

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2019-357

IN THE MATTER OF

AISHA AH A. RASUL,
JUDGE OF THE MUNICIPAL COURT

PRESENTMENT

The Advisory Committee on Judicial Conduct ("Committee") hereby presents to the Supreme Court its Findings and Recommendation in this matter in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's findings and the evidence of record demonstrate that, with the exception of Count VII, all of the charges set forth in the Formal Complaint against Aishaah A. Rasul, Judge of the Municipal Court ("Respondent"), which relate to Respondent's acknowledged lack of competence, abuse of office, appearance of bias, deprivation of litigant's rights, poor demeanor, and *ex-parte* communications during Respondent's handling of a criminal matter in the Englewood City Municipal Court, have been proven by clear and convincing evidence, and that such conduct violates Canon 1, Rule 1.1 and Rule 1.2; Canon 2, Rule 2.1, Rule 2.2, and Rule 2.3(A); Canon 3, Rule 3.2, Rule 3.5, Rule 3.6(A), Rule 3.6(C), Rule 3.7, Rule 3.8,

and Rule 3.17(B)(6), of the Code of Judicial Conduct, as well as Rule 1:12-1(g) of the New Jersey Court Rules.

Respondent's misconduct, as charged in the Formal Complaint and admitted in her Answer, constitutes serious violations of the Code of Judicial Conduct. Nevertheless, we find the recommendation for discipline in this case to be difficult. The record of wrongdoing in the aggregate, including Respondent's lack of respect for, or knowledge of, fundamental principles of criminal procedure, together with her temperament in dealing with staff who tried to warn her of the procedural and reporting improprieties, warrants discipline. However, in her appearance before us, Respondent acknowledged her wrongdoing, without equivocation, demonstrated sincere remorse, and during the length of her temporary suspension exhibited a commitment to the study of the law and court rules that govern the municipal courts specifically and her judicial conduct generally. Given these circumstances, coupled with Respondent's short tenure on the bench when these events occurred (i.e. two months) and her good faith efforts, though admittedly misguided, to fashion a remedy beneficial to the parties appearing before her, we believe Respondent should be permitted to resume the Bench, with conditions, following a period of suspension retroactive to the date of her temporary suspension.

For this reason, the Committee respectfully recommends that Respondent be suspended from the performance of her judicial duties, without pay, for a period of no less than ten months, that term of suspension to be calculated retroactively to the date of her interim suspension, without pay, by Order of the Supreme Court on November 13, 2019, which remains in effect pending the conclusion of this ethics proceeding and until further Order of the Court. Upon Respondent's return to the bench, the Committee recommends her Assignment Judge develop a plan to closely supervise Respondent and encourage her continued professional development.

I. PROCEDURAL HISTORY

Bergen County Presiding Municipal Court Judge Anthony N. Gallina, in consultation with Bergen County Assignment Judge Bonnie J. Mizdol, referred this matter to the Committee on July 12, 2019 following receipt of a grievance from litigant Monique Wilks concerning Respondent's conduct while presiding over the trial in State v. Ameika C. Blake, Complaint No. SCE-2018-001203, and the related matter of State v. Monique Wilks, Complaint No. SCE-2018-001204, in the Englewood City Municipal Court between February 5, 2019 and May 8, 2019. See P-1.

The Committee investigated Ms. Wilks' grievance, and, as part of that investigation, Committee staff interviewed five individuals, including Respondent. See P-13 thru P-17. In

addition, the Committee collected and reviewed documentation and audio and video recordings relevant to these allegations. See P-1 thru P-12; P-18 thru P-19.

On November 12, 2019, the Committee issued a seven count Complaint against Respondent charging her with conduct in contravention of Canon 1, Rule 1.1 and Rule 1.2; Canon 2, Rule 2.1, Rule 2.2, and Rule 2.3(A); Canon 3, Rule 3.2, Rule 3.5, Rule 3.6(A), Rule 3.6(C), Rule 3.7, Rule 3.8, and Rule 3.17(B)(6), of the Code of Judicial Conduct, as well as Rule 1:12-1(g) of the New Jersey Court Rules.

The New Jersey Supreme Court, on November 13, 2019, suspended Respondent, without pay, pending these ethics proceedings, having determined, pursuant to Rule 2:15-17(a), that probable cause existed to conclude that Respondent violated the code of Judicial Conduct and that her continued service on the bench while these disciplinary proceedings were pending would pose a substantial threat of serious harm to the administration of justice. See Order, In the Matter of Aishaah A. Rasul, D-35 September Term 2019, filed November 13, 2019, included as part of the record.

