D-100 September Term 2018
Supreme Court Docket No. 082636

FILED
JAN 28 2020
Heather J. Baker
CLERK

IN THE MATTER OF
JOHN F. RUSSO, JR.
JUDGE OF THE SUPERIOR COURT.

Before Judges Messano, Mendez and Mizdol, specially designated.

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

David F. Corrigan and Amelia Carolla argued the cause for respondent (The Corrigan Law Firm, and Reisman, Carolla, Gran & Zuba, LLP, attorneys; David F. Corrigan and Amelia Carolla, on the briefs).

On July 17, 2019, the Supreme Court filed a formal complaint for removal from office of Superior Court Judge John F. Russo, Jr. (respondent), pursuant to N.J.S.A. 2B:2A-3 and Rule 2:14. The complaint incorporated findings of fact made by the Advisory Committee on Judicial Conduct (ACJC), which, after conducting a hearing and considering the testimony and other evidence adduced before it, issued a presentment. R. 2:15-15(a). The ACJC found by clear and convincing evidence that respondent had committed

multiple violations of the Code of Judicial Conduct (the Code) in connection with "four distinct matters."[1]

The ACJC concluded in Count I that respondent violated Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.5 of the Code, based on his conduct during and immediately following the trial in M.R. v. D.H., an action brought under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. In Count II, the ACJC determined respondent violated Canon 1, Rule 1.1, and Canon 2, Rules 2.1 and 2.3(A) of the Code, by requesting the Family Division Manager in the Ocean Vicinage, Jill Vito, to intercede and "seek an adjustment of the hearing date" in respondent's guardianship litigation pending in the Burlington Vicinage.

Before the ACJC, respondent stipulated to the conduct cited in Counts III and IV of the presentment. The ACJC found the conduct cited in Count III violated Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.17(B) of the Code, and Court Rule 1:12-1(g), because respondent created the appearance of a conflict of interest by not recusing himself from a post-

[1] The Supreme Court adopted a revised Code of Judicial Conduct on August 2, 2016, which took effect on September 1, 2016. Code of Judicial Conduct, Pressler & Verniero, Current N.J. Court Rules, note on Appendix to Part 1 (2020). Respondent's conduct described in Counts I, III and IV of the presentment predated adoption of the revised Code. However, the revised Code did not substantively change Canon 1, Canon 2, or Canon 3, which are at issue here, and respondent has not contested its applicability to this matter.

judgment hearing in a matrimonial matter, Carbonetto v. Carbonetto, despite knowing both parties. In Count IV, the ACJC determined respondent's conduct in a non-dissolution matter, T.B. v. C.P., — engaging in an extended ex parte conversation with the defendant — violated Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.8 of the Code.[2]

The five-member majority of the ACJC recommended that respondent be suspended from office for a period of three months; a four-member minority recommended a six-month suspension. Through counsel, respondent accepted the ACJC's findings and recommendation for discipline and waived his right to appear before the Court. However, the Court issued an order to show cause, conducted a hearing on the presentment on July 7, 2019, and shortly thereafter filed this complaint for removal.

On July 24, 2019, the Court appointed this panel to conduct a hearing, take evidence and report its findings. See N.J.S.A. 2B:2A-7 (authorizing the taking of evidence by a three-judge panel); In re Yaccarino, 101 N.J. 342, 350-51 (1985) (discussing panel's authority to conduct a hearing "and issue a report that includes its findings of fact and recommendations" as to appropriate discipline). As he did before the ACJC, respondent stipulated to the conduct

[2] Given the nature of the proceedings and the defendant's allegations in this matter, we have chosen to use initials in order to maintain confidentiality. R. 1:38-3(d)(10) and (14).

cited in Counts III and IV of the presentment, and that such conduct violated the Code. Over the course of two days, this panel heard the testimony of Vito and respondent, received documentary evidence, including some of which, as detailed below, was not introduced before the ACJC, and the audio files of the three court proceedings that are the subjects of the presentment as incorporated into the complaint for removal.

I.

"Every judge is duty bound to abide by and enforce the standards in the Code of Judicial Conduct." In re DiLeo, 216 N.J. 449, 467 (2014) (citing R. 1:18). Generally, "there are two determinations to be made in connection with the imposition of judicial discipline" for an alleged violation of the Code. Id. at 468. The first determination concerns whether a violation of the Code has been proven. Ibid. The second determination concerns whether the proven violation "amount[s] to unethical behavior warranting discipline." Ibid.

Pursuant to the Judicial Removal Act, the Court may remove a judge from office for misconduct, willful neglect of duty, incompetence, or other unfitness, if same is established beyond a reasonable doubt. N.J.S.A. 2B:2A-2; N.J.S.A. 2B:2A-9. See In re Samay, 166 N.J. 25, 31 (2001) (defining "[r]easonable doubt . . . as 'an honest and reasonable uncertainty . . . about . . . guilt . . . after . . . full and impartial consideration [of] all of the evidence . . . .

It is a doubt that a reasonable person hearing the same evidence would have'") (quoting State v. Medina, 147 N.J. 43, 61 (1996)).

II. FINDINGS OF FACT

Based upon the evidence produced at the hearing, the panel concludes beyond a reasonable doubt that respondent violated those sections of the Code cited in paragraph three of the complaint for removal.

Background

Respondent was admitted to the practice of law in New Jersey in 1997 and served a judicial clerkship in the Ocean Vicinage before engaging in private practice, including his own law firm. He handled "some family work" and "some final restraining orders," as well as construction, land use and affordable housing matters. Respondent was an administrative law judge for six years immediately prior to taking the oath of office as a judge of the Superior Court on December 21, 2015. Respondent was assigned to the Family Division in the Ocean Vicinage. After "shadowing" a more experienced Family Part judge, respondent began hearing cases, first, under the matrimonial docket (FM), and then under the non-dissolution (FD) and domestic violence (DV) dockets.

In January 2016, respondent attended a three-day, division-specific training for new judges, known by the acronym, CJOP. Also, in January, and

again in April, respondent received specific training in the PDVA, and, in September 2016, respondent attended the multi-day educational program provided to all new judges.

In April 2017, Assignment Judge Marlene Lynch Ford referred respondent to the ACJC, which conducted an investigation that included interviews of Vito, respondent and more than twenty other individuals. Vito and respondent testified at a formal hearing before the ACJC. As noted, the ACJC ultimately returned the presentment.

Counts III and IV

While respondent stipulated that his conduct underlying these two counts violated the Code, the panel nevertheless concludes that details of the actual court proceedings at issue are necessary to demonstrate the nature and circumstances of these violations.

Carbonetto v. Carbonetto

On March 9, 2016, the defendant Alfio Carbonetto was arrested and brought before respondent pursuant to a warrant issued by Judge Steven Nemeth of the Family Division. Judge Nemeth determined that the defendant violated the rights of the plaintiff, his ex-wife Celestina Carbonetto, and entered an order in October 2015 fixing spousal support arrearages at $144,914.40 and ordering the defendant's arrest if he failed to pay $10,000 by

November 13, 2015. Judge Nemeth issued a warrant for the defendant's arrest in January 2016 because he failed to make any payment toward arrearages.

Almost immediately after the defendant was sworn at the March 9, 2016 proceeding, the following exchange took place:

> Respondent: Al.
>
> Defendant: Yes, Judge. Yeah, we're divorced and it's a nightmare.
>
> Respondent: Well --
>
> Defendant: Can I just explain my situation or not yet?
>
> Respondent: Well, for the record I've known Al Carbonetto and his wife since high school. Tina Bizzucci at that point.
>
> Defendant: Yes, sir.
>
> Respondent: We haven't really kept up. I don't believe I have a conflict in this matter.
>
> Defendant: No, I don't believe.
>
> Respondent: Although I reserve the right to recuse myself because of the nature of the relationship of both me and your ex-wife. But at this point why don't you tell me what's going on.

Respondent then took testimony from the defendant regarding his employment status, financial situation and loss of his pizza business. Referring to the current operator of the pizza shop, respondent remarked, "And by the way, it's not as good."

The defendant testified that he was receiving general assistance, food stamps and had been hired recently at a restaurant where he would, on that coming Friday, receive his first weekly paycheck of $500. After further colloquy, respondent asked: "[H]ow much could you pay to the outstanding . . . the $10,000?" The defendant replied: "If it keeps me out of jail[,] I'll give her the whole amount." Respondent did not clarify whether the defendant meant his entire paycheck or the entire purge amount.

After respondent determined the defendant was not indigent because he was now working, the defendant said he would "turn over the whole check" as payment toward the purge amount. Respondent nevertheless reduced the purge amount from $10,000 to $300, not $500, vacated the bench warrant, and released the defendant following his promise to pay probation by the coming Monday. The order respondent entered following the hearing stated "it is in all parties' best interest to ensure that [d]efendant does not lose this employment and has a wage garnishment put into place." As per Judge Ford's directive, respondent vacated that order one week later on March 16, and re-listed the case for an April 1, 2016 enforcement hearing before another judge.

Respondent has consistently denied that he treated the defendant any differently than he would any other litigant. Respondent testified before the panel that he reduced the purge amount from $10,000 to $300 because he did

not want the defendant to remain incarcerated and lose the job he recently secured. Respondent explained:

> [O]ne of the things that they instructed us [about purge hearings] is when you do the hearings, make sure you don't do anything that would result in the person losing their job. So if they had a job and staying arrested, if that would be something that would affect their employment, we were discouraged from keeping them in jail.
>
> Also, bail reform was starting to be talked about and we've received instructions that if somebody can't pay, we have to release them. So your hearing is really designed as an ability to pay hearing. If they can't pay, we can't keep them incarcerated. It's only willful failure to pay.

