D-119-15 (077673)

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2015-093

IN THE MATTER OF JOSEPH A. PORTELLI JUDGE OF THE SUPERIOR COURT	:	**PRESENTMENT**

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.

I. PROCEDURAL HISTORY

This matter was initiated with the filing of an ethics grievance against Respondent by the State of New Jersey, Office of the Attorney General, Department of Law & Public Safety, Division of Law, under the signature of Susan L. Olgiati, Chief of Staff, on October 28, 2014. P1. In that grievance, Ms. Olgiati recounted a series of discrete incidents involving Respondent, which the Attorney General's Office felt obligated to report given that those incidents, in the Attorney General's view, implicated the "State Policy Against Discrimination." Ibid.[1]

[1] The issue before the Committee is not whether Respondent's conduct violated Judiciary's *Affirmative Action and Anti-Discrimination* ("EEO/AA Policy" or "Policy") or, for that matter, New Jersey's

Several of the incidents alleged in the grievance ultimately became the basis for the Committee's Formal Complaint against Respondent, including Respondent's alleged vulgarity when speaking with two Deputy Attorney's General ("DAsG"), his criticism of guardianship trials, his complimentary remarks to a State's witness during two guardianship trials, and Respondent's comment to a DAG while a minor involved in a Children in Court matter was seated on his lap behind the bench. Ibid.

The Committee investigated the Attorney General's allegations and, as part of that investigation, interviewed five individuals. See Presenter's Exhibits at P-3 thru P-7. In addition, the Committee requested and received Respondent's written comments in respect of those allegations. See Presenter's Exhibits at P-3.

As a consequence of that investigation, the Committee issued a three count Formal Complaint against Respondent on September 21, 2015 charging him with conduct in contravention of Canons 1, 2A and 3A(3) of the Code of Judicial Conduct. Respondent filed an Answer to the Complaint on October 13, 2015 in which he admitted, with clarification, a portion of the factual allegations, denied

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Law Against Discrimination or any other applicable anti-discrimination statutes. While certainly any conduct in contravention of that Policy or any applicable anti-discrimination statute would constitute judicial misconduct, there exist many other forms of conduct that though not in conflict with the EEO/AA Policy or legally cognizable under an applicable state anti-discrimination statute would violate the Code of Judicial Conduct.

others and denied violating the cited canons of the Code of Judicial Conduct.

On March 28, 2016, Presenter and Respondent filed with the Committee a set of Stipulations in which Respondent admitted some ancillary circumstances surrounding each allegation referenced in the Formal Complaint, but did not admit the factual predicates underlying those allegations. Consistent with his Answer, Respondent did not concede that any such conduct violated the Code of Judicial Conduct.

The Committee convened a Formal Hearing on April 6, 2016 at which Respondent appeared, with counsel, and offered testimony in defense and mitigation of the asserted disciplinary charges, as well as that of three witnesses. The Presenter had called five witnesses in support of the disciplinary charges. Exhibits were offered by the Presenter and Respondent, all of which were admitted into evidence. See Presenter's Exhibits P-1 thru P-7; see also R-1.[2]

On March 24, 2016, prior to the Formal Hearing, Respondent sought leave of the Committee to admit into evidence two photographs of Respondent's Children in Court ("CIC") courtroom and to subpoena Passaic County Assignment Judge Ernest M. Caposela

[2] Respondent's exhibit R-1 consists of sixty-one letters of character, a portion of which were written by attorneys who have recently appeared before Respondent. See R-1 at #25, 30, 37, 40, 51, 54, 55, 57, 58, 59, 60.

to appear and testify on Respondent's behalf at the Formal Hearing, to which the Presenter objected. See Letter from Kirstin Bohn, Esq., associate counsel to Respondent, to John A. Tonelli, Executive Director, ACJC, dated March 24, 2016; see also Letter from Presenter, Maureen Bauman, Esq. to John A. Tonelli, dated March 29, 2016. The Committee initially denied Respondent's requests prior to the start of the Formal Hearing, but subsequently admitted into evidence the two photographs of Respondent's CIC courtroom following Respondent's renewed request for their admission during the Formal Hearing. See Letter from Candace Moody, Esq., Counsel to the ACJC, to Ralph J. Lamparello, Esq., counsel to Respondent, dated March 31, 2016; T10-2-17; T93-5 to T94-19; T103-21-24; T311-13 to T312-5[3]; see also R-2 and R-3.

