2015 law clerk left the clerkship a week early, on August 25, 2015, for personal reasons. 1T32-17 to 1T33-8; 3T51-11-12.<sup>5</sup>

Respondent's incoming law clerk for the 2015/2016 court term began her clerkship with Respondent on August 4, 2015, three weeks earlier than the official start date of August 24, 2015. 1T37-12-18; 2T138-8 to 2T139-11;<sup>6</sup> see also P1, P10, P12; R11; R13. The impetus for the law clerk's early start date, i.e.

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<sup>3</sup> "1T" refers to the partial Transcript of Formal Hearing, In re Gross-Quatrone, ACJC 2016-135, dated January 8, 2018.

<sup>4</sup> To preserve the privacy interests of Respondent's 2014/2015 and 2015/2016 law clerks, the Committee did not refer to those clerks by their names in the Formal Complaint. We continue that practice in our Presentment to the Court despite the 2015/2016 clerk's testimony at the public hearing in this matter.

<sup>5</sup> "3T" refers to the Transcript of Formal Hearing, In re Gross-Quatrone, ACJC 2016-135, dated January 10, 2018.

<sup>6</sup> "2T" refers to the Transcript of Formal Hearing, In re Gross-Quatrone, ACJC 2016-135, dated January 9, 2018.

whether Respondent required her to start early or the law clerk chose the early start date, was the subject of extensive testimony.

Respondent and her secretary, Maria DeLeon, testified that though Respondent *suggested* the 2015/2016 law clerk start early to transition into the position under the guidance of the 2014/2015 law clerk, the 2015/2016 law clerk *elected* to start the clerkship early and selected August 4, 2015 as her start date. 1T31-13 to 1T37-18; 3T31-17 to 3T34-9; 3T37-15-19; 3T48-1-4; see also Formal Complaint and Verified Amended Answer at ¶9; Verified Amended Answer at "Narrative."

The 2015/2016 law clerk, conversely, testified that on accepting the position on August 3, 2015, Ms. DeLeon advised her that she would be "required" to start the clerkship the next day and would need to shorten a planned family vacation.<sup>7</sup> 2T138-8 to 2T139-14.

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<sup>7</sup> Though not charged in the Formal Complaint, the 2015-2016 law clerk testified, for the first time at the hearing, that Respondent instructed her to conceal her presence in the courthouse between August 4, 2015 and August 23, 2015. 2T153-2-12. When interviewed by staff to the Committee on March 10, 2016, however, the law clerk attributed that instruction to Respondent's secretary, not Respondent. P42 at T11-5 to T15-22; T21-22 to T22-3.

The law clerk also recounted a telephone conversation between Respondent and a member of the judiciary during this same period wherein Respondent allegedly announced to the caller the presence of her 2014/2015 and 2015/2016 law clerks in chambers. P42 at T20-25 to T21-21. This testimony conflicts



This discrepancy is immaterial, however, given the absence of any evidence in the record that Respondent was made aware of a judiciary policy prohibiting incoming law clerks from starting their clerkships prior to the official start date, even when voluntarily offered.

While Respondent was admittedly aware of the official start date for the incoming 2015/2016 trial court law clerks as of August 2015, she testified that she was unaware of the judiciary's policy prohibiting any "training/in-chamber days" for those law clerks in advance of the August 24, 2015 start date. P40A at T166-24 to T167-18, T168-5 to T172-23; see also P5; at Certificate of Appointment; R14 thru R16; Formal Complaint and Verified Amended Answer at ¶10; Verified Amended Answer at "Narrative."

That policy, as contained in a memorandum from Acting Administrative Director Glenn A. Grant, J.A.D. to Assignment Judges and Trial Court Administrators, was circulated to its

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with the law clerk's assertion that Respondent instructed her 2015/2016 law clerk to conceal her presence in the courthouse. 2T146-23 to 2T149-19. Indeed, Respondent shared chambers with another Bergen County Superior Court judge during this period, a fact that further undermines the credibility of the law clerk's testimony in this regard. P40B at T196-4-15. The Presenter has not pursued this issue and previously acknowledged at a pre-hearing conference the absence of any allegation that Respondent instructed her 2015/2016 law clerk to conceal or lie about her true purpose in the courthouse during the relevant period. 2T180-7-12; 2T186-6-16. Given these circumstances, the Committee attributes no weight to the law clerk's testimony in this regard.

intended recipients on May 20, 2015. P1. Respondent, however, denies receiving a copy of that memorandum during her tenures in the Passaic and Bergen vicinages, and no evidence to the contrary exists in the record. P40A at T166-24 to T167-18, T168-5 to T172-23; see also Verified Amended Answer at "Narrative;" see also Reconstructed Record at ¶1(a)-(c); R14.

