SUPREME COURT OF NEW JERSEY
D-51 September Term 2020
085351

IN THE MATTER OF
THERESA E. MULLEN, A JUDGE
OF THE SUPERIOR COURT
OF THE STATE OF NEW JERSEY

Argued May 3, 2022 – Decided August 23, 2022

Before Judges Alvarez (retired and temporarily assigned on recall), Lynch Ford, and Telsey, specially designated.

Jean P. Reilly, Assistant Attorney General, argued the cause for the presenter (Matthew J. Platkin, Acting Attorney General, attorney; Jean P. Reilly, of counsel and on the briefs; Michelle Mikelberg, Deputy Attorney General, on the briefs).

Theresa E. Mullen, respondent pro se.

Respondent Theresa Mullen served seven years as a Superior Court Judge. After a series of incidents stemming from her family's involvement with St. Theresa School, a parochial school in Kenilworth, the Advisory Committee on Judicial Conduct (ACJC) filed a formal complaint against respondent. The four counts of the ACJC's complaint can be divided into two broad categories: charges relating to respondent's behavior at St. Theresa School on February 2, 2017, and her subsequent petty disorderly persons conviction for defiant trespass, N.J.S.A. 2C:18-3(b)(1); and charges relating to respondent's behavior

during the course of her husband Scott Phillips's lawsuit against St. Theresa School.

Phillips filed suit against the school in December 2016. On February 1, 2017, St. Theresa School asked the family to withdraw their children because the lawsuit violated school policy. On the morning of February 2, 2017, respondent and her family arrived at the school in defiance of that request. Respondent's behavior and refusal to leave the premises resulted in the defiant trespass conviction. During respondent's trial on the charge, the judge found that she gave untruthful testimony.

In July of 2017, respondent failed to appear at a court-ordered deposition in connection with Phillips's civil suit. When she was finally deposed at a later date, she allegedly refused to stop looking at her phone, on her attorney's advice refused to answer most questions, and generally acted disrespectfully. Although respondent was not a named party to the suit, she apparently occasionally sat at counsel table during court proceedings, and appeared to be instructing Phillips's attorney. Allegedly, respondent also asserted her status as a judge in seeking to avoid sanctions for her conduct related to the depositions.

On September 29, 2021, the Supreme Court filed the pending Complaint for Removal from Office and an Order to Show Cause. Respondent's seven-year judicial appointment expired on October 22, 2021, and she was not renominated.

The Complaint for Removal, filed pursuant to N.J.S.A. 2B:2A-3 and Rule 2:14, incorporates the ACJC's findings of fact, detailed in a sixty-seven-page Presentment rendered on February 3, 2021 after a full evidentiary hearing. See R. 2:15-15(a). The Presentment found clear and convincing evidence that respondent had violated Canon 1, Rule 1.1 and 1.2; Canon 2, Rule 2.1 and 2.3(A); and Canon 5, Rule 5.1(A) of the Code of Judicial Conduct (Code), and recommended her removal.

Pursuant to Rule 2:15-16, respondent moved to dismiss the Presentment or, alternatively, to modify ACJC's recommendation that she be removed from office. Following oral argument, the Court denied the application and filed the Complaint for Removal that same day.

On September 29, 2021, the Court appointed this special panel to conduct a plenary hearing and report its findings to the Court. The following procedural history is necessary in light of respondent's allegations that these proceedings were fundamentally unfair and violative of her due process rights.[1]

[1] An example is found in respondent's December 28, 2021, notice of motion. She sought to file a counterclaim against the ACJC for damages, alleging that the Presentment and related proceedings violated her due process rights and were biased. She insisted that the ACJC had prejudged her guilt prior to the hearings, and that barring her from pursuing these counterclaims "would unfairly deprive [her] of [her] due process rights and in effect, deprive [her] of [her] right to confront those who accused [her] of wrongdoing."

PROCEDURAL HISTORY

On November 18, 2021, we issued an order instructing the parties to appear for a case management conference at the Cumberland County Courthouse. Respondent unsuccessfully requested permission to appear via Zoom. The November 30, 2021, in-person case management conference addressed preliminary matters such as anticipated motions in limine, and scheduling. Respondent acknowledged that the ACJC exhibits were admissible and sought to move into evidence her August 10, 2020, Judicial Performance Evaluation Report with Comments, which the Court had released to her in accordance with Rule 1:35A-3(b)(4), but she never submitted the reports. Affirmative Motions were to be filed by December 21, 2021, responses by January 11, 2022, and replies by January 18, 2022. Oral argument on the motions was to take place on January 25, 2022.

On December 21, 2021, the Attorney General filed a brief and appendix in support of its motion to strike respondent's special defenses 1-7 pursuant to Rules 4:5-4, 4:6-2, 4:6-4, and 4:6-5. On that same date, respondent requested and was granted a one-week extension to file her affirmative motion due to a medical issue with one of her children.

On December 28, 2021, respondent filed a motion to dismiss these proceedings, and to participate in the appointment of independent counsel and

an independent tribunal, alleging conflicts of interests with the judiciary and the Attorney General's office. Alternatively, she sought the right to pursue a counterclaim against the ACJC and third-party complaints against members of the judiciary and prosecuting State agencies.

Respondent claimed the Attorney General's office had to be recused because she had lodged a complaint in August 2021 "which directly relates to this matter." The Assistant Attorney General (AAG), Jean P. Reilly, certified that she had no personal knowledge of the alleged complaint. Respondent never produced the complaint.

On February 11, 2022, after oral argument, we issued an order: (1) denying respondent's motion to dismiss and to appoint independent counsel and an independent tribunal; (2) granting respondent's application for a full hearing on Counts III and IV of the ACJC formal complaint but denying the request as to counts I and II; (3) denying the Attorney General's motion to strike respondent's special defenses 1-7 because Rule 4 is not applicable to these proceedings; and (4) denying respondent's request to file counterclaims and third-party complaints.

The February 11, 2022 decision reiterated that respondent could not move to dismiss or modify the recommendation contained in the ACJC Presentment, because the Court had denied that relief on September 29, 2021. Our decision

directed the parties to submit their witness and exhibit lists at the next case management hearing on February 22, 2022.

Respondent forwarded a February 17, 2022, letter indicating she intended to move for reconsideration of the February 11, 2022, order. She also asked whether her appearance was still required at the next scheduled case management conference on February 22, 2022. We instructed her to appear.

At the February 22, 2022, case management conference, the Attorney General's office submitted lists and discussed potential exhibits and witnesses. Respondent appeared, but had not prepared any exhibit or witness lists, and could not comment meaningfully on the Attorney General's proposals. We allowed a recess for her to formulate a response, but she ultimately requested additional time to produce exhibit lists and names of witnesses.

We thus ordered: (1) respondent to submit her witness and exhibit lists and to file any objections to the Attorney General's lists by March 1, 2022; (2) the Attorney General to file a legal memorandum supporting its right to call respondent and her former attorney, Susan McCrea, Esquire, as witnesses during its case-in-chief, along with any objections to respondent's lists, by March 4, 2022; and (3) respondent to file any response to the Attorney General's submissions by March 9, 2022.

In addition, the order set hearing dates of Monday, April 4, 2022, Tuesday, April 5, 2022, and Thursday, April 7, 2022, at 10:00 a.m. at the Cumberland County Courthouse. The order further stated that if exceptional circumstances existed, either party could request a witness be permitted to appear virtually. Such requests were to be made no later than March 16, 2022, with any opposition filed by March 18, 2022.

On March 1, 2022, after the close of business, respondent submitted her witness and exhibit lists. She also submitted her objections to the Attorney General's submissions.

On March 4, 2022, the Attorney General filed: (1) a response to respondent's objections to its witness and exhibit lists, with a supplemental appendix; (2) objections to respondent's proposed witness list; (3) objections to respondent's exhibit list; and (4) a legal memorandum and supplemental appendix supporting calling respondent and McCrea as witnesses in its case-in-chief. On March 9, 2022, respondent requested and was granted a one-day extension to respond to the Attorney General's submissions due to an unexpected medical emergency.