As to how he would handle the situation differently in the future, "after new judge training school and Judge Ford explaining . . . [the conflict]," respondent now knows to recuse himself and send the case "on to somebody else."

Canon 1, Rule 1.1 — "Independence, Integrity and Impartiality of the Judiciary" — states "[a] judge shall participate in establishing, maintaining and enforcing, and shall personally observe, high standards of conduct so that the integrity, impartiality and independence of the judiciary is preserved. This Code shall be construed and applied to further these objectives." Code of Judicial Conduct, Pressler & Verniero, Current N.J. Court Rules, Appendix to Part I at 539 (2020). Compliance with this rule furthers the "bedrock principle" expressed in Canon 1 "that '[a]n independent and honorable

judiciary is indispensable to justice in our society.'" DeNike v. Cupo, 196 N.J. 502, 514 (2008) (quoting Canon 1 of the Code). See also R. 1:18 ("It shall be the duty of every judge to abide by and to enforce the provisions of the Rules of Professional Conduct, [and] the Code of Judicial Conduct . . . .").

Similarly, Canon 2, Rule 2.1, entitled "Promoting Confidence in the Judiciary," requires that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Pressler & Verniero, Appendix to Part I at 539. "In other words, judges must avoid acting in a biased way or in a manner that may be perceived as partial. To demand any less would invite questions about the impartiality of the justice system and thereby 'threaten[] the integrity of our judicial process.'" DeNike, 196 N.J. at 514-15 (quoting State v. Tucker, 264 N.J. Super. 549, 554 (App. Div. 1993)).

Canon 3, Rule 3.17(B), states that "[j]udges shall disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned." Pressler & Verniero, Appendix to Part I at 544. Comment 2 to Rule 3.17 cites DeNike, in which the Court announced the following standard applicable when assessing a judge's conduct under this Canon: "Would a reasonable, fully informed person have doubts

about the judge's impartiality?" 196 N.J. at 517. Court Rule 1:12-1(g) sets a similar standard by requiring a judge to disqualify himself or herself on his or her own motion "when there is any . . . reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." (emphasis added).

Before the panel, in further explanation of why he reduced the defendant's purge amount to $300, respondent implied that his handling of the matter produced better results than what subsequently occurred. On April 1, 2016, another Family Division judge ordered the defendant's incarceration, set the arrearages at $197,240.40 and increased the purge amount to $100,000. The defendant remained incarcerated until April 29 when, after interim review and without the defendant making any payment, the judge entered an order that vacated the arrest warrant and $100,000 purge amount.

However, both the April 1 and 29, 2016 orders explain the circumstances that led to the defendant's arrest in the first instance. Respondent has consistently said he consulted with other judges and read the court file before conducting the hearing, but he failed to recognize that he knew the defendant from simply seeing his name. The panel reasonably presumes, therefore, that respondent would have been familiar with the history of the litigation.

As explained in the April 2016 orders, pursuant to a July 2013 property settlement agreement (PSA), the defendant agreed to pay the plaintiff permanent alimony. At the time he entered into the PSA, the defendant already owed $36,000 in pendente lite alimony to the plaintiff, and, in August 2013, the court ordered the defendant to pay all alimony to date or face arrest. In September 2013, on the return date of an order to show cause to enforce litigant's rights, the judge granted the plaintiff various relief involving the alimony then due, including ordering the defendant to make current payments and payments toward arrearages through probation, and entered a consent judgment against the defendant. Judge Nemeth's October 2015 order denied the defendant's requests to reduce, terminate or suspend his alimony obligations, which applications were denied again in February 2016.

Although respondent stipulated that his conduct was a violation of the Code, this detailed discussion of the record is necessary to fully explain the panel's conclusion beyond a reasonable doubt that respondent violated the Canons and Court Rule alleged in the complaint, and, more importantly that these violations in the Carbonetto litigation epitomize the very reason why these ethical tenets exist. Any reasonable, fully informed person would have had doubts about respondent's impartiality when, after announcing in open court that he knew both parties, respondent reduced the defendant's purge

amount from $10,000 to $300 based solely on uncorroborated financial information supplied by the defendant, without contacting probation or the plaintiff and without any apparent review of and reflection upon the history of the litigation.

T.B. v. C.P.

On May 26, 2016, respondent entered an order in this FD matter where the paternity of a child, born September 1, 2015, was at issue. As reflected in the order, C.P. had failed to appear for the hearing despite proper service. The order required the Ocean County Board of Social Services to "facilitate [p]aternity testing for [C.P.] and the [m]inor," and set another hearing date for July 6, 2016.

On July 6, the putative father of the child, T.B., appeared before respondent; C.P. was not present. T.B. told respondent that he believed C.P. no longer lived in New Jersey and now resided in Texas. Respondent had his court staff attempt to reach C.P. at two different phone numbers, and staff left voicemails requesting that she call respondent's chambers. Respondent adjourned the matter to July 21, 2016, and entered an order reflecting C.P.'s failure to appear on two prior occasions, and that she was scheduled to have paternity testing done on July 5, 2016, but it was unknown whether she had

appeared. The order further provided that T.B. could request sanctions if C.P. again failed to appear on the return date.

Eleven minutes after T.B. left the courtroom, C.P. called respondent's chambers, and the call was forwarded to the courtroom. Respondent asked if C.P. had attended the paternity testing scheduled for the day before. C.P. answered in the negative, telling respondent she no longer lived in the state and had not received "any paperwork." The following colloquy ensued:

> Respondent: What's your address?
>
> C.P.: I wish not to disclose any of that information.
>
> Respondent: Ma'am, I'm going to tell you this: I am going to assess financial penalties against you that will make it very difficult for you to ever get out from underneath this if you do not cooperate. So, we need --
>
> C.P.: Well, I wish to have a lawyer before anything else.
>
> Respondent: Well, ma'am, that's not an option for you. . . .

After advising C.P. of the new court date, the colloquy continued:

> Respondent: If you do not comply or participate, I have the authority to assess penalties. Something like maybe $10 a day that will accrue on a daily basis until you do comply, and it will become very expensive. . . . I have a woman right now who is in jail in Ocean County from a case where she took the kid out of the state four years ago. She's been in jail for two weeks. All we're trying to do here is get you to cooperate.

. . . .

Ma'am, you can get lawyers, you can do whatever you want. But if you don't cooperate, I'm going to assess financial penalties that nobody wants. I don't want to do that.

C.P.: Well, I looked up my rights when I left New Jersey before I had my baby.

. . . .

I was very scared, which is why I ran off and —

Respondent: Ma'am, do you know what I do every day?

. . . .

I do this every day. Every day, all I do is this. . . . So, I don't look up my rights any longer. I know how all of this works and what I find is there are people that make the . . . situation harder than they need to. The only question is whether or not you're one of those people.

C.P.: I know.

Respondent: So, I want the opportunity to send you a copy of this order so that you know what you're dealing with. I need your address to do that. Now —

C.P.: I really like it to get sent to a lawyer. I'm just scared to disclose my address, quite honestly.

Respondent: Ma'am, that's okay. . . . [H]e's not here right now. He left.

> C.P.: Yeah. I just don't know if he knows anyone that works anywhere, and I really don't want him finding me.
>
> Respondent: Well, he's going to find you, ma'am. We're all going to find you. The only question is . . . how much is it going to cost you to get this done. If he's not the father, he's out. Just comply with the testing. If he is the father, he has a right to know what's going on. But[,] it's not going away.
>
> C.P.: Yeah. Everything I've done was for the safety of my children.
>
> Respondent: That's . . . fine. What you've done is you've ignored court orders, and you are now creating situations that are going to make it very difficult for you to live in this world.

After respondent explored with staff whether C.P. could have the paternity test performed out-of-state, he stated: "All right. Here's the thing, ma'am. I'm done fooling around with you. I've got a courtroom full of people. You think you're doing the right thing. I can assure you, you are not."

C.P. then advised respondent that she feared T.B. had molested her daughter, feared for her son's safety, and reiterated a desire to "see the lawyer before I do anything else." Respondent told C.P. that T.B. was

> not going to go away, and what you're going to find out is all these things you're doing are just going to come back and . . . hurt you, and you're going to have no credibility with the [c]ourt in the future if you're making the allegation that you're making today.

> So, you really need to just comply and fight it out.

Respondent again asked C.P. for her address, and she again asked to "call [the court] back in a few days and leave [her] address after [she spoke] with a lawyer." Respondent ended the approximately nine-minute phone call by advising C.P. she should not ignore the testing, because even though respondent understood she was scared, "it will not work out well for you."

Before the ACJC, respondent stipulated that his ex parte conversation with C.P. violated the Code. He said his "mistake . . . was letting [C.P.] talk about all this other stuff" beyond scheduling, verifying her address, and ascertaining whether she had gotten the genetic testing done. Respondent's testimony before the panel was similar in nature, although he said that he has since learned judges sitting on the FD docket "called litigants all the time." He explained that T.B. was the one trying to establish paternity while "the mother . . . just kept running around" to different states.

Count IV charged respondent with conduct that violated the Canons and Rules already cited, as well as Canon 3, Rule 3.8 of the Code, which specifically addresses ex parte communications by a judge. It provides: "Except as authorized by law or court rule, a judge shall not initiate or consider ex parte or other communications concerning a pending or impending proceeding." Pressler & Verniero, Appendix to Part I at 542. Comment 4 to

Canon 3, Rule 3.8, explains that "settlement discussions, discussions regarding scheduling and a judge's handling of emergent issues are not considered to constitute ex parte communications in violation of this rule." Ibid. Ex parte communications not otherwise permitted obviously have the ability to "taint[] the proceedings with the appearance of partiality." Goldfarb v. Solimine, 460 N.J. Super. 22, 33-34 (App. Div.), certif. granted, 240 N.J. 83 (2019).

