SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2017-364

IN THE MATTER OF THERESA A. MULLEN JUDGE OF THE SUPERIOR 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 and the evidence of record demonstrate that the charges set forth in Counts I and II of the Formal Complaint filed against Theresa Mullen ("Respondent"), Judge of the Superior Court, relating to her interactions with Kenilworth police officers and school personnel at St. Theresa School in Kenilworth, New Jersey on February 2, 2017, for which she was convicted of defiant trespass, and her lack of candor when testifying at trial for that defiant trespass, have been proven by clear and convincing evidence. The Committee's findings and the evidence of record likewise demonstrate, clearly and convincingly, that Respondent lacked candor when testifying before this Committee in defense of these ethics charges.

The Committee's findings and the evidence of record also demonstrate, clearly and convincingly, that Respondent engaged in obstructive behavior during the course of her court-ordered deposition in a civil lawsuit brought by her husband against the Archdiocese of Newark and St. Theresa School, and abused the judicial office in response to the trial court's imposition of sanctions for that obstructive behavior, as is charged in Counts III and IV of the Formal Complaint.

Respondent's defiant trespass at St. Theresa School and obstructive behavior during her family's civil litigation constitute serious violations of the Code of Judicial Conduct for which significant public discipline, short of removal, would ordinarily be warranted. As to this conduct, we recognize that Respondent's behavior, though egregious and deserving of public discipline, sprang out of her parental feelings and emotions and was consequently taken without due circumspection. However, Respondent's demonstrable and pervasive dishonesty when testifying at trial before the Superior Court on the defiant trespass charge and during these ethics proceedings and her repeated abuse of the judicial office for which she, likewise, testified falsely, have irreparably compromised her integrity and that of the judicial office she is entrusted to hold, and renders her continued service on the bench incompatible with the principled objectives of the Judiciary and the public's continued confidence in the work of the

courts. For these reasons, the Committee respectfully recommends that proceedings be instituted to remove Respondent from judicial office in accordance with Rule 2:14-1 and N.J.S.A. 2B:2A-1 to -11.

I. PROCEDURAL HISTORY

The Middlesex County Prosecutor's Office, in July 2017, referred this matter to the Committee following that office's receipt of two municipal court matters -- one from the Borough of Kenilworth Municipal Court and a second from the City of Elizabeth Municipal Court, both located in Union County -- involving Respondent.[1] The first matter concerned a charge of defiant trespass (N.J.S.A. 2C:18-3(b)), a petty disorderly persons offense, which was filed against Respondent on February 10, 2017 vis-à-vis a Complaint-Summons (State v. Theresa E. Mullen, Complaint No. 2008-S-2017-00023) (hereinafter the "Mullen matter") signed by Father Joseph Bejgrowicz, the pastor at The Church of St. Theresa in Kenilworth, New Jersey. P-7; P-8. The Complaint-Summons was filed as a consequence of Respondent's refusal to leave St. Theresa School ("STS"), a parochial elementary school affiliated with the Archdiocese of Newark ("Archdiocese"), on February 2, 2017, despite the administration's repeated demands

[1] Administrative Directive #11-18(C)(2) requires the transfer of litigation involving a jurist or a jurist's immediate family member out of the county in which the jurist sits to avoid the appearance of impropriety.

that she do so. Id. This municipal court matter was heard in the Middlesex County Superior Court where it culminated in a bench trial in January 2018. P-9; P-10. The second municipal court matter concerned a parking ticket issued to Respondent by the City of Elizabeth (Summons No. 2004-ME-605974), which is not a subject of this ethics matter.

The Committee, consistent with its standing policy, held this ethics matter pending the conclusion of Respondent's trial on the defiant trespass charge in the Mullen matter. In the interim, the Committee opened an investigation into Respondent's conduct in a related civil lawsuit initiated by Respondent's husband, Scott Phillips, in the Essex County Superior Court, Chancery Division, in December 2016 -- Scott Phillips, as Guardian ad Litem, on Behalf of S.P., B.P., and K.P. v. Archdiocese of Newark and St. Theresa School, ESX-C-248-16[2] -- in which Mr. Phillips sought injunctive relief in multiple respects on behalf of his and Respondent's three children against the Archdiocese and STS. See Formal Complaint and Answer at ¶5. Respondent was not a party to this action. The trial court ultimately denied the requested injunctive relief by order dated August 15, 2017. See Phillips, as Guardian ad Litem, on Behalf of S.P., B.P., and K.P. v. Archdiocese of Newark and St. Theresa School, Docket No. A-4687-17T1 (App. Div. Oct. 14, 2020).

[2] Respondent's third child was added as a party plaintiff by court order on May 24, 2017. R-14 at "PA953."

A final order dismissing Mr. Phillips's claims and setting an amount for sanctions payable to Defendants was entered on February 15, 2018.[3] Ibid. at slip op. 5-6. Mr. Phillips appealed that decision as well as the trial court's July 28, 2017 imposition of sanctions for his and Respondent's failure to appear at their court-ordered depositions and their subsequent refusal to answer a majority of the questions posed to them at their rescheduled court-ordered depositions. Ibid.; P-23.

While the Phillips matter was pending, a two-day bench trial was held in the trespass case on January 24 and 25, 2018. On February 28, 2018, Respondent was found guilty of defiant trespass and sentenced on April 11, 2018 to pay a fine, court costs, and penalties. P-9 thru P-12. Respondent filed a motion for a new trial, which the trial court denied on July 9, 2018. P-13. Respondent appealed that decision. See State v. Theresa Mullen, Docket No. A-5569-17T4 (App. Div. Oct. 14, 2020) (slip op. at 2).

While Respondent's appeal in the Mullen matter and that of her husband's in the Phillips matter were pending, the Committee, on May 1, 2018, following an extensive investigation, filed a four-count Formal Complaint against Respondent charging her with conduct

[3] On learning that the parties did not receive a copy of the court's February 15, 2018 order, the court reissued the order on May 4, 2018. See Phillips, as Guardian ad Litem, on Behalf of S.P., B.P., and K.P. v. Archdiocese of Newark, Docket No. A-4687-17T1 (App. Div. Oct. 14, 2020) (slip op. 6, fn. 7).

in contravention of Canon 1, Rule 1.1 and Rule 1.2, Canon 2, Rule 2.1 and Rule 2.3(A), and Canon 5, Rule 5.1(A) of the Code of Judicial Conduct. These charges relate to Respondent's conduct on February 2, 2017 while at STS for which she was convicted of defiant trespass and her conduct during the Phillips litigation, which included obstructive behavior and abuse of the judicial office.

Respondent filed an Answer to the Complaint on July 6, 2018 in which she admitted certain factual allegations, with some clarification, denied others and denied violating the cited Canons of the Code of Judicial Conduct.

The Committee convened a Formal Hearing on September 11, 2019, which continued for three additional days – September 12, 2019, and October 16 and 18, 2019 – until its conclusion.[4] Respondent appeared, with counsel, and offered testimony in defense of the asserted disciplinary charges as well as that of two fact witnesses. The Presenter called nine fact witnesses in support of the asserted disciplinary charges. The Presenter and Respondent offered exhibits, the majority of which were admitted into evidence, without objection. See Presenter's Exhibits P-1 thru P-

[4] A minimum of seven Committee members were present on each hearing day. See Rule 2:15-3(a). The Committee members who did not participate in every hearing day read the hearing transcripts for those missed days and the Committee collectively reviewed the record in its entirety. Ibid.

39;[5] see also Respondent's Exhibits R-1 thru R-17. Presenter and Respondent, with leave of the Committee, filed post-hearing briefs on February 13, 2020, which the Committee considered.[6]

On January 15, 2020, more than 16 months after appealing her conviction for defiant trespass and while that appeal was still pending, Respondent filed a motion with the Appellate Division to supplement the record in support of her application for a new trial based on the existence of additional video evidence.[7] See State v. Theresa Mullen, Docket No. A-5569-17T4 (App. Div. Oct. 14, 2020) (slip op. at 2).

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[5] Exhibits P-19 and P-21 are duplicate exhibits. Presenter withdrew exhibit P-37.

[6] Consistent with Rule 2:6-8, references to the Presenter's and Respondent's post-hearing briefs are designated as "Pb" and "Rb," respectively. The number following this designation signifies the page at which the information is located.

[7] The additional video evidence consisted of the following five items:

(1) video and audio of Respondent and her family arriving at STS on the morning of February 2, 2017,
(2) a series of unidentified photographs,
(3) a short 2-4 second video with unintelligible audio of a brief conversation,
(4) video and audio of Respondent's discussion with her husband on February 2, 2017 while at the rear entrance to STS about driving their older child to school, and
(5) video and audio of Respondent and her family as they exited STS and returned to their respective vehicles.

See Order and Opinion, State v. Mullen, Complaint No. 2008-S-2017-00023, dated March 30, 2020, made a part of the record.

These videos were reviewed by the Committee at the ethics hearing after which Respondent, utilizing a single compact disc, moved them into evidence. R-11.

On February 24, 2020, the Appellate Division remanded the Mullen matter to the trial court to review Respondent's additional video evidence and determine its impact, if any, on the trial court's verdict. Ibid.

On March 30, 2020, the trial court denied Respondent's motion to reconsider the verdict based on the additional video evidence. See Order and Opinion, State v. Mullen, Complaint No. 2008-S-2017-00023, dated March 30, 2020, made a part of the record. Respondent did not file an amended notice of appeal contesting that decision. See State v. Mullen, Docket No. A-5569-17T4 (App. Div. Oct. 14, 2020) (slip op. at 2).

On October 14, 2020, the Appellate Division affirmed Respondent's conviction for defiant trespass after considering the trial court's credibility determinations, which accepted the State's witnesses' testimony and found Respondent's testimony incredible. See State v. Mullen, Docket No. A-5569-17T4 (App. Div. Oct. 14, 2020). On that same date, the Appellate Division dismissed as moot Mr. Phillips's appeal of the denial of his request for injunctive relief and affirmed the trial court's imposition of discovery sanctions in the Phillips matter. See Phillips, as Guardian ad Litem, on Behalf of S.P., B.P., and K.P. v. Archdiocese of Newark, Docket No. A-4687-17T1 (App. Div. Oct. 14, 2020).

