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Garden State CLE Presents:

A CLE Ethics Seminar:

“Please step out of the car, Your Honor”



LESSON PLAN

Our primary concern in determining discipline is therefore not the punishment of the judge, but rather to restore and maintain the dignity and honor of the position and to protect the public from future excesses. Judges engaging in misconduct must be disciplined to instruct the public and all judges, ourselves included, of the importance of the function performed by the judges in a free society. We discipline a judge to reassure the public that judicial misconduct is neither permitted nor condoned. We discipline a judge to reassure the public that the judiciary of this state is dedicated to the principle that ours is a government of laws and not of men.

In re Williams, 169 NJ 264, 275 (2001).

Part I. Sexual Misconduct

Introduction – In this era of political correctness, zero-tolerance and sensitive feelings, a cautionary word or two on dealing with subordinates, colleagues, attorneys, police and members of the public.

a.) Matter of Campbell, 205 NJ 2 (2011) (Reprimand)

[Affair between judge and bailiff resulting in attempted suicide]

And the Court being in agreement with the conclusion of the Advisory Committee on Judicial Conduct that respondent's position relative to the bailiff required him to report his relationship with the bailiff to his superiors in order to permit appropriate administrative reassignment;

And the Court further having concluded that the clear purposes of the disclosure requirements in the EEO Statement are “to eliminate any appearance of, or actual, impropriety in the workplace,” and to permit the taking of affirmative steps to prevent harassment or discrimination from occurring within the Judiciary due to private relationships among members of the Judiciary and thereby to avoid such claims as against the Judiciary;

Our reading of

[Lehmann \[v. Toys ‘ R ’ Us, Inc., 132 N.J. 587, 626 A.2d 445 \(1993\),\]](#) and its progeny, reviewed above, suggests that the Court, instead of requiring a litmus test depending on specific factors (e.g., power to fire or power to control daily tasks), would make the decision turn on whether the power the offending employee possessed was reasonably perceived by the victim, accurately or not, as giving that employee the power to adversely affect the victim's working life. Thus, such indicia as the power to fire and demote, to influence compensation, and to direct all job functions would be probative of supervisory status, but would not exclude other indicia. Also relevant would be any evidence that the alleged harasser controlled the workplace in subtler and indirect ways, as long as the effect was to restrict the victim-employee's freedom to ignore sexually harassing conduct.

b.) Matter of Jones, 211 NJ 116 (2012) (Suspension 4 months)

[While at a holiday Christmas party, judge engaged in a pattern of inappropriately touching of female probation officers and a restaurant employee as well as inappropriate, suggestive remarks to them while intoxicated.]

The Advisory Committee on Judicial Conduct having filed with the Court pursuant to *Rule 2:15–15(a)*, a presentment recommending that MARQUIS D. JONES, JR., a Judge of the Superior Court, be suspended from the performance of his judicial duties for a period of four months, without pay, and that certain conditions be imposed, for respondent's violations of *Canon 1* (a judge should personally observe high standards of conduct to preserve the integrity and independence of the judiciary) and *Canon 2A* (a judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) of the *Code of Judicial Conduct*;

And respondent, through counsel, having accepted the findings and recommendation for discipline of the Advisory Committee on Judicial Conduct and having waived his right to the issuance of an Order to Show Cause and a hearing before the Supreme Court;

And good cause appearing;

It is ORDERED that the findings and recommendation of the Advisory Committee on Judicial Conduct are adopted as provided herein and MARQUIS D. JONES, JR., is hereby suspended from the performance of his judicial duties, without pay, for a period of four months, effective immediately; and it is further ORDERED that respondent shall enroll in and successfully complete an in-patient or out-patient program alcohol treatment program approved by the Supreme Court and shall submit to the Court quarterly reports from a medical professional, therapist, or alcohol or addiction counselor approved by the Supreme Court documenting the progress of respondent's treatment for a period of one year.

c.) Matter of DeBello, 201 NJ 147 (2009) (Censure)

[Exchanged inappropriate, sexual e-mails (inappropriate and distasteful language) with a former law clerk using judiciary e-mail account, and continued after being told to stop by Assignment Judge; gave misleading information about his relationship with the clerk; used his influence to help her find private employment with a law firm.]

