

D-6-15 (076556)

UPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2013-265

IN THE MATTER OF

C. WILLIAM BOWKLEY, JR.,
JUDGE OF THE MUNICIPAL COURT

PRESENTMENT

The Advisory Committee on Judicial Conduct (the "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 demonstrate that, with the exception of Respondent's alleged violation of Canons 3C(1), 5A(1) and Rule 1:12-1(g), the charges set forth in Count I of the Formal Complaint against C. William Bowkley, Jr., Judge of the Municipal Court of Jefferson Township ("Respondent"), have been proven by clear and convincing evidence for which the Committee recommends Respondent be publicly reprimanded.

In respect of Count II, the Committee's findings demonstrate that the charges referenced therein have not been proven by clear and convincing evidence. Accordingly, the

Committee recommends the dismissal of Count II without the imposition of discipline.

I. PROCEDURAL HISTORY

This matter was initiated with the filing of an ethics grievance against Respondent by litigant John Chibbaro on May 17, 2013. See Presenter's Exhibits at P1. Mr. Chibbaro accused Respondent of engaging in an apparent conflict of interest by virtue of his conduct in representing Mr. Chibbaro's estranged wife, Linda (Mangan) Chibbaro, in the couple's divorce proceeding (Chibbaro v. Chibbaro, Docket No. FM-14-484-13) while the couple's competing harassment complaints were pending before Respondent in the Jefferson Township Municipal Court. Id. at P1. Mr. Chibbaro supplemented his ethics grievance by facsimile dated May 22, 2013 to which he attached additional documentation, including a copy of Respondent's retainer agreement with Mrs. Chibbaro vis-à-vis the couple's divorce proceeding. Id. at P2; see also P12.

The Committee conducted an investigation into Mr. Chibbaro's allegations and, as part of that investigation, reviewed documentation pertinent to those allegations. Id. at P-4 through P-19. In addition, the Committee requested and received Respondent's written comments with regard to Mr. Chibbaro's allegations and interviewed Respondent's court administrator, Elizabeth Mertz. Id. at P3; P20.

On February 11, 2014, the Committee issued a two count Formal Complaint against Respondent charging him with violating Rule 1:12-1(g) and Canons 1, 2A, 3C(1), 5A(1), 5A(3) and 5D(1) of the Code of Judicial Conduct as a consequence of his conduct in creating and engaging in a conflict of interest involving the Chibbaros with whom he interacted both as a jurist and a practicing matrimonial attorney. Those charges also relate to Respondent's alleged "pattern of disregard" for the strictures governing jurists' conflicts of interest by virtue of his prior receipt of a public admonition from the New Jersey Supreme Court in June 2008 for engaging in two similar conflicts of interest. See In re Bowkley, 195 N.J. 176 (2008).

Respondent filed an Answer to the Complaint on March 27, 2014 in which he admitted the essential factual allegations of the Complaint, with some clarification, but denied violating the cited canons of the Code of Judicial Conduct and denied any intent to do so.

On April 21, 2015, Presenter and Respondent filed with the Committee a set of Stipulations in which Respondent again admitted the factual predicates relative to the allegations in the Complaint, and specifically acknowledged the creation of a conflict of interest as a consequence of his professional interaction with the Chibbaros for which his disqualification from the Chibbaros' municipal court matters was required.

Respondent, likewise, stipulated to his disciplinary history before the Supreme Court as alleged in the Complaint. 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 April 29, 2015 at which Respondent appeared, with counsel, and offered testimony in defense and mitigation of the asserted disciplinary charges. The Presenter called one witness in support of the disciplinary charges - Jefferson Municipal Court Administrator Elizabeth Mertz. Exhibits were offered by both parties and admitted into evidence, as were the Stipulations previously referenced. See P1 thru P20; see also R1 and R2; Stipulations filed April 21, 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 1971. See Stipulations at ¶1. Respondent has served continuously as a part-time municipal court judge in various municipalities for thirty-seven years, having served in the Boroughs of Chester,

Mendham, Hopatcong, Stanhope and Victory Gardens, as well as the Township of Vernon. Id. at ¶2. At all times relevant to this matter, Respondent also served, on a part-time basis, as the municipal court judge in the Township of Jefferson, Morris County, a position he continues to hold. Id. at ¶3.

The facts pertinent to this judicial disciplinary matter are uncontested and the subject of a Stipulation. On October 8, 2012, a Jefferson Township police officer arrested John Chibbaro for his conduct in connection with a domestic violence incident involving his wife Linda (Mangan) Chibbaro. Id. at ¶4; see also P4. That incident prompted Mrs. Chibbaro to immediately seek a temporary restraining order ("TRO") against Mr. Chibbaro with the Jefferson Township Police Department (the "Jefferson Police Department"). See Stipulations at ¶5; see also P4.

