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SUPREME COURT
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SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2019-215

IN THE MATTER OF :
: PRESENTMENT
ALBERTO RIVAS :
ASSIGNMENT JUDGE OF THE :
SUPERIOR COURT :
_____ :

The Advisory Committee on Judicial Conduct ("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 the Formal Complaint against Alberto Rivas, Assignment Judge of the Superior Court ("Respondent"), concerning his discourteous treatment of the individuals present in his courtroom and the appearance of a bias engendered by that mistreatment, have been proven by clear and convincing evidence, and that such conduct violates Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 3, Rule 3.5 and Rule 3.6(C), of the Code of Judicial Conduct.

The Committee's findings and the evidence of record also demonstrate that Respondent's discourteous behavior, though

improper, does not constitute a violation of Canon 2, Rule 2.2, or Canon 3, Rule 3.6(A), of the Code of Judicial Conduct.

Accordingly, the Committee recommends that Respondent be censured for his misconduct in violation of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 3, Rule 3.5 and Rule 3.6(C), as delineated in the Formal Complaint.

I. PROCEDURAL HISTORY

This matter was initiated with the filing of an ethics grievance against Respondent by the plaintiff in the matter of J.V. v. M.R.,¹ which concerned Respondent's treatment of the individuals present in his courtroom on January 10, 2019 during an Order to Show Cause ("OTSC") hearing in the Middlesex County Superior Court. See P-1. The conduct at issue is a matter of record, having occurred in open court. A copy of the transcript of that OTSC hearing, which has been redacted to protect the parties' identities, and the corresponding CourtSmart audio recording are a part of the record in this matter. See P-2; P-3.

On August 14, 2019, the Committee issued a two count Formal Complaint against Respondent charging him with conduct in

¹ To preserve the privacy interests of the litigants in this matter, and in accordance with the New Jersey Supreme Court's directive in In re Seaman, the Presenter identified the litigants in the Formal Complaint by their initials (i.e. "J.V." and "M.R."). 133 N.J. 67, 75 (1993) (directing that "judicial-disciplinary cases involving . . . activities that humiliate or degrade those with whom a judge comes into contact, should preserve the anonymity of the alleged victim.").

contravention of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.2, and Canon 3, Rule 3.5 and Rule 3.6 (A) and (C), of the Code of Judicial Conduct. Respondent filed an Answer to the Complaint on August 15, 2019 in which he admitted all of the factual allegations contained in the Complaint and his concomitant violations of Canon 1, Rule 1.1, Canon 2, Rule 2.1, and Canon 3, Rule 3.5, but denied violating Canon 2, Rule 2.2, and Canon 3, Rule 3.6 (A) and (C), of the Code of Judicial Conduct. On September 4, 2019, Respondent filed a one-page addendum to his Answer in which he referenced his continued efforts to seek counseling to avoid repeating this misconduct.

Respondent, in his Answer, waived his right to a hearing on the charges contained in the Formal Complaint. In conjunction with that waiver and with the Committee's consent, Respondent, on November 22, 2019, filed with the Committee a letter brief addressing those canons Respondent denies violating (i.e. Canon 2, Rule 2.2, and Canon 3, Rule 3.6(A) and (C)) and the appropriate quantum of discipline for his admitted misconduct and associated violations of the remaining canons of the Code of Judicial Conduct. See Respondent's letter brief, filed November 22, 2019, which is a part of the record.

Presenter filed with the Committee on December 5, 2019 a letter brief addressing the canons in dispute and the appropriate quantum of discipline for Respondent's several

ethical infractions. See Presenter's letter brief, filed December 5, 2019, complete with one attachment, which is a part of the record.²

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

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1985. See Formal Complaint and Answer at ¶1.³ At all times relevant to this matter, Respondent served as Assignment Judge of the Middlesex Vicinage, a position he continues to hold. Id. at ¶2.

The facts germane to this ethics matter and Respondent's attendant ethical breaches, apart from Canon 2, Rule 2.2, and Canon 3, Rule 3.6(A) and (C), as alleged in the Formal Complaint, are undisputed. To wit, Respondent admits and the evidence demonstrates, clearly and convincingly, that on January 10, 2019 Respondent presided over an OTSC hearing in the matter

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

³ Though Respondent's Answer does not conform to the pleading requirements of Rule 4:5-3 in that it does not contain an admission or a denial as to each enumerated paragraph, we accept as sufficient for these purposes Respondent's general admissions of misconduct as contained in his Answer.

of J.V. v. M.R. during which he gave vent to his personal disdain for the plaintiff's decision to file the OTSC, which he viewed as having been done in bad faith, verbally chastised both litigants, as well as another individual present in the courtroom, and demonstrated a lack of self-control that is inimical to a jurist's role as a neutral and dispassionate arbiter. See Respondent's Answer at ¶¶17-18.

