D-40-15
(076956)

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2013-160
ACJC 2013-170

IN THE MATTER OF THOMAS J. SCATTERGOOD, FORMER 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 the charges set forth in the Formal Complaint against Thomas J. Scattergood, former judge of the Burlington City Municipal Court ("Respondent"), have been proven by clear and convincing evidence for which the Committee recommends Respondent be publicly reprimanded.

I. PROCEDURAL HISTORY

This matter was initiated with the filing of two ethics grievances against Respondent, one by Mary Penny, the former Deputy Court Administrator of the Burlington City Municipal Court, and the second by litigant Pamela Richards. See

Respondent's Certification at Exhibits 1 and 2.[1] As to the first grievance, Ms. Penny accused Respondent of behaving unethically in multiple respects during his tenure as the Burlington City Municipal Court Judge, which spanned approximately three years. As a general matter, the categories of conduct about which Ms. Penny complained concerned the following: (1) conflicts of interest; (2) judicial demeanor; (3) "ticket fixing;" and (4) plea bargaining. Id. at Exhibit 1.

In respect of the second grievance, Ms. Richards complained generally about Respondent's demeanor during a court session on January 17, 2013, which she characterized as arrogant, and accused Respondent of harboring a bias against those with disabilities. Id. at Exhibit 2. As to Respondent's purported arrogance, Ms. Richards claimed that during the subject court session Respondent advised individuals against whom he had assessed a fine that payment was due that day and directed them to the nearest ATM or suggested they telephone their "favorite mother-in-law" for the money. In addition, he purportedly assessed a $25.00 sanction against those litigants who were late

[1] Respondent, on January 29, 2015, served on the Committee a Certification in which he preemptively admitted the misconduct ultimately charged in the Formal Complaint on July 20, 2015 and to which he attached multiple exhibits. Those exhibits coincide with the documents obtained by the Committee during its investigation into these matters and constitute the record for purposes of this Presentment. Reference to these exhibits will include a citation to Respondent's Certification and the corresponding exhibit number.

for court and a $50.00 sanction against those individuals whose cellular telephones were confiscated by court personnel for texting during the court session.

The Committee conducted an investigation into these allegations and, as part of that investigation, reviewed documentation pertinent to the issues raised in each grievance. See Respondent's Certification at Exhibits 5 thru 15. In addition, the Committee requested and received Respondent's written comments, which he supplemented under separate cover. Id. at Exhibits 3 and 4.

On January 29, 2015, Respondent, through counsel, submitted to the Committee a Certification in which he admitted engaging in several of the acts of judicial misconduct alleged in Ms. Penny's and Ms. Richards's grievances and denied others. See Certification of Respondent. In conjunction with that Certification, Respondent requested that these matters be referred directly to the Supreme Court "for the purpose of imposing discipline" and without further proceedings before the Committee. See Correspondence from Robert Ramsey, Esq., dated January 29, 2015.

Consistent with Respondent's request, the Committee, on March 16, 2015, filed with the Supreme Court Respondent's Certification and counsel's accompanying correspondence. On March 30, 2015, counsel for Respondent filed with the Court a

memorandum of law related solely to the issue of discipline. The Court, on July 10, 2015, denied Respondent's request to proceed in the absence of the Committee and directed the Committee to continue its consideration of these matters consistent with its procedures as outlined in Rule 2:15-10 through -15.

On July 20, 2015, the Committee issued a six count Formal Complaint against Respondent charging him with violating Rule 1:12-1(g) and Canons 1, 2A, 3A(1), 3A(3), 3C(1) and 3D of the Code of Judicial Conduct as a consequence of his course of conduct while serving on the municipal bench that included: engaging in four actual and/or apparent conflicts of interest, disparaging in one instance the statutory framework for the assessment of fees for a moving violation, making a derogatory remark about women, exercising his judicial authority capriciously, engaging in plea negotiations with unrepresented litigants, and in one instance behaving discourteously towards a litigant appearing in his courtroom. Respondent filed a letter in lieu of an Answer to the Complaint on August 11, 2015 in which he admitted generally all of the allegations of the Complaint and the attendant ethical violations related to each.