On receipt of Mrs. Chibbaro's TRO application, the Jefferson Police Department telephoned Respondent that same day to adjudicate the TRO and with regard to the Department's concomitant Complaint/Warrant for harassment against Mr. Chibbaro. See Stipulations at ¶6; see also P4 and P7. During their ensuing telephone discussion, Respondent elicited from Mrs. Chibbaro and the complaining police officer the requisite testimony to establish probable cause to issue an *ex parte* TRO and a Complaint/Warrant for harassment against Mr. Chibbaro (State v. John Chibbaro, W-2012-000395), both of which were

issued simultaneously on October 8, 2012. See Stipulations at ¶¶ 6-7; see also P4 and P7.¹ As a condition of the TRO, Mr. Chibbaro was removed from the marital home and prohibited from having any contact with Mrs. Chibbaro. P7; see also T50-15 to T51-8.² Respondent ordered Mr. Chibbaro released from custody on his own recognizance that same day, after which Mr. Chibbaro was directed by the Jefferson Township Municipal Court to appear before Respondent on October 18, 2012 to answer for the Complaint/Warrant. P7.

The following day, October 9, 2012, Mr. Chibbaro filed a citizen's complaint for harassment against Mrs. Chibbaro in the Jefferson Township Municipal Court for which the court clerk found probable cause to issue a Complaint/Summons (State v. Linda Chibbaro, S-2012-000396). See Stipulations at ¶8; see also P7. The Complaint/Summons required Mrs. Chibbaro to appear before Respondent on October 18, 2012 to answer for the harassment charge. P7. Two days later, on October 11, 2012, Mr. Chibbaro filed a complaint for divorce against Mrs. Chibbaro in

¹ An amended TRO was issued by Superior Court Judge Thomas J. Critchley, Jr. on October 23, 2012 to include historical information concerning the couple's prior incidents of alleged domestic abuse (In re Linda Chibbaro, FV-14-000403-13). P5. Judge Critchley subsequently issued a final restraining order ("FRO") against Mr. Chibbaro on November 30, 2012. P6.

² "T" refers to the Transcript of Formal Hearing, In re C. William Bowkley, ACJC 2013-265 conducted on April 29, 2015.

the Morris County Superior Court (John Chibbaro v. Linda (Mangan) Chibbaro, FM-14-484-13) (the "Divorce Matter"). See Stipulations at ¶9; see also P10.

Mr. and Mrs. Chibbaro appeared before Respondent, as directed, in the Jefferson Township Municipal Court on October 18, 2012 for their respective arraignments on their competing harassment complaints (the "Harassment Complaints"). See Stipulations at ¶10. Respondent arraigned the Chibbaros separately. P8. During his arraignment, Mr. Chibbaro applied for a public defender, which Respondent granted. See Stipulations at ¶10; see also P8 at T2-20 to T3-5. Mrs. Chibbaro, conversely, waived her right to counsel and elected to proceed as a self-represented litigant. P8 at T5-18 to T6-11.

The Chibbaros next appeared before Respondent on January 3, 2013, which was the assigned trial date on the Harassment Complaints. See Stipulations at ¶12; see also P9; T59-3-7. At that appearance, the municipal prosecutor and the Chibbaros agreed to carry the Harassment Complaints for six months to permit the Chibbaros an opportunity to attend counseling. See Stipulations at ¶12; see also P7 at ACJC0144; P9. Mr. and Mrs. Chibbaro were subsequently notified by the Jefferson Township Municipal Court on January 4, 2013 that they were to appear again before Respondent in respect of their Harassment Complaints on July 11, 2013, which corresponded with the

conclusion of the six month moratorium imposed by consent in those matters. See Stipulations at ¶13.

On January 9, 2013, Respondent, in his capacity as private counsel, met with Mrs. Chibbaro for an initial consultation concerning the Divorce Matter. Id. at ¶14. When scheduling that consultation, Mrs. Chibbaro used her maiden name - Mangan - rather than her married name. T63-17 to T64-3; see also P3. Despite his longstanding tenure as a part-time municipal court judge in multiple municipalities for more than three decades and his active and ongoing concomitant private practice of law for more than four decades, Respondent had no procedure in place in his private practice to screen potential clients for conflicts before scheduling those individuals for an initial consultation. T78-5 to T80-3.³ As such, Respondent did not ascertain at the time his office scheduled the initial consultation with Mrs. (Mangan) Chibbaro that she was a litigant in a matter pending