The 2015/2016 law clerk's term with Respondent ended abruptly on Friday, December 10, 2015, following the law clerk's complaints to the Bergen County Human Resources supervisor and the Trial Court Administrator ("TCA") of alleged abusive treatment by Respondent. R9; P11; P19 at pp. 4-5; see also 2T42-11 to 2T46-18; 2T202-24 to 2T207-2; 2T216-2-4; 2T125-1-15; R-7 at "ACJC2816;" R-8.<sup>8</sup> Bergen County Assignment Judge Bonnie J. Mizdol subsequently reassigned Respondent's law clerk to a different judge with whom the clerk completed the remainder of the clerkship term. 2T52-8-16; 2T53-22-23.

The following Monday, December 14, 2015, Judge Mizdol met with Respondent to discuss the removal of her law clerk and related issues, including what, if any, additional administrative support would be made available to Respondent for the remainder of the 2015/2016 court term. 1T43-14-23; 2T46-2-25; 2T48-10 to 2T51-16; 2T52-17 to 2T53-2; see also P14; P19 at

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<sup>8</sup> Respondent acknowledged that she considered the law clerk's performance to be deficient and expressed that view to the law clerk, but denied any abusive treatment.

pp. 5-6. Respondent attempted to record this meeting surreptitiously on her cellular telephone. 1T46-10 to T49-23; see also P14.

Respondent referenced this attempted recording in a handwritten note she admittedly made on an email she received from Judge Mizdol scheduling the meeting on December 14, 2015 (*"Went up at 11:45. Taped meeting on phone. Almost 1 hr. Missed holiday Luncheon (12:15-12:30 start) Didn't get there til 12:55"*). Respondent again referenced this attempted recording in what appears to be a contemporaneously written draft email from Respondent to Judge Mizdol recounting her version of their discussion at that meeting. P14; P15; see also 1T44-4 to 1T46-9; 1T47-15 to 1T49-11.

Despite these notes, which Respondent maintained in her possession throughout the Committee's investigation in this matter, Respondent, when interviewed by staff to the Committee on December 6, 2016, initially feigned ignorance of this attempted recording.<sup>9</sup> P40B at T100-21 to T106-24; see also P16 thru P18. It was only when pressed during the interview that Respondent recalled "possibly" recording meetings she had with

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<sup>9</sup> Respondent's inability to recall, with specificity, her own conduct during this period stands in stark contrast to the detailed notes she maintained throughout her tenure in Bergen County and thereafter following her transfer to Essex County. P16; P18; R22. Those notes span more than a year beginning on June 12, 2015 through September 23, 2016. P16; P18.

Judge Mizdol during her tenure in Bergen. P40B at T106-3-24. Though Respondent now admits attempting to record surreptitiously the December 14, 2015 meeting, she claims that attempt ultimately failed and no recording exists.<sup>10</sup> 1T44-4 to 1T49-23.

The next day, December 15, 2015, Judge Mizdol instructed Bergen County Family Division Presiding Judge Peter J. Melchionne and Bergen County Family Division Manager Diana Moskal to develop a procedure by which Respondent would receive administrative support from the existing Family Part law clerks for the remainder of the 2015/2016 court term. P19 at pp. 6-7; see also 2T53-24 to 2T57-20. Judge Melchionne and Ms. Moskal provided Judge Mizdol with a draft of that procedure on December 17, 2015, which Judge Mizdol approved. 2T53-24 to 2T55-1; see also P19 at p. 7; R10.

On the morning of December 21, 2015, Judge Mizdol convened a management meeting (the "Management Meeting") in her chambers with Respondent, Judge Melchionne, Trial Court Administrator

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<sup>10</sup> Respondent, through counsel, acknowledged in January 2017 the existence of this recording, but disclaimed any knowledge of its whereabouts. P17; P18. Respondent, likewise, acknowledged its existence in her Answer to the Formal Complaint filed on April 4, 2017. P14; see also Formal Complaint and Verified Answer at ¶22. Nonetheless, Respondent testified at the hearing to having discovered, at an undisclosed time, that her attempt to record the December 14, 2015 meeting failed, prompting her to amend her Answer on October 30, 2017. 1T46-10 to T49-23; 1T51-3-12; see also Formal Complaint and Verified Amended Answer at ¶22.

