SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-148
District Docket No. XIV-2022-0171E

In the Matter of Bernice Toledo
An Attorney at Law

Argued
September 21, 2023

Decided
December 20, 2023

Hillary K. Horton appeared on behalf of the
Office of Attorney Ethics.

Adolph J. Galluccio appeared on behalf of respondent.

Table of Contents

Introduction

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following the Court's March 27, 2023 Order censuring respondent and imposing a permanent bar from future judicial service in connection with an Advisory Committee on Judicial Conduct (the ACJC) proceeding brought against her in her capacity as the Surrogate of Passaic County, New Jersey.[1]

The OAE asserted that, in the ACJC matter, respondent was determined to have violated the equivalents of New Jersey RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the OAE's motion and conclude that a one-year suspension is the appropriate quantum of discipline for respondent's misconduct.

[1] In New Jersey, a Surrogate serves as "both the Judge and the Clerk of the Surrogate's Court." N.J.S.A. 2B:14-1.

Respondent earned admission to the New Jersey bar in 2004. During the relevant time, she served as the Surrogate of Passaic County, a position to which she was first elected, in 2011, for a five-year term, and re-elected, in 2016, for a second five-year term. She has no disciplinary history.

Effective September 20, 2021, following her arrest for fourth-degree falsifying a judgment granting administration of an estate, in violation of N.J.S.A. 2C:21-4(a), the Court temporarily suspended respondent from her duties pending the outcome of disciplinary proceedings before the ACJC.

On November 7, 2022, respondent executed a disciplinary stipulation with the ACJC, conceding that she had violated Canon 1, Rule 1.1 of the Code of Judicial Conduct (requiring judges to observe high standards of conduct to preserve the integrity and independence of the judiciary); Canon 2, Rule 2.1 (requiring judges to promote 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 (prohibiting judges from permitting family; social; political; financial or other relationships or interests to influence their judicial conduct or judgment); Canon 2, Rule 2.3(A) (prohibiting judges from lending the prestige of judicial office to advance the personal or economic interests of the judge or others); Canon 3, Rule 3.17(B) (requiring judges to be impartial and refrain from manifesting, by words or other conduct, bias or

prejudice in the performance of their judicial duties); and R. 1:12-1(g) (requiring judges to disqualify themselves in proceedings in which there exists any reason that might preclude a fair and unbiased hearing and judgment, or that might reasonably lead counsel or the parties to believe so).

On March 27, 2023, the Court accepted respondent's disciplinary stipulation and censured respondent for her misconduct. Additionally, the Court permanently barred her from future judicial office. In re Toledo, 253 N.J. 330 (2023).

Facts

On January 28, 2017, Mark Halchak, a resident of Wayne Township, New Jersey, died intestate, without any surviving spouse, parents, siblings, or children.[2] However, Mark was survived by an aunt and by several cousins, including Estelle Halchak, a resident of New Hampshire.

On March 23, 2017, Keith Stewart, who is unrelated to Mark, filed an application with the Passaic County Surrogate's Court for administration of Mark's estate. Stewart was familiar with Mark by virtue of their employment together for the Township of Wayne. During his interview with the ACJC,

[2] A person dies "testate" if they "left a will at death." Black's Law Dictionary 1485 (7th ed. 2001). By contrast, a person dies "intestate" if they "died without a valid will." Id. at 827.

Stewart claimed that he and Mark shared a mutual interest in recreational hunting and that they went to shooting ranges together on a few occasions. Stewart, however, did not otherwise have a social relationship with Mark. Stewart also claimed that Mark "hated his family."

Stewart maintained that he sought appointment as the estate's administrator in order to sell its assets and provide the proceeds to the daughter of Mark's friend, Brain Hurtt, who also worked with Mark and Stewart for Wayne Township.[3] Stewart claimed that Mark "love[d]" Hurtt's daughter and that Hurtt was not "doing anything" to avoid the prospect of the estate's property "just go[ing] away." Stewart also claimed that Hurtt had provided significant assistance to Mark, who had suffered from a debilitating illness in the final months of his life. At the time he applied to become the estate's administrator, Stewart maintained that he was unaware of the value of Mark's estate.

Respondent had known Stewart for more than thirty years, having grown up together in the same neighborhood. Respondent and Stewart also were "friends," via their social media profile pages, and they both attended multiple fundraising events in connection with respondent's political campaign for

[3] On February 23, 2017, Hurtt attempted to probate, with the Surrogate's Court, Mark's unexecuted last will and testament, which purportedly named Hurtt as executor of Mark's estate and bequeathed Mark's truck and house to Hurtt and his children. The Surrogate's Court, however, advised Hurtt that it could not probate Mark's unexecuted will.

Surrogate.[4] During Stewart's interview with the ACJC, he claimed that, although attendees were "usually" required to pay to attend respondent's fundraising events, he was never required to do so because he was the "guest" of an individual who worked for respondent. Additionally, respondent and Stewart socialized together at parties. Finally, between January and June 2017, respondent initiated at least six telephone calls to Stewart, from her personal cellphone, and exchanged approximately sixty-three text messages with him.

During her interview with the ACJC, respondent admitted that she had known Stewart for thirty-five years but described her relationship with him as "an extension of [her] relationship with" his sister. Respondent also noted that she and Stewart socialized together in group settings. In respondent's view, she considered Stewart "a friend in the sense that . . . [he was] somebody I know" and not "somebody I'd call to talk on the phone."

On March 24, 2017, a genealogy company advised Estelle of Mark's death, following which Estelle and several "next of kin" secured Mark's remains and arranged to pay his estate's outstanding debts. Estelle also retained New Jersey counsel, Robert Altshuler, Esq., and obtained, from all "next of kin,"

[4] Respondent also was "friends," via social media, with Stewart's mother and older sister, the latter of whom attended grammar school with respondent.

executed "renunciations"[5] expressing their desire to allow Estelle to serve as the estate's administrator.

Meanwhile, on March 27, 2017, Estelle contacted the Surrogate's Court regarding her intent to seek appointment as the estate's administrator. The Surrogate's Court, however, advised Estelle that Stewart previously had applied to become administrator. Consequently, the Surrogate's Court scheduled a hearing to allow respondent "to take testimony" in connection with Stewart's and Estelle's respective efforts to become administrator. During her interview with the ACJC, respondent characterized such hearings as "informal" "consent conference[s]" wherein she allowed parties to "talk it out" and reach a compromise.

On May 6, 2017, Estelle, Altshuler, and Joseph Masiuk, Esq., a Pennsylvania attorney and relative of Mark, appeared at the Passaic County Surrogate's Court for the scheduled hearing before respondent. The hearing, however, did not take place due to the death of respondent's father.[6] Nevertheless, an employee of the Surrogate's Court advised Estelle, Altshuler, and Masiuk that, if Estelle produced proper renunciations, Estelle would be

[5] In the context of estate administration, an individual executes a "renunciation" to demonstrate that he or she has no intent to become administrator. See In re Estate of Watson, 35 N.J. 402, 408 (1961).

[6] Stewart attended the funeral of respondent's father.

appointed administrator at the re-scheduled June 6, 2017 hearing before respondent.[7]

During his interview with the ACJC, Altshuler claimed that Estelle was under the impression, based on their discussion with the Surrogate's Court employee, that "it was a slam dunk" that she would be appointed administrator. Consequently, Altshuler decided not to attend the June 6, 2017 hearing based on his view that it was unnecessary to charge Estelle legal fees for his appearance when he believed that she would appointed administrator.

