Garden State CLE presents:

Sex and the New Jersey Lawyer

Lesson Plan

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Part I

Foundational Issues

a. Proof of facts:

A criminal conviction constitutes conclusive proof of the RPC violation in a disciplinary hearing. The only issue becomes the quantum of discipline to be imposed. In re Tuso, 104 NJ 6 (1981). Rule 1:20-13(c)(1).

b. Purpose of Attorney Discipline

As we have often observed, the essential purpose of our system of attorney discipline is to protect the public, not to punish the attorney. The purpose of a disciplinary proceeding, as distinguished from a criminal prosecution, is not so much to punish a wrongdoer as it is to protect the public from an untrustworthy lawyer the principal reason for discipline is to preserve the confidence of the public in the integrity and trustworthiness of lawyers in general. In re Witherspoon, 203 NJ 343, 358 (2010).

c. Sexual Misconduct – In General

"We have traveled a far way from tolerance of sexual misconduct in the workplace and in our profession. We recognize the psychological damage that can be inflicted on the victims of sexual abuse, who silently suffer and do not complain because they feel powerless to do so. The sexual abuse of a client is unacceptable in any profession and in any business setting, and cannot be tolerated in our profession, which holds as sacred the dignity of the individual." In re Gallo, 178 NJ 115, 123 (2003). [Disbarment by consent, In re Gallo, 181 NJ 304 (2004)] **

d. The Disciplinary Process

"Our system of discipline, as a result, includes few bright line rules, because few indeed are the acts for which one sanction will be invariably appropriate. Considering how best to protect the public from a particular attorney ordinarily involves considering the ethical lapses both in comparison to our relevant disciplinary precedents and in the context of that attorney's history rather than merely identifying the attorney's specific unethical act. Our evaluation of the appropriate quantum of discipline, therefore, is necessarily fact sensitive." In re Witherspoon, 203 NJ 343, 358-59 (2010).

In order to implement the foregoing policy objectives, the Court takes the following five steps to determine the quantum of discipline:

1. **Review specific acts in respondent's case & the proven RPC violations;**
2. **Review respondent's personal disciplinary history;**
3. **Review any relevant disciplinary precedents for type conduct & the relevant, proven RPC violations;**
4. **Weigh & Evaluate aggravating and mitigating factors, and finally,**
5. **Order a level of discipline that will protect the public and deter future violations by respondent.**

e. Rules of Professional Conduct

RPC 8.4. Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- © engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law;
- (g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.

RPC 1.7. Conflict of Interest: General Rule

- **(a)** Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - **(1)** the representation of one client will be directly adverse to another client; or
  - **(2)** there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

Note: No New Jersey RPC explicitly forbids sexual relations with a client

f. Historical View – pre-1984

In re Wesler, 1 NJ 573 (1949) (Atty Population < 20,000)

"Respondent, Morris Wesler, was convicted of the crime of carnal abuse in Atlantic County. His conviction was sustained by the former Supreme Court, and by this Court. His name will be stricken from the roll of attorneys."

In re Fleckenstein, 34 NJ 20 (1961) (Atty Population <20,000)

"Respondent was convicted on two indictments charging acts of lewdness and carnal indecency in violation of N.J.S. 2A:115-1, N.J.S.A., and placed on probation upon terms requiring submission to psychiatric treatment. His convictions were affirmed. The offenses warrant striking respondent's name from the rolls but since he obviously is ill, the stigma of disbarment should not be visited upon him. Accordingly he is suspended from the practice of law until the court shall otherwise order upon satisfactory proof of his cure."

g. post-1984

In re Addonizio, 95 NJ 121, 124 (1984) (Atty Population <35,000)

There are few New Jersey decisions that involve disciplinary proceedings resulting from illegal sexual conduct. [Citing only *Wesler* and F*leckenstein*.] (The famous, "Product of a diseased mind case.")

h. Factors driving Attorney Discipline Involving Sexual Misconduct

1. Expanding Attorney Population (01/03/2011 = 88,094)
2. Evolving Social & Cultural Views
3. The Internet

Part II – Sex Crimes

a. Crimes Against or Involving Children:

A. Disbarment

In re Thompson, 197 NJ 464 (2009) (Federal - Sexual Exploitation of a child in Russia. He was a Superior Court Judge at the time)

In re X, 120 NJ 459 (1990) ("[R]espondent's atrocious acts justify his disbarment. More despicable behavior is difficult to fathom, especially in light of the vulnerability of the victims and of their close relationship to the offender. For a period of eight years, respondent sexually abused his three young daughters for the purpose of obtaining sexual gratification because, as put by the prosecutor and as found by the sentencing judge, respondent found his wife unattractive and prostitutes were too expensive. And he did so knowingly. The Board scoured the record for the existence of circumstances that might indicate that respondent's cognitive senses were substantially impaired. The Board found none.")

In re Sosnowski, 197 NJ 23 (2008) (Federal - Possess child pornography)

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b. Suspension

In re Herman, 108 NJ 66 (1987) (Three-year suspension – Sexual assault of a child – 2nd degree) *

In re McBroom, 158 NJ 258 (1999) (Two-year suspension – Federal possession of child pornography by downloading images of children engaged in sexual activities).

In re Ruddy, 130 NJ 85 (1992) (Two-year suspension for endangering (fondling several young boys)

In re Gernert, 147 NJ 289 (1997) (One-year suspension for PDP offense of harassment by offensively touching teenage client).

In re Peck, 177 NJ 249 (2003) (One year suspension – Federal Possession of Child pornography (15 months in prison)).

In re Ferraiolo, 170 NJ 600 (2002) (One year suspension – Attempted child endangering - Chat room encounter with supposed 14-year-old). But see In re Cunningham, 192 NJ 219 (2007) with identical facts resulting in disbarment.

In re Rosanelli, 176 NJ 275 (2003) (Six-month suspension – 4th degree endangering (PTI) based upon possession of 23 pictures)

Suspension

In re Kennedy, 177 NJ 517 (2003) (Six month suspension - – 4th degree endangering based upon downloading images from the internet)

In re Haldusiewicz, 185 NJ 278 (2005) (Six month suspension - Possession of child pornography based upon hundred images from the internet on his office computer at the Office of the Attorney General)

In re Armour, 192 NJ 218 (2006) (Six month suspension – Viewed more than 50 images of child pornography from the internet on his office computer at the Newark Housing Authority (probation))

c. Reprimand

In re Gilligan, 147 NJ 268 (1997) (Lewdness in front of children under the age of 13)

In re Pierce, 139 NJ 533 (1995) (Lewdness in front of a 12-year old female child)

d. Sexual Assault:

Disbarment

In re Wright, 152 NJ 35 (1997) (Aggravated Sexual Assault)

In re Palmer, 147 NJ 312 (1997) (Seven counts of aggravated criminal sexual contact)

3. Sexual Assault:

Suspension

In re Addonizio, 95 NJ 121, 124 (1984)

Although the relationship that gave rise to the offense arose indirectly from a lawyer-client relationship, the offense itself was not related to the practice of law. The conviction was of a fourth degree offense, which is the least serious grade of offense set forth in the Criminal Code. *N.J.S.A.* 2C:43-1. For such offenses the Legislature has established a presumption of non-imprisonment for first offenders. In addition, the Board was convinced that the conviction represents an isolated instance that is unlikely to reoccur. In the Board's view, the combination of circumstances, including respondent's marital difficulties, prescribed drug use, consumption of alcohol and meeting the individuals involved, indicated that the incident would otherwise not have happened.

The Board was satisfied, as are we, that respondent's offense was aberrational and not the product of a diseased mind. We nonetheless regard it as serious and believe that the public and the profession will be best served by a period of suspension.

Part III – Sex with Clients

In re Liebowitz, 104 NJ 175 (1985) (Reprimand)

The [DRB] finds that the attorney-client relationship between Respondent and his female client began when she entered his office as a court assigned client. This attorney-client relationship must be viewed from the perspective of a lay person. The Board rejects Respondent's contention that this professional relationship came to an end when he assigned the case to an associate. Respondent, a named partner in the firm assigned to represent her, was the only attorney with whom she had direct communication. Despite his stated delegation of her case, her assumption that he was her attorney was natural and is controlling.