On March 10, 2022, respondent requested a second extension until March 14, 2022, to submit her responses, due to an ongoing medical issue. We granted her request.

On March 14, 2022, respondent requested a third extension until March 18, 2022, due to an ongoing medical issue. We granted the request but advised we would not grant any further extensions.

On March 24, 2022, respondent requested a fourth postponement of the hearing, provided the Supreme Court Clerk with supporting medical documentation, and requested that a protective order be issued to prevent the documentation from becoming part of the public record. We issued a protective order, sealed the documentation, and impounded that portion of the record pursuant to Rule 1:20-9(h).

On March 25, 2022, we granted respondent's request for a postponement based upon sufficient cause shown and rescheduled the hearing to April 18, 2022. For a fourth time, we extended respondent's deadline for submission of written objections to the Attorney General's witness and exhibit lists to April 11, 2022. On that same date, the AAG advised that she was unavailable on April 18, 2022, due to a pre-paid family vacation. On March 28, 2022, we rescheduled the hearing to May 2, 2022.

On April 8, 2022, respondent requested a fifth extension of the deadline for her written submissions. We extended the deadline to April 14, 2022, and reminded respondent that she would have the right to place oral objections on the record during the hearing.

On April 14, 2022, respondent sent a letter advising that she was still suffering from the same medical issue. She further stated that she was physically unable to provide her written responses to the Attorney General's submissions, and would not be able to prepare an adequate defense for the upcoming hearing.

On April 20, 2022, we sent respondent a letter advising her that pursuant to the protective order, she need not share her medical details with the Attorney General. We also extended the deadline for respondent's written objections for the sixth time, to April 28, 2022, and reminded respondent that she could orally object at the hearing. That same date, we issued a written opinion granting the Attorney General's request to call respondent and McCrea as adverse witnesses. We concluded that McCrea and respondent effectively waived the attorney-client privilege by failing to assert it during the ACJC proceedings. Finally, our case management order specified exhibits to be admitted at the hearing, to which neither party objected. The order listed the remaining disputed exhibits, which were to be ruled upon on or before the trial date.

That order also required the parties to submit pre-marked lists of proposed exhibits by April 28, 2022. We permitted respondent to submit character witness certifications by April 28, 2022, to be admitted without testimony unless the Attorney General submitted specific written non-hearsay objections by May 2, 2022. The order stated that the dates were firm and that no further

submissions would be permitted. Finally, the order reiterated that the trial would commence at the Cumberland County Courthouse on May 2, 2022, at 10:00 a.m. On April 26, 2022, the Attorney General subpoenaed respondent for trial.

On April 28, 2022, respondent sent a letter stating that she continued to suffer from the same medical issue and was unable to prepare for trial. She asked for an indefinite adjournment of the matter until she made a full recovery.

On April 29, 2022, we asked respondent for more information in order to fairly address her accommodation request. We advised that Gail Haney, Esquire, Deputy Clerk of the Supreme Court, in her capacity as our Supreme Court's Americans with Disabilities Act (ADA) Coordinator, would contact respondent. We also postponed the first hearing date to May 3, 2022, subject to further modification.

Also on April 29, 2022, respondent informed Haney that she did not intend to sign the Health Insurance Portability and Accountability Act of 1996 (HIPAA) form or appear for the hearing due to her ongoing medical issue. She denied having asked for an accommodation to attend the hearing and stated she would not appear as she physically could not do so.

On April 30, 2022, at our request, Haney sent respondent an email clarifying important aspects of the ADA accommodation process. Respondent

refused to engage in the process. She provided no additional medical documentation specifying any date after the April 8 submission.

It bears mention that the only medical paperwork respondent provided during this time included prescription pad pages and appointment cards. The March 23, 2022 page indicated respondent should be excused from work for two weeks. The second, dated April 6, 2022, stated respondent could return to work April 18, 2022. Respondent also forwarded medical appointment cards for visits scheduled on April 6, 2022, and May 13, 2022.

On May 2, 2022, we denied respondent's request for an indefinite postponement, reminding her that she had the right to waive a further evidentiary hearing, which would allow the matter to proceed on the ACJC record plus any mitigating proofs she wished to submit. The letter asked respondent to advise of her position on the waiver by 5:00 p.m. and stated that absent a waiver, the hearing would proceed on May 3, 2022, as scheduled.

On May 2, 2022, at approximately 9:45 p.m., respondent supplied documentation related to her medical issue. We found the documentation did not establish sufficient cause to postpone the hearing.

On May 3, 2022, the hearing took place as scheduled. Respondent did not appear. The Attorney General presented testimony from McCrea and Christopher Westrick, Esquire, who represented St. Theresa's and the

Archdiocese of Newark in the Phillips lawsuit. We admitted the proposed exhibits from paragraphs 1, 2, and 3 of the April 20, 2022, case management order into evidence. Over the Attorney General's objection, we also admitted respondent's proposed exhibits R-1, R-3 and R-6 listed in paragraph 4 of the April 20, 2022, case management order.[2]

On May 5, 2022, Haney emailed the May 3, 2022, hearing transcript to AAG Reilly and respondent. We directed the Attorney General to submit written closing arguments on or before May 17, 2022. We advised respondent that she could submit written closing arguments on or before May 24, 2022. However, any written submissions could be based only upon evidence admitted on or before May 3, 2022, along with any character references and performance evaluation reports. The Attorney General submitted a timely post-hearing brief; respondent submitted nothing.

BACKGROUND

At the ACJC hearing, respondent offered information about her professional career. She graduated from law school in 1993, and worked for the Archdiocese of Newark until entering private practice in 1997. Respondent was

[2] Respondent never provided the panel with copies of her proposed exhibits. However, we have reviewed and considered her proposed exhibits to the extent we could identify them in the ACJC record. We note that we do not have any of respondent's Judicial Performance Evaluation Reports.

a certified civil trial attorney admitted to practice in both New Jersey and New York. She served as a part-time municipal prosecutor in Scotch Plains for approximately eighteen months before becoming a judge in 2014.

Respondent testified at the ACJC hearing that she received numerous accolades during her law career. She was named one of the top women lawyers in New Jersey and included on a "40 Under 40" list for lawyers. Respondent was also named a "Woman of Excellence" in Union County. She served as president of the Arthur Vanderbilt Inns of Court in 2004 and 2005, and the Richard Hughes Inns of Court in 2014 and 2015. Respondent was the president of the Union County Bar Association in 2011, and the Union County Bar Foundation in 2012. In addition, she was the Union County representative on the Judicial and Prosecutorial Appointments Committee and the Union County Ethics Committee for several years.

RESPONDENT'S CONVICTION AND TESTIMONY

Count I of the ACJC formal complaint concerned respondent's February 28, 2018, defiant trespass conviction. The underlying facts are that on February 2, 2017, respondent appeared at the school with her two daughters, despite the administration's email the night before asking that they be withdrawn, due to Phillips's lawsuit. Suing the school violated the school's written policies and

triggered expulsion. The family had been provided a copy of the written policies.

A person commits defiant trespass "if, knowing that [s]he is not licensed or privileged to do so, [s]he enters or remains in any place as to which notice against trespass is given by . . . [a]ctual communication to the actor." N.J.S.A. 2C:18-3(b)(1). Following a two-day bench trial, Judge Alberto Rivas concluded the State had proven "beyond a reasonable doubt . . . that [respondent] remained in the school knowing she was not licensed or privileged to do so after actual notice to leave was communicated to her several times." State v. Mullen, No. 5-2017-23 (Law Div. Feb 28, 2018) (slip op. at 6) (Mullen I).

The court fined respondent $400 plus costs of $33, a victim compensation penalty of $50, and a safe neighborhood penalty of $75. Subsequently, the judge denied respondent's motion for a new trial, based upon her theories of vindictive prosecution, entrapment, and failure to establish the elements of defiant trespass beyond a reasonable doubt. He also denied her demand the verdict be set aside based upon newly submitted video evidence.

