

STATE OF NEW HAMPSHIRE  
JUDICIAL CONDUCT COMMITTEE

JC-21-072-C

IN RE: Bruce F. DalPra

SUMMARY OF PROCEEDINGS, FINDINGS AND RECOMMENDATIONS  
PURSUANT TO NEW HAMPSHIRE SUPREME COURT RULE 40 (12) (d)

NOW COMES, the Judicial Conduct Committee and offers the following *Summary Report of Proceeding, Findings and Recommendations* pursuant to New Hampshire Supreme Court Rule 40(12)(d) as follows:

New Hampshire Supreme Court Rule 40(12)(d), *Dispositions Following Hearing*, provides in relevant part that:

*Violation Warranting Formal Discipline.* If the committee determines, by the affirmative vote of at least seven of its members, that the judge complained against has violated the Code of Judicial Conduct and that the violation is of a serious nature so as to warrant formal disciplinary action by the supreme court, the committee shall prepare a summary report of the proceeding and of its findings which shall be filed in the public docket of the committee. Such report shall include the recommendations of the committee (if any) concerning the sanctions to be imposed. Any member who dissents from the determination of the committee may prepare a minority opinion which shall be appended to the report of the committee. A copy of the decision shall be sent to the judge and to committee hearing counsel, and the committee shall also notify the supreme court that the decision finding serious judicial misconduct has been docketed.

On June 16, 2022, the Committee issued a *Statement of Formal Charges* (Ex. 1)<sup>1</sup> alleging that Marital Master Bruce F. DalPra (DalPra) violated Code of Judicial Conduct Rule 1.2, Rule 2.8(B), Rule 2.11, and Rule 2.16(A). A public hearing on the charges was scheduled to begin on September 14, 2022. On or about September 13, 2022, DalPra offered, and the Committee elected, to resolve this matter by way of *Stipulation and Agreement* thereby terminating these

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<sup>1</sup> Reference to the record is to exhibits stipulated by the Committee and DalPra which were to be submitted at the public hearing. These exhibits will be transferred to the Supreme Court together with this Report and Recommendations.

judicial conduct proceedings without public hearing. DalPra entered into this *Stipulation and Agreement*, with the advice of counsel, and entered the following pleas and waivers.

DalPra acknowledged receipt of the *Statement of Formal Charges* dated June 16, 2022.

DalPra recognized his right to a public hearing to contest the charges in the *Statement of Formal Charges* pursuant to New Hampshire Supreme Court Rule 40 (9), (10) and (11). He further admitted he was aware that a hearing had been scheduled for September 14, 2022, on the *Statement of Formal Charges*. DalPra signed the *Stipulation and Agreement* in lieu of this public hearing and thereby waived his right to this public hearing under Rule 40 and agreed that the *Stipulation and Agreement* would serve as part of the official record of these proceedings.

DalPra admitted that he violated the following provisions of the Code of Judicial Conduct (Supreme Court Rule 38) as alleged in the *Statement of Formal Charges and modified by the Stipulation and Agreement*, as referenced herein.

a. *Canon 1, Rule 1.2: Promoting Confidence in the Judiciary*

Master DalPra, in violation of Canon 1, Rule 1.2, failed to disqualify himself thus undermining the public's confidence in the judiciary, in that by not disclosing the potential basis for recusal to parties to give them the opportunity to move for his disqualification and by failing to cooperate fully with the Judicial Conduct Committee by not disclosing the exact inappropriate words he uttered, Master DalPra's combined conduct undermined the public's confidence in the integrity of the judiciary.

b. *Canon 2, Rule 2.11: Disqualification*

Master DalPra, in violation of Canon 2, Rule 2.11, failed to disqualify himself in a proceeding in which his impartiality might reasonably be questioned, in that Master DalPra failed to notify the parties in this case of his inappropriate comments made in his self-report to the JCC and thereby failed to provide the parties an opportunity to move for his recusal and failed to disqualify himself under circumstances in which his impartiality might reasonably be questioned.

c. *Canon 2, Rule 2.16(A): Cooperation with Disciplinary Authorities*

Master DalPra, in violation of Canon 2, Rule 2.16(A), failed to cooperate with the Committee by not fully disclosing all facts known to him concerning his utterances at the telephonic hearing in the underlying case, in that Master DalPra failed to cooperate fully with judicial disciplinary agencies by describing his comment as "inappropriate" instead of disclosing the exact words used, based on

his mistaken belief that the Committee already had this information in audio and transcript form.

d. Canon 2, Rule 2.8(B): Decorum, Demeanor

Master DalPra, in violation of Canon 2, Rule 2.8(B), failed to act in a dignified, patient and courteous manner in a court proceeding, in that by making his numerous comments and utterings during the course of the hearing (even though the comments were not heard by the parties) Master DalPra's actions were impatient, undignified and discourteous to the litigants and their counsel.

DalPra conceded that as a result of his admissions and the terms of this *Stipulation and Agreement*, the Judicial Conduct Committee will enter a finding, by clear and convincing evidence, that he had violated the provisions of the Code of Judicial Conduct as stated above and that the Committee would prepare a summary report of this proceeding and of its findings and recommendations (if any) concerning the sanctions to be imposed which shall be filed in the public docket of the Committee and forwarded to the New Hampshire Supreme Court as required by New Hampshire Supreme Court Rule 40(12)(d).