³ The absence of such a procedure is particularly striking given Respondent's expressed policy when presiding over his various municipal courts to begin each court session with an opening statement that includes a reference to his "active private practice" of law and a request that litigants alert him in the event he has "ever represented" them or a party adverse to them so that their municipal court matters may be transferred to another municipality. T50-8-14; see also P3; R2. Notably, this practice was borne out of Respondent's prior receipt of a public admonition from the Supreme Court in June 2008 for his conduct in engaging in two distinct conflicts of interest - one involving a client and the other the client's ex-spouse - while presiding over the Hopatcong Municipal Court. T66-5 to T67-11. See In re Bowkley, supra, 195 N.J. 176.

before him in the Jefferson Township Municipal Court, though he readily recalled the Chibbaros' Harassment Complaints and his involvement with them as the Jefferson Township Municipal Court judge during his supervening consultation with her. See Stipulations at ¶15; T64-24 to T65-5; see also P3.

On recalling his involvement with the Chibbaros' Harassment Complaints, Respondent recognized that a conflict had been created in those municipal court matters by virtue of his consultation with Mrs. Chibbaro in the Divorce Matter for which his immediate recusal from the Chibbaros' Harassment Complaints was necessary. T65-6-13; see also P3. Nevertheless, the Harassment Complaints remained on Respondent's docket in the Jefferson Township Municipal Court for an additional three months before Respondent caused an order to be issued transferring them to a different municipality on April 23, 2013. See Stipulations at ¶21; see also P7 at ACJC0141-0143.⁴

⁴ We heard extensive testimony from Trial Court Administrator Elizabeth Mertz and Respondent concerning the date on which Respondent requested the Harassment Complaints be transferred to a different municipality, about which Ms. Mertz and Respondent disagreed. Respondent claimed he requested the transfer on January 10, 2013, while Ms. Mertz recalled receiving that request in April 2013. T28-20 to T31-1; T37-5 to T40-6; T40-11 to T41-22; T68-3 to T70-16. We need not resolve this discrepancy, however, as it does not bear on the charges for which Respondent stands accused. Irrespective of when the transfer was ordered, the question of Respondent's alleged conduct in creating and engaging in that conflict remains. Notably, there existed at that time no formal procedures in the Jefferson Township Municipal Court to document Respondent's

In the interim, Respondent assumed the representation of Mrs. (Mangan) Chibbaro in the Divorce Matter on January 14, 2013, a decision predicated on the notion that to do so was proper given what he characterized as his "brief" involvement with the Chibbaros' Harassment Complaints, matters he characterized as "routine," and his assessment that he did not receive any information while presiding over those Harassment Complaints that was otherwise unavailable to Mrs. Chibbaro. T65-14-24; T74-11 to T75-3; T87-2-25; see also P3. For his part, Mr. Chibbaro initially appeared *pro se* in the Divorce Matter.

Respondent filed an Answer and Counterclaim to Mr. Chibbaro's Complaint for Divorce on February 8, 2013. See Stipulations at ¶17; see also P13. In that Counterclaim, Respondent alleged that Mr. Chibbaro had engaged in acts of "extreme cruelty" towards Mrs. Chibbaro, and included a specific reference to the TRO and FRO issued against Mr. Chibbaro in connection with the Harassment Complaints. P13 at ACJC0379, ¶5 and ACJC0382-0383, ¶8.

During the pendency of the Divorce Matter, Mr. and Mrs. Chibbaro received a second Notice of Appearance from the

request to transfer a case due to a conflict, which, in our view, significantly and needlessly exacerbated the potential for the instant circumstances to occur. T36-13-25; T68-24 to T70-2.

Jefferson Municipal Court on April 15, 2013, reminding them of their scheduled appearance before Respondent on July 11, 2013 concerning the Harassment Complaints, both of which remained pending before Respondent despite his ongoing representation of Mrs. (Mangan) Chibbaro in the Divorce Matter. See Stipulations at ¶18.

On April 22, 2013, following his receipt of the second Notice of Appearance, Mr. Chibbaro retained Joel A. Murphy, Esq. to represent him in the Divorce Matter. Id. at ¶19. On that same day, Mr. Murphy wrote to Respondent to advise that he was "in direct conflict" with Mrs. Chibbaro given Respondent's involvement as the Jefferson Township Municipal Court judge with the Chibbaros' Harassment Complaints, which remained pending before Respondent as of the date of Mr. Murphy's letter. Id. at ¶20; see also P15. Mr. Murphy specifically referenced Respondent's issuance of a TRO against Mr. Chibbaro, which ultimately led to the issuance of a final restraining order, and Mr. Chibbaro's receipt of the second Notice of Appearance requiring him to appear before Respondent on July 11, 2013 in the Jefferson Township Municipal Court. Ibid.