Respondent, through counsel, filed an Answer to the Complaint on December 18, 2019, in which she admitted the factual allegations as pled, with some clarifications, and her attendant violations of the Code of Judicial Conduct. Respondent, through

counsel, filed an Amended Answer to the Complaint on January 22, 2020 to clarify Respondent's First Affirmative Defense, which concerns the extent of her judicial training at the time of the events at issue.

On April 20, 2020, Presenter and Respondent filed with the Committee a set of stipulations in which Respondent again conceded to engaging in the charged conduct and the attendant violations of the Code of Judicial Conduct. See Stipulations. Respondent, with the benefit of counsel and in conjunction with the stipulations of record, waived her right to a Formal Hearing before the Committee. Id. at ¶1. Presenter and Respondent, with leave of the Committee, filed briefs on April 20, 2020 and April 22, 2020, respectively, which addressed the recommended quantum of discipline.¹

Given the extent of Respondent's acknowledged misconduct and the Presenter's recommended quantum of discipline of removal, and notwithstanding Respondent's waiver of a hearing, the Committee convened a hearing, remotely, on May 27, 2020. Respondent appeared by video, with counsel, and offered testimony in mitigation of the asserted disciplinary charges. The Presenter relied on the evidence of record, most notably the

¹ Consistent with Rule 2:6-8, references to the Presenter's and Respondent's pre-hearing briefs are designated as "Pb" and "Rb," respectively. The number following this designation signifies the page at which the information is located.

stipulations and documentary evidence, as well as audio and video recordings, in support of the asserted disciplinary charges. The Presenter and Respondent also offered exhibits, all of which were admitted into evidence. See Presenter's Exhibits P-1 thru P-20; see also Respondent's Exhibits D-1 and D-2.

Following the hearing, Respondent and Presenter filed post-hearing briefs on June 1 and 2, 2020, respectively, which the Committee considered.²

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

II. FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1990. Formal Complaint and Answer at ¶1. At all times relevant to this matter, Respondent served as a part-time municipal court judge in the City of Englewood, a position to which she was first appointed on December 1, 2018 and from which she was suspended, without pay, on November 13, 2019, by Order of the New Jersey Supreme Court. Stipulations at ¶¶3-4. Respondent

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

remains suspended pending the conclusion of these proceedings and until further Order of the Supreme Court. Id. at ¶4.

On ascending to the bench, Respondent attended and completed the Orientation for Municipal Court Judges on February 25 and 26, 2019, March 5 and 6, 2019, and May 3, 2019. See Amended Answer. Immediately prior to her judicial appointment, Respondent served for nine years as the municipal public defender for the City of Englewood and is a 30-year member of the New Jersey State Bar. Id. at ¶5; see also Rb1.

The facts pertinent to this judicial disciplinary matter are uncontested and the subject of a Stipulation, as is Respondent's violation of the cited canons of the Code of Judicial Conduct. Those facts concern Respondent's actions, both on and off the bench, while presiding over a four-day trial - February 5, 2019, March 13 and 25, 2019 and May 8, 2019 - in the Englewood City Municipal Court in the related matters of State v. Ameika Blake, Complaint No. SCE-2018-001203, and State v. Monique Wilks, Complaint No. SCE-2018-001204.

The Blake and Wilks matters were initiated on September 13, 2018 by Bria Locke, who signed citizen's complaints against both defendants, for which probable cause was found, following an altercation in August 2018 during which Ms. Locke sustained personal injury and property damage. Stipulations at ¶6; see

also P-15 at T4-2-9. Ms. Blake and Ms. Wilks were charged with simple assault (N.J.S.A. 2C:12-1). Ibid.

As of September 2018, when Ms. Locke filed her citizen's complaints against Ms. Wilks and Ms. Blake, Respondent was the municipal public defender for the City of Englewood, though she was unfamiliar with these defendants and unaware of the Blake and Wilks matters prior to Ms. Wilks' first appearance before Respondent in the Englewood City Municipal Court on February 5, 2019. Stipulations at ¶7, 9; see also P-17 at T10-17 to T12-5; T17-1-6. Ms. Wilks was self-represented throughout the trial. Stipulations at ¶8. Ms. Blake was represented by the municipal public defender. Ibid.

