SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON JUDICIAL CONDUCT

DOCKET NO: ACJC 2021-286

IN THE MATTER OF	**FORMAL COMPLAINT**
MICHAEL J. KASSEL, JUDGE OF THE SUPERIOR COURT	

Maureen G. Bauman, Disciplinary Counsel, Advisory Committee on Judicial Conduct ("Complainant"), complaining of Superior Court Judge Michael J. Kassel ("Respondent"), says:

FACTS

1. Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1982.

2. At all times relevant to this matter, Respondent served as a Judge of the Superior Court of New Jersey, assigned to the Civil Division in the Camden Vicinage, a position he continues to hold.

3. On or about April 10, 2021 through June 15, 2021, Respondent was temporarily assigned to the Family Division one day per week to address a management need.

COUNT I

4. Respondent, on 16 separate occasions while serving temporarily in the Family Division, remarked to litigants and their counsel appearing before him that he lacked familiarity with their case, was ignorant of the applicable law and incapable of adjudicating family court matters, and expressed dissatisfaction with the temporary assignment and the method by which that assignment was made, and openly expressed disagreement with Rule 5:4-3(b), which relieves a defendant of

the need to file an answer, appearance, or acknowledgment in a summary family action, provided the defendant appears in court on the return day.

5. On or about April 21, 2021, May 12, 2021, May 19, 2021, June 2, 2021, and June 9, 2021, Respondent made the following remarks to multiple litigants and their counsel in 16 separate court matters:

a. M.N. v. A. R., FD-04-1325-20, Respondent, when addressing the issue of parenting time during a virtual court proceeding, stated to the litigants and their counsel that he "knew very little about the applicable laws" having not served in the Family Division for two decades and having removed that which he may have remembered from his mind. Respondent compared his involvement in the matter before him to that of a cardiologist seeing his first patient. Finally, Respondent remarked that he had not read all of the documents and did not understand that which he had read, but agreed to hear the matter if counsel would "walk [him] through their issues step by step" and "treat [him] like I'm a ninth grader in high school."

b. L.M. v. S.M., FD-04-1965-19, while hearing an application for child support, Respondent stated to the litigants, "I am not a family division judge. I am a judge helping out. I am not a family division judge. I have no expertise in family law." Respondent also stated, ". . . I know nothing about this case. I know nothing about you, the litigants. . . ."

c. J.K. v. M.M., FD-04-365-19, while addressing litigants and their counsel, Respondent stated, "I'm working full time in the civil division and I'm literally, literally in the middle of a jury trial that I interrupted to take my Family Division Wednesday. I have no idea what's going on in this case, zero. So you're dealing with a judge that is completely inexperienced and untrained in the family division . . ." Respondent requested the attorneys "walk [him] through their case. They're going to have to walk me through their evidence." Respondent continued by

stating, "Don't assume I know anything about the law, or about this particular case. It's going to require both sides to walk me through the case like they were walking a fairly well-educated, first year law student."

d. A.W. v. J.C., FD-04-2506-09, during a hearing in respect of a custody application, Respondent advised the parties and their counsel as follows: "I do have some paperwork, but I want to be perfectly candid – I don't usually know what I'm looking at when I'm looking at the paperwork. . . . I don't understand some of this stuff." Respondent then asked plaintiff's counsel for an explanation of the application and the relief sought by plaintiff.

e. A.F. v. J.F., FD-04-3593-08, Respondent stated, "Let me advise the litigants that they've drawn a judge that's not in the family division for almost 20 years." Respondent continued and again stated,

> I want to be 100% transparent. I am not a family division judge. I'm a civil division judge and it's been almost twenty years since I last sat in this division. Everybody ought to be aware of my own limitations. I'm not an expert in family law. It's not my choice division. I'll do the best I can. I know zero about this case. I have some documents before me which I'll be glad to look through.

f. L.T. v. G.S., FD-04-1376-20, during a hearing to modify child support, Respondent stated, "The litigants ought to be aware that the last time I handled family division matters was 18 years ago and I'm filling in because of the shortage of judges in the family division."

g. CCBSS o/b/o P.D. v. M.E., FD-04-415-07, Respondent advised the litigants that he last sat in the family division 18 years ago. Respondent stated he moved the date of the hearing to give plaintiff time to file opposition because Respondent felt the court rule allowing an opposing party to verbally state opposition on the day of the motion hearing without filing any papers in advance is "very unfair." Respondent further stated,

> I think it's extraordinarily unfair to the judge and the other litigant that there's a good chance they are going to be confronted with stuff they are seeing for the very

> first time. It's a horrendous situation on top of an already horrendous situation. These are the cards I've been dealt.