The following day, April 23, 2013, Respondent caused an order to be issued transferring the Harassment Complaints to the Denville Municipal Court for disposition. See Stipulations at ¶21; see also P7 at ACJC0141. Shortly thereafter, on April 24,

2013, Respondent wrote to Mr. Murphy to advise that the Harassment Complaints had been transferred to a different municipality and to voice his disagreement with Mr. Murphy's contention that a conflict of interest existed between Respondent and Mrs. Chibbaro that necessitated his withdrawal as her counsel in the Divorce Matter. Id. at ¶22; see also P16.

Given their divergent positions on this issue, Mr. Murphy sought the intercession of Superior Court Judge Maryann L. Nergaard who was then presiding over the Divorce Matter. See Stipulations at ¶23; see also P17. Following a telephone conference with counsel and after receipt of Respondent's opposition to Mr. Murphy's claim of a conflict, Judge Nergaard advised the parties on June 3, 2013 that she believed Respondent to have a conflict in his representation of Mrs. Chibbaro, prompting Respondent to withdraw as Mrs. Chibbaro's counsel on June 7, 2013. See Stipulations at ¶¶24-25; see also P18; P19.

B.

In defense of this matter, Respondent has denied engaging in any impropriety and offered testimony at the Formal Hearing in defense, explanation and mitigation of the charged conduct, none of which, he contends, violates the cited canons of the Code of Judicial Conduct.

As it relates to the creation of a conflict of interest, Respondent denies any impropriety, claiming that the conflict

created by his initial consultation with and subsequent representation of Mrs. Chibbaro in the Divorce Matter while the Chibbaros' Harassment Complaints were pending before him in the Jefferson Township Municipal Court was "serendipitous" and not the product of any intentional conduct on his part. T77-1-15. Indeed, in Respondent's assessment, the circumstances of his initial consultation with Mrs. Chibbaro, i.e. her decision to seek and retain his legal services, were pure happenstance unrelated to any purposeful conduct on his part. Ibid.

On recognizing the creation of that conflict, Respondent claims he verbally recused himself from the Chibbaros' Harassment Complaints and requested those matters be transferred to a different municipality. T68-3 to T70-9. Though that transfer order was not issued until April 23, 2013, three months after he assumed Mrs. Chibbaro's representation in the Divorce matter, Respondent maintains that his lack of any involvement with the Chibbaros' Harassment Complaints during that time period precludes a finding that he engaged in a conflict of interest. P3; P7 at ACJC121, ACJC141; T89-4-9.⁵

As to his decision to represent Mrs. Chibbaro in the Divorce Matter, Respondent contends that in doing so he acted in good faith, having reasoned that his "perfunctory" involvement

⁵ According to Respondent, the Harassment Complaints were administratively dismissed following their transfer to the Denville Municipal Court. T71-6-17.

in the Chibbaros' Harassment Complaints did not provide him, and by extension Mrs. Chibbaro, with any undue advantage in the Divorce Matter. T65-14-24; T74-11 to T75-3; T87-2-25; see also P3. In this regard, Respondent notes that when advised by Judge Nergaard of his conflict with Mrs. Chibbaro in the Divorce Matter, he promptly returned all monies to her and withdrew as her counsel. T73-4-15. As such, Respondent contends that his conduct was consistent with his ethical obligations under the Code of Judicial Conduct and did not reflect adversely on his judicial office. P3.

Respondent, likewise, disclaims that by his conduct in this instance he has displayed a "pattern of disregard" for his ethical obligations as a jurist to avoid conflicts of interest, claiming that the instant matter is distinct from the circumstances present in the two prior conflict matters for which he was publicly admonished by the New Jersey Supreme Court in June 2008. T66-1 to T68-2; In re Bowkley, supra. In respect of his first ethics matter, Respondent notes that the two conflicts of interest in which he was found to have engaged - one involving a former client and the other her ex-spouse against whom Respondent had previously litigated - existed at the time the litigants appeared before him in the Hopatcong

Municipal Court.⁶ Ibid. Conversely, no conflict existed with the Chibbaros when he presided over their Harassment Complaints in the Jefferson Township Municipal Court. Ibid. When a conflict subsequently materialized as a consequence of his consultation with Mrs. Chibbaro, he transferred the Chibbaros' Harassment Complaints to a different municipality. T68-3-23.

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 fact finder 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). This standard may be satisfied with uncorroborated evidence. In re Williams, 169 N.J. 264, 273 n.4 (2001) (citing In re Seaman, supra, 133 N.J. at 84).

⁶ The conflicts in which Respondent engaged and for which he was publicly admonished in In re Bowkley, supra, were as follows: (a) arraigning a former client believing, erroneously, that such "ministerial" acts were permitted by the Code of Judicial Conduct despite the existence of a conflict; and (b) issuing an arrest warrant against that former client's ex-spouse unaware that he was the same individual against whom Respondent had previously litigated two years earlier.