During her interview with the ACJC, respondent claimed that, between January and June 2017, she had communicated with Stewart only twice, via telephone conversations. The first time, she stated, was in February or March 2017, in reply to Stewart's message left with a Surrogate's Court employee, to advise Stewart regarding the procedures to become administrator. The second time, she stated, was in May 2017, to advise Stewart that the hearing scheduled before her on May 6, 2017 had been adjourned due to her father's death. Respondent claimed that, during those conversations, she had no discussion with Stewart regarding the merits of his application. Respondent advised the ACJC

[7] The Surrogate's Court previously had scheduled the hearing before respondent for April 6 and 20, 2017. However, respondent claimed that the Surrogate's Court had adjourned the April 6 hearing based on the discovery of additional relatives of Mark and the April 20 hearing based on Estelle's personal request to reschedule the hearing.

that, between January and June 2017, she did not believe that she had engaged in any text message communications with Stewart.

On June 6, 2017, Estelle and Stewart appeared at the Surrogate's Court for a hearing before respondent. The hearing was neither recorded nor transcribed. At the outset, respondent informed Estelle and Stewart that she knew Altshuler "from professional functions," such as "cocktail parties."[8] Respondent also informed the parties that she knew Stewart "from outside of this hearing" as the brother of her "childhood friend."

During her interview with the ACJC, respondent claimed that "lots of years was communicated in that to let [Estelle] know that [Stewart was not] just somebody that [she] kn[e]w from a second ago." Further, respondent maintained that she had advised the parties of her belief that she could "render a fair decision after listening to each of [them] and hearing . . . objectively what [they had] to say." In respondent's view, she was not required to recuse herself from presiding over the hearing because, although she "knew" Stewart, she was not "close" with him.

[8] During his interview with the ACJC, Altshuler claimed that he knew respondent only in her capacity as the Passaic County Surrogate and had "no outside knowledge of her." During her interview with the ACJC, respondent claimed that she had "a professional relationship" with Altshuler, whom she knew from her prior litigation experience as a deputy attorney general.

In her disciplinary stipulation, respondent conceded that she failed to disclose to Estelle "the full extent of her relationship with" Stewart, including his attendance at fundraising events for her political campaign and the fact that, since January 2017, respondent and Stewart had exchanged approximately sixty-three text messages and had at least six telephone conversations.

During her interview with the ACJC, respondent claimed that she had advised Estelle that, if she was uncomfortable with her social connection with Stewart, respondent would end the hearing. Nevertheless, respondent advised Estelle that a judgement would be "made one way or another" at "another time." Respondent maintained that Estelle did not "demonstrate any kind of discomfort" by her connection with Stewart and expressed her intent to proceed with the hearing. Thereafter, respondent heard testimony from Estelle and Stewart and, ultimately, appointed Stewart as the administrator of Mark's estate.

Also, during her interview with the ACJC, respondent asserted that Stewart "had more credibility" than Estelle; "was geographically more desirable;" "had initiative" and a willingness to execute the duties of an administrator; and had knowledge of the debilitating illness Mark had suffered from at the end of his life. Moreover, respondent claimed that, given Estelle's testimony that Mark's house contained $30,000 worth of firearms, Stewart's "most important" qualification to serve as administrator was his claim that he

was a licensed firearms instructor. When respondent queried Stewart regarding why he had intended to "go through [the] trouble" of becoming administrator, Stewart replied that Mark was "not at rest."

By contrast, respondent described Estelle as "emotionally driven" and that she had "serious credibility issues." Specifically, respondent was concerned by Estelle's inability to prove her "kinship" with Mark and her "inconsistent" statements regarding not only the timeframe in which she had administered other estates, but also what costs, if any, she had paid towards Mark's funerary expenses. Respondent claimed that, because Estelle could not establish her familial relationship with Mark, she declined to closely examine the renunciations Estelle had produced during the hearing. Respondent also claimed to be concerned by Estelle's purported intent to compensate Hurtt "for his services," regardless of whether such payments abided by "the laws of intestacy."

When questioned by the ACJC regarding why she had determined to appoint Stewart as administrator rather than refer the dispute regarding the administration of Mark's estate to the Superior Court, as R. 4:82(5)[9] and

[9] R. 4:82(5) states, in relevant part, that "the Surrogate's Court shall not act in any manner in which . . . a dispute arises before the Surrogate's Court as to any matter."

N.J.S.A. 3B:2-5[10] require, respondent replied that, "[b]y that rationale, we'd have no hearings at all." Moreover, respondent observed that both Estelle and Stewart had "voluntarily submitted to the hearing." Respondent also claimed that she had determined to proceed with the hearing because, if she declined to do so, Estelle would have traveled from New Hampshire without an "opportunity to be heard."

In Estelle's August 22, 2017 certification in support of her verified complaint and order to show cause to overturn respondent's determination to appoint Stewart as administrator,[11] she claimed that, at the outset of the June 6, 2017 hearing, respondent had advised her that she was "a friend of Stewart's sister." Estelle also stated that she had advised respondent, during the hearing, that she intended to "conserve" Mark's estate and "honor" his wishes, which Mark had expressed in his unexecuted will that Hurtt had attempted to submit to probate, in February 2017. Additionally, Estelle maintained that when respondent had questioned her regarding whether she could "prove kinship" with Mark, she replied affirmatively and offered to present the renunciations executed by Mark's relatives. Estelle, however, claimed that respondent had

[10] N.J.S.A. 3B:2-5 states that, "[i]n the event of any dispute or doubt arising before the surrogate or in the surrogate's court, neither the surrogate nor the court shall take any further action therein, except in accordance with the order of the Superior Court."

[11] It does not appear, based on the record before us, that the ACJC interviewed Estelle.

refused to examine the renunciations. Estelle also stated that, during the hearing, Stewart told respondent that he knew Mark "from work" and that Mark, whom Stewart claimed he had visited in the final months of Mark's life, "did not like his own family." Finally, in reply to respondent's question regarding whether Estelle and Stewart had any experience administering estates, Estelle maintained that she had advised respondent that she had "probated three estates" while Stewart claimed that he had no experience in estate administration.[12]

At the conclusion of the June 6, 2017 hearing, Estelle claimed that respondent "pointed to me and stated you are family, [and] she pointed to Stewart and said you are nothing." Estelle also alleged that respondent, while addressing Stewart, stated "you told me that Mark did not like his family, so I appoint you." According to Estelle, respondent then advised her to appeal her decision if she disagreed with the outcome.

During his interview with the ACJC, Stewart claimed that, at the outset of the June 6, 2017 hearing, respondent informed him and Estelle that she knew Estelle's attorney, Altshuler, and that she "knew me." Stewart also maintained that respondent stated that she knew his sister. Stewart alleged that, following respondent's disclosures, he and Estelle both stated "fine." Additionally,

[12] During his interview with the ACJC, Stewart confirmed that he had no experience in estate administration.

Stewart told the ACJC that he had agreed with Estelle's observation that respondent refused to "accept" Estelle's renunciations. However, Stewart disagreed with Estelle's version of events regarding how respondent had determined to appoint him as administrator. Specifically, Stewart claimed that respondent stated that Estelle was "family, but she's out of touch with her family" and was unaware that Mark had suffered from a debilitating illness. Stewart also noted that respondent stated that he had more "contact" with Mark than Estelle, who only "stepped in at the end" of Mark's life.