Laura Simoldoni ("TCA Simoldoni") and Ms. Moskal to discuss this proposed procedure. 2T52-17 to 2T57-17; see also R19; R20; P40B at T123-15 to T126-11. On arriving at the courthouse that morning, Judge Mizdol was met at the exterior entrance to her secured chambers area by Respondent and Respondent's secretary, Maria DeLeon, whom Respondent had unilaterally invited to attend the Management Meeting as her "witness." 1T55-9-24; 2T57-18 to 2T59-1; see also P40B at T132-17 to T133-21; P19 at pp.7-9; P23; P40B at T132-17 to T134-19; Reconstructed Record at ¶2(cc). Judge Mizdol denied Respondent's request to admit her secretary into the Management Meeting, but agreed to meet privately with Respondent in advance of the Management Meeting to discuss Respondent's need for a "witness." 2T57-18 to 2T58-18. 2T58-22 to 2T59-1; see also P19 at pp.7-9; P23.

Respondent, unbeknownst to Judge Mizdol and the other meeting participants, brought with her to the Management Meeting an Olympus digital voice recorder, secreted in her purse, which she intended to use to record the scheduled meeting surreptitiously if she were denied a "witness" or an alternative means by which to record the meeting (i.e. CourtSmart). 1T53-19-25; see also P21; P40B at T139-16-23, T140-12-20. Respondent used that digital recorder to record surreptitiously both her private meeting with Judge Mizdol in advance of the scheduled Management Meeting as well as the Management Meeting. 2T59-2-9;

P19 at pp.7-9; P22; P23; P39. A transcript and a copy of those recordings are a part of the record in this matter. See P39; P44.

During her private meeting with Judge Mizdol, Respondent repeated her request to have a "witness" at the Management Meeting or, alternatively, to conduct the Management Meeting in a courtroom where its contents could be recorded on CourtSmart, both of which Judge Mizdol denied. P39 at T26-3 to T28-3; T46-1 to T50-20; 2T57-18to 2T62-15; see also P40B at T133-1 to T134-19; P19 at pp.7-9; P23; Reconstructed Record at ¶2(cc).

Immediately following Respondent's private meeting with Judge Mizdol, Respondent participated in the Management Meeting with Judges Mizdol and Melchionne, TCA Simoldoni and Ms. Moskal, which she likewise recorded surreptitiously. 1T53-19-25; see also P19 at pp.7-9; P40B at T139-16-23, T140-12-20. Judge Mizdol and the other meeting participants became aware of Respondent's secretive recording during the meeting when TCA Simoldoni, who was seated next to Respondent and in close proximity to Respondent's open purse, noticed a red light "beaming" from the top of Respondent's purse. 2T219-24 to 2T221-4; see also P19 at pp.7-9; P22; P23. Ms. Simoldoni reached into Respondent's purse and retrieved Respondent's digital recorder from which the red light was emanating and pressed the "stop" button. Ibid; 2T224-8-18; see also P19 at pp.7-9.

TCA Simoldoni asked Respondent if she was recording the meeting to which Respondent replied "No! It was a gift from my parents. I'm not taping the meeting. I don't know how this thing works." 2T65-4-10; 2T222-4-19; 2T259-14 to 2T260-10; see also P19 at pp.7-9; P22; P23 at p. 1 ("*In shock, I initially denied that I was taping the meeting.*"); P40B T143-9 to T145-14. Respondent reiterated this denial when questioned immediately thereafter by Judge Mizdol. 2T65-4-13; 2T73-2-13; 2T132-7-24; see also P19 at pp.7-9. In response, TCA Simoldoni replayed a portion of the recording, which revealed that Respondent had, in fact, recorded the meeting surreptitiously. 2T65-13-15; 2T222-7-19; see also P19 at pp.7-9; P22.

Respondent demanded the immediate return of her digital recorder. 2T65-4-21; 2T222-7-19; see also P19 at pp.7-9P22. TCA Simoldoni, however, declined to return the recorder prior to speaking with counsel to the Acting Administrative Director of the Courts. 2T223-10 to 2T224-4. The Management Meeting ended shortly thereafter. 2T225-1-8; see also P19 at pp.7-9; P22; Reconstructed Record at ¶2(cc).

Respondent requested and was permitted a private meeting with Judge Mizdol at the conclusion of the Management Meeting. 2T66-1 to 2T68-5; see also P19 at pp.7-9; P22; P23; Reconstructed Record at ¶2(cc). Judge Mizdol, on confirming with Respondent that she was not also recording that meeting, advised

Respondent that her conduct in surreptitiously recording the Management Meeting and her subsequent denials of that conduct was "irretrievable" and constituted a "significant breach of trust." 2T66-17-23. Respondent, throughout this meeting, maintained that she had done nothing wrong and reiterated her request for the return of her recorder. 2T67-11-25; 2T68-6-13; see also P19 at pp. 8-9; P23.