The plaintiff, J.V., filed an OTSC with Temporary Restraints against the defendant, M.R., seeking the return of several photographs taken of her for the benefit of her then boyfriend, F.T., that were allegedly mailed to F.T.'s wife, the defendant, M.R. P-2 at T3-12 to T15-20. The parties, both self-represented litigants, appeared before Respondent at the OTSC hearing, as did F.T., who was not a party to the proceeding. Id. at T3-4-5.

In Respondent's view, the plaintiff had fraudulently filed the OTSC to humiliate and harass the defendant. As such, throughout the more than 30-minute OTSC hearing, Respondent made several inappropriate and injudicious comments to the parties as detailed herein.

Respondent, when addressing the plaintiff's stated concern that the defendant would disseminate or otherwise publicize the pictures, engaged in the following admittedly undignified and discourteous colloquy with the plaintiff:

RESPONDENT: Well, she believes you're behind sending these pictures, and it's part of a coordinated campaign of harassment. It would become evidence. So, she would -- it would be appropriate for her to give it to the police.

PLAINTIFF: -- all right. I don't know where she works.

RESPONDENT: I find that hard to believe. So, [J.V.], I was born at night. It was not last night. You have been having a relationship with [F.T.] for a period of time. Do not sit there and tell me that you're having a relationship with a married man, and that you don't know where his wife works.

PLAINTIFF: I do not. He has never told me.

RESPONDENT: That's not believable.

PLAINTIFF: I have never inquired.

RESPONDENT: That is not believable. I'm telling you that now. I've been doing this for a number of years. Better people have attempted to lie to me, you're not that good.

PLAINTIFF: I do not know where she works. I've never inquired.

RESPONDENT: Baloney.

PLAINTIFF: I never wanted to know where she works.

RESPONDENT: Baloney.

PLAINTIFF: Up until your statement now --

RESPONDENT: Baloney. That's not true. If you're screwing him -- let's be frank now, because I should not be wasting judicial resources on this kind of malarkey. If you have been screwing him for these years, there's no question that you know where she works. That's how affairs work. This is not someone you just met. There's not a question on the table, so don't speak.

P-2 at T15-21 to T17-7.

Shortly thereafter, Respondent questioned the plaintiff about her intentions with F.T., for whom Respondent expressed contempt, and pressed the plaintiff at length to seek a final restraining order against F.T., which Respondent indicated he would grant, as follows:

RESPONDENT: What is your intention with [F.T.]? Do you intend to still see him?

PLAINTIFF: No.

RESPONDENT: So, why don't you file a final restraining order? I'll be happy to grant it.

PLAINTIFF: No.

RESPONDENT: Why not?

PLAINTIFF: I don't want to be around him. He doesn't want to be around me.

RESPONDENT: Right, and that's what a final restraining order will do.

PLAINTIFF: And that's okay.

RESPONDENT: It would order him not to do it. And if he stepped out of bounds, I can lock him up, because he deserves to be locked up.

PLAINTIFF: I'm not going to do that to him. He is a corrections officer. That would not be fair to his profession.

RESPONDENT: He doesn't care about his profession. Because if he did, he wouldn't be doing this. You should file a final restraining order.

PLAINTIFF: No.

RESPONDENT: And I'll give it right now. Because I can't believe you two have let this knucklehead --

PLAINTIFF: All I want is the pictures.

RESPONDENT: -- do what he's done. And he needs to be brought down a notch.

Id. at T17-23 to T19-1.

Speaking to the defendant, Respondent asked, "Why are you still with [F.T.]?" Thereafter, Respondent remarked, "I would suggest divorce, and take half his pension. That's an option you have having sat in Family Court. You can take his pension." Id. at T21-8-15. Respondent then addressed F.T. directly, stating, "I wish you were up here, because I'm gunning for you, because you are despicable." Id. at T21-15-17.

On learning that the defendant could provide the subject photographs of the plaintiff to the police as part of a harassment complaint, the plaintiff inquired if parts of those photographs could be blacked out to which Respondent replied, "I'm going to quote Animal House to you . . . [y]ou messed up, you trusted." Id. at T22-13-17.

Respondent then warned the parties and F.T. to avoid any future misconduct, stating, "[I]f you three have not figured out that I'm here just dying to whack one of you, just dying to whack one of you, come back. Come back. Your mistake was coming into my courtroom." Id. at T23-15-18.

