

ORIGINAL

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In re: : 13 - 1623

Complaint against : Case No. 13-029

Judge Joy Malek Oldfield : Findings of Fact,
Attorney Reg. No. 0073065 : Conclusions of Law, and
Respondent : Recommendation of the
Disciplinary Counsel : Board of Commissioners on
Relator : Grievances and Discipline of
the Supreme Court of Ohio

FILED
OCT 14 2013
CLERK OF COURT
SUPREME COURT OF OHIO

OVERVIEW

{¶1} This matter was heard on August 22 and 23, 2013 in Columbus before a panel consisting of Martha Butler Clark, Robert B. Fitzgerald, and Lawrence R. Elleman, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Relator was represented by Jonathan E. Coughlan and Catherine M. Russo. Respondent was represented by George D. Jonson and Lisa M. Zaring.

{¶3} At the hearing, Relator offered agreed stipulations. The stipulations were supplemented by 13 joint exhibits including a composite exhibit containing 75 character letters.

{¶4} This case involves an Akron Municipal Court judge who was sitting in a parked car with a public defender who was assigned to her courtroom when they were approached by officers from the Copley Police Department. The public defender was arrested and charged with

having physical control of a vehicle while under the influence of alcohol. Relator claims that Respondent abused the prestige of her judicial office by informing the officers that she was a judge in an attempt to dissuade the officers from arresting the public defender, and further that Respondent committed an ethical violation by failing to disqualify herself from subsequent cases in which the public defender represented defendants in Respondent's courtroom.

{¶5} The panel concludes that Relator failed to prove by clear and convincing evidence that Respondent attempted to use her judicial office or title to prevent the arrest of the public defender, but that she should have disqualified herself from the subsequent cases in which the public defender was involved. The panel recommends that Respondent receive a public reprimand.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶6} At the time of the alleged violations, Respondent was subject to the Ohio Code of Judicial Conduct, the Ohio Rules of Professional Conduct, the Supreme Court Rules for the Government of the Judiciary of Ohio, and the Supreme Court Rules for the Government of the Bar of Ohio.

{¶7} Respondent was admitted to the practice of law on November 20, 2000. Respondent is a graduate of the University of Akron Law School. During law school, Respondent worked in a legal clinic and as an intern in law firm settings. After passing the bar, Respondent became an associate in an Akron law firm doing complex litigation, malpractice, personal injury, and employment discrimination. Then, Respondent and another partner of that firm left to start their own law firm. In 2010, Respondent became a magistrate in the common pleas court in Akron. Respondent was elected to the Akron Municipal Court in November 2011, and took office in early January 2012. Respondent is married and has two children.

{¶18} Respondent enjoys an excellent reputation in the community for truth, honesty, professionalism, dedication, and competence. Hearing Tr. 444-448; Joint Ex. 13.

{¶19} Respondent is actively involved in numerous community activities and professional organizations. *Id.* 440-441.

{¶10} Catherine Loya was a public defender assigned to Respondent's courtroom from early 2012, when Respondent assumed the bench, through February 17, 2012. They had met once before Respondent assumed the bench, but they were not well-acquainted until Respondent became a judge. After taking the bench, Respondent occasionally attended social gatherings, which included court personnel, Loya, and others. Stipulations 4-5; *Id.* 340-341, 385.

{¶11} During the evening of Saturday, February 4, 2012, Respondent and her husband attended two social engagements, the latter of which Loya also attended. At around midnight Respondent's husband left the party, but Respondent stayed. Before leaving the party, Respondent's husband requested that Loya drive Respondent home. Loya agreed to do so. Stipulations 6-10; *Id.* 262-263.

{¶12} Sometime between 1:00 a.m. and 1:30 a.m. on February 5, Respondent and Loya left the party in Loya's car. At approximately 1:45 a.m., Copley Police Officer Thomas Ballinger observed the car parked in the Ridgewood Shopping Center Plaza, pulled his police car around behind Loya's vehicle, turned on his spotlight, and approached the car from the rear on the driver's side. Stipulations 11-14.

{¶13} Officer Ballinger testified that as he approached Loya's vehicle, Respondent and Loya were in the back seat under circumstances that suggested a sexual encounter. *Id.* 35-45. Relator introduced the police incident report and other internal police documents to corroborate Ballinger's testimony. Joint Ex. 1-3. On the other hand, Respondent and Loya both testified that

they had stopped in the shopping center plaza for a smoke, that they were never in the back seat of the car, and that no sexual activity occurred. Respondent introduced circumstantial evidence tending to support Respondent's contention that Ballinger's testimony was mistaken. *Id.* 205-209, 309, 312, 322-323, 385-394, 406-417.¹

{¶14} The panel finds that the evidence is inconclusive with regard to a sexual encounter and therefore finds such activity has not been established. The panel has specifically excluded this evidence from its analysis and from the findings of fact, conclusions of law, and recommendations contained in this report.

Abuse of Judicial Title to Dissuade Arrest

{¶15} Upon his initial approach to the car, Officer Ballinger asked for and received identifying information from Loya and Respondent and then returned to his cruiser to advise his dispatcher and to "start running their information." At this time, two other officers of the Copely Police Department, Officer Darrell Garner and Officer Brian Price, arrived on the scene. The three of them returned to the Loya vehicle. At this time, Loya was sitting in the front driver's seat and Respondent in the front passenger seat. Loya was asked to exit the car. She complied but refused to perform a field sobriety test. Loya was then placed under arrest. Stipulation 16-22; *Id.* 47-51.

{¶16} Officers Ballinger and Garner stood on the driver's side of the car with Loya. Officer Price was on the passenger side of the car next to Respondent. Officer Ballinger testified that when he began to handcuff Loya, Respondent said: "Oh, don't do that. I'm the one that's been drinking. Will it help if I tell you I'm a judge?" *Id.* 53-55. No other witness confirmed that Respondent said this. Respondent denied it. *Id.* 402-403. Loya did not hear it said. *Id.* 317.

¹ The panel was able to view a vehicle of the same make and model as Loya's vehicle. *Id.* 406-417, 448-449.

Officer Price, who was standing alongside Respondent's side of the car, also did not hear it. *Id.*

163. The only other person in a position to hear such a statement, Officer Garner, did not testify at all.

{¶17} Officer Garner supplemented Officer Ballinger's incident report on February 8th, three days after Loya's arrest. In his report, Garner said that Respondent kept interrupting by saying: "Do you know who I am? It was me who was drinking." Joint Ex. 1, page 4. Since Garner did not testify at the hearing, the panel was unable to assess his credibility or the context in which he would claim Respondent's statement was actually made, if at all. Respondent testified that she never said any such thing. *Id.* 402-403. Moreover, Officer Ballinger, Officer Price, and Loya all testified that they did not hear Respondent say this. *Id.* 112, 162-163, 317. The evidence does not establish that Respondent made this statement.

{¶18} Both sides agree that during these discussions, Respondent indicated that she was a judge. Respondent says that that information was not volunteered by her, but came in response to a specific question from Officer Garner. Respondent testified that she told Officer Garner that she, not Loya, had been drinking and asked him to come over to Respondent's side of the car to smell for alcohol. Garner responded with words to the effect: "Why won't she take the tests?" When Respondent attempted to explain that field sobriety tests are not always reliable, Garner said: "What are you, some kind of lawyer?" Respondent honestly replied: "Yeah, actually I've been an attorney for some time, and now I am a judge." *Id.* 193-194.

{¶19} After Loya was placed under arrest, Officer Price offered to drive Respondent home or to call someone for her. Respondent requested instead that she be transported to the Copely Police Station with Loya. Officer Price drove Respondent to the station alone in his cruiser. At the station, Respondent was placed in the waiting room while Loya was being

booked in a separate room. Stipulations 23-28; *Id.* 142-149. Officer Price testified that at the arrest scene and during the ride to the station, Respondent said several times that she was embarrassed that she had been with Loya at the time of the arrest, especially since Respondent is a judge. Respondent asked if there was anything she could do for Loya, but Respondent also repeatedly told Price that she did not want any special treatment because she was a judge. Price testified that he “never got the feeling that she (Respondent) was trying to use her judgeship to get Ms. Loya out of anything. To me it came across as she was concerned for her friend, she wanted to know if there was anything she could do, you know, to make it easier.” *Id.* 164. *See Id.* 149, 202; Stipulation 27.

{¶20} After the booking process was completed, Officer Garner drove Respondent and Loya to Respondent’s home where Respondent lived with her husband and children. Officer Garner, both at the arrest scene and on the drive home repeatedly and sometimes mockingly referred to Respondent by her judicial title. Each time, Respondent asked him not to refer to her as a judge. *Id.* 195, 325-326, 403-405.

{¶21} The panel finds that Respondent clearly wanted to help Loya avoid arrest, both because she believed Loya had not been drinking and because she did not want the adverse publicity that might be associated with the fact that they had been together when the arrest occurred. However, the evidence, taken as a whole, does not produce in the minds of the panel a firm conviction that Respondent attempted to use her judicial title or position to deter the police from arresting and prosecuting Loya.

{¶22} The panel is mindful that Jud. Cond. R. 1.3, Comment [1] says that it would be “improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials.” However, the panel is not convinced that in this case

Respondent “alluded” to her judicial status in order to assist Loya or gave the appearance of doing so. The panel is persuaded by Officer Price’s testimony that he “never got that feeling that she was trying to use her judgeship to get Ms. Loya out of anything.” *Id.* 164.

{¶23} Relator has cited two cases decided by the Commission of Judicial Conduct in the State of New York, where judges were sanctioned for gratuitously identifying themselves as judge at the time of arrest because by doing so, they conveyed an appearance that they were asserting their judicial status to obtain special treatment. *In the Matter of Jeffrey Werner, New York Commission of Judicial Conduct*, 2003 and *In the Matter of Paul M. Hensley, New York Commission of Judicial Conduct*, 2012. The panel is unconvinced that the evidence in this case supports the same conclusions that were reached in the two New York cases. Relator did not clearly establish that Respondent gratuitously identified herself as a judge or that she conveyed the appearance of abusing her judicial status to obtain special treatment.

{¶24} The panel concludes that Relator failed to establish by clear and convincing evidence a violation of Jud. Cond. R. 1.3 [a judge shall not abuse the prestige of judicial office to advance the personal or economic interest of the judge or others]. The panel therefore recommends dismissal of the alleged violation of that rule.²

Failure to Recuse from Subsequent Cases

{¶25} After they were dropped off by the police at Respondent’s home early Sunday morning, February 5, Loya stayed for the rest of the night. Later that morning, Respondent’s husband suggested that Loya stay with Respondent’s family until her driving privileges were restored. Loya lived with Respondent’s family until February 8. Stipulation 32; *Id.* 328-329, 424. From February 5 through February 8, Respondent and/or her husband assisted Loya in

² The complaint is pleaded in a single count. The panel finds no violation of Jud. Cond. R. 1.2 as it relates to allegations of abuse of judicial office or title to avoid arrest, but finds a violation of that rule for Respondent’s failure to recuse herself from subsequent cases. *Infra*, ¶ 41.

various ways including, driving her to and from work, helping her retrieve her car and personal items, driving her to her parents' home to get additional clothes and personal items, serving her meals, and driving to the grocery store and the book store. *Id.* 264-268, 342-346, 423-426.

{¶26} Respondent and her husband felt responsible for what happened to Loya because their request for a ride home from the party had led to Loya's arrest. Respondent felt that the arrest itself was unfair to Loya. *Id.* 264, 426.

{¶27} On Sunday, February 5, Respondent and Loya each talked by telephone with Gert Wilms, who was the prosecutor assigned to Respondent's courtroom and with whom Respondent and her husband had attended law school more than a decade before. In her conversation with Wilms, Respondent explained what had happened the night before and that Loya was staying at Respondent's home. Wilms had "no issues" with the fact that Loya was going to be staying at Respondent's home and at the same time continuing in her courtroom. *Id.* 276-284, 326-330, 428.

{¶28} Also on February 5, Respondent and Loya each talked by telephone with Joseph Kodish, who was the Director of the Legal Defender's Office of Summit County and Loya's boss. They each informed him about what had happened the night before. Kodish learned either in those telephone conversations or shortly thereafter that Loya was staying at Respondent's house and riding back and forth to work with Respondent. *Id.* 326-328, 356-363, 373, 397-400, 428-429.

{¶29} Respondent felt sure that Loya had not been under the influence of alcohol at the time of the arrest and knew that she would be a potential witness in any criminal misdemeanor trial against Loya. Respondent discussed this potentiality with Kodish on February 5. Kodish commented that he thought it would be unlikely that Respondent would be called as a witness

and further that because of Kodish's planned rotation of his attorney staff among the various courtrooms, Loya would no longer be practicing before Respondent by the time of Loya's criminal misdemeanor trial anyway. *Id.* 377-387, 399.

{¶30} The relationships among court personnel in Respondent's courtroom, including the prosecutor, public defender, court staff, and judge were informal and the general atmosphere was collegial. *Id.* 275-277, 304-306.

{¶31} Loya continued as the public defender assigned to Respondent's courtroom from Monday, February 6, 2012 through Friday, February 17, 2012. Respondent did not disqualify herself from any of the cases in which Loya was involved as counsel and did not request that Kodish reassign Loya to a different courtroom. Stipulation 33; *Id.* 382.

{¶32} During that period, 40 defendants, with Loya as counsel, were scheduled to come before Respondent in a total of 53 cases. Thirty-seven of those cases resulted in Criminal R. 11 pleas and associated sentences, two were dismissed by the prosecutor, one involved an agreement as to the amount of restitution, two involved defendants that did not appear resulting in the issuance of a bench warrant, and 12 matters were reset at the request of the parties. Stipulation 34; Joint Ex. 10. None of the above-described matters were "contested." However, as of February 6, there was no assurance that all the matters to which Loya would become involved would be uncontested. *Id.* 371.

{¶33} All the uncontested matters described above required Respondent to exercise her judicial discretion and authority by approving or disapproving the courses of action recommended by the attorneys. For example, Criminal R. 11 plea agreements were presented to Respondent in writing on a Rule 11 plea sheet signed by the prosecutor and the defendant. The plea sheets set forth the charges, pleas to some of the charges and dismissals of others, and the

agreed disposition which could include fines, imprisonment, probation, restitution, and other conditions. In each case, Respondent would review the plea sheet, allow the lawyers, including Loya, to comment, and presumably inform the defendant and/or question him according to the requirements of Rule 11, after which Respondent would then accept or reject the terms of the agreement and impose the agreed sanction. There is no evidence that during the period in question any of the plea agreements were rejected. However, that does not diminish the judicial role that Respondent was required by law to play in the process. Joint Ex. 10; *Id.* 213-217, 346-347.

{¶34} On or about February 17, 2012, Respondent and Loya learned for the first time that a supplement to Copley Police Officer Ballinger's incident report stated that on February 5th, he had observed Respondent and Loya in the back seat of the car, and further that newspaper publicity regarding that was impending.³ *Id.* 330-331, 394-398. Immediately, upon learning this, Kodish rotated Loya from her responsibilities in Respondent's courtroom because Kodish "did not want to fight with the media." *Id.* 364.

{¶35} Respondent testified that she allowed Loya to represent clients before her until February 17 because, among other things, Respondent had absolute confidence that she would be fair and impartial. Respondent further explained that the courtesies that she and her husband had extended to Loya were in part because she felt responsible for Loya's predicament, but she also said that she would have extended the same favors to anyone else under similar circumstances.

Respondent felt that based on her training at new judge school, she had discharged her obligation

³ The incident report, Joint Ex. 1, is a five-page document. The first three pages, prepared by Officer Ballinger on February 5, did not mention Respondent or the alleged sexual encounter. These pages were provided to the clerk's office and to the prosecutor's office. Later on, during the morning of February 5, Officer Ballinger prepared a supplement (page 5) that identified Respondent's presence in the parked car under circumstances that suggested a sexual encounter. The supplement was not filed with the clerk's office or delivered to prosecution, rather it was initially provided only to Ballinger's police lieutenant. *Id.* 75-83.

by consulting both the prosecutor and the public defender, making sure they knew all the facts and determining that they did not object to Loya continuing to appear as counsel before her. *Id.* 399-401, 429.

{¶36} The panel concludes that immediately on February 6, Respondent should have disqualified herself from all cases in which Loya was to appear in her court, because Respondent had actual knowledge of facts sufficient to establish that her impartiality could reasonably be questioned and that her failure to recuse would create the appearance of impropriety. Those facts included: that Respondent felt responsible for Loya's predicament; that Respondent had argued against Loya's arrest at the arrest scene and had requested that she be delivered to the police station so she could be with Loya; that she permitted Loya to live in her home for three days; that she drove Loya to and from work each of those days so that Loya could appear in her own courtroom; that she and her husband assisted Loya in retrieving her personal items and her car; and that she knew that she was a potential witness in Loya's criminal misdemeanor case.⁴

{¶37} The standard for violation of Jud. Cond. R. 2.11 and Jud. Cond. R. 1.2 is an objective one. See Jud. Cond. R. 1.2, Comment [5] and *Disciplinary Counsel v. Medley*, 93 Ohio St.3d 474, 475, 2001-Ohio-1592, citing *In re Complaint Against Harper* (1996), 77 Ohio St.3d 211. That Respondent may have had absolute confidence that she would be fair and impartial is relevant when considering the appropriate sanction, but is not dispositive in deciding if a violation of the Code of Judicial Conduct occurred.

⁴ Disqualification would have caused little or no inconvenience to the public defender's office because Mr. Kodish was about to rotate his attorneys to different courtrooms anyway. Respondent testified that he was not asked to remove Loya from Respondent's courtroom, but would have done so if asked. *Id.* 382, 399.

{¶38} The fact that all the matters involving Loya were uncontested does not absolve Respondent from her responsibility to recuse. Even in uncontested matters, Respondent was required to exercise her judicial discretion and authority in an ethical manner.

{¶39} The fact that the lawyers, who practice before Respondent in an insulated environment of collegiality, apparently did not see a problem with her continued participation in cases involving Loya does not detract from the panel's conclusion that Respondent's failure to recuse would create an appearance of impropriety to an objective observer. The Code of Judicial Conduct is intended to protect not only the parties to individual cases, but also to ensure "the greatest possible public confidence in [judges'] independence, impartiality, integrity, and confidence." Preamble [2]. That there is a dual purpose to these rules is demonstrated in part by the provisions of Jud. Cond. R. 2.11(C), which provides that the parties, following express procedures set forth in the rule, may agree to waive any ground for disqualification of a judge other than personal bias or prejudice. Even if the parties agree to waive an otherwise disqualifying factor, a judge may still be required to recuse herself, in part because of the dual purpose of these rules.

{¶40} The facts in *Medley, supra* are in some respects similar to this case. In that case, the judge was contacted by a defendant upon her arrest, picked her up at the police station, drove her home, and then presided over a negotiated plea proceeding. The Supreme Court found an ethical violation even though the prosecutor and the defense were aware of those facts before the case was resolved and apparently did not request that he remove himself from presiding over the negotiated plea proceeding. The Court stated: "the sight or thought of a judge providing a ride home to a person who has just been detained for breaking the law surely gives the impression of bias on the judge's part when it comes time to hear that case." *Id.* 476-477. Judge Medley's

case is not exactly like the instant case because Judge Medley's out of court relationship was with a defendant rather than defendants' lawyer. However, the principle holding in that case applies here, that a judge should recuse herself when necessary to avoid the appearance to an "objective observer to be not only unjudicial but prejudicial to public esteem for the judicial office." *Id.* 476.

{¶41} After considering all of the evidence and arguments of counsel, the panel concludes that Relator proved by clear and convincing evidence that Respondent violated Jud. Cond. R. 2.11 [a judge shall disqualify herself in any proceeding in which the judge's impartiality might reasonably be questioned]; Jud. Cond. R. 1.2 [a judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety]; and Prof. Cond. R. 8.4(d) [conduct prejudicial to the administration of justice].

AGGRAVATION, MITIGATION, AND SANCTION

{¶42} The panel finds, as an aggravating factor, a pattern of misconduct in that Respondent failed to disqualify herself in 53 different matters that came before her from February 6 through February 17, 2012.

{¶43} The parties stipulated as mitigating factors that Respondent has no prior disciplinary record and that she has displayed a cooperative attitude in these proceedings.

{¶44} The panel finds as additional mitigating factors that Respondent has an excellent reputation in the community for truth, honesty, professionalism, dedication, and competence, and that she has been actively involved in numerous community activities and professional organizations.

{¶45} The panel also finds that no individual litigant was shown to have been harmed by Respondent's misconduct.

{¶46} The panel has taken into consideration the fact that Respondent heard no contested matters between February 6 and February 17 in which Loya was involved and that Respondent disclosed the circumstances to the prosecutor and the public defender (but not the individual defendants represented by Loya).

{¶47} Relator recommended that Respondent receive a one-year suspension all stayed. Respondent's counsel argued that Relator's claim should be dismissed, but suggested that if an ethical violation is found for failure to disqualify herself from cases in which Loya was involved, the appropriate sanction would be a public reprimand.

{¶48} The Court has in other cases imposed a public reprimand for failure to disqualify. *Medley, supra*. And *Ohio State Bar Assn. v. Goldie*, 107 Ohio St.3d 201, 2005-Ohio-6186.

{¶49} After considering the ethical duties violated and the relative severity of such violations, the sanctions imposed in similar cases, and the aggravating and mitigating factors, the panel recommends that Respondent receive a public reprimand.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 11, 2013. The Board adopted the Findings of Fact and Conclusions of Law of the panel, including the recommended dismissal of the alleged Jud. Cond. R. 1.3 violation. The Board further adopts the sanction recommended by the panel and recommends that Respondent, Judge Joy Malek Oldfield, be publicly reprimanded. The Board further recommends that the costs of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on
Grievances and Discipline of the Supreme Court of Ohio,
I hereby certify the foregoing Findings of Fact, Conclusions
of Law, and Recommendation as those of the Board.



RICHARD A. DOVE, Secretary