

CARLIA M. BRADY,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES OF THE  
JUDICIAL RETIREMENT  
SYSTEM,

Respondent-Respondent.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3054-23

On Appeal from Final Determination of  
the Board of Trustees of the Judicial  
Retirement System

Sat Below:

Board of Trustees of the Judicial  
Retirement System

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**BRIEF ON BEHALF OF PETITIONER-APPELLANT,  
CARLIA M. BRADY**

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## PRELIMINARY STATEMENT

Appellant, Carlia Brady, previously a Judge of the Superior Court, has suffered disproportionately as a consequence of conduct that occurred over a two-day period while she was on vacation on June 10, and 11, 2013. As a result of that conduct, the Advisory Committee on Judicial Conduct (the “ACJC”) recommended that Judge Brady be removed from the Superior Court. Pending the resolution of that recommendation, the Judge lost hundreds of thousands of dollars in salary that accrued over a 57-month period during her suspension between June 12, 2013 and March 6, 2018. The Supreme Court of New Jersey found the ACJC’s removal recommendation was unwarranted and reduced the Judge’s suspension to three months; two Justices dissented and opined that no sanction was warranted. *Matter of Brady*, 243 N.J. 395 (2020).

In addition, as a result of the events of June 10 and 11, 2013, Judge Brady was arrested and indicted on three criminal charges: one charge was dismissed in a decision affirmed by this Court, *State v. Brady*, 452 N.J. Super. 143 (App. Div. 2017), and two were dropped. Now, the Board of Trustees of the Judicial Retirement System has revoked its approval of a disability retirement benefit after the Supreme Court determined Judge Brady was eligible to apply for that benefit and after the Governor gave his approval of its payment.

The Judge sustained these sanctions although she was never convicted of a crime and her conduct was, as argued in Point III below, lawful.

Judge Brady did, on June 10 and 11, 2013, violate New Jersey's Code of Judicial Conduct. However, as the Supreme Court acknowledged, the events that gave rise to these charges occurred over a short two-day period, at a stressful and tumultuous time, and involved Judge Brady's boyfriend whose child she believed that she was carrying.

As a consequence of the events which underlay the criminal charges and the Advisory Committee's recommendation, Judge Brady developed a mental disability which prompted her to apply for disability retirement benefits. That application was endorsed by the Supreme Court, approved by the Governor, and initially approved by the Board of Trustees of the Judicial Retirement System - and then denied.

Three issues are implicated in this appeal. For 43 years, it has been the law in this State that non-criminal conduct that does not touch and concern the employment of a public servant cannot be the basis of a decision to deny retirement benefits. *Masse v. Board of Trustees*, 87 N.J. 252, 258 to 59 (1981). This principle has been reiterated several times, most recently last year in a decision of this Court. *Caucino v. Board of Trustees, Teachers Pension and Annuity Fund*, 474 N.J. Super. 405 (App. Div. 2023). Yet, as argued in Point I of

this brief, the Board of Trustees has ruled that although she was indisputably disabled, Judge Brady's conduct warranted the denial of her disability retirement benefits even though her conduct had no connection to her public duties. This ruling is all the more puzzling because, as argued in Point II, the final arbiter of a Judge's entitlement to disability retirement benefits is, under *N.J.S.A.* 43:6A-12, the Governor. There is simply no role for the Board of Trustees of the Judicial Retirement System in that assessment.

As argued in Point III, conduct that might warrant the discipline of a public employee does not often warrant the forfeiture of a retirement benefit. Here, the Board of Trustees failed to properly assess the factors to be considered with regard to the Judge's entitlement to a disability retirement benefit.

Judge Brady has lost a prestigious job, suffered an uncompensated loss in income of several hundred thousand dollars, and suffers from a mental disability, all as a consequence of the over-reaction of the Woodbridge Police Department and an excessive penalty imposed by the ACJC. There is simply no lawful basis to deprive the Judge of the disability retirement benefits which were authorized by the Governor.



### PROCEDURAL HISTORY

Appellant, Carla M. Brady, served as a Superior Court Judge of the State of New Jersey between April 5, 2013 and April 4, 2020. (Aa117). Concurrent with her judicial appointment, Judge Brady enrolled in the Judicial Retirement System and continued as a member of that system until her judicial appointment ended in April 2020. (Aa116 to Aa117). Her service however was interrupted when she was suspended without pay from June 12, 2013 to March 6, 2018. (Aa119).

On May 4, 2018, the Advisory Committee on Judicial Conduct issued a Complaint against Judge Brady charging Her Honor with violating the Rules of Judicial Conduct. *Matter of Brady*, 243 N.J. 395, 399 (2020). (Aa1 to Aa9). Judge Brady filed an Answer to the Complaint on June 25, 2018. (Aa10 to Aa23). Following a hearing, the ACJC, on September 16, 2019, issued a Presentment against the Judge in connection with events that occurred over a two-day period, June 10 and 11, 2013. (Aa24 to Aa81). *Matter of Brady* at 439. In that Presentment, the Committee recommended to the Supreme Court that Judge Brady be removed as a Superior Court Judge. (Aa81). In an opinion issued on August 6, 2020, the Supreme Court, with two Justices opining that no sanction was warranted, rejected the Committee's recommendation and imposed a three-month suspension. *Matter of Brady*, 243 N.J. 395.

On February 18, 2020, Judge Brady submitted a letter to Chief Justice Stuart Rabner requesting approval of a permanent disability retirement. (Aa82 to Aa83). The Judge supplemented the request on March 31, 2020 (Aa88 to Aa89) and by a letter of December 1, 2020, the Clerk of the Supreme Court referred the application to the Governor for his review as required by statute. (Aa90). On October 27, 2021, the Governor issued a letter of approval. (Aa91).

Shortly after receipt of the approval, Judge Brady, on November 18, 2021, filed an application for disability retirement under *N.J.S.A.* 43:6A-12, (Aa92 to Aa98), which the Board of Trustees of the Judicial Retirement System approved. (Aa117). Ten days later, on December 1, 2021, the Judge submitted a request for a retroactive retirement benefit. (Aa105 to Aa106). On December 22, 2021, the Division of Pensions and Benefits denied the request for retroactive benefits. (Aa107 to Aa108). The Judge appealed the denial and in September 2022, the Board decided to revisit its previous decision which had approved payment of a disability retirement benefit for Judge Brady and to consider the Judge's request for retroactive benefits. (Aa107 to Aa108). On February 23, 2023, the Division of Pensions and Benefits referred the matter to the State House Commission (Aa113 to Aa115) which served as the Board of Trustees for the Judicial Retirement System. (Aa99 to Aa104).

Following a meeting held on March 30, 2023, the Board of Trustees determined to deny Judge Brady's request for a disability benefit in light of the factors set forth in *N.J.S.A.* 43:1-3 which rendered the application for retroactive benefits moot. (Aa116 to Aa132)

On June 5, 2024, Judge Brady filed a Notice of Appeal with this Court, (Aa137 to Aa139) which was amended on June 10, 2024. (Aa140 to Aa142).



## **STATEMENT OF FACTS**

The statement of facts below are drawn from the opinion of the Supreme Court of New Jersey in *Matter of Brady*, 243 N.J. 395 and the Final Administrative Determination of the Board of Trustees of the Judicial Retirement System. (Aa116 to Aa132).<sup>1</sup>

### **A. Events Underlying Judge Brady's Three-Month Suspension**

Carlia Brady was admitted to the bar of the State of New Jersey in 1997 and became a Judge of the Superior Court on April 5, 2013. *Matter of Brady* at 398. On June 11, 2013, Judge Brady was arrested at her home by the Woodbridge Police Department and charged with hindering the apprehension of Jason Pronnicki, who had been her boyfriend. *Id.* The next day the Judge was suspended from her judicial duties. *Id.*

Judge Brady was thereafter indicted on three charges: second degree official misconduct in violation of *N.J.S.A.* 2C:30-2(b); third degree hindering an apprehension or prosecution in violation of *N.J.S.A.* 2C:30-3(a)(1); and third-degree hindering an apprehension or prosecution in violation of *N.J.S.A.* 2C:30-3(a)(2). A trial Judge dismissed the official misconduct charge, and the two remaining charges were thereafter withdrawn by the Somerset County Prosecutor.

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<sup>1</sup> While Judge Brady disputed several of the Court's findings, for purposes of this brief, those findings are not disputed.

*Id* at 398. The dismissal of the official misconduct charge was affirmed by this Court in a lengthy opinion issued on September 11, 2017. *State v. Brady*, 452 N.J. Super. 143.

On March 6, 2018, Judge Brady's judicial suspension was lifted and she was reinstated to her duties as a Superior Court Judge. *Matter of Brady*, 243 N.J. at 399. Two months later, the Advisory Committee on Judicial Conduct issued a complaint against Judge Brady charging her with violations of the Code of Judicial Conduct. (Aa1 to Aa9). Judge Brady denied all of the allegations and following a hearing, the ACJC recommended that she be removed as a Superior Court Judge. *Id.* at 399, 408.

The facts disclosed at the hearing revealed that on June 10, 2013, Judge Brady appeared at the Woodbridge Township Police Department to report that her car had been stolen. She explained that her boyfriend, Jason Pronnicki, had taken her car without permission and loaned it to a friend who did not return it. While the Judge was present at the police headquarters, she was told that Mr. Pronnicki had open warrants and that, as an "officer of the court," she was required to inform the police if and when Mr. Pronnicki returned the car so he could be arrested. *Id.* at 400 to 401.

On that same day, at 1:11 PM, Judge Brady received a call from Mr. Prontnicki saying he would return her car. In that conversation, Mr. Prontnicki denied that there were open warrants, and the Judge advised him to go to the police “and take care of it right away.” While the Judge sought the return of her car, she told Mr. Prontnicki “you can’t come into my house.” *Id.* According to the Court’s opinion, Judge Brady did not call the police after speaking to Mr. Prontnicki. She explained that she believed that the police had told her not to call until “if and when he gets back to the house or I know his exact location.” *Id.* at 401 to 402.

Mr. Prontnicki then came to the Judge’s home; at 4:36 PM in the afternoon – fifteen minutes after he left – the Judge called the police, and left a message on the voicemail of Officer Robert Bartko. While the contents of the call were disputed, the Supreme Court opinion reveals that the message from the Judge indicated that Mr. Prontnicki had just returned her car. *Id.* at 404 to 406. Therefore as a consequence of the call, had Officer Bartko listened to his voicemail, he would have known of Mr. Prontnicki’s location at or about 5 PM on June 10.

At 1:49 PM the next day, June 11, Mr. Prontnicki informed Judge Brady that he would come to her home and pick up his belongings that afternoon. The Judge did not, at that time, call the police. However, at 3:31 PM, she left a second voicemail message for Officer Bartko. *Id.* at 405.



That afternoon, the Woodridge Police Department conducted a surveillance at Judge Brady's residence and observed Mr. Prontnicki coming to the Judge's home. The police thereafter arrested Mr. Prontnicki and Judge Brady. *Id.* at 398.

**B. The Hearing Before the Advisory Committee on Judicial Conduct**

The Advisory Committee on Judicial Conduct filed a formal complaint against the Judge on May 4, 2018. (Aa1 to Aa9). Judge Brady filed an answer on June 25, 2018 (Aa10 to Aa23), and the ACJC thereafter conducted a hearing on the charges. 243 N.J. at 399.

At the hearing, Judge Brady argued, among other things, that her conduct was attributable to a mental health condition. *Id.* at 407. The Committee rejected the Judge's defense and issued a Presentment against her. (Aa24 to Aa81). Judge Brady then moved before the Supreme Court to dismiss the Presentment or to modify the ACJC's recommendation. (Aa82 to Aa83). In response, the Court issued an Order to Show Cause requiring the Judge to show cause why she should not be publicly disciplined with a less onerous sanction than removal. *Id.* at 409. (Aa85 to Aa87).

**C. The Supreme Court's Three-Month Suspension**

With Justices Albin and LaVecchia dissenting, the Supreme Court found that the Judge engaged in judicial misconduct. (Aa120). The thrust of the Court's

opinion was that it was incumbent upon the Judge, as a judicial officer, to report Mr. Pronnicki's location so that he could be arrested. (Aa118).

The Court concluded that there was clear and convincing evidence that she had failed to do so which warranted discipline. (Aa120). However, the majority recognized that:

Respondent was undoubtedly in a difficult situation during the two days at issue here. Alarmed by the disappearance of her car and exhausted from searching for it, and believing that she might be pregnant with a child fathered by Pronnicki, she was shocked by the officers' revelation of his outstanding warrants and suspended driver's license. It is understandable that respondent was upset as those disturbing events unfolded.

*Id.* at 419. But, the Court reasoned, as a Judge, the Respondent, "was not at liberty to address her circumstances with only herself and her personal relationships in mind." *Id.* at 419.

The court then turned to the issue of discipline:

We acknowledge the emotional stress that respondent experienced on June 10 and 11, 2013, and in the nearly five years of criminal proceedings that followed, and the profound impact the events at issue have had on her life and career. *See Williams*, 169 N.J. at 279, 777 A.2d 323 (noting that the respondent in that matter had "already paid a heavy price for her intemperate behavior.").

*Id.* at 422. The Court reduced the sanction from removal, which had been recommended by the ACJC, to a three-month suspension. 243 N.J. at 423. (Aa121).

In dissent, Justice Barry Albin argued that there was no wrongful conduct and that the Judge's conduct did not demean the Judiciary:

From my review of the record, Judge Brady did not harbor a fugitive or obstruct a police investigation. Nor did her conduct demean the judiciary. Judge Brady's conduct should not be viewed from the sterile, twenty-twenty perspective of hindsight, but rather from that of a vulnerable human being, fatigued and frightened, in the grip of overwhelming stress, who, in the moment, made decisions that, even if flawed, do not rise to a level that warrants discipline. Had the police returned Judge Brady's phone calls, there is no reason to doubt she would have responded truthfully to any questions presented to her about the location of her boyfriend. I do not find justified the post-mortem criticism of Judge Brady -- that she should be disciplined for not leaving more information on a voicemail that the police recklessly failed to retrieve and for not acting as the perfect police informant during the tumultuous hours at issue (ACJC and the majority), and for not calling the police in the presence of a potentially violent criminal (ACJC).

*Id.* at 425.

Justice Jaynee LaVecchia also dissented finding that there was no clear and convincing evidence to sustain any disciplinary charge. *Id.* at 446.

**D. The Decision of the Board of Trustees of the Judicial Retirement System**

In a determination issued on April 26, 2024, the Board of Trustees of the Judicial Retirement System (the State House Commission) ruled that Judge Brady had forfeited her entitlement to any retirement benefits. In reaching its conclusion, the Board relied almost entirely on the facts found by the Supreme Court which it evaluated against the factors set forth in *N.J.S.A.* 43:1-3. (Aa116 to Aa123).



The Board, however, acknowledged that the fact that the Judge had already served a 57-month suspension, which the Supreme Court had reduced to 3 months, weighed in the Judge's favor. (Aa122). Nonetheless, balancing the various factors, the Board determined that the Judge did not qualify for a disability retirement benefit.