DalPra further waived any rights which he had to a *de novo* hearing in connection with this matter pursuant to New Hampshire Supreme Court Rule 40(12)(d)(1) and (2).

DalPra had the advice of counsel in connection with the preparation and execution of this *Stipulation and Agreement* and stated that he understood both the terms and effect of such *Stipulation and Agreement* and that he executed the *Stipulation and Agreement* of his own free will.

The Committee and DalPra agreed, that upon execution of this *Stipulation and Agreement*, the Judicial Conduct Committee would enter a finding of violations of the Code of Judicial Conduct as stated therein, by clear and convincing evidence, that the hearing set for September 14, 2022 would be cancelled, and that, due to the factual circumstances, the Committee would refer this matter to the New Hampshire Supreme Court for the imposition of formal discipline under Supreme Court Rule 40(12)(d).

The *Statement of Formal Charges* filed in this matter centered around comments DalPra made during a hearing on November 6, 2020 in a case captioned, In the Matter of Albrecht and Albrecht, Case No. 659-2016-DM-00288. At the time, DalPra, who has since retired, was the marital master presiding over the Albrecht case. On November 19, 2020, DalPra filed a self-report (Ex. 4) with the Committee regarding certain statements that he made during a hearing, which may have violated the Code of Judicial Conduct.

In his self-report, DalPra informed the Committee that during the telephonic hearing, the father [Mr. Albrecht] began to testify about matters which DalPra did not believe were relevant. DalPra wrote, "Under my breath, I uttered a comment that contained a vulgar expression: 'Who the fuck cares?' During the mother's [Ms. Albrecht] testimony somewhat later, I had uttered a sentence that was completely inappropriate."

In his disclosure to the Committee, DalPra explained that Administrative Judge David King learned of the comments when the transcriptionist brought them to his attention. Judge King, in turn, informed DalPra of the comments. DalPra stated that he did not remember making the comments until Judge King raised the issue. This conversation with Judge King prompted DalPra to make his self-report.

At a meeting on December 11, 2020, the Committee took up the matter of DalPra's self-report. The Committee directed its Executive Secretary to obtain an audio copy of the November 6, 2020 hearing so that Committee members could listen to the hearing before its next meeting. After reviewing the audio, the Committee voted to elevate DalPra's self-report to the level of a complaint (JC-20-062-C). Members were clearly able to hear DalPra state, under his breath, "Who gives a fuck?" (as opposed to "Who the fuck cares?" as he reported). No member of the Committee was able to hear the second comment DalPra made during the mother's testimony, which DalPra described as "completely inappropriate" in the self-report. The Committee invited DalPra to explain his behavior and to answer the Committee's questions regarding his conduct.

DalPra accepted the Committee's invitation and addressed the Committee during a *WebEx* meeting on or about February 12, 2021. The Committee's questions focused on the context and reasons for the comment, "Who gives a fuck?" The Committee did not explore in depth the second "inappropriate" comment made by DalPra during mother's testimony because the Committee could not hear it. DalPra did not mention that he was aware of the exact content of what he said during the mother's testimony.

DalPra told the Committee that his remark "Who gives a fuck?" was an isolated mistake. He informed the Committee that the statement was not audible to any of the participants because the court room was muted. He claimed that the offending remark was the result of human error or made in a moment of frustration, during a highly contentious case. DalPra expressed regret for the lapse. The Committee accepted DalPra's explanation and concluded that, under these circumstances, his remark did not constitute a violation of the Code of Judicial Conduct. On February 16, 2021, the Committee dismissed DalPra's self-report (JC-20-062-C) "for the lack of any showing of judicial misconduct with no reasonable likelihood of a finding of judicial misconduct."

While DalPra's self-report was pending before the Committee, DalPra issued a report and recommendations on January 20, 2021, relating to matters covered in the November 6, 2020 hearing. He also presided over a hearing on January 27, 2021, to extend a domestic violence order of protective against Dana Albrecht. See *Albrecht v. Albrecht*, Case No. 659-2019- DV-

00341. DalPra recommended that the order of protection be extended. The Committee was unaware of these developments in the Albrecht litigation at the time it dismissed DalPra's self-report.

Dana Albrecht appealed that ruling. Mr. Albrecht obtained a copy of DalPra's self-report to and dismissal by the Judicial Conduct Committee and utilized this information to argue in his appeal before the New Hampshire Supreme Court that DalPra should have disclosed his comment, "Who gives a fuck?," to the parties and recused himself.

The New Hampshire Supreme Court remanded the matter back to the Circuit Court on November 10, 2021, for the Circuit Court to determine whether DalPra was required to recuse himself. DalPra issued a report and recommendation which was approved by Circuit Court Judge John Curran on November 29, 2021. In that report, DalPra acknowledged that he did not disclose to the parties his comments at the November 6, 2020 hearing or his self-report to the Judicial Conduct Committee. In his recommendation regarding disqualification, DalPra only referred to the comment "Who the fuck cares?" and did not even allude to any other inappropriate remark(s) he made during the mother's testimony on November 6, 2020.

