

D-91-15 (077406)

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2014-127

IN THE MATTER OF :
: **PRESENTMENT**
:
MARIO A. BATELLI, JUDGE OF :
THE MUNICIPAL COURT :
:

The Advisory Committee on Judicial Conduct (the "Committee" or "ACJC") hereby presents to the Supreme Court its Findings and Recommendation in this matter in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's findings demonstrate that the charges set forth in Count II of the Formal Complaint against Mario A. Batelli ("Respondent"), Judge of the Municipal Court, relating to Respondent's misuse of his judicial office to access the confidential criminal history of another for personal reasons have been proven by clear and convincing evidence.

The Committee's findings also demonstrate that while the circumstances vis-à-vis Respondent's conduct in lending assistance to his sister-in-law in an anticipated municipal court matter, as was charged in Count I of the Formal Complaint, have been proven by clear and convincing evidence, that conduct does not constitute conduct for which judicial discipline is warranted.

The Committee recommends that Respondent be suspended from the performance of his judicial duties, without pay, for a period of one month for his misuse of the judicial office as delineated in Count II of the Formal Complaint. The Committee further recommends that the remaining charges against Respondent, as contained in Count I of the Formal Complaint, be dismissed without the imposition of discipline.

I. PROCEDURAL HISTORY

This matter was initiated by a referral from Passaic County Assignment Judge Donald J. Volkert, Jr., via Passaic County Municipal Division Manager Sonya Y. Noyes, of an email from Respondent to his sister-in-law, Annalisa Batelli, in December 2013. P1. In that email, Respondent advised Mrs. Batelli of the criminal charges her father could file in the Wayne Municipal Court against local contractor Anthony Pizza. Id. at "ACJC0005."

Included with Ms. Noyes's referral was the written statement of Wayne Municipal Court Administrator Lori Ellicott with whom Mrs. Batelli interacted when attempting to file her father's municipal court complaint against Mr. Pizza. Id. at "ACJC0003." According to Ms. Ellicott, Mrs. Batelli referenced Respondent's judicial office and provided her with a copy of his email when filing the complaint. Id.

The Committee conducted an investigation into this matter and, as part of that investigation, interviewed five individuals,

including Respondent. See P2 thru P4; P8; P22 thru P25. In addition, the Committee collected and reviewed documentation relevant to its consideration of this matter. See P7; P9 thru P21; P26. During the course of that investigation, the Committee learned of Respondent's conduct in accessing Mr. Pizza's confidential criminal history for personal reasons unrelated to his judicial office or the administration of criminal justice. P13.

On January 26, 2015, the Committee issued a two count Formal Complaint against Respondent charging him with conduct in contravention of Canons 1, 2A and 2B of the Code of Judicial Conduct relating to his alleged misuse of the judicial office to advance his family's private interests. Respondent filed an Answer to the Complaint on January 27, 2015 in which he admitted the factual allegations in respect of his own conduct, denied the factual allegations concerning the conduct of Mrs. Batelli claiming a lack of sufficient information to respond to those allegations, and denied violating the cited Canons of the Code of Judicial Conduct.¹

On November 10, 2015, Presenter and Respondent filed with the Committee a set of Stipulations in which Respondent admitted the factual predicates relative to the allegations in the Complaint.

¹The Answer bears an incorrect "filed" date stamp of January 26, 2015. The actual filing date, as reflected in Respondent's counsel's Certification of Service, was January 27, 2015.

Consistent with his Answer, however, Respondent did not concede that such conduct violated the Code of Judicial Conduct.

The Committee convened a Formal Hearing on November 20, 2015 at which Respondent appeared, with counsel, and offered testimony in defense and mitigation of the asserted disciplinary charges. Notably, during the Formal Hearing Respondent conceded, for the first time, the impropriety of his conduct in accessing Mr. Pizza's confidential criminal history for personal reasons, as alleged in Count II of the Formal Complaint. The Presenter called one witness - Wayne Court Administrator Lori Ellicott - in support of the asserted disciplinary charges. Exhibits were offered by the Presenter, which were admitted into evidence, as were the Stipulations previously referenced. See P1 through P26; see also Stipulations filed November 10, 2015.