On June 9, 2017, three days after the June 6 hearing before respondent, Altshuler sent respondent a letter requesting that she provide a copy of her "decision and/or judgment" appointing Stewart as administrator of Mark's estate. Altshuler also requested that respondent provide a copy of any statement of reasons that she had prepared in support of her decision. During her interview with the ACJC, respondent claimed that she had no recollection of receiving Altshuler's June 9 letter.

On June 22, 2017, respondent issued a "judgment granting administration" in favor of Stewart. Respondent's judgment stated, in relevant part, that:

> all of the competent adult next of kin and other persons having a right to administration upon the said estate prior or equal to that of [Stewart] have duly renounced their right of administration where lawfully required and requested that Letters of Administration be granted to [Stewart]; or due notice of the application of

> [Stewart] has been given to all of the competent adult next of kin and other persons entitled to administration upon the estate of [Mark], whose right thereto is prior or equal to that of [Stewart], or is the party first entitled to administration upon the estate of [Mark].
>
> [Ex.A, SubEx.11].[13]

Respondent's judgment also required that Stewart post a $385,000 bond with the Superior Court, an amount which respondent stated, in her judgment, did not exceed the value of Mark's estate.[14]

Following his appointment, Stewart posted the required bond with the Superior Court and retained Patrick Anderson, Esq., to assist him in connection with his duties as administrator.

On August 30, 2017, Estelle and Hurtt, through Altshuler,[15] filed with the Superior Court of New Jersey, Chancery Division, Probate Part, a verified complaint and order to show cause requesting that the Superior Court: (1) temporarily restrain Stewart from taking any further action as administrator, except for payment of emergent expenses, with the consent of both Estelle and Hurtt; (2) vacate respondent's judgment to appoint Stewart as administrator; and

[13] "Ex.A" refers to respondent's stipulation of discipline by consent before the ACJC and "Sub-Ex." refers to the exhibits appended to Exhibit A.

[14] Respondent's June 22, 2017 judgment was not discussed in any of the ACJC interviews in the record before us.

[15] The record is unclear precisely when Hurtt retained Altshuler as his attorney.

(3) appoint Estelle and Hurtt, Mark's "life-long friend," as co-administrators of the estate.

In their verified complaint, Estelle and Hurtt claimed that they had received neither a judgment nor any statement of reasons from respondent memorializing her decision to appoint Stewart as administrator. Estelle also stated that she and Mark's "next of kin" were "extremely uncomfortable with [respondent's] decision" and alleged "that they were not afforded a fair opportunity to present their position." Estelle and Hurtt also emphasized that Stewart was not Mark's relative and that Mark's close friends had "never even heard [Mark]" mention Stewart. Estelle and Hurtt further stressed that Stewart was merely Mark's "casual co-worker." By contrast, Hurtt was someone with "an almost lifetime strong and close friendship" with Mark. Moreover, Hurtt cared for Mark in the final months of his life and continued to "look after" Mark's "house and truck," the "major assets" of the estate. Estelle also emphasized her experience administering the estates of other family members and the fact that she had the consent of all Mark's next of kin to serve as administrator.

Estell and Hurtt argued that respondent's decision did "not comport with the spirit and intent of the law, or the Rules of Court," citing N.J.S.A. 3B:10-2 (if a person dies, intestate, without a surviving spouse, administration of the

estate "shall be granted" to "the remaining heirs[16] of the estate, or some of them, if they or any of them will accept the administration, and, if none of them will accept the administration, then to any other person as will accept the administration;" moreover, if the decedent's heirs do "not claim the administration within [forty] days after the death of the [decedent], the Superior Court or surrogate's court may grant letters of administration to any fit person applying therefor"), N.J.S.A. 3B:2-5, and R. 4:82(5) (both defined above).

Estelle and Hurtt acknowledged that Estelle did not apply to become administrator within forty days of Mark's death, pursuant to N.J.S.A. 3B:10-2. However, they argued that Estelle had no knowledge of Mark's death until March 24, 2017, fifteen days after the expiration of the forty-day period, following which Estelle and her family took immediate steps to secure Mark's remains and assets and to contact the Surrogate's Court. Although Estelle and Hurtt conceded that Mark "lived alone" and "was a very private person," he "did visit some of his relatives and have family relationships with them."

Moreover, Estelle argued that she clearly expressed to respondent her desire to become administrator and, thus, respondent was obligated, by statute

[16] N.J.S.A. 3B:1-1 defines "heirs" to include not only a surviving spouse, but also the "descendants of the decedent, who are entitled under statutes of intestate succession to the property of the decedent." Generally, under New Jersey intestate succession law, if a decedent is survived only by the "descendants of [his] grandparents," those "descendants take equally if they are all of the same degree of kinship to the decedent." N.J.S.A. 3B:5-4(e).

and Court Rule, to refer the dispute to the Superior Court. Finally, Estelle stated, in her certification to the Superior Court in support of the verified complaint, that, following the June 6, 2017 hearing, she discovered that respondent was "not only friends with Stewart's sister, as she disclosed" during the hearing, but was also "friends" with Stewart and his mother, as evidenced on their public social media profile pages.

Stewart did not file any opposition to Estelle's verified complaint and order to show cause. Rather, Stewart agreed with Anderson's advice that Estelle should serve as administrator, given Estelle's status as Mark's cousin.

On September 5, 2017, Altshuler appeared, on behalf of Estelle and Hurtt, while Anderson appeared, on behalf of Stewart, before the Honorable Thomas LaConte, J.S.C., in connection with Estelle and Hurtt's verified complaint and order to show cause.

During the hearing, Judge LaConte questioned why respondent, when faced with a dispute regarding the appointment of an administrator, nonetheless appointed Stewart, rather than transferring the matter to the Superior Court for resolution, as R. 4:82(5) requires. Judge LaConte stated that he "was surprised" that a hearing before respondent "even took place." Additionally, Altshuler and Anderson stated that they recently discovered that, in addition to Mark's house and truck, Mark's estate contained "$600,000 in liquid assets." Anderson agreed

with Judge LaConte's observation that, "under the totality of the circumstances, the next-of-kin should be the administrators as opposed to someone who was a coworker in the [municipal] Water Department."

Following the hearing, Judge LaConte issued an order restraining Stewart from taking any further action regarding the administration of Mark's estate, except for payment of emergent expenses, with the consent of Estelle and Hurtt, and appointing Estelle and Hurtt as "temporary co-administrators of the estate with regard to [Mark's] home and personalty therein." Judge LaConte also required the parties to appear, on October 6, 2017, for a hearing regarding the permanent relief requested in Estelle and Hurt's verified complaint.

On October 2, 2016, four days before the scheduled hearing, Judge LaConte issued another order, with the consent of the parties, discharging Stewart and appointing Estelle and Hurtt as co-administrators of Mark's estate.

On August 26, 2021, a criminal complaint charged respondent with fourth-degree falsifying a record, in violation of N.J.S.A. 2C:21-4(a). The complaint alleged that respondent falsified the June 22, 2017 judgment appointing Stewart as the administrator of Mark's estate, despite respondent's knowledge that "qualified individuals had not renounced their rights of administration."