Although respondent stipulated that his conduct violated the Code, once again the panel has chosen to recount the details of the violation. Unlike situations where ex parte communications foster a perception of partiality in favor of the communicant, ibid., here, it is unlikely any reasonable person would perceive respondent's on-the-record, ex parte conversation with C.P. as reflecting possible partiality in her favor to the detriment of T.B. To the contrary, respondent's conduct, in front of "a courtroom full of people," demonstrated an insensitivity that is quite disturbing.

With the permission of the parties, the panel listened to the audio recording of this matter, which is now C-1 in evidence.[3] We reach no conclusion whatsoever about the veracity of C.P.'s allegations, or whether they served as justification for her leaving New Jersey or her reluctance to provide

[3] The ACJC had the transcript of the proceedings, but it did not have the audio record.

any address. But C.P.'s voice certainly evidenced concern over disclosing her address, at least without speaking to an attorney beforehand. Respondent's response was, mildly put, quite threatening.

Respondent almost immediately told C.P. that he could impose financial sanctions that would "make it very difficult for [her] to ever get out from underneath this if [she did] not cooperate," told her that retaining a lawyer was "not an option," and told C.P. of another instance where he imposed financial sanctions, and the "woman right now . . . [was] in jail . . . from a case where she took the kid out of the state four years ago." Respondent belittled C.P.'s claim that she had investigated her legal rights before leaving New Jersey, and told her that she would have no credibility with any judge if she continued to make allegations against T.B.

Canon 2, Rule 2.1 requires a judge 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." Pressler & Verniero, Appendix to Part I at 539. Comment 2 to Rule 2.1 defines "actual impropriety" as "conduct that reflects adversely on the honesty, impartiality, temperament or fitness to serve as a judge." Id. at 540 (emphasis added). More than simply violating a prohibition on ex parte communications, respondent's discourteous comments and lack of patience reflect adversely on

his temperament to serve as a judge. The panel finds beyond a reasonable doubt that in addition to violating Canon 3, Rule 3.8, respondent's conduct in T.B. v. C.P. violated Canon 2, Rule 2.1.[4]

Count I — M.R. v. D.H.

On March 28, 2016, a hearing officer recommended, and respondent issued a temporary restraining order (TRO) to the plaintiff based on allegations that the defendant committed terroristic threats, sexual assault and harassment on March 24. One specific allegation in the complaint was that the defendant "forced himself on [the plaintiff], forcing her to have sex with him against her will." This allegation was repeated in the plaintiff's amended complaint that led to an amended TRO issued by another judge on April 18, 2016, citing the same predicate acts of domestic violence and adding another, i.e., that defendant had violated the TRO by contacting her. See N.J.S.A. 2C:29-9(b)(1) and (2) (defining contempt offenses for the violation of restraining orders).

[4] Although not cited in the presentment, the record supports a finding beyond a reasonable doubt that respondent also violated Canon 3, Rule 3.5 of the Code, which states: "A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall not permit lawyers, court officials, and others subject to the judge's direction and control to display impatience or discourtesy or to detract from the dignity of the court." Pressler & Verniero, Appendix to Part I at 541. We discuss Rule 3.5 more fully below in considering the evidence regarding Count I of the presentment.

Respondent presided over the hearing for a final restraining order (FRO), that commenced on May 16, 2016, and continued on June 10 and 16. The plaintiff was self-represented, while the defendant was represented by counsel. In an oral opinion that followed trial, respondent determined that the plaintiff had not met her burden of proof and dismissed the TRO.

Respondent began the proceedings by appropriately giving preliminary instructions to the plaintiff, who testified that she and the defendant were the parents of a five-year-old daughter and had been in a dating relationship for eleven years. Very early in her testimony, the plaintiff said that on March 24, 2016, defendant "force[d] himself on [her] to have sex with him." Respondent pressed for details, and the following exchange ensued within the first eight pages of the seventy-six-page transcript of the plaintiff's testimony:

> Plaintiff: Okay. Well, we got back from Home Depot and I made a joke, saying, "What time does your wife come home? We have a couple minutes." And next thing I know, that's what happened. So I was like, you know, I wasn't planning on having sex with him. So, you know what I mean?
>
> Respondent: No, I don't.
>
> Plaintiff: I don't know how to make it any clearer. I -- we had sex, but it was against my will. I wasn't planning on having sex with him. So he was like -- we were standing in the kitchen and he pulled my pants down, and that's what happened.

Respondent again told the plaintiff "you have to tell me what happened."

> Plaintiff: Okay. So I made a joke, like, "What time does your wife come home?" And next thing I know he was like, you know, grabbing at my clothes, pulling, you know, pulling my pants down. So I was like, you know, I didn't wanna have sex with him and it happened. And I was like, "You know what, that was against my will." And he's like, "Well, you liked it; didn't you?" I was like, you know, that's what happened.
>
> Respondent: All right. So I asked three times, but you haven't told me what happened.
>
> . . . .
>
> Plaintiff: Okay. So when I said, you know, "What time does your wife come home," he came up to me and he's like pulling, pulling my pants down, and we had sexual intercourse. It was against my will. I didn't wanna, want to have sex with him, but it happened.
>
> Respondent: Did you tell him to stop?
>
> Plaintiff: Yeah. Yeah, I did. I was like, "Stop. Get off me," and he's like, "Oh, come on, come on," and he just didn't stop.
>
> Respondent: Okay.

The plaintiff then described other events of alleged domestic violence, including the defendant disabling her garage door, breaking her vehicle's windshield, threatening to call child protective services to have her daughter removed, and threatening to burn her house down. She read respondent a text message allegedly sent to her by the defendant after the issuance of the TRO.

After fairly extensive cross-examination about the plaintiff's other allegations, defense counsel began questioning her about the alleged sexual assault. He asked if she had ever worked as an exotic dancer, which she acknowledged, and then asked: "Would it be fair to say that you got many unwanted advances from men that were overly sexual during your time as a dancer; correct?" Respondent properly interrupted, and the following ensued:

> Respondent: Objection. Where are we going here?
>
> Defense counsel: That she's more capable of asserting herself in a situation where she's confronted by somebody with unwanted sexual advances.
>
> Respondent: Maybe ask that question. See what she gives you, and see if you need to go --
>
> Defense counsel: Would it be fair to say . . . that you are capable of asserting yourself against unwanted sexual advances?
>
> Plaintiff: I guess so. I don't really know.
>
> Respondent: I'm sorry, but, "I guess so," is not an answer. Do you understand the question?
>
> Plaintiff: Not really, I don't understand the question.
>
> Respondent: I'll ask the question then.
>
> Plaintiff: Okay.
>
> Respondent: Do you know how to stop somebody from having intercourse with you?
>
> Plaintiff: Yes.

Respondent: How would you do that?

Plaintiff: I'd probably physically harm them somehow.

Respondent: Short of physically harming them?

Plaintiff: Tell them no.

Respondent: Tell them no. What else?

Plaintiff: To stop.

Respondent: To stop. What else?

Plaintiff: And to run away or try to get away.

Respondent: Run away, get away. Anything else?

Plaintiff: I -- that's all I know.

Respondent: Block your body parts?

Plaintiff: Yeah.

Respondent: Close your legs? Call the police? Did you do any of those things?

Plaintiff: I didn't call the police 'til later when --

Respondent: I understand that. I mean, right then and there to stop, did you do any --

Plaintiff: I told him to stop.

Respondent: -- did you do those things?

Plaintiff: I told him to stop and --

> Respondent: Did you try to leave?
>
> Plaintiff: -- I was trying to block him.
>
> Respondent: Block him, meaning?
>
> Plaintiff: Like I was trying to like, you know, like push him off me.
>
> Respondent: Okay. Did you try to leave?
>
> Plaintiff: Yeah.
>
> Respondent: Did he stop you from leaving?
>
> Plaintiff: Yeah.
>
> Respondent: And how did he do that?
>
> Plaintiff: He was like holding me like -- there was like a chair and he was like holding me like, you know, like he was like forceful, like I really couldn't do anything.
>
> Respondent: You answered my questions. I'm going to let [defense counsel] continue.

After completion of her cross-examination, the plaintiff produced no other witnesses.

The defendant called the plaintiff's mother as a defense witness. After she testified, the hearing was adjourned until June 10, 2016. On that day, the defendant's sister testified, and the defendant began his testimony. Critically, the only testimony on June 10 regarding the alleged sexual assault was the defendant's categorical denial that he was with the plaintiff on March 24, 2016,

that he sexually assaulted her or that he had sexual intercourse with her after March 18, 2016. The hearing was adjourned until June 16. After some further brief testimony by the defendant, and defense counsel's and the plaintiff's closing statements, respondent entered his findings of fact and conclusions of law.

Respondent concluded the plaintiff was not credible and the defendant and his witnesses were credible. Specifically addressing the sexual assault allegation, respondent stated:

> I recall her testimony being that when I asked her a question about the sexual assault, she said she did not intend to have sex that day. I don't know what that means, but it certainly raised concerns in my mind. It's important that the [c]ourt notes that she claims she was sexually assaulted on 3/24 or it was 3/23, but she didn't contact the police for five days. When I asked her about that, she said she had to work. I also thought it was interesting when she described the sexual assault encounter which took place, according to her testimony, in the kitchen. When I asked her if she tried to do anything to stop the sexual assault, she didn't have an answer. I asked if she tried to leave. I didn't get a good answer in response to that question. I asked her if she tried to close her legs. And for the record, I believe her testimony was they had intercourse. And I asked if she tried to use her hands to stop the defendant from sexually assaulting her. Again[,] I did not get an answer that I could understand.
>
> [(emphasis added).]

