

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2017-398

IN THE MATTER OF
HECTOR I. RODRIGUEZ,
A FORMER JUDGE OF THE
MUNICIPAL COURT

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PRESENTMENT

The Advisory Committee on Judicial Conduct (the "Committee" or "ACJC") hereby presents to the Supreme Court its Findings and Recommendation in this matter in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's findings demonstrate that the charges set forth in the Formal Complaint issued against Hector I. Rodriguez, former Judge of the Municipal Court ("Respondent"), concerning his inappropriate remark to a female defendant appearing before him, have been proven by clear and convincing evidence, and that by engaging in such conduct, Respondent violated Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.5 of the Code of Judicial Conduct. As a result of these findings, and for the reasons stated herein, the Committee respectfully recommends that Respondent be publicly reprimanded for his misconduct.

I. PROCEDURAL HISTORY

This matter was initiated when the Committee was informed of the remark made by Respondent on December 5, 2017 that resulted in his removal from the list of municipal court judges authorized to handle CJP/centralized first appearance matters by way of the Supreme Court's Order dated December 11, 2017.

The Committee authorized an investigation into this matter, which included interviews of multiple witnesses, review of the audio of the proceeding, which was less than five minutes in length, and review of the transcript of the subject proceeding.

On December 12, 2018, the Committee issued a Formal Complaint against Respondent, charging him with having engaged in conduct that violates Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.5, of the Code of Judicial Conduct when he made an inappropriate remark to a defendant that demonstrated discourteous and undignified behavior which detracted from the dignity of the court.

Respondent filed an Answer to the Committee's Formal Complaint on December 28, 2018, wherein Respondent admitted certain factual allegations, including the accuracy of the language therein quoted from the transcript of the December 5, 2017 proceeding, offered clarification regarding some allegations, denied others, and denied violating the cited Canons of the Code of Judicial Conduct.

Pursuant to Rule 2:15-13(a), the Presenter, by way of letter dated January 8, 2019, provided to Respondent, through his counsel, the documents that would be relied upon to sustain the disciplinary charges asserted in the Formal Complaint. Respondent did not provide discovery. After the hearing, Respondent submitted seven (7) character letters, which are identified collectively as R-2.

The Committee convened a Formal Hearing at the New Jersey Law Center on January 22, 2020. Presenter called two witnesses - Lauren Casale, Esq., Somerset County Assistant Prosecutor ("AP Casale"), and Audra McEvoy, a judiciary employee assigned to CJP court who works as a Team Leader, or a Court Services Supervisor ("CSS"), in the Pretrial Services Unit for the Somerset, Hunterdon & Warren Vicinage, ("CSS McEvoy") - both of whom were present in court on December 5, 2017 and heard Respondent's remark. Respondent appeared, with counsel, and offered testimony in defense of the asserted disciplinary charges. Exhibits offered by Presenter were admitted into evidence. See Presenter's Exhibits P-1, P-2, and P-4 through P-7.¹ Although Presenter intended to call as an additional witness Anthony Cowell, Esq., Assistant Deputy Public

¹ P-6, the transcript of the interview conducted of Respondent on February 16, 2018 in connection with investigation authorized by the Committee, includes testimony which concerns events for which there are no corresponding charges in the Formal Complaint. As such, in issuing this Presentment, the Committee afforded no weight to any portions of testimony that do not relate to the asserted disciplinary charges.

Defender for the Office of the Public Defender, Somerset Region, ("PD Cowell") who represented the defendant and was present in court and heard Respondent's remark on December 5, 2017, he was unavailable to testify at the Formal Hearing. As such, Presenter withdrew Exhibit P-3, which was a transcript of an interview conducted of PD Cowell on September 4, 2018 in connection with the Committee's investigation. See T94-4 to T95-24²; see also T112-18-20. The only exhibit offered at the Formal Hearing by Respondent was a CD containing an audio file of the December 5, 2017 proceeding, which was admitted into evidence. See Respondent's Exhibit R-1 ("CourtSmart Recording").