On October 7, 2015, Presenter and Respondent, through counsel, filed with the Committee a set of Stipulations in which Respondent again admitted the allegations and ethical violations

detailed in the Complaint and waived his right to a Formal Hearing before the Committee. The parties stipulated to the admittance into evidence of Respondent's Certification, complete with Exhibits 1 thru 15, which comprise the record in this matter. Prior to the Committee's deliberations and with its express approval, both parties offered legal memoranda in support of their respective positions concerning the appropriate quantum of discipline, which were filed on October 7, 2015 and considered by the Committee.

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 Respondent's Certification at ¶1. He has served intermittently as a municipal court judge in various municipalities for more than two decades. Id. at ¶2. At all times relevant to these matters, and for a period of three years, Respondent served as a judge in the Burlington City Municipal Court, a position he has not held since his term expired on September 30, 2013. Ibid.

The facts germane to this judicial disciplinary matter and the charges of judicial misconduct to which they relate are uncontested and the subject of Respondent's Certification.

1. **Counts I and II: Conflicts of Interest**

In respect of Count I, Respondent admits engaging in a conflict of interest in three separate matters - State v. Charles Smith, State v. John McGee, SC 2012 017807 and State v. James Fisher, SC 2012 019028 - in violation of Canons 1 (requiring jurist to uphold the integrity and independence of the Judiciary), 2A (requiring jurist to avoid impropriety and the appearance of impropriety in all activities), 3C(1) (requiring judicial disqualification in any proceeding in which a jurist's impartiality might reasonably be questioned) and 3D (prohibiting a jurist from remitting disqualification in a matter in which they have a conflict) of the Code of Judicial Conduct and Rule 1:12-1(g) (requiring judicial disqualification when circumstances exist that may reasonably lead counsel or the parties to believe that a jurist lacks impartiality). See Respondent's Certification at ¶16, ¶34. Indeed, as to two of the defendants, Respondent conceded the existence of a conflict on the record when adjudicating their respective matters, but nonetheless failed in each instance to recuse himself. See Respondent's Certification at ¶¶18-19, ¶34.

As to the Smith matter, Respondent, by his own admission, knows Charles Smith to be a resident of Burlington City. See Respondent's Certification at Exhibit 13 at T19-11-25. When Mr. Smith appeared before Respondent on September 6, 2012 to answer for a charge of driving on a suspended license, Respondent, in the absence of the municipal prosecutor, acknowledged on the record his conflict with Mr. Smith after which he sought and obtained, impermissibly, Mr. Smith's consent to proceed despite that conflict. Id. at T19-14 to T21-16. Having secured Mr. Smith's consent, Respondent negotiated a plea deal with him by which the charge of driving on a suspended license (N.J.S.A. 39:3-40) was amended to driving without a license (N.J.S.A. 39:3-10), the fine for which is less than that for driving on a suspended license, and imposed on Mr. Smith the reduced fine. Id. at T20-11 to T22-20.

Respondent further acknowledges that his conduct in negotiating a plea deal with Mr. Smith, irrespective of his admitted conflict of interest, violated Rule 7:6-2(d) (Plea Agreements, Municipal Court) and the associated Guidelines for Plea Agreements in Municipal Court, as well as Canons 1, 2A, and 3A(1) (requiring a jurist to be faithful to the law and maintain professional competence in it) of the Code of Judicial Conduct. See Respondent's Certification at ¶¶33-34.

As regards Messrs. McGee and Fisher, Respondent acknowledges his familiarity with both men as a consequence of their respective professional affiliations with local business entities in Burlington City -- Mr. McGee as the Headmaster of the Doan Academy, a private school, and Mr. Fisher as the former proprietor of the Café Gallery Restaurant. See Respondent's Certification at ¶¶18-19. Respondent likewise concedes that his familiarity with Messrs. McGee and Fisher created a conflict for him the existence of which necessitated his recusal from any municipal court matters in which they were involved, which he failed to do in two instances. Ibid.

