SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2013-281

IN THE MATTER OF CARLIA M. BRADY JUDGE OF THE SUPERIOR COURT	**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 and the evidence of record demonstrate that the charges set forth in the Formal Complaint against Carlia M. Brady ("Respondent"), Judge of the Superior Court, relating to her repeated failure over the course of a two-day period to notify the Woodbridge Township Police Department of her then live-in boyfriend's known whereabouts, despite being aware of two outstanding warrants for his arrest, one for armed robbery, and his expected presence and departure from her home, have been proven by clear and convincing evidence.

While Respondent's conduct may not be considered criminal given the dismissal of the criminal charges filed against her by the Somerset County Prosecutor's Office for second-degree official

misconduct (N.J.S.A. 2C:30-2b) and third-degree hindering the apprehension of a fugitive (N.J.S.A. 2C:29-3a(1) - a(2)), her conduct, in the aggregate, constitutes a significant violation of the Code of Judicial Conduct that has irreparably impugned Respondent's integrity and renders her continued service on the bench untenable.

For these reasons, the Committee respectfully recommends the Supreme Court institute proceedings to remove Respondent from judicial office in accordance with Rule 2:14-1 and N.J.S.A. 2B:2A-1 to -11.

I. PROCEDURAL HISTORY

The New Jersey Supreme Court, on June 12, 2013, referred this matter to the Committee following Respondent's arrest on June 11, 2013 on charges of hindering the apprehension of Jason Prontnicki, Respondent's then live-in boyfriend, for "knowingly harboring [him], a known fugitive (armed robbery), in her residence. . . for approximately 1 hour," without attempting to contact law enforcement. P-1. Incident to her arrest, the Supreme Court, by Order dated June 12, 2013, suspended Respondent, without pay, from her judicial office after which the Court issued a public statement concerning these events. The Committee, consistent with its standing policy, held this ethics matter pending the conclusion of Respondent's criminal proceedings, which spanned nearly five years (June 11, 2013 - March 2, 2018).

On June 14, 2013, Middlesex County Assignment Judge Travis Francis, by administrative order, transferred Respondent's criminal matter from the Middlesex County Superior Court to the Somerset County Superior Court. A Somerset County grand jury subsequently indicted Respondent on May 13, 2015 charging her with one count of second-degree official misconduct for failing to perform a duty inherent to the judicial office - i.e. to enforce an arrest warrant by notifying authorities of a fugitive's known whereabouts - and two counts of third degree hindering by concealing that fugitive and offering to provide him aid (money, transportation or clothing) to avoid arrest. State v. Carlia M. Brady, Indictment No. 15-05-00240-I. P-2.

On March 4, 2016, the trial court in State v. Carlia M. Brady, Indictment No. 15-05-00240-I, granted Respondent's motion to dismiss the official misconduct charge, but denied the motion as to the hindering charges. See Formal Complaint and Answer at ¶40. The trial court subsequently denied motions for reconsideration filed by the State and Respondent, respectively. Ibid. The parties moved for leave to appeal those decisions, which the Appellate Division granted, consolidating both appeals to issue a single opinion. (A-0483-16; A-0484-16). State v. Carlia M. Brady, 452 N.J. Super. 143 (App. Div. September 11, 2017).

On September 11, 2017, the Appellate Division issued its decision on those consolidated appeals affirming the trial court's

decision and remanding the matter to the Law Division for further proceedings. Brady, supra, 452 N.J. Super. at 162-174. As to the official misconduct charge specifically, the Appellate Division found "no authority supporting the contention that a judge has a non-discretionary duty to enforce" another court's warrant, though, in dicta, it acknowledged the New Jersey Supreme Court's separate and independent power to discipline judges for their conduct, "criminal or unethical, official or otherwise," to include removal from judicial office. Id. at 173-174.

On February 28, 2018, the Appellate Division granted an interlocutory appeal filed by third-party witness Jason Prontnicki, the subject fugitive, seeking emergent relief from the trial court's February 14, 2018 order compelling him to testify in Respondent's criminal trial, despite his assertion of the privilege against self-incrimination, and reversed that order. State v. Carlia M. Brady, No. AM-000353-17 (App. Div. Feb. 28, 2018) (slip op. at 2). As a result, the Appellate Division, on that same date, dismissed as moot Respondent's motion for leave to appeal from that aspect of the trial court's order limiting her cross-examination of Mr. Prontnicki. Ibid.

On March 2, 2018, the trial court, on the State's motion, dismissed, with prejudice, the remaining two hindering counts of the indictment given the State's position that absent Mr. Prontnicki's testimony it lacked sufficient evidence to prove

Respondent's guilt beyond a reasonable doubt. State v. Carlia M. Brady, Indictment No. 15-05-00240-I. Notably, the Appellate Division, in rejecting Respondent's appeal of the trial court's order denying the dismissal of the two hindering charges found the evidence sufficient to withstand Respondent's motion to dismiss. Brady, supra, 452 N.J. Super. at 158-162. We take no position on the merits of this dismissal or the State's position vis-à-vis the necessity of Mr. Prontnicki's testimony to prove the hindering charges.

Following dismissal of the indictment, the Supreme Court, on March 6, 2018, reinstated Respondent to active duty as a Superior Court judge in the Civil Division of the Middlesex vicinage. The Court's reinstatement order directed that its prior referral to the Committee in respect of this matter "remain[] in effect."

The Committee, accordingly, reinstated this matter to its active calendar and initiated an investigation into those aspects of Respondent's conduct on which the criminal charges were predicated. As part of that investigation, the Committee subpoenaed the Somerset County Prosecutor's investigation file and obtained, by court order, a copy of those documents the Prosecutor's office secured with a Grand Jury subpoena or a Communications Data Warrant. See P-1 thru P-20; P-23. In addition, the Committee retained the services of two experts -- a forensic audio expert and a board certified psychiatrist who specializes in

forensic psychiatry -- to evaluate Respondent's asserted defenses. See P-21 thru P-22; P-24 thru P-25.

On May 4, 2018, the Committee issued a Formal Complaint charging Respondent with conduct in contravention of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.3(A), and Canon 5, Rule 5.1(A) of the Code of Judicial Conduct.[1] These charges relate to Respondent's alleged failure between June 10 and 11, 2013 to notify the Woodbridge Township Police Department ("WTPD") of Jason Prontnicki's known whereabouts, despite her knowledge of two outstanding warrants for his arrest (one for armed robbery), and her abuse of the judicial office during her arrest.

Respondent filed an Answer to the Complaint on June 25, 2018 in which she admitted certain factual allegations, with some clarification, denied others and denied violating the cited Canons of the Code of Judicial Conduct.

The Committee convened a Formal Hearing on January 24, 2019, which continued for six additional days - January 25, 28 and 29,

[1] Formerly Canons 1, 2(A)-(B), and 5 of the Code of Judicial Conduct. The New Jersey Supreme Court adopted the revised Code of Judicial Conduct to which we cite and refer in this Presentment on August 2, 2016 with an effective date of September 1, 2016, which postdated Respondent's underlying conduct. There were no substantive changes, however, to Canons 1, 2 and 5(A) that would materially affect the charges in the Complaint and Respondent does not claim otherwise or that the matter should have proceeded with reference to canons that were no longer in effect at the time of the Complaint. We find these specific amendments to be immaterial in this case.

2019, February 22, 2019, March 26, 2019 and April 17, 2019 - until its conclusion. A four-member panel heard the matter with all four panelists in attendance throughout the hearing. See Rule 2:15-3(b). The Committee members who did not serve on the hearing panel read the hearing transcripts and briefs and reviewed the record. See Rule 2:15-3(a). Respondent appeared, with counsel, and offered testimony in defense of the asserted disciplinary charges as well as that of two fact witnesses and two expert witnesses. The Presenter called five fact witnesses in support of the asserted disciplinary charges in its case-in-chief and two expert witnesses on rebuttal. The Presenter and Respondent offered exhibits, the majority of which were admitted into evidence, without objection. See Presenter's Exhibits P-1 thru P-26; see also Respondent's Exhibits R-1 thru R-54, R-58 thru R-64, and R-66 thru R-75. Rb4, fn1.[2] Presenter and Respondent, with leave of the Committee, filed post-hearing briefs on June 7, 2019, and reply briefs on June 12 and 14, 2019, respectively, each of which the Committee considered.

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

Respondent did not offer into evidence exhibits R-55 thru R-57 or R-65.

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

II. FINDINGS

A.

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1997. See Formal Complaint and Answer at ¶1. At all times relevant to this matter, Respondent served as a Superior Court Judge in the Civil Division in the Middlesex vicinage, a position to which she was sworn on April 5, 2013. Id. at ¶2. As previously noted, Respondent was suspended, without pay, from judicial office on June 12, 2013 following the filing of criminal charges against her for hindering the apprehension of another in violation of N.J.S.A. 2C:29-3a(1) - a(2). Ibid. The New Jersey Supreme Court reinstated Respondent to active judicial status on March 6, 2018, subsequent to the dismissal of the criminal charges. Ibid.

