SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2017-225

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

The Advisory Committee on Judicial Conduct ("Committee") hereby presents to the Supreme Court its Findings and Recommendation in this matter in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's findings and the evidence of record demonstrate, clearly and convincingly, that the charges set forth in the Formal Complaint against John F. Russo, Jr., Judge of the Superior Court ("Respondent"), have been proven by clear and convincing evidence.

Accordingly, the Committee recommends that Respondent be suspended from the performance of his judicial duties, without pay, for a period of three months and, upon his return to the bench, Respondent be required to attend additional training on appropriate courtroom demeanor.

I. PROCEDURAL HISTORY

Ocean County Assignment Judge Marlene Lynch Ford referred this matter to the Committee on April 12, 2017. Judge Ford's referral concerned various issues related to Respondent's judicial comportment while interacting with court staff and the associated ethical implications of such conduct, as well as his possible violations of the Code of Judicial Conduct vis-à-vis several court matters over which he presided.

The Committee investigated these concerns and, as part of that investigation, Committee staff interviewed twenty-four individuals, including Respondent.[1] See P-24 thru P-26. In addition, the Committee collected and reviewed documentation and audio recordings relevant to these allegations. See P-1 thru P-23; P-27 thru P-30.

On March 26, 2018, the Committee issued a four count Formal Complaint against Respondent charging him with conduct in contravention of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.3(A), and Canon 3, Rule 3.5, Rule 3.8 and Rule 3.17(B) of the Code of Judicial Conduct, and New Jersey Court Rule 1:12-1(g).[2]

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[1] The record before the Committee does not contain the transcripts of every witness interviewed during the Committee's investigation, though Respondent was provided with copies of each in discovery.

[2] The Supreme Court adopted the revised Code of Judicial Conduct to which we cite and refer in this Presentment on August 2, 2016, with an effective date of September 1, 2016. Though

These charges relate to Respondent's conduct in four distinct matters - his questioning of an alleged domestic violence victim during a final restraining order hearing (Count I), his communication with a judiciary employee about a personal guardianship matter for which he sought that employee's assistance (Count II), his conduct in creating the appearance of a conflict of interest while presiding over a Family Part matter (Count III) and his involvement in an *ex parte* conversation with an unrepresented litigant (Count IV). The Complaint was amended on August 21, 2018 to correct a factual discrepancy concerning the dates referenced in Count II of the Complaint.

Respondent, through counsel, filed an Answer to the Complaint on May 15, 2018 in which he admitted certain factual allegations, with some clarification, denied others and denied violating the cited canons of the Code of Judicial Conduct. Respondent, through counsel, filed an Answer to the Amended Complaint on September 14, 2018 in which he admitted calling a court employee on her personal cellular telephone on a date certain, as alleged in Count II of the Complaint.

Respondent's conduct as addressed in Counts I, III and IV predate the adoption of the revised Code of Judicial Conduct, the changes made to the applicable canons -- Canons 1, 2 and 3 -- were not substantive in respect of the conduct at issue and, as such, do not affect the charges in the Complaint. Respondent has not contested the applicability of the revised Code of Judicial Conduct to this matter.

The Committee convened a Formal Hearing on October 17, 2018, which it continued to November 16, 2018. Respondent appeared, with counsel, and offered testimony in defense of the asserted disciplinary charges. The Presenter called one witness in support of Count II of the Formal Complaint and relied on documentary evidence and audio recordings with regard to the remaining charges. The Presenter and Respondent offered exhibits, all of which were admitted into evidence. See Presenter's Exhibits P-1 thru P-30; see also Respondent's Exhibits R-1 thru R-35; R-39 thru R-41.[3]

On October 17, 2018, Presenter and Respondent filed jointly with the Committee a set of Stipulations in which Respondent conceded to creating the appearance of a conflict as alleged in Count III of the Formal Complaint and to engaging in an impermissible *ex parte* conversation as alleged in Count IV of the Complaint. See Stipulations at ¶¶ 3-13; see also 1T156-1 to 1T158-7; 1T177-16 to 1T178-14;[4] see also Rb35-38.[5]

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[3] Respondent withdrew exhibit R-36 from evidence. 1T182-18-19. The Committee excluded from evidence Respondent's exhibits R-37 and R-38 as irrelevant. 1T182-20 to 1T186-22.

[4] "1T" refers to the Transcript of Formal Hearing, In re Russo, ACJC 2017-225, dated October 17, 2018.

[5] Consistent with Rule 2:6-8, references to the Presenter's and Respondent's post-hearing briefs are designated as "Pb" and "Rb," respectively. The number following this designation signifies the page at which the information is located.

Presenter and Respondent, with leave of the Committee, filed post-hearing briefs on December 11, 2018, which the Committee considered. After carefully reviewing the evidence, the Committee makes the following findings, supported by clear and convincing evidence, which form the basis for its recommendation.

II. FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1997. See Amended Formal Complaint and Answer at ¶1. At all times relevant to this matter, Respondent held the position of judge of the Superior Court of New Jersey, assigned to the Family Division in the Ocean vicinage, a position to which he was appointed in December 2015 and one he held, without interruption, until May 18, 2017 when he was placed on paid administrative leave. See Stipulations at ¶2. Respondent was reinstated to active judicial status effective December 4, 2018.

Given that the charges against Respondent relate to four discrete incidents, we will address our findings as to each under its corresponding count in the Formal Complaint.

Count I

The conduct at issue in Count I relates to Respondent's interrogation, on the record on May 16, 2016, of an unrepresented plaintiff in the matter of M.R. v. D.H. who sought

a final restraining order ("FRO") against the father/defendant of her five-year-old daughter based upon alleged acts of domestic violence that occurred on March 24, 2016.[6] P-1. Respondent denies that his questioning of the plaintiff was inappropriate or discourteous in violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 3, Rule 3.5 of the Code of Judicial Conduct, as was charged in the Formal Complaint.