The Appellate Division affirmed the defiant trespass conviction, concluding there was "ample evidence in the record." State v. Mullen, No. A-5569-17 (App. Div. Oct. 14, 2020) (slip op. at 18) (Mullen II). As the opinion explains:

> [Respondent] knew she was not welcome at the school when she received the Archdiocese's letter and the email from her attorney on February 1. As soon as she entered the meeting with Deacon Caparoso in the school office, he clearly told her that she had to leave or she would be "considered trespassing."
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> At that point, [respondent's] own video-recording confirms that she immediately told the officials that they could "bring criminal charges against" her, but she was not going to leave the premises. After the officials spoke to their attorney, they again repeatedly directed defendant to exit the property, and she consistently refused. Finally, Officer Kaverick was able to persuade defendant to go outside rather than be arrested and handcuffed in front of her children.
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> [Id. at 18-19.]

The Supreme Court denied respondent's subsequent petition for certification. State v. Mullen, 248 N.J. 541 (2021) (Mullen III).

When asked by the ACJC whether she would respond differently if "faced with that situation again," respondent initially testified that she still would have gone to the school that morning but "[k]nowing what [she] know[s] now," she "would have never sent [her] children" to that school. When asked again, she said "the better course of action" would have been "just to go back into court" without going to the school.

Count II of the ACJC's formal complaint, intertwined with count I, alleged that during the defiant trespass trial on January 25, 2018, respondent testified falsely regarding her interaction with Officer Sean Kaverick at the school. Judge

Rivas had specifically found Kaverick's testimony credible, and found respondent's testimony "incredible." Mullen I, slip op. at 5.

Judge Rivas summarized Kaverick's testimony as follows:

> [U]pon his arrival at the school, he entered through the front door and the Chief briefed him as to the situation involving [respondent]. He then encounters [respondent] in the hallway between the office and the gym. He testified that [respondent] was not in the process of leaving the school. He approached [respondent] and asked her to leave the premises. [Respondent] makes absolutely no effort to comply with the Officer's order. Instead, she indicated that she wanted to be handcuffed. The Officer did not want to handcuff her in the presence of her children, who he noted were crying and upset. He testified that he pointed out her daughter's emotional state to [respondent]. He testified that [respondent] made no effort to leave until five minutes had elapsed. His clear recollection and unequivocal testimony was that [respondent] remained fixed in one spot and was unwilling to leave the premises.
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> [Id. at 4.]

In contrast, Judge Rivas found that respondent "specifically testified that she had absolutely no contact with Officer Kaverick, in direct contravention with the Officer's unequivocal testimony." Id. at 5. She claimed that, following a meeting in the school office, "she immediately went outside, using the front entrance, to call her husband and await his return to the school." Ibid.

Judge Rivas explained in detail why he found Kaverick's testimony credible:

> First, there is video evidence of [respondent] asking to be handcuffed during her meeting with school officials in the office. This corroborates the officer's testimony that she made similar references when he encountered her in the hallway outside of the office. She testified that she exited the school immediately following the meeting, and she did so through the front door. Officer Kaverick entered the school through the front door and indicated he encountered her inside the school unwilling to leave. He further testified that because of [respondent's] position, he was very reluctant to arrest her, despite her request for handcuffs. According to the CAD report, Officer Kaverick arrived at the school at approximately 8:49 a.m., which is consistent with the timeline testified to by the other participants. [Respondent] ceased taping when she left the office and did not resume until 9:01 a.m. upon her husband's return to the school. [Respondent] points to the fact that she made calls to her husband once she left the office, but the evidence of the calls do[es] not indicate where she was physically at the time the calls were made. The calls could have easily been made from inside the school. This officer was a relatively young officer whose testimony clearly evoked his ambivalence of having to deal with a belligerent and confrontational [respondent], which the court relies on to find him credible.
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> [Ibid.]

Additionally, Judge Rivas found respondent "combative and evasive on the stand." Id. at 6. Moreover, he found that it was "impossible to reconcile" respondent's testimony "that she did not know the potential ramifications of not leaving the premises when asked to do so by school officials" given that she "had previously served as a municipal prosecutor." Ibid.

At respondent's sentencing hearing, Judge Rivas reiterated that "the Court found the testimony in the government's case to be credible, particularly, again, the testimony of Officer Kaverick. And frankly, the Court found [respondent's] testimony to be incredible. And because of that, she was found guilty."

When respondent testified about the events of February 2, 2017, during the ACJC hearing, she again denied speaking with Kaverick at all and denied giving false testimony to Judge Rivas. Instead, she maintained that Kaverick "did not tell the truth" to Judge Rivas and to the ACJC, and had even filed a false police report. Respondent said she did not believe that she "cause[d] a scene on February 2nd" and denied refusing to leave the premises.

During oral argument before the Supreme Court on her motion to dismiss the Presentment, respondent disputed Judge Rivas's determination that she gave false testimony and instead claimed that it was all the other fact witnesses at trial who had given false testimony:

> One of the most disturbing things to me is that I've been accused of being a liar. I'm not a liar. The truth has not been printed in any of the Appellate Division decisions, in the ACJC opinion, in anything. The record is clear that all the fact witnesses who testified in this matter before Judge Rivas, before the ACJC, did not tell the truth.

RESPONDENT'S CONDUCT IN PHILLIPS'S CIVIL SUIT

Count III of the ACJC's formal complaint alleged that on July 26, 2017, during a court-ordered deposition in Phillips's suit against the school, respondent demonstrated "obstructive behavior . . . that resulted in the imposition of sanctions against . . . Phillips for [r]espondent's refusal to answer approximately 95% of the questions posed to her." Count IV alleged that respondent "assert[ed] her judicial office in response to the imposition of sanctions by Judge Kessler announced in open court on July 28, 2017."

Phillips's lawsuit, which sought injunctive relief, related to conflicts with the St. Theresa School administration as to their children, including a child who had graduated. (AG-30). Phillips v. Archdiocese of Newark, No. A-4687-17 (App. Div. Oct. 14, 2020) (slip op. at 1-2). McCrea, a friend of Phillips and respondent, represented Phillips throughout the litigation and later represented respondent at depositions. Respondent was not a named party.

Now-retired Judge Kessler presided over the lawsuit. On or about May 18, 2017, Westrick, the Archdiocese's attorney, served McCrea with a Notice of Deposition for respondent to take place on June 13, 2017. He testified before us that respondent "was going to be a key witness at the trial" and "had probably [had] the majority of communications with the school" despite the lawsuit's initiation by her husband.

On June 9, 2017, in response to an email from Westrick confirming the deposition, McCrea refused to produce her clients for deposition. She cited a May 24, 2017, order entered by Judge Kessler setting forth a schedule for "limited paper discovery," which did not prohibit depositions, and claimed that Westrick would "eventually [be] entitled to one deposition . . . but not at this juncture."

On June 26, 2017, Westrick moved to compel the depositions of S.P. (respondent's daughter), Phillips, and respondent, and sought sanctions. On July 11, 2017, Judge Kessler ordered that "[d]epositions of Theresa Mullen and Scott Phillips shall be scheduled for July 19, 2017" at McCrea's office and that "[t]he testimony at said depositions shall be limited to the issues to be addressed at the July 24, 2017 plenary hearing." The court denied Phillips's application to bar respondent's deposition, finding that "she is a fact witness." The order further stated:

> Plaintiffs' application to adjourn the plenary hearing because Plaintiff does not know the factual bases for Defendants' expulsion decision is denied since the moving paper's certification of five of Defendants' representatives and press release set forth the reason for Defendants' expulsion decision . . . .[3]

[3] Westrick testified before us that Judge Kessler had requested the certifications "for purposes of letting the court see what we were dealing with and what the context of this [expulsion decision] was."

On July 12 and 13, 2017, the court issued amended orders which restated the above provisions and added, among other things, that "[f]uture depositions of Theresa Mullen and Scott Phillips may be allowed on other issues."

On July 19, 2017, Judge Kessler entered an order reiterating that respondent's deposition scheduled for that same date, would proceed as previously ordered "provided she receives permission to be excused from her job responsibilities." Neither respondent nor Phillips appeared for the July 19, 2017, depositions. (AG-30). Phillips, slip op. at 4. The judge later found that they "made the unilateral decision without the authority of the Court to choose not to show up to the [first] deposition . . . for the stated reason that they intended to file an application for leave to appeal." No motion was filed.