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 1998. Stipulations at ¶1. At all times relevant to this matter, Respondent served as a part-time municipal court judge in the Borough of Totowa, a

position he has held since January 2011. Stipulations at ¶2. Respondent also served intermittently as a substitute judge in the Townships of Little Falls and Wayne, the City of Clifton, and the Boroughs of Wanaque and Prospect Park. 1T5-15 to 1T6-3.² Immediately prior to his judicial appointment, and for a period of three years between January 2008 and December 2010, Respondent served as the municipal prosecutor in Totowa Borough and as the substitute municipal prosecutor in Wayne Township. Stipulations at ¶3; 1T6-15-19. At all times relevant to this matter, Respondent also maintained a private law practice - Foster & Mazzie, LLC - in Totowa Borough. 1T7-21 to 1T8-1.

The facts and circumstances pertinent to this judicial disciplinary matter are uncontested and the subject of a Stipulation. Those facts and circumstances, which inform our decision, are as follows. In or around Thanksgiving 2013, Respondent's sister-in-law, Annalisa Batelli, sought Respondent's counsel on the process by which to file criminal charges against Anthony Pizza, a local contractor with whom Mrs. Batelli's father had contracted in January 2013 to remodel the Batelli's home in Wayne Township ("Wayne Home Improvement Project"). Stipulations at ¶¶10-12. Mr. Pizza had allegedly failed to complete the work

² "1T" refers to the Transcript of Interview of Respondent conducted on June 12, 2014, which is designated as P2 in the record.

on the Wayne Home Improvement Project for which he had been paid. Id. at ¶9.

Respondent advised Mrs. Batelli that she and her father could go to the Wayne Police Department or to the Wayne Municipal Court to file criminal charges against Mr. Pizza. Id. at ¶12. In addition, Respondent directed Mrs. Batelli to speak with the Wayne Municipal Court Administrator when filing those criminal charges as the court administrator could make the requisite probable cause determination to permit the matter to proceed through the judicial process. Id. at ¶13. Respondent cautioned, however, that the court administrator "may not feel comfortable doing that" since Respondent had previously served as a substitute judge in Wayne, in which case, Respondent advised Mrs. Batelli to request a probable cause hearing before a Wayne Municipal Court judge. Ibid. Given his position as a judge in the Totowa Municipal Court, Respondent also advised Mrs. Batelli that neither he nor the attorneys in his firm could appear in the Wayne Municipal Court or any municipal court in Passaic County. Id. at ¶14.

Shortly thereafter, on the morning of December 3, 2013, Respondent emailed Mrs. Batelli from his law firm account to advise her of the seven "NJS 2C" charges he believed Mrs. Batelli and her father could file against Mr. Pizza. P1 at "ACJC0005;" Stipulations

at ¶15. The subject heading of the email, "shitbag," was a term Mrs. Batelli evidently coined to refer to Mr. Pizza. 2T18-4-11.³

The text of Respondent's email reads as follows:

Here are the charges:

NJS 2C:21-5(c)(2) bad check. 3rd degree

NJS 2C:20-3(a) theft of moveable property (the money given to him). 2nd degree since the amount given exceeds \$75K.

NJS 2C:20-3(a) theft of moveable property, specifically the cabinets, bathroom hardware and all other fixtures in the contract which you paid for but didn't receive

NJS 2C:20-4(a) theft by deception. 2nd degree since the amount exceeds \$75K

NJS 2C:20-4(c) theft by deception. 2nd degree since the amount exceeds \$75K

NJS 2C:20-5(a) theft by extortion

NJS 2C:20-5(e) theft by extortion

All of the above are for your dad. You can charge NJS 2C:21-5 for the bad check given to Wayne for the permits which you had to pay. Ask the detective to run a CCH which will show other criminal charges including the recent indictment for a \$50K bad check.

Good luck!

P1 at "ACJC0005.

³ "2T" refers to the Transcript of Interview of Annalisa Batelli conducted on April 11, 2014, which is designated as P22 in the record.