At another point in the proceeding Respondent stated, "Everybody should be aware it's been 18 years since I've done this. If there's a material factual dispute, I probably have to have some type of hearing, evidentiary hearing date, unless this can be resolved in 15 minutes' worth of testimony." Plaintiff's attorney advised the hearing would take longer than 15 minutes since five witnesses, including the mother, were expected to testify, to which Respondent replied, "We don't even know what Mom's version is. Apparently that's the law – it doesn't require it. It's insane."

h. D.R. v. G.P., FD-04-673-15, Respondent encouraged the parties to work out a parenting schedule stating, "You both sound like reasonable people. I would encourage the two of you, frankly, particularly compared to some of the litigants I had several hours ago. The two of you sound fairly reasonable." Respondent also discussed proceeding to mediation since they are more experienced than Respondent and stated, "Frankly, you could get a guy off the street that's more experienced than me with this stuff."

i. K.B. v. B.B., FM-04-831-10, Respondent advised the parties that he had "no paperwork and doesn't know anything about the case." In referring to the cross-motion that was 150 pages, Respondent stated, "Obviously I'm not going to be able to read that and I haven't even looked at the original motion. Let me look at the motion and see how bad it is."

j. E.W. v. K.W., FM-04-1286-17, the parties appeared before Respondent in respect of a motion filed by the defendant, which Respondent commented had included 150 exhibits. Respondent stated,

> Here's the bottom line. If you both want to submit a much shorter version. Let me tell you something about myself. I've been a judge now almost 20 years. The last time I sat in the family division was 18 years ago. It gets even worse. I didn't handle FM motions. I didn't deal with divorce cases and they put me in as a supplement on Wednesdays, obviously because it was an emergency."

Respondent likened himself to an obstetrician in the hospital when a patient comes in with broken bones and the doctor has to treat the patient stating, "That's the way you ought to view me. I'm the OB confronted with people with broken bones. Maybe that's a bad metaphor, maybe it's not, but the parties ought to be realistic as to what they can expect me to do until Judge Bernardin comes back." Respondent encouraged the parties to submit something shorter stating, "I don't have the time, especially with over 75 civil motions, and everything else going on, especially in the family division."

k. C.R. v. A.R., FM-04-141-21, the attorneys advised Respondent they were going to mediation and potentially a trial would be necessary to address child support issues. Respondent expressed his displeasure with his temporary assignment stating, "As a matter of fact, by the time this conference call ends, if I'm still in the family division, I'll be very unhappy about it, but it's unrealistic to expect my liberation from the family division is going to be sooner than that."

l. S.S. v. W.S., FM-04-1051-17, prior to the start of the hearing, Respondent advised the parties, "I did peruse the papers, I use the term liberally, peruse, all this stuff." Respondent further stated, "I have very little knowledge of matrimonial law. I didn't do it as a practitioner and didn't do it as a judge. I have zero, zero matrimonial knowledge." After consulting with his court clerk and learning that there were five other cases on his calendar that day, Respondent stated,

> I don't have the luxury of spending hours upon hours on this case to have the attorneys walk me through everything. I can give a morning or afternoon between now and June 15. If there is one discreet issue that can be resolved cleanly within an hour or so, I'll be glad to give you that time. If we go through all the issues in this case, all the paperwork, it will probably require me to set aside a full eight-hour day. You may not get that luxury until Judge Bernardin comes back. That's the reality of it. I'm not an apologist.

m. H.E. v. S.D., FM-04-1016-13, at the start of the hearing, Respondent advised the parties that he was one of the judges covering Judge Bernardin's cases and stated, "The good news

is he's expected back in four weeks. The bad news is I'm not a family law judge." When referring to the motions and cross-motions, Respondent stated, "I don't have the capacity to read through paperwork and financials to understand. I just don't. That's the reality."

n. T.F. v. R.F., FM-04-582-21, Respondent stated to the parties, "As you both are aware, I am filling in for Judge Bernardin and have zero knowledge about family law."

o. B.R. v. A.S., FD-04-1833-19, a default divorce, Respondent stated,

> I'm going to make a decision that I'm very sure is going to make at least one of you unhappy. I'm not here to make people happy. I'm not particularly happy in this position, but this is what I get paid to do. I'm not a family division judge. The last time I did this was literally 20 years ago. Understand I am a judge, but I have no expertise in this particular matter. 20 years ago is a long time.

p. E.B. v. J.C., FD-04-565-20, Respondent stated,

> You're looking at a judge who's not a family division judge. It's been literally almost 20 years since I've looked at or done any family division work. I'm not a family division judge. I know nothing about this case. There simply wasn't enough time for me to go through the pounds of filings. Even if I tried to go through it, I don't understand half of what I'm reading. As I said, it's been 20 years since I've done anything like this.

