528 P.3d 160 (Mem)
Supreme Court of Colorado,
Special Tribunal.

In the Matter of: the PEOPLE of the State of Colorado, Complainant,
v.
Lance P. TIMBREZA, a Former Judge of the Mesa County District Court, Respondent.

Supreme Court Case No. 22SA194
|
April 24, 2023

Original Proceeding in Discipline, Colorado Commission on Judicial Discipline Case No. 22-125

Attorneys and Law Firms

Appearing for the Colorado Commission on Judicial Discipline: Christopher Gregory, Executive Director, Denver, Colorado

Attorneys for Respondent, Cohen Black Law LLC, Nancy Cohen, Denver, Colorado

Attorney for Complainant: Jeffrey Walsh, Denver, Colorado

En Banc
CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE HART, JUSTICE SAMOUR, and JUSTICE BERKENKOTTER did not participate.

Order re: Recommendation of the Colorado Commission on Judicial Discipline and Public Censure

PER CURIAM

¶ 1 Former Judge Lance P. Timbreza, you appear before the Special Tribunal of the Colorado Supreme Court ("the Special Tribunal") for imposition of discipline based on violations of the duties of your office as a Judge of the Mesa County District Court. The Special Tribunal was convened because the Supreme Court had to recuse itself in this matter under Rule 41(b) of the Colorado Rules of Judicial Discipline ("RJD").

¶ 2 The Colorado Commission on Judicial Discipline ("the Commission") recommends approval of the Stipulation for Resolution of Formal Proceedings ("the First Stipulation"), which you and the Commission executed pursuant to RJD 37(e), and a second Stipulation for Resolution of Fees and Costs ("the Second Stipulation"), which you and the Commission executed pursuant to RJD 37(c), 38, and 40. (We refer to the First Stipulation and the Second Stipulation jointly as the Stipulations.)

¶ 3 Before the entry of the First Stipulation, you resigned your position as a judge. As part of the First Stipulation, you also stipulated to the entry of a public censure. You and the Commission further agreed that the issue of whether any additional sanctions should be imposed against you would be resolved at a future date. These remaining issues were addressed in the Second Stipulation.

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¶ 4 Consistent with the Stipulations, the Commission recommends that the Special Tribunal issue a public censure and order you to pay $20,658.00 in attorney fees and costs to the State of Colorado, through the Commission. The Special Tribunal adopts these recommendations.

I. Stipulated and Disputed Facts

¶ 5 In the First Stipulation, you and the Commission agreed to the following facts:

1. In June 2022, [former] Judge Timbreza attended a Colorado Bar Association hosted conference at a condominium complex in the mountains. On the first night of the conference, eight of the attendees (including [former] Judge Timbreza and Attorney 1, who met for the first time earlier that evening) gathered in the lobby of the hotel for an informal social gathering. Most members of the group were drinking alcohol. Several witnesses reported that [former] Judge Timbreza became visibly intoxicated around midnight. During the gathering, [former] Judge Timbreza (a gay male) privately made repeated sexual propositions to Attorney 1 (also a gay male), which included requests that they leave the gathering together to go to Attorney 1's condo/hotel room by themselves. (The Commission felt that the ***161** sexual orientation of [former] Judge Timbreza and Attorney 1 is not relevant to the propriety of the conduct in this case or to the issue of sanctions. [Former] Judge Timbreza's and Attorney 1's sexual orientation is referenced here for context, at the request of Judge Timbreza.) [Former] Judge Timbreza used his cell phone to show Attorney 1 at least one pornographic image. However, [former] Judge Timbreza maintains that he merely showed Attorney 1 a single still photograph of a naked gay porn actor from an adult website. [Former] Judge Timbreza believed he had Attorney 1's permission to show the picture. Attorney 1 maintains that he did not give such permission and did not welcome these propositions. Several witnesses reported that Attorney 1 appeared comfortable with [former] Judge Timbreza initially. But as [former] Judge Timbreza became more intoxicated, Attorney 1 appeared uncomfortable and tense while talking to [former] Judge Timbreza. Some witnesses also reported that both looked at one of the men's cell phone for a couple of minutes and both appeared to be sitting very close together.

2. Attorney 1 is a younger and less experienced lawyer than [former] Judge Timbreza. Given this, Attorney 1 was nervous about [former] Judge Timbreza's overtures. These feelings were compounded by the fact that Attorney 1 and [former] Judge Timbreza share much in common in both their background and interests. Attorney 1 made best efforts to politely decline [former] Judge Timbreza's overtures instead of forcefully rejecting them. Ultimately, at the end of the evening, [former] Judge Timbreza and Attorney 1 went to Attorney 1's hotel room. On the way to the hotel room,

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[former] Judge Timbreza kissed Attorney 1. Though Attorney 1 did not want this kiss, Attorney 1 did not physically stop [former] Judge Timbreza or tell him no either.

3. Ultimately, [former] Judge Timbreza entered Attorney 1's hotel room. Attorney 1 did not physically try to stop [former] Judge Timbreza from entering and did not expressly tell him no.

¶ 6 You and the Commission note the following disputed facts:

What happened next is unclear. Attorney 1 has been emotional when discussing this case and has been unwilling or unable to disclose what happened in the hotel room. [Former] Judge Timbreza claims that he laid in bed with Attorney 1 and fell asleep for approximately four hours before leaving early the next morning. There are other disputed facts. But as part of the compromise of this stipulation, the parties have agreed not to detail all those disputed facts in [the First S]tipulation.