Respondent arrived at those charges following his numerous conversations with his brother and Mrs. Batelli about Mr. Pizza during the previous eleven months, and after his review of various documents associated with the Wayne Home Improvement Project relevant to a lawsuit in which Respondent defended Mrs. Batelli and her parents in connection with claims against them and Mr. Pizza as a result of the alleged non-payment of money owed by Mr. Pizza. Ibid; see also Stipulations at ¶15.

On the same day he sent the email to his sister-in-law, Respondent requested and received from the Totowa Police Department Mr. Pizza's Computerized Criminal History ("CCH"), which is a confidential report maintained by the New Jersey State Police Bureau of Identification ("SBI") that contains the requested individual's criminal history, including any arrests, convictions or other judicial dispositions involving that individual.⁴ Stipulations at ¶¶30-42. Respondent was aware when making this request that his judicial office permitted him access to these CCHs, but only in

⁴ The SBI functions as the central repository for all criminal history record information ("CHRI"). Stipulations at ¶29. The SBI manages and controls CHRI on a computerized network known as the New Jersey Criminal Justice Information System ("NJ CJIS"). Id. at ¶31. The information contained on the NJ CJIS is confidential and intended for use by authorized criminal justice agencies only for the administration of criminal justice or for criminal justice purposes. Id. at ¶32. New Jersey's local law enforcement agencies are permitted by way of an agreement with the SBI to directly access NJ CJIS terminals, including the criminal history record information maintained on that system. Id. at ¶35.

those matters pending before him in which a CCH was necessary for the proper administration of criminal justice (e.g. sentencing and bail). Stipulations at ¶40; 3T43-19 to 3T44-19. By all accounts, Mr. Pizza had no pending matters in the Totowa Municipal Court on December 3, 2013 when Respondent requested and reviewed his CCH. Id. at ¶44. Indeed, by his own admission, Respondent misused his judicial office to obtain Mr. Pizza's CCH for personal reasons unrelated to his judicial office or the administration of criminal justice, conduct which he now concedes was wholly improper and in violation of Canons 1, 2A and 2B of the Code of Judicial Conduct. Id. at ¶43; 3T7-1-2; 3T38-13-22; 3T39-6-15; 3T54-3-14.⁵

Two weeks later, on December 16, 2013, Mrs. Batelli and her father appeared at the Wayne Municipal Court to file Respondent's suggested criminal charges against Mr. Pizza. Stipulations at ¶17. Wayne Court Administrator Lori Ellicott received Mrs. Batelli and her father at the Violations Window and reviewed their Complaint Information Form and Certification in Support of Probable Cause concerning their claims against Mr. Pizza. Id. at ¶¶18-19, see also 3T13-1 to 3T14-14; P5 at "ACJC0006-0007." On initial review, Ms. Ellicott suggested to Mrs. Batelli that the matter may be civil, not criminal, in nature given that it involved a contractual

⁵ "3T" refers to the Transcript of Hearing, In re Mario Batelli, ACJC2014-127, conducted on November 20, 2015.

relationship between her father and Mr. Pizza. Stipulations at ¶¶22-23. In response, Mrs. Batelli stated: "No, my brother-in-law is a Judge and he should know. He gave me the charges my father was to sign," at which point Mrs. Batelli handed Ms. Ellicott a copy of Respondent's email listing the criminal charges Mrs. Batelli's father was to file against Mr. Pizza.⁶ Id. at ¶24; see also; 3T14-1 to 3T15-18; P6. During their subsequent exchange concerning a possible conflict in the Wayne Municipal Court given Respondent's judicial office, Mrs. Batelli again referenced Respondent claiming that she had "just contacted [her] brother-in-law [i.e. Respondent]" who advised her to request a Probable Cause Hearing. P1 at "ACJC0003;" see also 3T20-3 to 3T21-2.

Ms. Ellicott ultimately prepared the Complaint-Summons (State v. Anthony Pizza, S-2013-001528-1614) charging Mr. Pizza with four of the seven "NJS 2C" violations Respondent had provided to Mrs.