The Committee offered counsel the opportunity to brief the effect of the Appellate Division's decisions in State v. Mullen,

A-5569-17T4, and Phillips v. Archdiocese of Newark, A-4687-17T1, on the charges at issue in this ethics matter and the recommended quantum of discipline if such charges were sustained. The Presenter and Respondent filed responsive briefs on November 5 and 6, 2020, respectively, each of which the Committee considered.[8] Respondent filed two additional, unsolicited, supplemental briefs, the first on November 10, 2020 and the second on November 20, 2020, which the Committee also considered.[9]

After carefully reviewing 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 1993. See Formal Complaint and Answer at ¶1. At all times relevant to this matter, Respondent served as a Superior Court Judge in the Family Division in the Union vicinage, a position she continues to hold. Id. at ¶2.

The facts pertinent to this judicial disciplinary matter are, in part, the subject of Respondent's and her husband's personal

[8] References to the Presenter's and Respondent's supplemental post-hearing briefs are designated as "2Pb" and "2Rb," respectively.
[9] References to the Respondent's two additional supplemental briefs are designated as "3Rb" and "4Rb," respectively.

video recordings or are a matter of public record in either the Mullen or Phillips matters, respectively. R-2; R-3; R-11; P-11; P-12; P-23; P-24. Those facts concern Respondent's conduct while at her children's parochial elementary school for more than an hour (i.e. 7:50 a.m. until 9:07 a.m.) on the morning of February 2, 2017 to contest their expulsion, resulting in her conviction for defiant trespass, and her obstructive conduct during her family's prolonged legal battle with STS and the Archdiocese of Newark, with which STS is affiliated, beginning in December 2016. See Formal Complaint and Answer at ¶¶1-69; see also P-4; P-5; P-11; P-22; P-23; P-24; R-2; R-3; R-11. These legal disputes were the subject of intense public scrutiny, generating significant press and local media attention, including two press releases from the Archdiocese. 2T119-18 to 2T120-3; 3T28-20 to 3T29-12; 3T123-6-8;[10] P-38; P-39; R-15.

Respondent, in the glare of that public scrutiny, attempted to improperly use her judicial office to frustrate the court's exercise of its authority in the Phillips matter to impose a sanction for Respondent's and her husband's obstructive behavior during that litigation, and demonstrated her willingness to be

[10] Reference to the hearing transcripts are as follows:

- "1T" - Transcript of Hearing dated September 11, 2019
- "2T" - Transcript of Hearing dated September 12, 2019
- "3T" - Transcript of Hearing dated October 16, 2019
- "4T" – Transcript of Hearing dated October 18, 2019

less than candid when defending against the defiant trespass charge in the Mullen matter. P-11; P-22; P-23; P-24. Notably, the trial courts' determinations in both respects have withstood Appellate review. See Phillips, as Guardian ad Litem, on Behalf of S.P., B.P., and K.P. v. Archdiocese of Newark, Docket No. A-4687-17T1 (App. Div. Oct. 14, 2020); State v. Theresa Mullen, Docket No. A-5569-17T4 (App. Div. Oct. 14, 2020).

Respondent and her husband, Scott Phillips, are the parents of three children, two of whom, S.P. and K.P.,[11] were enrolled at STS during the 2016-2017 academic year.[12] See Formal Complaint and Answer at ¶¶3, 5. On December 2, 2016, Mr. Phillips filed a complaint and order to show cause in the Essex County Superior Court, Chancery Division, seeking injunctive relief on behalf of K.P. and B.P., the eldest Phillips child, against the Archdiocese of Newark and STS (Scott Phillips, as Guardian ad Litem, on Behalf of S.P. and B.P. v. Archdiocese of Newark and St. Theresa School, ESX-C-248-16). Id. at ¶5. Mr. Phillips sought to compel STS and the Archdiocese to instate their eldest daughter to the boys' basketball team for the 2016-2017 academic year, as the girls'

[11] To preserve the privacy interests of Respondent's children, the Committee refers to them by their initials, as was done in the Formal Complaint.

[12] B.P. graduated from STS in June 2016 and was attending high school during the 2016-2017 academic year. See Formal Complaint and Answer at ¶3; see also 4T4-2-8.

team had been unable to field a squad for that year, and for other relief, including stricter enforcement of the sexual harassment and bullying policies set forth in the STS "K-8 Parent-Student Handbook" (the "Handbook"). Id. at ¶¶4-5.

On February 1, 2017, Margaret A. Dames, Ed.D., the Archdiocese's Secretary for Catholic Education/Superintendent of Schools ("Dr. Dames"), notified Respondent and Mr. Phillips, in writing, that Mr. Phillips's ongoing lawsuit against STS violated the provisions of the STS Handbook and that, as a consequence, Respondent and Mr. Phillips were "requested" to remove their children from STS immediately (the "Archdiocese's letter").[13] P-2. Respondent and Mr. Phillips received the Archdiocese's letter at their home on the evening of February 1, 2017. See Formal Complaint and Answer at ¶12; see also P-1, P-35. Mr. Phillips had previously signed a receipt for the Handbook on August 30, 2016, in which he acknowledged having read and understood its provisions and conceded to its binding effect "on the students and parents during the current academic year." Id. at ¶13; see also P-2.

The relevant portions of the Handbook on which Dr. Dames relied and to which she referenced in the Archdiocese's letter to Respondent and Mr. Phillips are as follows:

[13] The legality and enforceability of the Handbook's provisions in respect of such matters is not before this Committee and is not relevant to the elements of the trespass charge.

> The fact that a student has been registered at St. Theresa School indicates that its rules, regulations, and consequences have been examined and accepted by parents and guardians.
>
> . . .
>
> If a parent implicates St. Theresa School in a legal matter, or names St. Theresa School as a defendant in a civil matter, the parent/guardian will be requested to remove their children immediately from the school.

P-2.

The attorney representing STS and the Archdiocese in the Phillips matter, in an effort "to avoid any confusion" as to the intent of the letter, emailed a copy to Mr. Phillips's counsel and indicated that "neither [S.P. nor K.P.] should be coming to St. Theresa's School tomorrow morning or any day thereafter." Mr. Phillips's counsel forwarded this email and attachment to Mr. Phillips and Respondent that same day. P-1; P-2; 4T92-20 to 4T93-16; see also Formal Complaint and Answer at ¶12. Respondent reviewed the email that evening. See Formal Complaint and Answer at ¶12.

The then-principal of STS, Deacon Joseph Caporaso, notified Father Joseph Bejgrowicz, the parish priest, on February 1, 2017, of these circumstances and requested his presence at STS on the morning of February 2, 2017 in the event Respondent and her husband defied the Superintendent's directive and appeared at STS with S.P. and K.P. 1T30-11 to 1T31-12; 1T73-21 to 1T74-7; P-9 at T158-

12 to T159-13; R-1 at ¶¶2-5. For his part, Father Bejgrowicz apprised Kenilworth Police Chief, John Zimmerman, of the situation who, in turn, assigned Kenilworth police officer then-Detective Sergeant (Now-Lieutenant) James Grady and STS Resource Officer, Detective Brian Pickton, to report to STS on the morning of February 2, 2017. P-4; 1T73-21 to 1T75-9; 2T5-13-22; R-1 at ¶¶5-7; 2T31-20 to 2T32-3; 2T116-9 to 2T117-11; 2T118-2-10. Chief Zimmerman, Lt. Grady, and Det. Pickton were familiar with Respondent through her husband who served on the Kenilworth Police force for 34 years before retiring in 2011 at the rank of captain. 2T6-1-17; 2T33-13-20; 4T6-6-7. All three officers served under Mr. Phillips at various points during their respective careers. 2T6-1-17; 2T33-13-20; 2T117-12-19.

Lt. Grady and Det. Pickton, both dressed in plain clothes, met with Deacon Caporaso at STS, as instructed, on the morning of February 2, 2017. 2T8-1-16; 2T16-6-9; 2T22-19 to 2T23-12; 2T32-4-7; 2T32-12-14; 2T33-1-12; 2T33-23 to 2T34-16. Deacon Caporaso advised the officers that Respondent, her husband, and their children were not permitted on school property. 2T8-1-16; 2T22-19 to 2T23-12; 2T32-4-7; 2T33-1-12; 2T33-23 to 2T34-16. At approximately 7:50 a.m., Respondent, her husband, and their two younger children, S.P. and K.P., arrived at STS and approached the rear entrance to the school where Deacon Caporaso and Father Vincent D'Agostino, the Parochial Vicar at St. Theresa, were

greeting incoming students and parents. 1T34-3 to 1T36-4; 1T60-15 to 1T62-23; 1T153-16 to 1T155-15; 4T4-23 to 4T5-2; R-11.

Mr. Phillips, at Respondent's urging, recorded on his cellular telephone approximately 17 minutes of the ensuing interaction at the rear entrance to the school, with the first 13 minutes captured in what appears to be one continuous recording and the remaining 4 minutes captured in a subsequent recording. 4T28-14 to 4T34-1; R-11. Respondent may be heard at the beginning of the first recording instructing her husband to "record it, record the whole thing" as they approached the rear entrance to STS. Id. Respondent, nonetheless, was noncommittal when asked at her deposition in the Phillips matter on July 31, 2017 if her husband recorded the family's interaction at STS that day, stating that she thought so, but did not "know for sure." P-25 at T167-15-17.

Deacon Caporaso and Father D'Agostino met Respondent and her family at the rear entrance to STS where they were ultimately joined by Father Bejgrowicz and Det. Pickton in the interior rear vestibule of the school. Id.; see also 1T153-16 to 1T155-15. When informed by Father D'Agostino, Father Bejgrowicz, and Deacon Caporaso (collectively the "clergy") that STS would not admit their children into the school pursuant to the Archdiocese's letter and that any dispute in that regard must be directed to the Archdiocese, Respondent became combative stating, "[t]hese kids

are enrolled in school here and they're going to be in school today." R-11. The clergy, in response, again rebuffed Respondent's demand, citing the Archdiocese's letter. Id. Respondent became increasingly defiant stating, "[w]e're going to stand here and we're going to see what happens because they're enrolled in school here . . . my kids are entitled to be here, the request that they be removed [referring to the language used in the Archdiocese's letter] is denied." Id.

The stand-off between Respondent and the clergy assembled in the rear vestibule continued for several more minutes, with STS and church personnel repeatedly advising Respondent that her children were not permitted into STS, per the Archdiocese's letter, and Respondent continually rejecting that decision and demanding her children's admittance into the building. Id. Indeed, Respondent remained steadfast that, absent a "court order barring [the children] from going to school, they're enrolled in school here . . . [the Archdiocese's] request is denied." Id. Respondent's interaction with the clergy and police personnel was in full view of the parents and children arriving for school that morning. The clergy ultimately left the vestibule area to communicate privately with the Archdiocese, while Respondent, Mr. Phillips, S.P., K.P., and Det. Pickton remained in the rear vestibule where they were eventually joined by Lt. Grady. Id.