On June 21, 2022, respondent was admitted into the pre-trial intervention program (PTI) for a twelve-month period. As a condition of PTI, respondent agreed to be permanently barred from "any and all future public employment in the State of New Jersey and any of its administrative subdivisions." Respondent also agreed to abide by certain confidential "special conditions," which were not disclosed in the record before us. During oral argument before us, respondent, through counsel, stated that she neither pleaded guilty nor provided an allocution of guilt in connection with her admission to PTI.[17]

In respondent's November 7, 2022 disciplinary stipulation with the ACJC presenter, she conceded that she violated Canon 3, Rule 3.17(B) of the Code of Judicial Conduct and R. 1:12-1(g) by presiding over the June 6, 2017 hearing in which her "impartiality or the appearance of her impartiality might reasonably be questioned by virtue of [her] relationship with" Stewart.

Additionally, respondent stipulated that she violated Canon 2, Rules 2.2 and 2.3 of the Code of Judicial Conduct by "inappropriately" using "her office to advance the private interests of another" in connection with her appointment of Stewart, "a friend, as administrator of [Mark's] estate, rather than a relative."

[17] Because she was charged only with a fourth-degree offense that did not involve domestic violence, respondent was not required, pursuant to R. 3:28-5(b)(2), to plead guilty.

Finally, respondent stipulated that she violated Canon 1, Rule 1.1, and Canon 2, Rule 2.1, of the Code of Judicial Conduct by failing to disclose, in her sworn interview with the ACJC, the "pertinent details" and the "extent" of her "relationship" with Stewart, including "the nature of their interactions during the relevant time period."

In her disciplinary stipulation, respondent and the ACJC presenter noted, in mitigation, that respondent had no prior judicial discipline. Moreover, the stipulation emphasized respondent's extensive extrajudicial activities and volunteer work, including serving as a guest lecturer at local colleges, serving on Court and hospital committees, and participating in judicial outreach programs.

Citing applicable judicial disciplinary precedent, respondent and the ACJC presenter noted that the judicial discipline for respondent's misconduct warranted either a public reprimand or a public censure, with a permanent bar on holding future judicial office.

Following respondent's disciplinary stipulation, the ACJC recommended to the Court that the appropriate quantum of discipline for respondent's

misconduct was a public censure, with a permanent bar on holding or securing future judicial office.[18]

On March 23, 2023, the Court issued an Order accepting respondent's disciplinary stipulation with the ACJC presenter, publicly censuring respondent, and permanently barring her from holding or securing future judicial office. In its Order, the Court noted that respondent's stipulation and supporting documents "are hereby incorporated by reference into this Order, in accordance with Rule 2:15-15A(b)(4)."

Respondent failed to notify the OAE of her judicial discipline, as R. 1:20-14(b)(1) requires.

The Parties' Positions

The OAE asserted that respondent's unethical judicial conduct equated to violations of RPC 8.4(b); RPC 8.4(c); and RPC 8.4(d). Although the OAE did not expressly set forth the factual basis underlying each charged RPC, the nature of the misconduct is sufficiently clear to enable us to perform our review

[18] The ACJC's recommendation is not included in the record before us. As detailed below, pursuant to R. 2:15-15A(b)(3), the ACJC, in connection with its review of a stipulation for discipline executed by a respondent judge and a disciplinary presenter, "may either grant the application and accept the recommendation or deny the application. Following approval by the [ACJC], the matter shall be submitted to the . . . Court as an agreed upon disposition by way of application to impose discipline by consent with supporting documentation."

function.[19]

In support of its recommendation for either a six-month or one-year suspension, the OAE analogized respondent's misconduct to the attorneys in In re Molina, 216 N.J. 551 (2014), and In re Mott, 231 N.J. 22 (2017), who both received six-month suspensions, and In re Roca, 250 N.J. 512 (2022), who was prohibited from applying for re-admission, in any manner, to the New Jersey bar for a one-year period.

As detailed below, in Molina, an attorney, while serving as the chief judge of the Jersey City Municipal Court, improperly dismissed nine parking tickets issued to her significant other. In dismissing the tickets, Molina occasionally wrote "Emergency" on the tickets, even when no emergency existed.

In Mott, an attorney, while serving as a municipal prosecutor, improperly dismissed a speeding ticket for an employee of her family farm, failed to disclose her conflict of interest to the municipal court, and misrepresented to the court that the dismissal was due to a problem with discovery.

Finally, in Roca, an attorney, while serving as a judge in the Philadelphia County Court of Common pleas, attempted to leverage her status as a judge to

[19] We repeatedly have held that a motion for reciprocal discipline and accompanying brief serve as the charging document in the case and, thus, must expressly set forth the New Jersey RPCs which the OAE alleges a respondent violated and the facts underpinning each charge. In the Matter of Hercules Pappas, DRB 20-288 (July 27, 2021) at 22, so ordered, 250 N.J. 118 (2022).

favorably resolve a Philadelphia Municipal Court proceeding involving her son.

The OAE emphasized that respondent's behavior could have a "corrosive effect" on the public's view of surrogate's courts. The OAE also stressed that, like Molina, respondent "falsified public records" and "inappropriately used her office to advance the private interests of another, thereby violating the public trust." Moreover, the OAE observed that, during her sworn interview with the ACJC, respondent was not "forthcoming" regarding "her close and warm relationship" with Stewart and how that relationship "may have affected her judgment."

In mitigation, the OAE observed that respondent has no attorney disciplinary history; is permanently ineligible from holding public employment again in New Jersey; and participated in numerous extrajudicial and volunteer activities. The OAE also noted that respondent did not appear to receive any pecuniary benefit from her misconduct. However, in aggravation, the OAE emphasized respondent's failure to report her judicial discipline to the OAE and the fact that she committed her misconduct in her capacity as a county surrogate, a position that requires the "highest public trust."

At oral argument before us, respondent, through her counsel, urged the imposition of a censure, asserting that the discipline she received in connection with the ACJC proceeding was sufficient to address her misconduct. Similarly,

respondent argued that we need not recommend a term of suspension for her actions because the Court, in imposing judicial discipline, did not simultaneously impose any attorney discipline in the form of a suspension.

Respondent also asserted that she has consistently maintained her innocence in connection with her criminal charge, and subsequent admission to PTI. Additionally, respondent emphasized her lack of financial benefit from her misconduct and her view that her actions amounted to a "mistake of the heart." Finally, respondent urged, as mitigation, her lack of prior discipline and the loss of her reputation as a consequence of her actions.

Analysis and Discipline

Motions for Reciprocal Discipline

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. In New Jersey, judicial discipline can serve as the basis for reciprocal attorney discipline. In accordance with R. 1:20-14(c), where a judge has been removed or disciplined pursuant to R. 2.14 or R. 2.15, those proceedings "shall be conclusive of the conduct on which that discipline was based in any subsequent disciplinary proceeding brought against the judge arising out of the same conduct." R. 1:20-14(c). In such circumstances, attorney disciplinary proceedings may be taken in accordance with R. 1:20-14(a)(2)

through (5) and "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(2) and (3). See also In re Yaccarino, 117 N.J. 175, 183 (1989) ("determinations made in judicial-removal proceedings are conclusive and binding in subsequent attorney disciplinary proceedings").[20]

Like attorney disciplinary proceedings, New Jersey judicial disciplinary proceedings are subject to a clear and convincing standard of proof. R. 2:15-15(a). Here, respondent stipulated to her judicial misconduct via an application for discipline by consent, pursuant to R. 2:15-15A(b).