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 recommendations.

II. FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1981. Stipulations at ¶1. At all times relevant to this matter, and for a period of approximately three years between 2012 and 2015, Respondent served as a Judge of the Superior Court of New Jersey assigned to the

[3] "T" refers to the Transcript of Hearing, In re Joseph A. Portelli, ACJC 2015-093, conducted on April 6, 2016.

Children in Court ("CIC") docket of the Chancery Division, Family Part, in Passaic County. Id. at ¶2. Respondent was subsequently assigned to the Criminal Division in Passaic County, effective September 28, 2015, where he continues to serve.

The CIC docket includes, in part, abuse and neglect matters as well as guardianship matters. In the latter instance, complaints are filed by New Jersey's Division of Child Protection and Permanency ("DCP&P") seeking to terminate the parental rights of a parent or guardian to a child or children. Id. at ¶3. DCP&P is represented in those and all other matters by the DAsG assigned to the Department of Children and Families ("DCF") in the Office of the Attorney General, Department of Law and Public Safety, Division of Law. T25-18 to T26-10. As it concerns Passaic County, specifically, the DAsG dedicated to those DCP&P matters are assigned exclusively to DCF's geographic region known as the "DCF-North Section." Ibid.; see also T46-7-21; T104-19-23.

The affected children in those matters are represented by a Law Guardian from the Office of the Public Defender ("OPD"), Office of the Law Guardian ("OLG"), and their parents or legal guardians are oftentimes represented by a Deputy Public Defender ("DPD" in the singular, "DPDs" in the plural) from the Office of Parental Representation ("OPR") in the OPD. T60-9 to T61-3; T222-3-15.

Given the county specific designations to which attorneys in the AG's and OPD's offices are assigned, the same DAsG, DPDs and

to some extent the witnesses for each would appear regularly before Respondent in CIC matters. T107-10-24; T216-5-18; T222-3-12. Those weekly interactions fostered a degree of familiarity between Respondent, the attorneys appearing before him and those caseworkers from DCP&P who frequently appeared as witnesses for the State, and resulted in a fairly relaxed courtroom atmosphere, one in which Respondent would talk often and openly about his family and exchange pleasantries with those assembled. T107-10-18; T110-4-9; T135-17 to T136-5; T145-1-25; T152-16 to T153-12; T216-5-18; T197-22 to T198-17; T248-17 to T249-22; T250-16 to T251-8; see also P-2; R-1 at #27.

Respondent, as part of his CIC assignment, presided over both abuse and neglect matters as well as guardianship matters. Stipulations at ¶4; see also T136-6-14; T221-19 to T222-2. In the discharge of those responsibilities, Respondent would routinely invite the affected children and their Law Guardian to visit his courtroom and chambers area, and would engage in conversation with the children, permit the children to sit behind the bench, either on his lap[4] or directly on his chair, and to use the court's gavel, all in an effort to demystify for the children the courtroom and

[4] The appropriateness of a judge allowing a child to sit on his or her lap is not an issue in this disciplinary proceeding. However, we suggest it would be desirable for the AOC to provide additional guidance to judges regarding this subject.

the proceedings generally. Formal Complaint at ¶26; Answer at ¶26; see also T136-12-18; T137-19 to T138-1.

On one such occasion in the summer of 2013, a child involved in a CIC matter visited Respondent's courtroom and while there sat on Respondent's lap, at his invitation, while Respondent was seated behind the bench. Stipulations at ¶17; T136-12 to T138-1; see also Formal Complaint at ¶¶26-27; Answer at ¶¶26-27. While the child was sitting on his lap, Respondent had an exchange with the attorneys in the courtroom that forms the basis for the charge against Respondent contained in Count III of the Complaint. Four witnesses to this exchange testified at the hearing before the Committee: Law Guardians Michelle Birnbaum and Arlene Cohn, Deputy Attorney General Kathryn Kolodziej and Respondent. Birnbaum and Cohn had the clearest recollection of that exchange.