The first instance occurred on September 6, 2012, when Mr. McGee appeared in the Burlington City Municipal Court to answer for a local ordinance violation concerning a boat ramp permit. Though having recently recused himself approximately two weeks earlier from a matter involving Mr. McGee (State v. John McGee, SC 2012 017698), Respondent failed to do so on this occasion. See Respondent's Certification at ¶18(a). At this court appearance, Respondent spoke directly with Mr. McGee as both men were standing in a public hallway prior to the start of court. Ibid. Though Respondent declined to discuss with Mr. McGee his pending court matter, he did advise Mr. McGee to speak with a member of the Burlington City Recreation Department and with the municipal prosecutor about his court case. Ibid. Mr. McGee

subsequently left the courthouse prior to the start of court that evening, believing evidently that Respondent had adjourned his matter pending a review of the case by the municipal prosecutor. Ibid. Despite his admitted conflict with Mr. McGee, Respondent nonetheless directed his court staff to relist Mr. McGee's matter on his court calendar for a future date. Ibid.

In advance of Mr. McGee's next scheduled court appearance, Respondent learned from a member of the Burlington City Recreation Department that the Doane Academy, whose boats were the subject of the ordinance violation issued to Mr. McGee, was exempt under the ordinance. Ibid. Less than a week later, on September 10, 2012, Respondent, in the presence of the prosecutor, administratively dismissed the charge against Mr. McGee notwithstanding the absence of a basis for doing so in the court's file and irrespective of his admitted conflict with Mr. McGee. Ibid. Respondent subsequently relisted the matter for October 1, 2012 at which time Mr. McGee and the prosecutor appeared before Respondent. Ibid. Mr. McGee pled guilty to the ordinance violation on behalf of the Doane Academy. Ibid. Respondent, sua sponte, amended the complaint to reflect the Doane Academy as the proper defendant, accepted the guilty plea and assessed fines and costs against the Doan Academy.

In the Fisher matter, Mr. Fisher appeared before Respondent on December 6, 2012 to answer for a local ordinance violation

involving his alleged abandonment of an unregistered motor vehicle. See Respondent's Certification at ¶20. Respondent, though aware of his conflict with Mr. Fisher, failed at that time to disclose the existence of that conflict to the parties and likewise failed to recuse himself from Mr. Fisher's matter. Ibid. Mr. Fisher next appeared before Respondent on January 7, 2013 at which time Respondent first disclosed to the parties his conflict with Mr. Fisher and secured, impermissibly, the parties' consent to waive that conflict. Ibid. On the recommendation of the prosecutor, Respondent ultimately dismissed the charges against Mr. Fisher and wrote on the back of the complaint form the following notation: "Conflict of Judge disclosed & waived by State & Def." See Respondent's Certification at ¶20.

In respect of Count II, Respondent admits engaging in an apparent conflict of interest when in November 2011 he presided over the matter of State v. Casey Snodgrass, S 2011 000658, which involved the daughter of Robin Snodgrass, a municipal employee in the Office of the Mayor of Burlington City. See Respondent's Certification at ¶¶27 thru 29. Respondent acknowledges that Ms. Snodgrass's familial relationship with a municipal employee created a conflict of interest or minimally the appearance of one for which his recusal was warranted. Id. at ¶28. Having failed to recuse from the Snodgrass matter,

Respondent admits violating Canons 1, 2A and 3C(1) of the Code of Judicial Conduct and Rule 1:12-1(g). Id. at ¶29.

Casey Snodgrass was charged on November 15, 2011 with violating N.J.S.A. 2C:35-10(a)(4) for possessing a controlled dangerous substance without a valid prescription, a disorderly persons offense. Id. at ¶30. Ms. Snodgrass first appeared before Respondent to answer for this charge on November 28, 2011 at which time Respondent arraigned her. Id. at ¶30(a). While aware at that time of Ms. Snodgrass's familial relationship with a municipal employee, Respondent nonetheless arraigned her without first determining the nature of that relationship. Id. at ¶29.

