

qualified individuals had not renounced their rights of administration, in violation of N.J.S.A. 2C:21-4A. On September 20, 2021, the New Jersey Supreme Court suspended Respondent from the exercise of her judicial duties, with pay, pending proceedings before the Committee. On June 21, 2022, Respondent was admitted into the Pretrial Intervention Program (“PTI”) for a period of 12 months. In addition to Standard Conditions of PTI Supervision, Respondent agreed to Special Conditions, which remain confidential, and to being permanently barred from any and all future public employment in the State of New Jersey and any of its administrative subdivisions, pursuant to N.J.S.A. 2C:51-2.

A. FACTS

The decedent in the matter of the Estate of Mark Halchak (“the Estate”) died intestate on January 28, 2017. On March 23, 2017, an application for administration of the Estate was filed by Keith Stewart (“Mr. Stewart”), an individual unrelated to the decedent who was familiar with the decedent by virtue of their prior employment working in different capacities for the Township of Wayne. **See Complaint, Answer at ¶4.**

The decedent’s cousin, Estelle Halchak (“Ms. Halchak”), a New Hampshire resident, learned of her cousin’s passing on March 24, 2017 when she and other

relatives were contacted by a genealogy company offering to perform administration of the Estate in exchange for a percentage of its value. **Exhibit 1 at ¶8.**

Ms. Halchak traveled to New Jersey, secured the decedent's home and his remains, and contacted the Surrogate Court to advise of her interest in serving as administrator of the Estate. **Exhibit 2 at ¶2.** Ms. Halchak also retained counsel, Robert Altshuler, Esq. ("Mr. Altshuler"). **Exhibit 2 at ¶2; Exhibit 3 at T5-25 thru T6-6.** On March 27, 2017, an employee of the Surrogate's Court advised Ms. Halchak that Mr. Stewart, a non-relative, applied for administration rights to the Estate. **See Complaint, Answer at ¶7.** The Surrogate's Court scheduled a hearing for Respondent to take testimony since both Mr. Stewart and Ms. Halchak applied to be named as administrators for the Estate. **See Complaint, Answer at ¶8.**

Ms. Halchak obtained unanimous consent in the form of signed letters of renunciations from the other beneficiaries of the Estate, indicating their desire for Ms. Halchak to serve as administrator of the Estate. **Exhibit 4, T56-24 thru T57-21.**

On June 6, 2017, after multiple adjournments, a hearing was held at the Surrogate's Court. After placing them under oath, Respondent heard testimony from Ms. Halchak and Mr. Stewart. There was no recording made of this proceeding. **See Complaint, Answer at ¶10.**

Mr. Altshuler did not attend the hearing, as he believed it unnecessary to charge Mr. Halchak legal fees to attend when he reasonably believed that she, as the only relative present, would be named the administrator. **Exhibit 3, T9-15 thru T13-1.**

Prior to the hearing, Respondent advised the parties that she knew Ms. Halchak's attorney and she knew Mr. Stewart. **Exhibit 5, T58-6 thru T59-10.**

Respondent did not disclose to Ms. Halchak the full extent of her relationship with Mr. Stewart. **Exhibit 5, T48-25 thru T51-18; Exhibit 6, T36-17-21; T42-17 thru T43-11, T60-10-23, T62-9 thru 63-1, T178-9-15, T191-12 thru T192-11.)** Specifically, Respondent omitted the fact that she knew Mr. Stewart and his immediate family members for more than three decades, as they grew up in the same neighborhood (**Exhibit 5, T50-2-6; Exhibit 7, T4-6 thru T5-17**), that Respondent was Facebook friends with Mr. Stewart and members of his immediate family, including his mother and sister, as well as other mutual friends (**Exhibit 5, T51-19-22; Exhibit 7, T8-17-22; Exhibit 8**), that Mr. Stewart attended multiple fundraising events held for Respondent, including several "Annual Surrogate Social" events (**Exhibit 7, T7-10-12; Exhibit 9**), that Respondent socialized with Mr. Stewart at parties together (**Exhibit 5, T50-17-19; Exhibit 7, T6-5-16**), and that Respondent, in the six months preceding the June 6, 2017 hearing, made at least six telephone calls to Mr. Stewart from her personal cell phone, including a 23-minute telephone

call on March 27, 2017 that Respondent initiated, and exchanged approximately 63 text messages with Mr. Stewart. **Exhibit 10.**

After taking testimony from Ms. Halchak and Mr. Stewart, Respondent appointed Mr. Stewart to administer the Estate. See Complaint, Answer at ¶14. See also Exhibit 11.

