

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

DOCKET NO: ACJC 2022-118

**IN THE MATTER OF
MARY F. THURBER,
JUDGE OF THE SUPERIOR COURT**

**STIPULATION OF
DISCIPLINE BY CONSENT**

R. 2:15-15A(b)

THIS STIPULATION is made and entered into between the Hon. Mary F. Thurber, J.S.C. ("Respondent"), through counsel, John M. Carbone, Esq., and Maureen G. Bauman, Disciplinary Counsel / Presenter for the Advisory Committee on Judicial Conduct ("ACJC").

A. FACTS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1986. At all times relevant to this matter, Respondent served as a Judge of the Superior Court of New Jersey, assigned to the Family Division in the Hudson Vicinage from February 24, 2009 until May 2010, then the Bergen Vicinage until March 9, 2015 when she was reassigned to the Civil Division, a position she continues to hold.

From 1991 to 1999, Respondent operated the “Law Offices of Mary Thurber.” In 1999, Respondent merged her practice with another attorney and operated her law office as “Thurber Cappell, L.L.C.” until 2009, when Respondent was appointed to the bench. While in private practice, Respondent provided legal services to clients in various areas of law including estate planning, estate administration, and estate litigation. See Complaint, Answer at ¶¶ 3,4.

In or around 1991, Respondent was retained by the executor of the Estate of Alfred Dopkus to administer the estate. Respondent probated Dopkus’ will, administered his estate, and created a trust for the benefit of his sister, Isabelle McKinley (“Mrs. McKinley”), with the expectation that she would live in the house until she died. See Complaint, Answer at ¶¶ 5,6.

On or about March 24, 1998, Mrs. McKinley died intestate. In or around April 1998, the Trustee of the Dopkus Trust contacted Respondent to discuss the probate of the Estate of Isabelle McKinley (the “McKinley Estate”). No retainer agreement was executed between the parties. After no next of kin applied to administer the McKinley Estate, and in accordance with discussions with the Dopkus Trustee and decedent’s attorney, Respondent sought, and was granted, Letters of Administration from the Bergen County Surrogate on August 31, 1998. See Complaint, Answer at ¶¶ 7 – 9.

From June 1998 until December 2001, in connection with Respondent's role as administrator, Respondent and/or employees of her law firm provided legal services in connection with the administration of the McKinley Estate and the firm received \$18,130.76 in legal fees charged to the Estate. Legal work performed included the following:

- identified, marshalled, and consolidated all assets of the estate, which included multiple bank accounts, home contents, and safe deposit box contents;
- researched and completed application to recover escheated property from the State of New Jersey;
- opened estate accounts in the name of "Mary F. Thurber, Administrator of Estate of Isabelle McKinley;"
- received and reviewed estate account statements;
- opened savings accounts in the name of the estate;
- corresponded and made necessary in-person visits to multiple banks for execution of documentation of asset transfer;
- redeemed the decedent's savings bonds and deposited proceeds into estate accounts;
- retained an accounting firm to file personal and inheritance tax returns for multiple years and replied to inquiries for additional information from accountant;
- performed legal research to attempt to determine which heirs possess a right to inherit the decedent's estate;
- searched for and corresponded with potential heirs;

- hired an individual to perform clean out services of the decedent's house and belongings and dispose of same;
- engaged a company to assist with the sale of personalty and house contents;
- conducted search for a Will and placed newspaper notices for "lost will" of Mrs. McKinley; and
- reviewed financial records, entered disbursements and income into Quicken program throughout the administration of the estate in preparation of a draft formal accounting.

See Exhibit 1

Prior to Respondent's taking the bench in 2009, the McKinley Estate file remained open, and Respondent continued to serve as a fiduciary until February 4, 2022, when Respondent resigned as Administrator of the McKinley Estate. **See Exhibit 2** On or about April 8, 2022, an order was entered discharging Respondent as Administrator, subject to an accounting, and approving a substitute administrator. **See Exhibit 3** Respondent knew that as a judge she could no longer practice law. Further, Respondent knew or should have known that as a judge she was ethically prohibited, with limited exceptions inapplicable to the McKinley Estate, from serving as a fiduciary.

As of 2009 when Respondent was appointed to the bench, Respondent had not satisfied her fiduciary duties to the McKinley Estate, which included the following:

- withdrawing as counsel of record;
- filing a substitution of attorney ;
- completing an heir search or conclusively establishing the the existence of heirs entitled to inherit;
- closing the McKinley Estate administration bank accounts;
- dispersing the proceeds consistent with intestacy law; and
- filing a formal or informal accounting with the court.