On leaving Judge Mizdol's chambers at or around 11:30 a.m., and over the next several hours, Respondent telephoned Judge Mizdol on at least two occasions and Acting Administrative Director Glenn A. Grant, J.A.D. on one occasion seeking the return of her recorder. 2T68-16-22; see also P19 at p. 9; P23. In response, Judge Mizdol advised Respondent that she expected to hear from Counsel's Office that afternoon and would advise Respondent of the status of her recorder at that time. 2T68-16-22; see also P19 at p. 9; P23.

Respondent, nonetheless, telephoned TCA Simoldoni and threatened to call the police if she did not return Respondent's recorder. T225-9 to T226-8. Thereafter, the Bergen County Sheriff's Office received a telephone call from Respondent's courtroom inquiring as to the telephone number for emergencies. P24; R12. In response, Sergeant Gabriel Soto of the Bergen County Sheriff's Office conducted a "security check" of Respondent's courtroom and chambers area. Ibid; see also P40B at



T149-10 to T151-4. At that time, Respondent reported to Sergeant Soto that TCA Simoldoni had taken her "personal property," without her permission, and had refused to return it. P24; R12.

Bergen County Sheriff's Lieutenant James Hague, at Sergeant Soto's request, reported to Respondent's chambers to speak with Respondent about the incident. Ibid. Respondent recounted for Lieutenant Hague the events leading up to TCA Simoldoni's retrieval of her recorder, which Respondent characterized as a "theft," and expressed to the Lieutenant her desire to file a report with the Hackensack Police Department. Ibid.

Though feeling ill, Respondent refused to leave the courthouse or seek medical treatment prior to the return of her recorder. 2T68-23 to 2T69-6; see also P19; P22; P23; P25. TCA Simoldoni, with the requisite administrative approvals, made a copy of the contents of Respondent's recording and released the recorder to the Sheriff's department that afternoon. A sheriff's officer returned it to Respondent that same day. 2T69-7 to 2T70-22; 2T225-9 to 2T228-4; 2T229-10-14; see also P19 at p. 9; P22; P23.

Notably, there were three files on Respondent's recorder; the first contained a recording of Respondent saying "testing, testing, one, two, three, testing, testing," the second was blank, and the third contained the recordings of Respondent's

private meeting with Judge Mizdol and subsequent Management Meeting with the noted attendees. 2T228-13-23.

Respondent's evident testing of the digital recorder before using it that day conflicts with her disclaimer to Judge Mizdol and TCA Simoldoni that she did not know how the recorder worked when she initially denied recording the meeting. 2T65-4-10; 2T222-4-19; 2T259-14 to 2T260-10; see also P19 at pp.7-9; P22. Indeed, we find it irrefutable that Respondent knew how to use the digital recorder when she secreted it in her purse on December 21, 2015 and lacked candor when she denied any knowledge of its operation to Judge Mizdol and TCA Simoldoni. 1T53-19-25; see also P40B at T139-16-23, T140-12-20.

Respondent did not return to the Bergen County courthouse following these incidents on December 21, 2015. Rather, she was transferred to the Essex vicinage, effective January 11, 2016, where she remains. 2T69-11-13; see also Reconstructed Record at ¶2(dd)-(ee); P40A at T4-17-22; P40B at T172-18-19; R23; R37.

In addition to these events, the record reveals that during her tenure in the Bergen vicinage Respondent requested her judicial secretary perform personal work on judiciary time. P28 thru P37; see also Formal Complaint and Answer at ¶39; Reconstructed Record at ¶4(a)-(q). That personal work included intermittently paying Respondent's bills online, managing Respondent's personal travel arrangements, corresponding with

various merchants on Respondent's behalf and, in one instance, assisting Respondent's child with a homework assignment. P28 thru P37; see also 3T103-12 to 3T105-10; Reconstructed Record at ¶4(a)-(q).

As to that homework assignment, the record reflects that Respondent, in an email to Ms. DeLeon dated Wednesday, September 9, 2015, at 11:35 a.m., asked Ms. DeLeon "how is anthony's [sic] assignment going? Did you get the book?" P30. Ms. DeLeon replied, "I am working on Anthony's assignment. I got the book online. I will have a draft done by tomorrow am for him to look at." Ibid.