Respondent also concluded, without specificity except for a general credibility finding, that the plaintiff failed to meet her burden of proof as to the alleged predicate acts of terroristic threats and harassment. Although respondent concluded the defendant admittedly violated the TRO by texting the plaintiff, it was "a technical violation," and the plaintiff failed to prove entitlement to an FRO under the second prong of the analysis described in Silver v. Silver, 387 N.J. Super. 112, 126-27 (App. Div. 2006).

Immediately after the proceedings ended and the parties left the courtroom, respondent discussed the case with his court staff and law clerk. The back-up CourtSmart recording captured the discussion.

Respondent asked, "What do you think of that? Did you hear the sex stuff?" Respondent then said: "You think it's all fun and games out here." Before the ACJC and the panel, respondent said this was directed toward his law clerk who was in the courtroom, as an instructional effort to demonstrate the difficult task of judging domestic violence cases. The transcript reveals that an unidentified speaker, presumably the law clerk, said immediately thereafter, "Please don't make me re-live everything I heard." Another unidentified speaker declared, "That was the most ridiculous trial."

It is unclear, but it would appear from the audio file and transcript that others were in the courtroom when respondent rendered his decision and left

immediately thereafter. Two unidentified speakers thanked respondent, who answered, "Good luck. Thank you." Another unidentified speaker then remarked: "But I'm standing here looking at the girls that are listening and all I hear is you saying, and I asked her if she used her hands to try and stop him, and like why didn't you close your legs? And I'm like how old are these girls? They're like five. They look like they're five."

Reminding those in the courtroom of defense counsel's questioning of the plaintiff a full month earlier on May 16, respondent first asked, "[A]re we off the record?" When two unidentified speakers answered in the affirmative, respondent continued:

> Respondent: Well, then, there's [sic] an exotic dancer, one would think you would know how to fend off unwanted sexual --
>
> Unidentified speaker: I do remember that, I do.
>
> Respondent: I'm like all right, all right, stop.

Later, discussing someone's neat penmanship, respondent quipped, "What I lack in handwriting skills, I am the master of on the record being able to talk about sex acts with a straight face." An unidentified speaker asked, "Without laughing?" Respondent answered, "Yup." One of the staff continued, "I can barely listen without laughing. I usually hide behind the monitor." It is unclear whether the balance of the recording includes comments specifically

about the proceedings in M.R. v. D.H., but, without question, the atmosphere of frivolity in the courtroom continued.

When interviewed by ACJC investigators, respondent stated that he became involved in questioning plaintiff because he "did not understand . . . what happened with this sexual encounter." During his testimony before the ACJC, respondent elaborated by saying he took over to facilitate plaintiff's testimony after she became visibly upset by defense counsel's question about her prior employment:

> My concern was what her prior profession was, was irrelevant, plus she's sitting in front of me and when he asked that question, she just began to cry. But she was having a hard enough time testifying and getting her story out. That definitely . . . did not help her. I also believed that the defense attorney was trying to intimidate her, embarrass her or cast her in an unfavorable light and I wanted to stop that.

Later in his testimony, respondent clarified that the plaintiff did not cry, but "crumbled" and "put her head down" when asked whether she had worked as an exotic dancer. Respondent said his questions were designed "to have [the plaintiff] give her testimony as to what had actually occurred." As to why he asked whether the plaintiff had closed her legs, respondent testified:

> Again, for the same reason. I was trying to get her to testify as to any facts that may have been present that may have occurred that would go to force or coercion. And it was in an effort not to suggest that she should have done any of these things. These were the things

> that came to my mind in the moment that might get her to start testifying. And, as a matter of fact, it worked to some extent because she did [give more details].

Respondent denied trying to assume the role of defense counsel or using a prosecutorial tone; he did not intend to mistreat the plaintiff, nor did he think the "close your legs" comment "could have been offensive to anyone." While respondent's rationale for questioning the plaintiff was to elicit facts pertaining to the sexual assault allegation, he told the ACJC that he did not ask any questions about the other alleged predicate acts — harassment and terroristic threats — because "it [was] the plaintiff's job to present the case and [her] evidence."

During the ACJC investigation and hearing, respondent acknowledged that after speaking with Judge Ford, he understood his questioning of the plaintiff was inappropriate, and that a judge must be careful in questioning a victim of an alleged sexual assault to avoid "mak[ing] the victim look like they did anything . . . wrong." Respondent had "never thought about it that way," and believed this was the first DV trial he presided over in which there was an allegation of sexual assault.

As noted, before the ACJC, respondent said his comments that followed the trial were intended, in part, to provide guidance to his law clerk. He explained:

> And when I made that comment to her, I said, I was referring to this is what I was talking about, it's not just fun and games on the bench, it's tough because you have to deal with these things. You have to be able to talk about these things on the record, these sex acts. You have to be able to listen to them without changing your facial expression, without reacting so that you don't create any sense that this is shocking or offensive to the person who's the fact finder and that's what I was referring to with her.

Respondent acknowledged that it was inappropriate to permit court staff "to make light of the situation." He admitted that "one of the mistakes [he] made" was being "too familiar with staff" and being "uncomfortable in the role of being the boss . . . and shutting them down if they did things [that were] inappropriate." At that point, he "was still learning [his] way through this job . . . [and] how to do the job and still learning about what it meant to be in control of a staff and courtroom." Respondent explained that the very valuable instruction he received at new judge training occurred in September 2016, after the hearings in M.R. v. D.H.

Before the panel, while respondent was admittedly more critical of his questioning of the plaintiff at the hearing, he reiterated the same rationale. He testified that the plaintiff's testimony to that point was "really just conclusory," and, as to elements of force or coercion necessary to prove a sexual assault occurred, respondent "didn't hear any of that" from the plaintiff. He became involved in the questioning because the aggressive cross-examination left the

plaintiff "demoralized," and respondent "wanted to get her re-engaged in the hearing."

We provide in detail the explanation respondent provided during direct examination before the panel:

> Now, look, using words like I used, like close your legs, obviously that was a huge mistake, and it obviously has blown up, and it obviously turned into something that I never intended.
>
> Now, my intentions, I think, are secondary to the effect of my words on how people . . . might perceive them, and what happened at the ACJC hearing below and in the media and I think with the Chief Justice, they were definitely taken in a way that I never intended.
>
> The one thing I learned about all this is it doesn't matter what my intentions are. It matters . . . what I say or do, the effect it can have on the public, on the litigants, on the judiciary, on me, but it's important that this [panel] does understand and if you carefully look at the transcript, I was not trying to humiliate her. I was trying to do the opposite because somebody else had humiliated her. And for the first time, as I said, she actually testified to facts that would go to support her claim. My words were chosen terribly.
>
> Also . . . getting involved with asking the hypotheticals is not something I should be doing as a judge, but my intention was not to harm this person, and a close reading of the transcript reveals at that moment that that is not only what I tried to do, but it actually had some success.

Concerning why he asked the "close your legs" question specifically, respondent said:

> The testimony, as I understood it, at that point was that she was standing at the sink doing dishes in the kitchen and that's when this -- he penetrated her from the rear, something to that effect. And what I had in my mind was did you close your legs to turn around and get away.
>
> Now, I was thinking of whatever somebody could possibly do, not anything that was required because maybe that might be something that would have prompted her to testify and put facts on the record.
>
> Those are words . . . that can't be spoken by a judge at all because they're charged, they're loaded with much more than I intended, and I think I was somewhat naive when I did utter them, but they're not appropriate because they fall into a class of words that certainly did not reflect -- I mean at a minimum did not reflect positively on me. And I think especially when I looked at them out of context and what other people took away, made me sound like some sort of misogynistic buffoon.
>
> In doing that, I certainly embarrassed the judiciary and myself and my family, and that is not who I am and that's not what I think being a judge is and not certainly what I want to do as a judge.
>
> And . . . the difficulty whenever you try to explain anything is you sound like you make excuses or one does. I'm not trying to make excuses, but I think it's important that the [panel] understands and the Chief Justice and the public understand that . . . while I would never do it again, [it] was naively designed to try to help this person who I saw

> struggling in front of me, and that is, you know, unfortunately the position that I put myself in.
>
> It goes without saying that I would never say anything like that again . . . . [I] encountered something that I hadn't experienced before, which was a witness get her . . . legs taken out from underneath her in front of me, and I was really struggling to find out is this a case where there really is something going on and a witness who's just not capable of expressing it or is there something else going on.

During cross-examination by the presenter, respondent admitted having received PDVA training five months before the trial in M.R. v. D.H., and he knew beforehand that a judge "shouldn't do anything that would look like re-victimization of a domestic violence victim." Respondent maintained that it never occurred to him "that this listing of all the things that the plaintiff could have done or should have done would have any potential to embarrass or re-victimize" her.

Before the panel, respondent reiterated his explanations regarding the post-hearing comments he and court staff made. He expounded on the didactic intention behind the remarks made to his law clerk, explaining, for the first time, that he had previously urged her in chambers to watch the trial, and his comments after the hearing were a direct follow up to that earlier conversation "about the uglier parts of what we do as judges, especially in these types of cases." Respondent admitted before the panel that he encouraged the

inappropriate behavior of court staff when he too "laughed," and he recognized his relationship with them was "too familiar." Although stating he was not offering it as an excuse, respondent cited his prior experience as an administrative law judge, where he "supervised no one." Respondent reiterated that he asked whether the proceedings were "off the record" because he was really "bothered" by defense counsel's questioning of plaintiff, and he "really didn't want to be chastising an attorney on the record."