On November 30, 2021, the Supreme Court incorporated this order into Mr. Albrecht's appeal and issued the following order, in relevant part, on December 10, 2021:

The transcript of the November 6, 2020 hearing held in the parties' domestic relations matter (docket no. 659-2016-DM-00288) does not include the "vulgar expression" that Master DalPra uttered during Dana Albrecht's testimony; nor does it include the "completely inappropriate" sentence that Master DalPra uttered later during Catherine Albrecht's testimony.

Albrecht v. Albrecht, Case No. 2021 - 0192, Order (Dec. 10, 2021) (Ex. 5).

The Supreme Court ordered e-Scribers - the transcription service used by the New Hampshire Judicial Branch which originally identified the offending remarks - to "prepare an amended or additional errata sheet to the transcript of the November 6, 2020 hearing so as to include and identify (with page/line) those two comments." Id.

The corrected transcript was digitally signed on December 14, 2021. For the first time, it reflected that DalPra made the whispered comment, "Who gives a fuck?," during Mr. Albrecht's testimony on page 32, line 13 of the transcript, rather than his reported statement, "Who the fuck cares."

The amended transcript also reflected, for the first time, the remark DalPra described in his self-report as "completely inappropriate." Ms. Albrecht's lawyer was questioning her about the children that Mr. and Ms. Albrecht have together. The lawyer asked, "Do you believe that they are mature minors?" Ms. Albrecht answered, "Yes." The lawyer asked, "How do they do in

school?” Answer: “They have good grades.” Question: “Have they had any problems with their conduct in school or outside of school?” Answer: “Never.” Question: “Do they make wise, mature decisions in their daily lives relative to, for example, schoolwork?” Answer: “Yes.” DalPra whispered, “Of course not, they’re a bunch of morons.” This occurred on page 72, line 21 of the transcript. Ms. Albrecht’s lawyer then continued to question her about other topics relating to the children.

The Committee first learned of the exact nature of DalPra’s second comment in an email sent by Dana Albrecht to a number of recipients on December 15, 2021. On December 16, 2021, the Supreme Court ruled that DalPra should have recused himself from presiding over the hearing to extend the domestic violence order. See Albrecht v. Albrecht, Case No. 2021 – 0192, Order (Dec. 16, 2021) (Ex. 6).

On December 20, 2021, the Committee held a special meeting at which it voted to open a committee-initiated inquiry (JC-21–072–CII) to address the new information which came to light in the revised November 6, 2020 transcript. The Committee obtained the unredacted transcripts, pleadings from the Supreme Court appeal, and audio recordings of the November 6, 2020 hearing in its native format using the “For the Record” (FTR) application. After reviewing this material, the Committee elevated the committee-initiated inquiry to the level of a complaint and began an investigation. The Committee directed DalPra to answer the complaint and to explain his understanding of the following questions:

The wording of the second comment referenced by the transcriptionist;

How and when this comment was brought to his attention; and

Who would have instructed the transcriptionist not to include the two comments at issue in the hearing transcript.

The Committee also directed its Executive Secretary to conduct a further investigation into these matters. Through that investigation the Committee learned that the New Hampshire Judicial Branch utilizes e-Scribers as the official transcriptionist for court proceedings. On November 12, 2020, Michelle Lilley, a Lead Client Relations Representative from e-Scribers, sent an email to Kathleen Yee, an employee working for the New Hampshire Administrative Office of the Courts (Ex. 2). Ms. Lilley reported the following to Ms. Yee:

I thought you should be aware, per our transcriber regarding the above order:

So everyone is on Zoom/telephonic for this hearing, other than the judge. The mic is right next to the judge and I can hear everything. He talks to his clerk and himself a lot and makes some pretty bad remarks about the parties and the commentary the parties make.

For instance, he whispers to himself, right in the mic, "Who gives a fuck?" when the witness is answering a question, or calls them all bunch of morons, and so much. It actually creates it to where I can't hear what the witness is saying because he's talking into the mic, I think, completely unaware of what he's doing.

Of course, we are not going to transcribe that, however, the ordering party has also ordered the audio.

This is the order that was missing the audio that I emailed about today. The client already has most of the audio which I sent a couple of days ago. She was the one that let me know there was audio missing. I was just about to send her the rest when production let me know the above.

I can't not send the audio to her but I thought you should know.

Ms. Yee attempted to listen to the hearing but could not hear the comments on her own. She requested clarification from Ms. Lilley about the precise nature of the offending remarks. Ms. Lilley promptly responded that same day:

Here are a couple of examples from the transcriber:

Here are a few examples of timestamps where you can clearly hear the Court:

"Who gives a fuck?"-\*\*12:28:16

"Of course not, they're a bunch of morons."-\*\*1:45:59

The first one is really hard to hear so don't know if Ms. Albrecht will even hear it in her audio. The second example is pretty clear.

Ms. Yee brought these matters to Judge King's attention the next day. Judge King tried to reach DalPra that same day, but he was on vacation (Ex. 3). Judge King sent the audio clips of the offending remarks and the emailed examples to DalPra. Judge King then met with DalPra sometime the following week to discuss the matter. Judge King confirmed that he and DalPra discussed both comments, but the focus of the discussion was on the comment, "Who gives a fuck?" Judge King felt that the second comment was merely a sarcastic aside in light of the context of the questions and answers from the lawyers. Even though none of the parties heard the remarks, Judge King believed that the first comment reflected a lack of patience or dignity by DalPra. Judge King informed DalPra he had an obligation to self-report this conduct. DalPra convinced Judge King that he was not biased or prejudiced against either party and that he could continue to preside over the case fairly and impartially. Judge King notified the Committee's Executive Secretary by way of telephone of the general nature of his conversation with DalPra

and that DalPra would be filing a self-report, which, as described in detail above, DalPra did on November 19, 2020.