A disciplinary stipulation executed by a respondent judge and the ACJC disciplinary presenter shall contain "in detail the admitted facts regarding the unethical conduct, the specific ethic[s] rules violated, a specific recommendation for, or range of, discipline, together with a brief analysis of the legal precedent." R. 2:15-15A(b)(2). The ACJC may, following its review of the stipulation, "either grant the application and accept the recommendation, or deny the application. Following approval by the [ACJC], the matter shall be

[20] Although R. 1:20-14(c) states that the judicial discipline proceeding "shall be conclusive of the conduct on which the discipline was based in any subsequent disciplinary proceeding," the Court has held that fairness to the attorney required it "to conduct a painstaking de novo reexamination of the underlying record, just as it does in other attorney disciplinary matters in which the initial hearing is held before a District Ethics Committee." In re Breslin, 171 N.J. 235, 240-41 (2002). The Court, in reaching this conclusion, reasoned that the standards of conduct implicated by the Code of Judicial Conduct are more generalized than the standards set forth in the Rules of Professional Conduct.

submitted to the . . . Court as an agreed upon disposition by way of application to impose discipline by consent with supporting documentation." R. 2:15-15A(b)(3). The Court "may accept the tendered discipline by consent and enter an order of discipline with supporting documentation, to include any stipulations, affidavits, and other documents referenced in connection therewith." R. 2:15-15A(b)(4).

In the instant matter, the ACJC granted the application for discipline by consent and recommended to the Court that respondent receive a public censure and a permanent bar on holding or securing future judicial office. Thereafter, the Court accepted the tendered discipline by consent; publicly censured respondent; permanently barred her from holding or securing future judicial office; and incorporated, by reference, respondent's stipulation of discipline by consent and supporting documentation into its Order.

Generally, reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
>
> (B) the disciplinary or disability order of the foreign

jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
(D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

We conclude that subsection (E) applies in this matter because the unethical conduct established by the record warrants substantially different discipline. Specifically, pursuant to disciplinary precedent, respondent's violations of the Rules of Professional Conduct warrant the imposition of a one-year suspension, and not the discipline (a censure) imposed in connection with the judicial disciplinary proceeding, which is governed by different Rules and precedent than governing attorney discipline in New Jersey. In that same vein, in our view, although respondent also was permanently barred from judicial service, disciplinary precedent does not support disbarment for her misconduct.

Violations of the Rules of Professional Conduct

Turning to the charged violations, we determine that the record contains clear and convincing evidence that respondent violated RPC 8.4(c) and RPC

8.4(d). However, we dismiss, for lack of clear and convincing evidence, the charge that respondent violated RPC 8.4(b).

First, respondent violated RPC 8.4(c) by concealing from Estelle, during the June 6, 2017 hearing, the full extent of her relationship Stewart. Specifically, in Estelle's August 22, 2017 certification to the Superior Court, she alleged that, during the June 6 hearing, respondent advised the parties only that she was "a friend of Stewart's sister." Additionally, during his interview with the ACJC, Stewart claimed that, during that same hearing, respondent stated that she knew him and his sister. Finally, during her interview with the ACJC, respondent claimed that she had advised the parties that she knew Stewart as the brother of her "childhood friend." However, respondent maintained that many "years was communicated in that to let [Estelle] know that [Stewart was not] just somebody that [she] kn[e]w from a second ago."

Based on Estelle's, Stewart's, and respondent's largely consistent statements, we find that respondent falsely advised Estelle that her relationship with Stewart was based only on a distant social connection with Stewart's sister. In reality, as respondent ultimately stipulated, her relationship with Stewart was not merely that of a sibling of a childhood friend. Rather, respondent conceded that she failed to disclose to Estelle that she had known Stewart and his family for more than three decades, given that they grew up together in the same

neighborhood, and that Stewart had attended fundraising events for her political campaign for Surrogate. Indeed, unlike many attendees, Stewart did not pay a fee to attend respondent's fundraising events, given that he was the "guest" of an individual who worked for respondent. Respondent further concealed from Estelle the fact that, between January and June 2017, she had made at least six telephone calls to Stewart, from her personal cellphone, and exchanged approximately sixty-three text messages with him.

As respondent stipulated, Stewart was her "friend" and not someone with whom she had an attenuated social connection. Respondent, however, failed to disclose her friendship with Stewart to Estelle, who elected to proceed with the June 6 hearing based on the limited information respondent had disclosed at the outset of the hearing. Had Estelle been aware of the full extent of respondent's friendship with Stewart, she may have not elected to proceed with the hearing out of concern that respondent, as the Judge of the Passaic County Surrogate's Court, could not have conducted a fair and unbiased hearing.

Second, respondent violated RPC 8.4(d) by appointing Stewart, her friend, as the administrator of Mark's estate, rather than referring the dispute regarding the estate's administration to the Superior Court as R. 4:82(5) and N.J.S.A. 3B:2-5 require.

As previously stated, R. 4:82(5) provides that, "[u]nless specifically authorized by order or judgment of the Superior Court, and then only in accordance with such order or judgment, the Surrogate's Court shall not act in any matter in which . . . a dispute arises before the Surrogate's Court as to any matter." Similarly, N.J.S.A. 3B:2-5 provides that "[i]n the event of any dispute or doubt arising before the surrogate or in the surrogate's court, neither the surrogate nor the court shall take any further action therein, except in accordance with the order of the Superior Court." Consequently, although the Superior Court and a county surrogate "have concurrent jurisdiction in [estate] administration proceedings," the "surrogate's jurisdiction . . . is limited to matters which are not in doubt or dispute." In re Somoza, 186 N.J. Super. 102, 105 (Ch. Div. 1982). "In such instances . . . the surrogate's hand is stayed, and any dispute as to the administration of the intestate estate is properly resolved before the [Superior Court.]" Id. at 105-106. A dispute disqualifying the surrogate from acting can arise "even if informally raised, e.g., by oral statement or by letter." Pressler & Verniero, cmt 2.1 on R. 4:82 (2023) (citing In re Estate of Watson, 35 N.J. 402 (1961) (before the surrogate, an estate administrator "voiced his objection" to the appointment of a separate general administrator and, as soon as that dispute arose, further proceedings "were properly held in or under the direction of the County Court")).

Here, regardless of her perceptions of Estelle's credibility or Mark's purported "initiative" and "willingness" to serve as administrator, respondent was required, by statute and Court Rule, to refer the dispute regarding the administration of Mark's estate to the Superior Court. As Estelle noted in her submissions to the Superior Court in support of her verified complaint and order to show cause, she clearly expressed her desire to become administrator to respondent, whom she claimed advised her to "appeal" the decision if she disagreed with the outcome. Rather than referring the dispute to the Superior Court, as she was obligated to do, respondent improperly appointed Stewart, her long-time friend, who appeared to be a mere casual co-worker of Mark, as administrator of Mark's estate. Respondent's decision to subvert the legal process governing disputed estate administration matters necessitated an expedited proceeding before the Superior Court, wherein Judge LaConte openly criticized respondent's decision to appoint Stewart as administrator, given the clear dispute between Estelle and Stewart regarding the administration of Mark's estate.