Birnbaum testified that while the child was on Respondent's lap, Israel Segarra, who was identified as a Deputy Public Defender, "pos[ed] a question to the judge asking can I sit on your lap next or who is going to sit on your lap next." T158-4-6. Respondent said in response: "no, you cannot sit on my lap." T158-7-8. Birnbaum further testified that "somehow the response was directed to [DAG Kolodziej], but I don't recall exactly how it was directed to her because I don't recall her name being mentioned. . . ." T158-15-18. Birnbaum also stated that Respondent's response to Segarra's comment "was not sexually

suggestive, it wasn't inappropriate," T158-9-10, and that everyone in the courtroom, including DAG Kolodziej, was laughing after they heard it. T163-19-22. Birnbaum described Segarra as a "jokester" and said that "nobody really thought it was out of character for him" to make the comment that triggered Respondent's response. T173-2-5.

Cohn's testimony was similar. She testified that while the small child was sitting on Respondent's lap, Segarra said, "oh, judge, can I sit on your lap and [Respondent] said, no, no and you can't either or something to that effect." T215-18-20. Cohn understood Respondent to be referring to DAG Kolodziej when he said "you can't either," T215-21-23, but she had no recollection of Respondent referring to the DAG by name. T237-21-25. Cohn testified that the atmosphere in the courtroom was light-hearted when the exchange occurred, T215-24 to T216-18, and that Respondent's comment did not "strike [her] as inappropriate in any way." T238-1-3. Cohn described Segarra as "kind of the class clown." T236-11-12.

DAG Kolodziej's recollection of the incident, which occurred sometime in the summer of 2013, was less clear than that of Birnbaum and Cohn. She candidly acknowledged that "I don't remember that much about that day." T137-1-2. She could not remember the gender of the child who was sitting on Respondent's lap, the name of the child to which the incident related, or who

else was present in the courtroom at the time. T136-19 to T137-5.

Her only recollection of the incident was that Respondent made "some kind of comment . . . along the lines of, no, Ms. Kolodziej, you can't come sit on my lap next." T138-1-3. DAG Kolodziej did not recall whether Respondent's comment was preceded by Segarra asking Respondent whether he could sit on his lap. T138-9 to 11. When asked how she responded to Respondent's comment, DAG Kolodziej testified:

> I might have just said something jokingly back to him. I really at that time did not feel uncomfortable by that comment at all. I did not feel harassed by the judge. I probably don't remember a lot about that day because it wasn't really a significant comment for me at the time at all. I think it was just something said casually and so I remarked back casually like, oh, ha, ha, Judge, okay, not even thinking twice about it.
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> [T138-21 to T139-3].

She also testified that there was nothing sexual or flirtatious about Respondent's comment. T143-17-22, T144-23-25. Rather, the comment was made "just in a casual, light-hearted, joking way" and she "responded in the same type of way . . . maybe just a few little ha ha, you know, trying to lighten the mood." T144-2-6.

Initially, Respondent's recollection of the July 2013 incident was as vague as that of DAG Kolodziej. When he received the Complaint in this matter, he recalled that his comment to DAG Kolodziej had been precipitated by a comment made by someone else

in the courtroom, but he could not remember who made the comment. P-2; see also T243-3-13. However, after his counsel interviewed witnesses - presumably Law Guardians Birnbaum and Cohn - and reported back to him, he recalled that the person who had spoken before he made his comment was Israel Segarra, who said: "Judge, can I sit on your lap[?]" T243-14-18. Respondent further testified "I meant nothing by [the comment], nothing at all[,]" T243-21-22, and expressly rejected any suggestion that there was any sexual innuendo in his comment. T243-23 to T244-11.