We find Respondent's questioning of the plaintiff's conduct in this circumstance was not only discourteous and inappropriate, but also egregious given the potential for those questions to re-victimize the plaintiff, who sought redress from the court under palpably difficult circumstances. This conduct constitutes a significant departure from the courtroom demeanor expected of jurists and impugns Respondent's integrity and most notably that of the Judiciary.

The plaintiff in M.R. v. D.H. secured a temporary restraining order ("TRO") against the defendant on March 28, 2016 following allegations that on March 24, 2016, the defendant threatened the plaintiff's life, sexually assaulted her and made inappropriate comments to their minor child for whom he had not

[6] Consistent with the proscriptions contained in Rule 1:38-3(d)(9) and (10), which prohibit the public disclosure of court records relating to domestic violence matters, the Committee used the parties' initials when referencing this domestic violence matter in the Formal Complaint and during the hearing. We continue that practice in our Presentment to the Court.

paid the requisite child support. R-19. On April 18, 2016, the plaintiff sought to amend the TRO to include allegations that the defendant made verbal threats to the plaintiff on April 2 and April 8, 2016, respectively. R-20.

The subsequent FRO hearing spanned three non-consecutive dates - May 16, 2016, June 10, 2016 and June 16, 2016 - and included testimony from the plaintiff, defendant and two witnesses for the defendant. P1; R-21; R-22; R-23; P-27; P-28; R-40 thru R-41. During the May 16, 2016 hearing at issue, Respondent, believing plaintiff was upset by defense counsel's questions, examined the plaintiff directly and at length about her efforts, if any, to thwart the alleged sexual assault, beginning with a series of hypothetical questions. The ensuing colloquy, as recounted in the record, was as follows:

> 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.

P-1 at T73-2 to T75-2.

Respondent's questioning of the plaintiff in this manner, to include hypotheticals, was wholly unwarranted, discourteous and inappropriate given the irrelevance of such information to a determination of whether a FRO should issue under the Prevention of Domestic Violence Act ("PDVA"). N.J.S.A. §2C:25-17, et al. Indeed, as will be discussed in greater detail in our analysis of this ethical breach, Respondent's emphasis on the plaintiff's attempts to prevent the alleged sexual assault and the information such questions were designed to elicit serve no legitimate or cognizable purpose within the construct of the PDVA, and had the clear potential to re-victimize the plaintiff.

We note that Respondent, on assuming the bench in January 2016, received training on the PDVA and its elements. To wit, the Judiciary's records reflect that Respondent received such training on January 5, 2016 and again on April 12, 2016, five-months prior to the M.R. v. D.H. matter. His completion of those courses is also reflected in his Continuing Legal Education

credit history, which the Judiciary maintains for each member of the bench.

For his part, Respondent conceded during the hearing to receiving such training early in his judicial career. 1T127-22 to 1T129-7; 2T48-2-14.[7] Respondent, in fact, referenced the seminal case of Silver v. Silver, 387 N.J. Super 112 (App. Div. 2006), and the two-pronged analysis outlined therein when denying plaintiff's request for a FRO on June 16, 2016. P-27 at T27-12 to T30-3.

As to sexual assault cases specifically under the PDVA, Respondent testified that he understood the standard of proof required under the Sexual Assault statute (N.J.S.A. 2C:14-2), particularly as it relates to "force or coercion." 1T144-7-9. Nonetheless, Respondent not only questioned the plaintiff inappropriately about her attempts to prevent the alleged sexual assault, but also relied on her answers to those faulty questions when finding her incredible.[8] P-27 at T26-17to T27-6.

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[7] "2T" refers to the Transcript of Formal Hearing, In re Russo, ACJC 2017-225, dated November 16, 2018.

[8] Respondent opined (P-27 at T26-19 to T27-6):

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

Nowhere during his colloquy with the plaintiff, however, did Respondent ask about the *defendant's* conduct during the alleged assault. P-1 at T73-2 to T75-3.

Respondent maintains that his purpose in questioning the plaintiff in this manner about her efforts to prevent the alleged assault was to elicit testimony from her sufficient to demonstrate the element of force or coercion used during the assault, which he understood to be an essential element to prove the predicate act of sexual assault under the PDVA. 1T130-4 to 1T135-20; see also Rb12. Despite relying on the plaintiff's answers to those very questions when finding her incredible, Respondent denies any intent when asking those questions to suggest that a victim of a sexual assault should or could attempt to fend off an attacker using those methods, claiming instead that his questions were designed merely to aid the plaintiff in recounting a traumatic event. 1T135-23 to 1T136-24; see also Rb12.

We find Respondent's testimony in this regard undermined by his comments to his court staff at the conclusion of the FRO

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from sexually assaulting her. Again, I did not get an answer that I could understand.

It's apparent to me that the plaintiff in this case regarding these allegations is not credible, fabricated them.

hearing, which may accurately be characterized as infantile and grossly inappropriate. The transcript and audio recording of this colloquy, the latter of which evinced Respondent's flippant tone of voice when engaging in the noted exchange, informed our review of these circumstances. P-29; P-30

On June 16, 2016, Respondent issued his ruling to the parties, on the record, in which he denied plaintiff's request for a FRO. P-27. Once the parties exited the courtroom, Respondent may be heard on the back-up CourtSmart recording engaging in the following colloquy with his court staff:

RESPONDENT: What did you think of that? Did you hear the sex stuff?

. . .

UNIDENTIFIED SPEAKER: Please don't make me re-live.

RESPONDENT: You think it's all fun and games out here.

UNIDENTIFIED SPEAKER: Please don't make me re-live everything I heard.

. . .

UNIDENTIFIED SPEAKER: 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.

. . .

RESPONDENT: But that's - were you here for that?

UNIDENTIFIED SPEAKER: What?

RESPONDENT: Originally with the -

UNIDENTIFIED SPEAKER: I wasn't here for the second one. The first one I was here, yeah.

. . .

RESPONDENT: On this whole thing, he's like, well, ma'am - are we off the record?

. . .

UNIDENTIFIED SPEAKER: Yeah, it's off.

RESPONDENT: Well, then, as 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.

P-29; P-30 at T3-21 to T6-3.