Casey Snodgrass next appeared before Respondent on December 1, 2011 at which time she applied for and was granted a conditional discharge with the consent of the prosecutor. Id. at ¶30(b). Respondent imposed on Ms. Snodgrass the mandatory fines and assessments provided by law. Ibid. Approximately one year later, on December 6, 2012, Respondent dismissed the charges against Ms. Snodgrass following her successful completion of the conditions attendant to her conditional discharge. Id. at ¶30(e).

2. Count III: Inappropriate Judicial Demeanor

In respect of Count III, Respondent admits making improper and derogatory remarks during two separate court proceedings the

effect of which undermined the integrity and impartiality of the Judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct. See Respondent's Certification at ¶13.

On the first such occasion, which occurred on November 4, 2011, Respondent made a derogatory remark to a defendant about the fees and costs he was constrained to impose as a consequence of that defendant's guilty plea to a motor vehicle violation. Ibid. The nature of their exchange was as follows. When the defendant became belligerent and challenged his obligation to pay the surcharges, fines and costs associated with his plea, Respondent agreed with the defendant that such fees and costs "did not seem fair and . . . may be a scheme for the State to make money," but reasoned with the defendant that he was nonetheless receiving a benefit by avoiding an assessment of points on his license. Id. at ¶13(a). Respondent was subsequently admonished administratively by then Presiding Municipal Court Judge Bonnie Goldman for his "errant" comment. Ibid. For his part, Respondent now acknowledges the inherent impropriety of making such comments from the bench, the nature of which he concedes "have the clear capacity to undermine the public's perception of the integrity and impartiality of the Judiciary in violation of Canons 1 . . . and 2A . . ." of the Code. Ibid.

Approximately one year later, on December 6, 2012, Respondent made a derogatory comment about women while addressing a defendant who had failed to make payments under a payment plan for a fine that had been assessed against him in connection with an ordinance violation. Id. at ¶13(b). Specifically, when the defendant attempted to place the blame for his failure to make such payments on his ex-fiancé to whom he had allegedly entrusted the money, Respondent stated: "Well, when you trust a woman that's what you get." See Respondent's Certification at Exhibit 5.

3. Count IV: Irregularity in Judicial Proceeding

As it pertains to Count IV, Respondent admits administering justice "capriciously" and in contravention of Canons 1, 2A, and 3A(1) of the Code of Judicial Conduct when he dismissed a parking violation against a litigant utilizing a procedure that conflicted with Rule 7:6-2(d) (Plea Agreements in Municipal Courts) and the associated Guidelines for the Operation of Plea Agreements. See Respondent's Certification at ¶¶22-26.

The parking violation was issued to Joseph Zarzaca, a retired Burlington County Sheriff's officer, on December 30, 2012. Id. at ¶23(a). Mr. Zarzaca appeared before Respondent on January 7, 2013 to answer for that charge and entered a not guilty plea. Id. at ¶23(b). The municipal prosecutor submitted to Respondent an unsigned Request to Approve Plea Agreement form

on which was written "Dismissed Per Sgt. Fine." Ibid. The basis for that dismissal was not included on the plea form. Ibid. The prosecutor, when pressed by Respondent, provided a "vague" basis for the dismissal, namely that "there was a miscommunication with the police." Id. at ¶24. Despite the lack of a signed plea form and the absence of a factual or legal basis for the dismissal, Respondent nevertheless dismissed the charge against Mr. Zarzaca and incorrectly noted his reason for doing so as "Motion of the State." Id. at ¶25.

4. Count V: Plea Bargaining

In respect of Count V, Respondent admits engaging in plea negotiations with numerous defendants charged with driving while on the suspended or revoked list (N.J.S.A. 39:3-40) in contravention of Rule 7:6-2(d) (Plea Agreements in Municipal Courts) and the associated Guidelines for the Operation of Plea Agreements. See Respondent's Certification at ¶¶31-33. Respondent, likewise, concedes that such conduct constitutes an additional violation of Canons 1, 2A and 3A(1) of the Code as it undermines the fundamental principal of disinterested justice on which our judicial system is predicated, and also violates Canon 3A(6), which prohibits *ex parte* communications concerning pending or impending matters. Id. at ¶33.