Approximately one year later, in May 2014, Respondent began hearing an increased number of guardianship matters following the retirement from the bench of a colleague to whom the majority of those matters had been assigned. T104-11 to T107-2. Given the nature of the relief sought in such matters, i.e. termination of parental rights, guardianship trials, unlike abuse and neglect matters, lasted several days, involved multiple witnesses and required a significant amount of documentary evidence, some of which dated back several years. T110-23 to T112-13. While presiding over several such guardianship matters, Respondent was heard to say in open court and in the presence of the assigned DAG and several other attorneys that he found the trials "long and boring." T112-18 to T113-7; T121-12-22. This comment forms the basis for the charge against Respondent contained in Paragraphs 14, 15 and 23 of Count II of the Formal Complaint.

There is no factual dispute regarding this charge. Respondent admits having said on occasion that he found guardianship cases "long and boring" and that he may have made this comment in the presence of the assigned DAG. T260-21-23; T288-5-16. However, Respondent strongly asserted that despite this feeling, he was always diligent, attentive and fair while presiding over guardianship proceedings. T261-11 to T264-13.

The other charges set forth in Count II are based on comments Respondent made to a DCP&P Family Specialist who regularly appeared before him as a witness in guardianship matters, while she was on the stand on two occasions. The first such incident occurred on August 27, 2014 during a trial at which Respondent remarked, either verbally or in writing, to the DCP&P Family Specialist, "you look nice today." T76-14 to T81-5; T86-15 to T89-14; T117-24 to T118-11; T250-13 to T253-2. The second incident occurred on September 17, 2014 during a trial at which Respondent complimented the witness's manicure, saying either directly to her or in a note "your nails look nice." T81-6 to T83-14; T90-11 to T96-12; T118-11-24; T250-13 to T253-2.

As between the DCP&P witness and Respondent, their testimony differed as to how the compliments were conveyed, whether orally or in writing, and when they were imparted, whether while the witness was testifying or at a break in the proceedings. However, both agreed that Respondent complimented the DCP&P witness on her

appearance in substantially the manner alleged in the Complaint while she was seated on the witness stand to testify on behalf of the DCP&P in two separate guardianship trials. T76-14 to T83-14; T97-7-10; T97-23 to T98-5; T102-1-13; T250-13 to T253-14; T255-12 to T257-14; T303-18 to T304-12; see also P-2; R-2.

The DCP&P witness also testified that Respondent was always "very nice" and "very professional" and she did not consider his comments to her to be any type of "pass" or "flirting." T84-24 to T85-1; T89-25 to T90-10. Like a number of the other witnesses, she commented upon the informality of the relationships between Respondent and the attorneys and professionals who regularly appeared before him, which included exchanges of pleasantries outside the courthouse and discussions with Respondent about her schooling. T85-9 to T86-11.

The charges contained in Count I of the Complaint are based on Respondent's comments during a private meeting in his chambers with the DAsG assigned as the Chief and Assistant Chief, respectively, of the DCF-North Section following a motion hearing in which DCF sought to vacate a sanction Respondent had issued against its client, DCP&P, for a procedural failure. T25-6 to T31-19; T46-1 to T47-9; T52-19 to T54-10; T55-18-25; T245-25 to T247-5. This impromptu meeting was initiated by Respondent in reaction to his public rebuke of the Assistant Chief during the motion hearing for shaking her head in disapproval while Respondent

was speaking, for which Respondent felt badly. T29-10-21; T30-24 to T31-19; T54-11 to T55-15; T55-18-25; T245-25 to T247-5; T250-3-12. During the course of that meeting, Respondent is alleged to have "put his arm around the Assistant Chief's shoulder and remarked to both of them that the Assistant Chief was doing a great job and that he liked how she 'shoves it up' or 'rams it up' the Law Guardian's 'ass' and the Law Guardian 'needs that' or 'deserves that.'" See Formal Complaint at Count I, ¶10. Though Respondent admitted the general nature of the remarks to these DAsG, specifically his praise of the Assistant Chief's legal acumen to her superior and the placement of his hand on her shoulder while doing so, he denied using a vulgarity or referencing a specific Law Guardian during this exchange, claiming instead that he merely stated generically that the Assistant Chief "fights really hard," is "tough" and "really sticks it to her adversary." See Answer at ¶10; see also T247-2-18; P-2. Respondent characterized his remark as a compliment and denied any intent to be "crass or offensive," stating that he was merely speaking in the "vernacular." T306-8-14.