As argued in Point III below, many of the Board's findings are based upon an invalid premise. While Judge Brady's conduct on June 10 and 11, 2013 could be the basis for a decision terminating her employment, different principles inform a decision to deny a retirement benefit. Inasmuch as Judge Brady's conduct on those two days – declining to speak to the police – was lawful, *State v. Brady*, 452 N.J. Super. 143, and consistent with the rights afforded to every American citizen, that conduct cannot be the basis of the loss of a retirement benefit. Before turning to this issue, however, this brief addresses two aspects of the Board's decision: its improper consideration of Judge Brady's conduct which was committed outside the course of her public employment, and the implications of the Governor's approval of Judge Brady's disability retirement benefit.

## ARGUMENT

### SCOPE OF REVIEW

Points I and II below raise issues of law and are to be reviewed *de novo*. *Fair Share Hous. Ctr., Inc. v. New Jersey State League of Municipalities*, 207 N.J. 489, 494, n.1 (2011); *Dunbar Homes, Inc. v. Zoning Bd. of Adjustment of Tp. Of Franklin*, 233 N.J. 546, 559 (2018) (“In construing the meaning of a statute, an ordinance, or our case law, our review is *de novo*”). Point III raises a mixed issue of law and fact and is therefore reviewed under a more deferential standard.

While Point II was not raised below, it is unclear if the plain error doctrine applies in this administrative appeal inasmuch as *N.J. Court R. 2:10-2* is entitled “Notice of Trial Errors.” In any event, because Point II is a challenge to the jurisdiction of the State House Commission, the Judge need not demonstrate plain error. *Nieder v. Royal Indem. Ins. Co.*, 62 N.J. 229, 234 (1973); *Hamilton, Johnston & Co., Inc. v. Johnston*, 256 N.J. Super. 657, 661 (App. Div.) *cert. den.* 130 N.J. 595 (1992).

If the plain error rule is applicable, the Board’s error is of “such a nature as to have been clearly capable of producing an unjust result,” and, even if the Court were to find otherwise, the interests of justice would be served by consideration of the arguments in Point II as they go to issues of separation of powers, well beyond the scope of an administrative agency’s jurisdiction. *N.J. Court R. 2:10-2*. This is

especially the case in this matter because the arguments advanced in Point II are legal in nature, *E.S. v. H.A.*, 451 N.J. Super. 374, 382 (App. Div. 2017) (recognizing plain error rule should be relaxed where issue on appeal is one of law).

## POINT I

### **A JUDGE'S MISCONDUCT WHICH IS UNRELATED TO JUDICIAL DUTIES CANNOT BE THE BASIS TO DEPRIVE A JUDGE OF A DISABILITY PENSION (Aa 143)<sup>2</sup>**

The State House Commission erred as a matter of law. A public servant's misconduct cannot justify a forfeiture of a retirement benefit unless the misconduct occurs in the course of public employment, *see e.g. Masse v. Board of Trustees*, 87 N.J. 252, 258 to 59 (1981) or, if the misconduct does not occur in the course of public employment, it results in the conviction of a crime of moral turpitude coupled with compelling circumstances. *T.J.M. v. Bd. of Trs.*, 218 N.J. Super. 274 App. Div. 1987).

In the seminal case on this issue, *Masse v. Board of Trustees*, 87 N.J. at 258, the Supreme Court ruled that:

When the misconduct does not involve the public employment, the nexus is at best insubstantial. Such unrelated misconduct is certainly a significant step removed from the public trust that concerns the

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<sup>2</sup> Raised in a single sentence without citation to legal authority.



employer-employee relationship. The threat of forfeiture for unrelated misconduct does not impact upon the future performance of the public employment. This is not to say that a conviction of a crime involving moral turpitude may not be relevant to the individual's continued employment. See, *e.g.*, *N.J.S.A.* 2C:51-2. However, what is at stake here is not future employment, but rather pension benefits accrued over past years of otherwise creditable service. It is extremely doubtful that the Legislature intended such a drastic penalty when the criminal offense was unconnected with and unrelated to the employment.

Pensions for public employees, the Supreme Court reasoned, induce persons to accept public employment and are a component of compensation for past employment. *Id.* at 259-60. A salary, on the other hand, is compensation for current or future services:

However, what is at stake here is not future employment, but rather pension benefits accrued over past years of otherwise creditable service.

*Id.* at 259. Thus, the Supreme Court wrote, forfeiture of a pension based upon charges of misconduct or delinquency is only permissible where that misconduct or delinquency relates to the applicant's employment. *Id.* at 258 to 9.

Continuing, the Court reasoned that the sentencing provisions of *N.J.S.A.* 2C:51 *et seq.*, which prohibit public employment upon certain convictions, do not include provisions requiring forfeiture of a retirement benefit. Had the Legislature intended that such forfeiture be an additional penalty upon a criminal conviction, the sentencing statute would, the Supreme Court reasoned, have said as much. *Id.*

at 259. *Accord, Procaccino v. Public Employees' Retirement Sys.*, 87 N.J. 265 (1981).

The only exception to this principle arises when the board for a pension system seeks the forfeiture of a retirement benefit as a result of the conviction of a crime of moral turpitude, and then a forfeiture is only warranted in the “most compelling circumstances.” *T.J.M. v. Bd. of Trs.*, 218 N.J. Super. at 279:

The *Uricoli* test must, however, be viewed in the background of *Masse*. Thus, only in the most compelling of circumstances should the *Uricoli* test compel a civil servant to forfeit his pension rights when he is convicted of a crime involving moral turpitude which is *unrelated* to his public employment. (Emphasis in original).

This Court reiterated the principles set forth in *Masse* in its decisions in *In re Hess*, 422 N.J. Super. 27, 37 (App. Div. 2011) and last year, in *Caucino v. Board of Trustees, Teachers Pension and Annuity Fund*, 474 N.J. Super. 405. In *Hess*, the appellant had been an employee of the New Jersey Office of Information Technology. She was involved in a motor vehicle accident when driving while intoxicated, and she plead guilty to several counts of criminal conduct. Her employer served Hess with a preliminary notice of disciplinary action charging her with “conduct unbecoming of a public employee.” Rather than contest her dismissal, Hess filed for deferred retirement. The Public Employee Retirement System (“PERS”) Board denied the request because Hess had been removed for

misconduct based upon the criminal charge. Hess appealed and this Court reversed.

The PERS Board's decision in *Hess* was, in all material respects, identical to the decision here. *Id.* at 34. The question before the Court on appeal in *Hess* was whether a deferred retirement benefit can be forfeited when an employee "is removed for cause on charges of misconduct unrelated to the employee's official duties." *Id.* at 35. This Court held that, while an employee can be disciplined on the basis of criminal charges unrelated to employment, he or she should not suffer the added penalty of forfeiture of a retirement benefit.

In reaching this conclusion, the Court relied on several principles, all applicable here. First, The Court noted that "pension statutes should be liberally construed and administered in favor of public employees because they represent deferred compensation for a government employee's service." *Id.* Second, the loss of a pension, added to a criminal sanction, unfairly discriminates against public employees:

[i]f the range of conduct that disqualifies service [for pension purposes] is judicially broadened to encompass criminal conduct unrelated to that service, an additional penal sanction would be imposed on individuals solely because of their status as public employees. (Citation omitted).

*Id.* at 36.



Third, the identification of potential criminal sanctions is a Legislative prerogative. Inferring that a public employee should also suffer forfeiture of retirement benefits upon a criminal conviction would, in the Court's view,

intrude into a sphere of the criminal justice system where the Legislature has fixed the limits of punishment . . . within certain guidelines to determine sentences. (Citation omitted).

*Id.*

More recently, this Court reiterated these principles in *Caucino v. Board of Trustees, Teachers Pension and Annuity Fund*, 475 N.J. Super. 405, a case which involved the Teachers' Pension and Annuity Fund statute that conditioned receipt of benefits upon an employee not being removed for misconduct. The appellant there had been denied benefits due to a criminal conviction that predated his employment. Noting that pension statutes are remedial in nature and to be liberally construed in favor of the employee, *id* at 412 to 13, this Court reversed the denial of a deferred retirement benefit because the misconduct did not involve the employee's official duties.

In this matter as in *Masse, Procaccino, Hess* and *Caucino*, there is no "misconduct related to employment." *See State v. Brady*, 452 N.J. Super. at 167 to 173, noting the absence of any authority to support the preposition that a Judge has a duty to enforce an order of a court "wherever he or she may be, twenty-four hours a day, 365 days per year." *Id.* at 173. As a result, there is no justification to

deny Judge Brady a pension benefit based upon conduct that occurred during two days while on vacation, *id.* at 149, on June 10, and 11, 2013. Nor does this case fall within the exception adopted by this Court in *T.J.M.* inasmuch as this is not a case in which Judge Brady was convicted of a crime of moral turpitude. In fact, her conduct, in not contacting the police, was perfectly lawful and consistent with the rights afforded to every American citizen. The Division of Pensions and Benefits correctly determined to grant disability retirement benefits to Judge Brady in the first instance and the Board of Trustees incorrectly revoked that determination in its April 26, 2024 decision. (Aa116 to Aa132).

## **POINT II**

**THE GOVERNOR OF THE STATE OF NEW JERSEY HAS THE EXCLUSIVE AUTHORITY TO DETERMINE IF A JUDGE IS ENTITLED TO A DISABILITY RETIREMENT BENEFIT AND THAT DETERMINATION MAY NOT BE REVIEWED BY THE STATE HOUSE COMMISSION  
(Not raised below)**

Because judicial pensions raise issues of separation of powers, they are very delicate and treated, at least in the case of a disability benefit, differently than retirement benefits for other public employees. Eligibility for judicial pensions is governed by the “Judicial Retirement System Act” (the “Act”). *N.J.S.A.* 43:6A-1 *et seq.* That Act provides for two types of retirement benefits: (1) benefits payable to jurists who retire as a function of age and years of service, *see e.g. N.J.S.A.*

43:6A-8, 9 and 10, which is largely formulaic; and (2) benefits payable to jurists who become disabled, *N.J.S.A.* 43:6A-12, which is discretionary with the Supreme Court and the Governor.

Under the Act, the procedure to determine eligibility for disability retirement benefits differs from the procedure to determine disability retirement benefits for any other class of public employee. This is so because *N.J.S.A.* 43:6A-12 vests exclusive jurisdiction in the Supreme Court and the Governor to determine eligibility for a jurist's disability retirement benefits:

Whenever the Supreme Court shall certify to the Governor, any member who shall have served as a judge of the several courts, **may** be retired for disability if the member has become physically or otherwise incapacitated for full and efficient service to the State in his judicial capacity. The Governor shall thereupon refer the disability claim to three physicians of skill and repute in their profession and residents of this State who shall examine the member and report to the Governor as to his physical or other disability and whether in all reasonable probability, if they find the disability existent, it will continue permanently and does and will continue to prevent the member from giving full and efficient service in the performance of his judicial duties. If the report confirms the existence of the disability, and if the Governor approves the report, the member **shall be retired** not less than 1 month next following the date of filing of an application with the retirement system, and **he shall receive** a retirement allowance which shall consist of an annuity which is the actuarial equivalent of his accumulated deductions together with regular interest, and a pension which, when added to the member's annuity, will provide a retirement allowance during the remainder of his life in an amount equal to three-fourths of his final salary. (Emphasis added).



That statute anticipates a three-step process. First, the Supreme Court must certify that a judge “may be retired for disability. . . .” The Governor must then appoint a panel of three qualified physicians to evaluate whether the disability exists, is permanent, and will impair judicial performance. If a qualifying disability is found, then the Governor has the option to “approve[] the report.” All three of these conditions were satisfied in this matter. (Aa91). Once the three conditions were satisfied, the right to a disability retirement benefit became unconditional (“he **shall** receive . . .”). However, as a consequence of the decision of the Board of Trustees of the Judicial Retirement System (the State House Commission), a body that has no role in the determination of eligibility for a Judge’s disability retirement benefit, Judge Carlia Brady has been wrongly deprived of her disability retirement benefits.

As noted above, *N.J.S.A.* 43:6A-12 provides that, “if the Governor approves the [physicians’] report,” the jurist “shall receive a retirement allowance . . .” In this matter, the Governor, on October 27, 2021, approved the report of disability and “authorize[d] former Judge Holt [Brady] to pursue all necessary steps for her disability retirement.”

Neither that statute nor the Governor’s approval provides for a review by the State House Commission of the quality of Judge Brady’s conduct. On the contrary, *N.J.S.A.* 43:6A-12 is clear: because it uses the peremptory “shall,” the



Governor's approval renders a Judge's entitlement to a disability pension unconditional. When construing a statute, the paramount goal is to ascertain the legislative intent, *DeProspero v. Penn*, 183 N.J. 477, 492 to 93 (2007), and if the words are clear, a statute must be construed as written:

The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language. We ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole. It is not the function of this Court to "rewrite a plainly-written enactment of the Legislature [] or presume that the Legislature intended something other than that expressed by way of the plain language. We cannot "write in an additional qualification which the Legislature pointedly omitted in drafting its own enactment," or "engage in conjecture or surmise which will circumvent the plain meaning of the act." "Our duty is to construe and apply the statute as enacted." (Citations omitted).

Continuing the Supreme Court wrote:

A court should not "resort to extrinsic interpretative aids" when "the statutory language is clear and unambiguous, and susceptible to only one interpretation . . . ." On the other hand, if there is ambiguity in the statutory language that leads to more than one plausible interpretation, we may turn to extrinsic evidence, "including legislative history, committee reports, and contemporaneous construction." We may also resort to extrinsic evidence if a plain reading of the statute leads to an absurd result or if the overall statutory scheme is at odds with the plain language.

*Id.* at 492 to 93.

In the undertaking to determine the Legislature's intent, every word is presumed to have a meaning and not to be mere surplusage. *Jersey Cent. Power &*

*Light Co. v. Melcar Utility Co.*, 212 N.J. 576, 587 (2013). The word “shall,” used seven times in *N.J.S.A.* 43:6A-12, connotes an imperative. *Harvey v. Board of Chosen Freeholders of Essex County*, 30 N.J. 381, 391 (1959); *In re Appointment to Hudson Cty. Bd. of Elections*, 220 N.J. Super. 367, 371 (App. Div. 1987):

Applying these guidelines, we find that *N.J.S.A.* 19:6-18 is clear and unambiguous in its requirement that the statutory committee must meet and designate its nominee in writing during the 30-day period preceding February 15. The statute says the Committee “shall” meet and nominate in writing. The ordinary common meaning of shall is imperative and mandatory.

*Id.* at 371. *See also Jersey Cent. Power & Light Co.*, 212 N.J. at 588. Moreover, when a statutory section used the subjunctive elsewhere in its text, such as may or, as is the case here, “if the Governor approves,” the assumption that the Legislature intended to distinguish between the conditional and the absolute is even stronger.

*Id.*

Thus by virtue of the language in *N.J.S.A.* 43:6A-12, once the Governor elects to approve the physicians’ medical report, a jurist is entitled to a disability pension in the amount set forth in that statute.

This is not to say that misconduct, if relevant, is not to be considered. However, relevant misconduct can only be considered by the Supreme Court in making the referral to the Governor and by the Governor in approving the disability retirement. This is apparent from the language of *N.J.S.A.* 43:6A-12

insofar as it affords the Supreme Court the option to “certify” that a Judge “may be retired for disability . . .” *Cf In re Yaccarino*, 101 N.J. 342 (1985), where the Supreme Court ordered the removal of Superior Court Judge Thomas Yaccarino for misconduct in office but the Court nonetheless “authorized [the Judge’s] application for retirement based upon the medical evidence of disability. *See N.J.S.A. 43:6A-12.*” *Id.* at 394. Thus, any evaluation of a Judge’s misconduct is to be made by the Supreme Court or the Governor – the State House Commission has no role in that assessment.