The facts pertinent to this judicial disciplinary matter concern Respondent's conduct over the course of two days - June 10 and 11, 2013 - while interacting with the WTPD in person and over the telephone vis-à-vis the whereabouts of her then live-in boyfriend, Jason Prontnicki, whom Respondent was advised had two outstanding warrants for his arrest, one for armed robbery, and her abuse of the judicial office when arrested for this conduct.

See Formal Complaint and Answer at ¶¶1-37. Relevant to this discussion are the events of June 9, 2013 involving several interactions between Respondent and Mr. Prontnicki that precipitated Respondent's communications with the WTPD on June 10 and 11, 2013, and were the subject of testimony.

On June 10, 2013, at 10:19 a.m., Respondent went to the WTPD headquarters to report one of her two cars missing. P-3; see also Formal Complaint and Answer at ¶7. Woodbridge Police Officer Robert Bartko, who was on patrol at the time, responded to police headquarters to process Respondent's "walk-in" complaint. 1T40-16 to 1T41-1[3]; see also Formal Complaint and Answer at ¶7. On arriving at the police station, Officer Bartko was advised by those officers present that Respondent was a Superior Court judge. 1T41-7-13; 2T24-17-23.

Respondent's statement to Officer Bartko that morning included the following salient information. On June 9, 2013, she loaned one of her two cars to Mr. Prontnicki whom she had been dating since December 2012 and cohabitating with, in her home,

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[3] Reference to the hearing transcripts are as follows:

- "1T" - Transcript of Hearing dated January 24, 2019;
- "2T" - Transcript of Hearing dated January 25, 2019;
- "3T" - Transcript of Hearing dated January 28, 2019;
- "4T" - Transcript of Hearing dated January 29, 2019;
- "5T" - Transcript of Hearing dated February 22, 2019;
- "6T" - Transcript of Hearing dated March 26, 2019;
- "7T" - Transcript of Hearing dated April 17, 2019.

since March 2013. See Formal Complaint and Answer at ¶3; 6T15-25 to 6T20-4; 6T25-6 to 6T26-1. When Mr. Prontnicki returned home later that evening without Respondent's car, Mr. Prontnicki told Respondent that he had lent the car to his brother, Christopher Prontnicki, who also lived in Woodbridge Township, approximately one mile from Respondent's home. P-3; 6T37-23 to 6T41-5; 6T151-23 to 6T152-1; see also Formal Complaint and Answer at ¶4. Later that evening, however, Mr. Prontnicki told Respondent he had actually lent her car to a friend, not his brother. P-3; 6T41-7 to 6T42-21. Respondent and Mr. Prontnicki, at Respondent's insistence, spent the ensuing early morning hours (i.e. 1:00 a.m. to after 4:00 a.m.) of June 10, 2013 driving through Bayonne and Jersey City, New Jersey looking for her car, which they did not locate. P-3; 6T43-24 to 6T47-5. Respondent ultimately left Mr. Prontnicki alone in Jersey City to continue the search for her car and informed him that she would report the car "missing" if she did not hear from him by 10:00 a.m. that morning. P-3; 6T46-7 to 6T47-12; see also Formal Complaint and Answer at ¶6. Having not heard from Mr. Prontnicki, Respondent advised Officer Bartko that she wished to report her car "missing." 6T48-16 to 6T50-6.

Officer Bartko, on taking Respondent's statement, advised her of the procedures for filing a criminal complaint against Mr. Prontnicki, who was the last known individual to have Respondent's car. 2T25-15-24; 6T53-21 to 6T54-4. Respondent declined to do so,

preferring instead to file a complaint against the individual to whom Mr. Prontnicki claimed he loaned the car, a "Kareem Williams." See Formal Complaint and Answer at ¶9. The WTPD, however, could not identify any such person. Ibid.; 2T25-18 to 2T26-4. At Officer Bartko's request, his supervisors, Lieutenant James Mullarney (then Sergeant Mullarney), a twenty-six-year veteran of the department, and Sergeant Walter Bukowski, met with Respondent and again explained to her the procedures for filing a criminal complaint and her inability to do so in respect of Mr. Williams about whom the police had no information. 3T4-18-22; 3T8-14 to 3T10-7; see also P-4; Formal Complaint and Answer at ¶9. Respondent again declined to sign a criminal complaint against Mr. Prontnicki, indicating that she preferred to speak with counsel before doing so. P-4; 3T16-12 to 3T18-16; 6T53-25 to 6T54-10.

On further investigation, Lieutenant Mullarney learned that Mr. Prontnicki's license was suspended and there were two open warrants for his arrest, including one from Old Bridge, New Jersey for the armed robbery of a pharmacy on April 29, 2013. P-4; 3T10-8 to 3T12-13. Lieutenant Mullarney and Sergeant Bukowski advised Respondent before she left the police station that day of Mr. Prontnicki's open warrants and instructed her that as an officer of the court it was incumbent on her to alert the police when Mr. Prontnicki returned with her car. P-4; 3T13-18 to 3T15-7; 3T22-8-22. Respondent testified that she understood this instruction to

mean that she was to call the police when she was aware of his "exact location" or when he returned to her home. 6T59-22 to 6T60-9; 6T146-2-11.

Respondent claimed that Officers Mullarney, Bukowski and Bartko refused her request to go to her home that day to look for Mr. Prontnicki or accompany her home for her safety, which Officers Mullarney and Bartko denied on direct examination. 6T59-5 to 6T60-9; 2T28-3-18; 3T21-10 to 3T22-3. Officer Bukowski did not testify at the hearing. We find no credible evidence to support Respondent's claims in this regard.

The resulting chain of events, which are the subject of this ethics matter, were contemporaneously memorialized in a series of text messages Respondent sent to multiple friends between 12:36 p.m. on June 10, 2013, while still at the WTPD headquarters, and 4:58 p.m. on June 11, 2013, minutes before her arrest. P-19; P-26; R-16. As revealed in those text messages, Respondent, between 12:36 p.m. and 12:43 p.m. on June 10, 2013, while still at the WTPD headquarters, texted friends about Mr. Prontnicki's outstanding warrant for armed robbery, stating:

> I just found out that Jason is wanted for Robbery for threatening a pharmacist with a crowbar . . . on April 29[.] That's when he was already staying with me and I was a judge.
>
> . . .

> I can't have him in my house cos I wud now be harboring a criminal. . . I wud have to report him.

P-19; P-26; R-16; 6T143-11 to 6T145-6.

Shortly thereafter, at 1:11 p.m., having left the WTPD headquarters and returned home, Respondent received a telephone call on her cell phone from Mr. Prontnicki. P-26; R-16; 6T60-10 to 6T61-2. During their ensuing discussion, Respondent told Mr. Prontnicki of the outstanding warrants for his arrest and of his suspended driver's license, and informed Mr. Prontnicki that he could not come into her home because of those outstanding warrants and her attendant obligation to report his whereabouts to the police. 6T61-3-18; 6T148-4-16. Mr. Prontnicki disclaimed any knowledge of the warrants or of his suspended driver's license and told Respondent that he had located her car and would return it to her house that day. Ibid.

Following that telephone discussion, Respondent did not alert the police of Mr. Prontnicki's anticipated arrival at her home. 6T62-4-13; 6T150-8-21. Respondent, instead, texted a friend at 1:37 p.m., the following:

> He just called to tell me he got the car and will bring it home. I told him he cant 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.

P-26; R-16; 6T148-17 to 6T149-10. Minutes later, at 1:45 p.m. Respondent telephoned her parents and requested they come to her house, which they did, arriving between 2:45 p.m. and 3:00 p.m. that day. 4T181-20-24; 6T63-9-19; 4T198-9 to 4T199-18; R-14 at ¶4, Exhibit B at p. 6; R-15 at ¶4. By all accounts, Respondent's parents were unaware of Mr. Prontnicki's arrest warrants or the events of June 9, 2013 involving Respondent's missing car when they arrived at Respondent's home. 4T196-22 to 4T197-9; 4T209-9 to 4T210-11; 6T63-11-22.

Shortly thereafter, at approximately 3:00 p.m., Mr. Prontnicki returned Respondent's car, which he parked in her driveway, and entered her home after Respondent's father opened the front door. 6T66-2 to 6T67-12; 6T151-6 to 6T152-1; 4T182-13 to 4T183-6; R-14 at ¶¶10-12; R-15 at ¶¶10-12. Once inside, Mr. Prontnicki walked past Respondent and her parents and into the garage, where Respondent followed him. 6T68-6 to 6T69-9; 4T185-1-22; R-14 at ¶14; R-15 at ¶14. Approximately 45 minutes later, at 3:45 p.m., Respondent's father joined them in the garage. 6T73-9 to 6T74-3; R-14 at ¶¶16-20. Respondent and Mr. Prontnicki remained in the garage for approximately one hour where they spoke at length before Mr. Prontnicki's brother, Christopher, picked him up in front of Respondent's home.[4] 6T70-11 to 6T74-22. Jason Prontnicki,

[4] Respondent's father offered Mr. Prontnicki a ride and, alternatively, money for a cab, however, Respondent directed her

in fact,, had used Respondent's cell phone at 3:56 p.m. that day, while they were still in the garage, to call Christopher for a ride to Christopher's house. 6T83-14 to 6T84-6; 6T153-6 to 6T154-10; R-14 at ¶22; R-18.