The circumstances of this misconduct are as follows. During two court sessions, the first on June 7, 2012 and the

second on September 6, 2012, Respondent negotiated plea deals with several unrepresented defendants all of whom had been charged with driving while on the suspended or revoked list. Id. at ¶31. The terms of each deal were identical, the defendant would plead guilty to the lesser offense of driving while unlicensed (N.J.S.A. 39:3-10) and in so doing avoid paying the higher fines associated with driving while suspended or revoked. Ibid. "In each instance, these amendments were made without the participation, recommendation or consent of the prosecutor . . ." and without submission by the parties of a signed Request to Approve Plea Agreement form. Id. at ¶31. Respondent negotiated such deals with defendants whose license and/or registration had been restored at the time of the hearing, but whose status had not yet been updated by the Department of Motor Vehicles. Id. at ¶32(a)(b). Respondent ceased this practice in September 2012 on learning of its impropriety from the municipal prosecutor. Id. at ¶32(d).

5. Count VI: Arbitrary Exercise of Judicial Authority

As to Count VI, Respondent admits exercising his judicial authority in an arbitrary fashion in respect of a defendant's use of his cellular telephone while in the courtroom, and of behaving discourteously towards that same defendant in violation of Canons 1, 2A and 3A(3) (requiring jurists to be patient, dignified and courteous to all with whom they deal in an

official capacity) of the Code of Judicial Conduct. See Respondent's Certification at ¶¶42, 44.

The defendant at issue, William Rodgers, appeared before Respondent as an unrepresented litigant on January 17, 2013 in the matter of State v. William Rodgers, Complaint No. SC 2012 717. Prior to the adjudication of his matter, Respondent's court officer confiscated Mr. Rodgers's cellular telephone and Respondent subsequently required that he pay $50.00 for its return. Id. at ¶41. Respondent "premised the confiscation of Mr. Rodgers's cellular telephone and the fee for its return on the fact that he had been observed by a court officer text messaging during the court session." Ibid. Mr. Rodgers became argumentative with Respondent on learning that he would have to pay $50.00 for the return of his cellular telephone and denied using it during the court proceeding to text message. See Respondent's Certification at Exhibit 15. When Mr. Rodgers subsequently refused Respondent's direction to be seated, Respondent became combative stating: "You say one more word to me, you're out of here, one more word. Go ahead and say it. Tempt me." Ibid.

Respondent concedes that he did not observe Mr. Rodgers use his cellular telephone during the court proceeding and, indeed, the record does not evince any disturbance in the proceedings related to a cellular telephone. Id. at ¶42. Given these

circumstances, Respondent admits that his confiscation and detainer of Mr. Rodgers's cell phone and the imposition of a monetary sanction for its return was "arbitrary and constituted a gross over-reaction to a very innocuous situation in violation of Canons 1, 2A and 3A(3) . . . of the Code of Judicial Conduct." Ibid.

Similarly, Respondent acknowledges that his response to Mr. Rodgers was "wholly unbefitting a judge and without justification." Id. at ¶44. Respondent concedes that in reacting as he did and in attempting to "joust" with Mr. Rodgers, he further impugned the integrity and impartiality of the Judiciary in violation of Canons 1 and 2A of the Code.

B.

Though not charged in the Formal Complaint, Respondent, both in his Certification and in counsel's letter brief concerning the appropriate quantum of discipline to be imposed, concedes an abuse of the contempt procedures provided by Rule 1:10-1 and -2. See Respondent's Certification at ¶43; see also Rb4.[2] Respondent further acknowledges that this abuse constitutes an additional violation of Canons 1 and 2A of the Code of Judicial Conduct. Ibid. Specifically, Respondent admits that

[2] Consistent with Rule 2:6-8, references to the Presenter's and Respondent's legal memoranda will be designated as "Pb" and "Rb" respectively. The number following this designation signifies the page at which the information may be found.

his conduct in confiscating Mr. Rodgers's cell phone and in sanctioning him $50.00 for its return, in the absence of any evidence indicating an obstruction of the proceedings, contravened the contempt provisions of Rule 1:10-1 and -2.