(See administrative directive #3-06 – no personal use of e-mail and NO expectation of privacy.)

III. No Personal Use/No Expectation of Privacy

Users are advised that computers, computer networks, E-mail and other electronic communications systems and all communications created, received, stored on or transmitted through these systems are Judiciary property. Accordingly, users shall not use these resources for personal use and have no reasonable expectation of privacy regarding this equipment, networks, systems, or these communications and are advised that the systems and their communications are subject to monitoring and interception by management. While the systems may contain passwords, locks, encryption or other security features provided to users, users are advised that these security features exist to protect the Judiciary's business interests and not to protect a user's personal use of a business resource.

http://www.judiciary.state.nj.us/directive/personnel/dir_3_06.pdf

**d.) Matter of Boylan, 162 NJ 289 (2000)
(Disbarment)**

The respondent was admitted to the bar in 1988. From 1994 to 1997, respondent served as Jersey City Municipal Court Judge presiding over cases involving motor vehicle violations. In his federal sentencing proceedings, respondent acknowledged that he engaged in a scheme to defraud the City of Jersey City of money and property by reducing traffic violation fines and penalties for female defendants, coaching the defendants to lie in open court about the circumstances of their tickets and using these false statements as a factual basis to justify reductions in their fines and penalties. He acknowledged that he solicited sexual favors from these defendants and that the City of Jersey City had lost over \$10,000 in fines and penalties as a result of the scheme. Following his plea of guilty to the use of the mails to perpetrate the fraud, he was sentenced to 30 months in prison and 3 years probation and ordered to make restitution to Jersey City.

e.) In re Brennan, 147 NJ 314 (1997) (Private reprimand)

Roberts testified that when she entered Respondent's outer office, he was at the far end of the room, talking to a secretary who was operating a typewriter. According to Roberts, when she announced her presence, Respondent looked up, said she was just the person he wanted to see, and asked her to wait for a minute. He finished his business with the secretary, came over to Roberts and took his check from her, and then asked Roberts to step into his private office. Roberts did as requested, and Respondent asked her to wait for a moment while he took a telephone call. When he finished the brief call, he came out from behind his desk, approached Roberts, and told her what an excellent job she had been doing at the court.

According to Roberts, Respondent then put his arms around her waist and drew her close to him, pressing himself against her leg as he did so. She claimed that he began to kiss her passionately, asking her at one point if she used "non-smear lipstick."

Eventually, Roberts informed Respondent that the patrol car was waiting for her, and that she had to leave. Roberts told him to call her at work to “talk about this.” Roberts testified that she was nervous and frightened when she departed, and that no one was in the outer office when she left.

Respondent's testimony differed substantially from that of Roberts. He stated that he was sitting in his private office and overheard Roberts ask someone in the outer office if she could see him. He testified that as Roberts entered his office, he heard the phone ring in the outer office. Respondent's wife, who worked as a secretary in the office, buzzed him on the intercom to inform him that there was a call. Respondent took the call and spoke to the caller for a minute or two. He got up from his desk and walked to the front of the desk where Roberts was standing. Respondent acknowledges that he put his arm around Roberts, and that she put both her arms around him and “snuggled up.” He then asked Roberts if she was wearing smear-proof lipstick. He testified that when he kissed her on the cheek she reciprocated with encouragement of his advances. They kissed.

The Committee thus determined that Respondent's advance in his office on November 17, 1995, was not unwelcome. Because it was not unwelcome, the Committee determined that Respondent's conduct did not constitute sexual harassment. The Committee found, however, that Respondent engaged in improper conduct by a judge and that Respondent violated [Canons 1](#) and [2](#) of the Code of Judicial Conduct, in that his conduct was prejudicial to the administration of justice and brought the judicial office into disrepute. *R. 2:15-8(a)(6)*.