Speaking only to the parties, Respondent continued with the following comment:

Your problem is with that knucklehead. But, it is clear that you folks have been involved in a triangle, and kind of like the Bermuda Triangle, it's deadly. And you two ladies have let yourselves

get played by this guy. Well, I'm not going to call him a man, because he does not deserve that title. This homosapien.

Id. at T23-25 to T24-6.

Respondent concluded the proceeding with these words of "advice" to the plaintiff: "The only person you should be sending naked pictures to [is] . . . Hugh Hefner. He will pay you \$100,000 for the use of them." Id. at T24-24 to T25-2.

III. ANALYSIS

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

Respondent, by virtue of his conduct as set forth above, has been charged with impugning his integrity and that of the Judiciary, in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 and Rule 2.2, humiliating and demeaning litigants in violation of Canon 3, Rule 3.5, and creating the appearance of a

bias in violation of Canon 3, Rule 3.6(A) and (C) of the Code of Judicial Conduct.

We find, based on our review of the uncontroverted evidence in the record and Respondent's admissions of wrongdoing that, with the exception of Canon 2, Rule 2.2, and Canon 3, Rule 3.6(A), these charges have been proven by clear and convincing evidence, and that Respondent's conduct while presiding over the OTSC hearing in the J.V. v. M.R. matter on January 10, 2019 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 2, Rule 2.1, requires judges to "act at all times 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 2.2, requires judges to decide cases according to the law and the facts and to not permit family, social, political, financial or other relationships or interests to influence their judicial conduct or judgment.

Canon 3, Rule 3.5, requires judges to treat all those with whom they interact in an official capacity with courtesy,

dignity and patience and to require the same from "lawyers, court officials, and others subject to the judge's direction and control."

Canon 3, Rule 3.6(A), requires judges to be impartial and prohibits discrimination based on race, creed, color, sex, gender identity or expression, religion/religious practices or observances, etc.

Canon 3, Rule 3.6(C), prohibits judges, in the performance of their judicial duties, from manifesting, by words or conduct, any bias or prejudice, and from engaging in harassment, *including but not limited to*, bias, prejudice or harassment on the bases specified in Rule 3.6(A), and from allowing their staff to do so.

The impropriety of Respondent's conduct while presiding over the OTSC hearing in the matter of J.V. v. M.R. and his attendant ethical breaches vis-à-vis that conduct are indisputable. Respondent has rightly acknowledged his wrongdoing in this regard and expressed remorse for his misconduct and the corresponding necessity for this disciplinary proceeding.

Respondent's admitted lack of self-control when responding to a perceived malicious filing impaired his integrity and that of the judicial office, in violation of Canons 1, Rule 1.1, and Canon 2, Rule 2.1, of the Code of Judicial Conduct. Such conduct also strayed significantly from the mandate of Canon 3,

Rule 3.5, of the Code, which requires jurists to treat all those who appear before them with patience, dignity and courtesy.

Notably, the harm inflicted on the judicial office by Respondent's ethical breaches is enhanced appreciably by virtue of his position as the chief judicial officer in the vicinage. R. 1:33-4. As the Middlesex County Assignment Judge, Respondent sets the tone for vicinage personnel, including its most senior members, i.e. its jurists, for whom Respondent serves not only as an administrative presence but also as an exemplar of courtroom administration. When Respondent fails to fulfill that responsibility, as he did here, the public's confidence in the vicinage and the Judiciary generally suffers. Given these circumstances, public discipline is required to restore the public's confidence in the Judiciary as a neutral and detached arbiter.

We turn next to those canons of the Code of Judicial Conduct Respondent denies violating, i.e. Canon 2, Rule 2.2, and Canon 3, Rule 3.6(A) and (C). We find an absence of evidence that Respondent's conduct while presiding over J.V. v. M.R. violated Canon 2, Rule 2.2 or Canon 3, Rule 3.6(A). Conversely, we find evidence in the record sufficient to establish, clearly and convincingly, Respondent's violation of Canon 3, Rule 3.6(C).

Addressing Canon 2, Rule 2.2, we find that though Respondent's treatment of these litigants and F.T., as Respondent concedes, "went above and beyond the appropriate bounds," there is insufficient evidence in the record to establish that Respondent's conduct was influenced by any "family, social, political, financial or other relationships or interests," as proscribed by Canon 2, Rule 2.2. Rb3.

Similarly, there is insufficient evidence in the record to establish that Respondent's mistreatment of these litigants and F.T. was the product of discrimination on one or more of the bases specified in Canon 3, Rule 3.6(A), or created the appearance of such a bias.