After carefully reviewing the evidence, the Committee makes the following findings, supported by clear and convincing evidence, which form the basis for its recommendation for the imposition of public discipline.

² "T" refers to the transcript of the Formal Hearing held on January 22, 2020. The number following the "T" refers to the page of the transcript being referenced and the number(s) following the page number refers to line(s) being referenced (i.e. "T94-4" refers to the January 22, 2020 hearing transcript at page 94, line 4).

II. FINDINGS

A. Factual and Procedural Background

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1982. See Formal Complaint and Answer at ¶1. At all times relevant to this matter, Respondent served as Judge of the Municipal Court in the Township of Franklin, New Jersey, a position to which he was first appointed on January 1, 2014, reappointed on January 1, 2017, and not reappointed thereafter. Id. at ¶2; T112-2-9. In addition, effective January 1, 2017, Respondent was designated as a municipal court judge authorized to handle CJP matters for the Somerset Vicinage, a position he held until December 11, 2017, when the Supreme Court issued an Order removing Respondent from that list. See Formal Complaint and Answer at ¶2.

On December 5, 2017, as part of his CJP assignment, Respondent presided over a "first appearance" involving a female defendant who was charged with multiple indictable offenses related to drug charges and was represented by PD Cowell. Id. at ¶3. CSS McEvoy was present in court on December 5, 2017 to operate the court's audio recording equipment and was seated directly adjacent to Respondent. Id. at ¶4; T12-4-14; T49-15-24.

Following defendant's "not guilty" plea, Respondent read the defendant her rights and explained how the matter would proceed.

Respondent, thereafter, asked the defendant if she had any questions, to which the defendant replied that she did not. Id. at ¶5. At the conclusion of the proceeding, the following exchange between Respondent, counsel, and the Defendant occurred:

AP CASALE: Do we have to put bail on the record?

PD COWELL: Oh, it's an ROR bail.

RESPONDENT: Your bail is ROR -- you're released on your own recognizance.

DEFENDANT: Okay.

RESPONDENT: But you do have bail. You have monetary bail. You're released on your own recognizance.

DEFENDANT: Okay.

RESPONDENT: Okay?

DEFENDANT: Thank you.

RESPONDENT: Do you understand? You seem a little --

DEFENDANT: I'm like a little -- 'cause --

AP CASALE: Well, it's confusing --

DEFENDANT: -- I'm like, wait --

AP CASALE: -- saying money bail or saying she doesn't have to post anything.

RESPONDENT: Yeah. No.

DEFENDANT: Is it - do I owe you anything or --

RESPONDENT: Not that you can do in front of all these people, no.

P-1 at 6-18 to 7-16.

Respondent acknowledged that he made the above quoted remark -- "*[n]ot that you can do in front of all these people, no*" -- to the defendant, though aware that the defendant was to be released without posting bail. See Formal Complaint and Answer at ¶10; see also P-6 at 54-9-25; see also T87-24 to T88-23. Respondent claimed he replied to the defendant in this fashion to "reiterat[e] [to the defendant] that she need not make a payment to secure bail." See Answer at ¶10. Respondent was aware, however, that all payments made in respect of a court matter were made outside of the courtroom in either the Pretrial Services Unit or the Bail Unit, not to Respondent directly. See Formal Complaint and Answer at ¶11.

After the matter concluded and the defendant departed, AP Casale and PD Cowell discussed between themselves Respondent's remark and decided to speak with CSS McEvoy. See T16-2 to T17-10. They went to CSS McEvoy's office located in the building and listened to the audio recording of the proceeding. T17-23 to T18-12; T51-4 to T52-5. After further discussion, CSS McEvoy memorialized, in writing, what occurred in court and emailed it to her supervisor, Brian Rother, Assistant Criminal Division Manager. T52-6 to T53-12; See also P-5. The email was later forwarded to the Honorable Yolanda Ciccone, Assignment Judge for the Somerset, Hunterdon & Warren Vicinage. See P-5. The following day, the Honorable William T. Kelleher, Jr., Presiding Judge of the

Municipal Courts for the Somerset, Hunterdon & Warren Vicinage, advised Respondent that he was being "taken off the list" of municipal court judges authorized to handle CJP matters. T75-18 to T76-11; See also P-7.

