

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2016-022

IN THE MATTER OF

G. DOLPH CORRADINO,
FORMER PRESIDING JUDGE
OF THE MUNICIPAL COURTS

PRESENTMENT

The Advisory Committee on Judicial Conduct (the "Committee" or "ACJC") hereby presents to the Supreme Court its Findings and Recommendation in this matter in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's findings demonstrate that the charges set forth in the Formal Complaint issued against G. Dolph Corradino, Former Presiding Judge of the Passaic Vicinage Municipal Courts ("Respondent"), which relate to Respondent's unauthorized receipt of state funds by failing to act in accordance with the established protocol as set forth by the Honorable Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts ("Judge Grant"), have been proven by clear and convincing evidence. As a result of these findings, the Committee respectfully recommends that Respondent be publically censured for his

misconduct, prohibited from reappointment to any judicial position, and ordered to pay restitution, as described below.

I. PROCEDURAL HISTORY

This matter was initiated when the Committee received a referral letter dated September 14, 2015 from the Honorable Ernest M. Caposela, Assignment Judge of the Passaic Vicinage ("Assignment Judge Caposela"). See P-1. The referral letter was sent after Assignment Judge Caposela learned of Respondent's improper receipt of monies he directed be disbursed from the Municipal Court Alcohol Education, Rehabilitation and Enforcement Fund ("the DWI Fund" or "the Fund"); which was established by and operates according to N.J.S.A. 26:2B-32, et seq.

Assignment Judge Caposela explained in his referral letter that although the "Guidelines for the Expenditure of Municipal Court Alcohol Education Rehabilitation and Enforcement Funds" ("the Guidelines"), which were promulgated on May 18, 2009 by Judge Grant, require written pre-approval from the Assignment Judge of the vicinage in which a municipality is located prior to any disbursements from the DWI Fund, Respondent failed to obtain said pre-approval. See P-1. Instead, in each of the years from 2009 through 2013, and 2015, Respondent never advised his Assignment Judge of the sought-after disbursement and merely verbally directed the Little Falls Township Treasurer to disburse the funds.

Id. In other words, Respondent usurped the authority of the Assignment Judge when he decided, without permission, that the funds should be disbursed mostly to himself and, for a few years, to the municipal prosecutor and other municipal court personnel.

Id. As clearly set forth in the Guidelines promulgated by Judge Grant, which are specifically referenced in each of the annual memoranda¹ pertaining to the operations of the DWI Fund, "all proposed expenses must be submitted to the Assignment Judge, or his or her designee, per Rule 1:33-4 for approval prior to committing or disbursing these funds." P-1 at ACJC-00045. Importantly, as the Presiding Judge of Municipal Courts in the Passaic Vicinage, Respondent was a recipient of this memorandum each year.

As a consequence of this conduct, Assignment Judge Caposela entered an order on September 14, 2015, pursuant to R. 1:33-4, whereby Respondent was "temporarily suspended without compensation from serving as the Municipal Court Judge of the Borough of Little Falls, as the Presiding Judge of the Passaic Vicinage Municipal Courts, and as the Presiding Judge of the Passaic Vicinage Central Judicial Processing Court," and also precluded from "serv[ing] in

¹ Judge Grant's annual memoranda for the years 2009 through 2014 are contained in P-1 at ACJC-00003 through ACJC-00015. The memorandum for 2015 is included in P-1 at ACJC-00047 through ACJC-00048.

any judicial capacity within the Passaic Vicinage until further order" Id. at ACJC-00018 through ACJC-00019.

Thereafter, the Committee learned that the Division of Criminal Justice ("DCJ") of the Department of Law and Public Safety was conducting an investigation into Respondent's failure to seek and obtain preapproval from his Assignment Judge for his receipt of monies from the DWI Fund. Consistent with its policy and procedure, the Committee held in abeyance its investigation into this matter pending the outcome of DCJ's investigation until April 13, 2017, when it received a letter dated April 7, 2017. See P-2. The letter advised that DCJ "concluded its investigation into [Respondent's] handling of funds received by the Little Falls Municipal Court...." Id. at ACJC-00049. The Committee then commenced its investigation into this matter, which included the receipt and review of documents from DCJ, various judiciary memoranda, documents obtained from the Passaic Vicinage Municipal Division and Little Falls Municipal Court, and the interviews of Assignment Judge Caposela, employees of the Passaic Vicinage Municipal Division, employees of the Township of Little Falls, as well as Respondent, who was accompanied by counsel.