Nor is there any authority in the Judicial Retirement System Act which would permit the State House Commission to usurp the Governor’s role. Pursuant to *N.J.S.A. 43:6A-29*, the State House Commission is vested with “general responsibility for the proper operation of the” judicial retirement system. *N.J.S.A. 43:6A-29*. That statute contains 11 sections, none of which delegate to the Commission the authority to review the Governor’s determinations. Subsections (b), (c), (e), (f), (g), (h) and (k) are not remotely relevant. Subsection (a) gives the Commission “general responsibility” for the “proper operation of the retirement system,” but no specific authority to pass upon an application under *N.J.S.A. 43:6A-12*. Subsection (d) authorizes the adoption of rules and regulations and



subsection (j) deals with funding issues. The only relevant provision is subsection (i) which allows the Commission to appoint a medical board but does not confer appellate authority upon the Commission.

Nor may a Court, given the preemptory language of *N.J.S.A.* 43:6A-12 infer such authority. For to do so would allow an administrative body, the State House Commission, which includes members of the Legislature, *N.J.S.A.* 52:20-1, to intrude upon the prerogatives of the executive and judicial branches.

Finally, the Legislative history is consistent with the Appellant's position. *N.J.S.A.* 43:6A-12 was adopted in 1973 as L. 1973, c. 140, § 12. As then drafted, the version made provision for review of the Governor's recommendation by the State House Commission. It read in part as follows:

If the report of the medical board confirms the existence of the disability and if the Governor recommends retirement, the claim shall be presented to the State House Commission.

Upon approval by the State House Commission . . .

The law was amended later that year. L. 1973, c. 304, § 12. The amendment omitted any reference to the State House Commission and replaced the word "recommends" with "approves" and added the words "shall receive." The new version reads: "if the Governor approves the report . . .," the member "shall receive an annual pension . . ." Finally, in 1981, that section was again amended, L. 1981, c. 470, § 12, to specify the amount of the retirement benefit. At no point



was the role of the State House Commission restored. Thus, Appellant's interpretation is consistent with the language of *N.J.S.A.* 43:6A-12, public policy and the legislative history of that statute.

In summary, no other pension statutory scheme envisions a role for the Supreme Court and Governor to evaluate pension eligibility, and if their determinations are not final, *N.J.S.A.* 43:6A-12 would be meaningless.

### **POINT III**

#### **THE FORFEITURE OF JUDGE BRADY'S DISABILITY PENSION WAS UNWARRANTED WHEN HER CONDUCT IS MEASURED AGAINST THE *URICOLI* FACTORS AND N.J.S.A 43:1-3 (Aa116 to Aa132)**

Concededly, pension forfeitures are not, under New Jersey law, limited to situations in which a public employee commits a crime. *Corvelli v. Bd. of Trs.*, 130 N.J. 539, 552 (1992). (“Non-criminal misconduct in office may result in forfeiture” ). For the reasons set forth in Point I, non-criminal conduct outside of the scope of a Judge's judicial duties cannot be the basis for a forfeiture. And even if it could be a basis, the conduct here in issue, while found to be violative of the Canons of Judicial Conduct, is not dishonorable conduct that would warrant forfeiture of a pension. Thus, Judge Brady could be suspended from her job because of that conduct, but she should not be required to forfeit her retirement benefits.

Prior to 2007, the Courts employed what has become known as the *Uricoli* factors in assessing whether a pension benefit may be forfeited. *Uricoli v. Bd. of Trs. Police & Firemen's Ret. Sys.*, 91 N.J. 66 (1982). In 2007, the Legislature adopted *N.J.S.A.* 43:1-3.1 and amended *N.J.S.A.* 43:1-3. The amendments largely codified the *Uricoli* factors. *State v. Anderson*, 248 N.J. 53 (2021) *cert. den.* 142 S. Ct. 770, 211 L. Ed. 2d 482 (2022). Two of the sections, *N.J.S.A.* 43:1-3.1 and *N.J.S.A.* 43:1-3, of that statute are relevant to this appeal.

**A. *N.J.S.A.* 43:1-3.1**

*N.J.S.A.* 43:1-3.1 consists of five sections. The first, *N.J.S.A.* 43:1-3.1(a) provides for a pension forfeiture upon conviction of a crime listed in the succeeding section “which crime or offense involves or touches such office . . .” That section goes on to define the phrase “touches such office” as follows:

As used in this section, a crime or offense that “involves or touches such office, position or employment” means that the crime or offense was related directly to the person’s performance in, or circumstances flowing from, the specific public office or employment held by the person.

The events of June 10 and 11, 2013 did not relate “directly” to Judge Brady’s judicial office. *State v. Brady*, 452 N.J. Super. 143, 162 to 73. Since Judge Brady was not convicted of a crime and, secondly, because her conduct did not touch her office, this section cannot be the basis for the forfeiture of her disability pension.

Subsection (b) goes on to identify disqualifying crimes and is not relevant here. Subsection (c), also not relevant, deals with court orders mandating forfeitures upon conviction of a crime. Subsection (d) addresses stays and is also irrelevant. Subsection (e) which is applicable reads as follows:

Nothing in this section shall be deemed to preclude the authority of the board of trustees of any State or locally-administered pension fund or retirement system created under the laws of this State from ordering the forfeiture of all or part of the earned service credit or pension or retirement benefit of any member of the fund or system for misconduct occurring during the member's public service pursuant to the provisions of P.L.1995, c.408 (C.43:1-3 et seq.), including in a case where the court does not enter an order of forfeiture pursuant to this section.

This subsection merely preserves but does not create a new basis for a pension forfeiture.

**B. *N.J.S.A. 43:1-3***

*N.J.S.A. 43:1-3* conditions receipt of a retirement benefit on the performance of "honorable service." Before turning to a discussion of the 11 factors set forth in *N.J.S.A. 43:1-3(c)*, this brief addresses a threshold issue: whether Judge Brady's conduct on her vacation in June 2013 renders her service dishonorable as that term is used in the statute. Because Judge Brady's conduct on June 10 and June 11 is not the type of conduct that even warrants an analysis under *N.J.S.A. 43:1-3(c)*, the 11 factors listed in the statute are not even relevant.



**1. N.J.S.A. 43:1-3 Does Not Supersede *Masse***

As a matter of statutory interpretation, *N.J.S.A.* 43:1-3 is irrelevant because it does not permit consideration of conduct outside of public employment as a basis to disqualify a public employee for a retirement benefit. (*See* Point I). This statute must be interpreted with the recognition that, prior to the time that it was adopted in 1995 (L. 1995, c. 408) and amended, in 2007 (L. 2007, c. 49), the Supreme Court had ruled, in *Masse*, 87 N.J. 252, and *Procaccino*, 87 N.J. 265, that conduct occurring outside of the scope of public employment cannot be the basis of the denial of a retirement benefit. While this Court created an (inapplicable) exception to this principle in *T.J.M.*, 218 N.J. Super. 274, at the time that *N.J.S.A.* 43:1-3 was adopted the law was clear: In the absence of a criminal conviction, conduct outside of the scope of public employment cannot be the basis upon which to deprive a public employee of a retirement benefit.

Since the Legislature is deemed to be “thoroughly conversant with its own legislation and the judicial construction of its statutes,” *David v. Government Employees Ins. Co.* 360 N.J. Super. 127, 145 (App. Div.) *certif. den.* 178 N.J. 251 (2003), there is no reason to believe that *Masse*, *Procaccino*, and *T.J.M.* do not remain good law. This Court in fact decided two cases after the adoption of *N.J.S.A.* 43:1-3 which cited to this statute but nonetheless applied *Masse*. *See Hess*, 422 N.J. Super. 27, and *Caucino*, 474 N.J. Super. 405.



Moreover, the interpretation that Appellant here advances is consistent with the language in *N.J.S.A.* 43:1-3(b), which only authorizes a pension forfeiture for “misconduct occurring during the member’s public service.” Had it been the Legislature’s intention to depart from judicial precedent, it would have used clear language to do so but it did not. And were the phrasing of that statute ambiguous, it should not be construed to warrant a forfeiture here because “pension legislation is remedial in nature and should be liberally construed in favor of the employee.” *In re Orden*, 383 N.J. Super 410 (App. Div. 2006). In addition, a decision that would permit disqualification for a retirement benefit based on conduct outside of a Judge’s judicial duties would run afoul of the Supreme Court’s admonition that courts abhor a forfeiture. *Russell v. Princeton Laboratories*, 50 N.J. 30, 35 (1967) (disqualification for post-employment retirement benefits is a forfeiture and a court should take any tenable view to avoid it). *See also Lehigh Valley R.R. Co. v. Chapman*, 35 N.J. 177, 188 (1961):

[P]enalties and forfeitures are not favored at law, but, contrawise, it has been said that the “law abhors a forfeiture.”

Finally, a review of the reported cases that have made an *N.J.S.A.* 43:1-3 analysis all reveal fact patterns that would also have permitted a forfeiture under the *Masse* or the *T.J.M.* tests. *See e.g. State v. Anderson*, 248 N.J. 53 (employee in office of tax assessor was convicted of crime for conduct in the course of his employment: altering tax records).

Therefore, the Board erred insofar as it should not have engaged in an analysis of Judge Brady's application under *N.J.S.A.* 43:1-3 because Judge Brady's conduct occurred outside of her employment and did not result in a criminal conviction.

## **2. Judge Brady's Conduct Was Lawful**

For a second reason, Judge Brady's conduct did not, under relevant case law, render her service "dishonorable." The implications of a public employee's conduct varies depending upon the purpose for evaluating that conduct. For instance, conduct that would warrant the loss of employment does not necessarily require a loss of retirement benefits. *See e.g. Masse*. Different proofs are required to warrant the forfeiture of a retirement benefit than to justify loss of employment. *Id.* Conduct that violates the Code of Judicial Conduct is not necessarily criminal. *State v. Brady*, 452 N.J. Super. 143. While Judge Brady was found to have violated the Code of Judicial Conduct, her conduct was not dishonorable.

Those cases that hold that a retirement benefit cannot be forfeited for conduct unrelated to the performance of public duties, *see e.g. Masse*, 87 N.J. at 259 and Point I above, do so for reasons that should inform the assessment of what type of conduct is considered dishonorable. Our Courts have recognized that forfeiture of a public employee's retirement benefits for conduct of an employee

that would not warrant a forfeiture for conduct occurring in the private sector would unfairly discriminate against public employees. As this Court reasoned in *Hess*, 422 N.J. Super. at 36, if the conduct that would require forfeiture of a pension by a public employee is broader than that which would require forfeiture in the private sector, then the former would in effect be subject to an additional penal sanction over and above the loss of employment. It is highly unlikely that a private sector employee would forfeit a retirement benefit for failing to alert police to the location of a fugitive; nor should Judge Brady.

In addition, Judge Brady violated no duty owed as a Judge or as a private citizen. It is not entirely clear from the Board's decision as to which specific conduct of Judge Brady it deemed to be dishonorable. However, it appears to be the failure to communicate the location of Mr. Pronnicki to the Woodbridge police:

The Court explained that, as a Judge, Judge Brady was not at liberty to address her circumstances with only herself and her personal relationship in mind. The public has the right to expect that when police officers are searching for a fugitive accused of a violent crime and a judge has detailed knowledge of the whereabouts, activities and immediate plans of that fugitive, the judge will take prompt and decisive action to ensure that law enforcement is fully informed.

(Aa 121). The failure to do so may have warranted sanctioning the Judge by the ACJC and by the Supreme Court, but that failure does not warrant the loss of



retirement benefits. This is so because a Judge has no legal duty to inform the police of the whereabouts of a fugitive. *State v. Brady*, 452 N.J. Super. at 173.

There, the State appealed the dismissal of Judge Brady's indictment under *N.J.S.A. 2C:30-2(b)*. That statute reads in part as follows:

A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit:

\*

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\*

b. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

This Court found that the first two criteria of this statute were plausibly alleged in the indictment: Judge Brady was a public servant and she acted to benefit another. However, and relevant to this matter, this Court found that Judge Brady did not have duty "imposed upon her by law" or one "clearly inherent in the nature of her office" to require that she assist in the apprehension of Jason Prontnicki.

At oral argument, the State adopted the proposition that a judge would commit official misconduct if, knowing an arrest warrant based on a family member's failure to pay outstanding parking tickets had issued, the judge refrained from notifying police of that family member's whereabouts. No provisions of the *Code* or any other authority, however broadly read, would sustain a charge of official misconduct based on those facts. The facts presented to this grand jury were not much different.

*Id.* at 173.



Thus, based upon this Court's construction of *N.J.S.A. 2C:30-2(b)*, the law did not impose upon Judge Brady the duty to assist the police in the apprehension of her boyfriend. In the absence of court process compelling Judge Brady to report information, she had no duty to do so. And, therefore she engaged in no conduct that rendered her service dishonorable, and there was no reason for the Board to even consider the factors set forth in *N.J.S.A. 43:1-3(c)*.

**3. The Board of Trustees of the Judicial Retirement System Misapplied the Factors Listed in *N.J.S.A. 43:1-3(c)***

When the Board undertook that analysis, it misapplied the factors set forth in the statute and it overlooked the requirement that these 11 factors "must be balanced and then weighed in terms of the goals to be achieved under the pension law."

Our most recent cases demonstrate that the proper approach to the resolution of the problem of what constitutes dishonorable service justifying the forfeiture of earned pension benefits is one which calls for flexibility and the application of equitable considerations.

*Uricoli*, 91 N.J. at 78.

Two equitable considerations should drive the resolution of this matter. First, Judge Brady was suspended for 57 months without pay and, because she was a Judge, she could not work as an attorney. Thus, Judge Brady suffered for four and one-half years with no income for conduct which the Supreme Court ruled

justified only a three-month suspension, with two Justices finding no wrongful conduct. The Judge has sustained more than ample punishment.

Second, as the Supreme Court acknowledged, Judge Brady's conduct, which spanned a two-day period, involved her boyfriend, who may have been the father of her child, and occurred at a highly stressful time. These equitable considerations should inform the consideration of the statutory factors. Based upon an "equitable" evaluation of those factors, the Board erred.

In addition, the Board misapplied several of the *Uricoli* factors:

**(1) the member's length of service:** Judge Brady served as

a Judge for seven years and a judicial clerk for one.

While her service credit for pension purposes was 2 years and 4 months, the Board focused on the wrong metric. The relevant inquiry is not, as the Board found, the length of pension service, it is the "length of service." Moreover, the Judge's pension credits were 54 months less than they should have been because the ACJC's sanction of removal was deemed excessive and was reduced by the Supreme Court to a 3-month suspension. Therefore, the Judge was deprived of the ability to make pension contributions over a 54-month

period through no fault of her own. The Board misapplied this criteria.