We find Respondent's testimony that she was unaware Mr. Prontnicki used her cell phone while he was in her garage that day incredible given her proximity to him during these events and her father's recollection of Mr. Prontnicki placing a call on a cell phone while they were standing in the garage. R-14 at ¶22; 4T193-19 to 4T194-9; 6T82-14 to 6T84-6; 6T153-6 to 6T154-10. Indeed, during their hour-long conversation, Mr. Prontnicki advised Respondent, within earshot of her father, that he was staying at Christopher's house in Woodbridge, roughly a mile from Respondent's home. Ibid; 4T190-4-18; 6T151-6 to 6T152-1.

Respondent did not call the WTPD while Mr. Prontnicki was at her home on June 10, 2013. 6T69-10-21. Rather, at 4:36 p.m., approximately 15 minutes after Mr. Prontnicki left Respondent's home, Respondent telephoned the WTPD and asked to speak with Officer Bartko, who was unavailable. P-7; R-22. Respondent left the following voicemail message for Officer Bartko:

> Hi, Officer Bartko, this is Carlia Brady. I submitted, I sat with you to fill out incident report number 13065290/1 um with regard to the unlawful taking of my car. Um, I just wanted

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father not to provide Mr. Prontnicki with any assistance. 6T73-9 to 6T74-3; R-14 at ¶¶19-20.

> to report to you that, um, Jason Prontnicki, the suspect, um, actually returned it just now. Um, it is in my driveway. I haven't inspected it yet cause it's raining and I didn't bring it into my house because I don't want it in my house unless I can inspect it. Um, I just wanted to let that be known. Also, to let you know since there's a warrant out for his arrest, he is not with me, but he is in Woodbridge cause he left, um, my property so please give me a call back. I, we need to know whether an amended report needs to be redone, um, or added, whatever I needed to do. Please give me a call back. . .[Respondent leaves one telephone number at which she may be reached].

P-7; R-22 thru R-24.

Though Respondent was aware when she placed this telephone call to Officer Bartko that Mr. Prontnicki was staying with his brother, Christopher, a mere mile from her home in Woodbridge, Respondent did not include this information in her voicemail message to Officer Bartko nor did she attempt to speak directly with an officer that evening. Ibid. Rather, after leaving this voicemail message for Officer Bartko, Respondent left her house with her parents, who also lived in Woodbridge, and spent the night with them. 6T88-19-24; 6T89-21-24.

Officer Bartko did not learn of this voicemail message or Respondent's subsequent voicemail message until her arrest on June 11, 2013, as he was on patrol both days.[5] 2T33-13-25. Notably, WTPD

[5] Officer Bartko, a patrol officer with the WTPD for two-years as of June 2013 and an eight-year veteran at the time of the hearing

patrol officers, unlike detectives, do not have direct telephone lines as they do not conduct investigations or generally receive telephone calls related to those investigations. 2T39-20 to 2T41-5. Indeed, Officer Bartko had not received a single voicemail in the immediately preceding six months. 2T40-20 to 2T41-5. As such, the practice in the WTPD is for patrol officers to check their voicemail once on the first day of their shift, which can last several days, unless the officer is expecting a telephone call. 2T23-18-19; 2T40-9 to 2T41-5. We do not assume or believe that Respondent was aware of this procedure.

On the evening of June 10, 2013, a patrol car from the WTPD drove by Respondent's house where an officer observed Respondent's previously missing car in her driveway. P-5. An officer knocked on the door to Respondent's home, but there was no answer. Ibid. The following morning, June 11, 2013, an officer returned to Respondent's home and again knocked on the door, but again there was no answer. Ibid.

Meanwhile, at 10:07 a.m. on June 11, 2013, Respondent received another telephone call on her cell phone from Mr. Prontnicki. R-16. On this occasion, they spoke for more than two and a half hours during which Respondent confirmed with Mr. Prontnicki his

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in this matter, has served continuously as a patrol officer in the WTPD's traffic division. 2T23-17 to 2T24-8.

intention to stay at his brother's house in Woodbridge indefinitely and Mr. Prontnicki made plans with Respondent to retrieve some of his belongings from her house later that day. 6T93-6 to 6T95-21. Respondent testified that she understood that Mr. Prontnicki's brother, Christopher, not Mr. Prontnicki, would be retrieving those belongings. Ibid.

Following this telephone discussion, Respondent did not notify the WTPD of Jason Prontnicki's whereabouts at his brother's house, though she had confirmed his exact location only moments earlier, and took no steps to advise the police of his plans to secure from her home some of his personal belongings. 6T96-5-14.

Approximately one hour later, at 1:49 p.m., Mr. Prontnicki again called Respondent on her cell phone, this time to confirm that she would be home between 3:00 p.m. and 4:00 p.m. that day to permit him to retrieve some of his belongings from her house. R-16; 6T97-2-15. Respondent, again, did not notify the police of Mr. Prontnicki's whereabouts, though aware of his location, or of his intention to retrieve some personal items from her home later that afternoon. Rather, Respondent texted with a friend for 20 minutes (1:59 p.m. - 2:19 p.m.) about her situation. P-19; R-16. In those texts, Respondent stated, in part:

> [H]e said he will turn himself in with when his lawyer is able to come with him and cooperate fully with the cops by giving them everything he knows.

> He can't stay in my house cos he has an arrest warrant right now and I have a duty as a judge to report all crimes and anyone with an arrest warrant. So he is at his brother's house.
>
> Told me that he will fix everything and then attempt to show me that all these bad things are not him.

P-19; P-26; R-16; 6T96-10-14.

Finally, at 3:31 p.m., Respondent made a second telephone call to the WTPD and again asked to speak with Officer Bartko, who was unavailable. Respondent left the following voicemail:

> Hi, good afternoon, Officer Bartko, this is Carlia Brady, um, I filled out a police report with you two days ago regarding my, um, car that was, uh, I, you know, I was trying to say it was stolen. Um, I don't know if you got my message yesterday, but the car has been returned by Jason Prontnicki. I have it, um, I just wanna amend the police report and I need to know whether I should come in to amend that and when, um, you're available so I can get an amended report, or if you can call me and let me know when I can pick up an amended report to reflect the car has been returned. Obviously um, I have my property back, so, um, please give me a call on my cell . . . . [Respondent leaves two telephone numbers at which she may be reached]. It's Carlia Brady. Thank you.

P-8; R-22 thru R-24.

Noticeably absent from this second voicemail message is any mention of Mr. Prontnicki's whereabouts, though Respondent had confirmed those whereabouts with him earlier that day, or any reference to Mr. Prontnicki's plan to obtain some of his belongings

from Respondent's home between 3:00 p.m. and 4:00 p.m. that afternoon. Ibid.

Approximately 15 minutes later, at 3:48 p.m., Mr. Prontnicki arrived at Respondent's home, having secured a ride from his brother, Christopher, and placed a call to Respondent's cell phone from her driveway to alert her of their presence. P-19; P-26; R-16; 6T100-19 to 6T101-13. On receiving this call, Respondent went to the garage where Jason Prontnicki met her. 6T101-14 to 6T102-8. Jason Prontnicki remained at Respondent's home on this occasion for one hour, while his brother waited in his car, before leaving with a duffle bag, the contents of which included clothing and personal care items. P-16. There is insufficient evidence in the record to indicate that Respondent either packed this duffle bag for Mr. Prontnicki or assisted him in doing so, both of which Respondent denies. 6T102-9-25.

Unbeknownst to Respondent, the WTPD had begun surveilling her home shortly after 2:00 p.m. on June 11, 2013 and had observed her initial interactions with Mr. Prontnicki in the garage at roughly 4:00 p.m. 3T165-17 to 3T173-1; 3T174-8 to 3T176-13; P-9; P-10; P-11; R-16. Approximately one hour later, at 4:55 p.m., the police observed Jason Prontnicki exit Respondent's garage with a duffel bag, which police later confirmed contained his personal belongings, and drive away with his brother. 3T173-2 to 3T174-1. Minutes later, police stopped Christopher Prontnicki's car a short

distance from Respondent's home and arrested Jason Prontnicki. 3T174-2-11.

In the interim, Respondent had closed her garage door and entered the interior of her home, unaware that the police had arrested Jason Prontnicki. 6T105-23 to 6T106-4. While in her house, Respondent texted with a friend for 10 minutes (4:53 p.m. - 5:03 p.m.) during which she repeated, "he and I can't be seen together or stay at my house together." P-19; P-26; R-16.

At 5:05 p.m., the police, having confirmed with headquarters that Respondent had not reported Mr. Prontnicki's presence at her house that afternoon, returned to Respondent's home and arrested her for hindering his apprehension. 3T177-20 to 3T179-13; P-11.