The trial in the Blake and Wilks matters began on February 5, 2019. Stipulations at ¶12. Neither Ms. Blake nor her attorney were present on that date having not received the requisite trial notice from the court. Ibid.; see also P-18 at Audio of Trial, State v. Blake, Complaint No. SCE-2018-001203, and State v. Wilks, Complaint No. SCE-2018-001204, occurring on March 13, 2019. Respondent, unaware of Ms. Blake's involvement, heard partial testimony from Ms. Locke before entering a "No Contact" order, which prohibited any oral, written or personal contact between Ms. Wilks, Ms. Locke and Ms. Locke's family members, including but not limited to telephonic, text, Facebook, or any

other form of social media or electronic communication. Stipulations at ¶12; see also Answer at ¶6; P-2.

On March 13, 2019, the second day of trial, Ms. Blake appeared with counsel, having received notice of the trial date a week prior. P-18 at Audio of Trial, State v. Blake and State v. Wilks, occurring on March 13, 2019. At this appearance, counsel for Ms. Blake requested and was denied an adjournment of the trial date and Respondent consolidated the Blake and Wilks matters for trial. Ibid. Respondent heard the remainder of Ms. Locke's testimony, as well as that of Ms. Locke's mother, who was cross-examined by defense counsel and Ms. Wilks, and admitted into evidence various documents. Stipulations at ¶13; see also P-18 at Audio of Trial, State v. Blake and State v. Wilks, occurring on March 13, 2019.

The trial continued for a third day on March 25, 2019 at which all parties appeared. Stipulations at ¶14. Ms. Blake's counsel and Ms. Wilks, on her own behalf, cross-examined Ms. Locke, who had been recalled for that purpose, after which the State rested its case. P-18 at Audio of Trial, State v. Blake and State v. Wilks, occurring on March 25, 2019.

Ms. Blake and Ms. Wilks offered testimony in their defense and were examined by Respondent, the municipal prosecutor, and Ms. Blake's counsel. Ibid. Respondent, however, failed to advise Ms. Wilks of her right against self-incrimination prior

to offering her an opportunity to testify on her own behalf. See Stipulations at ¶15. Respondent concedes that her failure in this regard violated Canon 3, Rule 3.2, of the Code of Judicial Conduct, which requires jurists to maintain professional competence in the performance of their judicial duties (Count V). Id. at ¶17.

At the conclusion of the defendants' case, Respondent permitted Ms. Blake's attorney and the municipal prosecutor the opportunity to give closing statements but failed to give Ms. Wilks that same opportunity. Stipulations at ¶16. Respondent concedes that her failure to accord Ms. Wilks the opportunity to make a closing statement violated Canon 3, Rule 3.7, of the Code, which requires jurists to afford every individual who is legally interested in a proceeding the right to be heard (Count V). Id. at ¶17.

Following a brief recess, Respondent found Ms. Blake guilty of simple assault but did not make any findings as to Ms. Wilks' guilt or innocence. Id. at ¶19. Ms. Blake became emotional on hearing Respondent's finding and began crying hysterically and threatened to hurt herself, which ultimately resulted in Ms. Blake's removal from the courtroom. Stipulations at ¶14; see also P-18 at Audio of Trial, State v. Blake and State v. Wilks, occurring on March 25, 2019.

When Respondent questioned the municipal prosecutor as to the appropriate sentence, the prosecutor suggested the defendants be sentenced to a "period of adjustment," to include counseling and anger management along with restitution, which the Prosecutor described as the victim's primary concern. Stipulations at ¶34.

Respondent, though finding Ms. Blake guilty of simple assault, deferred sentencing her, but ordered she pay 50% of the cost of the property damage in restitution to Ms. Locke in lieu of assessing the statutorily prescribed court fees and costs, and without any statutory or legal authority to do so in the absence of imposing a sentence or a suspended imposition of sentence. Stipulations at ¶23; N.J.S.A. 2C:45-2.

Ms. Wilks reminded Respondent that she was a participant in the Drug Court program on an unrelated matter. Stipulations at ¶15. Respondent, believing Ms. Wilks to have been involved in the physical altercation that resulted in the simple assault charges at issue remarked, "if I was in drug court, I would have stayed my ass in the car." Id. at ¶18. In response to Ms. Wilks' inquiry as to what could happen to her, Respondent stated, "I could find you guilty but if I do you're out of Drug Court." Id. at ¶19.