On November 3, 2017, the Committee issued its Formal Complaint charging Respondent with engaging in conduct that violates Canon

1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct² by virtue of his unapproved receipt of monies from the DWI Fund. The Committee's Formal Complaint also included a demand that Respondent make restitution for the sums received without receiving the required pre-approval from his Assignment Judge in accordance with the appropriate protocol for obtaining such funds, of which Respondent was made aware on multiple occasions in multiple formats.

Respondent filed a "Verified Answer" to the Committee's Formal Complaint on December 8, 2017, wherein Respondent admitted certain factual allegations, offered clarification regarding some allegations, denied others, and denied violating the cited Canons of the Code of Judicial Conduct.

Pursuant to Rule 2:15-13(a), the Presenter, by way of letter dated December 29, 2017, provided Respondent, through his counsel, a copy of the discovery³ that would be relied upon to sustain the disciplinary charges asserted in the Formal Complaint. Thereafter,

² The Supreme Court adopted on August 2, 2016 the revised Code of Judicial Conduct, with an effective date of September 1, 2016, to which we cite and refer in this Presentment. Though Respondent's conduct predates the adoption of the revised Code of Judicial Conduct, the changes made to Canons 1 and 2 of the Code were not substantive and, as such, do not affect the charges in the Complaint.

³ ACJC-00001 through ACJC-01601.

Presenter supplemented discovery by providing additional documentation to Respondent *via* letter dated August 9, 2018.⁴

On December 18, 2018, Presenter and Respondent, through his counsel, jointly filed with the Committee their agreed upon Stipulations regarding the salient facts under consideration in this matter. The Stipulations included identification of what constitutes acceptable expenditures from the DWI Fund and a recitation of the appropriate procedure to follow for receipt of such expenditures from the DWI Fund, which are set forth in the Guidelines. Stipulations at ¶¶5-6. Importantly, Respondent also acknowledged the annual provision through the Administrative Office of the Courts ("AOC") of the controlling documents, and admitted that his receipt of monies from the DWI Fund occurred without him ever completing and submitting the requisite voucher form titled "Request for the Expenditure of DWI c. 531 or POAA Funds" to his Assignment Judge for pre-approval. Id. at ¶¶7-10.

The Committee convened a Formal Hearing in the Supreme Court Courtroom at the Richard J. Hughes Justice Complex on December 19, 2018. Respondent appeared, with his counsel, and offered testimony for mitigation purposes and in defense of the asserted disciplinary charges to explain the circumstances surrounding the events that led to the filing of the Committee's Formal Complaint. No witnesses

⁴ ACJC-01602 through ACJC-01633.

were called. Exhibits were offered by the Presenter and Respondent, all of which were admitted into evidence. See Presenter's Exhibits P-1 through P-13; see also Respondent's Exhibits R-1 through R-22. Notably, Respondent's 22 exhibits consisted solely of character letters submitted by various attorneys from the Passaic County area. After careful review of the record, the Committee makes the following findings, supported by clear and convincing evidence, which form the basis for its recommended discipline.

II. FINDINGS

A. Undisputed Facts

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1966. Stipulations at ¶1. At all times relevant to this matter, Respondent served as a judge of the Municipal Court of the Township of Little Falls ("Little Falls"), first appointed in 1993, Presiding Judge of the Passaic Vicinage Municipal Courts, appointed in or about July, 2006, judge of the Remand Court in Paterson until approximately July, 2015, and Presiding Judge of the Passaic Vicinage Central Judicial Processing Court, starting in or about July, 2015. Id. at ¶2. Respondent held these positions until September 14, 2015, when Assignment Judge Caposela entered an order suspending Respondent from his judicial duties, without compensation. Ibid.; See P-1 at ACJC-00018 through ACJC-00019. The Order of Suspension was vacated

on June 23, 2017. Stipulations at ¶2. Respondent was not reappointed to his positions as Presiding Judge of the Passaic Vicinage Municipal Courts or as the Presiding Judge of the Passaic Vicinage Central Processing Court. Id. at ¶3. Respondent resigned from his position as the Little Falls Municipal Court Judge effective July 6, 2017. Ibid.