In respect of the appropriate quantum of discipline, Respondent urges this Committee to recommend a public reprimand for his several ethical breaches. In support of this position, Respondent recounts several instances in which similar misconduct, albeit of varying degrees, has resulted in reprimands, and notes in mitigation his admittance of wrongdoing and current absence from the bench.

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).

In this judicial disciplinary matter, Respondent has been charged with and admits to seven separate violations of Canons 1 and 2A, four violations of Canon 3C(1) and Rule 1:12-1(g), two violations of Canons 3A(1) and 3D, and one violation of Canon 3A(3) of the Code of Judicial Conduct as a consequence of his course of conduct while serving as the Burlington City Municipal Court judge. We find, based on our review of the uncontroverted evidence in the record and Respondent's admissions of wrongdoing in respect of that evidence, that the charges of judicial misconduct set forth in the Formal Complaint against Respondent have been proven by clear and convincing evidence and that such conduct violated the cited canons of the Code of Judicial Conduct and Rules of Court.

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.

In keeping with these high ethical standards, Canon 3A(1) requires judges to be faithful to the law and to maintain professional competence in it, while Canon 3A(3) demands that in adjudicating matters the judge remain patient, dignified and courteous to all those with whom the judge deals in an official capacity.

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"). Notably, Canon 3D prohibits judges from avoiding disqualification by disclosing on the record the disqualifying interest and securing the consent of the parties.

In the instant matter, the evidence demonstrates and Respondent readily concedes that he failed in multiple instances to conduct himself in a manner consistent with these high ethical standards for which public discipline is warranted. Though Respondent's Certification amply delineates the misconduct constituting the violations of the Code of Judicial

Conduct for which public discipline is warranted, we believe a brief analysis of the rationale for such discipline is merited.

We begin our analysis with a discussion of Respondent's involvement in four separate conflicts of interest in violation of Canons 1, 2A and 3C(1) of the Code of Judicial Conduct and Rule 1:12-1(g), and his related conduct in two instances of soliciting conflict waivers to avoid disqualification in direct violation of Canon 3D. Such conduct and its detrimental effect on the integrity and impartiality of the Judiciary is significant.

A fundamental tenet of our system of justice is that each matter placed before a court of law receive a conflict-free, fair adjudication before a neutral magistrate. This ideal and its significance to our judicial framework has been the subject of several Supreme Court and Appellate Division opinions, most notably one during Respondent's recent tenure on the municipal bench and two shortly before his tenure. See State v. McCabe, 201 N.J. 34 (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); 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); 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).

As stated in the Code of Judicial Conduct and reaffirmed by our Supreme Court, the principle of disinterested justice and its presence, both actual and apparent, in our courts of law is indispensable to an honorable judiciary. Code of Judicial Conduct, Canon 1; State v. McCabe, supra, 201 N.J. 34; DeNike v. Cupo, supra, 196 N.J. 502. This precept is particularly true 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, supra, 201 N.J. at 42.

The onus for ensuring the integrity and independence of the judicial process lies most directly with jurists, an obligation Respondent failed to realize at several points during his tenure on the bench. Indeed, Respondent's knowing involvement in four distinct conflicts of interest, three of which (Smith, McGee and Fisher) within weeks of each other, fell far short of this mark and connotes a disturbing disregard for the ethical obligations attendant to the judicial office. As Respondent now concedes, his involvement in these several conflicts impugned the integrity and impartiality of the Judiciary and the judicial process generally, in violation of Canons 1 and 2A of the Code of Judicial Conduct. That Respondent solicited the parties'

consent to waive two of those conflicts in direct contravention of Canon 3D only compounded the harm.