The Committee heard testimony not only from Respondent and the two DAsG involved in this incident, but also from the Law Guardian to whom Respondent is alleged to have made reference during the meeting. Given that the Law Guardian's testimony on this issue, however, was limited to her opinion of Respondent's

propensity, or lack thereof, to utter such a vulgarity, and not on any first-hand knowledge of the incident, we find it lacking in probative value and attribute no weight to this portion of her testimony. T209-24 to T210-21.

The Committee finds the DAsG testimony credible. Respondent, though denying generally the use of a vulgarity when speaking with these DAsG or referring specifically to the Law Guardian with whom he is friendly, failed to offer *any* basis on which to conclude that either DAG would fabricate their testimony. T247-21 to T248-10. Moreover, though much was made of the fact that each DAG attributed a different verb to Respondent's statement, i.e. "rams" or "shoves," we find this distinction insignificant in assessing their credibility. Those terms are synonymous and may be used interchangeably without altering or diluting, in any meaningful sense, the vulgar nature of Respondent's statement to these DAsG. As such, we find the incident to have occurred as alleged in Count I of the Formal Complaint and recounted by these DAsG.

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 at 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 impugning the integrity and impartiality of the Judiciary and the public's confidence in that integrity and impartiality, in violation of Canons 1, 2A and 3A(3) of the Code of Judicial Conduct. Canon 1 of the Code of Judicial Conduct 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 3A(3) likewise requires judges to be "patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity . . . ."

We first address the incident that forms the basis of the charge contained in Count III of the Complaint. We find credible the testimony of Law Guardians Birnbaum and Cohn and Respondent regarding this incident. Specifically, we find that the whole incident was precipitated by a wisecrack by Deputy Public Defender Segarra to Respondent, who asked, seeing the small child on his lap, "can I sit on your lap too?" and that Respondent, after responding "no" to this wisecrack, said to DAG Kolodziej, as Cohn

testified, "you can't either." In making these findings, we do not question DAG Kolodziej's credibility. She admittedly had a very vague memory of the incident and simply did not recall whether Respondent's comment to her was preceded by the Segarra wisecrack to which the other witnesses testified.

Although Respondent's response to Segarra's wisecrack constituted an ill-advised attempt at judicial humor, which we trust Respondent will avoid in the future, we conclude that it did not constitute a violation of the Code of Judicial Conduct. In reaching this conclusion, we note the absence of any evidence that Respondent intended his response to Segarra to be any kind of sexual innuendo or that it was so understood by anyone who heard it. We also note the extremely informal atmosphere of the courtroom in which the incident occurred. Accordingly, we dismiss Count III of the Complaint.

We next address Respondent's comment that forms the basis of the charge contained in paragraphs 14, 15 and 23 of Count II of the Complaint. There is no factual dispute concerning this charge. Respondent admits having stated on occasion that he found guardianship cases "long and boring" and that he may have made this comment in the presence of the DAG assigned to handle such cases in his courtroom. Although Respondent exercised questionable judgment in making this comment to the assigned DAG, who obviously has a deep commitment to such cases, we conclude the

comment did not violate any canon of the Code of Judicial Conduct, particularly in view of the informality of Respondent's relationship to the attorneys and other professionals appearing before him in CIC matters and the absence of any evidence that Respondent failed to give full and fair consideration to the hearing of guardianship cases. Therefore, we dismiss the charge contained in paragraphs 14, 15 and 23 of Count II.

We turn next to Respondent's conduct in complimenting a DCP&P witness on her appearance at two separate guardianship trials. The only substantial dispute between the DCP&P witness and Respondent concerning those compliments is whether they were contained in written notes or made verbally. The Committee has no need to resolve this conflict because the comments were inappropriate in either event. Although we recognize that Respondent had a personal relationship with many of the attorneys and professional staff who appeared before him regularly and that the proceedings in Respondent's CIC courtroom were rather informal, there is simply no excuse for such conduct. Canon 1 of the Code of Judicial Conduct requires a judge to uphold the integrity and independence of the Judiciary, Canon 2(A) requires a judge to act in a manner that promotes public confidence in the integrity and impartiality of the Judiciary and to avoid even an appearance of impropriety, and Canon 3 requires a judge to be dignified and courteous to litigants, witnesses and others. A

judge complimenting a witness's appearance while the witness is on the stand violates these canons. Such conduct not only detracts from the dignity of the judicial proceedings but may convey an impression of partiality in favor of the party with whom that witness is affiliated, in this case the DCP&P, particularly in a bench trial such as a guardianship proceeding in which the judge must assess that witness's credibility.