At its February 11, 2022, meeting, the Committee directed its Executive Secretary to conduct additional investigation to learn about the meaning of the transcriptionist's email remarks, noting that DalPra "talks to his clerk and himself a lot and makes some pretty bad remarks about the parties and the commentary the parties make. It actually creates it to where I can't hear what the witness is saying because he's talking into the mic, I think, completely unaware of what he's doing." Members of the Judicial Conduct Committee listened to the entire November 6, 2020 hearing and did not notice the same level of comments. Ms. Lilley reported that these observations were actually made by a transcriptionist named Erin Perkins who no longer works for e-Scribers. The Executive Secretary learned that e-Scribers transcriptionists use noise canceling headphones with a "booster" app or device to enhance the sound quality of the recording. Ms. Lilley contacted Erin Perkins who reported through Ms. Lilley that she believed there were other comments made by DalPra during the hearing. At this time Ms. Perkins did not have a specific recollection of the content of those other remarks.

Based on this information, the Committee ordered a complete and unabridged transcript of the November 6, 2020 hearing with the equipment utilized by Erin Perkins. The Committee directed e-Scribers to capture all audible statements and making note of inaudible remarks. The additional audible statements uttered by DalPra beyond the statements in the abridged transcript were attached to the *Statement of Formal Charges* as "Appendix A" and in a revised-unabridged final transcript. See Hearing on Motions Before the Honorable Bruce DalPra Marital Master of the Circuit Court – Family Division (revised-unabridged final with timestamps) (Apr. 7, 2022) (hereinafter "Revised-Unabridged Final Transcript") (Ex. 11).

On February 17, 2022, DalPra submitted his answer to the Committee's complaint - albeit unsigned (Ex. 8). DalPra explained that he only made passing reference to the second "inappropriate" comment because when he wrote his self-report he "did not remember making it; did not know what the comment may have referred to; and... did not have a copy of the transcript in order to determine at what point in the hearing it was made; and in what context it was made."

DalPra asserted that he reviewed the corrected transcript to answer the Committee's complaint. He claimed he realized at that point that the comment was a sarcastic remark meant only for himself, not intended to characterize the children in any way, and merely intended to emphasize in his own mind the "pedantic nature of the questions." DalPra explained that he was thinking, "What do you expect her to say, no they are a bunch of morons?" He just did not realize that he had verbalized this sarcastic thought.

DalPra had no information about why the comments were not transcribed or who may have made that decision.



## Findings of Violations of the Code of Judicial Conduct

Although not a constitutionally appointed judicial officer, DalPra is nevertheless subject to the Code of Judicial Conduct as a marital master specifically included within the definition of the Code of Judicial Conduct (New Hampshire Supreme Court Rule 38) (terminology). Consequently, he falls under the jurisdiction of the Judicial Conduct Committee as a “judge” as this term is defined under New Hampshire Supreme Court Rule 40(2). Moreover, DalPra’s recent retirement does not divest the Committee of its responsibility to continue to address claims of misconduct. See In re Thayer, 145 NH 177, 181-82 (2000).

Based upon the foregoing facts and pursuant to the terms of the *Stipulation and Agreement* of September 13, 2022, for the reasons stated below, the Committee finds that DalPra has violated the Code of Judicial Conduct.

### A. Canon 2, Rule 2.11: *Disqualification*

DalPra violated Canon 2, Rule 2.11(C) by not notifying the parties in the Albrecht matter of his inappropriate comments recited in his self-report to the Committee and thereby depriving the parties of the opportunity to move for his recusal. DalPra then violated Rule 2.11(A) by not disqualifying himself when “his impartiality might reasonably be questioned.”

Rule 2.11(A) of the New Hampshire Code of Judicial Conduct states in relevant part that:

A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned...

The Rule goes on to list a number of circumstances in which a judge must recuse himself from presiding in a case. Importantly the commentary to Rule 2.11 specifically provides that “a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A) (one) through (six) apply.” Id. cmt 1. As the New Hampshire Supreme Court has explained, “whether an appearance of impropriety exists is determined under an objective standard, *i.e.*, whether a reasonable person, not the judge himself, would question the impartiality of the court.” State v. Bader, 148 NH 265, 268 (2002).

The New Hampshire Supreme Court has ruled that DalPra was required to recuse himself from the Albrecht proceedings based upon objective circumstances. See Albrecht v. Albrecht, Case No. 2021– 0192, Order (N.H. Dec. 16, 2021). The Committee need not expound upon that conclusion in more detail because it is bound by the judicial finding of the Supreme Court.