By way of background, from 2009 through 2013, as well as in 2015, Little Falls received, and was directed by Respondent to expend, monies from the DWI Fund, which was statutorily established to assist municipal courts in their efforts to dispose promptly of DWI matters and to defray the costs associated with the additional court sessions needed to expeditiously address pending and backlogged DWI cases. Id. at ¶4. Acceptable expenditures from the DWI Fund include, among other things, "payments to municipal court judges, municipal prosecutors and other municipal court personnel for work performed in addition to regular employment hours." N.J.S.A. 26:2B-35(b)(3). Id. at ¶5. In accordance with the Guidelines promulgated by Judge Grant on May 18, 2009, all expenditures from the DWI Fund must be preapproved by the Assignment Judge before disbursement of any sums from the Fund through submission of a Request for Expenditure of DWI Funds form. See P-1 at ACJC-00040 through ACJC-00045. Section II.B of the Instructions for the Request for Expenditure of DWI Funds form states, "[t]his section should be completed when the request is to

hold a special court session or to pay overtime. . . ."

Stipulations at ¶6. Judge Grant's memorandum, which sets forth the disbursements to each municipality and makes explicit reference to the Guidelines, is sent out on an annual basis, via e-mail, by the AOC to the Municipal Treasurer for the municipality with copies to municipal court administrators, deputy court administrators, judges, presiding judges, municipal division managers, and select central office staff. Stipulations at ¶7. The form to submit for requesting Assignment Judge preapproval is attached to the Guidelines, along with instructions for completing the form. Ibid. The annual Memorandum specifically states, "please keep in mind the policy that [Judge Grant] promulgated on May 18, 2009, requiring preapproval of the Assignment Judge before the expenditures of any DWI Fund monies (as well as P.O.A.A. monies)." See P-1' at ACJC-00004, ACJC-00006, ACJC-00008, ACJC-00010, ACJC-00012, and ACJC-00048.

From 2009 through 2011, monies from the Little Falls DWI Fund were used to pay Respondent, the Municipal Prosecutor, Court Administrator, and Deputy Court Administrator for DWI trials. Stipulations at ¶8. Other than Respondent, no other municipal court employees received payments from the DWI Fund in 2012, 2013, and 2015. Id. at ¶9. Respondent did not submit a Request for Expenditure of DWI Funds form to his Assignment Judge on any occasion prior to his receiving payment from the DWI Fund. Id. at

¶10. Respondent received the following amounts from the DWI Fund: in 2009, Respondent received \$3,001.30; in 2010, Respondent received \$2,245.53; in 2011, Respondent received \$1,295.08; in 2012, Respondent received \$647.00; in 2013, Respondent received \$2,744.28; and in 2015, Respondent received \$2,062.66. Id. at ¶¶11-16. A clerical review in August 2015 of Passaic Vicinage Municipal Division files by Sonya Noyes ("Ms. Noyes"), Municipal Division Manager for the Passaic Vicinage, revealed that the Little Falls Municipal Court's file relating to the DWI Fund lacked the requisite vouchers that should have been signed by the Assignment Judge authorizing the expenditure of monies from the DWI Fund. Id. at ¶17. On August 28, 2015, Ms. Noyes notified Respondent via e-mail of the lack of requisite vouchers in the Little Falls Municipal Court's file authorizing the expenditure of monies from the DWI Fund. Id. at ¶18.

B. Respondent's Defenses

Respondent has asserted, at various times, inconsistent defenses. In some instances, Respondent stated that he did not receive Judge Grant's annual Memorandum, nor the related Guidelines, which explain in detail the procedure by which expenditures may be made from the subject DWI Fund. In other instances, Respondent acknowledged that he received the Memorandum and Guidelines, but that he simply failed to read them.

Additionally, on one occasion, Respondent conceded that he may have actually commenced reading the annual Memorandum, but upon learning that the subject thereof was the DWI Fund, about which Respondent mistakenly believed he was already sufficiently educated, he discontinued his reading and neglected the remainder of the Memorandum. These differing defenses, and why they are incompatible, are specifically outlined below.