While being placed under arrest, Respondent, though initially compliant, became increasingly upset and directed the arresting officer to remove the handcuffs from her wrists as she had been "vetted," a direct reference to her judicial office, and stated that the handcuffs were unnecessary. P-11 at p. 4; 3T179-15-23; 4T36-5-10. When the officer refused to remove the handcuffs, Respondent requested the officer allow her to leave her house without handcuffs, which the officer denied as it was against WTPD policy and procedures. P-11 at p. 4; 4T33-3 to 4T34-13. Undeterred, Respondent requested the police handcuff her with her hands in front of her, not behind her, which the officer again declined to

do as it was against WTPD policy and procedures. P-11 at p. 4; 3T179-25 to 3T180-12.

Officer Bartko ultimately transported Respondent to the police station for processing following her arrest. 2T31-5-8. Consistent with WTPD policies and procedures, Officer Bartko activated the recording equipment in his patrol car after securing Respondent in the vehicle. 2T32-16 to 2T33-2. During her transport to headquarters, Respondent spoke at length about her situation, beginning with the possibility that she "may be pregnant" with Jason Prontnicki's child, the two having begun fertility treatments in April 2013. P-15; 6T25-6 to 6T26-1. She continued:

> He told me there was no arrest warrant and that he's getting the paperwork, he's just getting the stuff he needs for work, so he can have some clothes to wear the next few days. I mean, I don't understand why you would think somebody who's in love with someone, you know, I did call yesterday and I called again this afternoon to find out if I can talk to the officer, . . ., to see if it was true that there was no actual arrest warrant. . . .
>
> . . .
>
> I said [to Jason Prontnicki] I may, actually when they call me back I'm gonna go in to talk to them . . . to see if it's true . . . cause I don't know who to believe and, no offense, I don't know who to believe.
>
> . . .
>
> Oh my God. All I did was help this person. He was my boyfriend. There was never any incident before this.

P-15.

Officer Bartko, on returning to headquarters with Respondent that afternoon, alerted those detectives involved in her arrest of her statements during transport concerning the two messages she had left on his voicemail and about which he was wholly unfamiliar. 2T38-2-19. He subsequently played each message for the detectives. Ibid. Sometime thereafter, the Somerset County Prosecutor's Office assumed responsibility for Respondent's criminal matter from the WTPD given her position as a Superior Court judge in Middlesex County and ultimately a grand jury indicted Judge Brady on May 13, 2015. See State of New Jersey v. Carlia M. Brady, Indictment No. 15-05-00240-I; P-2; 3T73-7-24.

B.

Respondent, in denying any impropriety in respect of the events preceding her arrest, presents essentially a twofold defense, one of a medical nature and the second an accusation directed at the WTPD. As to the first defense, Respondent maintains that she was unwittingly suffering from a compromised mental state during this period, which directly affected the manner in which she processed and responded to information about Jason Prontnicki's dishonest and criminal conduct. In respect of the second defense, Respondent claims that she left two detailed voicemail messages with the WTPD, one on June 10, 2013 and the other on June 11, 2013,

that included a reference to Mr. Prontnicki's exact whereabouts, which the WTPD deleted to justify Respondent's arrest.[6]

Respondent offered expert testimony as to each defense, which the Presenter sought to rebut with competing expert testimony. As counsel did not object to the qualifications of these expert witnesses, we will not recount their respective qualifications here, but cite to their individual curriculum vitae contained in the record. P-22; P-24; R-46; R-49. Having weighed carefully these competing experts' reports and the testimony elicited from each medical expert, we find Presenter's experts more credible than Respondent's and find Respondent's stated defenses unpersuasive.

Addressing first Respondent's compromised mental state, Peter P. Oropeza, Psy.D., on Respondent's behalf, focused on three related topic areas: (1) stressors related to Respondent's decision-making in June 2013, (2) Respondent's current mental status as it relates to her position as a judge, and (3) Respondent's current mental status as it relates to her presentation and demeanor before this Committee.[7] R-46. In reaching

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[6] Though not raised previously in these proceedings, Respondent testified, when examined by the Committee, that she suspected the WTPD's decision to arrest her was racially motivated. 6T219-12 to 6T222-2. There being no evidence in the record to substantiate this claim and Respondent having not pursued it, we summarily reject this defense without further discussion.

[7] As to this third category, Dr. Oropeza opined that though Respondent has been compliant with treatment and is currently taking medication, she will likely "exhibit levels of anxiety that

his conclusions, Dr. Oropeza evaluated Respondent on three occasions - June 19, 2018, December 10, 2018 and December 17, 2018 - and reviewed documentation related to Respondent's criminal matter and this ethics matter, as well as Respondent's medical records from Rutgers University Behavioral Health Care (July 31, 2017 thru October 05, 2018) and Pamela E. Hall, Psy.D., who treated Respondent on July 9, 2014, July 23, 2014 and October 22, 2014. Ibid.; see also R-42 thru R-44. Dr. Oropeza also referenced a receipt for treatment Respondent received in 2013 from Sandra Colen, LCSW, who purportedly diagnosed Respondent with suffering from Post-Traumatic Stress Disorder ("PTSD"), though Dr. Oropeza was not provided with Ms. Colen's corresponding medical records. Ibid at p. 6; see also R-41.

Dr. Oropeza opined that during the two-day period at issue - June 10 and 11, 2013 - Respondent's mental state and judgment were "significantly impacted" by a series of "stressors," which included the following: "fear, shock, anger and anxiety" on learning that her boyfriend with whom she was actively seeking to conceive a child had been lying to her and was a potential "felon charged with a violent crime;" sleep deprivation between the

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will manifest in speech and thought patterns when testifying before this Committee." R-46 at pp. 13-14; 5T81-20 to 5T83-6. As this piece of Dr. Oropeza's testimony is immaterial to our analysis of this ethics matter, we will not address it further in this Presentment.

evening of June 9 and the morning of June 10, 2013 as she searched for her missing car; concern that a stranger had her car and personal information; lack of food; hormonal changes due to fertility treatments; her belief that she was pregnant with the child of Jason Prontnicki whom she now feared, and a history of prior domestic abuse from her first marriage 15 years earlier. R-46 at pp.10-11; 5T74-7 to 5T75-16.

These stressors, according to Dr. Oropeza, caused her to think irrationally during this period. 5T75-17 to 5T76-6. For example, Dr. Oropeza testified that she construed the WTPD's instructions to call when Mr. Prontnicki returned to her home literally, i.e. "to call when he was" at her house and not before. 5T76-7-25. This testimony, however, conflicts sharply with Respondent's who stated, unequivocally, that she understood this instruction to mean that she was to call the police when she was aware of his "exact location," not necessarily when he was in her home. 6T60-4-9; 6T146-2-11. Dr. Oropeza's testimony also conflicts with the facts of this case, which include a second telephone call from Respondent to the WTPD roughly 30 minutes *before* Mr. Prontnicki appeared at her home on June 11, 2013. P-8; R-22. When pressed as to why Respondent did not call the police when Mr. Prontnicki appeared at her home on June 10 and again on June 11, 2013, Dr. Oropeza opined that she did not do so out of fear that Mr. Prontnicki would hurt

her as her ex-husband had done 15 years earlier during a domestic dispute. 5T77-1-14.

The record, however, and Respondent's conduct during the events at issue, belie Respondent's claims that she feared Mr. Prontnicki. To wit, on June 10, 2013, Mr. Prontnicki gave Respondent several hours advanced notice before arriving at her home. Nonetheless, Respondent did not leave her home or seek police protection, preferring instead to await his arrival on June 10, 2013 with her elderly parents whom she had summoned to her home after learning of Mr. Prontnicki's outstanding warrant for armed robbery. Similarly, Respondent, in her multiple texts to friends while these events were unfolding, never mentioned being in fear of Mr. Prontnicki with whom she spoke for several hours, both over the telephone and in person, and repeatedly warned about their need to avoid being seen together given his outstanding warrants. See P-19; R-20. Indeed, even when arrested Respondent did not convey to the police any fear of Mr. Prontnicki. Rather, as she stated to Officer Bartko while in transit to the police station following her arrest, she doubted the very existence of an arrest warrant, insisting that she "did not know who to believe" - the police or Mr. Prontnicki - and remarking further that she was only trying "to help" Mr. Prontnicki. P-15.

When pressed, Dr. Oropeza ultimately conceded that "retrospective mental status examinations," as in this case, which

involve an attempt by the evaluator to discern a patient's mental state at an earlier point in time, in this case nearly six years earlier (i.e. June 2013), depend significantly on a patient's contemporaneous medical records, which, for Respondent, are nonexistent. 5T230-22 to 5T233-4. Though Sandra Colen, LCSW, evaluated Respondent in 2013, Ms. Colen did not provide Dr. Oropeza with any medical records, leaving Dr. Oropeza to rely on a copy of a bill for Ms. Colen's services on which Ms. Colen had evidently written several diagnostic codes, including one for PTSD. R-41; R-46 at p. 6. Dr. Oropeza acknowledged that if he were to rely on one data point, like Ms. Colen's medical records, their noted absence would render it impossible for him to discern if Ms. Colen's reference to PTSD on her bill related exclusively to Respondent's interactions with Mr. Prontnicki or was the result of the trauma from her arrest, indictment and attendant humiliation. 5T232-2 to 5T233-4. While Dr. Oropeza did, in fact, rely on medical records of a subsequent treatment provider, specifically the treatment notes of Pamela E. Hall, Psy.D. from July 9, 2014, July 23, 2014 and October 22, 2014 when arriving at his conclusions about Respondent's mental state in June 2013, those medical records postdated the events at issue by more than a year. R-42. Dr. Oropeza ultimately acknowledged the difficulty in this circumstance of rendering a "retrospective mental status" exam and conceded that it is "not a perfect science." Ibid.