The ACJC concluded in Count I of the presentment that respondent's conduct during M.R. v. D.H. violated the previously cited Rules of Canons 1 and 2, as well as Canon 3, Rule 3.5. Although respondent has repeatedly acknowledged that his questioning of plaintiff was inappropriate, he contends it did not violate these provisions of the Code. The panel finds beyond a reasonable doubt that respondent's conduct during and after the proceedings in M.R. v. D.H. violated these Canons.

Comment 1 to Canon 2, Rule 2.1 explains that "[p]ublic confidence in the judiciary is eroded by irresponsible or improper conduct by judges." Pressler & Verniero, Appendix to Part I at 539. As already noted, Comment 2 to Rule 2.1 defines "[a]ctual impropriety" as "conduct that reflects adversely on the honesty, impartiality, temperament or fitness to serve as a judge." Id. at 540. Comment 3 to Rule 2.1 explains that "an appearance of impropriety is

created when a reasonable, fully informed person observing the judge's conduct would have doubts about the judge's impartiality." Ibid. Canon 3 requires a judge to "perform the duties of judicial office impartially and diligently." Id. at 541. Rule 3.5, entitled "Demeanor," provides:

> A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall not permit lawyers, court officials, and others subject to the judge's direction and control to display impatience or discourtesy or to detract from the dignity of the court.
>
> [Ibid.]

This Rule finds particularly resonant voice in the Court's opinion in J.D. v. M.D.F., where it said, "Many litigants who come before our courts in domestic violence proceedings are unrepresented by counsel; many are unfamiliar with the courts and with their rights. Sifting through their testimony requires a high degree of patience and care." 207 N.J. 458, 481 (2011).

Throughout these proceedings, respondent has asserted that his intention in questioning the plaintiff was benevolent, both to assist her in eliciting facts necessary to support her allegation that the defendant sexually assaulted her, and to have the plaintiff "re-engage" after defense counsel's aggressive and inappropriate cross-examination about her prior experience as an exotic

dancer. These assertions are neither legally significant to our conclusion that respondent's conduct violated the Code nor are they credible.

Respondent's claims are not legally significant because by their plain language, none of the Canons cited require proof of malicious intent to establish a violation. Moreover, the Court has held that generally speaking intent is not relevant to whether a violation occurred:

> Misconduct in office and conduct evidencing unfitness for judicial office subvert the judicial process and, irrespective of motive, the end result is the same -- irreparable damage to the judicial system. Incorporating into the statutory scheme an evil or corrupt intent requirement would thwart the salutary purposes of the removal statute.
>
> [In re Hardt, 72 N.J. 160, 165 (1977).]

We do not profess to know, nor do we need to divine, exactly why respondent questioned the plaintiff in the admittedly improper way that he did. We find beyond a reasonable doubt, however, that respondent's stated reason for engaging in the questioning is not worthy of belief.

As noted, shortly after she began to testify and without any specific questioning by respondent, the plaintiff clearly stated that the defendant "pulled [her] pants down," and forced her to have sexual intercourse "against [her] will," after she told him to "stop" and "get off [her]." Sexual assault, N.J.S.A. 2C:14-2, is one of several predicate acts of domestic violence

enumerated in the PDVA. N.J.S.A. 2C:25-19(a)(7). "An actor is guilty of sexual assault if he commits an act of sexual penetration with another person" under several circumstances, which include when "[t]he actor uses physical force or coercion, but the victim does not sustain severe personal injury." N.J.S.A. 2C:14-2(c)(1).

More than twenty-five years ago, the Court made plain that "any act of sexual penetration engaged in by the defendant without the affirmative and freely-given permission of the victim to the specific act of penetration constitutes the offense of sexual assault." State in Interest of M.T.S., 129 N.J. 422, 444 (1992). "Therefore, physical force in excess of that inherent in the act of sexual penetration is not required for such penetration to be unlawful." Ibid. The element of "'physical force' is satisfied under N.J.S.A. 2C:14-2(c)(1) if the defendant applies any amount of force against another person in the absence of what a reasonable person would believe to be affirmative and freely-given permission to the act of sexual penetration." Ibid. "Because the statute eschews any reference to the victim's will or resistance, the standard defining the role of force in sexual penetration must prevent the possibility that the establishment of the crime will turn on the alleged victim's state of mind or responsive behavior." Ibid. (emphasis added).

Simply put, the plaintiff in this case had testified to the essential elements of sexual assault on her own, shortly after being sworn, and well before respondent engaged in his inappropriate questioning. Respondent's continued assertion that he needed to elicit additional details from the plaintiff in order to allow her to prove a prima facie case rings hollow when one examines the entire transcript.

We also do not accept respondent's concurrent rationale for the questioning, i.e., that defense counsel's limited questioning about the plaintiff's prior experience as a dancer left her despondent and essentially unable to proceed. Certainly, nothing in the audio recording of the trial remotely suggests this to be the case. The plaintiff continued to respond to questions, including those posed by defense counsel.

Moreover, rather than simply prohibiting defense counsel's further inquiry, respondent took it upon himself to engage in protracted questioning of the plaintiff, posing hypothetical questions that encompassed stereotypic tropes about sexual victimization and domestic violence. Respondent's questions displayed impatience, discourtesy, and a lack of understanding of applicable law.

In addition, the insignificance of the plaintiff's answers to respondent's questions is obvious when one considers the oral opinion respondent rendered

in dismissing the TRO. Recalling the plaintiff's testimony, respondent said that her statement that "she did not intend to have sex that day" raised "concerns" in his mind. Respondent attached importance to the plaintiff's failure to contact police for five days because she had to work, but our review of the transcript reveals no such testimony. The plaintiff only said she did not tell police about the sexual assault "right away," and testified that she did not apply for the TRO earlier because of her work schedule. In his decision, respondent said the plaintiff "didn't have an answer" when asked "if she tried to do anything to stop the sexual assault." To the contrary, as shown above, prior to respondent's interrogation, the plaintiff specifically testified that after defendant pulled her pants down, she told him to stop and "get off [her]." Respondent said he "didn't get a good answer" when he asked the plaintiff if she tried to leave, but the record demonstrates the plaintiff answered the question immediately and told respondent that the defendant was "forceful" and stopped her from leaving.

There is one final, significant reason why respondent's assertions about why he conducted himself as he did are not worthy of belief. The jocular banter between respondent and his staff after the hearing demonstrates a lack of decorum and seriousness that suggests respondent's questioning of the plaintiff was not motivated by any of his professed reasons or by a genuine

search for the truth. Along these lines, the panel rejects out-of-hand respondent's claim that his remarks to his law clerk were a teachable moment about the rigors of being a judge, duty-bound to adjudicate domestic violence cases. The exchange between respondent and his law clerk occurred more than a month after the plaintiff testified, which is when respondent posed his objectionable questions. Later testimony on the second day of trial from the defendant barely broached the subject of the alleged sexual assault. Similarly, respondent's testimony that he asked if the proceedings were "off the record" because he did not want to besmirch a lawyer's reputation is simply incredible, finding no support in the context of what was actually happening in the courtroom at the time.

In sum, respondent engaged in actual impropriety during the hearing through his inappropriate questioning of the plaintiff, a conclusion that is further supported by respondent's conduct with his staff after the trial ended. His actions undermined the integrity and impartiality of the judiciary and his demeanor fell far short of what the Code requires. Respondent's unbecoming conduct reflected adversely on his temperament and fitness to serve as a judge.

The record supports a finding, beyond a reasonable doubt, that respondent violated Canon 1, Rule 1.1; Canon 2, Rule 2.1; and Canon 3, Rule 3.5.[5]

Count II

Respondent denies the critical factual predicate that underlies this count of the presentment. He has consistently said that he never asked Family Division Manager Vito to intercede for personal reasons in the guardianship litigation pending in the Burlington Vicinage by asking her to call her "counterpart" to arrange consecutive trial days in the upcoming trial. As presenter aptly points out in his post-hearing submission, the panel must resolve, in the first instance, which version of events is more credible, and whether, as respondent generally asserts in his post-hearing submission, he "testified truthfully with this panel, admitting his errors."

What is undisputed is that respondent and his wife filed a complaint in October 2016 seeking to have the court appoint them as co-guardians of respondent's adult son, J.R. Given respondent's status as a sitting judge in Ocean County, venue was transferred to the Burlington Vicinage. Although respondent had obtained sole legal custody of his son in 2005, his ex-wife,

[5] Although not cited as a separate violation, the panel concludes beyond a reasonable doubt that respondent's conduct violated Canon 3, Rule 3.4, which provides: "A judge shall maintain order and decorum in judicial proceedings." Pressler & Verniero, Appendix to Part I at 541.

J.R.'s mother, was contesting the guardianship complaint to the extent she sought to be designated as a co-guardian, along with adequate parenting time. Respondent's ex-wife was represented by counsel, her two adult sons, J.K. and J.T.K. appeared pro se in the litigation, and J.R. was represented by court-appointed counsel. On January 11, 2017, the court entered an order (the January 2017 order) scheduling trial for Monday, March 13, 2017, before Judge Michael J. Hogan, who was retired and serving on recall. Undisputedly, respondent submitted a written request for time off to attend trial. His secretary's email and attachment were sent to Judge Ford, the Family Part presiding judge, Madelin Einbinder, and Vito.

In addition, respondent's request to accompany his son to a medical appointment unrelated to the guardianship litigation on Friday, March 10, 2017, is documented with proper notifications. Respondent anticipated leaving at 12:30 p.m. on March 10, a day he was scheduled at 11:15 a.m. to handle purge proceedings and first appearances. As a result, because it was unknown how many cases would come before the court, it was important that another judge be ready to fill in for respondent. In January, respondent's secretary sent an email reminding Judge Ford, Judge Einbinder and Vito of the March 10 appointment and respondent's already-submitted leave request. Without

dispute, respondent took his son to the medical appointment on March 10 without incident.