(2) **the basis for retirement:** It is undisputed that Judge Brady retired due to a disability brought on in part by the improper conduct of the Woodbridge Police Department insofar as it charged her with three crimes that she did not commit. Two of the three charges filed against her were dropped and one was dismissed. The Board's reliance on *Patterson v. Board of Trustees, State Police Retirement System*, 194 N.J. 29, 51 to 52 (2008), in its assessment of this factor, was misplaced insofar as the disability here originated with the conduct of the Woodbridge police who wrongly believed that the Judge had a duty to assist them to apprehend her boyfriend because he was a fugitive. As this Court determined, the police erred. *State v Brady* 452 N.J. Super. 143. The Judge should not suffer the loss of a disability benefit as a consequence of a disability caused by the wrongful assessment of the law by the Woodbridge police and an over-reaction by the ACJC. Judge Brady was

determined to be disabled by the required three physician panel and the Governor agreed that her disability warranted retirement benefits. *Patterson* is irrelevant.

**(3) the extent to which the member's pension has vested:**

Judge Brady's entitlement to a disability retirement benefit was vested by virtue of the Supreme Court's and Governor's approval.

**(4) the duties of the particular member:** Judge Brady was a jurist.

**(5) the member's public employment history and record covered under the retirement system:** With the exception of the events that occurred over two days, June 10 and 11, 2013 while on vacation, the Judge's employment history was unblemished.

**(6) any other public employment or service:** One year as a judicial clerk.

**(7) the nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense and whether it was continuing**



**or isolated:** The events at issue occurred in an emotionally charged context over two days. They were isolated and not the product of deliberation.

Moreover, the conduct of the Judge upon which the Board focused was not a crime. *State v. Brady*, 452 N.J. Super. 143. She had no duty to assist the police to arrest her boyfriend and therefore did not violate *N.J.S.A. 2C:30-2(b)*. *Id.*<sup>3</sup>

**(8) the relationship between the misconduct and the**

**member's public duties:** None. *See State v. Brady* 452 N.J. Super. 143. While Judge Brady does, as the Board found, have an obligation to uphold the Judicial Canons, she does not have an obligation to provide law enforcement with the location of a fugitive. *Id.*

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<sup>3</sup> The State dropped the charges against Judge Brady under *N.J.S.A. 2C:29-3(a)(1)* and (2), purportedly because Mr. Prontnicki refused to testify. Therefore there was no determination that the Judge violated either statute. The basis given by the State for dropping those charges seems pretextual. If the State truly believed that Judge Brady violated those sections, the case could have been proved using Judge Brady's voicemails and texts. Given the language of those statutory sections, it is difficult to understand why Mr. Prontnicki's testimony was needed. It is more likely that the charges were dropped because the Judge's conduct was not a crime. *See e.g. United States v. Annamalai*, 939 F. 3d 1216 (11<sup>th</sup> Cir. 2019); *United States v. Stacey*, 896 F.2d 75, 77 (5<sup>th</sup> Cir 1990) (failing to "disclose fugitive's location and giving financial assistance do not constitute harboring"); *United States v. Strain*, 396 F3d 689 (5<sup>th</sup> Cir. 2005) (same) both construing a similarly worded Federal statute.

**(9) the quality of moral turpitude or the degree of guilt or culpability, including the member's motives and reasons, personal gain and similar considerations:** Judge Brady's infraction does not have the earmarks of moral turpitude. "Moral turpitude" is defined as "[c]onduct that is contrary to justice, honesty, or morality; especially, an act that demonstrates depravity." *Black's Law Dictionary* 515 (11<sup>th</sup> ed. 2019). This Court has defined "moral turpitude" as an "act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, to society in general, contrary to the accepted and customary rule of right and duty between man and man." *State Bd. of Med. Exam'rs v. Weiner*, 68 N.J. Super. 468, 483 (App. Div. 1961) (internal citations and quotation marks omitted). Judge Brady simply exercised her right as an American citizen not to speak with the police.

In addition, Judge Brady was torn between her role as a Judge and her emotional attachment to her boyfriend whose child she may have been carrying. This was not a situation in which a public employee developed a deliberate

scheme for self-benefit: it was a situation in which the Judge, exhausted and emotionally wrought, made a wrong decision. *See Matter of Brady*, 243 N.J. at 419 and 422 and Justice Albin's dissent, *id.* at 425.

**(10) the availability and adequacy of other penal sanctions:**

There are no penal sanctions because there was no crime. Nonetheless, as a consequence of the excess of the Woodbridge police and the ACJC, the Judge suffered an unjustified 54-month suspension without pay between June 12, 2013 and March 5, 2018 during which she could not work as an attorney. She has lost hundreds of thousands of dollars because of the excess of the ACJC. As the Supreme Court wrote, Judge Brady, like the respondent in another case, has "already paid a heavy price . . ." 243 N.J. at 422.

**(11) other personal circumstances relating to the member**

**which bear upon the justness of forfeiture:** In the words of the Supreme Court:

Respondent was undoubtedly in a difficult situation during the two days at issue here. Alarmed by the disappearance of her car and exhausted from searching for it, and believing that she might be pregnant with a child fathered



by Pronnicki, she was shocked by the officers' revelation of his outstanding warrants and suspended driver's license. It is understandable that respondent was upset as those disturbing events unfolded.

*Matter of Brady* at 419.

Justice Albin, in his dissent, expressed the Judge's predicament best:

From my review of the record, Judge Brady did not harbor a fugitive or obstruct a police investigation. Nor did her conduct demean the judiciary. Judge Brady's conduct should not be viewed from the sterile, twenty/twenty perspective of hindsight, but rather from that of a vulnerable human being, fatigued and frightened, in the grip of overwhelming stress, who, in the moment, made decisions that, even if flawed, do not rise to a level that warrants discipline. Had the police returned Judge Brady's phone calls, there is no reason to doubt she would have responded truthfully to any questions presented to her about the location of her boyfriend. I do not find justified the post-mortem criticism of Judge Brady -- that she should be disciplined for not leaving more information on a voicemail that the police recklessly failed to retrieve and for not acting as the perfect police informant during the tumultuous hours at issue (ACJC and the majority), and for not calling the police in the presence of a potentially violent criminal (ACJC).

*Id.* at 425.

Judge Brady has suffered more than enough. As a consequence of conduct over two days in a highly charged emotional context, she has lost a career and hundreds of thousands of dollars in compensation. She is indisputably disabled and should receive the disability retirement benefit approved by the Governor.



**CONCLUSION**

For the foregoing reasons, the determination of the State House Commission to deny a disability retirement benefit to Judge Carlia Brady should be reversed.

Respectfully submitted,

**SZAFERMAN, LAKIND,  
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s/Arnold C. Lakind  
Arnold C. Lakind, Esq.

Dated: October 22,, 2024

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CARLIA M. BRADY,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
Petitioner-Appellant,	:	DOCKET NO. A-3054-23T4
	:	<u>Civil Action</u>
v.	:	
BOARD OF TRUSTEES,	:	ON APPEAL FROM A FINAL
JUDICIAL RETIREMENT	:	AGENCY DECISION OF THE
SYSTEM,	:	BOARD OF TRUSTEES, JUDICIAL
	:	RETIREMENT SYSTEM
Respondent-Respondent.	:	
	:	Date of Submission: February 4, 2025

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BRIEF OF RESPONDENT BOARD OF TRUSTEES,  
JUDICIAL RETIREMENT SYSTEM

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## **PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS**<sup>1</sup>

Appellant, Carlia M. Brady (“Judge Brady”), appeals the Judicial Retirement System (“JRS”) Board’s April 26, 2024 final agency decision imposing forfeiture of her pension benefits from April 1, 2023 forward.

Judge Brady enrolled in the JRS effective April 5, 2013 as a result of her appointment as a Judge of the Superior Court, Law Division, Middlesex County. (Aa117-118)<sup>2</sup>. On June 11, 2013, officers from the Woodbridge Township Police Department (“WTPD”) arrested Judge Brady at her home. Matter of Brady, 243 N.J. 395, 398 (2020)<sup>3</sup>. The following day, the Supreme Court suspended Judge Brady from her judicial duties without pay and referred the matter to the Advisory Committee on Judicial Conduct (“ACJC”). Ibid. In accordance with its policy regarding disciplinary proceedings against judges charged with criminal offenses, the ACJC took no action on the referral of the disciplinary matter pending completion of the criminal proceedings against Judge Brady. Ibid.

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<sup>1</sup> Because the procedural history and facts are closely related, they are combined for efficiency and the court’s convenience.

<sup>2</sup> “Aa” refers to Judge Brady’s appendix; “Ab” refers to her brief.

<sup>3</sup> Part of the procedural history and counterstatement of facts are drawn from the Supreme Court’s published opinion in Matter of Brady, 343 N.J. 395 (2020) as well as this court’s published opinion in State v. Brady, 452 N.J. Super. 143 (App. Div. 2017).



On or about May 13, 2015, a grand jury indicted Judge Brady on three charges: second-degree official misconduct in violation of N.J.S.A. 2C:30-2(b), third-degree hindering apprehension or prosecution in violation of N.J.S.A. 2C:29-3(a)(1), and third-degree hindering apprehension or prosecution in violation of N.J.S.A. 2C:29-3(a)(2). Ibid. The trial court granted Judge Brady's motion to dismiss the official misconduct charge but denied her motion to dismiss the hindering apprehension or prosecution charges. Ibid. The prosecutor appealed the dismissal of the official misconduct charge, and Judge Brady appealed the denial of her motion to dismiss the other charges. Id. at 398-399. This court affirmed the trial court's determinations and remanded the matter to the trial court for further proceedings. State v. Brady, 452 N.J. Super. 143, 174 (App. Div. 2017). Thereafter, the prosecutor moved to dismiss with prejudice the remaining two counts of the indictment. Matter of Brady, 243 N.J. at 399. On March 2, 2018, the trial court granted that motion, thus concluding the criminal proceedings against Judge Brady. Ibid. On March 6, 2018, the Supreme Court reinstated Judge Brady to her duties as a Superior Court Judge. Ibid. Judge Brady remained in this position and worked until the end of her term in April 2020. (Aa117).

On May 4, 2018, the ACJC issued a complaint charging Judge Brady with conduct that violated Canon 1, Rule 1.1; Canon 2, Rules 2.1 and 2.3(A); and

Canon 5, Rule 5.1(A) of the Code of Judicial Conduct. Matter of Brady, 243 N.J. at 399; (Aa1-9). In her Answer, Judge Brady denied violating any provision of the Code. (Aa10-23). Pursuant to Rule 2:15-3(b), four members of the ACJC conducted a seven-day hearing on the matter and other participating members reviewed the record and briefs. Matter of Brady, 243 N.J. at 399. On September 16, 2019, the ACJC issued a Presentment to the Supreme Court which stated Judge Brady's behavior "constitute[d] a significant violation of the Code of Judicial Conduct that . . . irreparably impugned [her] integrity and render[ed] her continued service on the bench untenable." (Aa24-25). As such, the ACJC recommended that the Supreme Court institute proceedings to remove Judge Brady from the bench. (Aa25). The Presentment was based on the ACJC's independent investigation, including a review of the prosecutor's investigative file, grand jury records, reports of a forensic audio expert and a forensic psychiatrist, and the record generated at the seven-day hearing between January 25 and April 17, 2019. (Aa24-81).

The Supreme Court determined that a sanction short of removal would be considered and heard argument on April 30, 2020. Matter of Brady, 243 N.J. 395, 423. After hearing argument and performing an independent review of the record, on August 6, 2020, the Supreme Court determined that Judge Brady violated the Code of Judicial Conduct. Id. at 412 and 423. In reaching its

decision, the Supreme Court made the following factual findings:

- As of June 10, 2013, Judge Brady had been a Superior Court Judge for approximately two months. She and Jason Prontnicki had been involved in a romantic relationship for about six months. Prontnicki was living in her home.
- On the morning of June 10, 2013, Judge Brady arrived at WTPD headquarters and met with two police sergeants and Officer Robert Bartko. Judge Brady reported that Prontnicki took one of her cars without permission; however, she declined to file a criminal complaint against him.
- While Judge Brady was at the station, officers told her about two open warrants for Prontnicki's arrest, including one for a violent crime; they also told her Prontnicki's driver's license was suspended. They further told Judge Brady that as "an officer of the court," she was required to report to them "if and when" Prontnicki returned, so that they could arrest him.
- At 1:11 p.m. on June 10, 2013, shortly after Judge Brady returned home, Prontnicki called her. Judge Brady testified that Prontnicki told her he would come to her house to return her car, and denied that he knew of any warrants or license suspension, and that she told him to "go to the police and take care of it right away." Immediately following her call with Prontnicki, Judge Brady texted her friend that Prontnicki "just called to tell me he got the car and will bring it home." She added that she had told Prontnicki "he can't stay with me cos he has a warrant out for his arrest and I am required to notify authorities when I know someone has a warrant[.] So I told him he must leave after he drops the car off as I must go to the police[.]"
- Judge Brady did not call the police to advise them that Prontnicki would be at her home that afternoon.
- At approximately 3:00 p.m. on June 10, 2013, Prontnicki arrived at Judge Brady's home. Judge Brady testified that when Prontnicki arrived, he walked past her father into the house. She said that she

was “a little surprised and shocked and then fearful,” and told him to leave. Nonetheless, Judge Brady and Prontnicki then talked in her garage for about an hour, joined by her father for the final fifteen minutes of the conversation. Eventually, Prontnicki used Judge Brady’s cellphone to call his brother, and his brother drove to Judge Brady’s home and picked Prontnicki up. Shortly thereafter, Judge Brady called Prontnicki and they spoke briefly.

- At 4:36 p.m. on June 10, 2013, approximately fifteen minutes after Prontnicki left her home, Judge Brady called the WTPD, asked to speak with Officer Bartko, and left a message on Officer Bartko’s voicemail. There is no dispute that the voicemail stated that Judge Brady’s car had been returned, but other contents of the voicemail are disputed. Judge Brady asserted that WTPD tampered with the voicemail to delete part of her message.
- At 10:07 a.m. on June 11, 2013, Prontnicki called Judge Brady, and they spoke for more than two and a half hours. During that call, Prontnicki confirmed that he would be staying with his brother, and said he needed to retrieve belongings from Judge Brady’s home. They agreed to meet at Judge Brady’s home that afternoon. Prontnicki also called again around 1:49 p.m. to confirm that Judge Brady would be home between 3:00 p.m. and 4:00 p.m. that day so he could pick up his belongings.
- At 3:31 p.m. on June 11, 2013, Judge Brady left a second voicemail message for Officer Bartko. Although Judge Brady asserted the WTPD also tampered with her June 11, 2013 voicemail, the Court found that this voicemail focused on her expressed intent to “amend the police report” on the theft of her car to reflect the fact that Prontnicki had returned it, and that Judge Brady did not reveal to the police Prontnicki’s calls or planned visit to her home that afternoon.
- Undetected by Judge Brady, WTPD officers conducted surveillance of her residence during the afternoon of June 11, 2013. According to the WTPD, at 3:48 p.m., Prontnicki arrived at Judge Brady’s home in a car driven by his brother. Prontnicki entered the garage and spoke with Judge Brady. While his brother waited in his car, Prontnicki remained in her home for about an hour. Prontnicki then



left with a duffel bag and was driven away by his brother. Shortly thereafter, a WTPD officer stopped the vehicle and arrested Prontnicki.

- Shortly after Prontnicki's arrest, Sergeant Brian Murphy, Detective Chris Lyons, and Officer Sean Grogan of the WTPD went to Judge Brady's home and arrested her for hindering Prontnicki's apprehension. One officer testified that when Judge Brady was handcuffed, she said, "I've been vetted, take the cuffs off." According to the police report, after the officers declined to remove her handcuffs, she asked to be handcuffed with her hands in front of, rather than behind, her. The officers refused.