The gravamen of the offense is the opportunistic misconduct toward his *pro bono* client. The Board adopts the conclusion of the Special Ethics Master when he said that where an indigent matrimonial client has been assigned by the Court both she and the Court may reasonably expect and rely on the fact that she will be treated strictly on a professional basis by the assigned attorney and not be converted into or considered by the attorney as a social guest to whom sexual proposals may be made and with whom sexual conduct may take place.

Respondent was in a position of superiority or dominance. An assigned client could reasonably infer that a failure to accede to Respondent's desires would adversely impact on her legal representation.

In re Principato, 139 NJ 456 (1995) (Reprimand)

Although the assault itself was not related to respondent's legal practice, respondent assaulted his client. An attorney in his relations with a client is bound to the highest degree of fidelity and good faith. To the public he is a lawyer whether he acts in a representative capacity or otherwise. Public policy requires strict adherence to that rule. The fact that respondent was involved with his client in a sexual relationship exacerbates the problem. We have warned attorneys [in *Liebowitz*] that sexual relationships with clients jeopardize the attorney-client relationship and have the strong potential to involve the attorney in unethical behavior.. In that case we held that sexual misconduct with an assigned client warranted a public reprimand.

In re Fornaro, 175 NJ 450 (2003) (Three-year suspension)

An attorney's intimate relationship with a client is not necessarily unethical. Under the circumstances of this particular case, however, it ran afoul of the rules. Custody of [her client's] five-year-old son was a major issue in the divorce case. [Her client] had alleged that [his estranged wife] was an unfit parent because of her relationships with other men. The parties' private lives, thus, were under scrutiny. Yet, respondent called into question [her own client's] fitness by participating in an intimate relationship with him, thereby jeopardizing his position as the custodial parent. Respondent, thus, placed her personal relationship ahead of the interests of her client, in violation of *RPC* 1.7(b)

In re Witherspoon, 203 NJ 343, 361 (2010) (One-year suspension)

[A]s we have previously cautioned, preying on clients will be dealt with more harshly than other acts because it goes directly to the heart of the trust on which the attorney-client relationship is founded. But we cannot endorse the dissenters' automatic disbarment approach because of its broader implications. Carried to its logical conclusion, creating the "zero tolerance" rule that they advocate based on this record would demand that we automatically disbar attorneys involved in non-criminal, non-threatening, non-traumatizing, purely verbal, sexual improprieties directed at other adults, simply because they are clients. In light of our disciplinary precedents making plain that not every conviction for a sexual offense will result in disbarment, we conclude that it would be disproportionate punishment indeed if respondent's behavior, although boorish, insensitive and offensive, but well shy of criminal, found itself on the far side of that bright line.

Part IV – Love on the Rocks

"[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 constitutes 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." In re Mattera, 34 NJ 259, 264 (1961)

In re Bock, 128 NJ 270, 275-76 (1992) (Six-month suspension)

In applying those principles to the underlying facts, we find that although the offense did not directly touch on the practice of law, it had an effect on respondent's practice of law and his municipal court office. In the context of application for admission to the bar, we have said that an applicant "must possess a certain set of traits-honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the judicial process and the administration of justice." Those traits require adherence to the disciplinary rules that govern attorney conduct. We have described those rules as the "fundamental norms that control the professional and personal behavior of those who as attorneys undertake to be officers of the court." In this case, we find a clear transgression of those fundamental norms. Respondent candidly admits that staging his death was an act of dishonesty that conveyed to his family and the public a fact that was not true. His abandonment of his municipal court office, his law partner, associate, and clients demonstrated a lack of trustworthiness and reliability.

In re Farr, 115 NJ 231, 234-35 (1989) (Six-month suspension)

As this sorry state of affairs reveals, respondent betrayed the confidence reposed upon him, as a prosecutor, by the members of the public, whose interests he swore to protect. By developing a personal relationship with [criminal informants], a relationship which exceeded the bounds reasonably necessary to obtain cooperation from an informant, respondent's responsibilities to the public were greatly compromised.