Respondent, on greeting Lt. Grady, with whom she was familiar, immediately challenged the Archdiocese's and STS's actions in barring her children from entering the school, stating:

> Legally, how can you stop these two children from going into school cause' there's no court order. I just want to know. So, are you going to arrest us, because I'd like to know that right now? My kids are paid to go in here and the letter says they requested . . . the letter says they can request that they leave the school . . . and we're denying that request.
>
> So, my kids are supposed to be in that school. Unless there's a court order, I'd like to know if we're going to get arrested because I'm not going to stand here all day with my kids not going to school that we pay for. I get if there's a court order saying we can't be here and a judge said . . . that's ok, but my kids are entitled to be here. . . .
>
> That's our position. The request is being denied and that's what the Handbook says. So, I don't see how anybody can stand here and prevent my children from going in their classrooms and if it's going to be an issue, I'd like to know now.

R-11.

When Lt. Grady assured Respondent that he would not be arresting her or her family but was merely there to ascertain the situation and keep the peace, Respondent continued to challenge the Archdiocese's and STS's authority to ban her children from the school absent a court order, reiterating that she wanted her children to go to their classrooms. Id. Unable to answer Respondent's questions, Lt. Grady went to Deacon Caporaso's

office, located at the front of the building, to discuss the situation with the assembled clergy. Id.

In the interim, Respondent confronted Det. Pickton who was standing with Respondent, her husband, S.P., and K.P. in the rear vestibule area and stated, in a hushed tone, "I'm not going to subject my children to this. I want to know what's going to happen if they go to their classrooms because I'm telling you right now." Id. Before Respondent could finish her sentence, however, Det. Pickton interjected stating that he could not answer Respondent's inquiry, at which point the initial recording ends. Id.

The second recording begins in the rear vestibule area, though it is unclear from the record if this recording begins precisely where the first recording ended. R-11. This recording reveals only the additional 4 minutes Respondent and her family waited in the rear vestibule for STS personnel before Respondent's husband left STS to transport their eldest child to high school. Id.

Respondent's recording on her personal cellular telephone begins at 8:09 a.m. as her husband exits the school through the back entrance to STS. R-2. This recording lasts approximately 24 minutes (8:09 a.m. – 8:33 a.m.) and its contents were transcribed and made a part of the record in this matter. R-2; R-3; 4T101-13-

25.[14] As evinced by this recording, Respondent, on being summoned to Deacon Caporaso's office, waited several minutes outside the office with her children and Father Bejgrowicz before being invited into the office to speak with the assembled clergy. R-2; R-3 at T3-24 to T8-19.

Respondent met with the clergy and Chief Zimmerman in the Deacon's office for approximately ten minutes, during which time she was again confrontational, argumentative, and defiant when told repeatedly by the clergy that her children were expelled from STS and she was trespassing on school property. R-2; R-3 at T9-4 to T22-24; 2T11-3-18; 2T38-15-21; 2T118-14 to 2T119-12; 2T120-25 to 2T121-2; 2T124-5 to 2T126-3.

At the outset of the meeting, Deacon Caporaso read to Respondent the following statement issued by the Archdiocese:

> We understand that you refuse to withdraw the children from the school as you've been requested to do pursuant to the student handbook that you signed on August the 16th, 2016. Therefore, the children are expelled. You must leave the premises immediately. If you refuse to comply, then you'll be considered trespassing.

R-2; R-3 at T9-7-14; P-3; 1T45-6-7; 1T166-25 to 1T167-2; 4T114-12-20.

[14] Portions of this transcript include remarks by school personnel unaffiliated with the circumstances involving Respondent and her children. R-3 at T3-13-20.

Respondent again refused to leave the premises and, on this occasion, explicitly and repeatedly invited her and her children's arrest on a criminal trespass charge, stating:

> Then you guys can bring criminal charges against us, because the – I didn't sign that [referring to the STS Handbook acknowledgement], but Scott had to take my son to school, so.
>
> . . .
>
> So, I want to be clear, this is being recorded. So, everything that everybody says is recorded. That's fine. I will not – the handbook says that we can be requested to leave the school. We're denying that request. So, if the police want to arrest me and my children for trespassing, they can go ahead and do that. Without a court order, I'm not leaving these premises and my children are not leaving these premises.
>
> So, when Scott comes back here you can deal directly with him. I need to go to work, but I will stay here, and I will sit here, and I'm not leaving. So, if the police want to bring charges against me for trespassing, or my children, they can do that.
>
> . . .
>
> I'm not trespassing when the handbook says that they can be requested to leave. I'm denying that request. I pay tuition here. My kids are enrolled in this school. My – we signed a contract for my children to be here this year.
>
> So, if the Archdiocese wants to say that we're trespassing, they are in their rights. If St. Theresa's wants to sign a complaint that I am trespassing and my children are trespassing and my husband is trespassing, then I guess St. Theresa's can do that. But I'm not leaving

> here, and my children aren't leaving here. So, if that's the way St. Theresa's wants to go, then that's the way St. Theresa's wants to go.

R-3 at T9-15 to T11-7.

During this exchange, Respondent's objections to the expulsion were twofold and at odds with each other. First, Respondent relied on semantics, noting that the STS Handbook had merely "request[ed]" she remove S.P. and K.P. from the school and she was denying that request. Ibid. Second, Respondent disclaimed any obligation to be bound by the Handbook's terms given that only her husband signed it, though he did so ostensibly on the family's behalf. As the Handbook made clear, registration of a child in STS was deemed to signify the parents' acceptance of its terms. Ibid. Respondent maintained these same conflicting positions when testifying before this Committee in defense of these ethics charges. 4T102-2-6; 4T114-15-20; 4T-175-22 to 4T-176-7; 4T-181-16 to 4T-183-9.

We find Respondent's position in both respects without merit and agree with the trial court's determination in State v. Mullen, Complaint No. 2008-S-2017-00023, that "[t]he clear import of the policy was not to offer a parent an option in the event of litigation, but rather . . . to avoid a harsher word, such as 'expulsion.'" P-11 at pg. 9. Even assuming that Respondent and Mr. Phillips sincerely believed they had a choice in the matter, that

misperception was rectified when the Archdiocese, via STS personnel, stated unequivocally at the outset of the meeting in the Deacon's office that the Phillips children were expelled. R-3 at T9-7-14. Respondent's continued reliance thereafter on the cited language in the Handbook was wholly unreasonable and without a justifiable basis in fact or law, as was her position that she was not bound by the terms of the Handbook because she did not sign it. This argument, as the trial court in Mullen opined, "ignores . . . [Scott Phillips's] parental authority vis-à-vis the children" and specifically his "ability to bind the family unit to the provisions of the handbook." P-11 at pg. 8.

Respondent, nonetheless, continued to argue with the clergy for several more minutes, at one point even challenging the Archdiocese's and STS's reliance on their counsel's advice and criticizing Father D'Agostino's suggestion that Mr. Phillips's counsel and the Archdiocese's counsel attempt to resolve these issues independently of the parties. R-3 at T11-13 to T19-2. Over the course of this meeting, Respondent grew increasingly antagonistic towards the clergy and again threatened to send her children to their classrooms in direct defiance of the Archdiocese's expulsion decision, prompting Father D'Agostino, who is designated as "Father Vincent" in the transcript, to remind Respondent that her children were expelled.

> And what happens if I say send them to class? Are you going to arrest them? Are you going to arrest my children? I'd like to know that right now. Are we all going to sit here?
>
> . . .
>
> I'm not going to sit here all day, and my children are not going to sit in the hallway all day.
>
> . . .
>
> Okay, so I'm going to tell them to go to class.
>
> . . .
>
> FATHER VINCENT: They're expelled, sorry.

R-3 at T19-3-23.

Respondent's video ends shortly thereafter with the clergy requesting Respondent leave the Deacon's office so they could again call their counsel. R-2; R-3 at T21-23 to T22-19. The time was 8:33 a.m. 4T111-15-19. This exchange, however, did not conclude the matter. By all accounts, Respondent and her children remained on STS property for approximately 30 minutes longer (8:33 a.m. – 9:07 a.m.), eventually leaving only after a uniformed Kenilworth police officer, Patrolman Sean Kaverick, arrived at the school to transport Respondent to police headquarters. 1T91-13 to 1T93-9; 2T15-10 to 2T19-20; 2T47-3-11; 2T76-12 to 2T79-25; 2T132-7 to 2T135-7; 4T101-13 to 4T103-3; 4T111-15-19; 4T115-21-23; P-5; P-6.

Respondent's conduct during the ensuing 30 minutes was the subject of conflicting testimony. This testimony differed in two material respects -- Respondent's location during this period,

i.e. inside or outside of STS, and her interaction, if any, with Ptl. Kaverick. 1T91-13 to 1T93-9; 1T169-20 to 1T170-1; 2T15-10 to 2T19-20; 2T47-3-11; 2T76-12 to 2T79-25; 2T132-7 to 2T135-7; 4T101-13 to 4T103-3; 4T111-15-19; 4T115-21-23.

All involved, apart from Respondent, testified that during those 30 minutes Respondent repeatedly rejected the clergy's continued requests that she leave STS and repeatedly invited the officers to arrest her. 1T46-12-25; 1T91-13 to 1T93-9; 1T160-8-12; 2T16-16-24; 2T19-8-16; 2T40-7 to 2T41-14; 2T128-23 to 2T130-4. The record, in fact, reflects that the school officials, clergy, and police officers present attempted to reason patiently with Respondent and did not express any anger or hostility towards her. Chief Zimmerman, for example, in an attempt to quell the situation, told Respondent that he "did not want to bring her out of there in handcuffs, especially with her two daughters there, who were upset . . . ." 2T130-9-14. Respondent, nonetheless, refused to leave STS voluntarily and again invited the officers to arrest her for trespass, prompting Chief Zimmerman to call for Ptl. Kaverick to physically remove Respondent from the premises. P-6; 1T91-13 to 1T93-9; 1T169-20 to 1T170-1; 2T15-10 to 2T19-20; 2T22-9-13; 2T47-3-11; 2T76-12 to 2T79-25; 2T132-7 to 2T135-7.