[Id. at 399-405, 415.]

Relying only on clear and convincing evidence, the Supreme Court held that Judge Brady's communications with the WTPD on June 10 and 11, 2013, fell short of the high standards imposed by the Code of Judicial Conduct. Id. at 418. The Court noted that despite ample opportunity to contact the WTPD in advance of Prontnicki's visits to her home on June 10 and 11, 2013, Judge Brady declined to do so. Id. at 412. The Court found that Judge Brady did not prioritize law enforcement's urgent need to locate and arrest Prontnicki over personal considerations. Ibid. Instead, she strategized about how to avoid circumstances that, in her view, would trigger a duty to advise the police of his whereabouts. Ibid. The Court found that Judge Brady concluded that if Prontnicki continued to stay at her home, she would have to "report him," and thus decided that he must move to another residence. Ibid. Her reasoning provides important context for what occurred that afternoon and the following day. Ibid. The Court

specifically rejected and did not find credible the two factors she claimed prompted her decision not to alert the WTPD of Prontnicki's contacts with her: 1) the officers' alleged instructions on June 10, 2013 that she contact police only in specific circumstances; and 2) her fear that Prontnicki would harm her. Id. at 415-417.

The Court found that there was clear and convincing evidence supporting the ACJC's contention that Judge Brady disclosed very little of what she knew about Prontnicki's location, activities, and plans to the police. Id. at 417. The evidence supports the inference that Judge Brady acted not at the direction of the police or because she feared harm, but in the hope she could assist Prontnicki and preserve their relationship while maintaining her judicial career. Ibid. Moreover, the Court viewed Judge Brady's comment that she was "vetted" to be an improper reference to her judicial status. Id. 417-418. In making its decision, the Court further explained:

As a judge, however, [Judge Brady] was not at liberty to address her circumstances with only herself and her personal relationships in mind. The WTPD was searching for an individual who allegedly robbed a pharmacy by threatening a pharmacist with a crowbar. A judge had found probable cause and issued a warrant for his arrest, and WTPD officers were charged to execute that warrant in the interest of public safety. It was incumbent on [Judge Brady] to fully cooperate with law enforcement in their search for Prontnicki, notwithstanding her distressing personal circumstances.

. . . .

The public has the right to expect that when police officers are searching for a fugitive accused of a violent crime and a judge has detailed knowledge of the whereabouts, activities and immediate plans of that fugitive, the judge will take prompt and decisive action to ensure that law enforcement is fully informed. There is no exception to that principle when the judge and the fugitive have a personal relationship.

. . . .

[Judge Brady] did not meet the high standard imposed on the judiciary, and she did not discharge her responsibility to the public.

[Id. 419-420]

As such, based on a *de novo* review of the record, the Court found clear and convincing evidence that Judge Brady violated Canon 1, Rule 1.1; Canon 2, Rules 2.1 and 2.3(A); and Canon 5, Rule 5.1(A) of the Code. Id. at 310. When considering the appropriate sanction for Judge Brady's violation of the Code of Judicial Conduct, the Court balanced the aggravating and mitigating factors and found that 1) Judge Brady handled her communications with the WTPD in a manner unbecoming and inappropriate for one holding the position of a judge; 2) there was emotional stress that Judge Brady experienced during the days of the incident and in the nearly five years of criminal proceedings that followed as well as the profound impact the events have had on her life and career; and

3) Judge Brady otherwise expressed no regrets about her actions during the critical two days. Id. 421-422. As a result, the Court modified the sanction of removal recommended by the ACJC and imposed a three-month suspension on Judge Brady. Id. at 422.

Judge Brady was not reappointed after her judicial term ended in April 2020. (Aa90 and 117). Instead, on February 18, 2020, before her judicial term expired, Judge Brady filed a Notice to the Supreme Court of New Jersey of Intention to File an Application for Judicial Disability Retirement pursuant to the JRS Act, N.J.S.A. 43:6A-12. (Aa88-90). On October 27, 2021, the Governor approved Judge Brady to file her judicial disability retirement application. (Aa91). Judge Brady filed her application on November 22, 2021 with an effective retirement date as December 1, 2021 to the New Jersey Division of Pensions and Benefits (the “Division”). (Aa92-98). On December 1, 2021, Judge Brady submitted a request for a retroactive retirement date (to May 1, 2020). (Aa105-106). The Division denied this request on December 22, 2022 advising Judge Brady that her effective retirement date could only be future dates after her filing of the disability retirement application in November 2021 under the applicable statute. (Aa107-108). Nevertheless, in processing this request, the Division noted that the misconduct during Judge Brady’s



judicial term had not been reviewed by the JRS Board<sup>4</sup> for purpose of the honorable service review pursuant to N.J.S.A. 43:1-3. (Aa117). Judge Brady further appealed the Division's denial of her request for retroactive retirement date on January 18, 2022. (Aa109-112).

In September 2022, the JRS Board advised Judge Brady that it would review her judicial service under N.J.S.A. 43:1-3, in addition to reviewing the administrative denial of her request for retroactive retirement date. (Aa117). After several adjournments requested by Judge Brady, on March 30, 2023, the Board reviewed Judge Brady's judicial service in light of the eleven Uricoli factors, now codified at N.J.S.A. 43:1-3, that pertain to the question of honorable service. See Uricoli v. Board of Trustees, Police and Firemen's Retirement System, 91 N.J. 62 (1982); (Aa117-122). Specifically, the Board weighed and balanced the eleven factors based on the factual record considered by the Supreme Court in this matter, relying on the Court's findings that were based on clear and convincing evidence<sup>5</sup>. (Aa125). The Board also considered the submission and statements by Judge Brady and witnesses on her behalf. Ibid.

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<sup>4</sup> The State House Commission acts and serves as the Board of Trustees for JRS. N.J.S.A. 43:6A-30(a).

<sup>5</sup> Judge Brady's August 11, 2023 appeal letter acknowledges that this factual record is undisputed; it is therefore agreed that there is no need to refer this matter to the Office of Administrative Law for factfinding.

In applying and weighing the statutory factors to these facts, the Board relied heavily on the fact that Judge Brady only has slightly over two years<sup>6</sup> of credited judicial service and her dishonorable service occurred just over two months into her judicial service (Factor One – length of service). (Aa126-127). This is not, as in Uricoli, a case in which an expectation of pension benefits built over a long career of honorable service is forfeited over a single infraction, or one in which an early infraction is followed by a long period of honorable service. Uricoli, 91 N.J. 62, 65. To the contrary, the Board noted that Judge Brady had barely begun her service when she egregiously violated the standards to which the public has a right to expect judges to adhere by failing to cooperate with police in their attempt to apprehend a fugitive accused of a violent crime. (Aa126-127). Judge Brady's action was motivated, as the Court found, by her desire to assist Prontnicki and preserve their relationship while maintaining her judicial career. Ibid. The Court also noted, as did the Board, a seeming lack of remorse on Judge Brady's part about her actions in June 2013. Ibid.

The Board acknowledged the achievements that led to Judge Brady's nomination, and the affection and respect demonstrated by her witnesses. (Aa127). However, under the circumstances presented, the Board found that

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<sup>6</sup> After the Supreme Court reinstated Judge Brady to her duties as a Superior Court Judge on March 6, 2018, Judge Brady remained in this position and worked until the end of her term in April 2020. (Aa117).

Judge Brady's receipt, after dishonoring the bench just over two months into her relatively brief judicial service, of a lifetime pension amounting to three-fourths of her judicial salary would be an unwarranted windfall. Ibid. This is especially true where her claim for a disability pension is based on a disability she asserts is the result of the events that led to her suspension. Ibid. Judge Brady's contributions to the pension fund during her two years and four months of credited service were repaid to her in the first four months of the sixteen months (from December 2021 through March 2023) for which she received a monthly disability retirement allowance (and subsidized health benefits). Ibid.

The Board found that the second and third statutory factors also weigh heavily against Judge Brady. (Aa128). The basis for Judge Brady's retirement (Factor Two) is a disability retirement based on a disability that Judge Brady asserts was caused by the events here at issue. Ibid. Thus, the Board noted that Judge Brady seeks a disability retirement to compensate her for the consequences of her own misconduct. Ibid. As part of the analysis, the Board applied the Supreme Court's rationale in Patterson v. Board of Trustees, State Police Retirement System, 194 N.J. 29, 51-52 (2008).

In Patterson, the Court found a State Trooper (Glynn Moore) was ineligible to apply for accidental disability retirement benefits based on a traumatic event that was in part the result of his own misconduct. Patterson,

194 N.J. 29, 51-52. In ruling that Moore could not “rely on the incident as the predicate for an enhanced public pension[,]” the Court observed that “[t]o rule otherwise would reward dereliction of duty.” Ibid. The Board noted Judge Brady seeks to retire on the basis of a disability that she asserts was the result of the events caused by her own misconduct. (Aa128). The Board found that Judge Brady’s claim for lifetime benefits on this basis, if successful, would handsomely “reward dereliction of duty”, and that it is inconceivable that the Legislature intended to provide such a windfall under these circumstances. Ibid. As to the extent to which the member’s pension has vested (Factor Three), the Board noted that it also weighs heavily against Judge Brady, because she had not vested for any pension benefits -- such as service retirement under N.J.S.A. 43:6A-8, early retirement under N.J.S.A. 43:6A-10, or deferred retirement under N.J.S.A. 43:6A-11-- other than disability retirement. (Aa128).

Further, the Board found that the duties and employment history of Judge Brady (Factors Four through Six) weigh against Judge Brady, given the importance and stature of her judicial position and the paucity of creditable service before June 2013. (Aa128). The Board found that the nature and gravity of the offense and whether it was single or multiple, continuing or isolated (Factor Seven) also weighs against Judge Brady. Ibid. This is because Judge Brady’s violations of the Code of Judicial Conduct are substantial and occurred



over a two-day period. (Aa128-129). As such, the misconduct at issue was neither a single incident nor conduct over a long period of time. Ibid.

The Board also found that the relation between the misconduct and Judge Brady's duties (Factor Eight) was direct. (Aa129). The Board found that Judge Brady was culpable of an egregious violation of judicial standards due to her elevating her personal relationship over her public duties. Ibid. As the Supreme Court found, Judge Brady did not meet the high standard imposed on members of the judiciary, and she did not discharge her responsibility to the public. Matter of Brady, 243 N.J. at 420. Further, as found by the Court, Judge Brady acted, during the two days at issue, in a manner "unbecoming and inappropriate for one holding the position of a judge." Id. 421-422 (citation omitted).

As to the quality of moral turpitude or the degree of guilt or culpability (Factor Nine), the Board noted the Court's finding - Judge Brady acted not at the direction of the police, but in the hope that she could assist Pronnicki and preserve their relationship while maintaining her judicial career. Matter of Brady, 243 N.J. at 417. The Board found that the gain Judge Brady sought was personal, though not monetary. (Aa129). As to the availability and adequacy of other penal sanctions (Factor Ten), the Board noted the three-month, after-the-fact suspension by the Supreme Court and the fifty-seven-month suspension during the pendency of her criminal case. Ibid. If the longer suspension is not

reversed, the Board found that this factor arguably weighs against total forfeiture. Ibid.

Finally, with respect to any other factors bearing on the justness of forfeiture (Factor Eleven), the Board took specific note of the amount already expended by the pension system as compared to Judge Brady's total pension contributions, reviewed mitigating factors considered by the Court and argued by Judge Brady to the ACJC (including two adverse credibility findings by the Court), the lack of remorse the Court and Board perceived on Judge Brady's part, the statements by Judge Brady and her witnesses as well as her arguments, the stress that this process has produced for Judge Brady and her family, and the hardship on Judge Brady and her family should the Board seek to recover monies already paid to Judge Brady. (Aa129).

In light of the statutory guideline that pension benefits generally cease to accrue at the commencement of the member's misconduct<sup>7</sup>, the Board found that Judge Brady arguably is not entitled to any retirement benefits. (Aa129). This

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<sup>7</sup> Whenever a board of trustees determines, pursuant to this section, that a partial forfeiture of earned service credit or earned pension or retirement benefits is warranted, it shall order that benefits be calculated as if the accrual of pension rights terminated as of the date the misconduct first occurred or, if termination as of that date would in light of the nature and extent of the misconduct result in an excessive pension or retirement benefit or in an excessive forfeiture, a date reasonably calculated to impose a forfeiture that reflects the nature and extent of the misconduct and the years of honorable service. N.J.S.A. 43:1-3(d) (emphasis added).

is because, as the Board noted, Judge Brady was not disabled at the time her misconduct commenced. Ibid. Any disability incurred by Judge Brady as a result of the events of June 10-11, 2013 and their aftermath occurred after the misconduct commenced, that is, after her retirement benefits ceased to accrue due to the misconduct. Ibid. The Board found that the “default” penalty of computing benefits as of the date the misconduct commenced would not result in an excessive forfeiture. (Aa130).

On the other hand, the Board noted that Judge Brady had already received sixteen months of disability retirement by the Board’s March 30, 2023 meeting. Ibid. The Board viewed those sixteen monthly payments (amounting to three and one-half times the value of Judge Brady’s pension contributions) as ample return of Judge Brady’s pension contributions. Ibid. In light of the mitigating factors noted by the Supreme Court and the hardship that a requirement to repay those sixteen-month payments would entail, the Board decided not to recoup those disability retirement benefits previously paid to Judge Brady. Ibid. The Board treated the sixteen-month disability retirement allowances as a combination of the return of Judge Brady’s pension contributions and partial pension benefits for that period. Ibid. Accordingly, the Board ordered the forfeiture of Judge Brady’s pension benefits from April 1, 2023 forward. (Aa116).

Finally, given the forfeiture decision, the Board found Judge Brady's request for a retroactive retirement date was moot. (Aa130). Despite that determination, the Board also explained that the Governor authorized Judge Brady to file her disability retirement application on October 27, 2021, and the Administrative Office of the Courts so notified Judge Brady on November 3, 2021. (Aa131). Judge Brady filed her application for disability retirement on November 22, 2021. Ibid. Therefore, under N.J.S.A. 43:6A-12, Judge Brady's retirement could only begin "no less than 1 month next following the date of filing of [her] application with the retirement system". (emphasis added). As such, her retirement correctly commenced on the first day of December 2021 (payable January 1, 2022). Ibid. Thus, the Board found it lacked the authority to approve a retroactive disability retirement date. Ibid.

On or about August 11, 2023, Judge Brady appealed the Board's March 30, 2023 decision. (Aa116). At its September 18, 2023 meeting, the Board denied the appeal. Ibid. Based on its finding that the material facts are not in dispute, the Board directed the Acting Secretary to prepare a Final Administrative Determination, which was reviewed and adopted at the Board's meeting of April 25, 2024. Ibid. This appeal followed on June 5, 2024. (Aa137).