Though failing to render a guilty finding as to Ms. Wilks, and in the absence of any statutory or legal authority,

Respondent placed Ms. Wilks on "in-house probation" for one year and warned that if she were to get into "trouble" again Respondent would "find [her] guilty of simple assault," stating, "We're your probation officer." Id. at ¶20. In addition, Respondent ordered Ms. Wilks to pay 50% of the cost of the property damage in restitution to Ms. Locke in lieu of assessing the statutorily prescribed court fees and costs, and despite the absence of a guilty finding and imposition of sentence or the suspended imposition of sentence. Ibid.; N.J.S.A. 2C:45-2.

Respondent again issued a "No Contact" order prohibiting any oral, written or personal contact between the defendants and Ms. Locke and Ms. Locke's family, including but not limited to telephonic, text, Facebook, or any other form of social media or electronic communication. Id. at ¶24; see also P-3; P-4.

Subsequently, on March 25, 2019, after the litigants had left the courthouse, Respondent "amended" her findings and required that Ms. Wilks pay the remaining 50% she allocated to Ms. Blake if Ms. Blake failed to pay her share. Stipulations at ¶25. Respondent did not alert the parties to this amendment. Ibid.

Respondent concedes that imposing a restitution obligation on Ms. Wilks in the absence of a finding of guilt and imposition of sentence or a suspended imposition of sentence was procedurally and legally incorrect, and violated Canon 1, Rule

1.2, of the Code, which requires jurists to respect and comply with the law, and Canon 3, Rule 3.2, which requires jurists to maintain professional competence in the performance of their judicial duties (Count I). Stipulations at ¶21. In addition, Respondent concedes that this conduct impugned the integrity of the Judiciary in violation of Canon 1, Rule 1.1, and was improper in violation of Canon 2, Rule 2.1 of the Code (Count I). Ibid.

The parties appeared before Respondent a fourth time on May 8, 2019. At this appearance, Respondent found Ms. Wilks guilty of simple assault and advised her that once she made the court ordered restitution payments to Ms. Locke, Respondent would "dismiss or maintain [the] charge." Stipulations at ¶26. Respondent warned Ms. Wilks that if she failed to pay a minimum of \$377.00 to Ms. Locke by June 30, 2019, the matter would be re-listed, and Ms. Wilks would be required to appear in court to pay to Ms. Locke an undefined sum of money. Ibid.

Respondent concedes that she erred when advising Ms. Wilks that her guilty finding could be "dismissed" once she paid the court ordered restitution to Ms. Locke, and that such conduct violated Canon 1, Rule 1.2, and Canon 3, Rule 3.2, of the Code (Count I). Stipulations at ¶21. In addition, Respondent concedes that this conduct impugned the integrity and impartiality of the

Judiciary in violation of Canon 1, Rule 1.1, and was improper in violation of Canon 2, Rule 2.1 of the Code (Count I). Ibid.

Respondent further concedes that using her authority over the disposition of Ms. Wilks' simple assault conviction to compel payment to Ms. Locke of the court ordered restitution constituted an abuse of the judicial office in violation of Canon 2, Rule 2.3 (A) of the Code, which prohibits jurists from lending the prestige of the judicial office to advance the personal or economic interests of the judge or others (Count I). Stipulations at ¶22.

Respondent also addressed Ms. Blake on May 8, 2019 and, without the requisite statutory or legal authority, advised Ms. Blake that she was "on probation" in "the Englewood Municipal Court" for one-year, and instructed Ms. Blake to "report here." Stipulations at ¶27. Respondent concluded the proceeding with a warning to both defendants that she was "going to keep [her] eyes on [them]" Id. at ¶31.

Acknowledging that she erred in using the term "probation" in this context, Respondent explains that she intended to impose a "period of adjustment," which the prosecutor had recommended and which her predecessors had used, albeit prior to rather than after the entry of guilty pleas or findings, in addressing similar circumstances. Id. at ¶35. Respondent concedes that sentencing Ms. Blake and Ms. Wilks to a one-year period of "in-

house probation," without the requisite statutory or legal authority, violated Canon 1, Rule 1.1 and Rule 1.2, Canon 2, Rule 2.1, and Canon 3, Rule 3.2, of the Code, as well as Rule 1:12-1 (g) of the New Jersey Court Rules (Count I). Id. at ¶28.

