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November 29, 2022

VIA HAND-DELIVERY AND ELECTRONIC TRANSMITTAL

Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 W. Market Street
P.O. Box 970
Trenton, N.J. 08625

**Re: In the Matter of Bernice Toledo, Former Surrogate
ACJC 2019-189**

Dear Chief Justice and Associate Justices:

Pursuant to Rule 2:15-15A(b)(3), please find enclosed herewith an application for discipline by consent filed with the Advisory Committee on Judicial Conduct ("the Committee" or "ACJC") on November 9, 2022 jointly by Maureen G. Bauman, Esq., ACJC Presenter, and Respondent, Bernice Toledo, former Surrogate of Passaic County, through her counsel, Adolph J. Galluccio, Esq. Respondent has conceded to violating Canon 1, Rule 1.1, Canon 2, Rule 2.1, Rule 2.2, Rule 2.3(A), and Canon 3, Rule 3.17(B)(6) of the Code of Judicial Conduct, and New Jersey Court Rule 1:12-1(g). These violations stem from Respondent's presiding over a hearing in which her impartiality or the appearance of her impartiality might reasonably be questioned by virtue of her

relationship with one of the administration applicants in an estate matter (*Count I*), Respondent's appointment of that applicant, her friend, as administrator of the estate, rather than a relative, thereby inappropriately using her office to advance the private interests of another (*Count II*), and Respondent's failure to disclose to ACJC investigators the nature and extent of her relationship and interactions with Mr. Stewart during the relevant time period (*Count III*).

The Committee granted the application for discipline by consent on November 16, 2022. Pursuant to the enclosed stipulation, Presenter and Respondent agreed to a recommended disciplinary sanction within the range of a public reprimand to a public censure, with a permanent bar to holding or securing future judicial office as the appropriate response to Respondent's judicial misconduct. After careful consideration, and for the reasons stated below, the Committee respectfully recommends to this Court that the appropriate sanction for Respondent's misconduct is the imposition of a public censure, with a permanent bar to holding or securing future judicial office.

The Committee finds, based on a review of the incontrovertible evidence of record, that Respondent's misconduct when performing her judicial duties as Surrogate in the underlying estate matter and during the Committee's investigation into Respondent's misconduct in that estate matter, was pervasive and inimical to the integrity and independence of the Surrogate's office and the judicial disciplinary system for which a censure with a permanent bar to holding or securing future judicial office is warranted. The nature and circumstances of the misconduct, as Respondent concedes, includes multiple ethics violations involving partiality (or the appearance thereof), abuse of office, and a lack of probity. While these offenses constitute Respondent's first disciplinary violations, the offending conduct, i.e.

abuse of judicial office and a lack of candor to this Committee, constitute egregious acts of judicial misconduct implicating the Judiciary's core ethical precepts of integrity and impartiality. DeNike v. Cupo, 196 N.J. 502, 514-515 (2008). Given these circumstances, and consistent with disciplinary precedent, censure, rather than reprimand, is the more appropriate quantum of discipline. See In re Corradino, 238 N.J. 217 (2019) (publicly censuring and permanently barring from judicial service a judge for failing to submit a Request for Expenditure of DWI Funds to the Assignment Judge prior to holding special DWI sessions; utilizing money from the DWI fund to pay himself and others "bonuses"); In re Falcone, 251 N.J. 476 (2022) (censuring judge and permanently disqualifying him from future judicial service after judge was suspended from office following charges for fourth-degree criminal sexual contact, in violation of N.J.S.A. 2C:14-3(b), for which he was eventually admitted into the PTI program and successfully completed). Cf. (State v. Richard B. Thompson, Accusation No. 18-02-149A) (Pleading guilty to one count of Falsifying Records, a fourth-degree crime, consenting to an Order of Forfeiture of Public Office pursuant to N.J.S.A. 2C:51-2 (d). The New Jersey Supreme Court disbarred Mr. Thompson and permanently restrained and enjoined him from practicing law and holding any judicial office in New Jersey. In re Thompson, 240 N.J. 263 (2020))

In addition, as set forth in the Stipulation of Discipline by Consent, Respondent, on June 21, 2022, agreed to being permanently barred from any and all future public employment in the State of New Jersey and any of its administrative subdivisions, pursuant to N.J.S.A. 2C:51-2. Indeed, the Supreme Court has censured those jurists charged by criminal complaint who have, as a consequence of those charges, forfeited their ability to hold future public office. (See Falcone, 251 N.J. at 476; Thompson, 240 N.J. at 263-265) Notably, the Respondent in Corradino, supra, who

was censured and permanently barred from judicial office, was not charged criminally, but was nonetheless censured for his misconduct.

While we acknowledge Respondent's reference to her extrajudicial work and volunteer endeavors as mitigating factors, those circumstances do not sufficiently mitigate Respondent's admitted abuse of office and lack of candor to justify the imposition of a reprimand in lieu of a censure. Cf. Corradino, 238 N.J. 217 (2019), (censuring and permanently barring judge whose mitigation included 22 character letters from members of the Bar demonstrating a reputation for fairness and his approximately 23 years of service to the bench, in multiple courts).

The Committee, on weighing Respondent's multiple ethics violations against the mitigating circumstances presented, including Respondent's otherwise unblemished judicial disciplinary history, and the applicable precedent, finds the imposition of a public censure, with a permanent bar to holding or securing future judicial office, to be the most appropriate quantum of discipline.

Please find enclosed herewith the record in this matter, which consists of the following documents:

1. Stipulation of Discipline by Consent;
2. Respondent's Affidavit of Consent;
3. All material exhibits (#1-13) in support of Stipulation;
4. Formal Complaint filed December 23, 2019;
and
5. Verified Answer filed January 28, 2020.

Thank you.

Very truly yours,

/s/ *Virginia A. Long*

Virginia A. Long, Chair

Enclosures

Cc: Maureen G. Bauman, Esq., ACJC Presenter

Adolph J. Galluccio, Esq., Counsel to Respondent