## **ARGUMENT**

### **POINT I**

#### **THE BOARD PROPERLY CONDUCTED THE HONORABLE SERVICE REVIEW REGARDING JUDGE BRADY'S JUDICIAL SERVICE UNDER THE ELEVEN-FACTOR ANALYSIS SET FORTH IN N.J.S.A. 43:1-3 AND CORRECTLY FOUND THAT THE RELATIONSHIP BETWEEN JUDGE BRADY'S MISCONDUCT AND HER PUBLIC DUTIES IS DIRECT.**

The JRS Board conducted the honorable service review regarding Judge Brady's judicial service under the eleven-factor analysis set forth in N.J.S.A. 43:1-3, and it found that the relationship between Judge Brady's misconduct at issue and her judicial duties as a judge is direct, particularly as to Factor Eight of the analysis, codified as N.J.S.A. 43:1-3(c)(8). That determination was reasonable, supported by the evidence in the record, and should be accorded deference by this court.

On judicial review of an administrative agency determination, this court has "a limited role to perform." Gerba v. Bd. of Trs., Pub. Emps.' Ret. Sys., 83 N.J. 174, 189 (1980). The Board's "decision [should] be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (quotation omitted). This court is "obliged to accept" factual findings that "are supported by sufficient credible evidence."



Brady v. Bd. of Review, 152 N.J. 197, 210 (1997) (quotation omitted). “[T]he test is not whether [this] court would come to the same conclusion if the original determination was its to make, but rather whether the factfinder could reasonably so conclude upon the proofs.” Ibid. “When an error in the fact finding of an administrative agency is alleged,” this court’s “review is limited to assessing whether sufficient credible evidence exists in the record below from which the findings made could reasonably have been drawn.” City of Plainfield v. N.J. Dep’t of Health & Senior Servs., 412 N.J. Super. 466, 484 (App. Div. 2010). The burden of demonstrating that the agency’s action was arbitrary, capricious, or unreasonable rests upon the person challenging the administrative action. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002).

In 1982 the New Jersey Supreme Court held that “honorable service is an implicit requirement of every public pension statute, whether or not this conditional term appears in the particular statute,” and that “[t]he condition of honorable service is applicable without regard to whether retirement is based on disability, age or length of service.” Uricoli, 91 N.J. at 66. Then in 1995 the legislature codified the holdings of Uricoli stating that the receipt of a public pension is “expressly conditioned upon the rendering of honorable service by a public officer or employee.” N.J.S.A. 43:1-3(a). Under Uricoli and its

subsequent codification in N.J.S.A. 43:1-3, the pension Boards were granted the authority to impose a total or partial forfeiture for failure to serve honorably in service as a condition precedent to the receipt of any pension benefits. Ibid.

As the Supreme Court has observed, the State’s “pension forfeiture policy is penal in nature and has as its objectives the same considerations underlying all such schemes: punishment of the individual and deterrence, both as to the offending individual and other employees.” Eyers v. Bd. of Trs., Pub. Employees’ Ret. Sys., 91 N.J. 51, 56 (1982) (emphasis added) (citing Uricoli, 91 N.J. at 70). N.J.S.A. 43:1-3 reads in pertinent part:

a. The receipt of a public pension or retirement benefit is hereby expressly conditioned upon the rendering of honorable service by a public officer or employee.

b. The board of trustees of any State or locally-administered pension fund or retirement system created under the laws of this State is authorized to order the forfeiture of all or part of the earned service credit or pension or retirement benefit of any member of the fund or system for misconduct occurring during the member’s public service which renders the member’s service or part thereof dishonorable and to implement any pension forfeiture ordered by a court pursuant to section 2 of P.L.2007, c.49.

[N.J.S.A. 43:1-3 (emphasis added)].

The pension boards may order the partial or total forfeiture of the pension of any member for misconduct occurring during the member’s public service. N.J.S.A. 43:1-3(b). The term honorable service “is sufficiently generic to

encompass a broad range of misconduct bearing on the forfeiture decision, including but not limited to criminal conviction.” Corvelli v. Bd. of Trs., Police & Firemen’s Ret. Sys., 130 N.J. 539, 552 (1992). Thus, even “non-criminal misconduct in office may result in forfeiture.” Ibid. In Uricoli, the Supreme Court developed an 11-part test to determine whether a public employee who engaged in dishonorable service should forfeit any or all pension benefits. This test was later codified in N.J.S.A. 43:1-3(c), which provides the following factors for consideration in calculating the forfeiture amount:

(1) the member’s length of service; (2) the basis for retirement; (3) the extent to which the member’s pension has vested; (4) the duties of the particular member; (5) the member’s public employment history and record covered under the retirement system; (6) any other public employment or service; (7) the nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense and whether it was continuing or isolated; (8) the relationship between the misconduct and the member’s public duties; (9) the quality of moral turpitude or the degree of guilt or culpability, including the member’s motives and reasons, personal gain and similar considerations; (10) the availability and adequacy of other penal sanctions; and (11) other personal circumstances relating to the member which bear upon the justness of forfeiture.

[Ibid.]

**A. The Board Correctly Found The Relationship Between Judge Brady’s Misconduct And Her Judicial Duties As A Judge Is Direct Under Factor Eight.**

The Board correctly found a direct relationship between Judge Brady's misconduct and her judicial duties, concluding that her violation of the Code of Judicial Conduct is plainly related to her judicial employment. The Board incorporated the Supreme Court's conclusion, by clear and convincing evidence, that Judge Brady violated Canon 1, Rule 1.1; Canon 2, Rules 2.1 and 2.3(A); and Canon 5, Rule 5.1(A) of the Code of Judicial Conduct. Matter of Brady, 243 N.J. at 420. Notably, those codes impose duties on all judges:

- 1) to 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;
- 2) to act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary;
- 3) to refrain from lending the prestige of judicial office to advance the personal or economic interests of the judge or others;
- 4) to conduct their extrajudicial activities in a manner that would not cast reasonable doubt on the judge's capacity to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties.

[Id. at 410-411]

The New Jersey Code of Judicial Conduct exists to preserve public confidence in the integrity and the independence of the judiciary. In re Russo, 242 N.J. 179, 196–97 (2020) (quotation omitted). To that end, “[e]very 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) (emphasis added). Because judges are in the public eye, everything they do can reflect on their judicial office and has the potential to erode public confidence. In re Reddin, 221 N.J. 221, 228 (2015) (quotation omitted). Under this principle, Judge Brady’s multiple violations of the Code of Judicial Conduct clearly related to her judiciary duties of maintaining public trust, promoting public confidence of the judiciary and preventing the demeaning of the judicial office. Thus, the Board found that the relation between the judge’s misconduct and her public duties was direct, satisfying Factor Eight. (Aa121).

At the time of the incident at issue, Judge Brady served as a state court judge, who was an officer of the court and was sworn to uphold the law. As such, Judge Brady owed the judiciary and the public the inherent duty to enforce court orders (including arrest warrants issued by the court) and at all times maintain the high standards of conduct that preserve and promote the integrity and impartiality of the judiciary. As held by the Supreme Court, the public has the right to expect that when police officers are searching for a fugitive accused of a violent crime and a judge has detailed knowledge of the whereabouts, activities, and immediate plans of that fugitive, the judge, as officer of the court with inherent duties owed to the judiciary, will take prompt and decisive action to ensure that law enforcement is fully informed. Matter of Brady, 243 N.J. at



419-420. Judge Brady failed to fulfill her public and judicial duties as a judge, and the Court found Judge Brady did not meet the high standard imposed on the judiciary member, and she did not discharge her responsibility to the public. Id. at 420. Further, as found by the Court, Judge Brady acted, during the two days at issue, in a manner “unbecoming and inappropriate for one holding the position of a judge”. Id. 421-422 (citation omitted).

Judge Brady’s reliance on the Supreme Court’s decision in Masse v. Board of Trustees, Public Employees’ Retirement System, 87 N.J. 252 (1981) and this court’s decisions in In re Hess, 422 N.J. Super. 27 (App. Div. 2011) and Caucino v. Board of Trustees, Teachers Pension and Annuity Fund, 475 N.J. Super. 405 (App. Div. 2023) is misplaced. (Ab15-20). First, the Board noted that those cited cases are largely inapt because they concern eligibility for a deferred retirement under the deferred retirement pension statutes (N.J.S.A. 43:15A–38 and N.J.S.A. 18A:66-36) as opposed to employing the Uricoli analysis under N.J.S.A. 43:1-3. Second, those cited cases involve public employees convicted of crimes that touched on no aspect of their public employment and duties, such as Masse (an assistant superintendent of water and sewers with primarily the duties of a foreman was previously convicted of impairing the morals of a minor), Hess (a geographic information specialist who was convicted of assault by automobile), Caucino (a teacher who was removed for criminal conviction

for bank fraud), Judge Brady's misconduct is related to the inherent duties for judges and was found to be in violation of judges' Code of Judicial Conduct. See Masse, 87 N.J. at 253; In re Hess, 422 N.J. Super. at 30-31; Caucino, 475 N.J. Super. at 408-409.

Judge Brady also contends that her misconduct was "lawful" because the criminal charge for official misconduct under N.J.S.A. 2C:30-2(b) was dismissed, so she claims that her conduct during the two days at issue was not "dishonorable" and does not warrant honorable service review under N.J.S.A. 43:1-3. (Ab32-35). That is not true. The Board is allowed to consider all wrongful conduct during the member's employment, not just criminal convictions. Corvelli, 130 N.J. at 551. "The term 'honorable service' as used in Uricoli and other opinions is sufficiently generic to encompass a broad range of misconduct bearing on the forfeiture decision, including but not limited to criminal conviction." Ibid. Whether Judge Brady's misconduct was "dishonorable" or not does not depend on the result of her criminal proceedings; rather, the Board "shall consider and balance the [eleven] factors" to evaluate Judge Brady's misconduct and determine "whether it constitutes a breach of the condition that public service be honorable and whether forfeiture or partial forfeiture of earned service credit or earned pension or retirement benefits is appropriate". N.J.S.A. 43:1-3(c); Corvelli, 130 N.J. at 552 ("[t]he Uricoli

balancing test [is the] answer in weighing the prevailing view of pensions as deferred compensation, whose purpose is to provide employment stability and financial security, against pension forfeiture, whose purpose is to punish for wrongful conduct”).

Furthermore, the prosecutor’s decision not to pursue criminal charges against Judge Brady for her behavior in June 2013 does not make her behavior lawful –the prosecutor simply declined to prosecute. In light of the foregoing, the Board properly concluded that Judge Brady’s misconduct, which was found to be a clear violation of multiple Codes of Judicial Conduct including her required duties of maintaining public trust, promoting public confidence of the judiciary and preventing the demeaning of the judicial office, was directly related to the her public and judiciary duties under Factor Eight. (Aa129).

**B. The Board’s Forfeiture Decision Is Reasonable, Proper And Supported By Sufficient, Clear And Convincing Evidence Under The Remaining Factors Set Forth In N.J.S.A. 43:1-3.**

Contrary to Judge Brady’s claim, the Board properly applied the eleven-factor analysis under the statutory guidance and relied on sufficient, clear and convincing evidence in reaching its forfeiture decision. As set forth more fully below, the Board properly considered each Uricoli factor and its decision should be affirmed.

**1. Factor One – the member’s length of service**

The Board found that Judge Brady earned two years and four months of JRS service credit based on her employment history and pension contributions, and that she had barely begun her judicial service when she engaged in the misconduct at issue. (Aa126-127). Based on these circumstances, it concluded that Factor One weighs heavily against Judge Brady.

Judge Brady argues the Board should have considered her “length of service” to be her total appointment as a judge for seven years, instead of her “length of pension service,” but she is wrong. (Ab36). “Service” is clearly defined under the JRS statute as “service rendered for which credit is allowed on the basis of contributions made by the State.” N.J.S.A. 43:6A-3(r). Judge Brady only worked and made pension contributions for two years and four months during her judicial appointment. (Aa117). As such, she has a total JRS service credit of two years and four months. Ibid. After dishonoring the bench just over two months into her relatively brief judicial service, Judge Brady’s potential receipt of a lifetime pension amounting to three-fourths of her judicial salary would be an unwarranted windfall. (Aa126-127). This is especially true where her claim for a disability pension is based on a disability she asserts is the result of the events that led to her suspension. Ibid. As to Judge Brady’s argument that she was deprived of the ability to make pension contributions over a fifty-four (54) month period during her criminal proceeding, the Board duly

considered and applied that fact to its analysis under Factor Ten in finding that factor arguably weighs against total forfeiture. (Aa129).

## **2. Factor Two – the basis for retirement**

The Board reasonably found factor two weighed against Judge Brady because her disability retirement is based on a disability she asserts was caused by the events here at issue; thus, she seeks compensation for the consequences of her own misconduct. (Aa128). Judge Brady argues her disability originated with the conduct of the Woodbridge police who wrongly believed that Judge Brady engaged in official misconduct. However, the Board correctly relied on the Supreme Court’s finding that Judge Brady had committed violations of the Code of Judicial Conduct. Therefore, the Board found the Woodbridge police acted as a result of Judge Brady’s misconduct during the two-day period at issue.

As part of the analysis, the Board applied the Supreme Court’s rationale in Patterson, where the Court found State Trooper Moore ineligible to apply for accidental disability retirement benefits based on a traumatic event that was in part the result of his own misconduct. Patterson, 194 N.J. 29, 51-52. In ruling that Moore could not “rely on the incident as the predicate for an enhanced public pension[,]” the Court observed that “[t]o rule otherwise would reward dereliction of duty.” Ibid. The Board noted that, unlike Moore (who was denied accidental disability but eventually approved for ordinary disability based



prolonged exposure to a racially hostile environment), Judge Brady seeks to retire on the basis of a disability that she asserts was the result of the events caused by her own misconduct. (Aa128). The Board found that Judge Brady's claim for lifetime benefits on this basis, if successful, would handsomely "reward dereliction of duty", and that it is inconceivable that the Legislature intended to provide such a windfall under these circumstances. Ibid.

**3. Factor Three – the extent to which the member's pension has vested**

The Board noted factor three weighs heavily against Judge Brady, because she had not vested for any pension benefits other than disability retirement, such as service retirement under N.J.S.A. 43:6A-8; early retirement under N.J.S.A. 43:6A-10; deferred retirement under N.J.S.A. 43:6A-11. (Aa128). Judge Brady argues that her entitlement to a disability retirement benefit vested by virtue of the Supreme Court's and Governor's approval of her application. That point is addressed below in Point II.

**4. Factor Four through Six - the duties of the particular member; the member's public employment history and record covered under the retirement system; and any other public employment or service**

The Board found that the duties and employment history of Judge Brady weigh against her, given the importance and stature of her judicial position as a judge and the paucity of creditable service before the incident at issue in June

2013 (two months). (Aa128). Judge Brady does not substantively address these factors beyond saying that she served one year as a judicial clerk and that the rest of her short employment history was “unblemished.” (Ab38).

**5. Factor Seven - the nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense and whether it was continuing or isolated**

The Board found that the nature and gravity of the offense and whether it was single or multiple, continuing or isolated also weighs against Judge Brady. (Aa128). This is because Judge Brady’s violations of the Code of Judicial Conduct were substantial and \ continued over a two-day period. (Aa128-129). As such, the misconduct at issue was neither a single incident nor conduct over a long period of time. Ibid. Judge Brady argues her misconduct occurred during an emotional time, and that she does not have an obligation to advise law enforcement with the location of a fugitive. This argument should be rejected, since the Supreme Court found that her misconduct was a violation of her ethical responsibilities.