The commentary to [Canon 2](#) states that “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.” By hugging and kissing Roberts, a subordinate employee, even if those advances were not unwelcome, Respondent engaged in conduct that embarrassed himself and his judicial office. In addition, his conduct provided for Roberts a factual predicate for her complaints of sexual harassment. The Committee concluded that Respondent should be privately reprimanded.

f.) In re Bock, 128 N.J. 270 (1992) (six-month suspension from practice)

Respondent had been practicing law in New Jersey with an unblemished record for thirty years when the events that gave rise to this complaint occurred. On November 7, 1989, depressed as a result of his wife's incessant and repeated interrogations concerning a recently-disclosed extra-marital affair with Martha Heath, respondent arranged with Ms. Heath to leave New Jersey. After leaving contrived evidence on Long Beach Island designed to give the impression that he had drowned, Ms. Heath drove respondent to New Brunswick where he boarded a train to Baltimore. He took an apartment near Easton, Maryland under an assumed name. Respondent remained there for approximately five weeks before returning to New Jersey on December 14, 1989, after the Morris Plains Police Department and the Morris County Prosecutor's Office located him.

At the time of his “disappearance,” respondent was a part-time municipal court judge in the Borough of Morris Plains, and was engaged in the practice of law in Morris Plains with a partner and associate.

He was responsible for sixty to seventy files. Respondent asserts that although he told neither his partner, associate, nor clients that he was leaving New Jersey for an indefinite period, he knew that his partner and associate could handle his caseload in his absence. As it turned out, no client left the firm as a result of respondent's conduct. He was removed from office as a municipal court judge by order of the Superior Court.

[T]he disciplinary power is not confined to the area covered by the canons. It has long been settled here and elsewhere that any misbehavior, private or professional, which reveals lack of the character and integrity essential for the attorney's franchise constitute a basis for discipline. The reason for this rule is not a desire to supervise the private lives of attorneys but rather that the character of a man is single and hence misconduct revealing a deficiency is not less compelling because the attorney was not wearing his professional mantle at the time. Private misconduct and professional misconduct differ only in the intensity with which they reflect upon fitness at the bar. This is not to say that a court should view in some prissy way the personal affairs of its officers, but rather that if misbehavior persuades a man of normal sensibilities that the attorney lacks capacity to discharge his professional duties with honor and integrity, the public must be protected from him.

g.) In re Williams, 169 N.J. 264 (2001) (three-month suspension)

[Respondent] has failed to adhere to the high standards we expect and demand of our judges. Her actions affected persons removed from the immediate controversy and her disregard for social norms negatively affects public confidence and brings discredit to the judiciary. Of greatest concern, she misled the Trenton police and, later, implied she was an official from the Hopewell Police Department. Moreover, the events of that night were not isolated. Prior incidents relating to respondent's relationship with Bridges are not before us except insofar as they bear on the quantum of discipline that should be imposed. In one such incident a year earlier, respondent was physically injured during another confrontation with Bridges. Neighbors called the police and respondent filed and then withdrew a complaint against him. She was asked to seek therapy at that time and did so. Although she was reappointed, her reappointment was without tenure due to a break in service. See [N.J. Const., art. VI, § 6, ¶ 3](#) (stating that “[t]he Justices of the Supreme Court and the Judges of the Superior Court shall hold their offices for initial terms of [seven] years and upon reappointment shall hold their offices during good behavior”). Respondent has already paid a heavy price for her intemperate behavior.

See also In re Williams, 188 NJ 476 (2006) (DWI - Censure)

h.) In re Seaman, 133 NJ 67 (1993) (two-month suspension)

[T]he inquiry before the Court is not whether respondent's behavior constituted sexual harassment as such. Although undoubtedly all forms of behavior that cross the legal threshold of sexual harassment would constitute judicial misconduct, many forms of offensive interpersonal behavior that would violate the *Code of Judicial Conduct* would not meet the legal definition of sexual harassment. Nevertheless, we cannot overstate that although we must address the ultimate issue of whether judicial conduct violates the canons, the charges of misconduct against respondent equate with sexual harassment.

The commitment of this State and its judiciary to end gender discrimination-and one of its most egregious expressions, sexual harassment-clearly weighs heavily in our determination of the discipline to be imposed on respondent. The Commissioner of Personnel for the State of New Jersey has described sexual harassment as “a serious problem in our state and our nation. It is behavior that we cannot tolerate.”