At the conclusion of the proceedings on May 8, 2019, Respondent instructed both defendants to make the required restitution payments *in cash* to Ms. Locke directly, or to her mother, at a predetermined meeting place in the courthouse, to avoid recording the guilty findings in the court's automated case tracking system. Id. at ¶29. This payment procedure required the defendants to violate Respondent's "No Contact" orders and contravened longstanding municipal court procedure, which provides for the payment of fees, fines and costs, *in any form*, to the *court* for distribution through the court's automated case tracking system. Id. at ¶30; see also P-8; P-9.

Similarly, Respondent directed her court staff to withhold entering the guilty findings as to Ms. Blake and Ms. Wilks in the court's automated case tracking system to avoid any disruption to Ms. Wilks' participation in the Drug Court program. Id. at ¶33; see also P-8; P-9. Indeed, during the pendency of the Blake and Wilks matters, Respondent made two telephone calls to Ms. Wilks' probation officer to inquire whether a guilty finding on the simple assault charge would disqualify Ms. Wilks from participating in the Drug Court

program and whether it could possibly result in a jail sentence. Id. at ¶37.

In addition, Respondent directed her court staff to re-schedule both matters for one year with the intention of dismissing those matters, despite the guilty finding in each, once Ms. Blake and Ms. Wilks made the court ordered restitution payments. Id. at ¶38; see also P-8; P-9.

Respondent concedes that directing her court staff to withhold documenting the court's disposition of the Blake and Wilks matters in the court's automated case tracking system for the benefit of the litigants, particularly the defendant Monique Wilks, obstructed the proper administration of justice in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code, demonstrated a bias in favor of Ms. Wilks in violation of Canon 3, Rule 3.17(B)(6), and allowed her concern for Ms. Wilks' status in Drug Court to influence her judicial decision-making in violation of Canon 2, Rule 2.2 of the Code (Count II). Stipulations at ¶36.

On July 7, 2019, the Englewood City Municipal Court Administrator advised Respondent that there was no such thing as "in house" probation and that the defendants may not make restitution payments to the victim directly at the courthouse. Id. at ¶38 (duplicate number); see also P-10. Respondent, admittedly agitated, told the Court Administrator to "get off

[her] fucking back.” Stipulations at ¶38. Respondent apologized personally to the Court Administrator and those within earshot shortly after making this remark. Id. at ¶40.

Respondent concedes that this remark to her Court Administrator and use of an expletive was discourteous and inappropriate in violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.5 of the Code, which requires jurists to treat all those with whom they deal in an official capacity courteously and in a dignified and patient manner (Count IV). Id. at ¶41.

Ms. Locke telephoned Respondent on July 9, 2019 to advise that she did not receive the court-ordered restitution payments from Ms. Blake or Ms. Wilks. Id. at ¶42. After speaking with Ms. Locke, Respondent telephoned Ms. Wilks, *ex parte*, and off-the-record, and repeatedly urged her to pay Ms. Locke the entire amount of the restitution. Id. at ¶43. This telephone call lasted 14 minutes and 34 seconds. Ibid. Neither the municipal prosecutor, Ms. Blake, nor the public defender were present or connected to the call. Ibid.

Respondent subsequently spoke by telephone with Ms. Locke’s mother and inquired when she could come to court to retrieve the payment from Ms. Wilks. Id. at ¶45. Respondent made a second telephone call to Ms. Wilks that same day and directed her to be at the courthouse the following day at 11:00 a.m. with \$377.00

for Ms. Locke's mother, who would retrieve the money from her at that time. Id. at ¶46. Neither the municipal prosecutor, Ms. Blake, nor the public defender were present or connected to these calls.

Respondent concedes that initiating and engaging in these and other *ex parte* communications about a pending matter with Ms. Locke and Ms. Wilks, a self-represented litigant, to compel restitution, violated Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.8 of the Code of Judicial Conduct (Count III). Id. at ¶44.

Ms. Wilks, unable to pay the court-ordered restitution in full, appeared at the Englewood City Municipal Court on July 10, 2019 and attempted to make a partial payment towards the restitution amount. Id. at ¶47. Respondent directed her court staff to refuse Ms. Wilks' partial payment as Respondent had instructed Ms. Wilks to "bring all of the money," and directed her court staff to instruct Ms. Wilks to call her. Id. at ¶48.