Respondent and Ms. DeLeon testified at the hearing that this homework assignment involved Ms. DeLeon providing Respondent's son, then a high school senior, with her opinion about a religious topic, work which Ms. DeLeon did on her personal time. Reconstructed Record at ¶4(1); 3T124-20 to 3T143-20. The record is otherwise silent as to the nature of this assignment.

Respondent maintains that this conduct, though occurring in part during working hours, was negligible when compared to the hours she devoted to judiciary business, and necessary to permit Respondent to devote that time to her work. See Reconstructed Record at ¶4(a)-(k). In addition, Respondent asserts that she was unaware at that time that any rule existed prohibiting such

conduct and, in fact, had observed other jurists utilizing their secretaries in a similar fashion. Id. at ¶4(s)-(w).

For her part, Ms. DeLeon testified that she did not perceive her conduct in assisting Respondent with these personal tasks, which she did voluntarily, as problematic given that these tasks did not interfere with her work for the judiciary to which she devoted herself in excess of the required thirty-five hour workweek. 3T106-5-17.

The Committee heard from the Honorable James Rothschild, J.S.C. (ret.) who served as a New Jersey Superior Court judge in Essex County for approximately fourteen years (i.e. 2002-2016) before retiring from the bench. 3T168-20 to 3T169-10. Judge Rothschild testified that during his tenure on the bench he would periodically request his secretary call his wife to inquire about his personal commitments that evening. 3T174-12 to 3T176-4. Though Judge Rothschild testified that he did not request his secretary perform all the tasks attributable to Respondent, we consider this distinction insignificant in this circumstance. 3T179-5 to 3T180-23.

The issue before the Committee vis-à-vis a judicial secretary's performance of a jurist's personal tasks on judiciary time, turns not only on the nature of the personal tasks performed, assuming none violate an administrative directive or judiciary policy and are permitted by law, but also

on the amount of time those tasks detract from the work of the judiciary and use taxpayers' funds to do other than de minimis personal work so that the judge may devote the time needed to perform all necessary and assigned duties. See Canon 5, Rule 5.1(B)(3) (prohibiting jurists from making use of "court premises, staff, stationary, equipment and other resources for extrajudicial activities" unless "permitted by law, administrative directive or judiciary policy. *De minimis* or other incidental personal use" of judiciary equipment or facilities does not violate this rule).

In this instance, the record reflects that Ms. DeLeon performed the above referenced discrete personal tasks for Respondent on a number of occasions over a ten-month period (May 2015 thru February 2016) and that each required an indeterminate amount of time. On this record, we cannot find, clearly and convincingly, that Respondent requested or utilized her judicial secretary to perform personal tasks on judiciary time beyond the "incidental personal use" authorized by Canon 5, Rule 5.1(B)(3) of the Code. As such, we do not find a violation of Canon 5, Rule 5.1(B)(3) of the Code, as was charged in Count III of the Complaint.

B.

In defense of these matters, Respondent has denied any impropriety and offered testimony in defense and explanation of the charged conduct, none of which, she contends, amounts to actionable misconduct. Having discussed specifically Respondent's defenses to Counts I and III above, we will focus our findings at this juncture on Respondent's asserted defenses to the charged misconduct relating to her surreptitious recording of her several meetings with her Assignment Judge and her subsequent denials of that conduct.

Respondent maintains that she was justified in surreptitiously recording the three referenced meetings with her Assignment Judge -- one on December 14, 2015 and two on December 21, 2015 -- given her professed need to protect herself from recurring "workplace hostilities, belittling in the presence of staff, and verbal abuse" allegedly inflicted by her Assignment Judge, and that such recordings were legal. See Amended Answer at "Narrative."

In this regard, Respondent produced two witnesses - Bergen County Non-Dissolution Team Leader Loretta Little and Bergen County Judiciary Clerk III (i.e. court clerk) Karen Francis -- to testify about an alleged "culture of mistrust" among court personnel towards Respondent in the Bergen vicinage. 3T238-18 to 3T239-5. Ms. Little and Ms. Francis, both Bergen County

judiciary employees in excess of thirteen years, testified to enjoying a cordial working relationship with Respondent. Neither, however, offered any testimony corroborating a "culture of mistrust" among the Bergen County Family Part personnel towards Respondent. 3T229-1 to 3T290-25. To the contrary, Ms. Little testified that she supervised a team of individuals who worked with Respondent directly between October 2015 and December 2015, none of whom complained to Ms. Little about Respondent. 3T232-7 to 3T233-16; 3T234-18 to 3T235-7. Moreover, Ms. Francis testified that she had not witnessed any conduct by any member of the Bergen vicinage that would lead her to believe that anyone was attempting to undermine Respondent or place her in a position to fail as a jurist. 3T278-18-23.