Contrary to Canon 5, Rule 5.8 of the Code of Judicial Conduct, Respondent remained fiduciary to the McKinley Estate between 2009 until 2022, and during that period, performed the following fiduciary duties:

- continued to receive and review bank statements at her home address showing interest income on a monthly basis;
- periodically reviewed the file prior to the date she resigned as Administrator; and
- communicated with the financial institution that held estate proceeds in response to inquiries regarding status of account.

See Exhibit 4 at T-111-6-14; T110-5-9; T132-12-18; T138-2-24.

On or about February 7, 2022, Respondent signed a Retainer Agreement with Hunziker, Jones & Sweeny, PA (the "Hunziker firm") to represent her and file the appropriate papers with the court to conclude the administration of the McKinley

Estate, specifically, seeking the appointment of a Substitute Administrator and prepare an accounting. See Complaint, Answer at ¶11.

An Affidavit of Services submitted by the Hunziker firm indicates that from January 24, 2022 through October 6, 2022, the following tasks were performed to conclude the administration of the McKinley Estate:

- prepared and filed motion papers for the appointment of a Substitute Administrator;
- forwarded the file and the funds of the McKinley Estate to the Substitute Administrator;
- retained an heirship search firm to locate any heirs of the decedent;
- prepared an accounting covering the time from appointment of Respondent as Administrator to appointment of the Substitute Administrator; and
- communicated with Respondent, Respondent's judicial ethics counsel, the Substitute Administrator, Deputy Attorney General, Court, Surrogate, heir search firm, and financial institutions about the McKinley Estate.

See Exhibit 5

On March 10, 2023, the court approved the first and final accounting submitted by the Hunziker firm authorizing \$13,754.92 in attorney's fees and costs sought by the Hunziker firm to be paid by the Estate as well as legal fees of \$18,130.67 Respondent previously received by her law firm. See Exhibit 6 The heir

search report submitted to the Court by the Hunziker firm indicates several heirs are still unknown or not located, confirms the existence of five heirs, identifies 17 unconfirmed heirs and more potential heirs living overseas. See Exhibit 7 Since the issue of potential heirs remains outstanding, the court ruled that any heirs who have been identified but not yet formally confirmed could later seek to reopen the matter if/when they are confirmed.

B. MISCONDUCT COMMITTED

Respondent, by her conduct in serving as a fiduciary for the McKinley Estate while sitting as a Superior Court judge, violated Canon 5, Rule 5.8 of the Code of Judicial Conduct, which prohibits judges from serving as an executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only when such service will not interfere with the proper performance of judicial duties; Canon 1, Rule 1.1, which requires judges to observe high standards of conduct so the integrity and independence of the Judiciary may be preserved; and Canon 2, Rule 2.1, which requires judges to avoid impropriety and the appearance of impropriety and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

C. AGGRAVATING / MITIGATING CIRCUMSTANCES

As reflected in Respondent's Verified Answer, filed on February 22, 2023, Respondent admitted the facts alleged in the Formal Complaint. Although

Respondent denied that the facts as alleged constituted violations of the Code of Judicial Conduct, Respondent now concedes, through the filing of this Stipulation, that her conduct constitutes violations of the cited canons of the Code.

In aggravation, Respondent's inaction in administering the McKinley Estate from June 1998 through April 8, 2022 deprived heirs of their inheritance. As of the filing of the within Stipulation for Discipline by Consent, the issue of potential heirs remains open.

In mitigation, Respondent has an unblemished record of fourteen years of judicial service and no prior disciplinary history. After consulting with and retaining an attorney to file paperwork for the appointment of a substitute administrator to complete administration of the McKinley estate, Respondent met with her Assignment Judge and subsequently self-reported the matter to the ACJC. Respondent has displayed contrition and remorse for her misconduct and assures the ACJC that her misconduct has no likelihood of repetition in the future. Respondent now submits a character letter from Robert B. Hille, Esq. attesting to her integrity and reputation. See Exhibit 8

D. AGREED DISCIPLINARY SANCTION AND LEGAL PRECEDENT

The agreed disciplinary sanction is a range between public reprimand and public censure, which considers Respondent's conduct in serving as a fiduciary for

the McKinley Estate while sitting as a Superior Court judge from 2009, when Respondent was appointed to the bench, until April 8, 2022, when Respondent, by court order, was discharged as Administrator of the McKinley Estate.