He knew the Prosecutor's Office prohibited attorneys to be directly involved with informants, without the aid of detectives, who are specially trained to conduct investigations. Yet, he deliberately violated that policy, refusing to comply therewith even after an admonition by the then Prosecutor.

He deliberately placed his personal interests above the duties required of him as an attorney and as a public official. He repeatedly forsook his client, the public, for his own interests and those of [the informants], criminal defendants from whom he had the duty to protect the public. He breached the public trust when he traded loyalties and turned counsel for [the informants] by assisting them in the preparation of their motion to suppress; when he vigorously pursued the reduction of [the female informants bail] bail and played "musical courts", thereby deceiving the judicial system; when he personally made it possible for [female informant] to be released by providing bail money; and when he stole evidence-illegal substances-from the State, for his own use and that of his [informant] friends.

In re Williams, 169 NJ 264, 274 (2001) (Three-month suspension from judicial duties)

Respondent's conduct was irresponsible. She did not conform her behavior to the social norms expected of ordinary citizens in our society and certainly not to the heightened standard we expect of judges. Although her actions were related only to her private life, they took place in public where others, knowing of her status as a judge, could lose confidence in the integrity and impartiality of the judiciary. Moreover, as the ACJC found, when respondent misled the police, she subordinated her responsibility to act in conformance with the law to her own personal concerns and needs. She demonstrated a lack of respect for the law that as a judge she has sworn to uphold. Likewise, when she called the Mill Hill and misrepresented her status, she came dangerously close to impersonating a police officer. Those actions suggest a lack of judgment that is both "prejudicial to the administration of justice [and] brings the judicial office into disrepute."

Part V – Domestic Violence

In re Principato, 139 NJ 456, 463 (1995) (Reprimand)

New Jersey has a strong public policy against domestic violence. Respondent's assault on [the female victim], a particularly vulnerable client, referred to him by a battered women's shelter, was a serious violation of *RPC* 8.4(b). But for the fact that we have not previously addressed the appropriate discipline to be imposed on a lawyer who is convicted of an act of domestic violence, and that respondent's offense was an isolated incident and did not present a pattern of abusive conduct, respondent's discipline would be greater than the public reprimand we hereby impose. We caution members of the bar, however, that the Court in the future will ordinarily suspend an attorney who is convicted of an act of domestic violence.

In re Magid, 139 NJ 449,455 (1995) (Reprimand)

Attorneys who hold public office are invested with a public trust and are thereby more visible to the public. Such attorneys are held to the highest of standards. "Respondent's conduct must be viewed from the perspective of an informed and concerned private citizens and be judged in the context of whether the image of the bar would be diminished if such conduct were not publicly disapproved." Respondent's conduct was a serious violation of *RPC* 8.4(b). But for the fact that we have not previously addressed the appropriate discipline to be imposed on an attorney who is convicted of an act of domestic violence, and that respondent did not engage in a pattern of abusive behavior, respondent's discipline would be greater than the public reprimand we hereby impose. We caution members of the bar, however, that the Court in the future will ordinarily suspend an attorney who is convicted of an act of domestic violence.

In re Margrabia, 150 NJ 198 (1997) (Three-month suspension)

Here, the assault occurred approximately seven months after our pronouncements in *Magid* and *Principato.* Respondent should have been aware of the possible discipline. The record, moreover, reveals that in the past respondent had resorted to physical force against his wife. In the subject incident, respondent punched his wife, leaving a "heavy duty bruise." According to his wife, in addition to striking her, respondent also hit their [three-year-old] child. We are persuaded that a suspension is the appropriate discipline. As we have stated, we "will ordinarily suspend an attorney who is convicted of an act of domestic violence."

In re Toronto, 150 NJ 191, 194-95 (1997) (Three-month suspension)

On May 13, 1994, respondent allegedly attempted to strangle his ex-wife, Consuela, with a telephone cord. On July 20, 1995, respondent pleaded guilty to simple assault. When entering the plea, respondent admitted that he and Consuela "were involved in an argument, during the course of which [he] push[ed her] away from [him]." The court sentenced respondent to one-year probation, fifty hours of community service and twenty-six sessions of domestic violence counseling. It also ordered him not to have contact with Consuela.

In November 1995, the OAE filed a Motion for Final Discipline with the DRB. Respondent joined in the OAE's recommendation of a reprimand. Accordingly, on September 16, 1996, the DRB recommended a reprimand. It reasoned that because *Magid* and *Principato* were decided ten months after respondent's assault, he was not on notice that he could be subject to suspension. In so concluding, the DRB noted that "[r]espondent offered as a mitigating factor his longstanding reputation, void of any prior ethics or criminal history."

While the present disciplinary action was pending before the DRB, however, the OAE was investigating another complaint against respondent involving a young woman ("complainant"), with whom respondent developed a romantic relationship. According to the complainant, respondent sexually abused her and infected her with a sexually transmitted disease. She also alleges that he violated tax laws by paying her cash for part-time secretarial services in his law practice. During questioning by a District Ethics Committee ("DEC") investigator, respondent initially denied engaging in sexual relations with complainant and having employed her. During the hearing, he responded evasively about his answer to the complaint. The DEC found that the complainant was more credible than respondent.

[Note sexually transmitted disease & tax allegations were not proved and did not result in discipline]

Part VI – Sexual Harassment

In re Seaman, 133 N.J. 67 (1993) (Two-month suspension from judicial duties)

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."

Other aggravating factors serve to define the gravity of misconduct. Those include the extent to which the misconduct, like dishonesty, or a perversion or corruption of judicial power, or a betrayal of the public trust, demonstrates a lack of integrity and probity, whether the misconduct constitutes the impugn exercise of judicial power that evidences lack of independence or impartiality, whether the misconduct involves a misuse of judicial authority that indicates unfitness,; whether the misconduct, such as breaking the law, is unbecoming and inappropriate for one holding the position of a; whether the misconduct has been repeated, and whether the misconduct has been harmful to others,

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.

In re Subryan, 187 N.J. 139 (2004) (Two-month suspension from judicial duties)

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 *148 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. In our system, the judge is a teacher, a mentor, an advisor, a source of referrals and a source of recommendations for his or her clerks. When that authority is exercised responsibly, the clerkship year stands out as a highlight in an attorney's professional life; when that authority is abused, certainly the clerk and, also, the judiciary are harmed.

We believe that a two-month suspension underscores the importance to the judiciary and to the public of a workplace free of gender discrimination and sexual harassment.

In re Brenner, 147 NJ 314 (1997) (Private Reprimand)

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 *318 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's findings continue:

Mary Stoia, a paralegal and legal secretary for Respondent, testified that she was in the outer office when Roberts arrived on November 17, 1995. She corroborated Respondent's version of how Roberts came to enter his private office. Contrary to Roberts' testimony that the outer office was empty when she left, Stoia testified that she was in the outer office, along with Respondent's wife, when Roberts left. According to Stoia, the three of them said goodbye to one another and Roberts seemed cheerful.

Part VII – Defenses

Correction through treatment

In re Templeton, 99 NJ 365, 374 (1985)

In all disciplinary cases, we have felt constrained as a matter of fairness to the public, to the charged attorney, and to the justice system, to search diligently for some credible reason other than professional and personal immorality that could *374 serve to explain, and perhaps extenuate, egregious misconduct. We have always permitted a charged attorney to show, if at all possible, that the root of the transgressions is not intractable dishonesty, venality, immorality, or incompetence. We generally acknowledge the possibility that the determinative cause of wrongdoing might be some mental, emotional, or psychological state or medical condition that is not obvious and, if present, could be corrected through treatment. An inquiry into such possible causes of ethical misconduct not only can be instructive and enlightening, it may also hold the promise of a resolution of the disciplinary charges in terms of personal rehabilitation, which will serve to protect the public interest without ruining a lawyer's career and life.