Ptl. Kaverick testified that he arrived at STS at 8:49 a.m. and conferred briefly with Chief Zimmerman, Lt. Grady, and Det. Pickton in the lobby area before speaking privately with

Respondent, who was standing between the Deacon's office and the gym. 2T76-12 to 2T94-23. These circumstances were confirmed by the officers at the scene. 2T18-2-8; 2T18-21 to 2T19-7; 2T42-8-25; 2T132-7 to 2T135-7. During their brief exchange, Ptl. Kaverick pleaded with Respondent to leave peaceably without the need for an arrest, but Respondent again refused, telling the officer that he would need to "handcuff" her if he wanted her to leave the premises. 2T80-19 to 2T82-12; 2T94-9 to 2T95-4.

Several minutes later, Respondent walked to the front steps of STS, presumably to meet her husband who had returned to the school and had approached the group that had gathered with Respondent on the steps, i.e. the four officers and Fathers Bejgrowicz and D'Agostino. 2T82-13 to 2T84-18; 2T135-19 to 2T136-13. Ptl. Kaverick met Mr. Phillips outside as Mr. Phillips approached the school and asked for his assistance in convincing his wife to leave peacefully and avoid being arrested in front of their children. 2T82-17 to 2T83-4; 2T114-6-13.

Respondent began recording again as Mr. Phillips engaged with the clergy on the front entry steps to STS. R-3 at T23-1-7. This recording lasts approximately one minute and depicts the assembled clergy advising Mr. Phillips that he and Respondent were trespassing and insisting that they leave the premises. Ibid. Following a terse exchange between Mr. Phillips and Father Bejgrowicz, for which Respondent scolded her husband, saying "stop

it," the recording ends. Id. at T24-14-25. Respondent ultimately left STS with her family at approximately 9:07 a.m., more than an hour after they had first arrived at STS and only after Ptl. Kaverick had been summoned to the school to arrest her. 4T10-7 to 4T11-19; 4T106-11 to 4T107-6; R-9; R-10.

Respondent's testimony at trial and before this Committee in respect of these events differed markedly from that of the other witnesses. Respondent testified that on leaving the Deacon's office at 8:33 a.m. she went directly outside to the front steps of STS to call Mr. Phillips where she remained for roughly 30 minutes while her children waited inside the school. 4T7—22-25; 4T101-13 to 4T103-3; 4T111-15-19; 4T115-21-25. Respondent denied having any further conversations with school officials or any Kenilworth police officers and specifically denied speaking with Ptl. Kaverick, whom she conceded was present at STS that morning. 4T130-10 to 4T131-10.

The trial court, when confronted with this conflicting testimony, found Respondent incredible and credited the testimony of the clergy and the officers, which the trial court determined was corroborated by the earlier video evidence in which Respondent may be heard refusing to leave STS and inviting the officers to arrest her. P-11 at pg. 10. The trial court characterized Respondent as "combative and evasive" on the stand and found that her statements concerning her interpretation of the Archdiocese's

letter "and the import of the signed [Handbook] acknowledgement [to] further undermine her credibility." Id. at pg. 11. We agree.

We cannot reconcile Respondent's claim that she voluntarily left STS once her husband returned to the school, and without any further engagement with the clergy or police personnel during the intervening 30 minutes, with her prior steadfast refusal to leave the premises until her children were placed in their classrooms or she was arrested. Respondent's testimony in this regard strains credulity and does not comport with the evidence of record. We find Respondent's purported justifications for her conduct contrived and not worthy of belief, especially her stated interpretation of the word "request" in the STS Handbook and her reliance on the absence of her signature on the corresponding acknowledgement card as a basis to deny the Handbook's applicability to her children.

Weighing these circumstances against the proffered testimony, we find the officers' testimony, particularly that of Officer Kaverick, more credible than that of Respondent as it accords most directly with Respondent's conduct throughout the course of her interactions with the police and clergy that day, as well as with that of the police who went to extraordinary lengths to avoid escalating the situation and having to arrest Respondent. 2T137-8 to 2T138-13. Indeed, Lt. Grady and Det. Pickton may each be heard on the initial recording in the rear vestibule of STS denying any

intent to arrest Respondent or her family when specifically questioned by Respondent about the possibility of such an arrest. R-11.

Thereafter, throughout their interactions with Respondent, both officers repeatedly advised her that they did not want to arrest her or her family and requested she leave without further incident. 2T14-22 to 2T15-5; 2T41-1-12. When questioned about their approach to dealing with Respondent and her family that day, Det. Pickton testified as follows:

> We provided as much latitude as we would anybody in . . . her position and with Mr. Phillips being a retired captain in the police department. Any other parent on that day would not have made it five feet without being arrested once we [were] told that they were trespassing and no longer welcome on the premises.

2T64-13-19.

Chief Zimmerman, likewise, testified repeatedly that his "ultimate goal" was to "keep the peace" and to avoid a situation in which Respondent would need to be arrested and forcibly removed from the premises. 2T119-18 to 2T120-3; 2T127-12-14; 2T130-9-14; 2T134-16 to 2T135-7. Accordingly, the Chief instructed his officers that day to "treat everybody with kid gloves." 2T156-9-20.

For his part, Ptl. Kaverick, much like Lt. Grady, Det. Pickton, and Chief Zimmerman, presented himself as a reluctant

participant in these events given his appreciation for Mr. Phillips as a former Kenilworth Police captain whom he respected and Respondent as a judge whom he was understandably loathe to arrest. Given the unenviable position in which he was placed, Ptl. Kaverick's stated attempt to persuade Respondent to leave the premises and avoid arrest, as his colleagues had done over the course of their interactions with Respondent that day, finds support in the surrounding circumstances and eyewitness testimony. We find these factors enhance Ptl. Kaverick's credibility and evince Respondent's lack of veracity as to these events when testifying before this Committee.

Following this incident, Mr. Phillips, on the afternoon of February 2, 2017, filed an emergent motion in the Phillips matter to compel the Archdiocese and STS (collectively "Defendants") to readmit K.P. and S.P. See Exhibit OO to Respondent's Answer; see also State v. Mullen, Docket No. A-5569-17T4 (App. Div. Oct. 14, 2020) (slip op. at 12, fn.4). The trial court denied that motion, but the Appellate Division, on February 2, 2017, granted Mr. Phillips's emergent application for a stay of the expulsion. See Exhibit OO to Respondent's Answer; see also Phillips, as Guardian ad Litem, on Behalf of S.P., B.P., and K.P. v. Archdiocese of Newark, Docket No. A-4687-17T1 (App. Div. Oct. 14, 2020) (slip op. at 4). On February 15, 2017, during the pendency of the stay, Joseph W. Cardinal Tobin of the Archdiocese of Newark, rescinded

the children's expulsion, and both completed the 2016-2017 academic year at STS. See Formal Complaint and Answer at ¶36.

We now consider the facts relevant to Respondent's conduct in the Phillips action. On April 3, 2017, the Archdiocese advised Respondent and Mr. Phillips, by letter, that STS would not accept their children's enrollment applications for the upcoming 2017-2018 academic year. Ibid. at ¶37. Citing STS's Mission Statement, the Archdiocese's letter reads as follows:

> Actions and events initiated by you over the last several months have directly interfered with the fulfillment of this Mission not only for St. Theresa's School, but also for many of its administration, staff, students, and parents. In order to restore the promise of a 'family atmosphere' characterized by 'respect, challenge, responsibility, and exceptional love,' St. Theresa's School will not be able to accept [S.P.]'s and [K.P.]'s enrollment for the 2017-18 school year.

Ibid.

Mr. Phillips, on May 9, 2017, filed a Third Amended Complaint in the Phillips matter alleging that the Archdiocese's decision of April 3, 2017 to decline to readmit his children to STS for the 2017-2018 academic year constituted an expulsion in retaliation for his filing of the Phillips lawsuit. See Formal Complaint and Answer at ¶42. Thereafter, Mr. Phillips sought a permanent injunction to compel STS to educate S.P. and K.P. for one year and three years, respectively. See Formal Complaint and Answer at ¶45.

The trial judge, on June 8, 2017, scheduled a plenary hearing for July 24, 2017 to address the issue of Mr. Phillips's "entitlement to a mandatory permanent injunction" as to the "re-enrollment/expulsion of S.P. and K.P." from STS in advance of the start of the 2017-2018 academic year. R-14; see also P-18 at "Statement of Reasons." The Phillips litigation ultimately continued in the Chancery Division for approximately 14 months and involved significant motion practice (December 2, 2016 to February 15, 2018). R-14; see also P-18 at "Statement of Reasons."

Though the Phillips matter has an extensive procedural history and involved multiple legal issues, much of it is unrelated to the conduct at issue in this ethics matter. Our focus, rather, is limited to Respondent's obstructive behavior vis-à-vis her deposition, as alleged in the Formal Complaint, and her abuse of the judicial office in response to the trial court's imposition of sanctions against her husband for that obstructive behavior. The salient facts that inform our decision in this regard are as follows.

On May 18, 2017, Defendants' counsel, Christopher Westrick, Esq., served Mr. Phillips's counsel, Susan McCrea, Esq., with deposition notices for Respondent and Mr. Phillips, which sought to depose each on June 13 and June 14, 2017, respectively. P-14; see also Formal Complaint and Answer at ¶43. Ms. McCrea, who represented Respondent for purposes of the deposition, emailed Mr.

Westrick on June 9, 2017 noting her refusal to produce Mr. Phillips and Respondent for their depositions based upon the trial court's Case Management Order of May 24, 2017, which provided for the exchange of "limited paper discovery," and noting that Respondent was not a named party to the litigation, though clearly a fact witness. See Formal Complaint and Answer at ¶44; R-14 (labeled "PA952") at ¶2.

On June 26, 2017, Defendants filed a motion to compel Respondent's and Mr. Phillips's depositions and for sanctions. P-15. On July 11, 2017, the trial court denied Mr. Phillips's application for a stay of the plenary hearing and ordered Respondent and Mr. Phillips to appear for their depositions on July 19, 2017. P-16. The court's order limited the scope of the depositions "to the issues to be addressed at the July 24, 2017 plenary hearing." Ibid.

On July 13, 2017, the trial court issued two additional orders, the first memorializing the court's decisions following a hearing on June 29, 2017 concerning Mr. Phillips's injunction petition and related discovery issues, and the second – "2nd Amended Order" -- memorializing a telephonic hearing concerning the scheduling and case management of the plenary hearing. R-14 at "PA1442" thru "PA1444;" P-17. Though each order addressed different aspects of the litigation, there was overlap concerning several items of particular importance to this ethics proceeding.