On July 24, 2017, Westrick moved for sanctions based upon Phillips's and respondent's failure to appear. The judge ordered respondent and Phillips to appear for depositions on July 26, 2017. Id. at 5. The court emphasized in a statement of reasons that it "continually in the past several months addressed the need for this case to move to hearing in advance of the school year so that the issues herein can be determined prior to the commencement of the school year and ample time is available . . . [for] appeal."

On July 26, 2017, respondent and Phillips appeared for depositions at McCrea's office. Respondent was "dressed in a pair of running shorts and a tee

shirt" because, according to McCrea, "she was going to run home" afterwards as she "trains and . . . does marathons." When asked about her attire at the ACJC formal hearing, respondent said that she had "no recollection" of what she wore to the deposition but had "no reason to dispute what Ms. McCrea said" because respondent "was training for the New York City marathon at that time" and "probably did go running later on that day."

During their depositions, respondent and Phillips "refused to answer almost all of the questions presented to them at the direction of plaintiff's counsel." Id. at 12. As explained by the Appellate Division in its unpublished opinion affirming the sanctions, Judge Kessler eventually assessed:

> The questions plaintiff and his spouse refused to answer included such simple and direct inquiries as:
>
> > Do you disagree with the decision not to permit your children to re[-]enroll at [STS] for this September?
> >
> > Do you think the defendants have asserted incorrect reasons for not permitting your children to re[-]enroll at [STS]?
> >
> > Do you have any basis to dispute that the decision not to permit your children to re[-]enroll at [STS] is an ecclesiastical one?
> >
> > Do you think that as a private institution [STS] doesn't have a right to decide not to accept your business for next school year?

> Do you have an understanding as to why the Archdiocese and [STS] made the determination not to permit your children to re[-]enroll in the school?
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> [Ibid.]

Throughout the respondent's deposition and Phillips's deposition, McCrea repeated several versions of the same core objection: "[T]his matter is limited to the five certifications and the previous court orders [that describe what the case is about] under Rule 4:14[-3(c)] and there's no reason to expand into anything else." She later explained: "My position is that these five certifications [referenced in Judge Kessler's July 11, 2017, order] are your case. That it was confined to that." During the ACJC formal hearing, respondent confirmed that she agreed with McCrea's understanding of the limited scope of the depositions. For his part, Westrick denied that Judge Kessler had ever imposed a limit, "other than he said the depositions would pertain to the issues that would be addressed at the trial."

McCrea testified before the ACJC that it was "absolutely [her] decision" to instruct respondent not to answer questions, and that she thought she "was doing the right thing" by objecting. She further testified that "there certainly was" a court order entered by Judge Kessler that "limited the scope of [respondent's] deposition to five certifications that had been submitted" and a press release, and that she was relying on the July 11, 2017 order. She continued

to rely upon this order during her testimony before us while simultaneously admitting that there was "no order . . . that says that the deposition questions cannot go beyond those five certifications and the press release." She maintained that "Judge Kessler's reading of his own orders was wrong[,]" adding that she "still feel[s] that way."

During the July 26, 2017 deposition, respondent indicated that she intended "to follow [her] counsel's advice" and declined to answer Westrick's questions whenever McCrea raised an objection. Additionally, respondent asserted the Fifth Amendment on numerous occasions when asked about the events of February 2, 2017. At the ACJC formal hearing, respondent testified that she "followed the advice of Ms. McCrea" and was concerned about the personal nature of the questions posed.

Westrick initially objected to respondent's presence during Phillips's deposition, which took place immediately after respondent's deposition. The attorneys called Judge Kessler, who decided she could not remain in the room. During her testimony before us, McCrea admitted that she "alluded to" respondent's "judicial status" when arguing to Judge Kessler that respondent should be allowed to "sit there and listen." Specifically, the deposition transcript reflects that McCrea said: "She's an officer of the court, she's a Superior Court

Judge. She is certainly not going to make any gestures or motions or anything like that to Mr. Phillips."

During his ACJC testimony, Westrick described respondent's conduct during the deposition as "nasty," "outrageous" and "disrespectful" to the process and to the court reporter. He offered similar testimony at the hearing before us, describing respondent's demeanor as "nasty and condescending." He said that he "had to ask [respondent] more than once . . . to please put her phone down and give [him] 100 percent of her focus" which "was met with just a rather hostile reaction" from respondent.

McCrea confirmed that respondent held her cell phone during the deposition but described her demeanor as "very businesslike" and "not rude." When she testified before the ACJC, respondent denied that she was "disruptive or disrespectful" but confirmed that her cell phone "was on the table" because her "children were home alone."

On July 28, 2017, the court heard argument on the sanctions issue. Before the public entered the courtroom, Judge Kessler spoke with Westrick and McCrea and told them:

> The reason I asked to see counsel first today is there [were] some applications regarding the hearing, the issue as to Father Joe outside of the presence of the public and my view and there was likewise an application to do the same with respect to the deposition of [respondent]. . . .

> Okay. At this juncture, what I intend to do is to hear the application with respect to Mr. Phillips'[s] deposition. I'll do that open – in open public court. Then I will hear the later applications about [respondent's] deposition and the issue of the criminal convictions I'll hear that afterwards privately and whether I seal the record or not on that, we can determine that later. . . .
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> . . . .
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> . . . What I really need to do is get to the issue of sanctions and then to the extent that that issue may apply to [respondent] we can then later address that issue and there may be some overlap in the analysis that would affect both applications. But I'll at least deal with the first application in open public court. I think I should get that resolved first.

During her testimony before us, McCrea characterized this as an "agreement that the pastor and [respondent] were going to be treated a certain way and it didn't happen." When asked by the Deputy Attorney General whether this agreement meant that respondent "would be treated a certain way because she was a judge," McCrea replied, "Right. Because . . . that's what Judge Kessler agreed to" in the colloquy.

In addition, McCrea testified for the first time before us that respondent had "safety concerns" and "didn't want her personal information . . . available to the public" as "this was around the time . . . [Judge Esther Salas's] son was

killed."[4] However, she later admitted that none of respondent's personal information was disclosed during the sanctions hearing and that her client "didn't have any legal entitlement to have anyone excluded from the courtroom."

The Appellate Division's unpublished opinion summarized the crux of McCrea's argument at the sanctions hearing as follows:

> Plaintiff's attorney asserted that she believed the deposition was limited to information contained in five certifications defendants had submitted from witnesses setting forth the school's reasons for the decision not to enroll S.P. and K.P. in STS for the upcoming academic year. However, Judge Kessler found that he had never issued an order that limited the scope of the depositions in this fashion.
>
> [Phillips, slip op. at 13.]

Judge Kessler found that "in reviewing the depositions, there were basic questions . . . relating to the plaintiff's case that were not answered without any order which would so authorize them to do so and it went well beyond the spirit of the rules." Moreover, he concluded: "[T]here is not one single order in which I limited what could be asked at depositions. Therefore, the instruction to not answer the question is a violation of the rules and the decision by the deponent not to answer the question is a violation of the rules." He added: "However,

[4] On July 19, 2020, an attorney travelled to Judge Esther Salas's home, murdered her son, and seriously injured her husband.

every deponent has a right to follow the advice of counsel. So I can't be critical of deponent for following the advice of counsel."

Ultimately, Judge Kessler imposed sanctions only upon Phillips and reiterated that "[a] failure to answer questions is a violation of the rules" and that "[t]he failure to do so was done by the plaintiff at his peril." After the court ruled on sanctions, the hearing continued and other case management issues were addressed. McCrea asked to speak with respondent "outside the courtroom."

Respondent confirmed to the ACJC that she "was upset" during her conversation with McCrea because certain "sensitive issues" were discussed during the hearing in open court while the press was present. She denied "instruct[ing] Ms. McCrea" on what to say to Judge Kessler about it. During her ACJC testimony, when asked if respondent told her what to say upon their return to the courtroom, McCrea replied: "I doubt it."