Further, based on the extent of her friendship with Stewart, respondent was obligated to disqualify herself from presiding over the hearing, pursuant to

R. 1:12-1(g),[21] and to refer the dispute to the Superior Court on that separate basis, in order to ensure a fair and unbiased hearing and judgment.

Third, respondent violated RPC 8.4(c) by preparing and issuing the June 22, 2017 judgment appointing Stewart as administrator, which judgment falsely stated that "all competent adult next of kin and other persons having a right to administration upon [Mark's] estate prior or equal to that of [Stewart] have duly renounced their right of administration where lawfully required and requested that Letters of Administration be granted to [Stewart]." It is well-settled that a violation of RPC 8.4(c) requires a finding that an attorney engaged in a knowing act of deception by clear and convincing evidence. See, e.g., In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011).

Here, when she issued the June 22, 2017 judgment, respondent knew that Estelle, who had obtained renunciations from Mark's other relatives requesting that she serve as administrator, had expressed her continuous intent to serve as administrator. Respondent, thus, was keenly aware that none of Mark's next of kin had renounced their right to administer Mark's estate in favor of Stewart, a non-relative, whose right to administer Mark's estate was not superior to that of

[21] R. 1:12-1(g) requires a judge of any court to be disqualified, on the court's own motion, "when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so."

Mark's heirs, including Estelle.[22] Respondent's judgment, however, was crafted to provide the false impression that all of Mark's remaining heirs who were qualified to serve as administrator simply had relinquished their right to administer the estate in favor of Stewart. Consequently, respondent knew that her judgment blatantly misrepresented the circumstances underlying her determination to appoint Stewart as administrator.

However, we determine to dismiss, for lack of clear and convincing evidence, the related RPC 8.4(b) charge. In respondent's disciplinary stipulation with the ACJC presenter, she noted that, in August 2021, she was charged with fourth-degree falsifying a record, in violation of N.J.S.A. 2C:21-4(a), "for allegedly falsifying a judgment granting administration of an estate to [Stewart] despite knowing that qualified individuals had not renounced their rights of administration."

N.J.S.A. 2C:21-4(a) provides, in relevant part, that "a person commits a [fourth-degree crime] if he . . . utters any writing or record knowing that it

[22] N.J.S.A. 3B:10-2 provides that if a person dies, intestate, without a surviving spouse, administration of the estate "shall be granted" to "the remaining heirs" of the estate. However, if the decedent's heirs "do not claim the administration within" forty days of the decedent's death, the Superior Court or surrogate may appoint "any fit person applying therefor" as administrator. Although Estelle did not apply to become administrator until fifteen days after the expiration of the forty-day statutory period, given that she was initially unaware of Mark's death, "[t]he mere fact that [a] next of kin had made no application for administration for more than [forty] days after the death of the decedent does not foreclose them absolutely from consideration." In re Estate of Stephens, 69 N.J. Super. 597, 600 (App. Div. 1961).

contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing." Under Title 2C, a person acts "with purpose" "with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result." N.J.S.A. 2C:2-2(b)(1). By contrast, a person acts "knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence." N.J.S.A. 2C:2-2(b)(2).

Here, although respondent knew that the content of her June 22, 2017 judgment clearly misrepresented the circumstances underlying her decision to appoint Stewart as administrator, the record is silent regarding whether respondent had acted with the heightened purposeful intent to deceive, injure anyone, or conceal any wrongdoing, as N.J.S.A. 2C:21-4(a) requires. Specifically, neither respondent's stipulation nor her statements to the ACJC addressed the circumstances underlying her preparation or issuance of the judgment, including the nature of her objectives or motives. Moreover, as respondent stated during oral argument before us, she neither pleaded guilty nor provided any allocution of guilt in connection with her June 2022 admission to PTI regarding her criminal charge. Although it is well-settled that a violation of

RPC 8.4(b) may be found even in the absence of a criminal conviction,[23] the record before us contains insufficient evidence to establish, by clear and convincing evidence, that respondent issued the false June 22, 2017 judgment with the requisite criminal, purposeful intent to deceive, injure anyone, or conceal any wrongdoing. Consequently, on this record, we determine to dismiss, for lack of clear and convincing evidence, the RPC 8.4(b) charge.

Finally, respondent violated RPC 8.4(c) by failing to immediately disclose, in her sworn interview with the ACJC, the full extent of her relationship with Stewart. As respondent stipulated, her testimony "concerning her relationship with [Stewart] lacked the pertinent details as to the extent of that relationship and the nature of their interactions during the relevant time period."

Specifically, during her interview with the ACJC, respondent stated that, although she had known Stewart for thirty-five years, her relationship with him was simply "an extension of [her] relationship with" his sister. Respondent also stated that Stewart was "a friend in the sense that . . . [he was] somebody I know"

[23] See In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime). See also In re McEnroe, 172 N.J. 324 (2002) (attorney found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense), and In re Nazmiyal, 235 N.J. 222 (2018) (although an attorney was not charged with, or convicted of, violating New Jersey law surrounding the practice of debt adjustment, the attorney was found to have violated RPC 8.4(b)).

and not "somebody I'd call to talk on the phone." Moreover, respondent claimed that, between January and June 2017, she had communicated with Stewart, via telephone conversations, on only two occasions, both of which involved his application to become administrator. Respondent further maintained that, during that same timeframe, she had not engaged in any text messages with Stewart.

Respondent, however, concealed from the ACJC the fact that, between January and June 2017, she had initiated at least six telephone calls to Stewart, from her personal cellphone, and had exchanged with Stewart approximately sixty-three text messages. Contrary to her statements to the ACJC, respondent appeared to have regularly communicated with Stewart, via her personal cellphone, during the same timeframe that Stewart sought to become the administrator of Mark's estate. Additionally, respondent failed to disclose the full extent of her social relationship with Stewart, including his attendance at fundraising events in connection with her political campaign for surrogate.

In sum, we find that respondent violated RPC 8.4(c) and RPC 8.4(d). We dismiss, for lack of clear and convincing evidence, the allegation that respondent violated RPC 8.4(b). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Respondent abused the privilege of her judicial office, as an elected county surrogate, by appointing her friend, who had a limited connection to the decedent, as the administrator of his estate, despite knowing that a qualifying relative, who had obtained executed renunciations from the decedent's heirs, sought to be appointed as administrator. Moreover, respondent misrepresented the extent of her relationship and interactions with her friend, both at the June 6 hearing she presided over and during her sworn interview with the ACJC. Finally, respondent's June 22, 2017 judgment appointing her friend as administrator falsely stated that all of the decedent's qualifying next of kin had renounced their rights to become administrator in favor of respondent's friend.

Disciplinary Precedent Involving Attorneys Who Have Abused Judicial or Public Office

Although there is no New Jersey disciplinary precedent that falls squarely within the facts of this case, attorneys who have been disciplined for abusing their judicial or public office consistently have received terms of suspension.