Clearly, respondent has engaged in a most serious form of misconduct. That misconduct involves not only the mistreatment of a person in his employ, but flagrant disregard for the law. *Canon 3A(4)* directs explicitly that “[a] judge ... should not discriminate because of sex.” Sexual harassment of women by men is among the most pervasive, serious, and debilitating forms of gender discrimination.

i.) In re Subryan, 187 NJ 139 (2006) (two-month suspension)

In our view, the question is not whether there is clear and convincing evidence that the judge and others made comments and jokes in chambers about gender and sex, and even about pornographic pictures-there is ample evidence they did. The question is whether those comments and jokes violated the *Code of Judicial Conduct*. Although the issue is closely poised, we find that they did not. The record suggests that the people who participated in the banter believed it to be harmless. Because of the possibility that some of those present could be offended, however, jokes and comments about gender and sex are simply not appropriate in this setting. A judge always must maintain a dignified environment, whether in the courtroom or in the relative informality and privacy of his or her chambers.

We begin with the understanding that the judge's conduct is unacceptable in any workplace setting, and that it is particularly troubling in the context of the judge-law clerk relationship because of the inequality inherent in that relationship.

Part II. Directive # 04-09

TO: SUPERIOR COURT JUDGES

TAX COURT JUDGES

MUNICIPAL COURT JUDGES

FROM: CHIEF JUSTICE STUART RABNER

**SUBJ: DISQUALIFICATION OF JUDGES CHARGED WITH OR CONVICTED OF DWI
OFFENSES OR DOMESTIC VIOLENCE OFFENSES**

DATE: MAY 29, 2009

On June 17, 1999, this Court issued Directive #7-99, which consolidated and restated procedures previously adopted by the Supreme Court regarding judicial disqualifications as a result of DWI or domestic violence matters. After almost ten years under that Directive, the Supreme Court has decided that substantive modifications to the policy are required. The revisions are consistent with the Legislature's imposition of enhanced penalties for DWI violations since Directive #7-99 was issued.

In particular, In 2004 the Legislature lowered the blood alcohol level required for DWI offenses from 0.10% to 0.08% and lengthened the period of license suspension for first-time offenders. L. 2003, c. 314 (mandating three-month suspension when violation involves blood alcohol level below 0.10% and lengthening suspension from six months to seven when level above 0.10%); see also L. 2003, c. 315 (imposing mandatory jail time for third drunk driving offense); L. 2002, c. 34, § 17 (increasing fines for DWI offenses); L. 2000, c. 83 (permitting the installation of ignition interlock devices after any DWI violation).

The revised policy language follows. Driving While Intoxicated (DWI) Disqualifications. The Supreme Court has modified its administrative policy for judges who have been charged with or convicted of driving while intoxicated (DWI) or related offenses. The policy applies to all judges sitting in Municipal Court and Superior Court, including temporary assignments.

Directive # 04-09

[Supersedes Directive #07-99]

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Judges charged with or convicted of DWI or related offenses shall not hear any DWI cases while the charges are pending and, if convicted, until (a) one year from the date of the imposition of sentence (as extended by any stay), or (b) all conditions imposed as a result of the DWI conviction are satisfied in full, including suspension of the judge's driver's license and completion of the prescribed program requirements of the Intoxicated Driver Resource Centers, whichever is longer. If, at the time the charges are brought, the judge has reserved decision in any DWI case, that case shall be transferred by the Assignment Judge to another judge. The matter shall be determined on the papers unless the defendant objects. If the defendant interposes an objection, a mistrial shall be declared and the case will be retried before the judge to whom the matter was transferred.

The Court has further determined that a judge who has been disqualified from hearing DWI matters under this policy shall not thereafter hear such cases without the prior approval of the Supreme Court on the application of the judge. Supreme Court approval of an application to resume hearing DWI cases will not preclude a judge from exercising his or her power of recusal in any particular DWI case or in any category of such cases.