In further support of her defense to these ethics charges, Respondent highlights four exchanges with Judge Mizdol prior to the December 14, 2015 meeting during which Respondent contends Judge Mizdol was verbally abusive and demeaning towards her. 1T27-8-18; P16; Reconstructed Record at ¶2.

The first such exchange occurred when Respondent telephoned Judge Mizdol on or around June 23, 2015, prior to the start of her tenure in the Bergen vicinage. 2T19-9 to 2T20-13; 2T104-22 to 2T107-3; see also Reconstructed Record at ¶2(h). By all accounts, Respondent advised Judge Mizdol during that conversation that she had two scheduled vacations for the month

of July 2015 following the start of her tenure in Bergen on July 6, 2015. 2T19-9 to 2T20-13; 2T104-22 to 2T107-3; see also Reconstructed Record at ¶2(h). Judge Mizdol, concerned that she was not previously aware of these vacations and would need to reassign Respondent's calendar for that period, responded to the effect of: "Jesus Christ, do you have any other [expletive] vacations that I don't know about?" 2T19-22-25; 2T20-13; 2T104-22 to 2T106-18.

Thereafter, on Respondent's first day in the Bergen vicinage, Judge Mizdol met with her to discuss the Family Part docket to which Respondent was assigned, i.e. the Children in Court ("CIC") docket, and the expectations in respect of that docket. 2T18-15 to 2T19-8; see also Reconstructed Record at ¶2(k). Judge Mizdol advised Respondent at that time that personal appointments during the court day were "discouraged" and, given the workload, jurist's workday typically exceeded the posted courthouse hours of 8:30 a.m. to 4:30 p.m. such that Respondent should not expect to leave the courthouse at 4:00 p.m. every day. 2T20-14 to 2T21-16.

The next noted exchange between Respondent and Judge Mizdol occurred on September 3, 2015 when Judge Mizdol and TCA Simoldoni met with Respondent to discuss an incident on September 2, 2015 involving Respondent and the CIC team leader. 2T24-3 to 2T31-17; see also R6; R7 Reconstructed Record at ¶2(p)-(q). That incident



related to Respondent's discussion with the CIC team leader about the quality of the CIC staff's work and alleged "gossip" concerning the team leader, some of which related to a jurist in the Bergen vicinage. 2T24-3 to 2T31-17; 2T111-24 to 2T113-2. Judge Mizdol was most concerned about Respondent's conduct in addressing with the CIC team leader, a subordinate, gossip about the team leader that was offensive to and demeaning of the team leader and involved a jurist in the courthouse. Ibid. A subsequent investigation into the merits of that "gossip" revealed that the rumors were unfounded. R6; R7. Given, however, the evident deterioration in Respondent's relationship with her CIC team leader, with whom Respondent interacted daily, Judge Mizdol advised Respondent on September 8, 2015 that she would be transferred from the CIC docket to a docket comprised of Child Support Enforcement matters, non-dissolution matters and, as with all Family Part judges, a post-judgment motion calendar. 2T31-18 to T33-9.

The final noted exchange between Respondent and Judge Mizdol occurred on October 8, 2015 when Judge Melchionne advised Judge Mizdol that Respondent had refused to handle an assigned domestic violence matter. 2T33-14 to 2T39-25. On learning this information, Judge Mizdol visited Respondent's courtroom, noted it was empty, as were the benches immediately outside of Respondent's courtroom, and entered Respondent's outer chambers

area, which was also empty. Ibid. Judge Mizdol found Respondent seated at her desk, in her office, with her court clerk, Karen Francis, and Ms. DeLeon. Ibid. On seeing Judge Mizdol, Ms. Francis and Ms. DeLeon left Respondent's office. Ibid. Judge Mizdol, admittedly upset, stated, "What the [expletive] is going on here?" Respondent explained that she was preparing to handle a non-dissolution matter that had been lingering in the courthouse for several hours. Ibid. Judge Mizdol, concerned about Respondent's apparent inability to manage her calendar appropriately, proceeded to discuss with Respondent several options to address more efficiently her docket and motion calendar, and offered to assist Respondent and her staff in this effort. Ibid.