Because of Judge Hogan's illness, the guardianship trial did not begin on March 13, 2017, and was adjourned to March 15. Respondent let Vito and others know that he would be absent the afternoon of March 15, but he was confident the litigation was close to settling. However, the case did not settle on March 15, and Judge Hogan ordered the parties to return on Thursday, March 23, 2017. The case settled that day with respondent and his wife being appointed J.R.'s co-guardians. As respondent described the results, he "got everything he wanted." In all respects, respondent, through his secretary, documented the absences necessitated by the litigation and copied Judge Ford, Judge Einbinder and Vito.

The critical facts as described in the presentment are alleged to have occurred on the morning of March 10. As Family Division manager, Vito made personnel and disciplinary decisions, interacted with judges, and handled day-to-day operations. She was also responsible for arranging coverage for judges who were out sick or on vacation. When interviewed by ACJC investigators, Vito recounted a conversation she had with respondent, with whom she had had limited prior contact, when he called on her personal cell phone. After telling Vito about the pending guardianship litigation,

respondent said, "it would definitely be better if I could be out for a chunk of time on my hearing instead of, you know, a day here, a day there, whatever." He asked her to call "[her] counterpart in Burlington and try to get the schedule changed . . . ." Vito said respondent "was trying to say it would be more conducive to his FD cases, that it wouldn't be so disruptive to our court here and could I do that for him." She refused.

When she testified before the ACJC, after she had reviewed her cell phone records which were produced for the committee, Vito said the call occurred while she was at work on the morning of March 10, 2017. It was the first time respondent ever called her personal cell phone, which number she provided to all new Family Part judges on the back of her business card.[6] She reiterated the substance of the phone call as previously relayed to the committee's investigators. She testified that respondent also "basically said . . . this conversation never happened" or "[s]omething along those lines," although she was "paraphrasing."

Vito identified handwritten notes, P-2, she contemporaneously made during the conversation on a pad she kept on her desk. Those notes were produced before the ACJC and this panel. Vito explained that respondent told

[6] Vito said the phone numbers for her office phone and business cell phone were both on the front of the business card.

her the guardianship trial was scheduled to begin in Burlington County on Monday, March 13, 2017, before Judge Hogan. She wrote "consecutive hearing days," because that is what respondent requested she speak to her Burlington County counterpart about. The notes reflected details about the litigation and the numerous people involved. Vito denied that respondent expressed any concern about coverage for his court calendar in Ocean County, and said that coverage had already been arranged for March 13 since respondent had requested the day off months earlier. However, Vito explained that respondent mentioned his court calendar "in the context of what [she] should say when [she] contacted Burlington, that it would be better for the court and for the FD calendar to have consecutive days and to try and avoid Thursdays," which were respondent's "heaviest calendar" day.

Before the panel, Vito's testimony was generally consistent with that she provided during the ACJC hearing. Both her and respondent's cell phone records for March 2017 were admitted into evidence. They reveal that respondent called Vito's cell phone and left a voice mail; she returned the call at 8:52 a.m., and a ten-minute call ensued. Vito first learned of respondent's pending guardianship matter when, in December 2016, he called regarding his emergent duty assignment during the holiday recess week. Respondent was concerned that there were appointments set in the litigation during that week,

and requested Vito find other judges to cover on those days respondent would be unavailable.

On the first day of the hearing before the panel, December 3, 2019, presenter sought to introduce three documents in evidence that were not produced before the ACJC and not included in the pre-hearing exchange between the parties. Respondent's counsel acknowledged having received them from presenter the day before Thanksgiving, i.e., November 27, and objected based on the late production. Over respondent's objection, the panel admitted the three documents, P-45, P-46, and P-47, into evidence.

Vito said that during preparation for her testimony before the panel, in an effort to corroborate that P-2 were notes reflecting a conversation she had with respondent on March 10 and not some other date, she found these documents. P-47 was the page in her notepad that immediately preceded P-2; it contained notes from a meeting she held with respondent and others regarding the inadequacy of security in his chambers and the need to make improvements. P-45 and P-46 were two emails which confirmed this meeting took place on March 8, 2017, two days before the critical phone call.

During cross-examination before the panel, Vito acknowledged that respondent said he did not want to leave her "in a jam" regarding his calendar. She replied, "don't worry about it, we'll take care of this, worry about your

family." However, this exchange was not during their March 10 call and was not about the March 13, 2017 Ocean County Family Division calendar. Rather, respondent made the comment and she responded as she did during a subsequent call the following week, when respondent "had to go back to court unexpectedly" due to the delay in the guardianship trial.

Respondent's versions of the phone conversations with Vito were decidedly different. He initially told ACJC investigators that he had only one phone call with Vito about the guardianship litigation, and that was when the case was scheduled for a Thursday, presumably March 23, 2017, and he was concerned about adjourning many FD cases on his docket. Vito told him not to worry and "do what's best for your child and your family." Respondent denied asking Vito to call her counterpart in Burlington County.

Before the ACJC, respondent acknowledged that having checked his own cell phone records, which were admitted in evidence before the committee and this panel, he called Vito on March 10, 13 and 16, 2017, as similarly reflected on Vito's phone records. Respondent testified that he called Vito on her personal cell phone because he had entered that number in the list of contacts on his cell phone. However, respondent claimed that he also called

Vito on her personal cell phone in December 2016, when he asked her to provide coverage for the holiday recess.[7]

Regarding the critical March 10, 2017 conversation, respondent said he called Vito's cell phone and left a voicemail; she returned the call. Before the ACJC, respondent explained the reason for the call:

> The reason I called her was to remind her that I had to leave at a particular time that day. At that point, I don't know, I still don't know, I don't think I knew how many purge matters were going to be on my calendar and I wanted to remind her that I had to leave at a particular time, so whatever we had to do if she would just -- if she had made any arrangements or she remembered the prior request.

Respondent denied ever asking Vito to contact her counterpart to arrange the scheduling of consecutive trial days in the guardianship litigation. He explained the other two calls to Vito's personal cell phone, on March 13 and 16, were to tell her first, that the case had been adjourned, and then that it had not settled the previous day and was now scheduled for March 23.

Respondent acknowledged for the first time during his testimony before the ACJC that during the March 16 phone call, with the guardianship trial scheduled to resume the following week, he asked Vito to call her counterpart in Burlington County; but he denied the request was for personal reasons.

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[7] The ACJC did not request, nor did respondent supply, his phone records from December 2016.

> When I called . . . Ms. Vito and I told her what was going on, I did say to her, hey, can you call your counterpart or something down there to see if we can arrange these schedules because at the time I'm thinking about all of this as just scheduling court things.
>
> As soon as I said that, I said to her, wait a minute, forget it. Remember, this is a three-minute phone call. I said, Jill, I should be worried about my own case, not the litigants that are appearing before me. And she said to me I think she said, Judge, the rest of it is a quote, you must do what's best for your son and your family. I said you're right, I'm not coming in, start doing what you got to do to handle rearranging the calendar, get somebody to cover. I'm going to send my leave request in as soon as I get off this phone.

Respondent told the ACJC that Vito's notes, P-2, were not about the conversation he had with her on March 10, 2017, because that was only about court business and his need to leave early.

During cross-examination before the ACJC, which occurred about one month after respondent's direct testimony, he testified for the first time that P-2 were notes from a conversation he had with Vito in December 2016, because that was the first time he spoke with her about the guardianship litigation. He reiterated that the December call was about finding coverage for emergent duty during the holiday recess, and explained, in response to a question from a committee member, that he did not obtain his cell phone records from December 2016 "[b]ecause it's not disputed that we had a phone call." When

asked about the reference in P-2 to "consecutive hearing days," respondent said that he did not know why Vito had written those words. He added: "I was explaining to her that I had consecutive days where I had appointments for the evaluations pertaining to the guardianship on the Thursday and Friday [December 29 and 30] of court recess week. That maybe is what she's talking about."

In respondent's testimony before the panel, he stated that he called Vito on her cell phone "in the end of November, beginning of December" 2016 to discuss "security concerns." Respondent claimed that P-47, Vito's notes, reflect the substance of that conversation. He also testified that he called Vito on her cell phone twice during the same time period to discuss adding another "case conferencer" for his courtroom on Fridays, and to arrange coverage for emergent duty during the holiday recess.

When asked during cross-examination before the panel about P-2, respondent maintained that Vito's notes were written during a December 2016 phone conversation about emergent duty, not on March 10, 2017, as she had testified. He reiterated that he told Vito "that, as part of my contested guardianship, I had to do these psychological evaluations and observations with my son, my wife[,] [J.R.'s] caregiver. Another day was my son with his mother and two half[-]brothers. Another day was for my psychological

evaluation." He added that "[t]hey were all scheduled for the -- I think it was [December] 28[], 29[] and 30[,]" 2016. Respondent cited the January 2017 order in the guardianship litigation, R-2, as corroboration of his testimony and explained: "[T]hat order was the order that scheduled the psychological evaluations . . . with the members, the parties that [Ms.] Vito had written down on her pad. They're all in Paragraph 5 [of the order]."

Asked directly whether he had ever checked his cell phone records to disprove Vito's testimony that he had never called her on her personal cell phone prior to March 10, 2017, he replied:

> I don't believe so. But also, the issue of the improvements to my chambers, we were never made aware that that was an issue at all in this case until right before Thanksgiving and that is what my testimony is also speaking of. I had a communication with her. Perhaps if we had gotten . . . [P-45, P-46, and P-47] earlier, and we knew what the proffer was, then we would have done a search to see if there was anything to refute whatever was being alleged.