Following these comments, Respondent and his court staff discussed other matters, including a staff member's neat penmanship, before Respondent returned the conversation to the M.R. V. D.H. matter with the following remarks:

RESPONDENT: 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.

UNIDENTIFIED SPEAKER: Without laughing?

RESPONDENT: Yup.

. . .

RESPONDENT:	Oh, my God, that was - was that great?
UNIDENTIFIED SPEAKER:	Yup.
RESPONDENT:	I was sure she wasn't coming back.
UNIDENTIFIED SPEAKER:	Oh, no. She thought she had him.
RESPONDENT:	Yes.

P-29; P-30 at T10-10-25.

This commentary bespeaks an absolute disregard for the solemnity that must attend every court proceeding, particularly those involving such serious concerns as domestic violence, and the decorum expected of each member of the Judiciary, beginning with its jurists who set the tone both in the courtroom and in chambers.

We reject as incredible Respondent's attempts to justify his remarks concerning the "sex stuff" and "fun and games" as his effort to instruct his law clerk about the complexities of adjudicating domestic violence matters. 2T80-11 to 2T81-3. Similarly, we give no weight to Respondent's testimony that in each instance his remarks, which produced laughter from his court staff, were intended as a serious commentary on those court proceedings and his professional comportment in such matters. 2T81-4 to 2T82-5; P-29. The tone and reaction of his court staff evinced in the audio recording belies this

explanation and any sense of seriousness Respondent claims to have intended to convey.

Though deflecting much of the responsibility for his conduct during this exchange on his inexperience as a Superior Court judge, Respondent rightly expressed embarrassment at his decision to engage with his court staff in this fashion and credited his subsequent training at New Judge Orientation with providing him the tools necessary to manage more appropriately his court staff. 2T85-2T86-6.

We find Respondent's suggestion that he was wholly ignorant of how to engage in a professional manner with court staff prior to his attendance at New Judge Orientation to strain credulity. Respondent, as a practicing lawyer for roughly two decades and an Administrative Law Judge for six years, was well equipped to understand the necessary professional parameters that must exist whenever he engages with other professionals, including his court staff. His professed ignorance in this regard, whether real or contrived, neither justifies nor excuses his actions and serves to aggravate his misconduct in respect of Count I.

Respondent, though denying any impropriety in this instance, maintains that he would not again ask an alleged victim of sexual assault those same questions. 1T141-6-13. We remain extremely concerned, however, about Respondent's ability to conduct himself appropriately when presiding over domestic

violence matters, particularly those involving allegations of a sexual assault, given his continued and acknowledged failure to appreciate, even now, "how far" to question a plaintiff in a FRO hearing about the circumstances of an alleged assault. 1T141-10-24.

Count II

The circumstances at issue in Count II relate to Respondent's alleged conduct in calling the Ocean County Family Division manager, Jill Vito,[9] on March 10, 2017 about his contested guardianship matter pending in Burlington County and requesting she communicate with her "counterpart" in Burlington about rescheduling the hearing to a date more convenient for Respondent and his family. Respondent, though admitting he requested Ms. Vito contact her counterpart in Burlington about the scheduling of his guardianship matter, denies having done so for personal reasons or otherwise abusing the judicial office in violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule

[9] In May 2016, Ms. Vito, a seventeen-year employee of the Judiciary assigned to the Ocean vicinage, was named the new Family Division manager in Ocean. 1T32-5-7. She began her career with the Judiciary as a law clerk to Judge Lynch Ford, after which she became a team leader in the Civil Division followed by an Assistant Civil Division manager and finally the Civil Division manager, before assuming the role of the Family Division manager. 1T12-1-14; 1T31-3 to 1T32-4. Part of Ms. Vito's duties as the Family Division manager include arranging coverage for any absent Ocean County Family Part judge and overseeing generally the scheduling of Family Part matters. 1T12-23 to 1T13-15; 1T26-20 to 1T27-15.

2.3(a) of the Code of Judicial Conduct, as was charged in the Formal Complaint.

Respondent maintains that he requested Ms. Vito intercede in the scheduling of his guardianship matter to ensure that his court calendar in Ocean County would be heard without undue disruption, though he claims to have retracted that request before concluding his conversation with Ms. Vito, a detail not substantiated by Ms. Vito. 1T17-24 to 1T18-17; 1T101-12 to 1T104-4; 1T105-25 to 1T107-21. For her part, Ms. Vito did not place the requested telephone call to her "counterpart" in the Burlington vicinage and instead reported the incident to Judge Lynch-Ford.[10] 1T17-24 to 1T18-17.

We find Respondent's testimony in this regard inadequate to overcome the clear and convincing evidence of Respondent's abuse of the judicial office in admittedly placing a telephone call to Ms. Vito during which he requested she contact her "counterpart" in the Burlington vicinage to request a change in the scheduling of his guardianship hearing to accommodate his personal schedule. Such conduct constitutes an abuse of the judicial

[10] We reject Respondent's suggestion that Ms. Vito's failure to report this issue to the Committee evinces her lack of veracity about these events. See Rb29. Ms. Vito testified that she promptly reported this incident to Judge Lynch Ford. 1T41-18 to 1T42-10. Having advised her superior, she was under no additional obligation to report it directly to the Committee.

office in violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.3(a) of the Code of Judicial Conduct.

The facts relevant to this issue are as follows. In August 2016, Respondent commenced a guardianship matter in the Ocean vicinage concerning his adult son, who has disabilities, in which he, in conjunction with his wife (Respondent's son's stepmother), sought to be declared his son's legal guardian. 1T69-16 to 1T70-12. Consistent with Judiciary policy, Respondent's guardianship matter was transferred to the Burlington vicinage due to Respondent's position as a Superior Court judge in Ocean County at the time. 1T70-14-19.

The guardianship matter was scheduled for trial on January 9, 2017, but was subsequently rescheduled to begin on Monday, March 13, 2017. 1T73-3-18; R-1; R-2. Due to the unexpected illness of the trial judge, however, the Burlington vicinage postponed the hearing on Sunday, March 12, 2017, and rescheduled it, on short notice, for Wednesday, March 15, 2017. 1T83-21 to 1T84-25; R-8; R-9; R-10; R-11. When the matter did not resolve on March 15, 2017, as expected, the court scheduled a second hearing date for Thursday, March 23, 2017. 1T97-18 to 1T98-23; 1T101-7-11; R-18.