As to Respondent's current mental status, Dr. Oropeza opined that the events at issue (i.e. her involvement with Mr. Prontnicki, arrest and indictment on charges that she hindered his apprehension and committed official misconduct, loss of income and humiliation) have caused her heightened anxiety and PTSD resulting in nightmares and depression for which Respondent testified she is currently taking medication. R-46 at p.12, 6T13-1-12.[8] Dr. Oropeza opined, however, that as of December 2018 Respondent, who has been compliant with treatment, "appears able to perform her duties as Judge of the Superior Court of New Jersey." Ibid. at p. 13; 5T80-20 to 5T81-19. Notably, however, Dr. Oropeza testified to certain "triggers" to which Respondent remains susceptible. 5T84-3 to 5T85-6. Those triggers include lying, i.e. when she believes she is being lied to, and "sometimes" the sight of police officers. Ibid.

When questioned about these triggers and their effect, if any, on her continued ability to sit as a judge, Respondent testified that she currently felt incapable of sitting in the Family Division without "more treatment" and without the eventual easing of the stress induced by the events at issue. 6T223-20 to 6T225-6. As to the Criminal Division, Respondent testified that she believes her personal experience with the criminal justice system has made her an "expert" in criminal procedure, which, in turn, has made

[8] Respondent, since May 2018, takes several different medications to control her nightmares, depression and anxiety. P-25 at p.7.

her better suited for the Criminal bench. 6T263-8 to 6T264-21. Notably, Respondent maintained this position despite her claims of police misconduct in the present matter. 6T264-22 to 6T266-3. Respondent, nonetheless, concedes that she is incapable of serving in the Middlesex County Criminal Division given her personal experience with the Middlesex County Prosecutor's Office. 6T263-23 to 6T264-21. Similarly, Respondent disclaimed any concerns with her current assignment in the Civil Division despite having to preside over matters in which WTPD officers are either witnesses or litigants. 6T225-7 to 6T226-25; 6T264-22 to 6T266-3.

On rebuttal, we heard the testimony of Carla Rodgers, M.D., a board certified psychiatrist specializing in forensic psychiatry, who examined Respondent on January 21, 2019 for the purpose of rendering an opinion as to Respondent's mental status. P-24; P-25. In reaching her conclusions, Dr. Rodgers reviewed the same documentation Dr. Oropeza reviewed, as well as the Code of Judicial Conduct, Respondent's medical records from the New Jersey Fertility Center and Dr. Oropeza's Report and Summary. P-25.

Dr. Rodgers opined that Respondent suffers from an "adjustment disorder with mixed disturbance of emotions and conduct," anxiety and depression, not PTSD. P-25 at p. 9. According to Dr. Rodgers, an "adjustment disorder" generally "lasts only 6 months, but suspension, loss of income and potential loss of reputation" prolonged Respondent's adjustment disorder, which ultimately "went

into remission with the dismissal of her charges . . . her return to work . . . and the reinstatement of her salary" in March 2018. Id. at pp. 9-10.

While Dr. Rodgers agreed with Dr. Oropeza's assessment that Respondent "could experience increased stress . . . as a result of the . . . (ACJC) hearing . . .," she concluded that "[those] feelings are not out of the normal range of emotions when one is being judged by one's peers, and one's job is on the line, and do not, per se, comprise a mental disorder." Id. at p. 8.

Dr. Rodgers ultimately concluded, based on her examination of Respondent and Respondent's test results, which were "computer scored" to "eliminate human scoring bias," that Respondent is "not paranoid or psychotic," but "is consciously trying to manipulate her answers to effect the greatest level of positive personal virtue." Id. at p. 7. In short, Respondent's current mental state is one of "conscious manipulation" to avoid any responsibility for her conduct when interacting with the WTPD on June 10 and 11, 2013. Id. at p. 10. This "conscious manipulation," according to Dr. Rodgers, was evident as early as Respondent's grand jury testimony on April 29, 2015 and May 6, 2015 and resurfaced during her examination and testing with Dr. Rodgers on January 21, 2019. Ibid. Indeed, Dr. Oropeza's test results, which were also computer scored, revealed a similar effort on Respondent's part to

manipulate the results of the psychological test. 7T66-1 to 7T69-3.[9]

Dr. Rodgers summarized Respondent's conscious manipulation as follows:

> [Respondent] claims inordinate virtue; everything that happened to her was someone else's fault; people, including the police, are out to get her; she is just very naïve and believes everything she hears from romantic partners. This is simply not credible, and it is evident that Judge Brady cannot acknowledge exercising impaired judgment in her personal life, and does not take responsibility for any aspect of her current situation regarding the upcoming hearing. It is also concerning that she said she would be upset if she were the judge on call, and police came to her house to get warrants signed.
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[9] In respect of the "validity" of the test results, Dr. Oropeza's test revealed "indications suggesting [Respondent] tended to portray herself in a consistently negative or pathological manner[]." As a consequence:

> Concerns about overt distortion of the clinical picture must be raised . . . . The respondent likely has emphasized negative aspects of herself and the environment while minimizing positive aspects. Although this pattern does not necessarily indicate a level of distortion that would render test results uninterpretable, the interpretive hypotheses presented in this report . . . should be reviewed with this response style in mind. The clinical elevations are likely to over-represent the degree and extent of symptoms in particular areas.

7T68-17 to 7T69-3.

> In order to help herself in this situation, [Respondent] has continually portrayed herself as blameless and naïve, but psychological testing has shown this posture to be conscious manipulation on her part.

P-25 at p. 10.

As to Respondent's mental state in June 2013, Dr. Rodgers, unlike Dr. Oropeza, testified, "it's not possible" to render a diagnosis today as to Respondent's mental state on June 9, 10 and 11, 2013. 7T127-6 to 7T129-16. Dr. Rodgers opined "to a reasonable degree of medical probability," that Respondent's behavior during that period (i.e. failing to call 9-1-1, returning home where Mr. Prontnicki "could most easily find her," inviting her elderly parents to her home) was as likely the product of Respondent's desire to protect her judicial position as it was the result of any "stressors." 7T128-10 to 7T129-4.

We find Dr. Rodgers's conclusions, when coupled with the evidence of record, namely Respondent's contemporaneous text messages to friends that she could not be seen with Mr. Prontnicki and the doubts she expressed to police about the very existence of the arrest warrants, more credible than those of Dr. Oropeza, whose opinions conflict with the facts in this case.

We next address Respondent's second defense, namely that the WTPD altered her two voicemail messages to eliminate the reference she claims she made to Mr. Prontnicki's exact whereabouts at his brother's house to justify Respondent's arrest on charges of

hindering his apprehension. 6T86-22 to 6T87-3; 6T98-13 to 6T100-16; 6T217-3-17; 6T218-7 to 6T219-6. Respondent's mother, who was purportedly within earshot of Respondent when she left the voicemail message for Officer Bartko on June 10, 2013, recalls, in striking detail, Respondent's reference to Jason Prontnicki's location at his brother's house and Respondent's description of the area in which the house was located. 5T15-1-12; R-15 at ¶¶22-23.

In support of this defense, Respondent offered the certifications and "Audio Authentication Report" of forensic audio expert Arlo E. West of Creative Forensic Services, dated June 10, 2014, January 21, 2015, and December 30, 2018, respectively. R-47 thru R-49. The Presenter, on rebuttal, offered two reports authored by forensic audio expert Bruce E. Koenig of Bek Tek, LLC, the first dated July 14, 2015 and the second dated March 21, 2019. P-21.[10] Counsel agreed to rely on their respective forensic audio experts' reports in lieu of live testimony. 6T267-13-22.

Mr. West reviewed "5CDs containing audio recordings" of Respondent's voicemail messages to Officer Bartko on June 10 and 11, 2013. R-49 at p. 1. According to Mr. West, CD#1 and CD#2 "are not authentic, true or correct," but are "re-recordings of an

[10] Unless otherwise indicated, citations to P-21 refer to Bruce E. Koenig's March 21, 2019 report, which responds directly to Mr. West's December 30, 2018 report.

intentionally edited version and is a masking attempt." R-49 at pp. 14, 28. The WTPD, in fact, created these re-recordings with the use of a handheld recording device, which they used to record the voicemails played on speakerphone from Officer Bartko's voicemail at the WTPD, to preserve this evidence following Judge Brady's arrest. 4T37-21 to 4T39-2.

Though acknowledging that these re-recordings are not digital clones of Respondent's original voicemails, and conceding that a recording may only be "authenticated" by examining "a digital clone duplicate of the hard drive and any relevant data files . . .," Mr. West nonetheless opines that CD#1 and CD#2 constitute competent evidence of intentional edits by the WTPD of Respondent's voicemail messages. R-49 at pp. 14, 28. Mr. West premises this opinion on the existence of "gaps" and "anomalies" on those re-recordings that purportedly occurred at the precise location where Respondent's deleted statements would have existed. Id. at pp.14-28.