In this judicial disciplinary matter, Respondent has been charged with four separate violations of Canons 1 and 2A, and with violating Rule 1:12-1(g) and Canons 3C(1), 5A(1), 5A(3) and 5D(1) of the Code of Judicial Conduct by virtue of his judicial and professional interactions with litigants John and Linda Chibbaro. As to Count I of the Complaint, those ethical improprieties include: (1) creating a conflict of interest with the Chibbaros in their municipal court matters, i.e. the Harassment Complaints, by consulting with and ultimately agreeing to represent Linda Chibbaro in the Divorce Matter while the Harassment Complaints were pending before Respondent in the Jefferson Township Municipal Court, in violation of Canons 1, 2A, 5A(1) and 5A(3) of the Code of Judicial Conduct; (2) engaging in a conflict of interest by failing to immediately disqualify himself from the Chibbaros' Harassment Complaints prior to assuming the representation of Mrs. Chibbaro in the Divorce Matter, in violation of Canons 1, 2A and 3C(1) of the Code of Judicial Conduct and Rule 1:12-1(g); and (3) entering into an attorney-client relationship with Mrs. Chibbaro for pecuniary gain with full knowledge of the Chibbaros' pending Harassment Complaints in the Jefferson Township Municipal Court and the conflict that would inevitably result as a consequence of that representation, in violation of Canons 1, 2A and 5D(1) of the Code of Judicial Conduct.

With regard to Count II, Respondent has been charged with evincing a "pattern of disregard" for his ethical obligation to avoid actual and apparent conflicts of interest, in violation of Canons 1, 2A and 3C(1) of the Code of Judicial Conduct. That pattern relates to Respondent's prior receipt of a public admonishment from the Supreme Court in 2008 for admittedly engaging in two similar conflicts of interest. See In re Bowkley, supra, 195 N.J. 176.

We find, based on our review of the uncontroverted evidence in the record and Respondent's partial admissions in respect of that evidence, that the charges of creating a conflict of interest and engaging in a business relationship in his private practice of law that interfered with and exploited Respondent's judicial position have been proven by clear and convincing evidence, and that such conduct violated the cited canons of the Code of Judicial Conduct. We further find that the charges relating to Respondent's conduct in engaging in a conflict of interest as a municipal court judge and demonstrating a pattern of disregard for his ethical obligations as a jurist to avoid such conflicts have not been proven by clear and convincing evidence and should be dismissed.

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).

Pertinent to this judicial disciplinary matter is a review of a jurist's ethical obligations as mandated by Canons 1, 2A, 3C(1), 5A(1), 5A(3) and 5D(1) 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.

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).

On the issue of judicial disqualification, Canon 3C(1) provides that a "judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." See also Rule 1:12-1(g) (requiring judges to disqualify themselves *sua sponte* when any reason exists "which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so").

The reach of these ethical precepts to the conduct of judges in their personal lives is exemplified by the provisions of Canon 5 of the Code of Judicial Conduct, which requires judges to conduct their extra-judicial activities in a manner that minimizes the risk of conflict with their judicial obligations. More specifically, Canon 5A compels judges to conduct all of their extra-judicial activities so as not to: (1) "cast

reasonable doubt" on their "capacity to act impartially as a judge;" (2) "demean the judicial office;" or (3) "interfere with the proper performance of judicial duties." To that end, Canon 5D(1) requires judges to "refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in transactions with lawyers or persons likely to come before the court on which the judge serves.

In the instant matter, the evidence demonstrates, clearly and convincingly, that Respondent failed to conduct himself in a manner consistent with several of these high ethical standards for which public discipline is warranted.

We begin our analysis with a discussion of the conduct in which Respondent admits participating, albeit as a passive observer, namely his participation in the creation of a conflict of interest with the Chibbaros' vis-à-vis their Harassment Complaints. Respondent concedes that his initial consultation with Mrs. Chibbaro concerning her Divorce Matter and his subsequent agreement to represent her in that matter, knowing that the Chibbaros' Harassment Complaints were pending before him, created a conflict of interest that necessitated his disqualification from the Chibbaros' municipal court matters and their transfer to a different municipality. Respondent, however,

denies any responsibility for creating that conflict, claiming it was merely "serendipitous," and denies that such conduct violated the Code of Judicial Conduct. We disagree.