DalPra’s decision not to disqualify himself from further proceedings in the Albrecht case was made even more egregious when he failed to disclose his inappropriate comments to the parties. DalPra presided over the hearing on November 6, 2020. Less than one week later, Judge King brought the offending remarks to DalPra’s attention. King emailed DalPra both the audio

clips of the hearing and the transcript excerpts from e-Scribers. After discussing the issues with Judge King, DalPra agreed that he was obligated to self-report his conduct to the Judicial Conduct Committee, which he did on November 19, 2020. DalPra, however, did not disclose either his inappropriate comments or his decision to make a self-report to the Judicial Conduct Committee to the parties in Albrecht. On January 20, 2021, DalPra issued an order based on the evidence presented during the November 6, 2020 hearing. On January 27, 2021, DalPra presided over a hearing to extend the domestic violence order against Mr. Albrecht. He ultimately issued a report and recommendation such that the order be extended for another year.

DalPra was not automatically required to recuse himself from further proceedings in these matters. Rule 2.11(C) provides:

A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

The comments following Canon 2, Rule 2.11(C) expand upon the judge's obligation: "a judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification." Id. cmt 5.

Had DalPra made a timely disclosure of his offensive remarks, the parties might have assented to his continued participation. At a minimum, it would have given the parties an opportunity to learn of DalPra's offensive remarks and to create a contemporaneous record. Instead, DalPra's decision to remain silent on the matter resulted in a considerable waste of litigation resources for both the parties and the court system. DalPra's failure to disclose all of the facts and circumstances to the parties in a timely manner undermined the integrity of the judicial process.

#### **B. Canon 2, Rule 2.16: *Cooperation with Disciplinary Authorities***

Canon 2, Rule 2.16 (a) mandates that: "A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies." DalPra did not disclose the exact content of his remarks to the Committee, even though he knew what he said when he filed his self-report. Rather, he only alluded cryptically to a second "inappropriate comment" made by him during the mother's testimony. When DalPra appeared before the Committee on February 12, 2021, a number of Committee members remarked that they were only able to discern the "Who gives a fuck?" remark. DalPra did not mention the second comment, "Of course not, they're a bunch of

morons.” He did not even suggest to the Committee that he was aware of the exact content of that remark.

In his answer to the committee-initiated complaint, DalPra attempted to explain this lack of transparency as follows:

I do not remember making it; did not know what the comment may have referred to; and... did not have a copy of the transcript in order to determine what point in the hearing it was made; and in what context it was made. Hence the passing reference in the letter.

DalPra further sought to justify his failure to disclose the content of the “morons” comment in his answer to the *Statement of Formal Charges*. In this Answer DalPra acknowledged that at the time he authored his self-report and appeared before the Committee he had a copy of the audio file and he actually heard the “morons” comment when he listened to that portion of the recording. DalPra claimed that he did not intentionally withhold information from the Committee about the morons comment. He incorrectly assumed the Committee had a copy of the email from Judge King which contained the snippets of the transcript for both comments and the segments of audio recording.

In the *Statement of Formal Charges*, the Committee alleged that DalPra was not candid with the Committee when he decided to withhold the extent content of the “morons” comment and that he was not truthful in his explanation for failing to disclose that information to the Committee. In the *Stipulation and Agreement*, DalPra admitted he

failed to cooperate with the Committee by not fully disclosing all facts known to him concerning his utterances at the telephonic hearing in the underlying case, in that Master DalPra failed to cooperate fully with judicial disciplinary agencies by describing his comment as “inappropriate” instead of disclosing the exact words used, based on his mistaken belief that the Committee already had this information in audio and transcript form.

The principle distinction between the accusation in the *Statement of Formal Charges* and the *Stipulation and Agreement* is that the Committee makes no finding that DalPra was intentionally dishonest during the investigation. Nonetheless, his failure to provide complete information to the Committee in his self-report and during the Committee’s investigation of JC-20-062-G led the Committee to reach the incorrect conclusion that DalPra had not violated the Code of Judicial Conduct when it closed JC-20-062-G. DalPra’s lack of complete disclosure undermined the Committee’s ability to fulfill its core mission to address behavior which undermines the public’s confidence in the integrity of the judicial process. Even if DalPra was not dishonest with the Committee, the fact that he was also not fully transparent in his self-report and answers during his appearance before the Committee compromised the public’s confidence in the work of the judicial disciplinary process. In other words, there was no reason DalPra

should not have disclosed the “moron” comment and explained why he could not determine if that remark violated the Canons of Judicial Conduct. If DalPra had laid all of his cards on the table during the Committee’s investigation in JC-20-062-G, the Committee would have been in a better position to determine whether DalPra’s off-record comments violated the Code. This lack of transparency constitutes a failure to cooperate with the disciplinary authority in violation of Rule 2.16. See In re Coffey’s Case, 157 NH 156, 182 – 85 (2008) (when considering mitigation evidence in the context of a judicial sanction judge did not fully cooperate with JCC and PCC investigation when she failed to disclose important transactions and made “evasive and misleading” statements).

### **C. Canon 1, Rule 1.2: *Promoting Confidence in the Judiciary***

A judge does not automatically violate the Code of Judicial Conduct every time he or she commits an error of law. “In applying and interpreting the law, a judge sometimes may make good faith errors of fact or law. Errors of this kind do not violate this rule.” N.H. S. Ct. R. 38, Canon 2, Rule 2.2, cmt. 3. The Committee does not find that DalPra is subject to discipline simply because he did not correctly construe the objective evidence requiring his recusal. In fact, Judge Curran reached the same conclusion on the same facts when he reviewed DalPra’s report and recommendation on disqualification following remand by the Supreme Court. See Albrecht v Albrecht, Docket No. 659–2019–DV– 0341, Order (Nov. 29, 2021). DalPra also is not obligated to disqualify himself just because he had a matter involving the same parties pending before the Judicial Conduct Committee. See In re Tapley, 162 NH 285, 298 (2011) (judge was not required to recuse himself from presiding over a case even though the JCC expressed concern about the tone used by the judge during a proceeding); State v. Hall, 152 NH 374, 377 (2005).