In discussing unresolved issues, Respondent explained to the parties that if child support were the only issue, he could refer to the child support guidelines, but "if it requires testimony or there are other issues, I'll give you another date because it ain't gonna happen today. It's just the nature of the beast unfortunately."

6. Respondent's expressions of dissatisfaction with his temporary family part assignment and his criticism of that assignment, which was done to address management needs at the time, impugned the integrity of the Judiciary in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct.

7. Respondent's willful failure to endeavor to familiarize himself with the applicable law and his repeated declarations to the parties and their counsel that he lacked the requisite knowledge

and skill to adjudicate their family court matters, impugned the integrity of the Judiciary and was improper, in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1, of the Code of Judicial Conduct.

8. Respondent's willful failure to endeavor to prepare adequately for those matters over which he was presiding contravened his ethical obligations to maintain professional competence in the performance of his judicial duties, in violation of Canon 3, Rule 3.2, of the Code of Judicial Conduct.

COUNT II

9. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

10. When presiding virtually over M.N. v. A.R., FD-04-1325-20 on June 2, 2021, Respondent appeared in the courtroom with his feet propped up on the desk and without his judicial robes.

11. Per Rule 1:2-1 (d), judges must wear judicial robes during proceedings conducted in open court, including during court proceedings conducted virtually.

12. Respondent, in failing to wear his judicial robes and appearing with his legs propped up on the desk in front of him while presiding virtually over M.N. v. A.R., impugned the integrity of the Judiciary and the solemnity of the court proceeding, in violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.4, of the Code of Judicial Conduct.

COUNT III

13. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

14. At the start of the virtual proceeding in M.N. v. A.R., FD-04-1325-20, Respondent disclosed to the parties that defense counsel previously served as the prosecutor in Respondent's drunk driving case 11 years earlier, which was ultimately dismissed on the prosecutor's motion.

Respondent stated that he "liked" defense counsel, but assured the parties that he could nonetheless remain impartial.

15. Respondent's prior professional association with defense counsel in M.N. v. A.R. created the appearance of a conflict of interest between Respondent and defense counsel that required Respondent's recusal from M.N. v. A.R. Respondent's failure to recuse despite the appearance of a conflict violated Canon 3, Rule 3.17(B), of the Code of Judicial Conduct and Rule 1:12-1(g).

COUNT IV

16. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

17. Respondent, despite disclaiming a conflict with defense counsel in M.N. v A.R., FD-04-1325-20, adjourned that matter based solely on Respondent's impression that plaintiff's counsel had an unstated concern about Respondent's potential partiality for defense counsel given counsel's involvement in Respondent's drunk driving case. To appease defense counsel, however, Respondent, prior to adjourning the matter, entered an interim visitation order for the defendant's benefit.

18. Respondent's adjournment of M.N. v. A.R. *after* disclaiming any bias in favor of defense counsel and based solely on Respondent's belief that plaintiff's counsel's had an "unstated concern" as to Respondent's impartiality, violated Canon 3, Rule 3.17(A), of the Code of Judicial Conduct.

WHEREFORE, Complainant charges that Respondent has violated the following canons of the Code of Judicial Conduct:

Canon 1, Rule 1.1, which requires judges to observe high standards of conduct so that the integrity and independence of the Judiciary may be preserved;

Canon 2, Rule 2.1, which requires judges to avoid impropriety and the appearance of impropriety and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary;

Canon 3, Rule 3.2, which requires judges to maintain professional competence in the performance of their judicial duties ;

Canon 3, Rule 3.4, which requires judges to maintain order and decorum in judicial proceedings ;

Canon 3, Rule 3.17 (A) and (B), which requires judges to hear and decide all assigned matters unless disqualification is required by the canon or "other law," and to disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned;

Rule 1:2-1 (d), which requires judges to wear judicial robes during proceedings in open court; and

Rule 1:12-1(g), which requires judges to disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned.

DATED: April 19, 2022

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