On July 10, 2019 at 10:17 a.m., Ms. Wilks called Respondent on her cell phone. Id. at ¶50. Ms. Wilks recorded this conversation with Respondent. Ibid.; see also P-19. During that telephone call, on which neither the municipal prosecutor, Ms. Blake, nor the public defender were connected or present, Respondent advised Ms. Wilks that she was responsible for the

entire restitution amount of \$754.01. The following colloquy ensued:

MS. WILKS: No, I don't have amnesia. You ordered me to pay half and Ameika to pay half. I have my half. I tried to get Ameika to bring her half.

RESPONDENT: I told you on the record you each had to pay the whole entire thing. You're the one that broke the glasses.

MS. WILKS: No, I didn't. You didn't tell me that on the record.

RESPONDENT: I did and then I said, if in fact you have a problem, which you keep telling me, then tell Ameika and Ameika could pay the other half. But I'm telling you right now. You're responsible for that \$754. And I told the mother not to take any money from you if it's not the right amount. And what the hell you doing down there at 10:18 when you were supposed to be here at 11:00?

MS. WILKS: Because there's a court ordered restraining order against me, so I don't feel comfortable paying her personally.

RESPONDENT: There's no restraining order particularly in the courthouse building . . . If you don't follow directions, you're always going to have problems.

Id. at ¶¶50-51; see also P-19.

Ms. Wilks reiterated to Respondent that she was not able to pay the full amount. Stipulations at ¶52. Respondent replied, "I should have locked the two of you up." Ibid.

Respondent concedes that her pursuit of Ms. Wilks for payment of the restitution amount constituted harassing and injudicious conduct in violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.6 (C), of the Code, which requires jurists, in the performance of their judicial duties, to refrain from using words or conduct that manifest bias or prejudice, or engage in harassment (Count III). Id. at ¶¶49; 54.

Respondent, likewise, concedes that her repeated threats and abrasive demeanor towards Ms. Blake and Ms. Wilks during and after the trial in the Blake and Wilks matters contravened her obligations under Canon 3, Rule 3.5, of the Code to treat all those with whom she deals with dignity, patience, and courtesy (Count IV). Id. at ¶55.

Finally, Ms. Locke's mother telephoned Respondent to inquire about her daughter's options to compel restitution from the defendants. Id. at ¶56; see also P-11. Respondent suggested to Ms. Locke's mother that she file a civil suit in small claims court against Ms. Blake and Ms. Wilks. Ibid.

Respondent concedes that by suggesting to Ms. Locke's mother that she file a civil suit against the defendants, Respondent abdicated her obligation to remain a neutral arbiter

and provided legal advice to a litigant's family member concerning a matter before Respondent. Id. at ¶57. In so doing, Respondent concedes impugning the integrity and impartiality of the Judiciary in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code (Count VI). Id. at ¶57.

III. ANALYSIS

As a general matter, judges are charged with the duty to abide by and to enforce the provisions of the Code of Judicial Conduct and the Rules of Professional Conduct. 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."). This obligation applies equally to a judge's professional and personal conduct. In re Hyland, 101 N.J. 635 (1986) (finding that the "Court's disciplinary power extends to private as well as public and professional conduct by attorneys, and *a fortiori* by judges.") (internal citation omitted).

When judges fail to uphold these ethical obligations, they may be subject to discipline. R. 2:15-1 et seq. In matters of judicial discipline "there are two determinations to be made" -- whether a violation of the Code of Judicial Conduct has been proven and whether the proven violation "amount[s] to unethical behavior warranting discipline." In re DiLeo, 216 N.J. 449, 468 (2014).

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 the instant matter, Respondent concedes violating multiple canons of the Code of Judicial Conduct and the Rules of Court - i.e. Canon 1, Rule 1.1 and Rule 1.2; Canon 2, Rule 2.1, Rule 2.2, and Rule 2.3(A); Canon 3, Rule 3.2, Rule 3.5, Rule 3.6(A), Rule 3.6(C), Rule 3.7, Rule 3.8, and Rule 3.17(B)(6), of the Code, as well as Court Rule 1:12-1(g) - during the course of a four-day trial. Indeed, Respondent's conduct, which included egregious legal error, bias, abuse of office, and harassment, contravened the "core ethical precepts" of independence, integrity and impartiality that "are indispensable to justice in our society." DeNike v. Cupo, 196 N.J. 502 (2008) (citing Canons 1 and 2 of the Code of Judicial Conduct).