Prior to each scheduled hearing date, Respondent submitted the requisite leave request to his superiors, on which he copied Ms. Vito, to assure there would be sufficient staff coverage for

his court calendar, including the two instances in which the matter was scheduled on short notice -- March 15, 2017 and March 23, 2017 R-3; R-13; R-14; R-17. Respondent was well acquainted with this procedure and the need to copy Ms. Vito on his leave requests, having repeatedly utilized the same process throughout his tenure in the Ocean vicinage. R-3 thru R-5; R-13; R-14 1T43-14 to 1T44-14; 1T73-15 to 1T75-22. Indeed, according to Respondent, one of his reasons for calling Ms. Vito on March 10, 2017 was to make certain she had arranged coverage for his afternoon calendar that day as he was leaving early (i.e. 12:30 p.m.). R-4; 1T80-16 to 1T81-15; see also R-4.

By all accounts, Ms. Vito and Respondent spoke by telephone on three separate occasions - March 10, 2017 at 8:52 a.m., March 13, 2017 at 4:23 a.m. and March 16, 2017 at 1:49 p.m. - about the scheduling of his guardianship matter and the need for coverage of his court calendar. 1T14-5-20; 1T15-2 to 1T16-25; 1T17-18 to 1T22-7; 1T101-12-24; P-3; R-6. Indeed, the record before the Committee includes Ms. Vito's and Respondent's telephone records from mid-February 2017 thru mid-March 2017, each of which reflect the subject telephone calls in March 2017. P-3; P-4; R-6; R-7. The first conversation lasted ten minutes, the second four minutes and the third three minutes. 1T22-17-23; 1T23-5-14; 1T101-12-24; P-3; R-6.

Though Ms. Vito's and Respondent's testimony differed as to the exact date on which the subject conversation occurred, i.e. March 10, 2017 or March 16, 2017, each agreed as to the essential fact at issue; namely, that Respondent asked Ms. Vito to call her "counterpart" in the Burlington vicinage to inquire if his guardianship hearing could be rescheduled. 1T15-7 to 1T18-17; 1T101-12 to 1T104-4. Ms. Vito's testimony in this regard is consistent with that which she provided when interviewed by staff to the Committee on May 24, 2017. P-24 at T41-14 to T44-22. Conversely, Respondent, when interviewed on September 28, 2017 denied asking Ms. Vito to call her "counterpart" in Burlington about the scheduling of his guardianship matter. P-25 at T165-17 to T169-24.

According to Ms. Vito, Respondent went on at some length during their discussion on March 10, 2017 about the complexity of his guardianship matter and the strain it placed on him and his wife. 1T15-17 to 1T16-16. Ms. Vito's undated, handwritten notes of her conversation with Respondent, in fact, contain personal details about his guardianship matter (e.g. "contested guardianship;" "BUR;" "consecutive hearing days;" "crazy ex-wife," "two sons, Brooklyn, California," "Justine," "psychiatrist," "court appointed attorney," "guardian-ad-litem," "psychologist" and even identified the Burlington judge assigned to hear the matter). P-2.

Ms. Vito understood Respondent's purpose in discussing those personal details with her as the basis for his request that she intercede with the Burlington vicinage to obtain consecutive hearing dates for his guardianship trial, which as of March 10, 2017 was scheduled for only one hearing date - March 13, 2017. 1T17-18 to 1T19-8; R-2. Though Respondent expected to appear in Burlington on March 13, 2017, Ms. Vito understood that he was seeking consecutive hearing dates *thereafter* to accommodate his personal schedule, and understood Respondent to be suggesting that she refer only to his court calendar when requesting an accommodation from her counterpart in Burlington. 1T24-3-13; 1T49-21-22.

Ms. Vito's notes about this conversation correspond with the status of Respondent's guardianship matter as of Friday, March 10, 2017, which, at that time, was poised to go to trial on Monday, March 13, 2017 before Burlington County Superior Court Judge Michael Hogan. Respondent had no indication as of March 10, 2017 that the matter would be adjourned on the eve of trial, and no indication it would settle until late in the day on March 13, 2017, which would effectively moot any need for Respondent to seek Ms. Vito's assistance in obtaining consecutive hearing dates thereafter. R-5; 1T50-10-21; 1T70-20 to 1T71-5; 1T83-11-14; 1T91-1-9; 1T97-22 to 1T98-11. Notably, when the matter ultimately settled on March 23, 2017, all of the individuals

mentioned in Ms. Vito's notes, with the exception of the psychologist and Respondent's son's caregiver (Justine), were present, including Respondent's ex-wife's two sons, one of whom appeared by telephone. R-18.

We find these collective circumstances lend significant weight to Ms. Vito's testimony concerning the contemporaneous nature of her handwritten notes and the substance of her telephone conversation with Respondent on March 10, 2017. Given the length of that discussion, the proximity of Respondent's guardianship trial to that discussion, the lack of any reference to settlement discussions prior to March 13, 2017 that would indicate a trial was unnecessary, and Ms. Vito's consistent testimony about these matters, we find her recounting of these events more persuasive than Respondent's.

For his part, Respondent does not deny discussing with Ms. Vito the personal details of his guardianship matter, but maintains he did not do so during the March 10, 2017 telephone call. 1T113-5 to 1T116-25. Respondent testified on direct examination that he may have discussed those details with Ms. Vito during their March 13, 2017 or March 16, 2017 telephone discussions, each of which were considerably shorter than the March 10, 2017 discussion. Ibid; P-3; P-4; R-6; R-7.