First, prior to the Committee's issuance of its Formal Complaint on November 3, 2017, Respondent testified to ACJC investigators on August 30, 2017 that "nobody" provided him with "any documents . . . or anything of that nature" concerning the DWI Fund and the procedure by which expenditures could be made from the Fund. See P-12 at pp. 40-41. Respondent claimed that the only information he was provided concerning the DWI Fund was by "word of mouth" from the Honorable James J. Murner, Jr., former Presiding Judge of the Municipal Courts of the Passaic Vicinage, now deceased, who served as Respondent's supervising judge when Respondent assumed the bench in 1993. Id. at pp. 41. However, later in the interview, Respondent acknowledged, in connection with his use of his judiciary e-mail account, that he "got a lot of correspondence that maybe came from the e-mails," but that he "never checked it." Id. at pp. 60. Thereafter, Respondent stated that he has "difficulty in accepting the fact that [Judge Grant's annual Memorandum] never reached [his] court . . . It had to have

come to [his] court." Id. at pp. 62. Next, Respondent speculated that "[i]t might have gotten mixed up in the general mail once and [he] never saw it," or that he saw it and "was confident that [he] knew what this fund was all about" and therefore "didn't need any information on the fund." Ibid. As further elaboration, Respondent then hypothesized that "what could have happened with [Judge Grant's annual Memorandum]. . . it came in [Respondent's] mail, [Respondent] looked at it, glanced at it and said [he] know[s] about the fund . . . so [he] put it aside. It got mixed up and [he] never read it." Id. at pp. 63. Respondent also claimed in his defense that the "checks and balances" in the court system should have more expressly alerted him to the requirement to submit the preapproval form prior to any expenditure from the fund. Id. at pp. 63, 88. Respondent was referring to those court staff employees who performed the Annual Municipal Court Visitation Reports at Little Falls, claiming that they should have earlier recognized and alerted Respondent to the dearth of the requisite vouchers for the authorizations of the DWI Fund expenditures.

Next, in his "Verified Answer" filed on December 8, 2017, Respondent stated that his failure to submit any Request for Expenditure of DWI Funds to his Assignment Judge was not willful, and asserted that he "never saw" Judge Grant's Guidelines promulgated on May 18, 2009. Answer at ¶23. Respondent claimed therein that the first time he learned of the Guidelines was on

September 2, 2015 when Ms. Noyes advised him about the preapproval form. Ibid. Additionally, in his Answer, Respondent claimed that "no one within the Passaic Vicinage ever advised [him] of any obligations set forth in the Guidelines or form from 2009 through September 1, 2015, or questioned why he hadn't complied with the Guidelines. . . ." Ibid. Respondent asserted that Ms. Noyes "never brought this issue up" with him and that he "never saw the Guidelines or the 'Request for the Expenditure of DWI c 531 or POAA Funds' form" and thus, "was unaware of the contents of same or any concomitant obligations that may have been set forth in the documents." Id. at ¶¶23-25. In response to the charge that Respondent failed to comply with the Guidelines promulgated by Judge Grant, Respondent again asserted that he "never received it." Id. at ¶28. Respondent also claimed in defense that, regardless of whether or not he submitted the pre-approval form, the Complainant could not show that "Respondent would have been denied the DWI funds had he completed the DWI form in the Complaint during the years 2009-2015 or that he was not otherwise permitted to receive the funds in question." See "Ninth Separate Defense" contained in Answer at pp. 7.

During the Committee's Formal Hearing on December 19, 2018, Respondent advised the Committee that he "never saw" Judge Grant's annual Memorandum, that he "knew nothing about it," that he "never attended any meetings where they had that," and that his

"divisional manager never brought that [Memorandum] to [his] attention personally in [his] remand court or in [his] Little Falls Municipal Court." See 1T⁵ at pp. 12. Later, Respondent stated that he "can honestly say to [the Committee that he] never heard anything about this fund at any of those [Conference of Municipal Court Presiding Judges] meetings and no one came to [his] chambers and gave [him] copies of that [memorandum] or explained it to [him]." See 1T at pp. 26.