The conflict created by Respondent's initial consultation with Mrs. Chibbaro was not unforeseen, but rather the direct result of Respondent's failure to employ adequate controls in his private practice of law to screen for possible conflicts with potential clients before agreeing to meet with them. Indeed, by Respondent's own admission he lacks any such safeguards in his private law practice. The absence of these controls constitutes a sharp divergence from Respondent's obligations both as a jurist and a private practitioner to avoid conflicts and the creation of conflicts.⁷ See Code of Judicial Conduct, Canons 1, 2A and 5; see also DeNike v. Cupo, 196 N.J. 502 (2008) (finding that judges must avoid actual conflicts as well as the appearance of impropriety to promote confidence in the integrity and impartiality of the judiciary); RPC 1.7 (General Rule), RPC 1.8 (Current Clients), RPC 1.9 (Former

⁷ We do not suggest that adequate controls will forestall every potential conflict, and acknowledge that unforeseen circumstances may arise in which a conflict is created despite the most arduous conflicts check. The complete absence of such safeguards, however, especially for one holding the office of jurist, is an affront to the ethical obligations attendant to that office to discharge its responsibilities with integrity and impartiality. See Canons 1, 2A and 5A of the Code of Judicial Conduct.

Clients), RPC 1.10 (Imputation of Conflicts of Interest: General Rule), RPC 1.11 (Successive Government and Private Employment) and RPC 1.12 (Former Judge, Arbitrator, Mediator or Other Neutral or Law Clerk).

In creating that conflict, Respondent placed his personal pursuits ahead of his judicial obligations and, in so doing, impugned both his integrity and impartiality and that of the Judiciary, in violation of Canons 1 and 2A of the Code of Judicial Conduct. Moreover, as the creation of that conflict and its resultant disruption to the court system was occasioned directly by Respondent's conduct in his private practice of law, and necessitated his recusal from the Harassment Complaints, Respondent also violated Canon 5A(3) of the Code of Judicial Conduct.

We are struck by Respondent's evident laissez-faire approach to conflicts, especially given his long tenure as both a jurist and a private practitioner, and in light of his prior receipt of public discipline on this very issue. What Respondent fails to appreciate is that his dual status as a part-time municipal court judge and a private practitioner necessarily requires him to be vigilant when those roles intersect to avoid impinging on the ethical obligations attendant to each. Chief among those is the obligation to avoid conduct in his personal life that would conflict with his judicial obligations or create the appearance

of impropriety as was done here. This obligation is particularly significant in the municipal courts where "millions of New Jerseyans" experience the court system for the first time each year and for whom "municipal court judges are the face of the Judiciary." State v. McCabe, 201 N.J. 34, 42 (2010) (finding it vital to our system of justice to ensure both conflict free, fair hearings and the appearance of impartiality in our municipal courts); see also State v. McCann, 391 N.J. Super. 542 (App. Div. 2007) (warning that judges at all levels and particularly municipal court judges must be sensitive to their conflicts).

Respondent maintains that this matter represents the first time a municipal court litigant has sought his private legal counsel. That fact, however, does not absolve him of his obligation to remain assiduous in avoiding such conflicts or excuse his failure to do so in this instance. Indeed, meeting that obligation in this matter would not have been particularly onerous, but rather required only a cursory inquiry of Mrs. (Mangan) Chibbaro when scheduling her initial consultation to ascertain the existence of any pending municipal court matters.

No matter the burden, however, Respondent's obligation to preserve the integrity and impartiality of the Judiciary must never yield to personal convenience or professional pursuits. Having failed to take even the most cursory of precautions,

Respondent has violated Canons 1, 2A and 5A(3) of the Code of Judicial Conduct and demonstrated a profound lack of sound judgment for which public discipline is warranted.

We find Respondent's shortcomings in this regard particularly disturbing given his prior receipt of a public admonition by the Supreme Court for engaging in two conflicts of interest that again arose out of his dual role as a jurist and a private practitioner. See In re Bowkley, supra. Though Respondent subsequently implemented a procedure in his various municipal courts to avoid a reoccurrence of that misconduct, he failed to institute a similar procedure in his private practice of law, a fact we find suggestive of his continued intransigence in the area of conflicts.

This leads us to a discussion of Respondent's subsequent decision to assume Mrs. (Mangan) Chibbaro's representation in the Divorce Matter while the Harassment Complaints were pending before him in the Jefferson Township Municipal Court. We reject as misguided Respondent's contention that in so doing he acted in good faith believing his limited involvement in the Chibbaros' Harassment Complaints was insufficient to preclude his legal representation of Mrs. Chibbaro in the Divorce Matter.

Rule of Professional Conduct 1.12(a) prohibits, in part, a lawyer from representing anyone "in connection with a matter in which the lawyer participated personally and substantially as a

judge" unless all parties to the proceeding consent to the representation in writing. The record before us evinces, beyond dispute, Respondent's personal and substantial participation in the Chibbaro's Harassment Complaints and the intrinsic relationship between those Complaints and the Chibbaros' Divorce Matter.