We next address Respondent's admitted lapse in appropriate judicial demeanor on two occasions, the first of which involved Respondent's critical remark to a litigant about the fees and costs he was obligated to impose on that litigant for certain motor vehicle violations. The second concerned Respondent's overtly demeaning comment about women, whom Respondent quipped should never be trusted.

As to the first comment, Respondent's attempt to assuage a belligerent defendant who disagreed with the fees and costs attributable to his motor vehicle violation by characterizing those statutory sanctions as a "money-making scheme" for the State was highly inappropriate for one holding the title of jurist. In that role, Respondent was expected to uphold the rule of law, not disparage it. Conduct of this sort necessarily betrays a disrespect for the legal system and detracts considerably from the legitimacy of the court proceedings, which is intolerable in our system of justice and constitutes an additional violation of Canons 1 and 2A of the Code of Judicial Conduct. See In re Mathesius, 188 N.J. 496, 528 (2006) (recognizing the necessity for jurists to subordinate their private views to the objective application of the law as it is written); In re Sadofski, 98 N.J. 434, 441 (1985) (holding that

frustration with a litigant or his attorney cannot translate to a judge's inappropriate behavior).

In respect of the second comment, Respondent's remark about women was not only gratuitous and disparaging, but, as Respondent now concedes, suggestive of a bias against women. While we do not find evidence of an actual bias on Respondent's part, his conduct in creating the appearance of one necessarily undermines the integrity and impartiality of the Judiciary in violation of Canons 1 and 2A of the Code. See DeNike v. Cupo, supra, 196 N.J. at 517; Accord State v. Marshall, 148 N.J. 89, 279, cert. denied, 520 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997).

We next address Respondent's admitted engagement in plea negotiations with numerous defendants and without the participation or recommendation of the prosecutor, in contravention of Rule 7:6-2(d) (Plea Agreements in Municipal Courts) and the associated Guidelines for the Operation of Plea Agreements in Municipal Court ("Guidelines). Rule 7:6-2(d) and the related Guidelines make clear that entry into a plea agreement in municipal court requires the participation of the prosecutor and the defendant or, where applicable, defense counsel. Cf. Rule 3:9-3 (prohibiting, with limited exceptions, a judge from participating in plea discussions); State v. Korzenowski, 123 N.J. Super. 454, 456 (App. Div.), certif.

denied, 63 N.J. 327 (1973) (striking as untenable defendant's contentions referable to the absence of the court in the bargaining process given the authority mandating nonparticipation by the court); State v. Thomas, 61 N.J. 314, 321 (1972) (finding that the court may not participate in plea discussions).

Strict adherence to these requirements, particularly in respect of the prosecutor's participation in plea negotiations, is necessary to preserve judicial independence and the integrity of the judicial process generally. See State v. Gale, 226 N.J. Super. 699, 704 (Law Div. 1988) (finding that guilty pleas are acceptable only after the exacting standards for such pleas under Rule 3:9-2 and its companion Rule 7:1 in municipal court have been met in all respects). As aptly noted by Respondent, "[t]he public's perception of impartial justice requires the presence of the prosecutor [when negotiating a plea] or a written acknowledgement of the terms of every plea agreement on the authorized municipal court plea form," neither of which occurred in the underlying proceedings. See Respondent's Certification at ¶33. Having employed a procedure in his municipal court for the negotiation of plea agreements by the court directly and without the prosecutor's knowledge or participation, Respondent undermined the integrity of the judicial process in violation of Canons 1, 2A and 3A(1) of the

Code, and in so doing engaged in *ex parte* communications with defendants concerning pending or impending matters in violation of Canon 3A(6).

Finally, we consider Respondent's admitted misuse of his judicial authority, specifically the contempt power, when addressing a defendant's use of his cellular telephone in the courtroom, and Respondent's related misconduct of behaving discourteously towards that same defendant in violation of Canons 1, 2A and 3A(3). Respondent admits that his conduct in confiscating defendant William Rodgers's cell phone and sanctioning him $50.00 for its return was an arbitrary exercise of his judicial authority that contravened the contempt provisions of Rule 1:10-1 and -2. We agree.