Before the panel, respondent reiterated that he called Vito on March 16, 2017, on her personal cell phone to tell her the guardianship trial was adjourned to Thursday, March 23, his busiest calendar day, and he "brought up the idea of Vito contacting her counterpart in Burlington County."

> My concern was not about my hearing, not about anything that I wanted. I knew this case was going to settle and I knew it was going to settle probably at the next hearing. My concern was for the

> litigants. That's why I called Jill Vito to find out what do we do. This is what happened. I just got notice of this. And during that conversation, I did say something about, if you could speak to your counterpart, maybe they can put it on a day where I didn't have 40 litigants coming in or a day where I didn't have anything scheduled such as a Monday where a domestic violence [sic] another judge could have handled those calendars -- those cases as they came in.
>
> As I'm saying those words, I realize, what am I doing, and I say to her, Jill, I got to worry about my case, my life, not the litigants, and that's when she said -- I recall that she said . . . Judge, as she testified at the committee below, you got to take care of your family. I said, you're right, that's what I'm going to do. I'm not going to be in on the 23rd.

Respondent recalled having a meeting with Vito about security issues and courtroom renovations as reflected in her emails, P-45 and 46.

In addition to the already cited Rules of Canons 1 and 2, the ACJC concluded in Count II of the presentment that respondent violated Canon 2, Rule 2.3(A), when he requested Vito's assistance with the scheduling of his personal guardianship matter in Burlington County. Respondent denies committing any violations of the Code, because, as succinctly stated in his post-hearing submission, his "only concern in speaking with Ms. Vito was for the litigants that were scheduled to appear before him on March 23, 2017, which was his busiest day, not for himself."

Canon 2, Rule 2.3, entitled, "Avoiding Abuse of the Prestige of Judicial Office," states in part (A): "A judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so." Pressler & Verniero, Appendix to Part I at 540. Comment 1 to Rule 2.3 explains:

> It is improper for judges to use or attempt to use their position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with others, such as persons in official positions and members of the public.
>
> [Ibid.]

See also Samay, 166 N.J. at 43 (noting that "awesome power is bestowed upon a judge on the condition that the judge not abuse or misuse it to further a personal objective such as a vendetta or to help a friend").

Having had the opportunity to hear and observe two witnesses that provided vastly divergent testimony, the panel concludes beyond a reasonable doubt that Vito's testimony is more credible and worthy of belief, and therefore, the panel finds respondent violated the cited Canons and Rules in Count II of the presentment.

We reject respondent's assertions that Vito's testimony, beginning with her interview by ACJC investigators, through her testimony before the panel,

was riddled with inconsistencies. To the contrary, her testimony about the salient points of the March 10, 2017 conversation with respondent has been quite consistent and is corroborated by her contemporaneous notes, P-2 in evidence. Vito has consistently testified that she wrote P-2 during a phone conversation with respondent after he called for the first time on her personal cell phone on March 10, 2017. Those notes include details of the guardianship litigation that essentially could only come from respondent and include a shorthand reference to respondent's request that his guardianship trial be held on "consecutive hearing days."

Further, the details of the guardianship litigation provided by respondent and reflected in P-2 sensibly fit Vito's explanation for why respondent called her in the first place. P-2 makes no mention of respondent's request to have Vito call her "counterpart" in Burlington County, but respondent admits uttering those words, albeit at a different time and in a different context. The documents first introduced before the panel, P-45, 46, and 47, serve to corroborate Vito's testimony that the conversation reflected in P-2 took place on March 10, 2017, the Friday before the scheduled start of the guardianship trial.

Respondent's testimony lacked consistency as these proceedings unfolded, appearing at times to be a calculated response to Vito's testimony

and the documentary evidence, as opposed to a truthful account of events. "Consistency of testimony, both internally and between witnesses, is an important indicator of truthful testimony." In re Seaman, 133 N.J. 67, 88 (1993).

During the ACJC interview, respondent categorically denied that he ever asked Vito to call her counterpart in Burlington County regarding the scheduling of his personal guardianship litigation. He acknowledged calling Vito when the case was adjourned to a Thursday, out of concern for the litigants scheduled to appear before him that day, but he never said that he asked her to do anything in particular.

However, before the ACJC and this panel, respondent testified that he asked Vito to call her "counterpart" in Burlington County during a March 16, 2017 phone call, now knowing the guardianship trial had been adjourned to the following Thursday. Respondent reiterated that he did so only out of concern for the litigants scheduled to appear before him in Ocean County.

As for the March 10, 2017 phone call to Vito, respondent has consistently said it was only to remind her that he needed to leave early for his son's medical appointment. However, his leave request had been submitted to his supervising judges and Vito months earlier, and Vito testified before the

panel that it was not normal procedure for a judge to contact her by phone to remind her about a previously submitted request for leave.

Respondent has consistently admitted that P-2 provides accurate details of his guardianship litigation, but denied it reflects his March 10, 2017 conversation with Vito. During direct examination before the ACJC, a committee member asked respondent, "from your point of view [P-2] could not have been the subject of notes on the 10th and would have had to have been the subject of notes on the 16th?" Respondent answered, "I believe that is accurate. Or they came on another day." He reiterated never speaking with Vito about the guardianship trial during the phone call on March 10, 2017.

During his second day of testimony before the ACJC, however, while being cross-examined, respondent said he believed P-2 were notes reflecting a conversation he had with Vito in December 2016, when he was concerned about coverage for emergent duty during recess week when court-ordered evaluations were scheduled in the guardianship litigation. Respondent acknowledged that "[a]fter the testimony the last time we were here from Ms. Vito and I looked at these notes . . . . I said now I know where that came from."[8]

[8] The first day of the ACJC proceedings included Vito's testimony and respondent's direct examination.

Footnote continued on next page.

Before the panel, respondent reiterated that P-2 were Vito's notes from a conversation he had with her in December 2016, not March 2017, and reflected his concern over coverage for emergent duty during recess week. He said he called Vito on her cell phone to advise that the guardianship evaluations were scheduled specifically for December 28, 29 and 30, 2016. Respondent claimed that the names appearing in P-2 were those contained on the January 2017 order in the guardianship litigation, R-2, which also included the dates for the evaluations.

While the January 2017 order mentions respondent's son, wife, ex-wife, and J.K. and J.T.K., it does not mention the name of J.R.'s caregiver, which appears in P-2, and it only states that one evaluation had been scheduled for December 30, 2016.[9] It does not mention December 28 or 29, 2016, as dates for evaluations. In fact, the January 2017 order states that "[a]ll other assessments will be scheduled promptly."

Before the panel, respondent asserted that P-47, the late-produced notes Vito said immediately preceded P-2 in her notebook, reflect a conversation from late November or early December 2016, following his complaints about the security in his courtroom. Respondent testified that prior to March 10,

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[9] It is not clear why the January 2017 order states this evaluation "is scheduled for December 30, [2016]," or whether or not it actually occurred.

2017, he called Vito on her personal cell phone about these concerns, as well as coverage during recess week. However, as noted, he testified that he never reviewed his cell phone records to corroborate his testimony because he was unaware of P-47's existence until shortly before the hearing before the panel.

While presenter undoubtedly shoulders the burden of proof beyond a reasonable doubt in a removal hearing, respondent's decision to testify before the panel subjects him to cross-examination like any other witness, and he was solemnly obligated to testify truthfully. Respondent first claimed during his second day of testimony before the ACJC on November 16, 2018, that P-2, Vito's notes from the March 10, 2017 phone call, actually reflected an earlier conversation he had with her in December 2016 regarding emergent duty coverage. In other words, more than one year before he testified before the panel, respondent was fully aware of the direct contradiction between his testimony and Vito's testimony about <u>when</u> she prepared P-2, and, concomitantly, what those notes reflected. Respondent's implication that the late production of P-47, which we noted corroborates Vito's version of events, somehow lulled him into inactivity regarding a search for his cell phone records from December 2016 is, simply put, disingenuous.

The panel concludes Vito's credible testimony, together with P-2, P-45, P-46, P-47, and the parties' cell phone records, P-3 and P-4, when weighed

against respondent's lack of credible testimony, support a finding beyond a reasonable doubt that respondent attempted to use his position as a judge "to gain personal advantage or deferential treatment" during the March 10, 2017, cell phone call when he asked Vito to contact her counterpart in Burlington County regarding the scheduling of his guardianship matter. This conduct violated Canon 2, Rule 2.3(A). Moreover, the record supports a finding, beyond a reasonable doubt, that respondent's improper conduct was capable of eroding public confidence in the independence, integrity and impartiality of the judiciary by creating the appearance of impropriety, in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1.

III. WHETHER RESPONDENT'S CONDUCT WARRANTS DISCIPLINE AND WHAT QUANTUM OF DISCIPLINE SHOULD BE IMPOSED

Discipline is not to be imposed "for 'mere error[s] in judicial activity or professional activities.' Rather, the disciplinary power is ordinarily reserved for conduct that 'is marked with moral turpitude and thus reveals a shortage in integrity and character.'" Seaman, 133 N.J. at 97 (quoting In re Mattera, 34 N.J. 259, 270 (1961)). If this panel decides that discipline is warranted, it must then recommend what quantum of discipline should be imposed in any particular situation, and whether removal is warranted. Yaccarino, 101 N.J. at 350.

When considering the appropriate quantum of discipline to recommend, the panel "undertake[s] 'a more searching and expansive inquiry . . . carefully scrutiniz[ing] the substantive offenses that constitute the core of respondent's misconduct, the underlying facts, and the surrounding circumstances . . . .'" Seaman, 133 N.J. at 98 (quoting In re Collester, 126 N.J. 468, 472 (1992)). That inquiry necessarily involves consideration of public policy, along with certain aggravating and mitigating factors. Id. at 98-101. Accord In re Williams, 169 N.J. 264, 279 (2001) (imposing a three-month suspension after "[h]aving weighed the aggravating and mitigating factors").