Rather, it was other circumstances combined with DalPra’s failure to disqualify himself that led to the Committee’s finding that DalPra violated in the Code of Judicial Conduct.

DalPra did not simply make an isolated mistake of law by not recusing himself from these proceedings following the November 6, 2020 hearing. His error was compounded when he violated Rule 2.11(C) by not disclosing the potential basis for recusal to the parties and giving them an opportunity to move for his disqualification. In addition, he withheld complete information from the Judicial Conduct Committee during its investigation, thereby violating his obligation to fully cooperate with disciplinary authorities in violation of Rule 2.16. These errors, even if not intended to deceive either the parties or the Committee demonstrate such a grave misjudgment that DalPra’s combined conduct has undermined the public confidence in the integrity of the judiciary in violation of Rule 1.2. See In re Case of Snow, 140 NH 618, 624 (1996) (violation of the Code of Judicial Conduct is not dependent on the judge’s motive or intent).

Rule 1.2 states:

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.

The commentary to New Hampshire Code of Judicial Conduct at Canon 1, Rule 1.2 explains that “the test for appearance of impropriety is whether the conduct would create in the mind of a reasonable, disinterested person, fully informed of the facts, a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.” N.H. S. Ct. R. 38, Canon 1, Rule 1.2 cmt. 5.

The basis for DalPra’s disqualification may never have come to light but for Mr. Albrecht’s persistence. Parties ought not be required to ferret out facts that might form a basis for a judge’s recusal. Part I, Article 35 of the New Hampshire Constitution guarantees “the right of every citizen to be tried by judges as impartial as the lot of humanity will admit.” To further this end, the litigants, and the public in general, should be able to rely on candid, transparent self-disclosure by judicial officers.

#### **D. Canon 2, Rule 2.8(B): *Decorum, Demeanor***

The complete and unabridged transcript of the November 6, 2020 hearing includes many utterings made by DalPra during the course of the hearing, which it appears he did not intend to be part of the record (hereinafter referred to as “off-record remarks”). It appears that he made most of these off-record remarks under his breath and they were not heard by the parties and counsel at the hearing. The complete and unabridged transcript, nonetheless, reveals that DalPra made many statements during the hearing that were either inappropriate or not germane to the proceedings at all. In fact, it appears that DalPra was, at times, having a discussion with a third-party at the same time that he was conducting this marital hearing. These off-record remarks are numerous and are catalogued in Appendix A to the *Statement of Formal Charges*.

Rule 2.1 (B) of the New Hampshire Code of Judicial Conduct at Canon 2 states in relevant part that:

A judge shall be patient, dignified and courteous to all litigants, jurors, witnesses, lawyers, court staff, court officials and others with whom the judge deals in an official capacity...

DalPra’s persistent comments and utterings during the course of this telephonic hearing were impatient, undignified, and discourteous to the litigants and their counsel in the extreme. While DalPra may have believed that the litigants and lawyers could not hear these off-record remarks, the revised, unabridged transcript makes clear that his comments and utterings were

made while the hearing was underway and appeared on the record. Indeed, anyone who ordered the original audio recording of the hearing could have uncovered them.

Rule 2.8 (B) sets a standard for judges to follow in proceedings before the court. This rule is no less applicable to judges because a particular hearing may be telephonic rather than in person and in open court.

The Committee was further troubled by DalPra's Answer to the Statement of Formal Charges with respect to these off-record remarks wherein he appears to dismiss or trivialize them as unintended and/or inconsequential. The Committee quotes DalPra's *Statement Regarding Statement of Formal Charges* at length because it highlights his misguided perception of the impact his unfiltered remarks have on the integrity of the judicial process. Of these numerous utterings, DalPra has written:

Additionally, there were other comments on the revised transcript that did not appear in the original. Some of these comments were inappropriate mutterings as referenced in the revised transcript. Others were my overt attempts to redirect court staff during down time in the hearing. One was a comment I made about my need for a break ("I have to pee.").

Discussions of baseball are, of course, not germane to the case. However, at the time these discussions of baseball occurred, the hearing was at recess. As many lawyers and judges know, some court proceedings, such as those in this case, are exceptionally stressful, not just for litigants, but others involved. Switching topics during down time is a courtroom management technique that I have developed over decades of service that accomplishes three critical things: 1) it creates an *esprit de corps* among staff giving all of us a bit of insight into each other as people; 2) it provides a point of relief and a way of easing tension; and 3) it helps keep off-record, case-related comments to a minimum by filling the silence with something completely different than the case. I happen to be a baseball fan and court staff in this proceeding was aware of that and so, in order to ease tension and further buttress bonds among all of us, we engaged in light banter about the Red Sox, team management, and starting pitchers. This was not a sign that I was distracted or did not care about the proceedings, but instead, as stated above, a way of helping all of us on the court staff refocus when the proceedings recommenced. Filling these silences with off-topic discussions also helps limit comments made by staff during down time that could unfairly impact one side of the other, especially when some participants were not present.