During cross-examination, however, Respondent stated that he "believe[d]" Ms. Vito's notes concerned a December 2016

telephone discussion he had with her concerning several appointments he had scheduled in respect of his guardianship matter that would conflict with two of the days on which he was scheduled for emergent duty. 2T20-25 to 2T22-24. Ms. Vito, though recalling a similar telephone conversation with Respondent in December 2016, did not attribute any portion of her handwritten notes to that conversation. 1T14-5-20. Absent Respondent's testimony, the record is bereft of any objective evidence to substantiate Respondent's alternating theories that Ms. Vito's notes were either the product of a later telephone discussion in March 2017 or an earlier telephone discussion in December 2016.

Whether occurring on March 10, 2017 or March 16, 2017, Respondent's request to Ms. Vito that she intercede in his personal guardianship matter to seek an adjustment of the hearing date constitutes an abuse of the judicial office. Were we to accept Respondent's explanation that he did so out of concern for his Ocean County docket that fact neither excuses nor mitigates his misconduct in utilizing his unfettered access to court personnel to circumvent the procedures available to the average litigant seeking an adjournment. To the extent Respondent had concerns about scheduling, he should have directed those concerns to his *lawyer* in the guardianship matter

who could have sought an alternate hearing date from the Burlington vicinage.

Count III

The conduct at issue in Count III is the subject of a stipulation and relates to Respondent's acknowledged conduct in creating the appearance of a conflict of interest while presiding over the matter of Celestina Licia Carbonetto v. Alfio Carbonetto, FM-15-74-12-C for which Respondent's immediate recusal was required. 1T168-16 to 1T169-5. Respondent concedes, and the evidence demonstrates, clearly and convincingly, that his conduct in this regard and his attendant failure to recuse from the Carbonetto matter violated Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 3, Rule 3.17 (B) of the Code of Judicial Conduct, and New Jersey Court Rule 1:12-1(g). See Rb31-36.

As stipulated, defendant, Alfio Carbonetto, appeared before Respondent on March 9, 2016 following his arrest on a bench warrant issued on January 5, 2016 by the Honorable Steven F. Nemeth, J.S.C. for his failure to pay $10,000.00 in support arrears. See Stipulations at ¶¶3-5; see also R-25. Respondent knew Mr. Carbonetto and his ex-wife from high school and more recently had frequented Mr. Carbonetto's pizza parlor in Toms River on occasion. Id. at ¶5; 1T152-23-25. Respondent did not recognize the Carbonettos by their given names having known Mr.

Carbonetto in high school only as "Al" and Mrs. Carbonetto as Tina Bizzucci. 1T152-1 to 1T153-3.

Respondent recognized Mr. Carbonetto, however, at the outset of the proceeding, calling him "Al," and acknowledged having known "Al Carbonetto and his wife [Tina Bizzucci] since high school." P-17 at T3-20 to T4-3. Respondent stated that he did not "believe [he] ha[d] a conflict," though he "reserve[d] the right to recuse . . . because of the nature of [his] relationship" with Mrs. Carbonetto. Id. at T4-5-11.

Following this exchange, Respondent took testimony from Mr. Carbonetto concerning his ability to pay the arrears and his possible status as an indigent. See Stipulations at ¶6; see also P-17 at T3-14 to T4-11. When, in response to an inquiry concerning Mr. Carbonetto's last employment, he advised Respondent that he had been evicted from his business location, Respondent referred to the business as "Al's Pizza" and opined that the new owner's pizza "is not as good." See Stipulations at ¶6; see also P-17 at T7-11 to T8-17.

Respondent ultimately found that Mr. Carbonetto had the ability to pay a portion of the purge amount, reduced that amount from $10,000 to $300.00, vacated the bench warrant and released Mr. Carbonetto based on his promise to pay $300.00 in support arrears by March 14, 2016. See Stipulations at ¶¶7 and 9; see also P-19.

On March 16, 2016, at Judge Lynch Ford's direction, Respondent entered an order vacating his March 9, 2016 order on the basis that "the matter should have been assigned to another Judge for enforcement," and relisted the matter for an enforcement hearing before a different judge. See Stipulations at ¶10; see also P-20.

Count IV

The conduct at issue in Count IV is, likewise, the subject of a stipulation and relates to Respondent's admitted involvement in an *ex parte* conversation with the defendant/mother in the matter of Thomas Bertolini v. Caitlyn Peters, FD-000302-16. Respondent concedes, and the evidence demonstrates, clearly and convincingly, that this conduct violated Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 3, Rule 3.8 of the Code of Judicial Conduct. See Rb36-38.

The Bertolini matter concerned a complaint to establish paternity of a child residing outside of New Jersey. As stipulated, Respondent entered an order in the Bertolini matter on May 26, 2016 requiring the Ocean County Board of Social Services to facilitate paternity testing for the defendant/mother and her child, and for the defendant/mother to have completed that paternity testing by July 6, 2016 when Respondent was scheduled to hear the matter. See Stipulations at ¶11.

On July 6, 2016, Respondent considered the plaintiff/father's request for sanctions against the defendant/mother for her failure to comply with Respondent's order for paternity testing. Id. at ¶12. The plaintiff/father appeared before Respondent, but the defendant/mother did not, despite proper service. Id. at ¶12; R-34. Respondent, after reviewing the court's file and computer system, noted that the defendant/mother had an appointment on July 5, 2016 for paternity testing and directed his clerk to telephone the defendant/mother to determine if she had completed that testing. See Stipulations at ¶12; P-23 at T15-11 to T17-22. The defendant/mother did not answer her telephone and, at Respondent's direction, his court clerk left a voicemail requesting she call the court. Ibid.; P-23 at T15-11 to T17-22. Respondent carried the matter until July 21, 2016 to ascertain if the defendant/mother had completed the requisite paternity testing. P-23 at T19-23 to T20-23.

The defendant/mother returned Respondent's telephone call shortly after the plaintiff/father left the courtroom on July 6, 2016. See Stipulations at ¶13. Respondent accepted the call and engaged in a nine-minute discussion with her, on the record, in the absence of the plaintiff/father. Ibid. Their discussion included the following topics:

- Whether the defendant/mother completed the court ordered paternity testing;

- Respondent's discretion to assess financial penalties against the defendant/mother for her failure to comply with his orders;

- Defendant/mother's desire to retain counsel, which Respondent initially rejected;

- Defendant/mother's allegations of abuse against the plaintiff/father;

- Defendant/mother's and her child's residence outside of New Jersey;

- Location of the paternity testing given defendant/mother's and her child's absence from New Jersey; and

- The next hearing date of July 21, 2016.