B. Respondent's Defenses

Respondent has consistently denied any impropriety or the appearance of an impropriety in his exchange with the defendant and has maintained that AP Casale and CSS McEvoy misunderstood his remark to the defendant as a sexual innuendo. When initially questioned by the ACJC's investigators, Respondent testified, under oath, that his remark to the defendant was not intended as a sexual innuendo, but rather was made "in furtherance of [his] colloquy [with the defendant] . . . regarding . . . monetary bail" and to explain to the defendant that she could not "give [Respondent] any monetary bail." See P-6 at 53-17 to 54-2.

In his Answer to the Formal Complaint, Respondent reaffirmed the propriety of his interactions with the defendant on December 5, 2017 and maintained that he was simply "reiterating [to the defendant] that she need not make a payment to secure bail." See Formal Complaint and Answer at ¶10. Respondent denied that in making the subject statement he violated the Code of Judicial Conduct. Id. at ¶19.

Respondent, when testifying before the Committee at the hearing in defense of his conduct, attempted to contextualize the

social climate at the time of these events with reference to the "Me Too movement, Harvey Weinstein . . . , [and] Matt Lauer . . . ," about which he was aware. T75-2-9. Cognizant that "people's sensibilities as to sexual innuendos and saying things in the workplace were somewhat heightened," Respondent maintained that his intent in making the subject remark was innocuous, i.e. to disabuse the defendant of any notion that she was required to post bail before leaving court that day. T75-9-14; T77-20-23. The offense expressed by AP Casale and CSS McEvoy, Respondent argued, was unreasonable and engendered by "their sensibilities, . . . their gender sexuality, . . . [and] their interactions with different types of people. . . ." T107-7-20.

III. ANALYSIS

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

In this judicial disciplinary matter, Respondent has been charged with impugning the integrity of the Judiciary and behaving

inappropriately and in an undignified manner, in violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.5, of the Code of Judicial Conduct.

We find, based on our review of the evidence of record, that these asserted disciplinary charges have been proven by clear and convincing evidence and that Respondent's poor choice of words during the December 5, 2017 CJP first appearance violated the cited canons of the Code of Judicial Conduct for which public discipline is warranted.

Respondent is charged with the duty to abide by and to enforce the provisions of the Code of Judicial Conduct. See R. 1:18 ("It shall be the duty of every judge to abide by and to enforce the provisions of the Rules of Professional Conduct, the Code of Judicial Conduct and the provisions of R. 1:15 and R. 1:17.")

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

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

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

Code of Judicial Conduct.

This Commentary emphasizes the special role that judges play in our society and the significance of their public comportment. "The understanding of [Canon 2] is that judges have a special responsibility because they are 'the subject of constant public scrutiny;' everything judges do can reflect on their judicial office." In re Blackman, 124 N.J. 547, 551 (1991). As recognized by our Supreme Court, adherence to this principle is of the utmost importance. In re Santini, 126 N.J. 291, 298 (1991); see also In re Murray, 92 N.J. 567, 571 (1983); In re Hardt, 72 N.J. 160, 166-167 (1977).

Canon 3, Rule 3.5, requires judges to treat all those with whom they interact in an official capacity, including litigants, jurors, witnesses, lawyers, and others, with courtesy, dignity and patience.

In the instant matter, the evidence presented demonstrates, clearly and convincingly, that Respondent failed to conduct himself in a manner consistent with the above referenced high ethical standards. We find Respondent's statement -- "[n]ot that

you can do in front of all these people, no" -- in response to the defendant's inquiry about whether she owed anything to the court in connection with a payment for bail, inappropriate. We reject as unpersuasive Respondent's asserted defense that his remark to the defendant concerned monetary bail and only meant to clarify to the defendant that she did not owe any payment to the court. The subject statement, on its face, suggests to its intended recipient that there was something she *could* do for Respondent in private, outside of the presence of those in the courtroom and unrelated to bail, that would satisfy her obligations in respect of the criminal charge. Given the defendant's ROR release, we find Respondent's explanation incongruous and the witnesses' interpretation of his remark as a sexual innuendo and their subsequent offense reasonable. Regardless of his intent, Respondent's statement had the clear potential to suggest to the defendant, as it did to AP Casale and CSS McEvoy, that she could avoid the consequence of her criminal charge if she were to do for Respondent, in private, something of a sexual nature.