The comment regarding the restroom was crass and more internal monologue than anything else. It was akin to an inadvertent burp on the record—inappropriate but innocent. It also has no impact on the case I was hearing whatsoever.

...  
Simply put every human being has, at times, muttered things to themselves under their breath. In this case, these private mutterings were barely picked up by the court's audio. These mutterings, like in this case, are not wise insights or phrases worthy of poetry, but almost exclusively venting. Additionally, given the way in which human beings make these utterances, like the pain from a stubbed toe, they evaporate from the mind quickly. Virtually no one can remember the exact phrase they muttered to themselves the last time someone cut them off in traffic or almost hit them at an intersection. These utterances are fleeting expressions of frustration. That is exactly what these two comments were, nothing more. The fact that I did not remember making them is not uncommon and a sign that they were simply fleeting expressions of frustration. The fact that no one at the time heard them is also not uncommon. I do not know why they were not included in the first transcript but show up in the second. My memory of these comments was so devoid that even after hearing a poor-quality audio recording of them, I did not remember exactly what was said, only that they were inappropriate.

Ex. 9 ¶¶ 51-53, 56 (paragraph numbers omitted).

This response betrays DalPra's fundamental misunderstanding of the effect of his demeanor on the judicial process. It also reveals his disturbing trend to shift the focus from his more offensive behavior to the more benign aspects of his conduct. In the same manner as he downplayed the "morons" comment by merely describing it as "inappropriate" here DalPra has highlighted his conversation regarding baseball without referencing his remarks which appear disrespectful of participants in hearing.

By way of example, at one point DalPra remarks to a staff member, "Can you imagine if this was in person?" Revised-Unabridged Final Transcript (Ex. 11) (page 65 line 9. The staff member responds, "Oh my God. I don't know if I (indiscernible)." Id. at 65, lines 10-11. At other points he appears to be joking about taking a break to go to the bathroom or leaving the hearing for an hour. Id. at 62, lines 16-17; id. at 65 at 7-8. Through these remarks DalPra projects an appearance that the parties are wasting his time and the proceedings are not sufficiently serious to warrant his undivided attention.

No one has suggested that DalPra's conversation about baseball with staff during a breaking in court proceedings violates the Code's requirements to treat lawyers and litigants with dignity, patience, and respect. Rather, it is the persistent nature of DalPra's remarks during the testimony that is troubling. It is hard to imagine that DalPra would have made the same off-record remarks if the hearing were conducted live in open court with the litigants and public watching. The fact that this hearing was telephonic does not diminish the need for decorum during the proceedings. It is likely that DalPra became lax in verbalizing his feelings about the case because no one was present to witness his behavior.

Even more troubling, however, is the fact that the unabridged transcript reveals DalPra having a side conversation with someone in the courtroom during the course of testimony. See *id.* page 62 line 16 to page 69 line 14. This is not merely an innocent passing remark to a colleague in court. According to the transcriptionist's time stamps, the exchange takes place over the course of at least 7 minutes while the lawyer is actively questioning Mrs. Albrecht. It appears that DalPra and the other staff member are looking at something during her testimony. (*id.* at 63 lines 11-12 ("The Court: [Whispered] Not this –not this one, but the previous."); *id.* at 64 lines 19-20 (The Court: [Whispered] I don't seem to have the rest of this."); *id.* at 65 lines 7-8 (The Court: [Whispered] And while you're looking through that, I'm gonna go pee."). It is difficult to believe that DalPra could also be paying attention to the testimony during this conversation.

It is not uncommon for a clerk staff to interrupt a judge during a live, in-court hearing to address some pressing matter. During public court proceedings, the judge can ask the parties to pause while he or she addresses the matter. At a minimum the lawyers and litigants normally can witness the exchange and react accordingly by stopping or asking for some form of relief. In this case the litigants cannot tell it is happening. The hearing in this case took place telephonically and courtroom was muted. It was incumbent on DalPra to treat the telephonic proceedings with the same level of dignity and decorum as would be expected in a public hearing in open court.

#### **DETERMINING THE APPROPRIATE SANCTION**

In determining an appropriate sanction for violating the Code of Judicial Conduct, both the Judicial Conduct Committee and the New Hampshire Supreme Court will look to a number of factors identified and adopted by the New Hampshire Supreme Court in *In re Coffey's Case*, 157 N.H. 156 (2008).

Several of the factors support the conclusion that DalPra's misconduct was serious and warrants formal discipline under Supreme Court Rule 40(12)(d). The violations relating to his conduct during the *Albrecht* case occurred in his official capacity and in the courtroom. They go to the heart of the public's respect for, and confidence in, the judicial process. DalPra exhibited a lack of respect for the parties, failed to conduct himself with dignity in the courtroom, and created the appearance that he was not impartial in those proceedings.

His subsequent failure to provide complete information to the Committee compounded the problem. DalPra's lack of transparency in his self-report and when he appeared before the Committee contributed to the Committee's original, incorrect decision to clear him of wrongdoing. Thus, not only had DalPra undermined the parties' and public's confidence in the work he did, his failure to fully cooperate with the Committee interfered with the ability of the disciplinary process to restore confidence in the judicial process. Although the Committee did not find that DalPra intended to deceive the Committee, his lack of full disclosure resulted in a flawed judicial disciplinary process.