We recognize, however, that such comments were made on only two occasions over the course of several years and multiple proceedings over which Respondent presided and that in each instance the exchange was brief and otherwise unremarkable. We also recognize that the comments were not intended by Respondent, or understood by the witness, to be flirtatious or otherwise inappropriate. In addition, there is no evidence to suggest that Respondent harbored an actual bias in favor of the State or that the DAsG and DPDs who appeared before him believed Respondent to be biased. While such conduct is inappropriate and its occurrence, no matter how minor, harmful to the integrity of the Judiciary and the judicial process generally, we are satisfied Respondent now appreciates fully the ethical strictures governing his conduct and will not repeat such behavior in the future.

For these reasons, we would ordinarily only impose private discipline for this violation. However, the violation was the subject of a Formal Complaint and public hearing. Moreover, we

have concluded that one of the other charges against Respondent, which we will discuss next, must be the subject of public discipline. Therefore, we conclude that the discipline for this violation also should be made publicly, and that the appropriate discipline is a public admonishment for violating the Code of Judicial Conduct by complimenting a witness's appearance while she was on the stand.

This leads us to the final charge against Respondent - his vulgar remark to the two DAsG while in chambers concerning a Law Guardian who appeared regularly before Respondent in the CIC court. The two DAsG to whom the remark was made testified to its occurrence, each of whose account was substantially consistent with their prior statement taken during the Committee's investigation in this matter. While Respondent denies using such vulgarity when speaking with these DAsG, the record is devoid of any evidence to suggest that the DAsG fabricated their testimony or were in any way untruthful as to the events of that day.

We find Respondent's use of a vulgarity and the context in which it was uttered, i.e. to disparage the DAG's adversary, unbefitting a member of the Judiciary and a violation of Canons 1, 2A and 3A(3) of the Code of Judicial Conduct. See In re Giles, 196 N.J. 456 (2008) (adopting the Presentment of the Committee at ACJC2008-169, to publicly reprimand a judge for his vulgar and discourteous conduct towards counsel on two separate occasions);

see also In re Sadofski, 98 N.J. 434, 441 (1985) ("No matter how tired or vexed, . . . judges should not allow their language to sink below a minimally-accepted level . . . ."). While Respondent may have intended his remark as a compliment, it was clearly not received as such, but rather made both DAsG extremely uncomfortable. Whatever his intent, Respondent's statement that he liked how the DAG "shoves it up" or "rams it up" the Law Guardian's "ass" and that the Law Guardian "needs that" or "deserves that," conveys a measure of incivility that is inappropriate in a member of the Judiciary and for which public discipline is merited.

In considering the appropriate quantum of public discipline for this ethical breach, 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). 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.

While respondent has garnered the respect of many during his seven years on the bench, as evidenced by the numerous letters of character submitted on his behalf, and has expressed his remorse

and a commitment to avoid repeating this misconduct, we find these mitigating factors insufficient to outweigh the impropriety of his vulgar statement to these DAsG. Therefore, we conclude that there must be a public reprimand of Respondent for this misconduct.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be publicly admonished for his violations of Canons 1, 2A and 3(A)(3) of the Code of Judicial Conduct for the charge in the part of Count II relating to Respondent's complimentary remarks to a State's witness, and that Respondent be publicly reprimanded for his violations of Canons 1, 2A and 3A(3) of the Code of Judicial Conduct as charged in Count I.

We recommend that the charges in that part of Count II relating to Respondent's criticism of guardianship trials and in Count III be dismissed.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

May 9, 2016

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

Susan A. Feeney, Esq. did not participate.