In Molina, 216 N.J. 551, the attorney, who was the chief judge of the Jersey City Municipal Court, adjudicated nine parking tickets issued to her significant other. Molina pleaded guilty to the third-degree crime of tampering with public records and the fourth-degree crime of falsifying records. In the

Matter of Wanda Molina, DRB 13-097 (Nov. 7, 2013) at 1. Molina dismissed the tickets, sometimes writing "Emergency" on them before doing so, despite knowing that no emergency had existed. Id. at 1-2. Molina engaged in the misconduct so that her significant other would not have to pay the fines to the city. Id. at 3. Molina conceded that, as the chief judge, she should have requested a change of venue, because of the conflict, or ensured that the tickets were paid. Ibid.

Molina presented significant mitigation, both at her sentencing hearing and before us: she deeply regretted and was embarrassed by her misconduct; for most of her life, she had served her community and helped women and minorities; she intended to compensate the city for the improperly dismissed tickets; she had no criminal history; her conduct was unlikely to recur; she resigned from her position as chief judge; she cooperated with law enforcement; she accepted responsibility for her conduct; she submitted eighteen character letters on her behalf; and she apologized publicly for her misconduct. Id. at 3-4.

In imposing the criminal sentence, the judge in Molina remarked that judges should be held to the highest standards to maintain the integrity of the judicial system and the public's faith in the system. Id. at 5. The judge sentenced Molina to three years' probation, "364 [days] in the Bergen County Jail as a reverse split;" ordered her to perform 500 hours of community service;

prohibited her from holding public employment; and directed her to pay restitution and penalties. Id. at 5.

In determining that a six-month suspension was the appropriate quantum of discipline for Molina's misconduct, we balanced the fact that suspensions were imposed on other municipal court judges who had been involved in only one instance of ticket fixing, who received no personal benefit from their conduct, and who forfeited their positions, against Molina's compelling mitigation and lack of disciplinary history. Id. at 20. The Court agreed with our recommended discipline.

In In re Sica, 222 N.J. 23 (2015), a default matter, a Jersey City municipal court judge who disposed of tickets for her employer violated RPC 8.4(b), (c), and (d). We found that Sica's adjudication of her employer's three traffic tickets had financial and non-financial consequences attached to it and that, in adjudicating the tickets, she had violated N.J.S.A. 2C:30-2(a) (committing official misconduct).

Sica had performed legal work for Victor Sison, Esq. (whose disciplinary case is discussed below), a fellow municipal court judge, on a per diem basis. In the Matter of Pauline E. Sica, DRB 14-301 (March 26, 2015) at 8-9. We, thus, reasoned that Sica's conduct was aimed at self-benefit, because she disposed of

three tickets for her employer, with whom she wished to maintain a professional relationship. Id. at 12.

In determining that a one-year suspension was the appropriate quantum of discipline, we observed that, unlike the attorney in Molina, Sica presented no mitigating circumstances and failed to demonstrate any contrition or remorse for her misconduct. During the criminal proceedings, she claimed that, although there was no legitimate reason to waive the fine, "that's the culture." Furthermore, her letter to the OAE did not acknowledge any wrongdoing on her part but implied that she had been pursued unfairly, given that no action had been taken against her employer. Ibid. In addition, Sica failed to reply to the grievance and allowed the matter to proceed as a default. The Court agreed with our recommended discipline.

In In re Sison, 227 N.J. 138 (2016), the attorney, who was a part-time Jersey City municipal court judge and employed Sica in his law firm, received a three-month suspension for having violated RPC 8.4(b) for his part in the ticket fixing schemes underlying the Molina and Sica matters. Specifically, Sison approached Molina and Sica to secure the preferential treatment, including dismissal, of tickets issued to him, his wife, and his son. In the Matter of Victor G. Sison, DRB 15-333 (July 20, 2016) at 4-5. Id. at 18. By way of a plea agreement with the Attorney General's Office, Sison, who had been charged

with second-degree official misconduct, was given credit for his cooperation with both law enforcement and the OAE and was admitted into PTI. Id. at 3-4.

We determined that, except for his inconsistent testimony during the ethics hearing, Sison's matter did not include the aggravating factors present in Sica. Id. at 24. Moreover, like Molina, Sison presented significant mitigation: he was a relatively new judge at the time of his misconduct; his misconduct involved only four tickets; he had not tampered with public records; he was regretful and contrite; he cooperated with law enforcement; and he submitted compelling character evidence on his behalf. Id. at 24.

In In re Mott, 231 N.J. 22 (2017), the Court imposed a six-month suspension on a municipal prosecutor who improperly dismissed a speeding ticket issued to an employee of her family's farm. To accomplish this, she wrote, on a plea agreement form, "N/G" (meaning "not guilty") and "Problem w/ Discovv [sic] Per officer," which the judge understood to mean that "there was a discovery issue" and that as a result, the State could not prove its case against the defendant. In the Matter of Mary Rose Mott, DRB 16-253 (March 31, 2017), at 6-7. However, Mott, in fact, had never reviewed the discovery; had no basis to represent to the municipal court that there was a problem with the evidence; and did not have the police department's approval to dispose of the ticket in this manner. Id. at 6-7, 25. Moreover, despite her employer-employee relationship

with the defendant, she failed to recuse herself. Id. at 27. Among the varied excuses she provided for her conduct, she claimed that the ticket itself had been fatally defective and that she "could not really prosecute" it. Id. at 34. We rejected her excuse, observing that her claim that the alleged defect was insurmountable "fundamentally ignore[d] her role as municipal prosecutor – to address such an evidentiary issue at trial by eliciting testimony" from the officer who had prepared the ticket. Id. at 34-35.

In aggravation, Mott involved the judge, without his knowledge, in her decision to improperly dismiss the ticket; "neither showed remorse nor manifested an understanding of the gravity of her misconduct, but, rather, accepted it as 'business as usual' in the towns she was entrusted to represent on behalf of the citizens of New Jersey;" and "was less than truthful in her interaction with both the Hunterdon County Prosecutor's Office and the OAE during the pendency of their respective investigations." Id. at 51-52. In mitigation, she had no prior discipline in her twenty-seven-year career at the bar. Id. at 52.

More recently, in Roca, 250 N.J. 512, an attorney, while serving as a judge in the Court of Common Pleas of Philadelphia County, Pennsylvania, discovered that the Philadelphia City Solicitor's Office had filed a complaint against her son for purportedly failing to file a business tax return. In the Matter of Angeles

Roca, DRB 20-347 (Aug. 16, 2021) at 4-5. Roca's son failed to appear for the hearing on the Solicitor's complaint and, consequently, the Philadelphia Municipal Court entered a default judgment against him. Id. at 5. After Philadelphia Municipal Court Judge Dawn A. Segal (whose disciplinary case is discussed below) denied Roca's son's petition to "open judgment," Roca made a telephone call to former Philadelphia Municipal Court Judge Joseph C. Waters explaining her son's predicament. Id. at 5-6. During that telephone conversation, Waters informed Roca that he would speak with Segal regarding her son's motion for reconsideration. Ibid.

Two days after her conversation with Waters, Roca's son filed a petition for reconsideration with the municipal court. Id. at 6. However, when Roca discovered that Segal would soon no longer preside over such petitions, she again spoke with Waters requesting his assistance to ensure that her son's petition would not be heard by a different municipal court judge. Id. at 6-7. Thereafter, Segal granted Roca's son's petition, following which Waters advised Roca that the "thing's taken care of." Id. at 8.