DalPra's explanation that his off-record remarks were akin to a mere "inadvertent burp," a spontaneous reaction like stubbing one's toe, or "simply fleeting expressions of frustration" betrays a continued lack of understanding about the impact of his lapses on the public's perception of the process. The record in this case reveals they were persistent throughout the



course of the hearing, and not an involuntary expression to an unexpected event. His mutterings demonstrate a lack of patience, dignity, and respect. His side discussion with staff during the examination of a witness further illustrates his lack of care and attention. Even if this behavior was not intended to harm the parties, serious violations of the Code do not need to be premised on intentional misconduct. See In re Case of Snow, 140 N.H. 618, 624 (1996).

DalPra's misconduct created not only a theoretical impact on the public's perception of the judicial process it had direct consequences for the parties in the Albrecht case. His lack of disclosure of a potential basis for recusal resulted in a significant expense to the parties and the judiciary as the parties litigated the issue of recusal before the Supreme Court, on remand to the Circuit Court, and again on appeal. As noted in the *Statement of Formal Charges*, if it had not been for Mr. Albrecht's persistence these issues may never have come to light. A litigant should not be required to ferret out recusal issues. The rules of judicial conduct are designed to provide the parties complete information so they can make informed decisions about how to proceed with litigation. DalPra's lack of disclosure of his inappropriate remarks undermined this process at great time and expense to all involved.

This case was not DalPra's first appearance before the Committee. On February 28, 2022, DalPra accepted the Committee's dismissal of a complaint with caution in Case Number JC-21-068-G. In some respects, the issue in that case was not dissimilar from this matter. In that case DalPra made a series of injudicious statements about another marital matter. In JC-21-068-G DalPra was presiding over proceedings on remand from the Supreme Court. He remarked to the parties about not "re-opening a case of worms," that the case was "a thorn in my side" and that he was "blessed with hearing this dispute." In addition, over the course of 21 years DalPra was the subject of 14 complaints to the Committee, eight of which also involved concerns about his demeanor. Based on this information, the Committee cautioned DalPra that his comments could be perceived by the litigants and public as exhibiting a lack respect or patience. In this regard DalPra's utterances in JC-21-068-G reflect an analogous lack of appropriate judicial demeanor and temperament to his behavior during the Albrecht hearing.

DalPra stipulated to virtually all of the allegations in the *Statement of Formal Charges* and acknowledged his violations of the Code of Judicial Conduct. This certainly weighs in his favor. That said, and as noted above, his answers to the committee-initiated complaint and *Statement of Formal Charges* indicate a continued lack of appreciation for the seriousness of his misconduct. In this respect his *Stipulation and Agreement* only carries marginal mitigating effect on the Committee's recommendation regarding sanctions.

DalPra offered no personal circumstances to mitigate his misconduct. There is no indication he was suffering from personal, emotional, physical, or mental health issues. He was not impaired by drugs or alcohol. While this case was undoubtedly contentious and stressful, many cases, particularly marital disputes, are. There was nothing particularly unusual about the November 6 hearing that would explain DalPra's reaction.

Other factors are mitigating or neutral on the issue of sanctions. The misbehavior here was not for personal gain or to exploit his official capacity for his own benefit. There is no indication that DalPra was motivated by prejudice or even that his undignified remarks reveal a prejudgment of the case for one side or the other. His injudicious comments occurred throughout the hearing and were made during the presentation by both lawyers. His conduct was certainly not a crime. The off-record remarks reflect a lack of any foresight or judgment on his part.


Although the Committee originally charged DalPra with dishonesty in his dealings with the judicial disciplinary process it entered no finding that that effect. In the end, his approach to the disciplinary proceedings reflects bad judgment.

DalPra retired after 33 years of service to the judiciary. Although he has been the subject of similar complaints regarding demeanor, the Committee has no record of formal disciplinary action against DalPra in his long career. As a marital master he has presided over some of the most hard-fought, emotional, and contentious cases. This, until recent, unblemished track record is a substantial mitigating factor in his favor.

As set forth above, the Committee has determined, and DalPra has stipulated, that he engaged in a number of violations of the Code of Judicial Conduct warranting formal discipline. DalPra agreed that he is responsible to reimburse the Administrative Office of the Courts (AOC) for the attorney's fees, transcript fees and expenses that the Judicial Conduct Committee incurred in the investigation, charging, and prosecutorial stages of this case pursuant to New Hampshire Supreme Court Rule 40(13-A), *Expenses Relating to Discipline Enforcement*. DalPra represented he has the resources to pay the aforementioned costs and will make payment to the Administrative Office of the Courts within thirty (90) days of the full execution of the agreement.

Beyond this, the Committee's range of options for formal discipline is severely limited by DalPra's retirement. This Report and Recommendations functions as a public reprimand. The Committee would have likely recommended a 90-day suspension without pay had DalPra not retired. The Committee would also have required DalPra to take appropriate training, relating to patience, demeanor, and judicial decorum, at his own expense through the National Judicial College. Because he is no longer serving in any judicial capacity these measures are not appropriate in this case.

The State of New Hampshire Judicial Conduct Committee, by:



Mary E. Collins, Chair

Dated: October 3, 2022