On or about August 30, 2017, Ms. Halchak filed an Order to Show Cause in the Superior Court, Chancery Division, appealing the Surrogate's appointment of Mr. Stewart as the Estate's administrator. **Exhibit 1.** On or about September 5, 2017, the Hon. Thomas J. LaConte, J.S.C. ("Judge LaConte"), held oral argument regarding the application. **Exhibit 12.** During the hearing, it was disclosed that the value of the Estate was approximately \$600,000. Id. at T10-18-21. Judge LaConte questioned how Mr. Stewart became the administrator. Judge LaConte cited Rule 4:82(5), and questioned why Respondent, when faced with a dispute concerning the appointment of an administrator, nonetheless made an appointment. Id. at T7-4 thru T9-17.

On October 2, 2017, pursuant to a Consent Judgment, Judge LaConte discharged Mr. Stewart as administrator and appointed Ms. Halchak as co-administrator, along with the decedent's life-long friend. **Exhibit 13.**

B. MISCONDUCT COMMITTED

By presiding over a hearing in which Respondent's impartiality or the appearance of her impartiality might reasonably be questioned by virtue of Respondent's relationship with one of the administration applicants, Respondent violated Canon 3, Rule 3.17(B) of the Code of Judicial Conduct and Rule 1:12-1 (g).

By her conduct in appointing Mr. Stewart, a friend, as administrator of the Estate, rather than a relative, Respondent inappropriately used her office to advance the private interests of another in violation of Canon 2, Rule 2.2, and Rule 2.3 of the Code of Judicial Conduct.

When questioned about this matter by ACJC investigators, Respondent's testimony, under oath, concerning her relationship with Mr. Stewart, lacked the pertinent details as to the extent of that relationship and the nature of their interactions during the relevant time period and violated Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct.

C. AGGRAVATING/MITIGATING CIRCUMSTANCES

Respondent has no prior judicial disciplinary history.

Respondent's extrajudicial activities and volunteer work includes the following:

- 2013 – 2014 Constitutional Officer's Association, Section Chief to all judges of the Surrogate's courts in New Jersey
- 2013 – 2014 New Jersey Supreme Court Surrogate/Judiciary Liaison Committee
- 2016 – 2021 New Jersey Supreme Court Advisory Committee on Outside Activities of Judiciary Employees
- 2016 – 2021 St. Joseph's Regional Medical Center, Board of Trustees, Strategic Planning Committee
- 2017 – 2022 Paterson Animal Center Volunteer for Pets program via Chief DeCando
- 2017 New Jersey Courts Judicial Outreach Program, Coach to Eastside High School's Mock Trial Team
- 2021 Buddies Rescue, Paramus NJ, Pet Foster Parent
- New Jersey Puerto Rican Congress Task Force
- United Passaic Organization – Volunteer Mentor to High-Risk Youth, "Mentor of the Year"
- Passaic County Technical Institute, Criminal Justice Program, Guest Lecturer, Evidence
- Passaic County Community College, Bridge to College Success Program, Guest Lecturer, Civics

D. AGREED DISCIPLINARY SANCTION AND LEGAL PRECEDENT

The agreed disciplinary sanction for this type of misconduct is a range of public reprimand to public censure, with a permanent bar to holding future judicial office. This range of discipline considers Respondent presiding over a hearing in which her impartiality or the appearance of her impartiality might reasonably be questioned by virtue of her relationship with Mr. Stewart (*Count I*), Respondent's appointment of Mr. Stewart, a friend, as administrator of the Estate, rather than a relative, thereby inappropriately using her office to advance the private interests of another (*Count II*), and Respondent's failure to disclose to ACJC investigators the nature and extent of her relationship and interactions with Mr. Stewart during the relevant time period (*Count III*).

A range of public reprimand to public censure with a permanent bar to future judicial service, is consistent with precedent. See In re Corradino, 238 N.J. 217 (2019) (publicly censuring and permanently barring from judicial service a judge for failing to submit a Request for Expenditure of DWI Funds to the Assignment Judge prior to holding special DWI sessions; utilizing money from the DWI fund to pay himself and others "bonuses"); In re DeBello, 201 N.J. 147 (2009); (censuring a judge for exchanging inappropriate emails with former law clerk via a Judiciary email account and persisting in such activity despite Assignment Judge's directive to cease such behavior; giving misleading answers to ACJC staff when asked about

his interactions with his former law clerk; and soliciting employment for his former law clerk); In re McCloskey, 211 N.J. 565 (2012) (publicly reprimanding a judge for engaging in an *ex parte* conversation with the municipal prosecutor and creating the appearance of bias); In re Falcone, ___ N.J. ___ (2022) (censuring judge and permanently disqualifying him from future judicial service after judge was suspended from office following charges for fourth-degree criminal sexual contact, in violation of N.J.S.A. 2C:14-3(b), for which he was eventually admitted into the PTI program and successfully completed). Cf. (State v. Richard B. Thompson, Accusation No. 18-02-149A) (Pleading guilty to one count of Falsifying Records, a fourth-degree crime, consenting to an Order of Forfeiture of Public Office pursuant to N.J.S.A. 2C:51-2 (d). The New Jersey Supreme Court disbarred Mr. Thompson and permanently restrained and enjoined him from practicing law and holding any judicial office in New Jersey.)

E. RESPONDENT'S REPRESENTATIONS

By entering into this Stipulation of Discipline, Respondent agrees that this disciplinary action will proceed directly to the Committee, by way of application for discipline by consent, for its review and consideration on the written record, in accordance with R. 2:15-15A(b)(3). No further documentation beyond the record submitted will be accepted by the Committee.

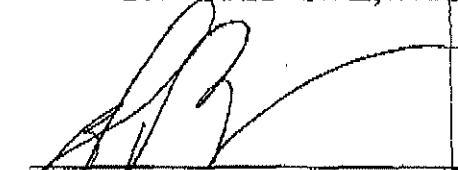
Respondent understands that should the Committee grant the application for discipline by consent and accept the recommendation herein, the Committee shall submit the written record to the Supreme Court for further action, in accordance with R. 2:15-15A(b)(4). Respondent understands that in the event the motion for discipline by consent is denied by the Committee, the disciplinary proceeding shall resume as if no motion had been submitted and this Stipulation shall not be evidentiary.

F. LIST OF EXHIBITS IN SUPPORT OF STIPULATION

1. Verified Complaint to Vacate Judgment and Appointment of a Substituted Administrator
2. Certification of Estelle A. Halchak dated August 22, 2017 in Support of Complaint and Order to Show Cause
3. Transcript of May 21, 2019 Interview of Robert Altshuler, Esq.
4. Transcript of August 2, 2019 Interview of Respondent (Part 2 of 3)
5. Transcript of July 12, 2019 Interview of Respondent (Part 1 of 3)
6. Transcript of August 27, 2019 Interview of Respondent (Part 3 of 3)
7. Transcript of September 10, 2019 Interview of Keith Stewart
8. Screen shots of Respondent's Facebook page, including timeline and friends list
9. Photographs of Respondent, Keith Stewart, and others at multiple Surrogate fundraising events, including those held on October 10, 2012, November 19, 2014, October 17, 2015 and November 29, 2018
10. Respondent's cellular phone records obtained through Subpoena

11. Judgment Granting Administration to Keith Stewart dated June 22, 2017
12. Transcript of September 5, 2017 hearing before Hon. Thomas J. LaConte, P.J.Ch.
13. Order of Hon. Thomas J. LaConte, P.J.Ch. dated September 5, 2017

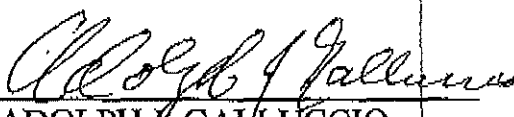
G. SIGNATURE, RECOMMENDATION AND APPROVAL



 BERNICE TOLEDO
 Respondent

11/07/2022


 DATE



 ADOLPH GALLUCCIO
 Counsel for Respondent

11/7/2022

 DATE



 MAUREEN G. BAUMAN
 Disciplinary Counsel/Presenter

November 9, 2022

 DATE

/s/ Virginia A. Long

 Hon. Virginia A. Long (Ret.)
 ACJC Chair

November 29, 2022

 DATE