Westrick testified before us that McCrea and respondent were out of the courtroom for about a half hour after having "stormed out" and then "stormed back" in. When they returned, McCrea placed the following on the record:

> MCCREA: I conferred with my client, Your Honor, and I just want to make a record just briefly. We started out today where the Court indicated that it was going to defer the issues of Father Joe and [respondent] outside of the public. And the Court rendered its decision this afternoon on the record with the media

> here, as well as with law clerks and other court personnel. On the record, my client feels that she was public[ly] humiliated in her judicial position.
>
> THE COURT: Well, why didn't you ever bring that to my attention? I was –
>
> MCCREA: I brought it to your attention, Your Honor.
>
> THE COURT: That certainly was not my intent. You could have asked me at any point to stop what I was doing. That was not my intention.
>
> MCCREA: I would like to finish, please. She feels embarrassed and extremely humiliated as a sitting judge that this Court did not, when it knew sitting from the bench looking into the spectra [sic] of the courtroom, did not ask the media to leave or anyone else to leave.

McCrea also asked the court to "direct the media not to report anything" with regard to respondent, to which Judge Kessler replied, "I can't direct the media to do anything. I'm not allowed to." That same day, the court entered an order which, among other things, required Phillips and respondent to appear for depositions on July 31, 2017, at the courthouse.

Westrick testified that he requested the depositions take place at the courthouse "so that we would be there when the inevitable disputes came up and we'd be able to . . . get [Judge Kessler] to rule in real time as things happened." He said that Judge Kessler ordered respondent "to answer all the questions asked, or something like that." The July 28, 2017, sanctions hearing transcript

corroborates that Judge Kessler instructed the parties to answer every question absent a privilege or confidentiality claim.

At the July 31, 2017, deposition, respondent continued to refuse to answer certain questions based upon McCrea's relevancy objections, because the questions were "personal," or based on the Fifth Amendment. Respondent continued to hold her phone in her hand and refused to put it down despite Westrick's request that she show "common courtesy."

The attorneys contacted Judge Kessler numerous times that day due to various deposition-related objections and concerns.

Respondent, through McCrea, "requested that the entire deposition transcript be sealed and . . . be used by counsel and the Court only for the next forty-eight (48) hours, pending a specific application to redact or seal portions of the deposition transcript, because she is a sitting Superior Court Judge and her personal life should be confidential." Judge Kessler denied respondent's applications to seal her deposition transcript, to bar deposition "questions that relate to her personally," and for a stay pending appeal.

Phillips moved for reconsideration of the sanctions order, which the court denied. Phillips, slip op. at 5. In his oral decision, Judge Kessler explained that he "could have sanctioned" respondent and McCrea as he had "every authority to sanction a lawyer who obstructs a deposition." Ibid.

When asked by the ACJC whether she would have done anything differently "with respect to [the] deposition," respondent testified that "[w]ith respect to not answering the questions," she would continue to "follow the advice of Ms. McCrea." Respondent acknowledged that she was "experienced in both taking and defending depositions" and "knew the applicable rules governing depositions." She reiterated her position regarding following the advice of McCrea during argument before the Supreme Court on her motion to dismiss the Presentment, further claiming that Judge Kessler had limited discovery to paper discovery initially, and had limited the scope of the depositions to information contained in the five certifications and a press release.

In addition to testifying about the depositions, Westrick testified before the ACJC and the panel regarding respondent's involvement in the Phillips court proceedings. He told the ACJC the following:

> Initially she sat in the gallery. It's a very small courtroom. She sat in the first row of seats . . . in the back of the courtroom. One of the initial days prior to the actual start of the trial, she was present in court, sitting in that first row and Ms. McCrea was repeatedly turning around to confer with [respondent] in response to questions and things that Judge Kessler would raise. Mr. Phillips was seated at counsel table . . . and at one point I remember distinctly Judge Kessler saying that if Mr. Westrick doesn't object [respondent] can come up and sit at counsel table to limit the conferring in the back. I thought it was kind of strange but I didn't really

> think it was my place to object, so I didn't. And from that point forward, throughout the trial, [respondent] sat at counsel table between Ms. McCrea and Mr. Phillips.

Westrick further testified before the ACJC and the panel that "more times tha[n] [he could] count during the trial," he heard respondent "leaning over to Ms. McCrea and telling her when to object to [his] questions." Additionally, Westrick authenticated two undated photographs at the panel hearing, AG-37 and AG-38, depicting respondent seated at counsel table between McCrea and Phillips during the Phillips litigation.

Contrary to Westrick's description, McCrea initially testified before the ACJC that respondent "hid in the back corner of the courtroom" and "didn't want to even be near" McCrea "because she didn't want her photograph taken by the media, she wanted to stay way far out of it as a judge." But McCrea admitted to the ACJC that she "definitely turned around and asked [respondent] questions from time to time" and that respondent sat at counsel table on occasion after "Judge Kessler invited her there." McCrea also testified that respondent "helped [her] mostly with the facts" but that she conferred with respondent "[o]nce or twice" about how to make an objection. She told the ACJC that respondent "had much more trial experience than [she] did."

McCrea's testimony before us was not consistent with her ACJC testimony. For instance, when asked whether she would turn around to speak

with respondent from time to time during the Phillips court proceedings, McCrea replied: "I don't really think so. I mean, I could have, but I don't really think so." When confronted with a photograph marked as AG-42, McCrea conceded that she and respondent were shown communicating and that this would "maybe" happen from time to time in the courtroom "but not very often." She also testified that respondent only sat at counsel table for one day and that she "needed some help" from respondent.

DISCUSSION

"Every judge is duty bound to abide by and enforce the standards in the Code of Judicial Conduct." In re DiLeo, 216 N.J. 449, 467 (2014) (citing R. 1:18). Generally, "there are two determinations to be made in connection with the imposition of judicial discipline" for an alleged violation of the Code. Id. at 468. The first determination concerns whether a violation of the Code has been proven. Ibid. The second concerns whether the proven violation "amount[s] to unethical behavior warranting discipline." Ibid.

Pursuant to the Judicial Removal Act, the Supreme Court may remove a judge from office for misconduct, willful neglect of duty, incompetence, or other unfitness, if established beyond a reasonable doubt. N.J.S.A. 2B:2A-2; N.J.S.A. 2B:2A-9; In re Samay, 166 N.J. 25, 31 (2001); In re Yaccarino, 101 N.J. 342,

350 (1985); In re Coruzzi, 95 N.J. 557, 569 (1984). "Reasonable doubt is defined as 'an honest and reasonable uncertainty in [one's mind] about the guilt of the [accused] after [one has] given full and impartial consideration to all of the evidence.'" Samay, 166 N.J. at 31 (quoting State v. Medina, 147 N.J. 43, 61 (1996)).

Removal "requires misconduct flagrant and severe." In re Williams, 169 N.J. 264, 276 (2001). "Judicial misconduct . . . involving dishonesty of any kind will ordinarily require removal as the appropriate discipline." In re Alvino, 100 N.J. 92, 97 (1985). "'[R]emoval is not punishment for a crime,' but rather serves to vindicate the integrity of the judiciary." Yaccarino, 101 N.J. at 387 (alteration in original) (quoting Coruzzi, 95 N.J. at 577). This is because "the most significant goal of judicial removal statutes is the preservation of the public's confidence in the judicial system." Coruzzi, 95 N.J. at 571-72.

"The focus of a removal proceeding is determined solely by the public interest, and by the Court's 'steadfast commitment to maintaining an independent and incorruptible judiciary.'" Samay, 166 N.J. at 42 (citation omitted) (quoting In re Imbriani, 139 N.J. 262, 266 (1995)). "Public confidence in the judiciary 'is shaken when a judge commits an offense [or conduct] that subjects him or her to removal; the removal proceedings are designed to restore faith.'" Ibid. (alteration in original) (quoting Coruzzi, 95 N.J. at 572).