⁶We find incredible Mrs. Batelli's disavowal of her statement to Ms. Ellicott invoking Respondent's judicial office. 2T12-25 to 2T13-6. The evidence in the record firmly establishes Ms. Ellicott's credibility in this regard. We find most compelling Ms. Ellicott's written statement to her supervisor, which she prepared within 48 hours of the event. P6; P7. In that statement, Ms. Ellicott provided a verbatim recitation of Mrs. Batelli's statement invoking Respondent's judicial office, which we have referenced herein. Ibid. This fact, given its sequential proximity to the event at issue, when coupled with Respondent's acknowledgement of the overall credibility of Ms. Ellicott's testimony as compared to that of Mrs. Batelli, lends significant weight to the reliability of Ms. Ellicott's testimony and underscores the implausibility of Mrs. Batelli's denial. 3T69-14-25.

Batelli via email. Stipulations at ¶25; see also P5 at "ACJC 0008-0010;" 3T21-3-11. Concerned, however, about a possible conflict in the Wayne Municipal Court given Respondent's familial relationship to Mrs. Batelli, Ms. Ellicott immediately referred the issue to her superior, Passaic County Municipal Division Manager Sonya Noyes, who subsequently referred it to Passaic County Assignment Judge Donald J. Volkert, Jr. P5. Shortly thereafter, on December 19, 2013, the Pizza matter was transferred by Judge Volkert to the Bergen Vicinage for a probable cause determination and possible adjudication. P1; see also P7 at "ACJC0022."

B.

In defense of this matter, Respondent denied any impropriety in assisting his sister-in-law and her father in their pursuit of criminal charges against Anthony Pizza, as was charged in Count I of the Formal Complaint. 3T7-12 to 3T8-19. Respondent specifically denied that his email created the risk that his judicial office would be used to advance Mrs. Batelli's or her father's private interests, or permitted Mrs. Batelli to convey the impression that she was in a special position of influence. 3T94-1-21. That email, according to Respondent, was nothing more than a personal communication to his sister-in-law, who was also a client of his law firm, concerning an ongoing and longstanding issue between Mrs. Batelli's family and Mr. Pizza, the existence of which Respondent never intended be shared with a third party, least of all a member

of the Judiciary. 3T8-1-10; 3T94-12-21. The very informal structure of the email and its inclusion of an expletive (i.e. "shitbag"), Respondent maintained, revealed its purely private nature. 3T8-1-10. We note in this regard the absence of any evidence in the record to suggest that Respondent intended Mrs. Batelli reference his email or his judicial office when filing her father's complaint against Mr. Pizza in the Wayne Municipal Court. 3T9-25 to 3T10-6.

In addition, Respondent noted Ms. Ellicott's testimony that she did not perceive Mrs. Batelli's intent in referencing Respondent's email and invoking his judicial office as an attempt on her part to influence the outcome of the Pizza matter. 3T8-11-14; 3T29-6 to 3T31-4; 3T94-1-25. Indeed, Respondent argued that Ms. Ellicott had no ability or authority to affect the ultimate outcome of the Pizza matter, but rather was limited to making the initial determination as to the existence of probable cause to file the complaint, which was subject to review by a municipal court judge. 3T8-14-19; 3T13-1 to 3T26-2; 3T96-5-25; see also Rule 7:2-2(a)(1).

As to Count II, Respondent admitted the impropriety of his conduct in accessing Mr. Pizza's CCH for personal reasons on December 3, 2013 and the attendant violations of the Code of Judicial Conduct in respect of that conduct. 3T7-1-2; 3T38-13 to 3T39-15. In mitigation, Respondent disclaimed any nefarious intent

in doing so, claiming his only purpose in accessing Mr. Pizza's CCH was to ascertain the status of a separate criminal matter involving Mr. Pizza - State v. Anthony Pizza, S-2013-000121 ("Pizza II") - that had originated in the Totowa Municipal Court and been referred to the county prosecutor's office as an indictable offense. 3T35-13 to 3T36-6; 3T38-13 to 3T39-15.