Whether Respondent intended his words as a sexually suggestive remark, an attempt at humor,³ or something else,

³Although denied by Respondent, there is evidence that suggests Respondent's reply to the defendant's inquiry may have been an attempt at humor. T107-21-108-9. Earlier in the December 5, 2017 proceeding, Respondent joked about defendant's last name. P-1 at 2-14 to 3-3; T74-10-19; T83-6-15. Also, four of Respondent's character letters include descriptions of his use of humor while

Respondent knew or should have known that his choice of words was inappropriate because of the negative inferences which reasonably could, and, in this case, were drawn from the manner in which he phrased his response to the defendant's inquiry. Such remarks have no place in our judicial system and must be assiduously avoided by all members of the Judiciary, particularly its jurists.

Respondent's introduction of sexual innuendo into a courtroom proceeding impugned the integrity of the Judiciary and the judicial process, sullied the dignity of those seeking redress in the court, and tainted the solemnity of the courtroom proceedings in violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.5, of the Code of Judicial Conduct.

Having concluded that Respondent violated the Code of Judicial Conduct, the sole issue remaining is the appropriate quantum of discipline. In our consideration of this issue, we are mindful of the primary purpose of our system of judicial discipline, namely, to preserve the public's confidence in the integrity and independence of the Judiciary, not to punish an offending judge. In re Seaman, supra, 133 N.J. at 96 (1993). Discipline imposed upon a judge is meant to reassure the public that judicial misconduct is neither permitted nor condoned. Id. at 97.

on the bench. One letter stated Respondent uses "quips" in his courtroom, and another stated "oftentimes, [Respondent's] proceedings took on a somewhat informal air." See R-2.

Relevant to this inquiry is a review of both the aggravating and mitigating factors that may accompany judicial misconduct. Id. at 98-100. The aggravating factors to consider when determining the gravity of judicial misconduct include the extent to which the misconduct demonstrates a lack of integrity and probity, a lack of independence or impartiality, misuse of judicial authority that indicates unfitness, and whether the conduct has been repeated or has harmed others. Id. at 98-99.

The Committee finds Respondent's failure to appreciate the impropriety of his remark and his refusal to concede that it could reasonably be considered as inappropriate to aggravate his misconduct in this instance.

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

In respect of any mitigating factors, the record before us includes seven (7) character letters submitted by attorneys on Respondent's behalf, which together reflect their shared belief that Respondent served as a fair jurist and competent attorney. We recognize and commend Respondent for his service on the municipal bench between 2014 and 2019, first as an associate judge and then

as the chief judge in the Township of Franklin. We also note that prior to this incident, Respondent's judicial disciplinary history was unblemished.

We find these mitigating factors, though significant, inadequate when weighed against the aggravating circumstances and Respondent's unethical conduct in this instance, for which we recommend a public reprimand. In re Convery, 201 N.J. 411 (2010) (reprimanding Respondent for making disrespectful and insulting comments to a litigant appearing before him, in addition to making an undignified and discourteous comment, which also created the appearance of bias); In re Citta, 201 N.J. 413 (2010) (reprimanding Respondent making biased, disrespectful, and insulting comments to defendants appearing before him); In re Rivas, ___ N.J. ___ (2020) (censuring a judge for his several improper remarks to litigants appearing before him throughout the course of a proceeding, See Order filed March 23, 2020 adopting findings and recommendation of ACJC Presentment 2019-215).

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be publicly reprimanded for his conduct violative of Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.5, of the Code of Judicial Conduct. This recommendation considers the seriousness of Respondent's misconduct, the precedent in this area, and the aggravating and mitigating factors present in this case, which justify the quantum of discipline recommended.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

May 12, 2020

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