Mr. Koenig, of Bek Tek LLC, contradicts Mr. West's conclusions in this regard, opining that since "Q1" (CD#1) and "Q2" (CD#2) are neither the original audio files of these voicemails nor a "bit-for-bit copy (a 'clone')," Mr. West's analysis of these re-recordings and his ultimate conclusions are "forensically meaningless." P-21 at p. 10. Notably, Mr. Koenig also discredits the "standards" to which Mr. West cites when determining the

audio's authenticity. Id. at p. 8. In his report, Mr. West refers to "The Seven Tenets of Audio Authenticity" as the "generally accepted standards used to determine audio authenticity." R-49 at p. 2. These "standards," however, according to Mr. Koenig, "originate from a Federal District Court judgment of November 17, 1958 [United States v. McKeever, 169 F. Supp. 426 (S.D.N.Y. 1958)]" and are unreliable for several reasons, including:

> This judgment (1) is over sixty years old; (2) pertains to analog recordings, not the digital recordings present in this matter; (3) is a legal statement, not a scientific-based, peer-reviewed methodology; and (4) was not addressed . . . by the appellate court, who stated, in part, 'Of course in our discussion we do not reach the further point whether a sufficient foundation has been laid . . . as to the authenticity and accuracy of the recording. [citation omitted].

P-21 at p. 8

Mr. Koenig, likewise, discredits Mr. West's reference to an article in the 1995 September/October edition of *Prosecutor's Magazine* titled "Sound Recordings as Evidence in Court Proceedings," Vol. 29, No. 5, as forensically meaningless when analyzing digital audio recordings. P-21 at p. 9. As Mr. Koenig notes, "This 1995 article . . . (1) has not been scientifically peer-reviewed; (2) is basically concerned with analog media; and (3) is published in a legal magazine of the National District Attorneys Association." Ibid. Similarly, Mr. Koenig discredits Mr. West's reference to the book *Digital Image Forensics: There is*

More to a Picture Than Meets the Eye, by Husrev Taha Sencar and Nasir Memon, July 26, 2012, as immaterial given its focus on "digital image forensics," not "digital audio authenticity forensics." Id. at p. 10.

In respect of CD#3, it contains not only Respondent's voicemail messages, but also those immediately prior to and following Respondent's voicemail messages, all of which were retrieved directly from the WTPD's NiceLog recorder. P-21 at p. 12; R-49 at p. 30. Mr. West places great significance on the fact that no similar gaps are detectable on the recordings immediately prior to or following Respondent's subject voicemails. Ibid.

Mr. Koenig, however, who has prior experience with the NICE voicemail recording system used by the WTPD, explains this purported anomaly with reference to the NICE Administrator's Manual (the "Manual"), which provides that its users may enable the "Activity Detector" for *each* "configured input channel," and thereby allow the system to record only "active audio" and not "the periods of silence between active segments." P-21 at p. 11. According to the Manual, "Activity Detection also enables efficient playback of audio, so that silent segments can be skipped (compressed), and not reproduced during playback." Ibid. Indeed, Mr. Koenig has "repeatedly found zero digital amplitude areas," or what Mr. West refers to as "gaps," when analyzing the same type of NICE recordings used in this matter, which, he explains, are

"encountered in digital logging systems in areas of no or low amplitude or volume, such as between segments of speech or other sounds." P-21 at pp. 10-11.

We find Mr. Koenig's explanations and supporting analyses more credible than that of Mr. West, who evidently has no prior experience with the NICE-based voicemail recording system and, as such, we accord no weight to Mr. West's notation of the absence of gaps on the other voicemail messages contained on CD#3.

As to CD#3, CD#4 and CD#5, collectively, Mr. West opines that:

> [E]ach contain an inauthentic and inaccurate version . . . of the voicemail message left by Judge Brady on June 10, 2013. The recording contained on CD#3 cannot be considered authentic, whole or complete because of missing and/or omitted or possibly redacted and/or edited dialogue.

R-49 at p. 43.

By comparing these three CDs, Mr. West opines that CD#4, "which is from the archive," contains a longer "gap" than that contained on CD's #3 and #5. Ibid. This distinction, "combined with the dialog discontinuance anomalies," according to Mr. West, "can only occur if something has been added to the audio in CD#4 or if something has been taken away from the audio on CD's 3 and 5." Ibid. Mr. West concludes, "[T]hat dialog from the subject voicemails was edited, whether intentionally or otherwise, causing dialog discontinuance, gaps and anomalies to occur" and that none of the 5 CDs reviewed may be "relied upon as accurately reflecting

the actual voicemail messages left by Judge Brady on June 10, 2013 and June 11, 2013." Id. at pp. 43-44.

Mr. Koenig discredits these findings, explaining that "Q3" (CD#3) and "Q5" (CD#5), which, unlike "Q4" (CD#4), contain a continuous recording of both voicemails, have a "DC [direct current] portion (i.e. no audio information)" at "the beginning of each file." Q4 (CD#4), however, which contains bit-for-bit copies ("clones") of the original voicemails does not have the same "DC portion." P-21 at pp. 5, 15. Mr. Koenig's forensic comparison of the DC portions on Q3 and Q5 with the recordings on Q4 "revealed that there is no loss of information from the original recording for any of these files, but that an area of no audio information, lasting 1/20th of a second, has been added to . . . Q3 and Q5." Id. at p. 15.

Utilizing "critical listening analysis" to evaluate Respondent's two voicemail messages cloned on Q4 and reproduced on Q5, Mr. Koenig observed "no discontinuities, deletions, additions, or other types of events indicative of editing processes." Id. at p. 7. Attached to Mr. Koenig's July 14, 2015 report are two peer-reviewed scientific resources, one an article entitled "Forensic Authentication of Digital Audio Recordings" and the other a book entitled "Forensic Authentication of Digital Audio and Video Files," which explain, in detail, the concept of "critical

listening analysis." P-21 at p. 7; see also P-21 at Koenig July 14, 2015 report, Exhibits "A" and "F."

In addition, using "narrow-band spectrum, spectrographic and high-resolution waveform analysis," Mr. Koenig observed "no electrical network discrete frequencies, improper frequency ranges . . . speech or recording discontinuities, deletions, additions or other types of events indicative of editing processes." Ibid. In short, Mr. Koenig's forensic analysis of Respondent's two voicemail messages contained on the WTPD's NICE voicemail recording system confirms that Respondent's voicemail messages were "not altered or edited to add, remove, or reposition the originally-recorded information." Id. at p. 17.

We find given the weight of the credible scientific evidence offered by Mr. Koenig when compared with the evidence offered by Mr. West, that Respondent's accusation against the WTPD concerning their purported alteration of her voicemail messages is without merit. Indeed, Mr. Koenig's report and corresponding forensic analysis provides ample authority to conclude that the integrity of the WTPD's NICE voicemail system on June 10 and 11, 2013 was not compromised and, had it been, evidence of such would have been readily detectable. As such, we find Respondent's testimony and that of her mother accusing the WTPD of altering her voicemails incredible and the testimony of the WTPD officers denying such conduct credible.

Notably, even absent this expert testimony, the evidence of record establishes, clearly and convincingly, that Respondent failed to alert the police of Mr. Prontnicki's anticipated presence in her home on June 10 or of his actual presence in her home on either June 10 or 11, 2013.

Finally, in denying any impropriety in respect of her conduct when arrested, i.e. referring to her judicial office ("I've been vetted") when requesting she not be handcuffed, Respondent maintained that her intent was not to obtain preferential treatment, but simply to assure the arresting officers that she would not resist arrest. P-11 at p. 4; 4T36-5-10; 6T108-17-23; Rb25. In this regard, Respondent noted that Officer Grogan, the arresting police officer, was admittedly unware of the meaning of the term "vetted," though he noted it in his report, and Officer Murphy, his superior, considered this reference "nervous chatter," implying that Respondent's use of the term did not have even the unintended consequence of exerting influence over these officers. 3T200-1-16; 4T27-4-20; 4T33-5-10; 4T36-5-10; Rb25.

In terms of Respondent's request that she be handcuffed with her hands placed in front of her, rather than behind her, Respondent again maintained that she was not seeking preferential treatment because she was a judge, but rather made this request because she was pregnant and wanted to "protect" her stomach while handcuffed. 6T108-5-14; Rb25.

We find these defenses without merit. Respondent's explanation that any such reference to her judicial office was innocuous as she only intended to assure the arresting officers of her purpose to cooperate, underscores its impropriety. This explanation acknowledges Respondent's attempt to trade on the esteem of the judicial office to secure preferential treatment, i.e. an arrest without handcuffs. Indeed, we can conceive of no other purpose for such a reference in this context.

We are similarly unpersuaded by Respondent's subsequent reference to her as yet unconfirmed pregnancy as the basis for her request for special treatment, namely to be handcuffed with her hands in front of her as opposed to behind her. Having inserted her judicial office into this circumstance, Respondent's subsequent reference to other, seemingly more personal reasons for making such a request does not cure the taint of her initial and inappropriate reference to her judicial office.

