

# APPENDIX BB

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. OE-136

IN RE: THOMAS ESTES

ORDER

The Commission on Judicial Conduct (Commission) and the Hon. Thomas Estes (Judge) have submitted a final submission upon agreed facts, pursuant to G.L. c. 211C and Rule 13A of the Rules of the Commission on Judicial Conduct (final submission) in Commission complaint no. 2017-39. Upon consideration of the final submission and after hearing from the parties, the court makes the following determinations and enters the following order.

1. The court accepts the stipulation of facts in the final submission. The parties agree and have stipulated that the Judge had an undisclosed sexual relationship with Tammy Cagle, a clinician member of the "team" in the drug court session of the Pittsfield Division of the District Court Department (drug court). We note at the outset what is not included or addressed in the final submission. There is no finding, determination, or stipulation with respect to the presence or absence of sexual harassment or discrimination, and we make no such determination or finding. The final submission also does not address whether the Judge had any hiring or firing authority over Cagle. In arriving at our disposition in this matter, the court has considered only the facts and misconduct that have been agreed to by the parties as set forth in the final submission.

The stipulated facts are as follows. While Cagle was a member of the drug court team over which the Judge presided, the Judge and Cagle engaged in an undisclosed sexual relationship. Their sexual encounters began in November, 2016, and continued until July, 2017. From November, 2016, until March, 2017, while Cagle was an active member of the drug court team, Cagle and the Judge had sexual encounters both in Cagle's home and on several occasions in the Judge's lobby. Before or after some of their sexual encounters, they would have general discussions regarding the operation of the drug court. They also communicated about a particular defendant, although the Judge appears not to have taken any action in response to Cagle's request regarding that defendant. During some of the time period covered by their affair, the Judge attempted to mediate problems between Cagle and other members of the drug court team. The final sexual encounter between the Judge and Cagle was in July, 2017, by which time Cagle was no longer on the drug court team. The Judge used his official electronic mail (e-mail) account to communicate with Cagle and facilitate one of the sexual encounters.

2. The court also accepts the parties' stipulation that the Judge's conduct constituted wilful judicial misconduct that brings the judicial office into disrepute, as well as conduct prejudicial to the administration of justice and unbecoming a judicial officer. The court further accepts the stipulation that the Judge has violated the Code of Judicial Conduct by failing to act, at all times, in a manner that promotes public confidence in the independence, integrity, or impartiality of the judiciary, and by failing to avoid impropriety or the appearance of impropriety, in violation of Rule 1.2; by failing to give precedence to judicial duties, in violation of Rule 2.1; by creating an appearance that he was not performing all duties of judicial office fairly and impartially, in violation of Rule 2.2; by creating an appearance that he was not performing judicial duties without bias or prejudice, in violation of Rule 2.3; by creating an appearance that his judicial

decision-making was subject to inappropriate outside influences, in violation of Rule 2.4; by failing to be dignified, and courteous to litigants, witnesses, lawyers, court personnel, and others with whom he deals in an official capacity, in violation of Rule 2.8(B); by failing to disqualify himself from a proceeding in which his impartiality might reasonably be questioned, in violation of Rule 2.11(A); by participating in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality, in violation of Rule 3.1(C); and by making improper use of court premises, staff, stationery, equipment or other resources, in violation of Rule 3.1(E).

3. We have carefully considered the recommendations of the parties for disposition in light of the agreed upon violations of the Code of Judicial Conduct. Although this court's dispositions in prior proceedings and dispositions in other jurisdictions generally may offer some guidance, the appropriate resolution in these matters depends on the particular circumstances. Because none of our earlier cases is on point, our prior judicial disciplinary decisions provide little guidance in reaching a conclusion on the facts presented in this proceeding. We have weighed mitigating and aggravating circumstances, including the Judge's expressions of remorse and his very positive judicial performance evaluations.

