

(3) Complainant #1 and Complainant #2, the Chief Judge of Family Court, retained counsel and filed their respective complaints before the Court on the Judiciary on January 18, 2011. The Chief Justice referred the complaints to a Panel of the Preliminary Investigatory Committee for consideration. The Panel, in turn, issued two separate reports, both dated March 14, 2011, which found probable cause that Respondent engaged in judicial misconduct by:

- (a) Sending inappropriate communications to Complainant #1, a Member of the Delaware Bar who regularly appeared before him; and,
- (b) Having inappropriate *ex parte* communications with Complainant #1; and,
- (c) Being inappropriately influenced in his judicial decision-making by Complainant # 1's involvement in cases before him.

(4) Because the Panel found probable cause to believe that Respondent violated the Delaware Judges' Code of Judicial Conduct, this Court, following Rule 9(a), appointed a "Board of Examining Officers" (consisting of one member) to the case. The Board was charged with issuing a Rule to Show Cause to Respondent why he "should not be sanctioned or retired," appointing a Presenting Counsel to conduct an investigation and present evidence on the formal charges, and convening a hearing to determine whether clear and convincing evidence supported the Panel's finding of misconduct.

(5) Energetic efforts to resolve the complaints failed to persuade this Court to conclude the proceedings. Accordingly, on October 3, 2011, the Court consolidated the two complaints, rejected proposed consent agreements, and directed the Board to hold a hearing not later than November 15, 2011.

(6) Before the scheduled hearing date of November 10, 2011, the Board and the parties agreed to bifurcate the hearing into a merits phase, addressing evidence related to charges of judicial misconduct and, if appropriate, a sanctions phase, during which the Board would consider evidence related to the Respondent's conduct's impact on Complainants. During the merits phase, the Respondent admitted to certain violations of the Delaware Judges' Code of Judicial Conduct, thereby necessitating proceeding to the sanctions phase.

(7) The Board submitted its findings of fact and recommendations to this Court in a Report issued on March 12, 2012. The Court is required to conduct its own evaluation of the evidence adduced by the Board and reach an independent conclusion as to the sanctions to be imposed.

(8) The Board found, and detailed, clear and convincing evidence of two violations of the Code: (1) that Respondent engaged in an inappropriate *ex parte* communication with Complainant #1 in an October 5, 2010 email to her; and (2) that Respondent, after developing and expressing romantic feelings for Complainant #1, continued to preside over cases in which she participated.

(9) The Board's Report accurately reflects that Respondent "acknowledged" that the October 5, 2010 email, in which he offered advice regarding Complainant #1's preparation of a legal memorandum that was to address a contested issue then before him, constituted an inappropriate *ex parte* communication.

(10) The Board correctly concluded that both Respondent's admission, and the evidence received, established clear and convincing evidence that Respondent violated Rule 2.9 of the Delaware Judges' Code of Judicial Conduct, which prohibits Delaware judges from "initiat[ing] . . . *ex parte* communication [on the merits] concerning a pending . . . proceeding." The Board further correctly concluded that clear and convincing evidence supported that: Respondent had violated Rules 1.2(A) (requiring a judge "to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"), Rule 2.2 (requiring a judge to "be faithful to the law"), Rule 2.3(A) (requiring a judge to "perform the duties of judicial office . . . without bias"), Rule 2.3(B) (requiring a judge to "avoid impropriety and the appearance of impropriety in all activities"), and Rule 2.4(b) (requiring a judge to avoid "allow[ing] social or other relationships to influence his conduct or judgment"). The Board based its findings substantially on Respondent's own words in his email, which urged Complainant

#1 to “[f]or obvious reasons, keep these as your observations and not mine” and “[a]s always keep this email confidential.”

(11) The Board correctly concluded that the above violations, supported by clear and convincing evidence, constituted “wilful misconduct” and not a mere error of judgment.

(12) The Board further found that Respondent’s own Proposed Findings of Fact and Conclusions of Law formally acknowledged that “his conduct ‘from August 20, 2010 until the middle of November 2010, in allowing [Complainant #1] to appear before him, violated Rule 1.2 of the Delaware Judges’ Code of Judicial Conduct in that he failed to promote the (sic) confidence in the judiciary by hearing cases in which [Complainant #1] was involved when he had developed a relationship with her that was beyond a normal friendship.’” Respondent also formally acknowledged that he violated Rules 2.2 and 2.3.

(13) The Board’s findings established that clear and convincing evidence supported Respondent’s admissions. Mere social contacts with Members of the Bar, including those who appear before judges, alone do not constitute a violation of the Delaware Judges’ Code of Judicial Conduct. But, where those contacts rise to the level of personal and emotional attachments, no matter how unrealistic, one-sided, and unreciprocated, judges must take steps to preserve public confidence in their integrity and impartiality. Here, Respondent, despite clearly rebuffed

overtures, continued to pursue a relationship and preside over cases in which Complainant #1 appeared. Only after the Chief Judge of his Court intervened did he no longer preside over cases involving Complainant #1 or her firm.

(14) Importantly, the Board found no clear and convincing evidence that Respondent's perceived relationship impacted *any* decision in *any* case in which he presided. Nevertheless, the Board correctly concluded that Respondent's continuing to preside over cases in which Complainant #1 appeared on "a weekly basis for more than a year after he had developed strong personal feelings for her [beyond] 'casual social interaction'" constituted "persistent misconduct in violation of the Canons of Judicial Ethics" as envisioned by article IV, section 37 of the Delaware Constitution.

(15) The Board's findings, legal analysis, and recommendations are thorough, careful, and thoughtful. The Board correctly applied relevant principles of law and the Board's factual findings are not clearly wrong. Notably, the Board's recommended sanctions are measured and balanced with sensitive regard for the impact on Complainants, Respondent and his family. Particularly noteworthy is the Board's express finding that Respondent "has enjoyed a distinguished career, first as a practicing lawyer and, for the past *eleven years*, as a Family Court judge." We take judicial notice that Respondent's term expires November 1, 2012.

(16) On March 26, 2012, Respondent filed exceptions to the Board's Report. Presenting Counsel filed no exceptions. Because we find no merit to the exceptions and conclude that they raise no genuine issue of material fact and do not raise legal issues, we impose sanctions, two thirds of the Members concurring.

SANCTIONS

1. This Order removes Respondent from the Office of Judge of the Family Court of the State of Delaware effective November 2, 2012 (one day after his 12 year pension entitlement vests), and a vacancy shall be deemed to exist as of that date.

2. For the balance of his term in office, Respondent shall be granted no vacation days.

3. The Chief Judge of Family Court, consistent with her existing administrative powers, shall determine Respondent's assignment within Family Court, limiting Respondent to assignments solely within the State. Respondent shall not be authorized to travel for work purposes outside the State.

4. Upon presentment, Respondent shall pay up to \$10,000 of Complainant #1's therapy bills actually incurred and seventy-five percent of her reasonable counsel fees.

5. Upon presentment, Respondent shall pay seventy-five percent of Complainant #2's reasonable counsel fees.

6. Respondent shall reimburse any State fund which paid any of his counsel or defense fees and costs.

7. Consistent with article IV, section 37 of the Delaware Constitution and Rule 17 of the Rules of this Court, this Order, having included the sanction of removal, shall be made public. All other records, hearings and proceedings of the Board and Court shall be private and confidential unless, at Respondent's request, the Court orders otherwise.