**6. Factor Eight – the relationship between the misconduct and the member’s public duties**

The Board found that this factor weighs heavily against Judge Brady, since the relation between the misconduct and Judge Brady’s duties was direct. (Aa129). The Board found that Judge Brady was culpable of an egregious

violation of judicial standards due to her elevating her personal relationship over her public duties. Ibid. While she concedes that she had an obligation to conform to the Judicial Canons, Judge Brady reiterates that she had no obligation to advise law enforcement of the location of a fugitive. Again, the critical issue is that the Supreme Court found that her misconduct violated the Judicial Canons.

**7. Factor Nine - the quality of moral turpitude or the degree of guilt or culpability, including the member's motives and reasons, personal gain and similar considerations**

The Board noted the Supreme Court's finding that Judge Brady acted not at the direction of the police, but in the hope that she could assist Pronnicki and preserve their relationship while maintaining her judicial career. Matter of Brady, 243 N.J. at 417. It found that the gain Judge Brady sought was personal, though not monetary. (Aa129). Judge Brady argues that her infraction did not amount to "moral turpitude," especially given her emotional state at the time, but the Board reasonably rejected that claim, noting, as did the Court, a seeming lack of remorse on Judge Brady's part about her actions in June 2013. Ibid.

**8. Factor Ten - the availability and adequacy of other penal sanctions**

The Board considered Judge Brady's argument that she has suffered enough due to the three-month, after-the-fact suspension imposed by the Supreme Court and the fifty-seven-month suspension during the pendency of

her criminal case. Ibid. If the fifty-seven-month suspension is not reversed, the Board found that this factor arguably weighs against total forfeiture. Ibid. In fact, the Board eventually did not impose a total forfeiture. (Aa129-130). It determined to forfeit Judge Brady's prospective pension benefits beginning on April 1, 2023, but it allowed her to keep those pension benefits previously received from January 1, 2022 through April 1, 2023 (amounting to three and one-half times the value of Judge Brady's total pension contributions to JRS). Ibid.

**9. Factor Eleven - other personal circumstances relating to the member which bear upon the justness of forfeiture**

The Board took specific note of the amount already expended by the pension system as compared to Judge Brady's total pension contributions, reviewed mitigating factors considered by the Court and argued by Judge Brady to the ACJC (including two adverse credibility findings by the Court), the lack of remorse the Court and Board perceived on Judge Brady's part, the statements by Judge Brady and her witnesses as well as her arguments, the stress that this process has produced for Judge Brady and her family, and the hardship on Judge Brady and her family should the Board seek to recover monies already paid to Judge Brady. (Aa129).

In light of the statutory guideline that pension benefits generally cease to accrue at the commencement of the member's misconduct, the Board determined

that Judge Brady arguably is not entitled to any retirement benefits. (Aa129). The Board found that the “default” penalty of computing benefits as of the date the misconduct commenced would not result in an excessive forfeiture. (Aa130). The Board noted that Judge Brady already received sixteen months of disability retirement payments as of the Board’s March 30, 2023 meeting. Ibid. The Board viewed the sixteen monthly payments (amounting to three and one-half times the value of Judge Brady’s pension contributions) as ample return of Judge Brady’s pension contributions. Ibid. In light of the mitigating factors noted by the Supreme Court and the hardship that a requirement to repay those sixteen-month payments would entail, the Board decided not to recoup those disability retirement benefits previously paid to Judge Brady. Ibid. The Board treated the sixteen-month disability retirement allowances as a combination of the return of Judge Brady’s pension contributions and partial pension benefits for that period. Ibid. Accordingly, the Board properly ordered the forfeiture of Judge Brady’s pension benefits from April 1, 2023 forward. (Aa116).

As a whole, the Board properly applied the eleven-factor analysis and considered all relevant records, the factual findings made by the Supreme Court by clear and convincing evidence as well as the mitigating factors and Judge Brady’s unique situation. All of the Board’s findings and determinations are based on sufficient and credible evidence, largely originating from the Supreme



Court's decision on Judge Brady's disciplinary action. Given the deferential standard of review and the serious nature of Judge Brady's misconduct, the Board's forfeiture decision is neither arbitrary, capricious, nor unreasonable, and should be affirmed.

## POINT II

**THE HONORABLE SERVICE REVIEW IS A  
DISTINCT AND SEPARATE ISSUE FROM THE  
ELIGIBILITY OF DISABILITY RETIREMENT  
AND THE POWER TO CONDUCT THE REVIEW  
IS STRICTLY VESTED WITH THE BOARD  
UNDER N.J.S.A. 43:1-3.**

Judge Brady also asserts, for the first time on appeal, that the Governor and the Supreme Court have the exclusive authority to conduct honorable service review in their process of referring or approving disability retirements under N.J.S.A. 43:6A-12, and that the Board erred as it lacks the authority or jurisdiction to do so, but she is incorrect. (Ab20-27). Judge Brady confuses the authority of the Supreme Court and the Governor to determine initial eligibility for disability retirement for JRS members with the exclusive authority vested in Boards of Trustees for their respective retirement systems, including JRS, to conduct honorable service review and order pension forfeitures under N.J.S.A. 43:1-3.

This court ordinarily declines to consider questions or legal issues not properly presented in the lower court when an opportunity for such a

presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest. Brown v. Township of Old Bridge, 319 N.J. Super. 476, 501 (App. Div.), certif. denied, 162 N.J. 131 (1999). Because Judge Brady had ample opportunity to present this argument to the Board but failed to do so, this court should decline to consider it.

Nevertheless, when an appellant raises a new legal argument that was not raised in the lower court, the appellate court may review the issue under the “plain error” standard. R. 2:10-2. This standard is applied to determine whether the error was “clearly capable of producing an unjust result.” Big Smoke LLC v. Township of West Milford, 478 N.J. Super. 203, 226 (2024). The burden is on the appellant to establish that the trial court’s actions constituted plain error. State v. C.W.H., 465 N.J. Super. 574, 595 (2021). The “plain error” standard is a high bar, intended to incentivize timely objections during trial to allow the trial court to address potential errors immediately. State v. Santamaria, 236 N.J. 390, 404 (2019).

Judge Brady attempts to frame her argument as jurisdictional in nature, and, thus, an exception to the plain error standard, (Ab14-15), but this attempt should be rejected, as it is based on her misunderstanding of the relevant statutes and confusion of the legal issues presented.

Judge Brady’s assertion that a JRS member’s entitlement to disability retirement is “unconditional” and “absolute” under N.J.S.A. 43:6A-12 ignores N.J.S.A. 43:1-3(b), which states, “[t]he board of trustees of any State . . . retirement system created under the laws of this State is authorized to order the forfeiture of all or part of the earned service credit or pension or retirement benefit of any member of the fund or system for misconduct occurring during the member’s public service which renders the member’s service or part thereof dishonorable.” *Ibid.* (emphasis added).

In ignoring N.J.S.A. 43:1-3 as a whole, Judge Brady relies on N.J.S.A. 43:6A-12 and contends that the Governor and the Supreme Court have the exclusive authorities to conduct honorable service review in their process of referring or approving disability retirement under N.J.S.A. 43:6A-12. (Ab24-25). That argument must fail as it largely boils down to Judge Brady’s incorrect statutory interpretation.

“The Court’s obligation when interpreting a law is to determine and carry out the Legislature’s intent.” Sussex Commons Assocs., LLC v. Rutgers, 210 N.J. 531, 540-41 (2012) (citing Allen v. V & A Bros., Inc., 208 N.J. 114, 127 (2011)). “[G]enerally, the best indicator of that intent is the statutory language.” DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citing Frugis v. Bracigliano, 177 N.J. 250, 280 (2003)). “A court should ‘ascribe to the statutory words their

ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole.’” D’Ambrosio v. Dep’t of Health & Sr. Servs., 403 N.J. Super. 321, 334 (App. Div. 2008) (citing DiProspero, 183 N.J. at 492). “Ultimately, a court’s role when analyzing a statute is to give effect to the Legislature’s intent as evidenced by the ‘language of [the] statute, the policy behind it, concepts of reasonableness and legislative history.’” Ibid. (quoting Johnson Mach. Co. v. Manville Sales Corp., 248 N.J. Super. 285, 303-04 (App. Div. 1991)).

New Jersey courts “afford substantial deference to an agency’s interpretation of a statute that the agency is charged with enforcing.” Richardson v. Bd. of Trs., Police & Firemen’s Ret. Sys., 192 N.J. 189, 196 (2007) (citing R & R Mktg., LLC v. Brown-Forman Corp., 158 N.J. 170, 175 (1999)). “Such deference has been specifically extended to state agencies that administer pension statutes,” because “a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise.” Piatt v. Police & Firemen’s Ret. Sys., 443 N.J. Super. 80, 99 (App. Div. 2015) (quoting In re Election Law Enf’t Comm’n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)).

N.J.S.A. 43:6A-12 affords the Governor and the Supreme Court the authority to determine JRS members’ eligibility for disability retirement.

Specifically, the Supreme Court shall certify to the Governor that a JRS member “may be retired for disability if the member has become physically or otherwise incapacitated for full and efficient service to the State in his judicial capacity”. N.J.S.A. 43:6A-12. Then, [t]he Governor shall thereupon refer the disability claim to three physicians of skill ... who shall examine the member and report to the Governor as to his ... disability. . . .” Ibid. “[I]f the report confirms the existence of the disability, and if the Governor approves the report, the member shall be retired [under disability retirement].” Ibid.

However, nothing in N.J.S.A. 43:6A-12 affords the Governor or the Supreme Court the authority to consider her misconduct before referring or approving her disability retirement. Rather, the statute merely sets forth the process for determining JRS members’ eligibility for disability retirement. Judge Brady’s argument that the Governor and the Supreme Court were given the authority to conduct honorable service review in their process of referring or approving disability retirement under N.J.S.A. 43:6A-12 is simply unsupported by the plain language of the statute.

Further, in making that argument, Judge Brady confuses the authority of the Supreme Court and the Governor to determine initial eligibility for disability retirement for JRS members with the exclusive authority vested in Boards of Trustees for their respective retirement systems, including JRS, to conduct

honorable service review and order pension forfeitures under N.J.S.A. 43:1-3. JRS members may be eligible for one or more types of retirement benefits, including service retirement (N.J.S.A. 43:6A-8), early retirement (N.J.S.A. 43:6A-10), deferred retirement (N.J.S.A. 43:6A-11) or disability retirement (N.J.S.A. 43:6A-12), if they satisfy the different requirements set forth for such retirement, but their eventual “receipt of ... [any type of] retirement benefit is [] expressly conditioned upon the rendering of honorable service.” N.J.S.A. 43:1-3(a); see e.g. State v. Anderson, 91 N.J. 53, 61 (2021) (affirming the Board’s forfeiture decision against the member’s early retirement benefits for which the member was found to be eligible and was approved); LePrince v. Board of Trustees, Teachers’ Pension and Annuity Fund, 267 N.J. Super 270, 271-72 (App. Div. 1993) (affirming the Board’s partial forfeiture decision against the member’s service retirement benefits for which the member was found to be eligible and was approved); Borrello v. Board of Trustees, Public Employees Retirement System, 313 N.J. Super. 75, 77-78 (App. Div.1998) (finding the codified eleven-factor honorable service review is a separate and distinct issue from determining whether the member is otherwise eligible for deferred retirement under the deferred retirement statute).

Judge Brady asserts the lack of explicit authority in the JRS Act for the Board to conduct honorable service reviews means the Board usurped the



Governor's authority. (Ab25-26). She is incorrect. While it is true that nowhere in the JRS Act does it explicitly state that the JRS Board has the authority to conduct honorable service review, that is true for all pension statutes such as PFRS statutes (N.J.S.A. 43:16A-1 through 68), PERS statutes (N.J.S.A. 43:15A-6 to -161) and TPAF statutes (N.J.S.A. 18A:66-1 to -93). Nowhere in any of those pension statutes do they include an independent and particular section that specifically authorize their respective boards of trustees to conduct honorable service review. Instead, N.J.S.A. 43:1-1 through 5 are the general forfeiture statutes applicable to all State retirement systems. N.J.S.A. 43:1-3(b).

Judge Brady also relies on the Legislative history of N.J.S.A. 43:6A-12 and argues that the Legislature never made any references to the Board or State House Committee when it enacted and subsequently amended N.J.S.A. 43:6A-12. (Ab26-27). Such an argument is illogical. N.J.S.A. 43:6A-12 does afford the Governor and the Supreme Court the authority to determine JRS members' eligibility for disability retirement. As argued above, however, there is simply no explicit or implied language in N.J.S.A. 43:6A-12 that affords the Governor or the Supreme Court the authority to consider Judge Brady's misconduct, or even makes any such references about reviewing misconduct, before referring or approving her disability retirement. N.J.S.A. 43:6A-12 merely set forth the process and authority in determining JRS members' eligibility for disability

retirement. Because N.J.S.A. 43:6A-12 has nothing to do with honorable service review, the lack of reference to the JRS Board in the statutory language cannot be interpreted as an intention of the Legislature to strip the honorable service review authority from the JRS Board under N.J.S.A. 43:1-3.

Judge Brady's argument that the Governor or the Supreme Court have the exclusive authority for honorable service review in their process of referring or approving disability retirement under N.J.S.A. 43:6A-12, would also lead to the illogical result that the Legislature enacted N.J.S.A. 43:6A-12 as an exception to N.J.S.A. 43:1-3. Not so. First, N.J.S.A. 43:6A-12 was enacted years before N.J.S.A. 43:1-3.<sup>8</sup> To suggest that an earlier adopted statute was specifically intended to be treated as an exception to a later adopted statute is untenable. Second, if the Legislature intended to make N.J.S.A. 43:6A-12 an exception to N.J.S.A. 43:1-3, then the Legislature would have made that clear when it enacted N.J.S.A. 43:1-3 in 1995, about fourteen years after N.J.S.A. 43:6A-12 was last amended, because there is a strong presumption that the Legislature is familiar with its own enactments. Kramer v. Board of Trustees of Public Employees' Retirement System, 291 N.J. Super. 46, 55 (App. Div. 1996) ("The Legislature is presumed aware of its earlier enactments"); State Shorthand Reporting

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<sup>8</sup> N.J.S.A. 43:6A-12 was enacted in 1973 as L. 1973, c. 104, §12 and last amended in 1981 as L. 1981, c. 470, §12. N.J.S.A. 43:1-3 was enacted in 1995 as L. 1995, c. 408, § 1.

Services v. New Jersey Department of Labor and Workforce Development, 478 N.J. Super. 13 (App. Div. 2024) (“the Legislature is presumed to be familiar with its existing enactments and is presumed to intend that its newer enactments be harmonized with the existing ones, in light of the Legislature’s purpose”). Finally, N.J.S.A. 43:1-3 is a specific statute, which was enacted to address the pension forfeiture and honorable service review issues for all public pension funds and retirement systems of the State. As such, N.J.S.A. 43:1-3 would prevail if it conflicted with a general statute. J.H. v. Mercer County Youth Detention Center, 396 N.J. Super. 1, 15-16 (App. Div. 2007) (it is a well-established rule of statutory construction that where two statutes appear to be in conflict, and one is general in nature and the other specific, the conflict is resolved in favor of the more specific). However, there is no conflict because N.J.S.A. 43:6A-12 does not address pension forfeiture and honorable service review. J.H. v. Mercer County Youth Detention Center, 396 N.J. Super. 1, 15-16 (App. Div. 2007) (it is a well-established rule of statutory construction that where two statutes appear to be in conflict, and one is general in nature and the other specific, the conflict is resolved in favor of the more specific).