The first order of July 13, 2017 identified the issues to be addressed at the plenary hearing, i.e. "to determine if Defendants' decision to deny re-enrollment of S.P. and K.P. was an abuse of discretion, or an appropriate secular decision, or an ecclesiastical decision protected by the First Amendment." P-17 at ¶2. The "2nd Amended Order" denied Mr. Phillips's renewed application for a stay of the plenary hearing and his companion motion to bar Respondent's deposition. R-14 at "PA1442" thru "PA1444." Both orders directed Respondent and Mr. Phillips to appear for their depositions, the "2nd Amended Order" again specifically requiring them to appear on July 19, 2017. R-14 at "PA1442" thru "PA1444;" P-17.

On July 18, 2017, Ms. McCrea, by email to Mr. Westrick, unilaterally adjourned the court-ordered depositions again on the basis that Mr. Phillips intended to file an emergent appeal. See Formal Complaint and Answer at ¶48. Notably, on July 13, 2017, the trial court had denied Mr. Phillips's application for a stay of the plenary hearing and no appeal of that decision had been filed. R-14 at "PA1442" thru "PA1444." Indeed, Mr. Phillips never filed the emergent appeal application on which Ms. McCrea's unilateral adjournment of the depositions was premised. P-23.

On July 19, 2017, the trial court, following an impromptu case management conference on July 18, 2017, again denied Mr. Phillips's application for a stay of the plenary hearing pending

appeal and his related application for a stay of Respondent's deposition pending appeal. R-14 at "PA1474" to "PA1477." The court ordered Respondent deposed that same day. Ibid. Respondent, however, again failed to appear for her court-ordered deposition on July 19, 2017. P-23; see also Formal Complaint and Answer at ¶48. When questioned about her failure to appear, Respondent testified before this Committee that she did so on the advice of her counsel, Ms. McCrea. 4T118-5-9. As will be discussed herein, we find this explanation inadequate to defend against these ethics charges.

Defendants filed a second motion to compel Respondent's and Mr. Phillips's depositions and for sanctions, which was granted, in part, on July 24, 2017. P-20. The court ordered Respondent's and Mr. Phillips's depositions to occur on July 26, 2017 and denied plaintiff's third motion to stay the plenary hearing pending appeal. P-18. The court did not impose sanctions for the Plaintiff's contempt of the July 13, 2017 court order. Ibid.

On July 26, 2017, Respondent appeared, with Mr. Phillips, for her court-ordered deposition, dressed in "running clothes," and refused to answer approximately 95% of the questions posed to her at the direction of her counsel. P-19; 3T93-16 to 3T94-7. The questions Respondent refused to answer included those relating directly to Mr. Phillips's theory of the case, such as:

> Do you think the articulated reasons by the defendants to not permit the re[-]enrollment of your children in [STS] in September is a smokescreen?
>
> Do you disagree with any of the reasons that have been provided by the defendants to not permit the re-enrollment of your children to St. Theresa School?
>
> Do you support the lawsuit that your husband is pursuing to get your children readmitted to St. Theresa School for September?

P-19 at T28-11-14; T29-1-4; T42-4-6.

Ms. McCrea instructed Respondent not to answer these and a majority of the other questions posed to her primarily on relevance grounds, claiming erroneously that the court limited the depositions to the information contained in five certifications Defendants submitted concerning STS's reasons for denying the Phillips children's re-enrollment application for the upcoming academic year, and an Archdiocese's press release.[15] P-19. Respondent, before this Committee, testified that she relied on her attorney's advice when refusing to answer these questions.[16] 4T119-13 to 4T120-12; 4T144-5 to 4T145-2. Again, as will be

[15] A subset of counsel's objections, raised specifically in response to questions about Respondent's conduct while at STS on February 2, 2017, relied on Respondent's 5th Amendment privilege against self-incrimination given the pendency of the trespass charges in the Superior Court. P-19 at T29-7-20; T30-9-24; T33-13 to T34-2; T37-2-22; T39-13-22; T40-6 to T41-10.

[16] Ms. McCrea, unlike Respondent, was not a certified civil trial attorney and had very little litigation experience. 3T109-1-3; 3T122-19 to 3T123-5; 3T145-1-16.

discussed herein, we reject Respondent's assertion that reliance on her counsel's advice constitutes a legitimate defense to these ethics charges.

We also heard testimony from Mr. Westrick concerning Respondent's demeanor generally during her deposition on July 26, 2017, which is pertinent to this ethics matter. Throughout her deposition, Respondent repeatedly looked at her cellular telephone, seemingly failing to give Mr. Westrick her full attention. 3T20-17 to 3T21-15; P-19 at T37-23 to T38-10, T46-21 to T47-6. Mr. Westrick testified that he was very disturbed by Respondent's conduct, which he characterized as "disrespectful to the process." 3T20-17 to 3T21-15. Respondent has disclaimed any inappropriate conduct during her July 26, 2017 deposition, insisting that she behaved professionally and appropriately throughout the proceeding. 4T128-11 to 4T129-17.

In respect of Respondent's attire that day, i.e. "running shorts and a tee shirt," Respondent, though not disputing Ms. McCrea's description of her outfit, disclaims any recollection of what she wore on that occasion. 4T129-18 to 4T130-6. Accepting that she was dressed in running clothes, Respondent denies any intent to disrespect anyone involved in the matter by her attire. 4T130-7-9.

Irrespective of Respondent's intent, we find her extremely unprofessional clothing that day disrespectful to the process and

to the parties and are troubled not only by Respondent's judgment in this circumstance, but by her evident inability to appreciate the issue with that attire even now. Depositions are part of the business of litigation and are generally regarded by those in the legal community as a business event at which business attire is expected. Respondent, by appearing for her deposition in shorts and a tee shirt, and by repeatedly looking at her cell phone, conveyed the clear impression to STS and the Archdiocese that she did not take the proceedings seriously. Such conduct conflicts sharply with her ethical obligations under the Code of Judicial Conduct to uphold and promote the Judiciary's integrity and that of the judicial process generally.

Respondent refused thereafter to leave the deposition room to permit the taking of Mr. Phillips's deposition despite Mr. Westrick's objection to her presence given her status as a non-party. See Formal Complaint and Answer at ¶52. Ultimately, the trial court intervened and, finding no legal basis to permit Respondent's presence during Mr. Phillips's deposition, precluded her from the room. Ibid. at ¶54. Ms. McCrea, when arguing this issue to the trial judge, expressly relied on Respondent's status as a jurist stating, "[s]he's a superior court judge. She is certainly not going to make any gestures or motions or anything like that to Mr. Phillips." Ibid. at ¶53.

Following these depositions, Defendants renewed their request for sanctions about which the trial court heard oral argument on July 28, 2017. P-22. The court, at oral argument, granted Defendants' motion, finding that the depositions were never limited in the manner described by Ms. McCrea. Ibid. at T55-22 to T56-18. The court opined as follows:

> The plaintiff has alleged at varying times that the conduct of the Archdiocese was a smoke screen, that it was taken in bad faith, . . . for their underlying reason, which was, essentially, to take some kind of unfair action against the children because of the relationship of the parents. The depositions were never limited to only the expulsion decision.
>
> . . .
>
> The defendants have a right to inquire about the evidence which will be presented against them . . . just as the plaintiff has a right to inquire as to . . . the scope of the expulsion decision. . . . At depositions, there appears to be an election not to answer questions which relate to the plaintiff's direct case and which also relate to questions of credibility. . . .
>
> I never . . . said [the deponents] should not answer questions about their direct case. All I did and my order is precise, it limited it to the defendants' proofs on the expulsion decision. It in no way related to plaintiff's proofs.
>
> . . .
>
> So my [July 13, 2017] order was quite clear that it was any issue that could be brought up at the plenary hearing, an issue that could be brought up by the plaintiff or an issue that could be brought up by the defendant. That was the scope of the depositions. . . .

P-22 at T56-11-18; T57-12-20; T61-17-21; T73-22 to T74-1.

Accordingly, the trial court ordered Mr. Phillips to pay Defendants' counsel's fees and costs for the July 26, 2017 deposition, as well as the fees and costs for the sanctions motion, and the costs for a new deposition to be held on July 31, 2017 in the Essex County courthouse. P-23. In reaching this decision, the court explained:

> The court believes . . . it would have the authority, if it so chose, to dismiss the plaintiff's case. It would also have the authority to bar the testimony of the plaintiff and [Respondent]. And the reason it would have that authority is in reviewing the depositions, there were basic questions that were 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. However, this court in the context of this case is reluctant to refuse to hear any part of the plaintiff's case, even though it would well be justified to do so.
>
> The court, however, will impose sanctions. The failure to answer questions is a violation of the rules. The failure to do so was done by the plaintiff at his peril. . . .

P-22 at T85-8-23.

As the court noted, the "delay in this matter [was] due in large part to Plaintiff and [Respondent's] failure to appear at depositions . . . and Plaintiff and [Respondent's] failure to answer questions based on the direction of counsel . . . ." P-23.

Oral argument continued thereafter regarding the scheduled trial dates, during which Ms. McCrea requested the opportunity to speak with Respondent privately, which the court granted. P-22 at T99-11-13; T103-15-17. On returning to the courtroom, Ms. McCrea made the following statement, on the record:

> I conferred with my client . . . and I just want to make a record . . . . 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 personnel. On the record, my client feels she was publicly humiliated in her judicial position --
>
> . . .
>
> She feels embarrassed and extremely humiliated as a sitting judge that this [c]ourt did not, when it knew sitting from the bench looking into the spectra of the courtroom, did not ask the media to leave or anyone else to leave.

Ibid. at T104-7-16; T104-25 to T105-4.

The trial court rejected this contention noting the absence of any court rule or case law which requires Respondent's status as a jurist to be the proper subject of an application to seal the courtroom. Ibid. at T107-16-19. Respondent, when questioned by this Committee about her attorney's remarks, denied instructing Ms. McCrea to make these statements, but acknowledged advising Ms. McCrea that she was upset. 4T171-4-14. As discussed herein, we find Respondent's testimony in this regard incredible.

On July 31, 2017, Respondent's deposition was retaken in the Essex County courthouse. P-25. During this deposition, Respondent again insisted on holding her cellular telephone while being deposed despite Mr. Westrick's repeated request that she leave it on the table. P-25 at T190-12 to T191-5. Moreover, at the outset of the deposition, Respondent refused to answer any questions she deemed of a "personal nature," (e.g. "Ms. Mullen have you ever been a party to a lawsuit before?;" "Where were you when you first found out that . . . there were not enough girls for a seventh grade girls' basketball team last fall?") claiming that her position as a Superior Court judge required that her "personal" information remain confidential. P-24; P-25 at T81-5 to T82-8; T126-23 to T127-16.