That Respondent was involved personally in the Harassment Complaints is not a matter in dispute. So too, we find it irrefutable that Respondent's participation in those Harassment Complaints, though brief, was substantial. Respondent issued a TRO against Mr. Chibbaro the effect of which was to remove him from the home he shared with Mrs. Chibbaro, and led to the issuance of a FRO against him. Such a circumstance may not fairly be characterized as inconsequential so as to render inapplicable the proscriptions contained in RPC 1.12(a). By all accounts, Respondent was, in fact, the only jurist to have had any involvement in the Harassment Complaints, as both were administratively dismissed following the six month moratorium imposed on each by consent.

The inherent relationship between the Chibbaros' Harassment Complaints and their Divorce Matter is similarly undeniable and was wholly foreseeable. We need look no further than the Answer and Counterclaim Respondent filed on Mrs. Chibbaro's behalf in response to the Complaint for Divorce to appreciate the

fundamental connection between these matters. In that Counterclaim, which was filed a mere month after his initial consultation with Mrs. Chibbaro, Respondent made the Chibbaros' domestic violence issues, including the TRO and FRO issued against Mr. Chibbaro, the central focus of his claim of extreme cruelty against Mr. Chibbaro. This fact, when coupled with Respondent's personal and substantial involvement in the Harassment Complaints, makes clear the applicability of RPC 1.12(a) and the resultant conflict, the existence of which precluded his representation of her in the Divorce Matter.

Given these circumstances, it was incumbent on Respondent to decline the representation of Mrs. Chibbaro in the Divorce Matter. His failure to do so and the obvious personal financial benefits he accrued as a result of that representation constitute a clear violation of the ethical mandate espoused in Canon 5D(1), which prohibits judges from engaging in financial and business dealings that "reflect adversely" on their "impartiality [or] interfere with the proper performance of [their] judicial duties . . .," and his related obligations under Canons 1 and 2A to act at all times in a manner that promotes and preserves the integrity and impartiality of the Judiciary.

We do not, as Respondent urges, view his subsequent disgorgement of the monies paid to him by Mrs. Chibbaro under

the terms of Respondent's retainer agreement as a panacea for his impropriety in initially assuming that representation despite his obvious conflict. The return of money wrongfully acquired does not remedy the conflict that existed at the time Respondent assumed the representation of Mrs. Chibbaro. If anything, it underscores the impropriety of Respondent's conduct in entering into an attorney-client relationship with Mrs. Chibbaro. See Cohen v. Radio-Electronics Officers Union 146 N.J. 140, 155-156 (1996) (stating that an otherwise enforceable agreement between an attorney and client is invalid if it runs afoul of the ethical rules governing that relationship).

We next address the charge that Respondent engaged in a conflict by failing to immediately disqualify himself from the Chibbaros' Harassment Complaints prior to assuming the representation of Mrs. Chibbaro in the Divorce Matter, in violation of Canons 1, 2A and 3C(1) of the Code of Judicial Conduct and Rule 1:12-1(g).

Respondent contends that his lack of any involvement with the Chibbaros' Harassment Complaints during the interim period between his assumption of Mrs. Chibbaro's legal representation (January 14, 2013) and the date of the transfer orders in the Harassment Complaints (April 23, 2013) precludes a finding that he engaged in a conflict. Though we agree that Respondent did not engage in a conflict in violation of Canon 3C(1) and Rule

1:12-1(g) given the dormancy of those municipal court matters,⁸ we find his failure to ensure their timely transfer heightened the appearance of impropriety engendered by his conduct in creating the conflict and in representing Mrs. Chibbaro despite that conflict.

By all accounts, there existed no formal procedures in the Jefferson Township Municipal Court to document Respondent's requests to transfer cases in which he had a conflict. While such lax procedures may have worked reasonably well in the past, their use in this instance led to a circumstance whereby Mr. Chibbaro received a Notice to Appear before Respondent - the very attorney then representing his estranged spouse - on the Harassment Complaints, which remained pending on Respondent's docket despite his conflict with the Chibbaros. On receipt of that Notice, Mr. Chibbaro retained counsel in the Divorce Matter who promptly raised with Respondent his conflict of interest. It was only then, roughly three months after the creation of the conflict, that Respondent finally attended to the transfer of the Harassment Complaints.

⁸ For this reason, we do not find a violation of Canon 5A(1) (prohibiting extra-judicial conduct that casts reasonable doubt on the judge's capacity to act impartially) of the Code of Judicial Conduct, as Respondent took no action on the Harassment Complaints following his assumption of Mrs. Chibbaro's representation in the Divorce Matter.