Aggravating factors "serve to define the gravity of misconduct" and include: (1) "the extent to which the misconduct, like dishonesty, or a perversion or corruption of judicial power, or a betrayal of the public trust, demonstrates a lack of integrity and probity"; (2) "whether the misconduct constitutes the impugn exercise of judicial power that evidences lack of independence or impartiality"; (3) "whether the misconduct involves a misuse of judicial authority that indicates unfitness"; (4) "whether the misconduct, such as breaking the law, is unbecoming and inappropriate for one holding the position of a judge"; (5) "whether the misconduct has been repeated"; and (6) "whether the misconduct has been harmful to others." Seaman, 133 N.J. at 98-99. See also Samay, 166 N.J. at 31 (explaining that the misconduct's

"effect upon other persons . . . may be a relevant factor in assessing the gravity of the misconduct and the appropriate discipline").

Mitigating factors "bear[] on the sanction to be imposed" and include: (1) whether "a matter represents the first complaint against a judge"; (2) "the length and good quality of the judge's tenure in office"; (3) an "exemplary personal and professional reputation"; (4) a "sincere commitment to overcoming the fault"; (5) whether the judge expressed "remorse and [made] attempts at apology or reparations to the victim"; (6) whether the judge "will engage in similar misconduct in the future"; (7) "whether the inappropriate behavior is susceptible to modification"; and (8) an "acknowledg[ment of] wrongdoing or expressed contrition" from the judge. Id. at 100-01.

"Public confidence in the judiciary 'is shaken when a judge commits an offense [or conduct] that subjects him or her to removal; the removal proceedings are designed to restore faith.'" Samay, 166 N.J. at 42 (quoting In re Coruzzi, 95 N.J. 557, 572 (1984)). Imposition of the removal sanction "requires misconduct flagrant and severe[,]" Williams, 169 N.J. at 276, and "[j]udicial misconduct . . . involving dishonesty of any kind will ordinarily require removal as the appropriate discipline." In re Alvino, 100 N.J. 92, 97 (1985). In other words, "'removal is not punishment for a crime,' but rather serves to vindicate the integrity of the judiciary." Yaccarino, 101 N.J. at 387

(quoting Coruzzi, 95 N.J. at 577). "The focus of a removal proceeding is determined solely by the public interest, and by the Court's 'steadfast commitment to maintaining an independent and incorruptible judiciary.'" Samay, 166 N.J. at 42 (quoting In re Imbriani, 139 N.J. 262, 266 (1995)) (citation omitted).

Respondent contends that his removal is not warranted in this case because numerous mitigating factors are present and current precedent does not support removal because no judge has been removed when the ACJC recommended a lesser sanction. In further support of his position, respondent asserts that "none of his missteps were intentional."

In considering the aggravating and mitigating factors, the panel recognizes that this is the first disciplinary action brought against respondent. He was not subject to discipline as an attorney, nor was he cited for any violations of the Code after he was reinstated and transferred to the Civil Division in the Burlington Vicinage in 2018. The panel also considers the evidence introduced by respondent over presenter's objection — official court statistics — which supports a finding of a diligent work ethic in helping to reduce significantly backlogs in the case types to which he was assigned. The panel additionally notes that respondent's palpable concern and care for his son is laudable.

However, respondent did not present any mitigating evidence regarding his personal or professional reputation. The four violations of the Code occurred within the first fifteen months of respondent assuming office. While respondent implies that the "newness" of the office and differences between his position as an ALJ and a Superior Court judge contributed to his transgressions, he had received specific Family Part training and DV training before the violations in Counts I, III and IV occurred, and he also received the multi-day instruction given to all new judge before the violations in Count II occurred. The panel further assumes that as a practicing lawyer and ALJ, respondent surely must have appreciated the necessity to avoid appearances of impropriety caused by conflicts of interest and prohibited ex parte conversations. The multiplicity of different violations of the Code calls into question respondent's very understanding of the significant restrictions placed upon a judge, and the reasons for those restrictions, i.e., the "bedrock principle . . . that '[a]n independent and honorable judiciary is indispensable to justice in our society.'" DeNike, 196 N.J. at 514 (quoting Canon 1 of the Code). The aggravating factors listed by the Court in Seaman, 133 N.J. at 98-99, focus upon the gravity of the misconduct at issue, and in the panel's opinion significantly outweigh the mitigating factors in this case.

Those cases in which the Court has removed a judge are distinguishable from those in which a lesser sanction was imposed. Removal has generally been imposed if a judge committed one or more willful violations of the Code, coupled with an element of dishonesty or lack of integrity. While respondent's multiple instances of misconduct do not evidence dishonesty in and of themselves, the record supports the conclusion that respondent's testimony regarding Counts I and II of the presentment lacked candor, fabricated after-the-fact explanations for events, and displayed a lack of integrity that is unworthy of judicial office.

In Samay, the Court removed the respondent municipal judge after he, among other things, failed to recuse himself from matters in which he knew the parties; used his judicial power for personal gain; and minimized his misconduct during the removal proceedings. 166 N.J. at 31-43. In deciding what level of discipline to impose, the Court recognized that any single incident might not warrant removal, but together represented a "larger pattern" that warranted removal based upon "unfitness for judicial office." Id. at 41-45. Also, the Court considered in Samay that the respondent's "less than truthful" testimony before the ACJC and hearing panel "demonstrated a lack of respect for the law" and was "further evidence" to support his removal from the bench. Id. at 43-45.

In Yaccarino, 101 N.J. at 349, 354-86, the Court removed the respondent following a "pattern of misconduct" which included threatening and demeaning defendants, questioning witnesses in an intimidating way, using crude, offensive and harsh language on the bench, holding ex parte meetings with litigants, and using his judicial position in an attempt to influence other public officials.

Respondent's attempt to distinguish Yaccarino, and other removal cases, because the judges in those cases "showed no remorse" following "a pattern of repetitive and intentional misconduct" is unconvincing. Respondent has neither acknowledged nor shown remorse for his Count II misconduct. Indeed, he has continuously shaded his testimony in response to evidence revealed throughout the proceedings. Any remorse shown in connection with Count I was accompanied by a decidedly incredible explanation for why he posed such unfeeling and objectionable questions to the plaintiff in the first place, and a false justification for jokingly discussing the case with his law clerk and staff afterwards. See Seaman, 133 N.J. at 101 (noting that while the judge should not be penalized for defending himself, his actual defense, which cast blame on the victim and suggested other witnesses were lying, did not demonstrate contrition). As to Count IV, respondent believes his transgression was technical, and he has since come to understand that his ex parte conversation

with C.P. should have been curtailed. Yet, he has offered no explanation or remorse for the threatening and belittling way he addressed C.P. And, with respect to Count III, only Judge Ford's intervention eliminated the harm respondent caused to the public's perception of impartial justice when he drastically reduced the purge amount for a litigant he knew based solely on that litigant's uncorroborated testimony and without any apparent consideration of the history of the litigation.

Respondent cites a number of cases in which the Court concluded removal was not warranted. In In re Albano, the Court censured a judge who demonstrated "intemperate conduct during judicial proceedings"; "repeated misapplication of law"; "bias against attorneys" from a legal services agency; "criticism of tenant-oriented laws"; and engaged in an ex parte communication. 75 N.J. 509, 511 (1978). However, the Court found none of the violations "reflect[ed] in any way on respondent's integrity, his inherent legal abilities or his hardworking attention to his duties." Id. at 515. As noted, here, however, the panel concludes respondent's testimony calls his integrity and fitness as a judge into question.

In In re Brenner, the Court reprimanded a judge who hugged and kissed a subordinate employee in a single incident of misconduct, concluding the judge had "embarrassed himself and his judicial office" in violation of Canon 1

and Canon 2. 147 N.J. 314, 319-20 (1997). This case involves multiple instances of misconduct that violated numerous Canons of the Code, coupled with respondent's dishonest testimony.

Lastly, the conduct of the judges involved in Seaman, 133 N.J. at 76-78, 101-02, and In re Subryan, 187 N.J. 139, 143-44, 156 (2006), while reprehensible, did not take place on the bench, in open court, as three of the four incidents of misconduct did in this case. Additionally, the Court found in both of those cases significant mitigating evidence. Id. at 154-55; Seaman, 133 N.J. at 101.

Although respondent contends that it is inappropriate and a departure from prior disciplinary actions to suggest removal is appropriate after the ACJC recommended a lesser-sanction, it is clear that neither the Act nor the relevant court rules require that removal proceedings be initiated by the Court only after the ACJC recommends a judge's removal. See Pressler & Verniero, Comment 1 to R. 2:15 ("[T]he Advisory Committee's report and recommendations are reviewable by the Supreme Court, whose prerogative it is to issue a complaint against a judge seeking his removal or a lesser penalty."). See also In re Mathesius, 188 N.J. 496, 518 (2006) (explaining that the Court conducts a "de novo" review of judicial discipline matters presented

to it by the ACJC). Ultimately it is for the Court, not this panel, to address respondent's contention in this regard.

The panel's function is to "not only receive evidence but also to make findings of fact and recommendations as to appropriate discipline." Yaccarino, 101 N.J. at 350. The evidence supports a finding, beyond a reasonable doubt, that respondent violated the Canons and Rules cited in all four counts of the presentment as incorporated into paragraph three of the complaint for removal. Because respondent committed multiple acts of severe misconduct and offered less than truthful testimony before both the ACJC and the panel in an effort to deny or minimize his actions, thereby demonstrating his unfitness for judicial office, the record coupled with the relevant case law supports imposition of the most severe sanction: removal from judicial office.