Respondent, through counsel, moved before the trial court during her redeposition to seal the transcript for 48 hours, "pending a specific application to redact or seal portions of the deposition transcript[] because . . . [as] . . . a sitting Superior Court judge [she argued] . . . her personal life should be [kept] confidential." P-24. Respondent also moved to require Mr. Westrick to refrain from discussing with his clients the contents of the deposition transcript. Ibid. The trial court denied both applications, finding no basis to seal the transcript and expressing an unwillingness to limit Mr. Westrick's preparation on the eve of the plenary hearing. Ibid. Mr. Westrick, however,

agreed, at the court's request, to only discuss Respondent's testimony with his clients, which Respondent found unsatisfactory. Ibid. Respondent filed an emergent appeal on these issues during the deposition. R-14 at "PA1761" to "PA1764." The record is silent as to the outcome of that appeal.

B.

Respondent, in denying any impropriety in respect of her conduct while at STS on February 2, 2017 and when involved in discovery disputes with the Defendants in the Phillips matter, raises some of the same arguments deemed unpersuasive by the trial courts and the Appellate Division in State v. Mullen, A-5569-17T4, and Phillips v. Archdiocese of Newark, A-4687-17T1.[17] We likewise find Respondent's defenses inadequate to rebut the clear and convincing evidence of her several ethical breaches as alleged in the Formal Complaint and developed more fully during these ethics proceedings.

As it relates to Respondent's conviction for defiant trespass, which was affirmed by the Appellate Division on October 14, 2020,

[17] Respondent also advances as a defense two unsubstantiated allegations and a legal argument previously rejected by the trial court and again by the Appellate Division – vindictive prosecution, entrapment, and a failure to establish the elements of trespass. Rb10-14; 2Rb2. We summarily reject these defenses given the absence of any evidence in this record to substantiate Respondent's affirmative claims and the Appellate Division's affirmance of Respondent's defiant trespass conviction. See State v. Mullen, A-5569-17T4 (App. Div. October 14, 2020) (slip. op. at 17-21, 24); see also P-13.

Respondent maintains that this conviction should not be deemed conclusive evidence of a violation of the cited canons of the Code of Judicial Conduct as alleged in Count I of the Formal Complaint. 2Rb1-2. Respondent advances two arguments in support of this position, one procedural and the other substantive. Ibid.

Procedurally, Respondent asserts that her intention to file a petition for certification with the Supreme Court places the finality of Respondent's conviction at issue and, as such, renders it unreliable for purposes of this ethics matter. 2Rb2. This argument is legally untenable.

Rule 1:20-13(c)(1) and (2) provides that disciplinary proceedings premised on criminal or quasi-criminal conduct "*shall be deemed to be conclusively established by . . . a certified copy of a judgement of conviction . . . .*" Accordingly, this Committee may find that the charges relating to this conduct, as contained in the Formal Complaint, have been conclusively established. See In re Collester, 126 N.J. 468, 472 (1991) (noting that "[i]n attorney and judicial disciplinary cases, the Court gives conclusive effect to the respondent's convictions of statutory crimes and offenses.") (internal citations omitted).

Substantively, Respondent argues that there exist "numerous inconsistencies between" Respondent's and her husband's "tape recording[s] and the recollections" of the officers and clergy

present at the scene as well as "amongst those witnesses."[18] Rb4. In addition, Respondent contends that the case presented before the Committee "contained evidence . . . not presented to Judge Rivas at the petty disorderly persons trial," and that this evidence bolsters Respondent's credibility and mitigates "the conclusion reached by Judge Rivas, and affirmed by the Appellate Division. . . ." 2Rb2. Specifically, Respondent cites to Det. Pickton's testimony and the dash-cam video from Ptl. Kaverick's patrol car. 4Rb. We disagree.

Respondent's violations of the charged canons of the Code of Judicial Conduct, as alleged in Count I of the Formal Complaint, are conclusively established by her conviction for defiant trespass and are further buttressed by the very recordings Respondent moved into evidence before this Committee. Those recordings reveal Respondent's recalcitrant and combative behavior when engaging with the clergy and police personnel at STS on

[18] Respondent places great significance on the absence of the word "handcuffed" in the police reports and in the recording of her interactions with the clergy and police that day as demonstrative of the inconsistencies between their testimony that Respondent insisted on being "handcuffed" and the recording. Rb4-6. We find this discrepancy immaterial. Respondent's recording evinces, clearly and convincingly, that she refused to leave STS and repeatedly invited the officers to arrest her, conduct wholly unbefitting a jurist. The absence of the word "handcuffed" during this exchange neither alters the inappropriate tenor of the conversation nor minimizes Respondent's ethical breach in this regard. Notably, the subject recording does not capture the entirety of her time at STS that morning, 30 minutes of which were unrecorded. 4T101-13 to 4T103-3.

February 2, 2017, which is consistent in all material respects with the testimony offered by those individuals during the Formal Hearing. Det. Pickton's testimony and that of the other officers and clergy present at STS on February 2, 2017, though relevant to Respondent's lack of candor when testifying before this Committee about her conduct during the 30 minutes prior to Mr. Phillips return to STS, is not solely dispositive of these ethical violations or at variance with Respondent's defiant trespass conviction.

Similarly, the evidential value of the dash-cam video retrieved from Officer Kaverick's police vehicle is limited, at best. By all accounts, Officer Kaverick arrived at STS at 8:49 a.m. on February 2, 2017 and remained there until 9:12 a.m., which is confirmed by the dash-cam video. Though difficult to discern, Respondent and Mr. Phillips testified that it also depicts their "voluntary" departure from STS at 9:07 a.m. The record in this respect is undisputed. This timeline, however, does not bear on the ultimate issue before this Committee, i.e. whether Respondent's conduct while at STS violated the Code of Judicial Conduct.

In respect of Respondent's lack of candor before the trial court, as alleged in Count II of the Formal Complaint, Respondent asserts that the court erred in finding her incredible as to her denial of any conversations with Ptl. Kaverick while they were

both present at STS on February 2, 2017. The trial court's credibility determinations, however, were left undisturbed by the Appellate Division when affirming Respondent's defiant trespass conviction. See State v. Mullen, A-5569-17T4 App. Div. Oct. 14, 2020) (slip op. at 13).

Turning to Respondent's conduct during the Phillips litigation, Respondent denies any impropriety, as alleged in Count III of the Formal Complaint, when refusing to answer a majority of Defendants' deposition questions at her rescheduled court-ordered deposition, claiming she did so on the advice of her counsel as is her right. Rb15-16. In support of this defense, Respondent relies principally on the trial court's rationale when sanctioning Respondent's husband for this conduct, to wit that the "conduct of counsel is chargeable to their clients," as opposed to a finding that Respondent was personally contumacious. P-22 at T115-13-24. We find this defense misplaced in the judicial disciplinary context where a jurist's ethical obligations under the Code of Judicial Conduct are neither assignable nor discretionary.

Respondent, as a jurist, is charged with the duty to abide by and to enforce the provisions of the Code of Judicial Conduct and the Rules of Professional Conduct. R. 1:18. That duty, unique to the judicial office, may not be delegated to another, including a duly licensed attorney, under the auspices of the advice of counsel and thereby serve as a defense to a jurist's violation of the

ethical duties integral to that office, as Respondent seeks to do in this instance. Cf. Atty. Griev. Comm'n. v. Pennington, 387 Md. 565, 589 (Court of Appeals, 2004) (finding the duties of an attorney under the Rules of Professional Conduct non-delegable thereby precluding as an affirmative defense in attorney disciplinary matters a reliance on the advice of counsel); Accord, In re Gatti, 330 Ore. 517, 526 (Supreme Court, 2000) (finding that advice from disciplinary counsel is not a defense to a disciplinary violation).

Accordingly, we reject Respondent's blanket assertion that her conduct is automatically insulated from review under the Code of Judicial Conduct simply because it was precipitated by the advice of her counsel. Respondent is presumed to be well versed in the New Jersey Court Rules, including those governing discovery, and fully cognizant of her ethical obligations as a member of the bench and Bar, particularly those intrinsic to the practice of law and the administration of justice, such as compliance with court orders. As a member of the Bar of the State of New Jersey for approximately 24 years at the time of these events, a former member of the Union County Ethics Committee, a past president of the Union County Bar Association and the Union County Bar Foundation, and a former certified civil trial attorney prior to her judicial appointment, Respondent could not have reasonably believed that her defiance of a court order to submit to a deposition and

subsequent refusal to participate meaningfully in a second court-ordered deposition was proper or ethically appropriate, irrespective of her counsel's advice. 4T80-18 to 4T82-13. Indeed, Respondent's level of experience was far greater than that of her counsel.

Respondent's reliance on the absence of a finding by the trial court that her conduct in defying these court orders was contumacious is, similarly, erroneous as that finding is not dispositive of the issue before this Committee, i.e. whether such conduct is ethically inappropriate under the Code of Judicial Conduct. It is. Though contumacious conduct by a jurist would necessarily constitute an ethical breach, a judicial finding of contumacious conduct is not required to substantiate a violation of the Code.

Lastly, Respondent denies any impropriety, as alleged in Count IV of the Formal Complaint, regarding her counsel's reliance on Respondent's status as a jurist when objecting to the trial court's imposition of discovery sanctions in the Phillips matter. The statement at issue, which Ms. McCrea made to the court following a conference with Respondent in the hallway, concerned Respondent's feelings of humiliation and embarrassment "as a sitting judge" at the court's imposition of sanctions "on the record with the media" present.

Respondent does not dispute the impropriety of this misplaced reference to her judicial office, but disavows any responsibility for it, claiming she "did not instruct Ms. McCrea" to advise the court that she felt humiliated or embarrassed because of her judicial position, though she acknowledged advising Ms. McCrea of those feelings. Rb20-21. We find this defense spurious.

As the record reveals, Respondent sat silent while her counsel, on her behalf, invoked her judicial office improperly to contest the trial court's imposition of discovery sanctions in open court, without any legal basis for that contest, and in so doing tacitly endorsed her counsel's statements. This circumstance, when coupled with the timing of counsel's statements immediately after a conference with Respondent, evinces, clearly and convincingly, Respondent's attempt to leverage her judicial office to secure preferential treatment, i.e. the closing of a public courtroom, without a legal basis to do so, to advance her personal interests in keeping information she considered embarrassing private. We find Respondent's feigned assertions to the contrary before this Committee to further evince her lack of candor throughout these ethics proceedings.