As a member of the Judiciary, it is incumbent upon Respondent to comply with the Code of Judicial Conduct. Respondent failed to satisfy her obligations in this regard and compounded that harm by neglecting to complete or have completed the administration of the McKinley Estate for 24 years (August 31, 1998 – April 2022), 13 of which occurred while serving as a jurist.

This recommendation of a range between a public reprimand and a public censure is based upon the Supreme Court of New Jersey's decision in In re Hazelwood, 102 N.J. 635 (1986), in which Respondent-judge was reprimanded for improperly handling a civil action he filed on behalf of a complainant that was dismissed for failure to answer interrogatories. Thereafter, Respondent-judge offered to pay the client to settle the claim and continued to negotiate the "settlement" for nine years while serving on the bench. In rejecting the Committee's recommendation of a public censure, the Court considered the judge's 12 years on the bench, his previously unblemished record, and the particulars surrounding his representation of the complainant. The Court stated,

We are convinced that respondent in no way tried to cheat or deceive complainant, but was attempting to fairly

compensate her for his mistake. . . . Nevertheless, in view of Respondent's position as a member of the Judiciary, it was incumbent upon him to make certain that complainant was completely aware of the status of her case and the options available to her, especially the option of retaining independent counsel to represent her interests.

Id., at 637-638.

Other states have disciplined jurists for continuing in a fiduciary role subsequent to their appointment to the bench. Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals removed a judge from office for continuing to function as a fiduciary to several estates after becoming a judge, continuing to perform business or legal services for clients, and maintaining a business and financial relationship with his former law firm, which had an active practice before his court. The Court noted continuing to function as a fiduciary for more than two years after assuming the bench as "an inexcusably long period." The Commission and Court found no justification for the judge's defense that the tasks he continued to perform were merely "ministerial" acts. In addition to continuing to serve as a fiduciary, presiding over his own matters, and maintaining a relationship with his former law firm, the judge altered entries relating to his improper activities in an attempt to mislead the Commission. See In the Matter of Moynihn, 604 N.E.2d 136 (New York 1992).

The Texas State Commission on Judicial Conduct imposed a public admonition on a judge for continuing to practice law after taking the bench as an associate judge. The judge failed to withdraw as attorney of record in at least six cases that were pending in the Court of Appeals until ordered to do so by the Court and had been administratively suspended for non-payment of dues on five separate occasions. See Public Admonition of Lucas (Texas State Commission on Judicial Conduct, August 29, 2022).

Given Respondent's acknowledged failures to comply with the Code of Judicial Conduct, aggravating and mitigating circumstances as noted herein, and the judicial disciplinary precedent, the agreed upon range of disciplinary sanction is between a public reprimand and a public censure.

E. RESPONDENT'S REPRESENTATIONS

By entering into this Stipulation of Discipline, Respondent agrees that this disciplinary action will proceed directly to the Committee, by way of application for discipline by consent, for its review and consideration on the written record, in accordance with R. 2:15-15A(b)(3). No further documentation beyond the record submitted will be accepted by the Committee.

Respondent understands that should the Committee grant the application for discipline by consent and accept the recommendation herein, the Committee shall

submit the written record to the Supreme Court for further action, in accordance with Rule 2:15-15A(b)(4). Respondent understands that in the event the motion for discipline by consent is denied by the Committee, the disciplinary proceeding shall resume as if no motion had been submitted and this Stipulation shall not be evidentiary.

F. LIST OF EXHIBITS IN SUPPORT OF STIPULATION

1. Quicken Estate Account Register
2. Resignation of Mary F. Thurber as Administrator, dated February 4, 2022
3. Judgment Discharging Administrator and Appointing Substitute Administrator, filed April 8, 2022
4. Transcript of September 14, 2022 Interview of Respondent (redacted)
5. Affidavit of Services of Susan E. Champion, Esq., dated October 18, 2022
6. Judgment Approving First and Final Account of Mary F. Thurber As Administrator, dated March 10, 2023
7. Unsigned Affidavit of Michelle Caron on behalf of International Genealogical Search Inc. DBA Heir Search
8. Certification of Robert B. Hille, Esq., dated June 30, 2023

G. SIGNATURE, RECOMMENDATION AND APPROVAL




 HON. MARY F. THURBER, J.S.C.

7-15-23

 Date


Respondent



JOHN M. CARBONE, ESQ
Counsel to Respondent

7/15/23


Date



MAUREEN G. BAUMAN, ESQ.
ACJC Disciplinary Counsel / Presenter

July 17, 2023

Date



HON. VIRGINIA A. LONG, RET.
ACJC Chair

July 26, 2023

Date