According to Respondent, he believed that if Pizza II had been remanded to the Totowa Municipal Court it would have provided him with a basis (i.e. a conflict of interest) on which to extricate himself from the civil lawsuit Mrs. Batelli and her family had requested he file on their behalf against Mr. Pizza, one in which Respondent's firm stood to lose a substantial sum of money. 3T36-12 to 3T37-8. Respondent, purportedly unable to obtain the status of the Pizza II matter informally from Mr. Pizza's counsel, Richard J. Baldi, Esq., whom Respondent claimed had ceased representing Mr. Pizza prior to December 2, 2013, sought the desired information from Mr. Pizza's CCH.⁷ 3T37-7 to 3T39-15; 3T41-3-10.

We find Respondent's testimony in this regard in sharp conflict with the evidence in the record, a circumstance of significant concern to this Committee as it casts considerable doubt on Respondent's veracity. As Respondent conceded during the

⁷The evidence in the record belies Respondent's testimony on this issue. Mr. Baldi's firm, in fact, represented Mr. Pizza throughout the entirety of the Pizza II matter, including its dismissal on December 17, 2013. P16 at "ACJC0047."

Formal Hearing, his conflict with Mr. Pizza existed irrespective of Pizza II given Mr. Pizza's legal issues with Respondent's family and Respondent's protracted involvement in addressing those issues on his family's behalf. 3T41-16-23. Indeed, on the very day he requested Mr. Pizza's CCH, Respondent emailed his sister-in-law with the criminal charges he believed her father could file against Mr. Pizza in the Wayne Municipal Court, a fact clearly indicative of Respondent's conflict with Mr. Pizza. P1; see also Stipulations at ¶¶15-16, 41-43. Notably, included in that email was a directive to Mrs. Batelli to request a copy of Mr. Pizza's CCH from the Wayne Police Department. P1.

These facts considered in conjunction with the timing of Respondent's request for Mr. Pizza's CCH (i.e. the same day he emailed his sister-in-law about the charges to file) engender significant questions about the validity of Respondent's claimed purpose for accessing the CCH.

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 Canons 1, 2A and 2B of the Code of Judicial Conduct in several material respects, including: (1) creating the risk that his judicial office would be used to advance the private interests of others by assisting Mrs. Batelli and her father, via email, with their municipal court complaint against Mr. Pizza (Count I); (2) permitting Mrs. Batelli to convey to Ms. Ellicott the impression that she was in a special position of influence by virtue of her familial relationship to Respondent (Count I); (3) using the judicial office to access confidential information about Mr. Pizza's criminal record for personal reasons unrelated to Respondent's judicial duties (Count II); and (4) allowing Respondent's judicial conduct and judgment to be influenced by his familial relationships (Count II).

We find, based on our review of the uncontroverted evidence in the record and Respondent's admissions of wrongdoing, that the charges relating to Respondent's misuse of the judicial office to access a CCH for personal reasons, as alleged in Count II of the Formal Complaint, have been proven by clear and convincing evidence and that Respondent's conduct violated the cited Canons of the Code of Judicial Conduct.

We further find that although the factual allegations set forth in Count I of the Formal Complaint are uncontested, that conduct does not constitute a violation of the cited Canons of the Code of Judicial Conduct and should be dismissed. Specifically, we find that Respondent's email to his sister-in-law did not, on its face, create a risk that his judicial office would be used to advance her private interests or permit her to convey the impression that she was in a special position of influence, in violation of Canons 1, 2A and 2B of the Code of Judicial Conduct.

Canon 1 requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary are preserved. Canon 2A directs that judges conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. Canon 2B prohibits a judge from lending the prestige of the judicial office to advance private interests or conveying or permitting others to convey the impression that they are in a special position of influence.

As the Commentary to Canon 2 explains:

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

Code of Judicial Conduct, Canon 2, Commentary.

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

In the instant matter, the evidence demonstrates, clearly and convincingly, that Respondent failed to conduct himself in a manner consistent with these high ethical standards, and did so intentionally, for which public discipline is warranted. Notably, Respondent's misconduct - the intentional misuse of the judicial office - was not only ethically improper, but potentially criminal, a fact of significant concern to this Committee. See N.J.S.A. 2C:30-2(a) (Official Misconduct); N.J.S.A. 2C:20-25 (Computer Criminal Activity). Given the potentially criminal nature of Respondent's misconduct, we have referred this matter to the

appropriate authorities for whatever action they may deem necessary.