When determining the level of discipline, we undertake a "searching and expansive inquiry . . . carefully scrutiniz[ing] the substantive offenses that constitute the core of respondent's misconduct, the underlying facts, and the surrounding circumstances." In re Seaman, 133 N.J. 67, 98 (1993) (alteration in original) (quoting In re Collester, 126 N.J. 468, 472 (1992)). We consider public policy and certain aggravating and mitigating factors. Id. at 98-101. Accord Williams, 169 N.J. at 279 (imposing a three-month suspension after "[h]aving weighed the aggravating and mitigating factors.").

Aggravating factors, which "serve to define the gravity of misconduct," include: (1) "the extent to which the misconduct, like dishonesty, or a perversion or corruption of judicial power, or a betrayal of the public trust, demonstrates a lack of integrity and probity"; (2) "whether the misconduct constitutes the impugn exercise of judicial power that evidences lack of independence or impartiality"; (3) "whether the misconduct involves a misuse of judicial authority that indicates unfitness"; (4) "whether the misconduct, such as breaking the law, is unbecoming and inappropriate for one holding the position of a judge"; (5) "whether the misconduct has been repeated"; and (6) "whether the misconduct has been harmful to others." Seaman, 133 N.J. at 98-99; see also Samay, 166 N.J. at 31 (explaining that misconduct's "effect upon

other persons . . . may be a relevant factor in assessing the gravity of the misconduct and the appropriate discipline.").

Mitigating factors that may "bear[] on the sanction to be imposed" include: (1) whether "a matter represents the first complaint against a judge"; (2) "the length and good quality of the judge's tenure in office"; (3) an "exemplary personal and professional reputation"; (4) a "sincere commitment to overcoming the fault"; (5) whether the judge expressed "remorse and [made] attempts at apology or reparations to the victim"; (6) whether the judge "will engage in similar misconduct in the future"; (7) "whether the inappropriate behavior is subject to modification"; and (8) an acknowledgment of "wrongdoing or expressed contrition" from the judge. Seaman, 133 N.J. at 100-01.

A judge removed pursuant to the Act "shall not thereafter hold judicial office." N.J.S.A. 2B:2A-9. For that reason, the controversy before us is still ripe; judicial disciplinary matters may proceed even if a judge is "not reappointed" to the bench. R. 2:15-23(a). We conclude that respondent has, beyond a reasonable doubt, violated Canons 1, 2, and 5 of the Code.

Charges Stemming From Respondent's Trespass Conviction

The ACJC presentment concluded that respondent's defiant trespass conviction "demonstrated a gross lapse in [judgment] and . . . demeaned the

judicial office" in violation of Canon 1, Rule 1.1 and Rule 1.2; and Canon 2, Rule 2.1 of the Code. Further, her false testimony at trial "reflect[ed] adversely on [her] character and judgment, both of which are essential components for one serving on the bench" in violation of Canon 2, Rule 2.1 and Canon 5, Rule 5.1(A) of the Code. We agree.

"In attorney and judicial disciplinary cases, the Court gives conclusive effect to the respondent's convictions of statutory crimes and offenses." Collester, 126 N.J. at 472. Based on the record, including but not limited to the trial and appellate opinions and the certified disposition filed with the Borough of Kenilworth Municipal Court, respondent was convicted of the petty disorderly persons offense of defiant trespass. The facts upon which the conviction was based support a further finding, beyond a reasonable doubt, that she violated Canon 1, Rule 1.1 and Rule 1.2; Canon 2, Rule 2.1; and Canon 5, Rule 5.1(A) of the Code.

Canon 1 states: "An independent and impartial judiciary is indispensable to justice. A judge therefore shall uphold and should promote the independence, integrity and impartiality of the judiciary." The Comment to Canon 1 states that "[v]iolations of this Code, or violations of law or court rules that reflect adversely on a judge's honesty, impartiality, temperament or fitness constitute a failure to respect and comply with the law."

Canon 1, Rule 1.1 states that "[a] judge shall participate in establishing, maintaining and enforcing, and shall personally observe, high standards of conduct so that the integrity, impartiality and independence of the judiciary is preserved. This Code shall be construed and applied to further these objectives." Canon 1, Rule 1.2 states that "[a] judge shall respect and comply with the law." Compliance with these rules furthers the "bedrock principle" expressed in Canon 1 "that '[a]n independent and honorable judiciary is indispensable to justice in our society.'" DeNike v. Cupo, 196 N.J. 502, 514 (2008) (quoting Canon 1).

Canon 2 states: "A judge shall avoid impropriety and the appearance of impropriety." "That obligation extends to judges' private lives." In re Reddin, 221 N.J. 221, 228 (2015). Canon 2, Rule 2.1 states that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." "To demand any less would invite questions about the impartiality of the justice system and thereby 'threaten[] the integrity of our judicial process.'" DeNike, 196 N.J. at 514-15 (alteration in original) (quoting State v. Tucker, 264 N.J. Super. 549, 554 (App. Div. 1993)).

The Rule 2.1 Comment clarifies several points. Since "[p]ublic confidence in the judiciary is eroded by irresponsible or improper conduct by judges," including both their "professional and personal conduct," judges must:

(1) "avoid all impropriety and appearance of impropriety"; (2) "expect to be the subject of constant public scrutiny"; and (3) "accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly."

The Comment defines "[a]ctual impropriety" as "conduct that reflects adversely on the honesty, impartiality, temperament or fitness to serve as a judge." "With regard to the personal conduct of a judge," the Comment explains that "an appearance of impropriety is created when an individual who observes the judge's personal conduct has a reasonable basis to doubt the judge's integrity and impartiality."

Canon 2, Rule 2.3(A) provides that "[a] judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so." The comment to Canon 2, Rule 2.3 explains:

> It is improper for judges to use or attempt to use their position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with others, such as persons in official positions and members of the public.

Canon 5 states: "A judge shall so conduct the judge's extrajudicial activities as to minimize the risk of conflict with judicial obligations." Rule 5.1(A) states that "[j]udges shall conduct their extrajudicial activities in a

manner that would not cast reasonable doubt on the judge's capacity to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties."

During the contentious incident at St. Theresa School, respondent failed to meet the high standard of judicial conduct found in Canon 1, Rule 1.1. She failed to respect and comply with the law, violating Canon 1, Rule 1.2. Respondent's refusal to leave the school building, while in the presence of numerous school officials, law enforcement officers, and students and parents entering and leaving the school, could only erode public confidence in the judiciary, in violation of Canon 2, Rule 2.1. See generally In re Brady, 243 N.J. 395, 421-22 (2020) (holding that the respondent judge's communications with the police concerning a personal matter were "unbecoming and inappropriate for one holding the position of a judge.").

Although "[j]udges are subject to the same human emotions as other parents and are entitled, as parents, to respond to a felt unjust abuse of their children[,]" they "must always be conscious that they not blur the line between parent and judge." Yaccarino, 101 N.J. at 362. Thus, respondent's children's expulsion from St. Theresa does not excuse her violations of the Canons.

Additionally, while testifying in Mullen I, respondent failed to act with honesty and integrity, in violation of Canon 2, Rule 2.1, conducting herself in a

manner that demeaned the judicial office, in violation of Canon 5, Rule 5.1(A). "The polestar of our Canons of Judicial Conduct is to maintain judicial integrity and the public's confidence in that integrity." Samay, 166 N.J. at 43.

When before the ACJC and the Court, respondent steadfastly maintained that her trial testimony was truthful while all the other fact witnesses lied. Her failure to provide credible testimony has the potential to shake the public's confidence in the judiciary and demonstrates "a lack of respect for the law." Ibid.; see Williams, 169 N.J. at 274 (judge's false statements to police "subordinated her responsibility to act in conformance with the law to her own personal concerns and needs" and "demonstrated a lack of respect for the law that as a judge she has sworn to uphold").

The trial and appellate opinions in State v. Mullen, discuss respondent's lack of veracity and are available to the public under Rule 1:38-1. When a judge's credibility is publicly called into question, there is a patent and significant risk that the public's confidence in the judiciary will be eroded.