Our recommendation for removal, however, does not turn on the events related to Respondent's reactions to being handcuffed upon her arrest, but rather on her conduct and inaction on June 10 and 11, 2013 preceding her arrest.

III. ANALYSIS

The burden of proof in judicial disciplinary matters is clear-and-convincing evidence. Rule 2:15-15(a). Clear-and-convincing evidence is that which "produce[s] in the mind of the trier of

fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence, so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts in issue." In re Seaman, 133 N.J. 67, 74 (1993) (citations and internal quotations omitted).

In this judicial disciplinary matter Respondent has been charged with violating Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.3(A), and Canon 5, Rule 5.1(A) of the Code of Judicial Conduct in two material respects: (1) failing, over the course of two-days, to notify the police of her then live-in boyfriend's confirmed whereabouts, despite being aware of two outstanding warrants for his arrest; and (2) abusing her judicial office to secure preferential treatment when arrested.

We note, prefatorily, that the sole issue before this Committee is not whether Respondent, in failing to notify the WTPD of Mr. Prontnicki's whereabouts, committed a crime, but rather whether Respondent's conduct violated her *ethical obligations* under the Code of Judicial Conduct.

Indeed, the Appellate Division, in affirming the trial court's dismissal of Respondent's indictment for official misconduct, found no such legal duty or attendant criminal violation to exist in respect of the judicial office, but acknowledged the limits of its decision to exclude the separate issue of whether that same

conduct violated Respondent's ethical obligations under the Code. State v. Carlia M. Brady, supra, 452 N.J. Super. at 173-174 (finding "no authority supporting the contention that a judge has a non-discretionary duty to enforce" another court's warrant "while at home on vacation," though acknowledging the Supreme Court's power to discipline judges for their conduct, "criminal or unethical, official or otherwise," to include removal from judicial office).

The New Jersey Supreme Court has long recognized that conduct, though not criminal, may contravene the Code of Judicial Conduct for which discipline, including removal, is justified. In re Yaccarino, 101 N.J. 342, 353 (1985) (finding "conduct that in itself does not constitute a criminal offense may be violative of standards governing performance, warranting discipline or removal for cause") (citing Napolitano v. Ward, 457 F.2d 279, 284 (7th Cir.), *cert. denied*, 409 U.S. 1037)). Accord In re Complaint of Judicial Misconduct, 575 F.3d 279, 291 (3d Cir. 2009) (finding that "[a] judge's conduct may be judicially imprudent, even if it is legally defensible").

Similarly, the principle of collateral estoppel, though not raised by Respondent as a defense in these proceedings, has no application here, as judicial decisions concerning the underlying charges do not address the merits of those charges vis-à-vis a breach of judicial ethics Ibid. (citing In re Coruzzi, 95 N.J.

557, 568-569 n.6 (1984)). As the Supreme Court acknowledged more than three decades ago, "the power of the judiciary, stemming from the doctrine of separation of powers, must prevail to control its own members." Ibid. (citing Knight v. Margate, 86 N.J. 374 (1981)).

Decisions concerning whether a breach of the Code has occurred and the appropriate quantum of public discipline, if any, for that breach, rest solely with the New Jersey Supreme Court, which is constitutionally vested with the "exclusive responsibility for . . . making . . . rules concerning practice and procedure" and for "the admission and discipline of those admitted to practice law," including judges. In re Gaulkin, 69 N.J. 185, 189 (1976) (citing N.J. Const. art. VI, §II, ¶3). In conformity with this constitutional mandate, the Supreme Court has adopted several court rules that constrain judges to behave in a manner consistent with the Code of Judicial Conduct.[11]

Jurists' obligation to conform their conduct to the Code applies equally to their professional *and* personal lives. See Canon 2, Rule 2.1, [Official] Comment [1] (explaining that judges "must avoid all impropriety and appearance of impropriety and must

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[11] See R. 1:14 (providing, in relevant part, that the Code of Judicial Conduct of the American Bar Association, as amended and supplemented by the Supreme Court . . . shall govern the conduct of . . . judges . . . of all courts of this State); see also R. 1:18 (providing that it "shall be the duty of every judge to abide by and to enforce the provisions of . . . the Code of Judicial Conduct and the provisions of R. 1:15 and R. 1:17.").

expect to be the subject of constant public scrutiny. *This principle applies to both the professional and personal conduct of a judge.*")(emphasis supplied). The rationale for this is clear; "everything judges do [personally or professionally] can reflect on their judicial office." In re Blackman, 124 N.J. 547, 551 (1991). As such, "When judges engage in private conduct that is irresponsible or improper, or can be perceived as involving poor judgment or dubious values, '[p]ublic confidence in the judiciary is eroded.'" Ibid.

Within this ethical framework, we consider the facts of this matter, cognizant of our obligation to examine those facts under the clear and convincing evidence standard applicable in judicial disciplinary matters. We find, based on our review of the substantial evidence of record, that the charges of judicial misconduct filed against Respondent have been proven by clear and convincing evidence and that Respondent's conduct violated the cited Canons of the Code of Judicial Conduct.

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

Canon 2, Rule 2.1, directs judges to conduct themselves in a manner that "promotes public confidence in the independence,

integrity and impartiality of the judiciary, and . . . [to] avoid impropriety and the appearance of impropriety."

Canon 2, Rule 2.3(A) prohibits a judge from lending the prestige of the judicial office to advance "the personal or economic interests of the judge or others, or allow others to do so."

The Commentary to Rule 2.3(A) explains:

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

Code of Judicial Conduct, Canon 2, Rule 2.3(A) [Official] Comment [1].

In the instant matter, the evidence demonstrates, clearly and convincingly, that Respondent attempted to evade her ethical obligations when interacting with the WTPD about Mr. Prontnicki by offering the police intentionally vague and irrelevant information about his known whereabouts to appear cooperative while willfully withholding relevant information. Respondent, by behaving in this fashion and placing a greater emphasis on her personal concerns than her ethical constraints as a jurist, irretrievably impugned her integrity and impartiality and demeaned the integrity of the

judicial office, in violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 5, Rule 5.1(A), of the Code.

In addition, the evidence of record demonstrates that Respondent abused her judicial office to secure preferential treatment from the WTPD during her arrest, in violation of Canon 2, Rule 2.3(A) of the Code, further demonstrating a disrespect and disregard for the ethical obligations attendant to her judicial office.

Given the egregious nature of this misconduct and its deleterious effect on the public's confidence in Respondent's integrity and ability to serve credibly, Respondent's removal from judicial office is required. We are convinced that no remedy short of removal will restore the public's confidence in the Judiciary as an institution of integrity committed to the rule of law.

Respondent's actions and inactions in respect of Mr. Prontnicki's active warrants and her communications with the WTPD are a matter of record having been chronicled in a series of contemporaneous text messages, voicemail messages and police reports. That record reveals that Respondent, after learning of Mr. Prontnicki's active warrants and understanding the WTPD's instructions to alert them if he returned to her home or learned of his whereabouts, intentionally did less than that required of a judge in her circumstances. Indeed, Respondent, over the course of two days, did not speak directly with *any* officer at the WTPD

about Mr. Prontnicki's known whereabouts, actual or anticipated, preferring instead to leave incomplete and irrelevant voicemail messages, lasting roughly one minute each, focused largely on her previously "missing" vehicle, with only a single passing reference to Mr. Prontnicki's location "somewhere in Woodbridge." Conversely, Respondent spent nearly 5 hours speaking with Mr. Prontnicki either on her cell phone or in person during this period, a man she purportedly feared.

When not speaking with Mr. Prontnicki, Respondent was texting with friends about her interactions with him and his whereabouts. Respondent's friends, in fact, were better informed of Mr. Prontnicki's whereabouts during this period than the WTPD. The reason for this is clear and stated expressly in those very text messages wherein Respondent repeatedly communicated her intent to avoid being "seen" with Mr. Prontnicki to circumvent what she understood her reporting obligation to be; namely to report him to authorities when aware of his location. In short, Respondent sought plausible deniability for her failure to provide the police with the very information she acknowledged she was required to provide and, in fact, was routinely providing to her friends, in an effort to aid Mr. Prontnicki avoid arrest. Indeed, she even permitted him access to her home to secure a duffle bag containing some of his belongings.

Were there any doubt about Respondent's motivations in this regard, those doubts were allayed when Respondent, while en-route to the police station, openly expressed to Officer Bartko her doubt about the very existence of those warrants and admitted that "all [she] did was help" Mr. Prontnicki.

These events bespeak a disturbing lack of probity on Respondent's part and a degree of cunning wholly misplaced in a jurist. When viewed against the canons of the Code of Judicial Conduct, particularly, Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 5, Rule 5.1(A), these events, in the aggregate, also evince, clearly and convincingly, Respondent's breach of the ethical constraints to which all jurists must abide and involves conduct that is improper and intolerable in a jurist.