Finally, Respondent, in further justification of her surreptitious recordings, maintains that those recordings, which were captured with the consent of "one party," i.e. Respondent, are "legal" in New Jersey and, as such, she cannot be disciplined for such conduct. We disagree. As noted by the United States Court of Appeals for the Third Circuit, "[a] judge's conduct may be judicially imprudent, even if it is legally defensible. In re Complaint of Judicial Misconduct, 575 F.3d 279, 291 (3d Cir. 2009). Indeed, Respondent's documented insubordination in her interactions with her Assignment Judge and lack of credibility both to her Assignment Judge and this Committee constitute a

sharp deviation from the integrity demanded of all jurists under Canons 1 and 2 of the Code of Judicial Conduct and is deserving of public discipline.

We find Respondent's defenses on the whole inadequate to justify or mitigate her intentional misconduct in surreptitiously recording meetings with her Assignment Judge and then denying that very conduct when confronted with it by her Assignment Judge and the TCA. While Respondent may have perceived herself to be the subject of hostile treatment, she had available to her several options to address that situation short of engaging in deceptive and insubordinate conduct.

Respondent could have communicated her concerns directly to the Acting Administrative Director of the Courts or the Assistant Director of Human Resources at the Administrative Office of the Courts. Respondent's decision to forego these legitimate avenues to address workplace concerns does not constitute a viable defense in this proceeding.

### 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, Canon 2, Rule 2.1 and Canon 5, Rule 5.1(B)(3) of the Code of Judicial Conduct in three material respects: (1) recording, surreptitiously, three meetings with her Assignment Judge the last of which was in direct contravention of her Assignment Judge's directive that no such recording occur and, thereafter, denying that conduct (Count II); (2) using her judicial secretary to perform personal, non-judiciary work on judiciary time (Count III); and (3) permitting her 2015/2016 law clerk to start her employment with the judiciary early, in contravention of judiciary policy (Count I).

We find, based on our review of the evidence in the record, that the charges of surreptitiously recording three meetings with her Assignment Judge, the last of which in violation of her Assignment Judge's direction to the contrary, and Respondent's subsequent denials of that conduct, have been proven by clear and convincing evidence for which public discipline is warranted.

Though we find that the evidence of record establishes, clearly and convincingly, Respondent's use of her judicial

secretary to perform personal, non-judiciary work on judiciary time, that conduct, in this circumstance, does not violate Canon 5 of the Code of Judicial Conduct. As a general matter, use of judiciary resources, including staff, for personal matters is, with limited exception, prohibited. Canon 5, Rule 5.1(B)(3), however, recognizes an exception for the incidental use of such resources by a jurist ("*De minimis* or other incidental personal use of judiciary [resources] does not violate this rule.>").

The evidence of record fails to establish that Respondent's use of her judicial secretary to conduct several discrete personal tasks was anything other than incidental and as such no violation of Canon 5, Rule 5.1(B)(3) of the Code has been established.

As to the remaining conduct -- Respondent's 2015/2016 law clerk's early start date -- we find that while the record establishes, clearly and convincingly, the law clerk's early start date in violation of a judiciary policy, the record is devoid of any evidence that Respondent knew of the subject policy. As such, this circumstance does not constitute conduct for which judicial discipline is warranted.

Canon 1, Rule 1.1, requires judges to "participate in establishing, maintaining and enforcing, and . . . [to] personally observe, high standards of conduct so . . . [as to

preserve] the integrity, impartiality and independence of the judiciary."

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

As the Commentary to Canon 2 explains:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny.

In the instant matter, the evidence demonstrates that Respondent's insubordination in surreptitiously recording meetings with her Assignment Judge in contravention of her Assignment Judge's direction to the contrary, and subsequent denials of that conduct, constitutes an affront to these high ethical standards for which public discipline is warranted.

Respondent began surreptitiously recording her meetings with Judge Mizdol on December 14, 2015 and did so again during two successive meetings on December 21, 2015. As to the latter meeting on December 21, 2015, Respondent's defiance of Judge Mizdol's direction that no recording would be made of that meeting constituted an act of insubordination. That insubordination, having occurred in full view of subordinate court personnel, undermined Judge Mizdol's authority and

constituted a breach of the high standards of conduct demanded of jurists by Canons 1 and 2 of the Code of Judicial Conduct.

Such insubordination is intolerable in an institution such as the judiciary where the operational fortitude of the organization depends appreciably on its members' compliance with the mandates of the administrative hierarchy. Absent such compliance by its most senior members, i.e. jurists, the judiciary risks similar noncompliance from subordinate court personnel and, for that matter, court users who are required to abide by court orders or face potential sanctions.