Furthermore, respondent's dishonesty during the State v. Mullen trial shows a lack of integrity likewise capable of eroding public confidence in the judiciary. See id. at 98 (citing as an aggravating factor "the extent to which the misconduct, like dishonesty . . . demonstrates a lack of integrity"). She continues to dispute both her conviction and Judge Rivas's credibility

assessment. Her lack of judgment, insight, and refusal to acknowledge her misconduct casts serious doubt on her ability to meet the standards expected of judges.

The day of the defiant trespass, respondent went to the school, with her children in tow, knowing full well she had better alternatives than an in-person confrontation. She knew that she could have sought an order restraining the expulsion, could have done so from the inception of the lawsuit, and later did obtain such an order.

In Samay, the Court removed the respondent municipal judge in part because he used his judicial power for personal gain and minimized his misconduct during the removal proceedings. 166 N.J. at 43. Samay's misconduct included two relevant incidents, the first concerning his use of the initials "JMC" on a letter to his sons' private school about a tuition debt. Id. at 32-34. He claimed that he used the initials because he wanted to convey that he was intelligent enough to handle his financial affairs without guidance from the school board. Id. at 34. However, the Court found his "alleged motive . . . totally lacking in credibility." Ibid. The second involved the arrest of the respondent's son's gym teacher, David Grassie. Id. at 38. During gym class, Grassie and the respondent's son had "a verbal confrontation." Ibid. Thereafter, the respondent "ha[d] an incident report made out by a police officer" which

embellished the facts, claiming that Grassie had threatened to slap his son and to "bash [his son's] head in and kill him" after class. Id. at 38-39. The respondent signed "a complaint and warrant charging Grassie with third-degree terroristic threats," the police arrested Grassie, and Grassie appeared before the respondent for arraignment. Id. at 39-40. A different judge acquitted Grassie on all charges. Id. at 40. The respondent claimed that he signed the complaint because a detective "advised him that a parent must sign a complaint when a child is the victim." Id. at 39. The Court found that this explanation "totally lack[ed] credibility" and that the respondent "signed the complaint for revenge[.]" Ibid.

While the Court noted that removal was not warranted based upon the first incident alone, it viewed the respondent's misconduct pertaining to the letter "as part-and-parcel of [a] larger pattern" that did warrant removal based upon "unfitness for judicial office." Id. at 41, 45. It found that "[t]he evidence established beyond a reasonable doubt that [the] respondent corrupted his judicial office to benefit his personal interest and to punish people for personal reasons." Id. at 43. The Court explained:

> [A]wesome power is bestowed upon a judge on the condition that the judge not abuse or misuse it to further a personal objective . . . . [The r]espondent not only abused that power, but he betrayed the public trust and New Jersey's great tradition of judicial honesty and integrity.

[Ibid.]

The Court further found that the respondent "was less than truthful in his testimony before the ACJC and the hearing panel" which "demonstrated a lack of respect for the law." Ibid. In particular, the Court found it "disturbing that [the] respondent minimize[d] his misconduct and . . . demonstrated that he ha[d] no compunction about being less than credible in support of his position." Id. at 45. It "deem[ed] that shortcoming to be further evidence that [the] respondent lack[ed] the honor and integrity demanded of a judge." Ibid.; see also In re Russo, 242 N.J. 179, 200 (2020) (finding that the respondent judge's "explanations under oath about what occurred also reveal a lack of candor on multiple occasions" which factored into its decision to impose the removal sanction); In re DeAvila-Silebi, 235 N.J. 218, 219 (2018) (finding the respondent judge made "false statements under oath before the ACJC" which supported imposition of the removal sanction).

Here, similarly, respondent has gone to great lengths to minimize her misconduct. She testified incredibly before the ACJC. She broke the law, knowing that an alternative was available to her. The record supports the conclusion that, like the respondent in Samay, respondent has engaged in a pattern of misconduct that, coupled with her dishonesty, subjects her to the

removal sanction. See Yaccarino, 101 N.J. at 349 (imposing the removal sanction following the respondent judge's "pattern of misconduct").

Where the Court has suspended, but not removed, judges whose Code violations involved unbecoming and inappropriate interactions, the respondents were not convicted of crimes or petty disorderly persons offenses. In Brady, despite the ACJC's removal recommendation, the Court imposed a three-month suspension upon concluding that respondent violated Canon 1, Rule 1.1; Canon 2, Rules 2.1 and 2.3(A); and Canon 5, Rule 5.1(A) of the Code. 243 N.J. at 397-98. The misconduct stemmed from the judge's less-than-forthcoming communications with the police concerning her fugitive boyfriend's whereabouts and her failure to disclose that he was at her home on two occasions. Id. at 412-20.

In Brady, the Court explained that "[i]t was incumbent on [the respondent judge] to fully cooperate with law enforcement in their search" for her boyfriend despite her personal feelings. Id. at 419. The respondent told police "that she had been 'vetted' . . . to discourage the officers from handcuffing her in accordance with their normal procedures" and to obtain preferential treatment. Id. at 418. Overall, that respondent's communications with the police were "unbecoming and inappropriate for one holding the position of a judge." Id. at 421-22. Additionally, the Court and the ACJC found that some of the

respondent's testimony during the disciplinary proceedings lacked credibility. Id. at 408.

When deciding the quantum of discipline to impose, the Court recognized as mitigating factors that "[t]his was the first ethics complaint against [the] respondent, who had been on the bench for only two months" and that she experienced "emotional stress" during the incident "and in the nearly five years of criminal proceedings that followed," all of which had a "profound impact . . . on her life and career." Id. at 422. Thus, the Court concluded that a three-month suspension was the appropriate sanction, "commensurate with the conduct proven by clear and convincing evidence and to further [the] disciplinary system's purpose of preserving public confidence in the judiciary." Ibid.

Here too, respondent's interactions with the police at St. Theresa School were "unbecoming and inappropriate for one holding the position of a judge." See id. at 421-22. Had anyone but a judge been at the school that morning, that person would have been swiftly and unceremoniously ejected from the building, and/or arrested and removed on the spot. And respondent's interactions with police and school administrators took place on a busy morning, in offices, a reception area, and school hallways.

Respondent unquestionably experienced emotional stress over the conflict with school administrators, which involved her children. Like in Brady, the

record does not support a finding that respondent is remorseful. Id. at 422. Unlike the circumstances in Brady, however, respondent's testimony was deemed entirely incredible in State v. Mullen and at the ACJC hearing. The proofs in Brady were not as overwhelming as the proofs against respondent. Brady is therefore readily distinguishable.

In Williams, the Court suspended the respondent judge for three months upon finding that she violated the Code by making false or misleading statements to police during a dispute with her former boyfriend. 169 N.J. at 270-80. The Court noted that although the respondent's "actions were related only to her private life, they took place in public where others, knowing of her status as a judge, could lose confidence in the integrity and impartiality of the judiciary." Id. at 274. It emphasized that by misleading the police, "she subordinated her responsibility to act in conformance with the law to her own personal concerns and needs" and "demonstrated a lack of respect for the law that as a judge she has sworn to uphold." Ibid.

In imposing discipline, the Court found that the respondent neither "directly and willfully misused her judicial office" nor "poison[ed] the well of justice." Id. at 276-77. In balancing the aggravating and mitigating factors, the Court considered that the respondent "perform[ed] well on the bench and ha[d] a reputation as a solid and fair judge" and recognized "[h]er work with the Inns

of Court." Id. at 278. On the other hand, it emphasized its concern over her dishonesty. Ibid.

Here, although respondent's "actions were related only to her private life, they took place in public"—both at St. Theresa School and at an open court hearing—"where others, knowing of her status as a judge, could lose confidence in the integrity and impartiality of the judiciary." See id. at 274. In addition, respondent "subordinated her responsibility to act in conformance with the law to her own personal concerns and needs" and "demonstrated a lack of respect for the law that as a judge she has sworn to uphold." See ibid. And some of her misconduct involved dishonesty. Williams too is distinguishable because that respondent was not convicted of anything, and agreed to continue to engage in counseling. Id. at 278. This respondent does not acknowledge any error in judgment.