P-23 at T22-19 to T31-19.

III. ANALYSIS

The burden of proof in judicial disciplinary matters is clear-and-convincing evidence. Rule 2:15-15(a). Clear and convincing evidence is that which "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence, so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts in issue." In re Seaman, 133 N.J. 67, 74 (1993) (citations and internal quotations omitted).

In this instance, Respondent has been charged with violating Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.3(A), and Canon 3, Rule 3.5, Rule 3.8 and Rule 3.17(B) of the Code of Judicial Conduct, and New Jersey Court Rule 1:12-1(g). These charges relate to four distinct areas of misconduct: (1) mistreating a litigant seeking a final restraining order (Count I); (2) abusing the judicial office in a personal guardianship matter (Count II); (3) creating the appearance of a conflict and failing to recuse in a post-judgment matrimonial matter (Count III); and (4) engaging in an *ex parte* conversation with a litigant (Count IV).

We find, based on our review of the evidence in the record and Respondent's acknowledgement of wrongdoing as to Counts III and IV of the Formal Complaint, that these charges have been proven by clear and convincing evidence and that Respondent's conduct violated the cited canons of the Code of Judicial Conduct.

As a general matter, Respondent's behavior in these four instances implicates the Judiciary's core ethical principles of integrity and impartiality contained in Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct.

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

integrity, impartiality and independence of the judiciary is preserved."

Canon 2, Rule 2.1, requires judges to "act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and . . . [to] avoid impropriety and the appearance of impropriety."

In respect of Count I, Respondent's conduct also implicates Canon 3, Rule 3.5 of the Code, which requires a jurist to treat all those with whom the jurists interacts in an official capacity with courtesy, dignity and patience and to require the same from "lawyers, court officials, and others subject to the judge's direction and control."

The evidence of record in this instance demonstrates, clearly and convincingly, that Respondent mistreated the plaintiff in the M.R. v. D.H. matter when he examined her, at length, about her efforts to prevent the alleged sexual assault despite its irrelevance under the Prevention of Domestic Violence Act ("PDVA") (N.J.S.A. §2C:25-17, et al) and the Sexual Assault statute (N.J.S.A. 2C:14-2).

The legal framework within which a jurist must evaluate whether permanent civil restraints, i.e. a FRO, should issue under the PDVA is well established. In making such a determination, a jurist must conduct a two-pronged analysis. Silver v. Silver, 387 N.J. Super. 112, 125-127 (App. Div. 2006).

First, the judge must determine whether the plaintiff has proven, "by a preponderance of the credible evidence, that one or more of the predicate acts set forth in N.J.S.A. 2C:25-19a has occurred." Silver v. Silver, supra, 387 N.J. Super. at 125-126; see also N.J.S.A. 2C:25-29a (stating "the standard for proving the allegations in the complaint shall be by a preponderance of the evidence").

Second, on finding the commission of a predicate act of domestic violence, the judge must determine whether a FRO is necessary to protect the plaintiff/victim from immediate danger or to prevent further abuse. Silver v. Silver, supra, 387 N.J. Super. at 126-127; see also N.J.S.A. 2C:25-29b. In reaching this decision, the judge must evaluate the necessity of the FRO against the six factors set forth in N.J.S.A. 2C:25-29a(1) to -29a(6).[11] Ibid.

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[11] "A court shall consider but not be limited to the following factors:

(1) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;

(2) The existence of immediate danger to person or property;

(3) The financial circumstances of the plaintiff and defendant;

(4) The best interests of the victim and any child;

(5) In determining custody and parenting time the protection of the victim's safety; and

(6) The existence of a verifiable order of protection from another jurisdiction.

Respondent's questions of the plaintiff in M.R. v. D.H. were directed at the first prong of the analysis, i.e. whether the plaintiff had proven the occurrence of a predicate act of domestic violence as defined in N.J.S.A. 2C:25-19a. The PDVA identifies nineteen categories of conduct as predicate acts constituting domestic violence. Sexual assault is included among those nineteen categories and is defined with reference to the Sexual Assault statute (N.J.S.A. 2C:14-2) as "an act of sexual penetration with another person" by "physical force or coercion," but without severe personal injury to the victim. N.J.S.A. 2C:14-2(c)(1).

As the New Jersey Supreme Court has noted, the Sexual Assault statute "eschews any reference to the victim's will or resistance," indicating that proof of a sexual assault does not turn on "the alleged victim's state of mind or responsive behavior." State in the Interest of M.T.S., 129 N.J. 422, 444 (1992). The Supreme Court held that the element of "physical force" under the Sexual Assault statute is satisfied "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." Id. at 445. There is "no burden on the alleged victim to have expressed non-consent or to have denied permission, and no inquiry [may be] made into what he or she

thought or desired or why he or she did not resist or protest." Id. at 448. Notably, since 1978 the New Jersey Criminal Code has not referred to force vis-à-vis a sexual assault in relation to "overcoming the will" of the victim, or to the "physical overpowering" of the victim, or to the "submission" of the victim, but only to the assaultive conduct of the defendant. Id. at 440-443.

Respondent's interrogation of the plaintiff, with its focus on her efforts to prevent the alleged assault, bears no reasonable relationship to the elements necessary to establish the predicate act of sexual assault under the PDVA, and, in fact, conflicts sharply with the Legislature's purpose and the Supreme Court's interpretation of that statute. Moreover, such questions from a jurist suggest a degree of intolerance and insensitivity towards victims of sexual assault that is antithetical to the public policy of this state[12] and to the Judiciary's mandate to act with integrity, and is akin to victim blaming or victim shaming that has no place in our judicial system.

This conduct constitutes a breach of the high standards of conduct demanded of jurists under Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct and reflects a sharp

[12] See N.J.S.A. §2C:25-18.

departure from the decorum demanded of every jurist under Canon 3, Rule 3.5 of the Code.