In light of the foregoing, the Board properly conducted honorable service review concerning Judge Brady’s judicial service pursuant to its authority duly vested from N.J.S.A. 43:1-3.

**CONCLUSION**

For these reasons, the Board's final agency decision should be affirmed.

Respectfully submitted,

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By: /s/ Yi Zhu  
Yi Zhu  
Deputy Attorney General

Dated: February 4, 2025

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CARLIA M. BRADY,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES OF THE  
JUDICIAL RETIREMENT  
SYSTEM,

Respondent-Respondent.

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3054-23

On Appeal from Final Determination of  
the Board of Trustees of the Judicial  
Retirement System

Sat Below:

Board of Trustees of the Judicial  
Retirement System

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**REPLY BRIEF ON BEHALF OF PETITIONER-APPELLANT,  
CARLIA M. BRADY**

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## PRELIMINARY STATEMENT

Much of the brief filed by Respondent, the Board of Trustees of the Judicial Retirement System, (the “Board”), is devoted to a recapitulation of the facts found in this matter by the Supreme Court of New Jersey and the State House Commission. While Appellant, Judge Carlia Brady, disagrees with the inferences drawn by the Court and by the Board, she accepts, for purposes of appeal, the underlying fact findings.

However, those facts findings are irrelevant to two of the three arguments advanced by Appellant since those arguments are legal in nature: (1) whether conduct unrelated to the performance of Judge Brady’s public duties could be the basis for a pension forfeiture; and (2) whether the Board of Trustees of the Judicial Retirement System had the authority to even review a Judge’s application for disability retirement benefits. The third argument advanced by Appellant, which contests the Board’s interpretation and application of certain statutory criteria, is a mixed issue of law and fact and, unlike the arguments raised in Points I and II, which are reviewed *de novo*, is reviewed more deferentially.

Respondent devotes three pages of its brief (Rb24 to Rb26)<sup>1</sup> to a discussion of Appellant’s first argument, largely advancing irrelevant distinctions between

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<sup>1</sup> “Rb” refers to the brief of Respondent, the Board of Trustees of the Judicial Retirement System.

“Ab” refers to the initial brief of Judge Carlia Brady.

“Aa” refers to the appendix in this matter.

Judge Brady's situation and the facts underlying the cases cited in Point I of Appellant's brief. With regard to the second argument, which raises an issue of statutory construction concerning the Board's jurisdiction, Respondent ignores the text of the relevant statute, *N.J.S.A.* 43:6A-12, and proffers an argument that trivializes the role which the Legislature delegated to the Supreme Court in the disability pension review process.

### **STATEMENT OF FACTS**

Appellant relies on the Statement of Facts submitted in her original brief but here addresses two arguments advanced by Respondent in its Statement of Facts.

While Appellant acknowledges that her judicial tenure was as Respondent argues relatively short (Rb11), that brevity was attributable to the fact that Appellant was unable to work as a Judge as a consequence of her suspension without pay pending the resolution of the criminal charges filed against her, which were ultimately dismissed. Judge Brady was never convicted of any crime, and the Supreme Court found that removal, which had been recommended by the Advisory Committee on Judicial Conduct, was an excessive penalty and reduced her sanction to a three-month suspension (Rb9). However, Judge Brady as a result of these events, was unable to work as a jurist for nearly five years during which she could not make pension contributions or, because of her status as a Judge, work in any legal capacity. (Ab13; Ab35).

Respondent's contention that Judge Brady's disability flowed entirely from her misconduct is wrong. (Rb12; Aa128). At the time of the events in June 2013, Judge Brady's conduct was influenced by her memory of "domestic abuse in a prior relationship" in which she was physically abused. *Matter of Brady*, 243 N.J. 395, 406 (2020). In addition, at that time, she was concerned that she was pregnant with Mr. Pronnicki's child and upset to learn that he had an outstanding warrant for armed robbery. (Aa18 to Aa19; Aa22). The Supreme Court found that these stressors contributed to Judge Brady's disability and, based on their timing, they could not be the product of any misconduct attributable to her.

## **ARGUMENT**

### **POINT I**

#### **IN THE ABSENCE OF A CRIMINAL CONVICTION INVOLVING A CRIME OF MORAL TURPITUDE, A PUBIC EMPLOYEE MAY NOT BE REQUIRED TO FORFEIT A DISABILITY RETIREMENT BENEFIT BASED UPON CONDUCT THAT OCCURS OUTSIDE OF PUBLIC EMPLOYMENT**

In Point I of its Brief, Respondent argues that honorable service is an "implicit requirement of every public pension statute" (Rb19). *Uricoli v. Board of Trustees*, 91 N.J. 62 (1982). While that proposition is undisputed, it is still necessary to assess what type of conduct requires an "honorable service" analysis under relevant case law.

On three occasions, the Supreme Court and this Court have ruled that a public employee may not be required to forfeit retirement benefits as a consequence of conduct outside of public employment unless that conduct results in the conviction of a crime of moral turpitude. *Masse v. Board of Trustees*, 87 N.J. 252, 258 to 59 (1981); *Caucino v. Board of Trustees, Teachers Pension and Annuity Fund*, 474 N.J. Super. 405 (App. Div. 2023) and *In re Hess*, 422 N.J. Super. 27, 37 (App. Div. 2011). Thus, non-criminal conduct that does not touch and concern an employee's public employment does not trigger the need to undertake an "honorable service" analysis.

Respondent's brief attempts to distinguish these cases on three grounds: (1) these cases involved applications for deferred retirement benefits, not disability pensions; (2) the cases involved "public employees convicted of crimes that touched on no aspect of their public employment and duties"; and (3) a pension fund board of trustees is permitted to "consider all wrongful conduct during the member's employment, and not just criminal convictions." (Rb24 to Rb25).

However, the Supreme Court in *Masse* and this Court in later decisions announced a bright line holding; and those decisions eliminated the relevance of employee misconduct that is unrelated to public duties (unless that conduct results in a criminal conviction) to the honorable service assessment. Therefore, neither



the brevity of Judge Brady's service, nor the nature of the retirement benefit at issue are relevant to Judge Brady's application. Moreover, while Judges must be held to high ethical standards when assessing their right to continued employment, there is no reason to apply more stringent standards to a Judge's application for a retirement benefits than are applicable to any other public employee.

In addition to being inconsistent with the holdings of in *Masse*, *Caucino*, and *Hess*, Respondent's distinctions cannot be reconciled with the rationales the Courts gave to support their conclusions. First, pensions for public employees induce persons to accept public employment. *Masse*, 87 N.J. at 259-60. The forfeiture of post-employment benefits fails to recognize the financial sacrifice made by Judges who often abandon lucrative legal careers to perform a public service.

Second, sentencing provisions incorporated into *N.J.S.A. 2C:51 et seq.* do not include provisions requiring the forfeiture of a retirement benefit as an additional sanction upon conviction of a crime. Had the Legislature intended that result, it would have added such a sanction. *Masse*, 87 N.J. at 259. That is, the identification of criminal sanctions is a legislative prerogative and a requirement that a public employee forfeit a retirement benefit as a consequence of conduct outside the scope of public employment would unlawfully intrude upon that prerogative. *Hess*, 422 N.J. Super. at 36.

Third, pension statutes are to be liberally construed for the benefit of public employees. *Id.* at 35. Fourth, the loss of a pension benefit would impose an added sanction on public employees solely because of their status as public employees which unfairly discriminates against them. *Ibid.* at 36.

Given these rationales, Respondent's distinctions are inapposite. The nature of the retirement benefit would not, based upon the principles which underlay the decisions in *Masse*, *Hess*, or *Caucino*, have any relevance. And while it is true that these cases involved "public employees convicted of crimes that touched on no aspect of their public employment and duties" (Rb 24), Judge Brady committed no crime and Respondent's assertion that her "misconduct" relates to her judicial employment is wrong. As this Court found in *State v. Brady*, 452 N.J. Super. 143, 173 (App. Div. 2017), there is no authority to support the proposition that a Judge has a duty to enforce an order of a court "wherever he or she may be, twenty-four hours a day, 365 days per year." *Ibid.* at 173.

Finally, the assertion that a pension fund board of trustees is permitted to "consider all wrongful conduct during the member's employment, and not just criminal convictions" (Rb25), which is Respondent's third argument, cannot be reconciled with the explicit holdings of *Masse* and later cases.

*Corvelli v. Bd. of Trs.*, 130 N.J. 539 (1992), upon which Respondent relies (Rb21; Rb25), is inapposite. That case involved a policeman convicted of the

crime of weapons theft and who had engaged in “associated misconduct in office.” *Ibid.* at 541. That misconduct included the wrongful assignment of police personnel driven by Corvelli’s personal animus over a two- and one-half-year period, and the theft of another policeman’s weapon and later accusing the officer of carelessness as a consequence of the theft which Corvelli and an accomplice had committed. *Id.* at 543, 547. Corvelli’s conduct was, as the Court found and as Corvelli admitted, “directly related to his employment.” *Ibid.* at 548.

In summary, the bases which the Respondent advances to distinguish *Masse*, *Hess* and this Court’s more recent decision in *Caucino*, cannot be reconciled with the holding or reasoning of those decisions.

## POINT II

### THE BOARD OF TRUSTEES OF THE JUDICIAL RETIREMENT SYSTEM LACKS THE AUTHORITY TO SUPERSEDE A DETERMINATION OF THE SUPREME COURT OF NEW JERSEY THAT A JUDGE IS ENTITLED TO A DISABILITY BENEFIT

The question before this Court in Appellant’s Point II is not whether a board of trustees of a state pension has the general authority to order a pension forfeiture as a consequence of a state or municipal employee’s dishonorable service. The question, rather, is whether that authority resides with a pension board given the language and apparent purpose of *N.J.S.A.* 43:6A-12, which is uniquely applicable to jurists.

That statute reads as follows:

Whenever the Supreme Court shall certify to the Governor, any member who shall have served as a judge of the several courts, **may** be retired for disability if the member has become physically or otherwise incapacitated for full and efficient service to the State in his judicial capacity. The Governor shall thereupon refer the disability claim to three physicians of skill and repute in their profession and residents of this State who shall examine the member and report to the Governor as to his physical or other disability and whether in all reasonable probability, if they find the disability existent, it will continue permanently and does and will continue to prevent the member from giving full and efficient service in the performance of his judicial duties. If the report confirms the existence of the disability, and if the Governor approves the report, the member **shall be retired** not less than 1 month next following the date of filing of an application with the retirement system, and **he shall receive** a retirement allowance which shall consist of an annuity which is the actuarial equivalent of his accumulated deductions together with regular interest, and a pension which, when added to the member's annuity, will provide a retirement allowance during the remainder of his life in an amount equal to three-fourths of his final salary. (Emphasis added).

Several aspects of this statute undermine the Respondent's argument. First, in situations in which statutory language is clear, a court is bound to construe that statute as written without resort to extrinsic interpretative aids. *DeProspero v. Penn*, 183 N.J. 477, 492 to 93 (2007). The use of the phrases "shall be retired" and "shall receive" connotes an imperative. *Harvey v. Board of Chosen Freeholders of Essex County*, 30 N.J. 381, 391 (1959). Therefore, based upon the statutory language, there is no role for the Board of Trustees of the Judicial Retirement System in the entitlement analysis.

Second, no other New Jersey pension statute requires express approval of a public employee's disability benefit by the Governor, who sits as the head of the executive branch. Much like an executive order, the Governor's approval cannot be reversed by the Board or, generally, by the Courts unless it runs afoul of the Constitution.

This is not to say that all disabled jurists are entitled to a retirement benefit without consideration of their conduct. However, that conduct, if relevant, is to be evaluated by the Supreme Court, not the State House Commission in its role as a trustee for the Judicial Retirement System. For *N.J.S.A.* 43:6A-12 is unique insofar as it specifically requires the Supreme Court to determine whether a jurist "may be retired for disability." Therefore, the authority to evaluate a jurist's qualification for disability benefits resides with the Supreme Court of New Jersey and not with the Board of Trustees of the Judicial Retirement System. If the Court determines that a Judge's service was dishonorable, then it has the option to refuse to certify to the Governor that a Judge "may be retired for disability . . ." *N.J.S.A.* 43:6A-12.

Third, Respondent's construction of *N.J.S.A.* 43:6A-12, affords no meaningful role for the Supreme Court. It would make no sense to afford the Supreme Court of New Jersey a role in the "process" (Rb38; Rb40), if that role were wholly ministerial. For any public employee, a jurist or a laborer, is always

free to apply for a disability benefit. In the case of a disability retirement, while the Supreme Court does not determine if a Judge is disabled (the Governor does), it does determine whether the judge “may be retired.” If the Supreme Court’s assessment that a jurist’s service warrants receipt of a retirement disability benefit is usurped by the Board, the role of the Supreme Court would be entirely ministerial.

Fourth, the statutory delegation to the Governor and the Supreme Court recognizes the unique status of Judges, a part of the judicial branch of government who should be insulated from review by administrative agencies, such as the board of trustees

Fifth, in an earlier iteration of *N.J.S.A.* 43:6A-12, the Legislature provided for a role for the Board of Trustees of the Judicial Retirement System. As noted in Appellant’s initial brief, an earlier version of that statute read as follows:

If the report of the medical board confirms the existence of the disability and if the Governor recommends retirement, the claim shall be presented to the State House Commission.

Upon approval by the State House Commission . . .

The law was amended later that year, L. 1973, c. 304, § 12, to omit any reference to the State House Commission and to replace the word “recommends” with “approves” and to add the preemptory “shall receive.” (See discussion of statutory

history at Ab26 to Ab27). Respondent offers no explanation for the deletion of the reference to the “State House Commission” in the statutory amendment. Clearly, the deletion of this language signifies the Legislature’s intent to authorize only the Supreme Court and the Governor to determine whether or not a jurist qualifies for disability retirement.

*N.J.S.A.* 43:1-3(b) on which Respondent relies as a basis to supersede *N.J.S.A.* 43:12A-6 is not even applicable. The former statute only applies if the “misconduct [occurs] during the member’s public service” and that misconduct “renders the member’s service or part thereof dishonorable.” As the Appellate Division has ruled, Judge Brady’s conduct occurred outside of her public service and while it reflected adversely on Her Honor, it did not impact her “member’s service.” See Point I of Appellant’s initial and this reply brief.

Finally, while, as Respondent argues, a specific statute must prevail over a generally worded statute (Rb42), *N.J.S.A.* 43:12A-6, since it deals only with disability benefits for Judges, is more specific than the general delegation of authority to pension boards set forth in *N.J.S.A.* 43:3-1.



### POINT III

#### **THE FORFEITURE OF JUDGE BRADY'S DISABILITY RETIREMENT BENEFIT WAS UNWARRANTED WHEN MEASURED AGAINST THE *URICOLI* FACTORS PROPERLY CONSTRUED**

Appellant relies on Point III of her initial brief and any applicable arguments above.

### CONCLUSION

For the reasons set forth in this brief and in Appellant's initial brief, the determination of the State House Commission should be reversed.

Respectfully submitted,

**SZAFERMAN, LAKIND,  
BLUMSTEIN & BLADER, P.C.**

*s/Arnold C. Lakind*  
Arnold C. Lakind, Esq.

Dated: February 21, 2025