Given Respondent's acknowledgment of wrongdoing and the uncontroverted evidence of record, we find that, apart from Count VII, the charges contained in the Formal Complaint filed

against Respondent have been proven by clear and convincing evidence.

We accept, however, that Respondent's motivation for engaging in this course of conduct, albeit unethical, was a sincere desire to achieve for all interested parties what she considered to be the best possible outcome, i.e. to make the victim whole while avoiding any undue negative consequences to the defendants, one of whom was a participant in the Drug Court program and the other homeless, unemployed and of questionable immigration status. Respondent, concerned that a guilty finding on the simple assault charge would disqualify Ms. Wilks from the Drug Court program and possibly result in her incarceration, leaving her two small children without parental support, and cognizant of the emotional, financial, and possible immigration challenges Ms. Blake faced, fashioned a remedy outside of accepted statutory and ethical norms whereby the victim, Bria Locke, would receive restitution for her damaged property directly from the defendants, in cash, without the entry of a guilty finding against either defendant. See P-9.

When neither defendant met her restitution obligations timely, Respondent, drawing on her experience as the public defender for the City of Englewood, became combative with Ms. Wilks and attempted to compel her to make the required restitution payments by referencing the impact a guilty finding

would have on her continued participation in the Drug Court program and the possibility of her incarceration. This conduct, though well intentioned and occurring a mere two months into Respondent's judicial term, went well beyond the ethical constraints contained in the Code of Judicial Conduct and Court Rules for which Respondent readily concedes her impropriety.

We are, nonetheless, persuaded that Respondent's conduct on this single occasion during her short tenure on the municipal bench is not, nor should it be considered, determinative of her future performance as a jurist. Indeed, Respondent has availed herself of multiple professional educational opportunities and self-study during her interim suspension and is agreeable to continuing her professional education if reinstated to the bench. Given the totality of these circumstances, we believe a long-term suspension coupled with increased supervision is an appropriate quantum of discipline best suited to address the harm done to the public's confidence in the integrity and impartiality of the judicial process and Respondent's admitted professional shortcomings.

In respect of Count VII, Respondent concedes that her position as the municipal public defender when the Blake and Wilks matters were initiated necessitated her recusal from those matters, consistent with Administrative Directive #31-17, and that her failure to recuse impugned the integrity and

impartiality of the Judiciary, in violation of Canon 1, Rule 1.1, and Canon 2, Rule 2.1 of the Code of Judicial Conduct.

The record in this instance indicates that Respondent, though the municipal public defender for the City of Englewood at the time of the filing of the simple assault charges against Ms. Blake and Ms. Wilks, had no knowledge of or involvement with either Ms. Blake's or Ms. Wilks' case prior to her appointment as the Englewood City Municipal Court judge. Given these undisputed facts, the absence of any indication in the record that Respondent was the "head" of a public defender's office for the City of Englewood, as that term is used in the Directive, and the Directive's distinct disqualification requirements as between the "head" of such an office and a "municipal or regional public defender," Respondent's violation of the Directive in not initially recusing from the Blake and Wilks matters has not been proven by clear and convincing evidence. As such, the Committee recommends the dismissal of Count VII of the Complaint.

Having concluded that Respondent violated Canon 1, Rule 1.1 and Rule 1.2, Canon 2, Rule 2.1, Rule 2.2, and Rule 2.3(A), Canon 3, Rule 3.2, Rule 3.5, Rule 3.6(A), Rule 3.6(C), Rule 3.7, Rule 3.8, and Rule 3.17(B)(6), of the Code of Judicial Conduct, as well as Rule 1:12-1(g) of the New Jersey Court Rules, the sole issue remaining is the appropriate quantum of discipline. In our

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

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

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

Respondent argues that given her relative inexperience on the municipal bench at the time of these proceedings (i.e. two months), her nervousness at presiding over her first substantial trial, and the remedial efforts she has undertaken while suspended (i.e. attendance at various training seminars),

the appropriate recommended quantum of discipline for her several ethical breaches is a reprimand and "service of her unpaid suspension" since November 13, 2019. 2Rb6-7; see also D-1. In support of this argument, Respondent attempts to analogize her circumstances to that of other judges disciplined for misconduct similar, in part, to that of Respondent's, though not as expansive. 2Rb1-5. See In re Rivas, 2020 N.J. LEXIS 909 (censuring judge for fourth offense of discourteous conduct); In re DiLeo, 216 N.J. 449 (2014) (reprimanding judge for egregious legal errors in conduct of trial, including failure to advise of constitutional rights/privileges); In re McCloskey, 211 N.J. 565 (2012) (reprimanding judge for *ex parte* conversation with prosecutor during which judge exhibited bias for the prosecution when directing the prosecutor as to the information to elicit from the witnesses during the trial); In re Thompson, 100 N.J. 108 (1985) (dismissing ethics charges related to legal error given extraordinary circumstances of case, including a disturbed defendant and inexperienced court staff).