In respect of Count II, Respondent's abuse of the judicial office implicates Canon 1, Rule 1.1, Canon 2, Rule 2.1 *and* Rule 2.3(a). Canon 2, Rule 2.3(A) prohibits a judge from lending the prestige of the judicial office to advance "the personal or economic interests of the judge . . . ."

As the Commentary to Canon 2, Rule 2.1 explains:

> Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

As the Commentary to Canon 2, 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.

Code of Judicial Conduct, Canon 2, Commentary.

This Commentary emphasizes the special role that judges play in our society and the significance of their public comportment. "[J]udges have a special responsibility because they are 'the subject of constant public scrutiny;' everything

judges do can reflect on their judicial office. When judges engage in private conduct that is irresponsible or improper, or can be perceived as involving poor judgment or dubious values, '[p]ublic confidence in the judiciary is eroded.'" In re Blackman, 124 N.J. 547, 551 (1991). As recognized by our Supreme Court, adherence to this principle is of the utmost importance. In re Santini, 126 N.J. 291, 298 (1991); see also In re Murray, 92 N.J. 567, 571 (1983); In re Hardt, 72 N.J. 160, 166-167 (1977).

In the instant matter, the evidence demonstrates, clearly and convincingly, that Respondent abused the judicial office in placing a telephone call to Ms. Vito during which he requested she contact her "counterpart" in the Burlington vicinage to request a change in the scheduling of his guardianship hearing to accommodate his schedule. Such conduct constitutes an intentional abuse of the judicial office in violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.3(a) of the Code of Judicial Conduct for which significant public discipline is warranted.

Irrespective of Respondent's proffered reason for making this request, i.e. to accommodate his judicial calendar, or Ms. Vito's understanding that he sought this accommodation for personal reasons, his attempt to utilize his judicial position to secure, internally, that which the average litigant could not

do without their adversary's knowledge and the court's approval constitutes an abuse of the judicial office. See Code of Judicial Conduct, Canon 2, Rule 2.3, Commentary (stating, "It is improper for judges to use or attempt to use their position to gain personal advantage or deferential treatment of any kind.").

Indeed, Ms. Vito's impressions of Respondent's request underscore its impropriety. By seeking her intercession in his personal guardianship matter, which was transferred to the Burlington vicinage to avoid the very appearance of impropriety engendered by his conduct, Respondent created the clear potential for his judicial office to influence the manner in which the Burlington vicinage handled his scheduling concerns. Though no influence was actually exerted, the mere fact that such a potential exists constitutes a misuse of the judicial office in violation of the Code of Judicial Conduct. Cf. In re Rivera-Soto, 192 N.J. 109 (2007) (censuring the Justice for engaging in a course of conduct that created the risk that the prestige and power of his office might influence and advance his son's private interests).

These circumstances and the inevitable impressions they engender impair Respondent's integrity and that of the judiciary generally, in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct.

As to Count III, Respondent's acknowledged conduct in creating the appearance of a conflict of interest while presiding over the Carbonetto v. Carbonetto matter and his failure to recuse from that matter violates Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 3, Rule 3.17(B), of the Code, as well as Rule 1:12-1(g).

Canon 3, Rule 3.17(B) (1-6), requires jurist to recuse in any proceeding "in which their impartiality or the appearance of their impartiality might reasonably be questioned," including, but not limited to, the following:

- Personal bias, prejudice or knowledge;
- Financial Interest;
- Personal Relationships;
- Prior Professional Relationships;
- Post-Retirement Employment; and
- Whenever the nature of the relationship would give rise to partiality or its appearance.

Rule 1:12-1(g), similarly, provides for a jurist's disqualification whenever circumstances exist that "might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so."

In this instance, Respondent acknowledges that by his expressions of familiarity with the parties in the Carbonetto matter, he created the appearance of a conflict of interest for

which his recusal was necessary in violation of Canon 3, Rule 3.17(B) of the Code of Judicial Conduct. We agree.

Respondent's reference to the defendant as "Al," his acknowledged familiarity with both the plaintiff and the defendant since high school, his decision to reserve on the recusal issue given the "nature of [his] relationship" with the plaintiff, and his statement as to the superior quality of Al's Pizza, created the appearance of a conflict requiring his recusal. Such conduct constitutes a clear violation of Canon 3, Rule 3.17(B) and Rule 1:12-1(g).

In mitigation, Respondent requests the Committee consider that his order in the Carbonetto matter was in effect for "only" seven days before being vacated, that he recused promptly after learning of the appearance of impropriety created by his conduct and that no actual prejudice accrued to the parties in the Carbonetto matter. See Rb36.

We find these factors irrelevant for purposes of mitigation. Canon 3 of the Code of Judicial Conduct, in mandating that a jurist perform the duties of judicial office impartially and diligently, does not recognize an exception based on any of the factors referenced by Respondent. Judges, rather, are obligated, without exception, to avoid actual conflicts as well as the appearance of impropriety to promote confidence in the integrity and impartiality of the Judiciary. See DeNike v. Cupo, 196 N.J.

502 (2008) (establishing the standard: "Would a reasonable, fully informed person have doubts about the judge's impartiality"). This obligation applies equally to circumstances involving actual prejudice and the appearance of impropriety or bias:

> Our rules, . . . , are designed to address actual conflicts and bias as well as the appearance of impropriety. . . . '[I]t is not necessary to prove actual prejudice on the part of the court[;] . . . the mere appearance of bias may require disqualification. . . . [T]he belief that the proceedings were unfair must be objectively reasonable.'

[State v. McCabe, 201 N.J. 34, 43 (2010) (citing State v. Marshall, 148 N.J. 89, 270 (1995) (citing R. 1:12-1(f)), cert. denied, 522 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997))].

Respondent's conduct in creating the appearance of a conflict in the Carbonetto matter and his subsequent failure to recuse from that matter violates his ethical obligations under Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 3, Rule 3.17(B) of the Code of Judicial Conduct for which public discipline is warranted.