Based on respondent's defiant trespass conviction, untruthful testimony at trial and before the ACJC, and absolute dismissal of Judge Rivas' credibility findings, we conclude beyond a reasonable doubt that she violated Canon 1, Rule 1.1 and Rule 1.2; Canon 2, Rule 2.1; and Canon 5, Rule 5.1(A). Respondent's submitted proofs did not corroborate her claims. She has been less than candid throughout these proceedings and has engaged in a flagrant and

severe pattern of misconduct. See Williams, 169 N.J. at 276 (holding that imposition of the removal sanction "requires misconduct flagrant and severe").

In mitigation, this is the first disciplinary action against respondent in her seven years on the bench. Prior to the events of February 2017, she appears to have enjoyed an unblemished reputation. However, we find no other mitigating factors. Respondent continues to deny wrongdoing and blames everyone but herself for her current predicament. We note that we provided respondent multiple opportunities to provide mitigating evidence, including character references and judicial performance evaluations, but she submitted nothing.

The aggravating factors significantly outweigh the mitigating factors here. Respondent committed multiple violations of the Code. As to Counts I and II specifically, respondent broke the law, which is "unbecoming and inappropriate for one holding the position of a judge." Seaman, 133 N.J. 67 at 99. Her behavior at St. Theresa School, which resulted in the conviction for defiant trespass, clearly demonstrated a lack of respect for the law capable of eroding public confidence in the judiciary.

Respondent's conduct and untruthful testimony demonstrate unfitness for judicial office and support her removal from office. Although respondent was not reappointed, and in that sense this decision has no immediate impact upon her status, removal would bar her from holding judicial office in the future. See

N.J.S.A. 2B:2A-9 ("A judge so removed shall not thereafter hold judicial office."); R. 2:15-23(a) (explaining that judicial discipline proceedings may proceed even if a judge is "not reappointed").

Charges Stemming From the Phillips Suit

The ACJC concluded respondent's obstructive behavior during the depositions "demonstrated a failure to conform her conduct to the high standards expected of judges and impugned the integrity of the Judiciary in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1" of the Code. It further concluded that by "asserting her judicial office in response to the imposition of sanctions by Judge Kessler announced in open court on July 28, 2017," respondent violated Canon 1, Rule 1.1; Canon 2, Rule 2.1; and Canon 2, Rule 2.3(A) of the Code.

The record supports a finding, beyond a reasonable doubt, that respondent's failure to appear for a court-ordered deposition on July 19, 2017, violated Canon 1, Rule 1.1 and Canon 2, Rule 2.1. Nothing in the record established a valid reason for respondent's non-appearance. Her conduct fell below the high standard of conduct required of a sitting judge and denigrated the public's confidence in the independence, integrity, and impartiality of the judiciary. Respondent is not entitled—by virtue of her judicial appointment—or for any other reason—to disregard court orders.

Furthermore, the record supports a finding, beyond a reasonable doubt, that respondent's presence at counsel table during the Phillips hearing violated Canon 1, Rule 1.1 and Canon 2, Rule 2.1 by creating an appearance of impropriety. While respondent's interest in the proceedings involving her family is self-evident, she should have remained uninvolved. Despite Judge Kessler's invitation, respondent should have been more circumspect in her conduct, and declined it. She was a non-party and sitting judge. Instead, she exercised poor judgment by literally inserting herself between McCrea and Phillips at counsel table, and thus, seemingly, into the litigation and providing legal counsel to her husband and his attorney.

The hearing was open to the public. Court staff, members of the media, and others could have reasonably perceived respondent as attempting to practice law or leverage her status as a judge to influence the outcome of the proceedings. "Although her actions were related only to her private life, they took place in public where others, knowing of her status as a judge, could lose confidence in the integrity and impartiality of the judiciary." See Williams, 169 N.J. at 274.

The Attorney General, however, has failed to prove beyond a reasonable doubt that respondent either directly used her judicial status to gain favorable treatment or gave McCrea permission to do so on her behalf. The Attorney General has not proved beyond a reasonable doubt that respondent violated

Canon 2, Rule 2.3(A) in attempting to gain favorable treatment during her husband's deposition on July 26, 2017, the sanctions hearing on July 28, 2017, or at her own July 31, 2017, deposition, at which time she sought to seal the transcript. Nor was proof beyond a reasonable doubt submitted to establish that respondent violated the Code during her July 26, 2017 deposition.

The Attorney General contends that respondent played an active role in formulating McCrea's litigation strategies, given her significant experience as a civil trial attorney. Nonetheless, the record does not establish this beyond a reasonable doubt. The Attorney General contends that respondent should have objected to McCrea's comments regarding her position, but it is not clear from the record that respondent was even present when they were made.

Additionally, the record shows that McCrea repeatedly objected to the questions posed by Westrick at respondent's deposition, claiming they exceeded Judge Kessler's order, and advised respondent not to answer. McCrea's position lacked merit. Rule 4:14-3(c) states that "an attorney shall not instruct a witness not to answer a question unless the basis of the objection is privilege, a right to confidentiality or a limitation pursuant to a previously entered court order." Although McCrea's position lacked merit, facially, her objections comported with Rule 4:14-3(c), as she opined Judge Kessler limited the scope of the deposition to the content of five certifications and a press release.

The Attorney General argues that respondent should have known better as an experienced civil trial attorney, and answered questions despite McCrea's objections. However, the Attorney General has not cited any New Jersey case law that directly supports the position. We found no judicial discipline case addressing whether the Code requires a judge to assess and potentially override her attorney's legal advice.

Respondent's refusal to attend a court-ordered deposition on July 19, 2017, however, reflects a lack of respect for the law. She apparently believed she was in some way above the law or exempt from court orders, which constitutes "a misuse of judicial authority that indicates unfitness." Seaman, 133 N.J. at 99. Judge Kessler invited respondent to sit at counsel table because her consultations with McCrea were disruptive. Respondent exercised poor judgment by accepting the offer, and creating an appearance of impropriety in a public setting.

Thus we find beyond a reasonable doubt respondent violated Canon 1, Rule 1.1 and Canon 2, Rule 2.1 through her failure to appear for the July 19, 2017, deposition, and her presence at counsel table. Were respondent a sitting judge, we would recommend a term of suspension—not removal—for these charges. Because she is not a serving judge, however, the issue is moot. We address it no further.

CONCLUSION

Justice Long said in her Williams dissent:

> As judges, we come to our task with the cares, the weaknesses, and the emotional needs that attend all human existence. Our duty is to recognize those impediments to proper judicial performance and, as far as is humanly possible, to act outside their influence. By and large our judges meet and exceed that expectation. If, from time to time, one of our number makes an error in judgment in his or her personal life, accepts due punishment, learns from that experience and is permitted to continue as a judicial officer, . . . the public's confidence in the integrity and independence of our institution will [not] be shaken.
>
> [169 N.J. at 281 (Long, J., dissenting).]

Respondent's perception throughout this entire ordeal has been that she is right and everyone else is wrong. She expresses the view that her behavior was above reproach. Unfortunately, respondent's actions based on her improper belief that her judicial office entitled her to some special treatment or protection were reflected in the responses of some of those around her.

Once Phillips sued the school, respondent no doubt anticipated her children would be expelled, as the lawsuit clearly violated school policy. When she came to the school, respondent created a scene for nearly an hour, during which she refused to leave despite the school administrator's request that she do so. The conclusion is inescapable that but for her judicial office, police would

have escorted her out immediately, rather than attempting to convince her to leave voluntarily.

When faced with the consequences of her trespass, respondent lied under oath. She has blamed everyone but herself for her predicament. For whatever reason, respondent sought postponement after postponement of this hearing—a series of requests that increasingly became more unreasonable, and were unsupported. Her final request was for an indefinite postponement.

Respondent expresses no regret for these events, and does not acknowledge committing any wrong. Respondent's errors in judgment accumulated, and she neither learned from the experiences nor understood they violated the Canons. Respondent's refusal to take responsibility, and stunning lack of remorse, demonstrate there is no hope she could exercise better judgment in the future. Removal is the only option to preserve public confidence in the integrity of the judiciary.