Because deference to the judgments of our courts requires that courts maintain the public's trust and confidence, our disposition must assure the public that judges are held to high standards and that the judiciary is worthy of the trust and confidence necessary in a society governed by law. Here, the Judge has admitted to violations of the Code of Judicial Conduct that are serious and numerous and that implicate fundamental principles of integrity, impartiality, and respect for the judicial office. As we said in *Deputy Chief Counsel for the Pub. Defender Div. of the Comm. for Pub. Counsel Servs. v. Acting First Justice of the Lowell Div. of the Dist. Court*

*Dep't*, 477 Mass. 178, 180 (2017), "A judge is the leader of the drug court team." In this role, the judge presides over drug court sessions, makes final decisions on participant eligibility after considering input from team members, and makes all decisions in drug court cases. See Executive Office of the Trial Court, *Adult Drug Court Manual, A Guide to Starting and Operating Adult Drug Courts in Massachusetts*, at 9 (2015). The Judge admitted that Cagle participated in discussions regarding admission into drug court, referral for treatment, and termination from drug court during his undisclosed extramarital relationship with her. He also admitted that he and Cagle engaged in general discussions regarding the drug court before or after their sexual encounters. We have no doubt that the Judge's undisclosed sexual relationship with a member of his drug court team raises, at the least, the appearance of inappropriate influence and partiality in his decisions regarding drug court participants and thus puts the integrity of the drug court during his leadership into question. Further damaging respect for his office, the Judge used his lobby in the court house for at least several of their sexual encounters, reflecting complete disrespect for the dignity and decorum of the court. He also used his court e-mail account to communicate with Cagle, including communicating on a strategy to ensure that their text messages would not be seen by his family. It is beyond dispute that these egregious, deliberate, and repeated acts of misconduct severely diminished respect in the eyes of the public not only for this judge but also for the judiciary.

As noted above, the Judge's performance evaluations suggest that he has been a conscientious judge who consistently received very positive ratings from attorneys, court employees, and jurors. The Judge's misconduct, however, is serious, and his prior positive evaluations cannot repair the damage to the judicial system caused by his grave, wilful, and repeated wrongdoing. The Judge's unwillingness to abide by the standards imposed on his office

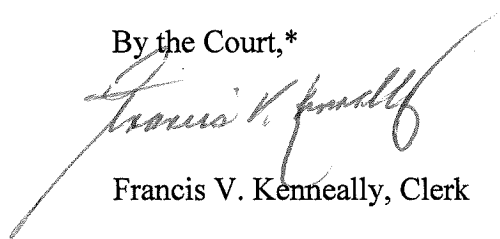
brought the office of the Judge, and by extension, the judiciary, into disrepute. "That the standards imposed on judges are high goes without saying. Because of the great power and responsibility judges have in passing judgment on their fellow citizens, such standards are desirable and necessary and there should be strict adherence to them. Failure on the part of even a few judges to comply with these standards serves to degrade and demean the entire judiciary and to erode public confidence in the judicial process. Anyone who is unwilling to accept and abide by such stringent rules of conduct should not aspire to or accept the great honor and the grave responsibility of serving on the bench." *Matter of Morrissey*, 366 Mass. 11, 16-17 (1974).

Clearly, the Judge's misconduct has damaged the esteem of the judicial office in the public's eye. The sanction we impose is severe not because we seek to punish the Judge severely, but because, like the Commission, we seriously question whether he can command the respect and authority essential to the performance of his judicial function. In furtherance of our duty to assure the public that Massachusetts judges are held to high standards of conduct and that the Commonwealth's judiciary is worthy of their trust and confidence, we conclude that Judge Estes shall be and hereby is publicly censured, and that effective June 15, 2018, he shall be suspended without pay indefinitely or until further order of this court, and it is so ORDERED. A copy of this order shall be delivered to the Governor and the Legislature.

4. The Commission shall be permitted to share with the legislative and executive branches any nonimpounded material that has been provided to this court.

5. In response to the Commission's request regarding a press release, the Commission may issue a press release consistent with this order.

By the Court,\*

A handwritten signature in cursive script, appearing to read "Francis V. Kenneally". The signature is written in dark ink and is positioned above the printed name.

Francis V. Kenneally, Clerk

Entered: May 24, 2018

\* Chief Justice Gants Recused