In respect of Count IV, Respondent concedes and the evidence demonstrates that he engaged in an impermissible *ex parte* conversation with the defendant/mother in the Bertolini matter. Respondent, likewise, concedes that this conduct violates Canon 3, Rule 3.8 of the Code of Judicial Conduct, which prohibits

jurists from initiating or considering "*ex parte* or other communications concerning pending or impending proceedings." We agree.

The record in this regard establishes, clearly and convincingly, Respondent's violation of Canon 3, Rule 3.8, of the Code. That record reveals a nine-minute *ex-parte* conversation between Respondent and the defendant/mother in the Bertolini matter concerning her legal obligations and the consequences of her failure to comply with Respondent's order for paternity testing, both of which were the subject of a hearing only minutes earlier. Rule 3.8 of the Code does not recognize an exception for good intentions or judicial efficiency and neither circumstance mitigates or excuses this misconduct.

This ethical breach, likewise, implicates Canon 1, Rule 1.1 and Canon 2, Rule 2.1, which require jurists to maintain and enforce high standards of conduct and to avoid impropriety and the appearance of impropriety to preserve the integrity, impartiality and independence of the Judiciary.

Having concluded that Respondent violated Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.3(A) and Canon 3, Rule 3.5, Rule 3.8 and Rule 3.17(B) of the Code of Judicial Conduct, the sole issue remaining is the appropriate quantum of discipline. In our consideration of this issue, we are mindful that the primary

purpose of our system of judicial discipline is to preserve the public's confidence in the integrity and independence of the judiciary, not to punish an offending judge. In re Seaman, supra, 133 N.J. at 96 (1993). Relevant to this inquiry is a review of both the aggravating and mitigating factors that may accompany judicial misconduct. Id. at 98-100.

The aggravating factors to consider when determining the gravity of judicial misconduct include the extent to which the misconduct demonstrates a lack of integrity and probity, a lack of independence or impartiality, misuse of judicial authority that indicates unfitness, and whether the conduct has been repeated or has harmed others. Id. at 98-99.

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

Respondent's misconduct in this instance has been aggravated considerably by his comments to his court staff following his decision in the M.R. v. D.H. matter, which demonstrate an emotional immaturity wholly unbefitting the judicial office and incompatible with the decorum expected of every jurist, regardless of their judicial experience.

Respondent's evident penchant at that time to engage with his court staff in such a fashion and at the expense of the litigants and attorneys appearing before him, impugned his integrity and that of the Judiciary. Indeed, we are struck by the extreme informality that existed in Respondent's courtroom and his evident inclination to participate and even encourage such sophomoric banter with his court staff at the public's expense.

In addition, the misconduct at issue in Count II - misuse of the judicial office - demonstrates a lack of probity and a breach of the public's trust. Respondent's professed lack of intent to do so neither diminishes the impropriety of his misconduct nor mitigates the harm done to the judicial office and the public's trust in those who hold that office. In re Blackman, supra, 124 N.J. at 551 (finding that improper judicial conduct includes creating or acquiescing in any appearance of impropriety).

Finally, Respondent's refusal to acknowledge his wrongdoing as to Counts I and II suggests to this Committee that he fails to appreciate the ethical constraints governing his judicial office and is susceptible to repeating this misconduct.

In respect of any mitigating factors, the record, on balance, is wanting. While we recognize, as Respondent notes, that these four instances of misconduct occurred early in his

judicial career, we would expect a practitioner of his experience to be fully familiar with these ethical constraints, none of which are novel or unfamiliar to those in the legal profession. Though Respondent now acknowledges his wrongdoing as it relates to Counts III and IV of the Complaint, that acknowledgment is insufficient to mitigate the harm caused to the judiciary's integrity as a consequence of his collective misconduct in these matters.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be suspended from the performance of his judicial duties, without pay, for a period of three months, and that upon his return to the bench he be required to attend additional training on appropriate courtroom demeanor. This recommendation takes into account the seriousness of Respondent's ethical infractions and the aggravating factors present in this case.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

March 11, 2019

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

Joined By: Judge Stephen Skillman, J.A.D. (ret.), Judge Edwin H. Stern, J.A.D. (ret.), Vincent E. Gentile, Esq., and A. Matthew Boxer, Esq.

Susan A. Feeney, Esq., David P. Anderson, Karen Kessler and Paul Walker concurring in part and dissenting in part:

We concur with the majority's conclusions that the charges contained in the Formal Complaint against Respondent have been proven by clear and convincing evidence, Respondent having conceded the conduct and the attendant ethical violations alleged in Counts III and IV of the Complaint. We dissent, however, as to the recommended sanction of a three-month suspension.

Were these matters confined to the four ethical infractions charged in the complaint, the first of which - mistreatment of a litigant in a FRO hearing - is particularly egregious, a three-month suspension would be appropriate. Respondent's misconduct, however, was exacerbated considerably, as the majority notes, by his juvenile remarks off-the-record to his court staff at the conclusion of the FRO hearing in M.R. v. D.H. We are unpersuaded, like the majority, by Respondent's attempt to justify or excuse this conduct as his effort to educate his law clerk on the complexities of domestic violence matters or as a byproduct of his inexperience at that time as a Superior Court judge. Such baseless denials are, in fact, an affront to the judicial office Respondent occupies and reveal a fundamental disrespect for this judicial disciplinary process.

Beyond that, however, we are alarmed by Respondent's pointed remarks to his court staff about counsel and the litigants appearing before him. Such base conduct has no place in our public discourse let alone in a courtroom and most disturbingly from a jurist whose responsibility it is to preserve and protect the integrity of the judicial office, not defame it. Litigants, lawyers and visitors alike have a right to expect that the judges before whom they appear will behave in a manner consistent with their office and refrain from disparaging those who appear before them both on and off-the-record. Respondent failed to uphold this basic principle and in so doing gave license to his court staff to do the same.

Given the severity of this misconduct and its effect on the overall atmosphere in Respondent's courtroom, we believe a suspension of six months, without pay, is more appropriate and conveys most directly the Judiciary's intolerance for such behavior.