The Committee rejects each of Respondent's defenses. His assertion that he would have been entitled to receive at least some of the DWI Fund monies if he had filled out the appropriate form is not supported by the evidence. In fact, the record is devoid of any evidence demonstrating that Respondent held special sessions that could warrant receipt of monies from the DWI Fund. Furthermore, multiple individuals involved in this matter, including Sonya Notes, Passaic Vicinage Municipal Court Division Manager, and Charles Cuccia, Little Falls Township Treasurer, testified that there was no backlog in Little Falls that would necessitate the municipal court's scheduling of special sessions during the relevant time period. See P-8 at pp. 24-25, 80-81; See P-11 at pp. 31. Furthermore, Respondent's claim that he performed extra work outside of court, such as conducting legal research and

⁵ 1T = Transcript of Formal Hearing held on December 19, 2018

drafting written opinions, would not qualify, according to Assignment Judge Caposela, as an acceptable expenditure from the DWI Fund "because it's really not verifiable." See P-7 at pp. 22. More importantly, Respondent was not in a position to supplant his judgment over Assignment Judge Caposela's supervisory role regarding what would qualify as a compensable event under the DWI Fund Guidelines, as that determination is vested in the Assignment Judge.

Importantly, despite Respondent's claims to the contrary, Respondent attended multiple meetings held by the Conference of Presiding Judges of the Municipal Courts, both before and after⁶ the promulgation of the Guidelines on May 18, 2009 by Judge Grant, where the DWI Fund and related issues were discussed. See P-13; P-1 at ACJC-00034 through ACJC-00038. Furthermore, the AOC regularly uploads and stores online for easy access the memoranda promulgated by Judge Grant, which are readily available on the judiciary's "InfoNet." See P-8 at pp. 30. Additionally, Ms. Noyes testified

⁶ Respondent asserted in his post-hearing submission dated January 7, 2019 that while "Respondent did attend monthly meetings wherein the subject of DUI funds was discussed . . . each meeting summary submitted as evidence by the Presenter in this matter pre-dates Judge Grant's Guidelines dated May 18, 2009." This is not accurate. The Meeting Summary of the June 9, 2014 Conference of Presiding Judges - Municipal Courts meeting, contained in P-1 at ACJC-00034 through ACJC-00038, reflects Respondent's attendance at that meeting where discussion occurred about the DWI Fund.

that she hand delivered these documents to Respondent. Id. at pp. 36.

Respondent's receipt via e-mail of these documents is irrefutable. Steven A. Somogyi, Director of the Municipal Court Services Division, confirmed "with certainty" that Respondent was identified on the e-mail distribution list that included the recipients of Judge Grant's annual Memorandum. P-2 at ACJC-00125, ACJC-00145. Respondent's decision to ignore the content of those e-mails does not constitute a viable defense to these ethics charges.

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).

In this judicial disciplinary matter, Respondent has been charged with violating Canon 1, Rule 1.1, and Canon 2, Rule 2.1 of the Code of Judicial Conduct by his conduct in failing to comply

with noticed, established protocol when he directed the Little Falls Township Treasurer to disburse to him sums of money from the DWI Fund without first receiving approval from his Assignment Judge through submission of the required Requests for Expenditure of DWI Fund forms.

We find, based on our review of the significant evidence of record, that these asserted disciplinary charges have been proven by clear and convincing evidence and as such, Respondent violated the cited Canons of the Code of Judicial Conduct. Consequently, Respondent is subject to discipline.

Respondent is charged with the duty to abide by and enforce the provisions of the Code of Judicial 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.")

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

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." As the Commentary to Canon 2, Rule 2.1 explains:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

Code of Judicial Conduct.

This Commentary emphasizes the special role that judges play in our society and the significance of their public comportment. "[J]udges have a special responsibility because they are 'the subject of constant public scrutiny;' everything judges do can reflect on their judicial office. When 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.'"

In re Blackman, 124 N.J. 547, 551 (1991). As recognized by our Supreme Court, adherence to this principle is of the utmost importance. In re Santini, 126 N.J. 291, 298 (1991); see also In re Murray, 92 N.J. 567, 571 (1983); In re Hardt, 72 N.J. 160, 166-167 (1977).

As our Supreme Court made clear almost 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." In re Samay, 166 N.J. 25, 43 (2001). Indeed, each judge, upon 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).

In the instant matter, the evidence presented demonstrates, clearly and convincingly, that Respondent failed to conduct himself in a manner consistent with the high ethical standards applied to judges. Respondent's conduct constitutes significant violations of the Code of Judicial Conduct for which severe public discipline is warranted. We find that Respondent's improper receipt of monies from the DWI Fund in each of the years from 2009 through 2013, and 2015, without first applying for and obtaining authorization from his Assignment Judge, constitutes behavior that sharply conflicts with the provisions and overall spirit of the Code of Judicial Conduct.