The same, however, cannot be said for Respondent's conduct when evaluated against the proscriptions contained in Canon 3, Rule 3.6(C). We find ample evidence in the record to establish that Respondent's treatment of these litigants and F.T. violated the clear mandate of Canon 3, Rule 3.6(C), which prohibits jurists from manifesting, by words or conduct, bias or prejudice, "*including but not limited to bias, prejudice or harassment on the bases specified in Rule 3.6(A).*" (emphasis supplied). The absence of evidence establishing Respondent's violation of Rule 3.6(A) is not dispositive of the issue as it relates to Respondent's violation of Canon 3, Rule 3.6(C). The plain language of Rule 3.6(C), rather, requires a more searching

review of the record to root out bias, prejudice and harassment from our judicial system in every form, not merely that specified in Rule 3.6(A). To suggest otherwise would reduce Canon 3, Rule 3.6(C), to nothing more than a restatement of Rule 3.6(A) and allow bias or prejudice and harassment to infect the administration of justice.

Comment [2] to Canon 3, Rule 3.6, is instructive in this regard and provides as follows:

Examples of manifestations of bias or prejudice include but are not limited to epithets, slurs, demeaning nicknames, negative stereotyping, attempted humor based on stereotypes, threatening, intimidating, or hostile acts, . . . and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

Respondent, by his words and conduct as contained in the record of the J.V. v. M.R. matter, demonstrated, unequivocally, his bias against these litigants, which was borne out of his stated belief that the plaintiff was manipulating the judicial system at the defendant's expense and his disapproval of the parties' ongoing involvement with each other. Rb3-4. Examples of this bias include the following:

- "[F.T.] deserves to be locked up."

- "[F.T.] doesn't care about his profession cause if he did, he wouldn't be doing this."
- "[I] can't believe you two let this knucklehead do what he's done. And he needs to be brought down a notch."
- "[F.T.], I wish you were up here cause I'm gunning for you. Cause you are despicable."
- "If you three have not figured out that I'm here just dying to whack one of you, come back, come back. Your mistake was coming into my courtroom."
- "I'm not gonna call him a man cause he does not deserve the title. This homosapien."

Respondent's remarks to these litigants and F.T., as detailed herein, may accurately be described as harassing and indicative of the type of conduct Canon 3, Rule 3.6(C), was intended to address and for which public discipline is warranted.

Having concluded that Respondent violated Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 3, Rule 3.5 and Rule 3.6(C) of the Code of Judicial Conduct, the sole issue remaining is the appropriate quantum of discipline. In our consideration of this issue, we are mindful that the primary purpose of our system of judicial discipline is to preserve the public's confidence in the integrity and independence of the judiciary, not to punish an offending judge. In re Seaman, 133 N.J. 67, 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 conduct in this instance has been aggravated considerably by his receipt of two private reprimands, one in July 2013 for his conduct in two separate matters in which he displayed an injudicious demeanor towards litigants appearing before him, and another in October 2014 for his discourteous treatment of a criminal defendant. Notably, Respondent, in conjunction with the first private reprimand, assured the Committee that such conduct was an aberration and voluntarily participated in sensitivity training, a fact about which

Respondent was reminded on receipt of his second private reprimand in October 2014.

Respondent's repeated displays of discourtesy towards litigants and the appearance of bias engendered by that conduct renders his behavior in this instance significantly more egregious than that of previous judicial disciplinary matters involving similar demeanor issues. See In re Convery, 201 N.J. 411 (2010) (reprimanding judge for disrespectful and insulting comments to a litigant and the discourteous treatment of an attorney, which conduct created the appearance of a bias); In re Citta, 201 N.J. 413 (2010) (reprimanding a judge for discourteous and disrespectful comments to litigants that were indicative of a bias); In re Baker, 206 N.J. 530 (2011) (reprimanding a judge becoming irate with a litigant, screaming at that litigant and making a series of remarks that created the appearance of partiality).

In respect of any mitigating factors, we recognize Respondent's recent attempt to seek counseling to address his evident temperament issues and his acknowledgement of wrongdoing. R-1. These mitigating factors, however, when weighed against Respondent's repeated instances of poor demeanor and failed attempts to correct these issues, are inadequate to mitigate the harm caused to the Judiciary by Respondent's

conduct in this instance, the effect of which is heightened substantially by Respondent's position as an Assignment Judge.

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be censured for his conduct in contravention of Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Canon 3, Rule 3.5 and Rule 3.6(C) of the Code of Judicial Conduct. This recommendation takes into account Respondent's ethical infractions and the aggravating factors present in this case, which justify the quantum of discipline recommended.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

February 5, 2020

By:

Virginia A. Long
Virginia A. Long, Chair