The evidence of Respondent's intentional misconduct is a matter of record. As to Count II, Respondent admits misusing his judicial office to access Mr. Pizza's confidential criminal case history for personal reasons unrelated to his judicial office or the administration of criminal justice, in violation of Canons 1, 2A and 2B of the Code of Judicial Conduct. Respondent likewise admits that when he engaged in this misconduct he understood that his authority to access such confidential information was a function of his judicial office and limited to matters pending before him in the administration of criminal justice. On this point, Respondent readily concedes that he was aware at the time that Mr. Pizza had no pending matters in the Totowa Municipal Court and there existed no other official purpose justifying Respondent's request for and review of Mr. Pizza's CCH. In this context, Respondent knowingly and purposefully accessed Mr. Pizza's criminal case history to advance a personal objective (i.e. his sister-in-law's legal claims against Mr. Pizza) and in so doing betrayed the public's trust and impugned the integrity of the Judiciary in violation of Canons 1, 2A and 2B of the Code of Judicial Conduct.

We find unpersuasive Respondent's attempt to mitigate this misconduct with claims of ignorance as to an alternative means by

which to secure the status of Pizza II and its relevance to Respondent's conflict with Mr. Pizza. The record before us, as previously discussed, indicates that Respondent's apparent motivation for accessing Mr. Pizza's confidential criminal history was to advance his sister-in-law's case against Mr. Pizza, a circumstance warranting significant discipline.

Viewed more broadly, a jurist's abuse of the judicial office to access the personal and confidential records of another cannot be mitigated or excused by tangential claims of ignorance, real or imagined, as to the administrative procedures or legal processes governing the courts of this State. The standard to which jurists are held demands a greater degree of accountability. To wit, jurists are expected to maintain, enforce and observe "high standards of conduct," to "act at all times in a manner that promotes public confidence" in the integrity of the Judiciary and to "avoid all impropriety and [the] appearance of impropriety." Code of Judicial Conduct, Canons 1, 2(A), commentary to Canon 2; Cf. In re Samay, 166 N.J. 25, 43 (2001) (removing a judge for multiple abuses of the judicial office stating that the power bestowed on jurists is conditioned on their not abusing that power). That Respondent saw fit in this instance to abuse his judicial office, whether out of convenience or personal gain, falls far short of this ethical mark.

We next address the charge that Respondent by his conduct in emailing his sister-in-law created the risk that his judicial office would be used to advance her interests or permitted her to convey the impression that she was in a special position of influence, in violation of Canons 1, 2A and 2B of the Code of Judicial Conduct. The facts underlying this charge are uncontroverted. Respondent, however, denies that those facts constitute a violation of the Code. We agree and find, based on our review of the record, that Respondent's conduct as alleged in Count I of the Formal Complaint does not constitute a violation of Canons 1, 2A or 2B of the Code and recommend the dismissal of those charges.

While the proscription against a jurist's use of judicial stationery or reference to the judicial office in a private matter is clear and longstanding, less evident is a jurist's culpability for the conduct of another who refers to that jurist's office or material provided by that jurist to advance a personal agenda. As our Supreme Court articulated more than a decade ago, the issue in the latter instance, absent a showing of intent on the judge's part, is one of foreseeability, namely whether a jurist should have anticipated the misuse of his or her office by a third party under the circumstance at issue. In re McElroy, 179 N.J. 418 (2004).

In McElroy, a municipal court judge wrote a note for an acquaintance on the back of one of his attorney business cards, which read as follows: "Please consider an amendment from N.J.S.A. 39:4-98 to N.J.S.A. 39:4-97.2 Unsafe Driving. RE: Yvonne Adams. Thanks Lawson McElroy." Id. The acquaintance, on appearing in municipal court to answer for a moving violation, presented the judge's note to the municipal prosecutor and informed the prosecutor that Lawson McElroy could not appear because he was a municipal court judge. Id. The Supreme Court, adopting the Presentment of the Committee, rejected Judge Lawson's professed lack of intent, finding that even absent such intent the judge should have foreseen what ultimately occurred and that the prosecutor would conclude the judge was attempting to trade on his judicial office for the benefit of a friend. Id.