In light of the evidence, we simply cannot accept any of the defenses asserted by Respondent. Likewise, we do not believe that Respondent's purported lack of willfulness or intentionality of his conduct could serve as a sufficient basis to withhold an imposition of discipline. See In re Blackman, 124 N.J. 547 (1991) (finding judge's lack of intent irrelevant in judicial disciplinary matters). Respondent's various defenses, which ranged from his claim that he never received and, thus, never saw the subject annual Memorandum or Guidelines, to his defense that the checks and balances of the court system should have earlier detected and more explicitly alerted him to his procedural noncompliance, do not justify or negate Respondent's misconduct. Respondent, by virtue of his judicial office, was duty-bound to

know and adhere his conduct to the rules and statutes that govern the municipal court, including the strictures pertaining to the operation of the DWI Fund and the attendant requirements for receipt of expenditures from same. See In re Sgro, 63 N.J. 538 (1973) (finding that "all municipal court judges, even though inexperienced and part-time, are charged with knowledge of the rules and statutes governing that court and are bound to act accordingly.") Willful ignorance of these strictures cannot reasonably serve as a defense to Respondent's unauthorized receipt of state funds.

Having concluded that Respondent violated Canon 1, Rule 1.1 and Canon 2, Rule 2.1 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 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.

In the instant matter, several aggravating circumstances exist. First, the misconduct at issue - the unauthorized receipt of state monies based upon willful ignorance of Judge Grant's annual Memorandum and Guidelines - demonstrates a lack of integrity and probity. Respondent's professed lack of intent to do so neither diminishes the impropriety of his misconduct nor mitigates the harm done to the judicial office and the public's trust in those who hold that office. Next, Respondent's assertion before this Committee of multiple inconsistent defenses also serves to aggravate the ethical misconduct for which he was charged, as it bespeaks a fundamental lack of candor. Additionally, Respondent's continued refusal to date to return to the Treasurer of the State of New Jersey any of the DWI Funds he distributed to himself without authorization aggravates his ethical misconduct. Respondent even conceded at the Committee's Formal Hearing on December 19, 2018 that "maybe [he] should pay something back." See 1T at pp. 21. Lastly, further aggravating Respondent's ethical misconduct were his multiple attempts to redirect the blame for his noncompliance with established protocol for his receipt of money from the DWI Fund upon others, specifically, the Passaic Vicinage Municipal Division employees and the Little Falls municipal court employees.

Factors to be 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).

In respect of any mitigating factors, the record before us includes 22 character letters submitted on behalf of the Respondent by attorneys who practice in the Passaic Vicinage, which demonstrate Respondent's well-earned reputation as a competent and fair jurist. See R-1 through R-22. We recognize and commend Respondent for the approximate 23 years of service to the bench, from 1993 through 2015, in multiple courts and note that Respondent's disciplinary history with the Committee is otherwise unblemished. Moreover, given Respondent's representation that he has retired, has moved out-of-state, and has no intention of returning to the bench, there appears to be no likelihood of repetition of such conduct.

We find these mitigating factors, though significant, inadequate when weighed against the aggravating circumstances and Respondent's significant ethical misconduct in this instance, for which we recommend a public censure and permanent bar from judicial office. 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 Sonstein, 175 N.J. 498 (2003) (censuring municipal court judge for writing a letter on judicial letterhead to another municipal court judge about his parking matter pending before that judge). Cf. In re Batelli, 225 N.J. 334 (2016) (suspending a municipal court judge for intentionally misusing his judicial office to access the criminal case history of a defendant for personal reasons); In re Muller, 208 N.J. 435 (2011) (reprimanding municipal court judge for improperly invoking her judicial office in a private matter while disrespecting police officers and demonstrating a lack of professionalism and courtesy); 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).

IV. RECOMMENDATION

For the foregoing reasons, the Committee recommends that Respondent be publically censured and permanently barred from judicial office for his conduct violative of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct. This recommendation takes into account the seriousness of Respondent's ethical misconduct as outlined above, as well as the aggravating and mitigating factors present in this case, which justify the

quantum of discipline recommended. Furthermore, the Committee also recommends that Respondent be immediately ordered to pay restitution in the amount of \$11,995.85 to the Treasurer of the State of New Jersey.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

March 28, 2019

By: Virginia A. Long
Virginia A. Long, Chair