We find Respondent's reliance on these several cases unpersuasive as in each the conduct at issue was but a fraction of the conduct for which Respondent has conceded her impropriety in the instant matter. For example, in Rivas the judge was censured for his discourteous treatment of two litigants and the appearance of bias engendered by that discourteous conduct.

Absent from Judge Rivas's matter were any allegations of egregious legal error, abuse of the judicial office, or involvement in an *ex parte* conversation.

Similarly, though the DiLeo matter concerned egregious legal error of a degree similar to that of Respondent's, it did not involve abuse of the judicial office or *ex parte* conversations with a defendant occurring at a time when the judge might have recalled the defendant for sentencing or resentencing irrespective of any probationary period or possible violation of probation. When considered in its totality, Respondent's misconduct is substantial and its harmful effect on the public's confidence in the integrity and impartiality of the judicial system undeniable.

In McCloskey, the judge was reprimanded for engaging in an *ex parte* conversation with the prosecutor during a trial that engendered the appearance of a bias for which his recusal was necessary. Absent from Judge McCloskey's matter, however, were any allegations of egregious legal error, abuse of the judicial office or discourteous conduct.

The same is true for the conduct at issue in Thompson, which, though involving legal error, did not include the abuse of the judicial office, displays of bias, participation in *ex parte* conversations or the discourteous treatment of litigants at issue here. Notably, the Thompson matter arose almost three

decades *before* the Supreme Court's adoption of the standard by which to adjudge when legal error constitutes judicial misconduct. See In re DiLeo, *supra*, 216 N.J. 449. These facts and the acknowledged "extraordinary circumstances," *e.g.* a disturbed defendant and inexperienced court staff, accompanying Judge Thompson's conduct distinguish it sufficiently from the instant matter as to render it inapplicable for purposes of our analysis as to the appropriate recommended quantum of discipline. Indeed, the Supreme Court in distinguishing Thompson from the DiLeo matter opined that "Judicial conduct, including conduct in the form of legal error, that has the capacity to undermine public confidence in the integrity and impartiality of the judicial process can be the basis for charges of judicial misconduct and can lead to the imposition of discipline." In re DiLeo, *supra*, 216 N.J. at 472-473.

For these same reasons, the Presenter argues for Respondent's removal, noting the scope and degree of the misconduct and its detrimental effect on the public's confidence in the Judiciary as an institution of integrity committed to the impartial adjudication of contested legal matters.

The Committee, however, has unanimously concluded that several mitigating factors weigh against a recommendation of removal. At the time of these events, Respondent had served as a municipal court judge for only two months. Cf. In re Carlia

Brady 2020 N.J. LEXIS 896 (citing respondent's short tenure on the bench when the misconduct occurred as a mitigating factor). Respondent's unequivocal and immediate acknowledgement of wrongdoing and expressions of remorse, her ongoing efforts at rehabilitation, which included her review and completion of multiple judicial education classes, among them "Maintaining a Bias Free Court" and "Common Ethical Issues in Municipal Court," as well as her completion of a course entitled "Coping Strategies for Staying Calm in Highly Pressurized Situations," and her independent study of relevant ethics opinions, demonstrate her sincere commitment to overcoming her lapses in reason, judgment, and temperament that precipitated her ethical violations in this matter. See D-1.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be suspended from the performance of her judicial duties, without pay, for a period of no less than ten months, that term of suspension to be calculated retroactively to the date of her interim suspension, without pay, by Order of the Supreme Court on November 13, 2019. Upon Respondent's return to the bench, the Committee recommends her Assignment Judge develop a plan to closely supervise Respondent and encourage her continued professional development.


This recommendation considers the seriousness of Respondent's multiple ethical infractions and the aggravating factors present in this case.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

September 15, 2020

By:



Virginia A. Long, Chair