With the adoption of the 1947 Constitution, the New Jersey judiciary has operated as a uniform court system consisting of fifteen vicinages (i.e. county courthouses) throughout the State, each of which operates under the Rules Governing the Courts of the State of New Jersey. N.J. Const., art. VI, sec. 1, ¶3. The ultimate administrative authority in this organizational structure rests with the Chief Justice of the New Jersey Supreme Court whose responsibilities include the "administration of all courts in the State." R. 1:33-1. To assist in this effort, the Chief Justice appoints an "Administrative Director of the Courts" who serves "at the pleasure of and report[s] directly to the Chief Justice." Ibid. The Administrative Director is responsible "for the enforcement of the rules, policies and

directives of the Supreme Court and the Chief Justice relating to matters of administration." R. 1:33-3.

At the vicinage level, the Chief Justice appoints an Assignment Judge who serves as the Chief Justice's representative in the vicinage and, for purposes of administration, is the chief judicial officer in the vicinage. R. 1:33-4. The Assignment Judge is responsible for maintaining managerial control and oversight of the judges and court personnel within the vicinage, as well as the Surrogate and Municipal Courts throughout the county. Given their broad administrative responsibilities, the primacy of the Assignment Judges' administrative authority cannot be overstated. Though that authority is subject to review by the Chief Justice, and, as designated, the Administrative Director, challenges to that authority constituting insubordination, as here, threaten the very integrity and efficacy of the institution.

Respondent's insubordination in making surreptitious recordings of meetings with her Assignment Judge, coupled with her lack of candor when confronted with her behavior, leaves little room to debate the impropriety of Respondent's conduct under Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct. Irrespective of Respondent's professed legal right to do so, such surreptitious recordings are wholly incompatible with the heightened standards to which every jurist



is held under the Code of Judicial Conduct and the probity required to hold judicial office.

Respondent was well versed in these heightened ethical standards when she assumed the bench in March 2015. Though a member of the Superior Court for less than a year at the time of these events, Respondent has been a member of the Bar for more than two decades. 1T14-2-4. Her credentials include prior service as a municipal court judge, past president of the Bergen County Bar Association and former member of the District IIB Ethics Committee. 1T17-5 to 1T18-7; see also Answer at "Narrative" p. 8. By no means was Respondent inexperienced professionally or unfamiliar with the ethical constraints placed on jurists by the Code of Judicial Conduct.

Nonetheless, Respondent felt justified in defying her superior and exhibiting a lack of candor without regard for the integrity of the judicial office. These actions suggest a disturbing lack of sound judgment and professional integrity that, if left unaddressed, threaten the dignity of the judicial office and the public's confidence in the judiciary as an institution worthy of deference.

Having concluded that Respondent violated the cited canons 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.

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

Respondent's misconduct in this instance has been aggravated considerably by her attempts to mislead this Committee during its investigation with expressions of feigned ignorance about recording surreptitiously the December 14, 2015 meeting and her conduct following the December 21, 2015 Management Meeting. That latter conduct -- making multiple calls to the Assignment

Judge seeking the return of her digital recorder, threatening the TCA with police intervention if the TCA did not return her recorder immediately and initiating a spurious incident report with the Bergen County Sheriff's Office in which she reported a "theft" of her personal property -- excacerbated an already tense situation and unnecessarily exposed additional courthouse staff to this incident.

In contrast to this behavior, the record reflects that Respondent has performed satisfactorily on the bench since the start of her tenure in the Essex vicinage in January 2016, and has engaged appropriately with the Essex County Civil Division Manager with whom she now works. See Affidavit of Dennis Carey, P.J.S.C. (ret.); see also Affidavit of Debra Dadic, Civil Division Manager for the Essex vicinage.

Though we commend Respondent on her dedicated service in the Essex vicinage over the past two years, we find that service insufficient to outweigh Respondent's knowing and purposeful misconduct in this instance. Her insubordination and lack of candor breached the trust of her Assignment Judge and Presiding Judge, and rendered Respondent's continued service in the Bergen vicinage untenable.

Such intentional insubordination impugns Respondent's integrity and that of the judiciary, in violation of Canon 1,

Rule 1.1 and Canon 2, Rule 2.1, of the Code of Judicial Conduct for which public discipline is necessary.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be suspended from the performance of her judicial duties, without pay, for a period of two months. This recommendation takes into account the seriousness of Respondent's ethical infractions and the aggravating factors present in this case.

The Committee further recommends that the remaining charges against Respondent be dismissed without the imposition of discipline.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

September 10, 2018

By:

Virginia A Long  
Virginia A. Long, Chair