Respondent's attempts before this Committee to cast herself the victim in these circumstances are simply implausible and directly contradicted by her words and deeds at the time of these events. Without question, Respondent was, at all times, aware of her circumstances and deliberate in her chosen responses. While we recognize that Respondent and Mr. Prontnicki were living together and discussing long-term commitments during this period, and that Respondent was concerned about possibly being pregnant with his child, those factors neither mitigate nor excuse Respondent's purposeful misconduct in failing to alert the police to Mr. Prontnicki's confirmed whereabouts at his brother's home in

Woodbridge. Irrespective of her personal circumstances, Respondent had a continuing obligation to comport herself in a manner consistent with the high standards of conduct demanded of jurists under the Code of Judicial Conduct, which she failed to do. Respondent clearly violated the letter and spirit of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 5, Rule 5.1(A) of the Code by not doing so.

Similarly, though we understand that Respondent may have been the victim of abuse during her marriage 15 years earlier, the weight of the evidence in this matter contradicts her proffered explanation for failing to report Mr. Prontnicki's presence in her home, to wit that she feared him. We simply cannot reconcile Respondent's claimed fear of Mr. Prontnicki with her contemporaneous text messages with friends in which she does not evince or express any fear of him and her extensive personal interactions with him both on the telephone and in person during this period.

While the indictment filed against Respondent in respect of this conduct was dismissed and Respondent was not convicted of a crime, the canons of the Code of Judicial Conduct for which she stands accused of violating embody different obligations that are binding on those entrusted to serve as jurists in this State. Having considered the evidence of record, we are satisfied, by the requisite burden, that Respondent's conduct, in the aggregate, on

June 10 and 11, 2013 violated Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 5, Rule 5.1(A), of the Code and warrants removal from the bench. We find these violations cast an unavoidable pall over Respondent's ability to serve as a jurist and conclude that the public's confidence in the Judiciary would be severely undermined if she were to continue to serve on the bench.

Indeed, on learning of two outstanding warrants for her then live-in boyfriend, Jason Prontnicki, and being asked by the police to advise them if he returned to her home or learned of his whereabouts, Respondent did far less than that required of a judge in her circumstances. Respondent did not call the police with relevant information when she anticipated Mr. Prontnicki's arrival at her home or when he was at or had just left her home, or when she learned of his whereabouts at his brother's home in the same township. This conduct stands in stark contrast to Respondent's contemporaneous texts messages, which reveal that she was fully cognizant of her ethical obligations as a jurist in this regard (acknowledging a duty to "report" him), and yet stood silent as to Mr. Prontnicki's movements and whereabouts between June 10 and 11, 2013 to help him avoid arrest. Respondent, when arrested on June 11, 2013, in fact, conceded to police that "all [she] did was help this person."

Lastly, we consider Respondent's conduct in referencing her judicial office when seeking preferential treatment, i.e. no

handcuffs, during her arrest on June 11, 2013. Though disclaiming any memory of using the term "vetted" when requesting Officer Grogan remove the handcuffs, Respondent maintains that if she did so it was merely to assure the officer that she would cooperate, not an attempt to trade on her judicial office. Respondent fails to appreciate, however, that in doing so she attempted to use the considerable influence of her judicial stature to secure preferential treatment in violation of her ethical obligations under Canon 1, Rule 1.1 and Canon 2 Rules 2.1 and 2.3(A) of the Code.

The law proscribing such conduct is well settled. The Supreme Court has consistently held that a jurist's reference to his or her judicial office (or use of judicial stationery) to advance a matter that is wholly private in nature and unrelated to his or her official duties, is improper and violates Canons 1 and 2 of the Code of Judicial Conduct.[12]

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[12] See In re Rivera-Soto, 192 N.J. 109 (2007) (censuring the Justice for engaging in a course of conduct that created the risk that the prestige and power of his office might influence and advance his son's private interests); In re McElroy, 179 N.J. 418 (2004) (reprimanding a municipal court judge for giving a friend who was a defendant in a traffic case a message on his business card to hand to the municipal prosecutor requesting a downgrade); In re Sonstein, 175 N.J. 498 (2003) (censuring municipal court judge for writing letter on judicial letterhead to another municipal court judge about his parking matter pending before that judge); In re Murray, 92 N.J. 567 (1983) (reprimanding a municipal court judge for sending a letter on behalf of a client to another municipal judge in which he identified his judicial office); In re Anastasi, 76 N.J. 510 (1978) (reprimanding a municipal court judge for

Respondent's professed lack of intent to abuse her office when arrested is immaterial as is the officer's interpretation of her reference to having been "vetted." Having inserted the judicial office into a purely personal matter, Respondent created the risk that her status as a judge would be an influential factor in how the WTPD treated her during her arrest. See In re Blackman, 124 N.J. 547, 552 (1991) (finding judge's lack of intent irrelevant in judicial disciplinary matters); see also In re Isabella, 217 N.J. 82 (2014)(admonishing judge for using his judicial stationery to intervene in a school board matter involving his girlfriend's child with counsel for the board with whom he had practiced law for many years). Though there is no indication that any influence was actually exerted, the mere fact that such a potential exists constitutes a misuse of the judicial office in violation of Canon 2, Rule 2.3(A) of the Code. Cf. In re Rivera-Soto, 192 N.J. 109 (2007) (censuring the Justice for engaging in a course of conduct that created the risk that the prestige and power of his office might influence and advance his son's private interests).

As our Supreme Court made clear almost two decades ago, those fortunate enough to hold judicial office are bestowed with tremendous power "on the condition that [they] not abuse or misuse

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sending a letter on behalf of a former client to the New Jersey Racing Commission on his official stationery).

it to further a personal objective . . . or to help a friend." In re Samay, 166 N.J. 25, 43 (2001) (removing a judge for multiple abuses of the judicial office and for providing false and misleading information to a local police force as well as the ACJC). Indeed, each judge, on assuming the bench, takes an oath to "'faithfully, impartially and justly perform all the duties' of judicial office." Ibid. (citing N.J.S.A. 41:1-3).

Respondent, in referencing her judicial office to secure treatment more favorable than that afforded the average citizen, abused her judicial office in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct. Such conduct further evinces Respondent's penchant in these circumstances to prioritize her personal interests ahead of her ethical obligations, a character trait at odds with the high ethical standards required to hold judicial office.

Having concluded that Respondent violated Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.3(A), and Canon 5, Rule 5.1(A), of the Code of Judicial Conduct as charged in the Formal Complaint, the sole issue remaining is the appropriate quantum of discipline. In our consideration of this issue, we are mindful of the primary purpose of our system of judicial discipline, namely to preserve the public's confidence in the integrity and independence of the judiciary, not to punish an offending judge. In re Seaman, supra, 133 N.J. at 96 (1993).

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

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

Respondent's misconduct in this instance has been aggravated considerably by her attempts, as evinced in the record, to evade her acknowledged obligation to cooperate with the police by reporting Mr. Prontnicki's known whereabouts while taking steps to create the illusion of such compliance, i.e. leaving two voicemail messages for Officer Bartko that carefully omitted relevant information as to Mr. Prontnicki's expected presence and known whereabouts. This conduct reflects a character wholly unbefitting an individual entrusted by the public to hold judicial office. In these circumstances, this fact alone warrants removal. See In re

Mattera, 34 N.J. 259, 266 (1961) ("a single act of misconduct may offend the public interest in a number of areas and call for an appropriate remedy as to each hurt. This may require removal from public office. . . .").

Further aggravating Respondent's misconduct is her "conscious manipulation" of the testing performed by Drs. Oropeza and Rodgers relating to this ethics matter. That testing revealed that Respondent sought incredibly to portray herself as "blameless and naïve" and possessing "inordinate virtue" to deflect responsibility for her conduct in this matter.

Respondent, having demonstrated a predilection toward dishonest conduct both when dealing with authorities in a criminal context and when defending against these ethics charges, has irreparably impugned her character for truthfulness and has rendered her continued credible service as a jurist untenable. Given the totality of Respondent's conduct on June 10 and 11, 2013, we find that no remedy short of removal will properly safeguard the public's confidence in our system of justice. Cf. In re DeAvila-Silebi, 235 N.J. 218 (2018) (removing a judge for pervasive dishonesty before ethics authorities to avoid discipline for abusing the judicial office); In re McClain, 662 N.E.2d 935 (Ind. 1996) (removing a judge for dishonesty before the ethics panel and for manufacturing a defense in an attempt to avoid discipline).

In respect of any mitigating factors, the record before us is largely silent. Respondent did not provide any persuasive evidence in mitigation of these ethics charges and none is evident from the record. Indeed, she served on the bench only two months before these events occurred and sought no guidance from her Judicial superiors while they were ongoing.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be removed from judicial office for her violations of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.3(A) and Canon 5, Rule 5.1(A), of the Code of Judicial Conduct. This recommendation takes into account the seriousness of Respondent's ethical infractions and the substantial aggravating factors present in this case, which justify Respondent's removal from judicial office.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

September 16, 2019 By: Stephen Skillman
Stephen Skillman, Vice Chair

September 16, 2019 By:
Edwin H. Stern, Panel Chair

Virginia A. Long, Chair, did not participate