The summary contempt procedures provided by Rule 1:10-1 specifically contemplate the *immediate* adjudication of the contemptuous conduct, as witnessed by the judge, without the issuance of a bench warrant or an order to show cause so as to permit the underlying court proceeding to continue without further obstruction. By all accounts, Mr. Rodgers's cell phone use did not obstruct the proceedings, was not witnessed by Respondent and its immediate adjudication was not necessary to permit the proceeding, which had concluded, to continue. To the extent Mr. Rodgers's conduct may have been contemptuous, he was entitled to notice of his alleged contemptuous conduct, either

through an order to show cause or a bench warrant, and a hearing consistent with the requirements of Rule 1:10-2, neither of which he received. Respondent's misuse of the contempt power and his resultant exchange with Mr. Rodgers, which was intemperate and wholly unnecessary, impugned the integrity and impartiality of the Judiciary in violation of Canons 1, 2A and 3A(3) of the Code of Judicial Conduct.

Having concluded that Respondent violated in multiple respects Canons 1, 2A, 3A(1), 3A(3), 3C(1) and 3D of the Code of Judicial Conduct and Rule 1:12-1(g) while serving on the municipal bench, the 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 on 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, 133 N.J. 67 (1993) (citing In re Coruzzi, 95 N.J. 557, 579 (1984)); In re Williams, supra, 169 N.J. 264.

Respondent, having admitted his misconduct and its conflict with the Code of Judicial Conduct, urges the imposition of a public reprimand for his multiple ethical infractions and cites to several cases in support of this position. Rb2-4. While Respondent's recitation of the precedent relating to his various acts of judicial misconduct, when considered individually, substantiate the imposition of a public reprimand, many of the cases on which Respondent relies do not account for the multiple ethical infractions present here. We are persuaded, however, by Respondent's reliance on those matters in which a jurist was reprimanded for engaging in several discrete acts of misconduct, as opposed to censured or suspended for an ongoing pattern of misconduct. See, e.g., In re Bozarth, supra, 127 N.J. 271 (publicly reprimanding judge for mistreating several litigants, trivializing one litigant's right to counsel, and implementing a system for handling tardy defendants that resulted in one defendant being handcuffed to a bench in the police station for several hours on a parking violation charge); In re Broome, 193 N.J. 36 (2007) (publicly reprimanding judge for dismissing charges in contravention of plea agreement guidelines, participating in plea negotiations in multiple matters, failing to advise defendants of constitutional rights, creating and enforcing without authority a policy concerning payment of fines).

We nevertheless recognize there exist a number of aggravating factors in these matters that must be considered when determining the appropriate quantum of discipline. First, the sheer number of infractions over the course of Respondent's three years on the bench and their obvious impact on his court staff was significant. That conduct, by all accounts, undermined the public's confidence in Respondent's ability to serve as a jurist and in the integrity and impartiality of the Judiciary generally.

Second, all of the conduct at issue occurred in public while Respondent was discharging his judicial duties. The public nature of this misconduct and its occurrence while Respondent was performing his judicial duties heightens the harm to the Judiciary's integrity and impartiality in the public sphere.

We are equally cognizant, however, of the several mitigating factors present here that bear on our consideration of the appropriate measure of discipline in these matters. Most notably, from their inception, Respondent has accepted responsibility for his misconduct and has expressed his regret and apology for their occurrences. In addition, the misconduct at issue, all of which occurred approximately three years ago, though considerable, involved several discrete incidents none of which evinced a pattern or practice of unethical misconduct.

Though not a mitigating factor, we are likewise aware of Respondent's absence from the bench since his most recent term expired in September 2013 and the unlikelihood that he will seek another term as a jurist in the future.

Weighing these several factors, both aggravating and mitigating, we conclude that the imposition of a public reprimand is appropriate.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be reprimanded for his violations of Canons 1, 2A, 3A(1), 3A(3), 3C(1) and 3D of the Code of Judicial Conduct and Rule 1:12-1(g).

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

December 14, 2015 By: Virginia A Long
Virginia A. Long, Chair