In connection with its investigation of Waters, federal agents interviewed Roca, who, when asked whether Philadelphia judges call one another to ask for favors, replied "we don't do that here at all." Ibid. Additionally, Roca falsely denied having engaged in any inappropriate communication with Waters in her

written reply to an inquiry from the Judicial Conduct Board of Pennsylvania. Id. at 9

We determined that Roca improperly leveraged her position as a judge by improperly seeking to influence Segal, using Waters, with whom she was familiar, as an intermediary to reopen her son's case. Id. at 15. We observed that the core of Roca's misconduct was the significant harm she caused to the public perception of a fair and impartial judiciary. Id. at 17.

In determining that a one-year suspension – deferred until her license to practice law was restored from an administrative revocation – was the appropriate quantum of discipline, we weighed, in mitigation, the passage of eight years since the crux of Roca's misconduct had concluded; her removal from the bench and ineligibility to hold future judicial office; her strong character references; and the fact that she, eventually, admitted her misconduct and consented to discipline. Id. at 36-37. However, we weighed, in aggravation, her status as a judge in the Philadelphia County Court of Common Pleas at the time of her misconduct, the fact that she committed her misconduct to benefit her son, and the fact that she admitted her misconduct only after she was confronted with her recorded conversations with Waters. Id. at 27. The Court agreed with our recommended quantum of discipline but imposed a one-year bar on her ability to apply for readmission to the New Jersey bar.

In In re Segal, 246 N.J. 137 (2021), Segal, the same Philadelphia Municipal Court judge in Roca, repeatedly engaged in ex parte communications with Waters in connection with three distinct matters before her as a judge. In the Matter of Dawn A. Segal, DRB 20-072 (Feb. 11, 2021) at 13. Following her ex parte conversation with Waters, Segal would covertly favor one party in her courtroom (Waters's clients or friends) over another, constituting an egregious affront to the administration of justice. Ibid. Segal, thus, engaged in open, public corruption in order to curry Waters's personal political favor in pursuit of her desire to be retained as a municipal judge. Id. at 13, 35. We observed that, in Segal's courtroom, "justice was for sale, if the price was right." Id. at 35. Based on Segal's self-motivated attack on the integrity of the administration of justice, which subverted one of the fundamental objectives of government, we determined that disbarment was required to protect the public and preserve confidence in the bar. Id. at 36. The Court, however, imposed a three-year suspension.

Nevertheless, "[c]onduct by a judge may require disbarment if that conduct demonstrates such untrustworthiness, dishonesty[,] or lack of integrity that the public must be protected from such a person as a lawyer." In re Boylan, 162 N.J. 289, 293 (2000). See also In re Thompson, 240 N.J. 263 (2020) (during a five-year period, the attorney, while serving as a municipal court judge in nine

jurisdictions, routinely suspended mandatory motor vehicle fines in cases and, instead, substituted baseless contempt of court charges in their place, knowing that his criminal scheme would steer one hundred percent of the contempt proceeds to the towns over which he presided; if challenged by a defendant, he often would revert contempt charges to mandatory fines, but, on one occasion, threatened the defendant with jail time; he also improperly applied defendants' bail money toward the phony contempt charges, without notice or due process for those defendants; the attorney admitted that the purpose of his criminal scheme was to use his authority, in his public office, to direct maximum revenue to the towns where he presided as a municipal court judge; to conceal his wrongdoing, he typically falsified the contempt charges outside the presence of the defendants and their counsel; he also admitted that he continued his scheme, even after a March 2014 meeting with his superiors to discuss his contempt of court practices, by assessing smaller phony contempt fines, thus, continuing to steer funds to his preferred jurisdictions, until his suspension from the bench).

In our view, respondent's misconduct bears some similarities to the attorney in Roca, who received the equivalent of a one-year suspension for abusing her judicial office, in connection with a single court matter, to benefit her son. Like Roca, respondent abused her judicial office in a single court matter by improperly advancing the private interests of her friend Stewart in connection

with a disputed estate administration matter. Specifically, rather than refer the dispute regarding the administration of Mark's estate to the Superior Court, as required by statute and Court Rule, respondent unilaterally appointed Stewart, who appeared to have only a limited social connection to Mark by virtue of their status as co-workers, as administrator of Mark's estate. Thereafter, respondent compounded her misconduct by issuing the false June 22, 2017 judgment appointing Stewart as administrator, which misrepresented that all of Mark's competent adult next of kin had renounced their intent to serve as administrator in favor of Stewart.

Additionally, like Roca, who, initially, falsely denied having engaged in any misconduct to federal agents and Pennsylvania judicial disciplinary authorities, respondent, during her sworn interview with the ACJC, concealed the "pertinent details" regarding her "relationship" and "interactions" with Stewart. Respondent also falsely advised Estelle, at the outset of the June 6, 2017 hearing she presided over, that Stewart was merely the sibling of a distant childhood friend. Respondent's deception, thus, prevented Estelle from making an informed decision regarding whether to proceed with the hearing.

The Court has recognized that a "surrogate is a judicial officer [who] perform[s] important judicial functions in our court system," including "the issuance of letters of administration," the "probating [of] wills," and the

"appointment of guardians of minors." In re Conda, 72 N.J. 229, 233-34 (1977) (citation omitted). Respondent, however, damaged the public's perception of the surrogate's court's ability to fulfill those vital functions fairly and impartially. Respondent not only improperly resolved a disputed estate administration matter in favor of her friend Stewart, but she also issued a false judgment misrepresenting her appointment of Stewart as an uncontested matter. Respondent's misconduct necessitated an expedited Superior Court hearing to overturn her decision and allow Estelle, Mark's relative, and Hurtt, Mark's lifelong friend, to serve as co-administrators.

Moreover, when confronted by the ACJC regarding why she had determined to appoint Stewart as administrator rather than refer the dispute to the Superior Court, as the law requires, respondent replied that, "[b]y that rationale, we'd have no hearings [before the Surrogate's Court] at all." In our view, respondent's answer demonstrates a lack of basic understanding of the "limited and special jurisdiction" of the surrogate's court to perform certain statutory functions in estate matters "which are not in dispute or doubt." See In re Estate of Aich, 164 N.J. 179, 182 (Ch. Div. 1978) (detailing the scope of the "limited and special jurisdiction" of the surrogate's court) (citations omitted).

Nevertheless, like Roca, who admitted her misconduct only after she was confronted with recorded conversations of her improper behavior, respondent,

eventually, stipulated to her misconduct before the ACJC and consented to discipline and a permanent bar on holding future judicial office. Further, in connection with her admission to PTI, respondent agreed to be permanently barred from holding any future public employment in New Jersey. Finally, although respondent conceded, in her stipulation with the ACJC, that she "inappropriately used her office to advance the private interest of another," the extent of respondent's motivation for her misconduct is unclear based on the record before us.

Conclusion

On balance, considering the corrosive effect respondent's misconduct had on the public's perception of a fair and impartial judiciary, and consistent with disciplinary precedent for attorneys who have received discipline for abusing their judicial office, we determine that a one-year suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Menaker voted to impose a censure.

Members Joseph and Rivera were absent.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Bernice Toledo
Docket No. DRB 23-148

Argued: September 21, 2023

Decided: December 20, 2023

Disposition: One-year suspension

Members	One-year suspension	Censure	Absent
Gallipoli	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph			X
Menaker		X	
Petrou	X		
Rivera			X
Rodriguez	X		
Total:	6	1	2

/s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel