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ADVANCE SHEET HEADNOTE
March 4, 2024

2024 CO 12

No. 23SA171, *In the Matter of Robert Kiesnowski*—Judicial Discipline—Sanctions.

In this judicial disciplinary proceeding the supreme court considers the amended recommendation of the Colorado Commission on Judicial Discipline (“the Commission”) to (1) publicly censure now-retired Adams County District Court Judge Robert Kiesnowski and (2) order him to pay the costs incurred by the Commission in this matter. In reviewing the amended recommendation, the court considers Judge Kiesnowski's exceptions. The court concludes that the Commission properly found that Kiesnowski violated the Code of Judicial Conduct when he acted as counsel and exploited his judicial position for the benefit of his brother-in-law. The court further concludes that, given Kiesnowski is now retired, the appropriate sanction is the imposition of a public censure and an order requiring the payment of the Commission's costs in this matter.

Accordingly, the supreme court hereby publicly censures now-retired Judge Robert Kiesnowski for violations of Canon 1, Rule 1.1, Rule 1.2, and Rule 1.3, as

well as Canon 3, Rule 3.10, of the Colorado Code of Judicial Conduct. Additionally, the court orders now-retired Judge Kiesnowski to pay the costs incurred by the Commission in this matter in the amount of \$4,966.95.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 12

Supreme Court Case No. 23SA171
Original Proceeding in Discipline
Colorado Commission on Judicial Discipline Case No. 23-104

In the Matter of Complainant:

The People of the State of Colorado,

and

Respondent:

Robert Kiesnowski, a former judge of the Adams County District Court.

Public Censure

en banc

March 4, 2024

Appearing for Colorado Commission on Judicial Discipline and Complainant:

Jeffrey M. Walsh, Interim Executive Director and Special Counsel

Denver, Colorado

Attorneys for Respondent:

Craig L. Truman, P.C.

Craig L. Truman

Denver, Colorado

PER CURIAM.

CHIEF JUSTICE BOATRIGHT did not participate.

PER CURIAM.

¶1 This judicial disciplinary proceeding is before us on the amended recommendation of the Colorado Commission on Judicial Discipline (“the Commission”) to (1) publicly censure now-retired Adams County District Court Judge Robert Kiesnowski and (2) order him to pay the costs incurred by the Commission in this matter. In reviewing the Commission’s amended recommendation, we consider Kiesnowski’s exceptions.

¶2 The Commission’s recommendation is based on the factual findings and conclusions of law set forth in the September 22, 2023 Report of the Special Masters (“the Report”) in this case. The special masters determined that while serving as a judicial officer, Kiesnowski violated Canon 1, Rule 1.1, Rule 1.2, and Rule 1.3, as well as Canon 3, Rule 3.10, of the Colorado Code of Judicial Conduct. More specifically, the special masters found that Kiesnowski acted as counsel and exploited his judicial position for the benefit of his brother-in-law.

¶3 Kiesnowski timely filed exceptions to the Commission’s recommendation. In these exceptions, he contends that the special masters did not fully consider his predicament and his attempts to quickly find answers for how to balance his judicial position and his need to provide “short-term transparent representation of his brother-in-law.”

¶4 Having now considered the record, the briefs of the parties, and the Report, we conclude that the Commission properly found that Kiesnowski violated the Code of Judicial Conduct. We further conclude that, given that Kiesnowski is now retired, the appropriate sanction is the imposition of a public censure and an order requiring the payment of the Commission’s costs in this matter.

I. Facts and Procedural History

¶5 Kiesnowski first took the bench as a district court judge of the Adams County District Court in 2011. The instant matter involves Kiesnowski’s alleged misconduct and representation of his brother-in-law in 2023.

¶6 On May 31, 2023, Kiesnowski’s brother-in-law was involved in a domestic violence incident with his girlfriend and was admitted to intensive care for stab wounds he received during the conflict. The following day, June 1, an investigator with the district attorney’s office in the Thirteenth Judicial District (“the investigator”) sought to interview his brother-in-law. But Kiesnowski’s wife denied the investigator’s interview request, indicating that her brother was in too much pain to participate in an interview. Later that day, Kiesnowski called the investigator on two separate occasions. During the first call, he disclosed that he was a district court judge in the Seventeenth Judicial District and relayed what his brother-in-law remembered from the incident. During the second call, he identified himself as “Judge Kiesnowski.” During that call, the investigator

informed Kiesnowski that he would let him know before he went to the hospital to interview his brother-in-law.

¶7 The next day, June 2, the investigator went to the hospital to interview the brother-in-law without first informing Kiesnowski. The brother-in-law told the investigator that he did not want to consent to an interview without first seeking advice from Kiesnowski, to whom he referred as “his lawyer.” The investigator then called Kiesnowski, who responded that he wanted to be present for the interview and could be at the hospital in approximately forty minutes. Before leaving for the hospital, Kiesnowski reviewed the Colorado Code of Judicial Conduct Rule 3.10 (barring judges from the practice of law) to determine if it permitted him to represent his brother-in-law. Concluding that it did in fact permit this representation, he drove to the hospital to act as his brother-in-law’s legal counsel.

¶8 Once Kiesnowski arrived at the hospital, he consulted privately with his brother-in-law and then consented to a formal interview, which was video and audio recorded. Kiesnowski admitted in this judicial disciplinary proceeding that he told the investigator he would be acting as his brother-in-law’s counsel and that he requested his brother-in-law to wait for his instructions after each question. He further admitted that he made statements during the interview, including calling the brother-in-law’s girlfriend a “total disaster” and accusing her of threatening to

blame the brother-in-law for injuries she would inflict on herself. He described his brother-in-law as a “hard-working guy” who had been hit by his girlfriend in the past. At the end of the interview, Kiesnowski signed a medical release for his brother-in-law, noting that he was acting as a legal representative, and provided his Colorado bar number on the release.

¶9 Ten days later, Kiesnowski retired from the bench pursuant to a condition of a Stipulation for Private Censure he had agreed to for previous, unrelated judicial misconduct.

¶10 The Commission filed the Statement of Charges at issue here on June 30, 2023. Kiesnowski responded to the charges, admitting to many of the facts but denying that he had violated the Code of Judicial Conduct. On September 6, 2023, the special masters convened a one-day hearing and subsequently released the Report on September 22, 2023. In the Report, the special masters concluded by clear and convincing evidence that Kiesnowski had committed the charged violations. They then recommended public censure. Thereafter, the Commission adopted the Report and recommended to this court in October 2023 that Kiesnowski be publicly censured and assessed costs.

¶11 In the recommendation filed in this court, the Commission included as an attachment the Stipulation for Private Censure entered between the Commission and Kiesnowski in the earlier, unrelated matter. Because that stipulation was

entered pursuant to Colorado Rule of Judicial Discipline 35(h), and was thus intended to remain confidential, we struck the Commission's recommendation and attached record of proceedings. We simultaneously ordered the Commission to submit an amended recommendation and a record of proceedings excluding or redacting the confidential materials and extra-record statements.

¶12 In response, the Commission filed a Motion to Reconsider this Court's Order to Redact from the Record All Information Related to Former Judge Kiesnowski's Prior Disciplinary History. The motion for reconsideration argued that (1) the Rules of Judicial Discipline permit disclosure of the details of Kiesnowski's previous Stipulation for Private Censure; and (2) Kiesnowski waived his right to confidentiality as to his Stipulation for Private Censure by not objecting to its admission into evidence and by committing new ethical breaches serious enough to warrant public discipline. We granted the motion in part and denied it in part. Because Kiesnowski had not disputed the issue of waiver, we declined to resolve any dispute over the interpretation of the Rules of Judicial Discipline. Based on the waiver, we allowed the Commission to include the Stipulation for Private Censure in the record of proceedings along with references to the facts underlying that stipulation. However, the part of our order requiring the redaction of the irrelevant and unproven assertions in paragraphs four through seven of the Commission's October recommendation remained unchanged. We thus ordered

the Commission to file an amended recommendation and record of proceedings consistent with this new order.

¶13 The Commission’s amended recommendation was submitted on December 11, 2023. Thereafter, Kiesnowski timely filed exceptions to the Commission’s amended recommendation.

II. Analysis

¶14 We begin by discussing our jurisdiction to hear this matter and the applicable standard of review. We then proceed to address the recommended sanction and Kiesnowski’s contention that the special masters did not fully consider his predicament. Finally, we conclude that public censure and assessment of costs are appropriate sanctions for Kiesnowski’s violations of the Colorado Rules of Judicial Conduct.

A. Jurisdiction and Standard of Review

¶15 Article VI, section 23(3) of the Colorado Constitution entrusts matters of judicial discipline to this court, the Commission, and to any special masters that may be appointed by this court in connection with the hearing of a judicial disciplinary matter. But this court, and only this court, is the ultimate decisionmaker in judicial disciplinary proceedings. Colo. Const. art. VI, § 23(3)(f); *see also* Colo. RJD 40 (stating that “[t]he decision of the [supreme] [c]ourt, including such sanctions as may be ordered, shall be final”). Under the Colorado Rules of

Judicial Discipline (“R.J.D.”), this court must consider the law and the evidence, including the record of the proceedings, the Report, the Commission’s recommendation, and any exceptions filed under R.J.D. Rule 38. Colo. RJD 40.

¶16 We will uphold the special masters’ findings of fact unless, after considering the record as a whole, we conclude that they are clearly erroneous or unsupported by substantial evidence. *Matter of Booras*, 2019 CO 16, ¶ 18, 500 P.3d 344, 348. We review de novo the special masters’ conclusions of law. *Id.*

B. The Violations and the Exceptions

¶17 Kiesnowski acknowledges that his exceptions involve very few factual disputes. Rather, he argues that the special masters did not fully consider all the circumstances – namely, his attempt to do the best he could to balance his judicial employment and “what he believed was the appropriate short-term transparent representation of his brother-in-law.” He asks us to consider his own perception of the situation and to credit his efforts to find an answer under time pressure. And in doing so, he assures us that his mistakes were made in good faith. We review each of the violations and Kiesnowski’s corresponding arguments in turn.

1. Colorado Code of Judicial Conduct Rule 3.10

¶18 Upon our review of the entire record, we agree with the special masters that Kiesnowski violated Rule 3.10 by acting as his brother-in-law’s attorney while he was still a judge. Rule 3.10 states in relevant part:

A judge shall not practice law except as permitted by law or this Code. . . . The judge may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in *any forum*.

(Emphasis added.)

¶19 Kiesnowski explicitly stated during the investigator's recorded interview that he was "acting as [an] attorney" for his brother-in-law. Moreover, Kiesnowski directed his brother-in-law to wait to answer each question until Kiesnowski gave him the green light to do so. And Kiesnowski stopped the interview twice so that he and his brother-in-law could confer privately.

¶20 Additionally, Kiesnowski asserted his brother-in-law's Fourth Amendment and Fifth Amendment rights during the interview—he invoked the Fourth Amendment when he refused to agree to a consensual search of his brother-in-law's cell phone, and he invoked the Fifth Amendment when he terminated the interview. We discern nothing erroneous or insupportable in the special masters' conclusion that this constituted legal representation of his brother-in-law. *See Matter of Booras*, ¶ 18, 500 P.3d at 348.

¶21 Importantly, Kiesnowski does not dispute that he represented his brother-in-law. Instead, he argues that after quickly reviewing Rule 3.10, he believed that he was only prohibited from serving as his brother-in-law's lawyer in a "forum." And after consulting both Black's Law Dictionary and Heritage Dictionary, he was

of the opinion that the word “forum” in Rule 3.10 referred to a public, formal, adjudicatory setting and not to an interview in a private hospital room. Black’s Law Dictionary defines “forum” as: (1) “[a] public place, esp. one devoted to assembly or debate”; and (2) “[a] court or other judicial body; a place of jurisdiction.” *Forum*, Black’s Law Dictionary (11th ed. 2019). We are unpersuaded.

¶22 First, we agree with the special masters’ legal conclusion that, under the plain and ordinary language of Rule 3.10, a judge may not act as counsel to a family member in “*any* forum,” whether that forum is public or private. (Emphasis added.) The standard principles of statutory construction apply to the interpretation of court rules. *People v. G.S.*, 2018 CO 31, ¶ 32, 416 P.3d 905, 913. Thus, when construing a rule, we must give “the words and phrases their ordinary and commonly accepted meaning.” *Goodman v. Heritage Builders, Inc.*, 2017 CO 13, ¶ 7, 390 P.3d 398, 401. If the language is unambiguous, then we must apply it as written and need not turn to other rules of construction. *Bd. of Cnty. Comm’rs v. Colo. Dep’t of Pub. Health & Env’t*, 2021 CO 43, ¶ 17, 488 P.3d 1065, 1069.

¶23 The language of Rule 3.10 is unambiguous. The operative word here is “any” because by qualifying “forum,” it conveys broad inclusion of a variety of forums, both public and private. Kiesnowski’s interpretation, on the other hand, is overly narrow and fails to give full effect to the word “any.” See *Ceja v. Lemire*, 154 P.3d 1064, 1066 (Colo. 2007) (“If courts can give effect to the ordinary meaning

of words used by the legislature, the statute should be construed as written, *giving full effect to the words chosen*” (emphasis added)). The rule’s prohibition regarding representation in “any forum,” when juxtaposed against the rule’s provision expressly allowing a judge to give free legal advice to family members and to draft or review their legal documents, suggests that a judge’s representation of family members is limited to a behind-the-scenes role. *See* C.J.C. 3.10.

¶24 Our interpretation is further bolstered by Arizona’s Judicial Ethics Advisory Opinion No. 2010-06. There, the state’s advisory committee considered whether a judge could represent a spouse in negotiations with an insurance company. *Ariz. Jud. Ethics Advisory Comm., Advisory Op. 10-06 (2010)*, https://www.azcourts.gov/Portals/137/ethics_opinions/2010/10-06.pdf [https://perma.cc/64E8-FQQV]. Arizona’s Canon 3, Rule 3.10 mirrors Colorado’s Canon 3, Rule 3.10 and prohibits a judge from serving as a family member’s lawyer in *any forum*. After considering the meaning of “forum,” the advisory committee concluded that, “[h]ad the drafters of the canon and rule intended that ‘forum’ be restricted to a courthouse context, they would have so stated, and the Reporters’ Notes would have had no need” to consider in which informal settings representation was appropriate. *Id.* Accordingly, the advisory committee held that the negotiations were not sufficiently informal and minor as to permit the

judge to represent the judge's spouse. *Id.* The special masters found this opinion to be well reasoned and applicable to the facts in this case. So do we.

¶25 We are unmoved by Kiesnowski's request that we account for his good-faith belief that he was not representing his brother-in-law in any forum after he attempted to research the rule's prohibitions. Kiesnowski asserts that in his "hurry scurry" to get to the hospital after the investigator showed up without warning, he did the best he could with his available research tools and limited time. Be that as it may, the special masters rejected, as either a defense or as mitigation, Kiesnowski's claim that he felt he had no choice but to quickly rush to the aid of his brother-in-law. And the special masters' conclusion is neither erroneous nor unsupportable. *See Matter of Booras*, ¶ 18, 500 P.3d at 348. Furthermore, Kiesnowski was well aware that he could have simply directed his brother-in-law to refuse the interview – he admitted as much at the formal hearing. Doing so would have given Kiesnowski time to more thoroughly research Rule 3.10 and secure appropriate representation for his brother-in-law.

¶26 Kiesnowski next maintains that when he signed the medical release, he did not believe he was acting as a representative in "any forum" but was merely trying to make things easier for the investigator. But this argument is unconvincing considering that Kiesnowski conceded that he told the investigator he was signing

the release in his “official” capacity as counsel. Indeed, as counsel would typically do, Kiesnowski included his bar registration number on the release.

¶27 In sum, we conclude that Kiesnowski violated Rule 3.10 when he acted as his brother-in-law’s counsel during the interview with the investigator.

2. Colorado Code of Judicial Conduct Rule 1.3

¶28 Rule 1.3 states that “[a] judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” After reviewing the entire record, we agree with the special masters that Kiesnowski violated this rule when he conveyed to the investigator his status as a judge and then tried to advance the personal interests of his brother-in-law by vouching for his brother-in-law’s good character while disparaging the character and credibility of the girlfriend.

¶29 First, the special masters found that by repeatedly identifying himself as a judge, it could reasonably be inferred that Kiesnowski wanted to remind the investigator of his status. Kiesnowski counters that in his first phone call with the investigator he disclosed his title purely for the sake of transparency. The special masters, however, did not take issue with this initial identification. It was the additional reminders that were troubling to the special masters because they were irrelevant to the investigator’s attempts to conduct the interview. And, regardless of Kiesnowski’s intent, his repeated use of his title resulted in favorable treatment:

The investigator testified that Kiesnowski's status as a judge increased his credibility and led the investigator to conduct the interview in a more deferential manner.

¶30 Having established his status as a judge, Kiesnowski then made statements during the interview, such as describing his brother-in-law as a "hard-working guy" and the girlfriend as a "total disaster" who had "made statements that she will self-inflict injury and say that [the brother-in-law] did it." The special masters found Kiesnowski's statements constituted clear and convincing evidence that he tried to advance the personal interests of his brother-in-law throughout the interview.

¶31 Still, Kiesnowski contends that his statements were merely meant to help the investigation as his brother-in-law was in extreme pain, under opiate treatment, and not thinking clearly. He claims that he did not intend to attack the credibility of the girlfriend and that he trusted that other law enforcement authorities would vet the information.