As in McElroy, Respondent in the instant matter denies any intent for his sister-in-law to share his email with personnel at the Wayne Municipal Court. Indeed, by all accounts there exists no evidence in the record to indicate that Respondent expected his sister-in-law would refer to his email or his judicial office in the manner in which she did when filing her father's municipal court complaint against Mr. Pizza.⁸

⁸ For this reason, we likewise decline to amend the Formal Complaint, as requested by the Presenter, to include a charge against Respondent that he violated the proscription against the practice of law by municipal court judges in any criminal, quasi-

The question remains, however, whether Mrs. Batelli's use of Respondent's email and reference to his judicial office was foreseeable under the circumstances such that Respondent should have anticipated this occurrence and avoided the conduct which precipitated it. We find, under the facts at issue, that Mrs. Batelli's conduct was not reasonably foreseeable.⁹

criminal or penal matter, as contained in Rule 1:15-1(b). 3T81-15 to 3T82-12. Although the rules governing judicial conduct are broadly construed "in keeping with their purpose of maintaining public confidence in the judicial system," Respondent's conduct in assisting his sister-in-law in her pursuit of Mr. Pizza, limited as it was to the Sunday night dinner table, random conversations, and a single, discrete email, cannot reasonably be considered as the practice of criminal or quasi-criminal law. In re Blackman, supra, 124 N.J. at 554. The record is devoid of any evidence to indicate that Respondent attempted, in any way, to intervene in the Pizza matter on behalf of Mrs. Batelli or her father, or that he communicated, either surreptitiously or directly, with the court or Mr. Pizza in respect of that matter. Under these circumstances, we find no basis on which to amend the Formal Complaint to include the requested charge against Respondent. Cf. In re McElroy, supra, 179 N.J. 418 (reprimanding judge for intervening, covertly, in a friend's municipal court matter in violation of Rule 1:15-1 and the Code of Judicial Conduct); In re Santini, 126 N.J. 291 (1991) (reprimanding a judge for attempting to intercede with officials of his municipality on behalf of a client in violation of Rule 1:15-1 and the Code of Judicial Conduct); In re Di Sabato, 76 N.J. 46 (1978) (censuring judge who appeared in a speeding case in another municipal court on behalf of his son in violation of Rule 1:15-1 and the Code of Judicial Conduct).

⁹ Though finding these events unforeseeable, we do not, as Respondent urges, view Ms. Ellicott's inability to affect the ultimate outcome of the Pizza matter as dispositive of this issue. Though potentially relevant to the quantum of discipline imposed, it is not necessary for the judicial reference to have affected the ultimate outcome of a matter to constitute a violation under the Code of Judicial Conduct. The risk that a matter will receive

Respondent emailed Mrs. Batelli from his law firm account and, unlike the note in McElroy, that email does not present as though intended for a third-party, nor does it request any action on the part of a third-party for Mrs. Batelli's or her father's benefit. As written, the email simply instructs Mrs. Batelli and her father on the charges they may file against Mr. Pizza in municipal court. Additionally, the inclusion of an expletive in the reference line of that email strongly suggests that it was intended for Mrs. Batelli's eyes only. Though Respondent claims to have instructed Mrs. Batelli to reference his judicial office for purposes of alerting the Wayne Municipal Court to a possible conflict of interest, that circumstance, which we find highly irregular and injudicious, does not, standing alone, render Mrs. Batelli's subsequent inappropriate reference to Respondent's judicial office foreseeable. 3T71-17-25; 3T75-8-21. If anything, it underscores Respondent's evident belief that Mrs. Batelli would refrain from attempting to use his judicial office to advance her private interests. On this record, we simply cannot conclude,

preferential treatment by virtue of a jurist's professed involvement in that matter exists throughout the whole of the proceeding, even if never realized, and not merely at its conclusion. See In re Connor, 124 N.J. 18, 26-27 (1991) (finding that the effect of judicial misconduct on other persons is not an essential element of an alleged violation of the Code of Judicial Conduct or the Court Rules, but may be relevant in assessing the gravity of the misconduct and the appropriate discipline). It is that very risk of inappropriate judicial influence that Canon 2B seeks to avoid.

clearly and convincingly, that Mrs. Batelli's use of Respondent's email and reference to his judicial office when filing her father's municipal court complaint against Mr. Pizza was foreseeable.