In allowing the Harassment Complaints to linger in the Jefferson Township Municipal Court in excess of three months despite his conflict in those matters, Respondent invited reasonable doubts about his integrity and impartiality and that of the Judiciary generally. That, in turn, raised reasonable questions in the minds of Mr. Chibbaro and his counsel about the overall integrity of the process, a circumstance wholly at odds with Respondent's ethical obligations to preserve the integrity and impartiality of the Judiciary as required by Canons 1 and 2A of the Code of Judicial Conduct.

Lastly, we consider the remaining allegation against Respondent, i.e. his alleged "pattern of disregard" for the ethical obligations of a jurist in contravention of Canons 1 and 2A. While this matter represents Respondent's second infraction of the ethical proscriptions relating to conflicts of interest, a circumstance that causes us grave concern, we consider Respondent's repeated infractions in this regard more appropriately considered for purposes of the quantum of discipline to be imposed, rather than as a separate ethics charge. For this reason, we recommend that Count II of the Complaint be dismissed.

Having concluded that Respondent violated Canons 1, 2A, 5A(3) and 5D(1) of the Code of Judicial Conduct by his conduct in respect of Mr. and Mrs. Chibbaro, the sole issue remaining

for our consideration is the appropriate quantum of discipline. In this undertaking, we are mindful of our obligation to examine, with care, the facts and circumstances underlying Respondent's misconduct, including any aggravating or mitigating factors that may bear upon that misconduct. In re Collester, 126 N.J. 468, 472 (1992); see also In re Connor, 124 N.J. 18, 22 (1991); In re Mathesius, supra, 188 N.J. 496; In re Seaman, supra, 133 N.J. at 98. We are also cognizant 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, supra, 169 N.J. at 275.

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).

In the instant matter, there exist several aggravating factors that bear considerably on our consideration of the appropriate measure of discipline to be imposed for Respondent's multiple ethical infractions. Most notably, this is Respondent's second ethics violation for conduct related to his participation in a conflict of interest. Though the first ethics matter for which Respondent was publicly admonished concerned his engagement in a conflict of interest while performing his judicial duties whereas this matter relates to Respondent's creation of a conflict that infringed on his ability to perform those duties, those distinctions do not, as Respondent suggests, render these matters distinct for purposes of discipline. Irrespective of the circumstances involved in each, Respondent's repeated breach of his ethical responsibility to avoid creating or engaging in conflicts of interest is significant and constitutes an aggravating factor in this circumstance.

In addition, Respondent's evident failure to institute procedures in his private practice of law to avoid the very circumstances at issue here, particularly given his prior receipt of discipline, and his absolute denial of any wrongdoing in creating the conflict at issue or in assuming Mrs. Chibbaro's legal representation despite that conflict, demonstrates a disturbing lack of integrity and probity. We are particularly troubled by Respondent's decision to assume Mrs. Chibbaro's legal representation given his obvious conflict with her, and his subsequent refusal to withdraw from that representation until forced to do so by a Superior Court judge. Such conduct bespeaks an inability on Respondent's part to appreciate the strictures placed on his private practice of law by his judicial office and the paramount importance of his obligation as a jurist to adhere to the highest standards of conduct both on and off the bench so as to preserve the integrity and independence of that office.

In respect of any mitigating factors, we note Respondent's dedicated service as a municipal court judge for more than three decades. In that timeframe, Respondent has evidently garnered the respect of his colleagues and associates as reflected in the letters of character submitted to this Committee on his behalf. Furthermore, while Respondent has disputed engaging in any misconduct before this Committee, he has assured us that in the

event he is found to have done so, he will avoid any further reoccurrences of that misconduct in the future.

Weighing these several factors, both aggravating and mitigating, we conclude that the imposition of a public reprimand is appropriate. We base this conclusion on our belief that Respondent does not fully appreciate the weight of his ethical obligations, particularly in the context of conflicts, and the fact that an earlier, lesser penalty did not deter a reoccurrence of this misconduct.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be reprimanded for his violations of Canons 1, 2A, 5A(3) and 5D(1) of the Code of Judicial Conduct. This recommendation takes into account Respondent's several ethical infractions, all of which impugned the integrity and impartiality of the Judiciary, and demonstrate a disturbing lack of good judgment. This recommendation also strikes the necessary balance between the significant aggravating factors present in this case and the mitigating factors, which, though present, are insufficient to justify the imposition of discipline less than that of a reprimand.

We further recommend the dismissal of the charges in Count I relating to Respondent's violation of Canons 3C(1) and 5A(1), and

Rule 1:12-1(g), as well as the dismissal of the charges in Count II, without the imposition of discipline.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

September 17, 2015

By: Virginia A. Long
Virginia A. Long, Chair