Implementation of Defense in Sex Case

Approximately nine years ago, respondent-then a young, even immature, but hardworking assistant county prosecutor-went through a period of extreme personal stress. During that period, he lost his ethical compass and went astray. In the interim, he has found his bearings. When, as here, ethics transgressions are remote in time, we may consider intervening events and current circumstances in determining the appropriate sanction. As offensive as was respondent's conduct, we are persuaded that "the root of his transgressions is not intractable dishonesty, venality, immorality, or incompetence. We generally acknowledge the possibility that the determinative cause of wrongdoing might be some mental, emotional, or psychological state or medical condition that is not obvious and, if present, could be corrected through treatment." By receiving needed psychotherapy and performing various good works, respondent has rehabilitated himself. In re Farr, 115 NJ 231, 237 (1989)

[Accord In re Asbell, 135 NJ 446 (1994) (Two-year suspension)]

Appendices – State of New Jersey, Judiciary's Official Policy Statement - July 3, 2007

Policy on Sexual Harassment

In recognition of the dignity and worth of each person who works for the Judiciary or who comes into contact with the courts, the New Jersey Judiciary promulgates this policy on sexual harassment for implementation throughout the court system. Sexual harassment is illegal, an abuse of authority and, if engaged in by a Judiciary employee, will be deemed to constitute misconduct. Sexual harassment undermines the public's confidence in the Judiciary and the integrity of employment relationships, debilitates morale and may be destructive to its victims and their associates. Accordingly, sexual harassment will not be tolerated whether it is practiced by judges, employees or non-employees, against court employees, attorneys, litigants, witnesses or others who come into contact with the court system. Managerial and supervisory personnel are required to ensure adherence to and compliance with this policy and, upon being informed of possible harassment, are required to take appropriate and immediate action in response thereto.

The New Jersey Judiciary has procedures for filing discrimination complaints, including sexual harassment complaints against judges, non-judge Judiciary employees, and non-employees, whether by Judiciary employees, attorneys, litigants, witnesses or others who come into contact with the court system. The Judiciary complaint procedures should be used for filing and addressing discrimination and sexual harassment complaints as noted in the "Filing a Complaint" section below.

Policy Against Discrimination Based on Gender Identity or Expression

The Judiciary respects the individual humanity and worth of each person who comes in contact with the courts. Discrimination in any form based on a person's gender identity or expression is prohibited. Gender identity or expression is defined as having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person's assigned sex at birth. The Judiciary shall not treat job applicants, employees, or individuals who come into contact with the courts differently because of their actual or perceived gender identity or expression.

Policy Against Discrimination Based on Affectional or Sexual Orientation

The Judiciary is committed to treating all employees and court users equally, with dignity and respect. Discrimination in any form against any individual on account of his or her affectional or sexual orientation is prohibited. Affectional or sexual orientation is defined as male or female heterosexuality, homosexuality, or bisexuality by inclination, practice, identity or expression, having a history thereof, or being perceived, presumed or identified by others as having such an orientation. The Judiciary shall not treat job applicants, employees, or individuals who come into contact with the courts differently because of their actual or perceived affectional or sexual orientation.

Policy on Consensual Dating in the Workplace

Consensual dating relationships between Judiciary employees are generally not the Judiciary's business. However, when the two people currently or previously involved in such relationships work as supervisor and subordinate, the supervisor must promptly inform his or her immediate superior of the personal relationship so that the Judiciary may take action to change the reporting relationship between the individuals. This is necessary in order to eliminate any appearance of, or actual, impropriety in the workplace. For justices, judges and Judiciary employees subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., failure to give proper notice to the supervisor's immediate superior may result in the denial of legal representation and indemnification by the State in the event that a discrimination or sexual harassment lawsuit is filed in connection with the relationship.

Policy on Racial/Ethnic Bias, Harassment, and Hostile Work Environment

The Judiciary prohibits all forms of bias, harassment, and discrimination in all of its operations. This prohibition extends to workforce management, all aspects of employment practices, the processing and adjudication of cases, and all programs, services and activities of the Judiciary. Appropriate actions, up to and including discharge, will be taken against individuals who do not adhere to this policy.

Judges, managers, and supervisors are to take all necessary steps to ensure that each employee's work environment is free of unlawful discrimination, including racial, ethnic or sexually-oriented jokes. Harassment, coercion or intimidation of any employee based on that employee's race, creed, color, national origin, age or other unlawful criteria is strictly forbidden.