We recognize that as between a judge and his/her family, conversations concerning legal issues, such as admittedly occurred here, are inevitable. When confined to a private exchange between the judge and his/her family those conversations pose little risk of implicating the judicial office. When, however, those exchanges are reduced to writing by a jurist, the potential for the judicial office to be compromised, whether purposefully or negligently, is substantially heightened. Given this, judges should limit such interactions to avoid conduct that may reasonably be construed as lending the prestige of the judicial office to advance a private interest. Cf. In re Yaccarino, 101 N.J. 342, 362 (1985) (warning that "judges must always be conscious that they not blur the line between parent and judge" even in those circumstances in which they are responding to "a felt unjust abuse of their child[.]").

Having concluded that Respondent violated Canons 1, 2A and 2B of the Code of Judicial Conduct as charged in Count II of 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 a judge.

In re Seaman, supra, 133 N.J. at 96 (1993) (citing In re Coruzzi, 95 N.J. 557, 579 (1984)); In re Williams, 169 N.J. 264, 275 (2001).

Relevant to this inquiry is a review of both the aggravating and mitigating factors that may accompany judicial misconduct. In re Seaman, supra, 133 N.J. at 98-100 (citations omitted). The aggravating factors considered by the Supreme Court 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, and whether the conduct has been repeated or has harmed others. Id. at 98-99 (citations omitted).

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 or reparations to the victim, and whether the inappropriate behavior is susceptible to modification. See In re Subryan, 187 N.J. 139, 154 (2006) (citations omitted).

There exists in this instance several aggravating factors that bear on our consideration of the appropriate quantum of discipline. First, the misconduct at issue -- intentionally misusing the judicial office to access confidential information for personal reasons -- demonstrates a significant lack of integrity and probity, and constitutes a breach of the public's trust. That it may also constitute criminal conduct renders

Respondent's abuse of office markedly more egregious than that of prior judicial disciplinary matters involving similar misconduct. See In re Inacio, 220 N.J. 569 (2015) (reprimanding judge for using his judicial stationery to intervene in a juvenile matter concerning a municipal councilman's daughter); 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); 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 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 sending a letter on behalf of a former client to the New Jersey Racing Commission on his official stationery).

Second, while this is the first judicial misconduct complaint filed against Respondent, it implicates an intentional disregard for the judicial office and the rule of law, both of which Respondent has been entrusted to preserve and protect. Our concerns

in this regard are enhanced considerably by Respondent's decision to place his family's personal issues ahead of his judicial integrity and ethical responsibilities.

In respect of any mitigating factors, the record, on balance, is wanting. Respondent is currently in his sixth year as the Totowa Municipal Court judge and, as previously indicated, this complaint is the first charge of judicial misconduct to be brought against him. Though initially denying any wrongdoing in his Answer to the Complaint, Respondent has since taken responsibility for his misconduct. It remains unclear, however, the extent to which Respondent appreciates the egregiousness of his abuse of the judicial office and its implications in respect of his character for integrity and probity. We remain concerned about Respondent's evident failure to appreciate the sharp divide that must exist between his personal life and his judicial obligations, and the precedence that must be given the latter.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be suspended from his judicial duties, without pay, for a period of one month for his violation of Canons 1, 2A and 2B of the Code of Judicial Conduct. This recommendation takes into account the seriousness of Respondent's ethical infraction and the significant aggravating factors present in this case while also

accounting for the mitigating factors, which, though present, are insufficient to justify the imposition of a lesser discipline.

We further recommend the dismissal of the charges in Count I of the Formal Complaint relating to Respondent's additional violations of Canons 1, 2A and 2B as a consequence of his discussions, both written and oral, with his sister-in-law concerning her family's anticipated municipal court complaint in the Wayne Municipal Court.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

March 22, 2016

By:

Virginia A. Long
Virginia A. Long, Chair