¶32 However, this is precisely the argument the special masters rejected as less than believable. They found that Kiesnowski's derogatory statements regarding the girlfriend, "as well as his tone and tenor" while making them, "could be for no other reason than to persuade the investigator of her lack of credibility." We

perceive nothing erroneous or unsupportable in the special masters' conclusions. *See Matter of Booras*, ¶ 18, 500 P.3d at 348.

¶33 Kiesnowski nevertheless insists that he did not violate Rule 1.3 because he did not violate Rule 3.3 (prohibiting judges from testifying as character witnesses). According to Kiesnowski, by making character statements during the investigator's interview, he was not testifying as a character witness because he was not under oath. But this is a strawman argument. Kiesnowski was not charged with violating Rule 3.3. He incorrectly ties Rule 1.3 to Rule 3.3 based on comment 1 to the latter rule, which says that a judge who, without being subpoenaed, testifies as a character witness is in violation of Rule 1.3. However, Kiesnowski does not need to have violated Rule 3.3 to have violated Rule 1.3. Rule 1.3, on its face, says nothing about a judge testifying as a character witness. Here, Kiesnowski violated Rule 1.3 by abusing the prestige of his office to advance the personal interests of his brother-in-law.

3. Colorado Code of Judicial Conduct Rule 1.2

¶34 We also concur with the special masters' conclusion that Kiesnowski violated Rule 1.2 by (1) engaging in conduct that appeared to compromise the independence, integrity, and impartiality of the judiciary; and (2) engaging in actual impropriety and in conduct that created an appearance of impropriety. *See* C.J.C. 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.”).

¶35 The support for the special masters’ conclusions vis-à-vis Rule 1.2 is threefold. First, Kiesnowski actively conducted himself as legal counsel and made statements that derided the girlfriend’s credibility and bolstered his brother-in-law’s credibility. Second, Kiesnowski committed actual impropriety as established by his violation of Rules 1.3 and 3.10. Third, his conduct created the appearance of impropriety when he attempted to influence the charging decision through his character statements. Based on our review of the record, we cannot say that these conclusions are erroneous or insupportable. *See Matter of Booras*, ¶ 18, 500 P.3d at 348.

¶36 Although Kiesnowski says that he did not believe that his representation of his brother-in-law was inappropriate or that he did anything other than provide information to aid the investigation, a judge’s own perception is irrelevant. The “appearance of impropriety standard” is an objective one. *See C.J.C. 1.2 cmt. 5* (“The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code”). Here, viewing Kiesnowski’s conduct through an objective lens, we conclude that he created an appearance of impropriety.

¶37 Accordingly, Kiesnowski’s conduct violated Rule 1.2.

4. Colorado Code of Judicial Conduct Rule 1.1

¶38 Rule 1.1(A) requires a judge to “comply with the law, including the Code of Judicial Conduct.” The special masters found by clear and convincing evidence, and we agree, that Kiesnowski violated Rules 1.2, 1.3, and 3.10. Therefore, he necessarily also violated Rule 1.1.

C. Appropriate Sanction

¶39 In fashioning an appropriate sanction, the Code of Judicial Conduct directs us to consider factors such as “the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.” C.J.C., Scope ¶ 6.

¶40 Kiesnowski was previously disciplined for violations of the Code of Judicial Conduct. As a result of those proceedings, he agreed to retire following a Stipulation for Private Censure, so removal from office is no longer an available sanction. And we are mindful of the seriousness of the violations in this case. Kiesnowski’s representation of his brother-in-law and abuse of his judicial position for the sake of furthering his brother-in-law’s interests both undermined his judicial office and the public’s confidence in the judiciary.

¶41 In light of Kiesnowski’s violations of the Code of Judicial Conduct, and given that he is now retired, we conclude that the Commission’s recommendation

to publicly censure him and order him to pay costs is the appropriate sanction for his misconduct.

III. Imposition of Sanctions

¶42 For the foregoing reasons:

1. This court hereby publicly censures you, now-retired Judge Robert Kiesnowski, for your violations of Canon 1, Rule 1.1, Rule 1.2, and Rule 1.3, as well as Canon 3, Rule 3.10, of the Colorado Code of Judicial Conduct; and
2. This court orders you, now-retired Judge Robert Kiesnowski, to pay the costs incurred by the Commission in this matter in the amount of \$4,966.95.

IT IS SO ORDERED.