Undeterred by these sanctions, Respondent again attempted to wield her position as a judge during her second deposition on July 31, 2017 to refuse to answer questions she deemed of "personal" nature, without any legal basis to do so, and again obstructed the

discovery process. As a witness in the lawsuit, which concerned a personal matter involving her family, Respondent was not entitled to use her judicial office to avoid the normal obligations of any witness or litigant. Such knowing and repeated manipulation of her judicial status to satisfy a personal agenda is repugnant to the integrity of the Judiciary and the public's trust in those who hold that office and cannot be countenanced.

We find these defenses, which as a whole seek to assign blame for Respondent's ethical breaches to her attorney for whom the Code of Judicial Conduct does not apply, evince Respondent's fundamental disrespect for the integrity of the judicial office, the ethical obligations to which she is bound as a judge, and the judicial disciplinary process entrusted with addressing such ethical breaches. Indeed, Respondent, more than three years after these events and two separate failed legal disputes, continues to deny any responsibility for her ethical violations, preferring instead to create a false narrative in which she behaved appropriately in all respects and either exercised no control over her counsel's stated positions on her behalf, or blindly followed her counsel's advice even when doing so plainly conflicted with the Rules of Court.

III. ANALYSIS

Judges are charged with the duty to abide by and to enforce the provisions of the Code of Judicial Conduct and the Rules of

Professional Conduct. R. 1:18 ("It shall be the duty of every judge to abide by and to enforce the provisions of the Rules of Professional Conduct, the Code of Judicial Conduct and the provisions of R. 1:15 and R. 1:17."). This obligation applies equally to a judge's professional and personal conduct. In re Hyland, 101 N.J. 635 (1986) (finding that the "Court's disciplinary power extends to private as well as public and professional conduct by attorneys, and *a fortiori* by judges.") (internal citation omitted). The rationale for this is clear, "everything judges do [personally or professionally] can reflect on their judicial office." In re Blackman, 124 N.J. 547, 551 (1991). As such, "[w]hen judges engage in private conduct that is irresponsible or improper or can be perceived as involving poor judgment or dubious values, '[p]ublic confidence in the judiciary is eroded.'" Ibid.

A failure to uphold these ethical obligations may be subject to discipline. R. 2:15-1 et seq. In matters of judicial discipline "there are two determinations to be made" -- whether a violation of the Code of Judicial Conduct has been proven and whether the proven violation "amount[s] to unethical behavior warranting discipline." In re DiLeo, 216 N.J. 449, 468 (2014).

The burden of proof in judicial disciplinary matters is clear-and-convincing evidence. Rule 2:15-15(a). Clear-and-convincing evidence is that which "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations

sought to be established, evidence, so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts in issue." In re Seaman, 133 N.J. 67, 74 (1993) (citations and internal quotations omitted).

In this judicial disciplinary matter Respondent has been charged with violating Canon 1, Rule 1.1 and Rule 1.2, Canon 2, Rule 2.1 and Rule 2.3(A), and Canon 5, Rule 5.1(A) of the Code of Judicial Conduct in four material respects: (1) refusing to leave the premises of her children's elementary school following their expulsion, resulting in her conviction for defiant trespass; (2) testifying falsely during her defiant trespass trial; (3) obstructing the discovery process in the Phillips matter; and (4) abusing her judicial office to secure preferential treatment during the course of the Phillips litigation.

We find, based on our review of the substantial and incontrovertible evidence in the record, that the charges of judicial misconduct filed against Respondent have been proven by clear and convincing evidence and that Respondent's conduct violated the cited Canons of the Code of Judicial Conduct.

Canon 1, Rule 1.1, requires judges to "participate in establishing, maintaining, and enforcing, and . . . [to] personally observe, high standards of conduct so . . . [as to preserve] the integrity, impartiality and independence of the judiciary."

Canon 1, Rule 1.2, requires judges to "respect and comply with the law."

Canon 2, Rule 2.1, directs judges to conduct themselves in a manner that "promotes public confidence in the independence, integrity and impartiality of the judiciary, and . . . [to] avoid impropriety and the appearance of impropriety."

Canon 2, Rule 2.3(A) prohibits a judge from lending the prestige of the judicial office to advance "the personal or economic interests of the judge or others, or allow others to do so."

The Commentary to Rule 2.3(A) 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.

Code of Judicial Conduct, Canon 2, Rule 2.3(A) [Official] Comment [1].

Canon 5, Rule 5.1(A), requires judges, in part, to conduct their extrajudicial activities in a manner that would not demean the judicial office.

In the instant matter, Respondent's intentional conduct, which includes a conviction for defiant trespass and the flagrant defiance of two court orders, while significant, would not,

standing alone, warrant removal from judicial office. This conduct, however, has been aggravated considerably by Respondent's pervasive and persistent lack of candor both before the trial court in the Mullen matter and before this tribunal, and by her repeated abuses of the judicial office, conduct evidencing Respondent's unfitness for that office. Such false swearing and wholesale abuse of office irretrievably impugns Respondent's integrity and that of the Judiciary and represents an egregious violation of the charged canons of the Code of Judicial Conduct for which Respondent's removal is warranted.

We begin our analysis with reference to the conclusive effect we accord Respondent's conviction for defiant trespass entered on February 28, 2018 and affirmed by the Appellate Division on October 14, 2020. R. 1:20-13(c)(1); see also In re Collester, 126 N.J. 468, 472 (1991) (noting that "[i]n attorney and judicial disciplinary cases, the Court gives conclusive effect to the respondent's convictions of statutory crimes and offenses.") (internal citations omitted).

That conviction establishes, clearly and convincingly, Respondent's violation of Canon 1, Rule 1.1 and Rule 1.2, and Canon 2, Rule 2.1, of the Code of Judicial Conduct, as alleged in Count I of the Formal Complaint. Cf. In re Curcio, 216 N.J. 335 (2013) (finding that respondent's 2nd DWI conviction constituted a violation of Canons 1, 2A and 5A(2)); In re Tourison, 199 N.J. 121

(2008) (finding that respondent's DWI conviction constituted a violation of Canons 1, 2A and 5A(2)).

Though Respondent was understandably upset at the Archdiocese's decision to expel her children from STS in the middle of the school year, her response to that decision was extreme and, at points, irrational. The recordings reveal that Respondent went to STS on February 2, 2017 determined to confront STS personnel, on camera, and demand her children's immediate re-enrollment in school. When she was met with resistance from the assembled clergy and police personnel, she grew visibly incensed and increasingly antagonistic, even goading the police to arrest her. Despite multiple opportunities to leave peaceably, Respondent remained for more than an hour, eventually requiring the presence of a uniformed police officer to expedite her departure from the property.

While we recognize that judges, as parents, are subject to the same human emotions as any other parent when confronted with the perceived unjust treatment of their children, those emotions neither excuse nor mitigate Respondent's excessive conduct in this case. Even in such circumstances, Respondent is obligated to adhere to her ethical obligations and may not engage in conduct that would impugn the Judiciary or demean the judicial office. See In re Samay, 166 N.J. 25, 43 (2001) (removing judge for multiple abuses of judicial office, including signing a complaint/warrant against his son's gym teacher and presiding over that teacher's arraignment

in retaliation for a perceived injustice, and for providing false and misleading information to local police and the ACJC); In re Yaccarino, 101 N.J. 342, 362 (1985) (finding that while judges "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.").

The record evinces that Respondent, cognizant that neither the school nor the police personnel present wanted to arrest a judge, pressed her perceived privilege to bully and intimidate STS into readmitting her children. The fact that Respondent's efforts in this regard were unsuccessful does not minimize the severity of this misconduct, but rather stands as a testament to the clergy and police personnel who maintained their professional integrity while Respondent abdicated her own.

As Respondent well knew, she and her husband had other avenues available to them to redress this issue short of appearing personally at STS. To wit, Mr. Phillips petitioned the court in the Phillips matter that very afternoon for a stay of the expulsion, which was ultimately granted by the Appellate Division. In choosing to engage with school and police personnel directly and in a belligerent fashion, Respondent demonstrated a gross lapse in judgement and engaged in conduct that demeaned the judicial office, in violation of Canon 1, Rule 1.1 and Rule 1.2, and Canon 2, Rule 2.1.

We next address Respondent's lack of veracity when testifying before the trial court in the Mullen matter in violation of Canon 2, Rule 2.1 and Canon 5, Rule 5.1(A), of the Code of Judicial Conduct, as charged in Count II of the Formal Complaint. Respondent's demonstrated lack of candor before the trial court represents a complete departure from the core ethical precepts expected of every jurist and impugns Respondent's integrity and that of the Judiciary, in violation of Canon 2, Rule 2.1, and Canon 5, Rule 5.1, of the Code. A judge found incredible cannot, with any legitimacy, evaluate the credibility of witnesses in other proceedings.

We likewise find Respondent's renewed proffer to this Committee, under oath, that she did not speak with Ptl. Kaverick while at STS on February 2, 2017, incredible. Respondent maintains that her recollection of these events should be afforded more weight than that of Ptl. Kaverick, Lt. Grady, and Father D'Agostino, whose testimony on this issue differed as to the precise location of Respondent's conversation with Ptl. Kaverick, and that of Father Bejgrowicz whose testimony before the trial court included a statement that Ptl. Kaverick arrived at STS after Respondent exited the building. Rb14. In addition, Respondent asserts that the dash-cam video obtained from Ptl. Kaverick's patrol car casts doubt on the reliability of his recall of these events. Rb15. We disagree.

While each witnesses' recollection differed slightly as to the precise location within STS at which Ptl. Kaverick spoke with Respondent, all three – Ptl. Kaverick, Lt. Grady, and Father D'Agostino – agreed as to the essential fact at issue, namely that a conversation did in fact occur between them while both were present at STS on February 2, 2017. 1T160-13 to 1T161-24; 1T173-19-25; 2T18-24 to 2T19-7; 2T78-6 to 2T82-12. This testimony is consistent with that given by Ptl. Kaverick and Lt. Grady during Respondent's defiant trespass trial in the Mullen matter at which Father D'Agostino did not testify. P-9 at T30-2-15; T202-1 to T207-12.

Chief Zimmerman, likewise, testified credibly before this Committee to witnessing a conversation between Ptl. Kaverick and Respondent in the front interior hallway of STS, which again comports with his testimony during Respondent's defiant trespass trial in the Mullen matter. 2T132-7 to 2T135-7; P-9 at T79-25 to T80-16. See In re Seaman, supra, 133 N.J. at 88 (internal citations omitted) ("Consistency of testimony, both internally and between witnesses, is an important indicator of truthful testimony.").