Domestic Violence Disqualifications

The Supreme Court also has adopted a policy for assigning cases to judges when a judge is a party to a domestic violence matter. The policy applies to all judges sitting in Municipal Court and Superior Court, including temporary assignments. A judge who is a party in a domestic violence matter shall not hear any domestic violence cases while the matter is pending and for a period of one year from the entry of the trial court's disposition. If the disposition is a final restraining order against the judge, the judge shall be disqualified from hearing any domestic violence case during the period any restraint is in place or for one year from the date of the order, whichever is longer.

If, at the time a domestic violence complaint is filed, the judge has reserved decision in any domestic violence case, that case shall be transferred by the Assignment Judge to another judge. The matter shall be determined on the papers unless a party objects. If a party interposes an objection, a mistrial shall be declared and the case will be retried before the judge to whom the matter was transferred. The Court has further determined that a judge who has been disqualified from hearing domestic violence matters under this policy shall not thereafter hear such cases without the prior approval of the Supreme Court on the application of the judge. Supreme Court approval of an application to resume hearing domestic violence cases will not preclude a judge from exercising his or her power of recusal in any particular domestic violence case or in any category of such cases. A judge disqualified under this policy may not automatically resume hearing domestic violence matters if a temporary order of restraint is vacated, or if the matter in which the judge is involved is concluded without the entry of relief in favor of the complainant. Once disqualified under this policy, a judge must obtain the approval of the Supreme Court prior to hearing any domestic violence cases.

Part III - Drunk Driving

a. Note - Requires immediate self-reporting (Directive 07-11) & prompt compliance with Directive 04-09.

b. Plea or finding of guilt conclusively establishes the Judicial Ethics Violation. Case will be tried before a judge of the Superior Court (sitting as a municipal court judge) with appeal directly to the Appellate Division. See *State v. Cerefice*, 335 NJ Super. 374 (App. Div. 2000).

c.) **Public Policy:** With respect of drunk driving, we said in *Connor*: ‘We do not view offenses arising from the driving of an automobile while intoxicated with benign indulgence. They are serious and deeply affect the safety and welfare of the public. They are not victimless offenses.’ We firmly endorse the governmental commitment to the eradication of drunk driving as one of the judiciary's own highest priorities. In re *Collester*, 126 NJ 468, 472-473 (1992).

d. Typical Discipline upon conviction will result in:

1. A Reprimand for routine cases

In re Jones, 199 N.J. 118 (2009)

In re D' Ambrosio, 157 N.J. 186 (1999)

In re Richardson, 153 N.J. 355 (1998)

In re Lawson, 124 N.J. 280 (1991)

2. A Censure or disqualification for cases involving aggravating factors related to the driving, arrest or investigation

In re Sasso, 199 N.J. 119 (2009) [Disqualification – intoxicated while on the bench]

In re Tourison, 199 N.J. 121 (2009) [Penny in mouth]

In re Williams, 188 NJ 476 (2006) (Failed to cooperate & prior discipline)

In re Annich, 130 N.J. 538 (1993) [Resisted arrest]

In re Connor, 124 N.J. 18 (1991) [Accident & high-speed pursuit]

3. Suspension from Judicial Office for subsequent offenses

In re Collester, 126 N.J. 468, 473-474 (1992)

Without doubt the most egregious aspect of respondent's ethical dereliction is the fact that he has repeated the offense of drunk driving. However, in addition to that circumstance, there were other aggravating circumstances surrounding his motor vehicle infractions. Respondent, on his arrest, immediately informed the arresting officer that he was a Judge of the Superior Court. He also stated that he was responding to an emergency at the court house. That statement was false. There was no emergency.

Although respondent was, in fact, proceeding to the court house, it was to obtain a file to review that night in preparation for the next day's trial. Moreover, he repeated that false statement to the arresting trooper. He thus seemingly attempted to divert, if not obstruct, justice. Further, as observed by the Committee, "respondent's several references to his judicial status gave the impression that he was entitled to some special preference." He thus clearly used the prestige and weight of his judicial office to try to gain some personal advantage.