Respondent's reliance on the dash-cam video of Ptl. Kaverick's arrival at STS as a basis to undermine his credibility vis-à-vis these events is similarly unpersuasive. That video, the relevant portion of which is no more than a few seconds in length, is largely unintelligible and, though pertinent to developing a timeline of

the events at issue, does not, as Respondent maintains, discredit Ptl. Kaverick's recollection of his interactions with Respondent while both were inside STS on February 2, 2017. R-4.

The parties have stipulated that this dash-cam video depicts Ptl. Kaverick exiting his patrol car in front of STS and engaging momentarily with Lt. Grady before approaching the school. Ibid.; 4T15-15 to 4T28-11. The brief exchange between these two officers, however, lasting mere seconds, is inaudible and lacks any discernable relevance to the issue of Ptl. Kaverick's interactions with Respondent while inside STS. For these reasons, we accord no substantive weight to this video.

As to Father Bejgrowicz, he testified before this Committee that Ptl. Kaverick entered STS while Respondent was still present in the building, though he had no specific recollection as to any interactions between them outside of what he was told by Ptl. Kaverick about those interactions. 1T92-11 to 2T93-9. Contrary to Respondent's contention, however, Father Bejgrowicz testified similarly before the trial court in the Mullen matter, specifically confirming Ptl. Kaverick's presence inside STS during the events of February 2, 2017. P-9 at T120-17-21. Father Bejgrowicz's testimony, though limited, does not undermine Ptl. Kaverick's credible firsthand account of his interactions with Respondent on February 2, 2017, or the corroborating eyewitness testimony offered by Lt. Grady, Father D'Agostino, and Chief Zimmerman. It is

axiomatic that a failure on the part of some to observe an event is not evidence of its nonoccurrence nor do we consider it as such in this instance. Cf. In re Council, 223 N.J. 395 (2015) (adopting the Committee's presentment finding, in part, that the failure of some to observe the judge direct an employee out of a courtroom by her ear did not evince its nonoccurrence).

We move now to Respondent's obstructive behavior during her court-ordered deposition on July 26, 2017 in the Phillips matter in violation of Canon 1, Rule 1.1, and Canon 2, Rule 2.1, of the Code, as charged in Count III of the Formal Complaint. As evinced in the record, Respondent's obstructive behavior on this occasion was but one in a series of instances in which Respondent defied a court order and frustrated the discovery process in the Phillips litigation. Preceding this deposition, Respondent failed to appear for her court-ordered deposition on July 19, 2017, without any legal authority to do so and despite the trial court's order of July 19, 2017 again requiring Respondent to appear, that same day, for her deposition, consistent with its prior order.

Respondent's proffered justifications for failing to appear for her deposition on July 19, 2017, i.e. plaintiff's intent to file an emergent appeal and her reliance on counsel's advice, are belied by the record and are indefensible. The trial court, on July 13, 2017, denied plaintiff's renewed request for a stay of the litigation and his companion request to bar Respondent's

deposition. Plaintiff's intent to file an emergent appeal in advance of Respondent's July 19, 2017 deposition did not act as an automatic stay of the Phillips litigation or have any collateral effect on the trial court's order directing Respondent to appear for her deposition that day. Moreover, as previously discussed, Respondent's reliance on her counsel when behaving unethically is not a viable defense in these ethics proceedings.

Respondent's subsequent refusal to answer 95% of the questions posed to her during her court-ordered deposition on July 26, 2017 on relevance grounds, as the trial court determined, was neither permissible under the court rules nor sanctioned by any court order. To add to this impropriety, Respondent's behavior while being deposed and immediately thereafter, including her unprofessional attire and her refusal to give Mr. Westrick her undivided attention, was disrespectful, particularly for a member of the bench and Bar. Mr. Westrick was, in fact, offended by Respondent's conduct, finding it "disrespectful to the process." We agree. Respondent's conduct and demeanor during this deposition did harm to the integrity of the Judiciary in violation of Canon 1, Rule 1.1, and Canon 2, Rule 2.1, of the Code.

We find Respondent's conduct in this regard aggravated by her subsequent behavior in refusing to leave the deposition room to permit Mr. Phillips's deposition to be taken immediately thereafter, ultimately requiring a directive from the trial court

to bar Respondent from the room, and by her obstructive behavior during her redeposition on July 31, 2017. On that occasion, Respondent again refused to answer an array of questions, without any legal basis, ultimately requiring a directive from the court compelling Respondent to answer the subject questions before the deposition could proceed. This conduct reflects adversely on Respondent's character and judgment, both of which are essential components for one serving on the bench.

Finally, we address Respondent's abuse of the judicial office in response to the trial court's imposition of sanctions on Mr. Phillips for his and Respondent's obstructive behavior in violation of Canon 1, Rule 1.1, and Canon 2, Rule 2.1 and Rule 2.3(A), of the Code, as is charged in Count IV of the Formal Complaint. Having addressed the circumstances underlying this charge in detail above and the attendant violation of the cited canons, we need not discuss them further here. We find, on the strength of this record, that these charges have been proven by clear and convincing evidence and that Respondent, in referencing her judicial office to secure treatment more favorable than that afforded the average citizen, abused her judicial office and compounded that harm by testifying falsely before this Committee about her involvement in that conduct, in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct.

A jurist's reference to his or her judicial office (or use of judicial stationery) to advance a matter that is wholly private in nature and unrelated to his or her official duties, is improper and violates Canons 1 and 2 of the Code of Judicial Conduct.[19] As our Supreme Court made clear two decades ago, those fortunate enough to hold judicial office are bestowed with tremendous power "on the condition that [they] not abuse or misuse it to further a personal objective . . . or to help a friend." In re Samay, supra, 166 N.J. at 43. Indeed, each judge, on assuming the bench, takes an oath to "'faithfully, impartially and justly perform all the duties' of judicial office." Ibid. (citing N.J.S.A. 41:1-3).

We find Respondent's conduct in this regard aggravated by the several other instances in which she permitted her counsel to use her judicial office to attempt to secure preferential treatment in

[19] See In re Rivera-Soto, 192 N.J. 109 (2007) (censuring the Justice for engaging in a course of conduct that created the risk that the prestige and power of his office might influence and advance his son's private interests); In re McElroy, 179 N.J. 418 (2004) (reprimanding a municipal court judge for giving a friend who was a defendant in a traffic case a message on his business card to hand to the municipal prosecutor requesting a downgrade); In re Sonstein, 175 N.J. 498 (2003) (censuring municipal court judge for writing letter on judicial letterhead to another municipal court judge about his parking matter pending before that judge); In re Murray, 92 N.J. 567 (1983) (reprimanding a municipal court judge for sending a letter on behalf of a client to another municipal judge in which he identified his judicial office); In re Anastasi, 76 N.J. 510 (1978) (reprimanding a municipal court judge for sending a letter on behalf of a former client to the New Jersey Racing Commission on his official stationery).

the Phillips litigation. Those instances include Respondent's reliance on her judicial office when requesting the court's permission to remain in the deposition room while her husband was being deposed on July 26, 2017, and her refusal to answer questions at her July 31, 2017 deposition on the grounds that her judicial office precluded any questions she deemed of a "personal" nature. In each instance, the trial court rejected Respondent's contentions, finding no legal basis to grant Respondent those privileges. Respondent's repeated misuse of the judicial office in this fashion impugned the integrity of the Judiciary in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1, and Rule 2.3(A).

Having concluded that Respondent violated Canon 1, Rule 1.1 and Rule 1.2, Canon 2, Rule 2.1 and Rule 2.3(A), and Canon 5, Rule 5.1(A), of the Code of Judicial Conduct as charged in the Formal Complaint, the sole issue remaining is the appropriate quantum of discipline. In our consideration of this issue, we are mindful of the primary purpose of our system of judicial discipline, namely, to preserve the public's confidence in the integrity and independence of the judiciary, not to punish an offending judge. In re Seaman, supra, 133 N.J. at 96 (1993).

Relevant to this inquiry is a review of both the aggravating and mitigating factors that may accompany judicial misconduct. Id. at 98-100. The aggravating factors to consider when determining the gravity of judicial misconduct include the extent to which the

misconduct demonstrates a lack of integrity and probity, a lack of independence or impartiality, misuse of judicial authority that indicates unfitness, and whether the conduct has been repeated or has harmed others. Id. at 98-99.

Factors considered in mitigation include the length and quality of the judge's tenure in office, the judge's sincere commitment to overcoming the fault, the judge's remorse and attempts at apology, and whether the inappropriate behavior is susceptible to modification. See In re Subryan, 187 N.J. 139, 154 (2006).

Respondent's misconduct in this instance has been aggravated considerably by her lack of candor both when testifying before the trial court in the Mullen matter and before this tribunal, and her repeated abuse of the judicial office. Respondent's demonstrable and pervasive lack of candor and repeated abuses of the judicial office impugns her character for truthfulness and renders her continued credible service on the bench unsustainable.

Given the totality of Respondent's conduct, we find that no remedy short of removal will properly safeguard the public's confidence in our system of justice. Cf. In re DeAvila-Silebi, 235 N.J. 218 (2018) (removing a judge for pervasive dishonesty before ethics authorities to avoid discipline for abusing the judicial office); In re Samay, supra, 166 N.J. at 45 (finding the judge's lack of candor further evidence of his unfitness to serve on the

bench); In re McClain, 662 N.E.2d 935 (Ind. 1996) (removing a judge for dishonesty before the ethics panel and for manufacturing a defense in an attempt to avoid discipline).

In respect of any mitigating factors, the record before us is largely silent save for a letter of character from a member of the bar in which counsel recounts her positive experiences on two occasions when appearing before Respondent on post-judgment motions in the Family Part. R-17. While we appreciate counsel's comments and commend Respondent's dedicated service as a Superior Court Judge for the past six years, counsel's isolated experiences before Respondent and Respondent's length of service, standing alone, are insufficient to mitigate her misconduct in this instance, which reveals a compromised character for truthfulness and a penchant to employ the prestige of the judicial office improperly for her personal advantage.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be removed from judicial office for her violations of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.3(A) and Canon 5, Rule 5.1(A), of the Code of Judicial Conduct. This recommendation considers the seriousness of Respondent's ethical infractions and the substantial aggravating factors present in this case, which justify Respondent's removal from judicial office.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

February 3, 2021 By: Virginia A. Long
Virginia A. Long, Chair