In re Connor, 124 NJ 18 (1991)

Aggravating Factors:

That examination in this case discloses aggravating circumstances that bear on appropriate discipline. Those aggravating factors affect our consideration of each of the offenses. The drunk-driving offense resulted in an accident with another vehicle. The offenses of leaving the scene and careless driving were particularly egregious. The former, itself a serious offense, bespeaks a denial of responsibility and a disregard for the proper enforcement of the laws. The careless driving entailed not only an accident with another vehicle, endangering its occupants, but a high-speed chase, presenting significant risks to other innocent persons. As serious are the circumstances that followed those offenses. Rather than simply refusing to discuss the incident with the investigating officers following the commission of these offenses-which respondent had the legal right to do, aside from whether it was morally and ethically proper for him to do so-respondent lied about being involved in any accident and, worse, tried to cast blame on the victim.

Mitigating Factors:

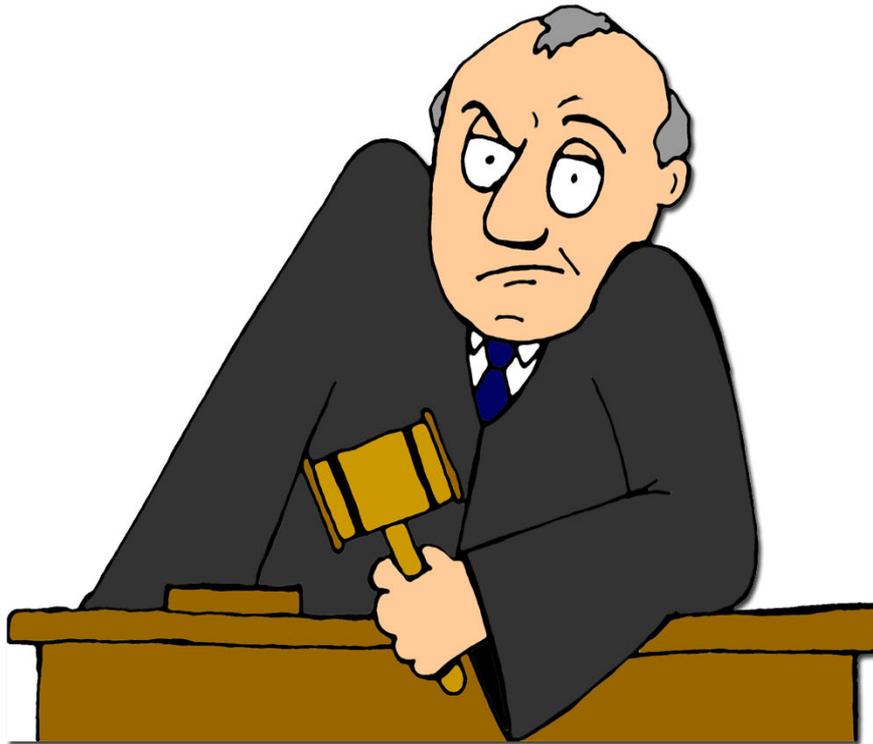
On the day following the accidents and arrest, respondent called Ms. Bennett to inquire about her condition and that of the passengers in her vehicle. He apologized to Ms. Bennett for the accident and offered to pay for any damages that she had incurred. Next, he wrote a series of letters to Atlantic County judges explaining what he had been charged with, admitting guilt to all the charges, and apologizing for the incident. Respondent then called Seabrook House, a clinic specializing in the treatment of substance abuse, and scheduled an interview for that day. The respondent had an interview with a counsellor from Seabrook House who recommended an inpatient treatment program. Recognizing the extent of his drinking problem, respondent decided to enroll in a thirty-day residential treatment program. Later that day, respondent prepared and released to the press a written statement acknowledging responsibility for his actions and offering a general apology.

Immediately after the court hearing, respondent entered Seabrook House for a thirty-day residential treatment program. Following his release from Seabrook House, respondent enrolled in a prescribed outpatient program, consisting of weekly group-therapy sessions run by a counsellor and individual counselling sessions with a therapist. Additionally, respondent followed a recommended course of three meetings per week at Alcoholics Anonymous. He also has a sponsor, an attorney with whom he speaks at least once each week.

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“Please step out of the car, Your Honor”



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