¶ 7 In the First Stipulation, you and the Commission also agreed to the following facts:

[Former] Judge Timbreza maintains that at all times throughout the evening he believed that his propositions to Attorney 1 were welcome. [Former] Judge Timbreza recognizes now that his perception of the evening's events, on the one hand, and Attorney 1's perception of the evening's events, on the other, stand in contrast to one another. [Former] Judge Timbreza acknowledges that due to his alcohol consumption on the night in question, his judgment and his ability to objectively perceive events were compromised. In light of the investigation in this case, he sees now that his propositions were not welcome and that his conduct was inappropriate.

II. Stipulated Rule Violations

¶ 8 In the First Stipulation, you and the Commission agreed that you violated the following rules:

Colorado Code of Judicial Conduct Canon Rule 1.1

1. Canon Rule 1.1 provides, in relevant part: "A judge shall comply with the law, including the Code of Judicial Conduct."

2. As described below, former Judge Timbreza admits his non-compliance with Canon Rule 1.2, Canon Rule 1.3, and Canon Rule 2.3, which establishes that he has violated Canon Rule 1.1.

***162 Colorado Code of Judicial Conduct Canon Rule 1.2**

3. Canon Rule 1.2 provides: "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."

4. Former Judge Timbreza acknowledges that his admitted conduct was improper and created an appearance of impropriety in violation of Canon Rule 1.2.

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Colorado Code of Judicial Conduct Canon Rule 1.3

5. Canon Rule 1.3 states: "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."

6. Former Judge Timbreza admits that by making sexual propositions, as described above, to Attorney 1, he abused the prestige of his judicial office to advance his personal interests and thereby violated Canon Rule 1.3.

Colorado Code of Judicial Conduct Canon Rule 2.3

7. Canon Rule 2.3(B) states, in relevant part: "A judge shall not ... engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, [or] gender ...."

8. Additionally, Chief Justice Directive ("CJD") 08-06 defines sexual harassment to include "unwanted sexual advances or propositions; unwelcome touching; ... repeated sexual comments; ... [and] the display in the workplace of sexually suggestive objects or pictures."

9. CJD 08-06 further states, in part: "The Colorado Judicial Department will not tolerate, condone or allow harassment ... in the workplace or during any work-related activity ...."

10. Former Judge Timbreza acknowledges that his admitted conduct was improper and violated Canon Rule 2.3 and CJD 08-06.

III. Prior Disciplinary History

¶ 9 In the First Stipulation, you and the Commission agreed that you have the following prior disciplinary history:

> As detailed in *Matter of Timbreza*, 2019 CO 98 [454 P.3d 217], [former] Judge Timbreza previously received a public censure and 28-day unpaid suspension for driving while impaired by alcohol and resulting consequences. In that case, "according to witnesses and the arresting officer's report, [former] Judge Timbreza consumed several glasses of wine at a vineyard and, after leaving the vineyard, drank more wine at a poolside party." *Id*. Upon leaving the poolside party, [former] Judge Timbreza crashed his vehicle into roadside trees and bushes to avoid a collision with another vehicle. *Id*. He subsequently refused to take a blood alcohol test. According to one of his colleagues, [former] Judge Timbreza ignored advice not to drive home from the poolside party. *Id*.
>
> [Former] Judge Timbreza's judicial disciplinary history further includes a private censure for delay in the performance of his judicial duties.

IV. Stipulated Resolution of Formal Proceedings

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¶ 10 RJD 37(e), titled "Stipulated Resolution of Formal Proceedings," allows the Commission to file a "stipulated resolution" as a recommendation to the Special Tribunal in a disciplinary proceeding. In filing such a stipulation, the Commission has authority to recommend, among other possible sanctions, that the Special Tribunal "censure the Judge publicly ... by written order." RJD 36(e); *accord* Colo. Const. art. VI, § 23(3)(f). The Commission also has authority to recommend that the Special Tribunal "[a]ssess costs and fees incurred by the Commission." RJD 36(g).

¶ 11 Under RJD 40, after considering the evidence and the law, the Special Tribunal is required to issue a decision concerning the Commission's recommendations. If the Commission recommends adoption of a stipulated resolution, "the [Special Tribunal] shall order it to become effective and issue any sanction provided in the stipulated resolution, unless ***163** the [Special Tribunal] determines that its terms do not comply with Rule 37(e) or are not supported by the record of proceedings." RJD 40.

¶ 12 By the Stipulations, former Judge Lance P. Timbreza waived his right to a hearing in formal proceedings and review by the Special Tribunal and agrees with the Commission's recommendations that he be publicly censured and ordered to pay $20,658.00 in attorney fees and costs to the State of Colorado, through the Commission. (Pursuant to RJD 6.5(a) and RJD 37(e), the Stipulations, the Commission's recommendations, and the record of proceedings became public when the Commission filed its recommendations with the Special Tribunal.)

¶ 13 Upon consideration of the law, the evidence, the record of proceedings, the Stipulations, and the Commission's recommendations, and being sufficiently advised in the premises, the Special Tribunal concludes that the terms of the Stipulations comply with RJD 37(e) and are supported by the record of proceedings. Therefore, the Special Tribunal orders the Stipulations to become effective and issues the agreed-upon sanctions.

¶ 14 The Special Tribunal hereby publicly censures you, former Judge Lance P. Timbreza, for violating Code of Judicial Conduct Canon Rules 1.1, 1.2, 1.3, and 2.3, as well as CJD 08-06. The Special Tribunal also orders you to pay $20,658.00 in attorney fees and costs to the State of Colorado, through the Commission.

The Special Tribunal:

Hon. David Furman

Hon. Craig Welling

Hon. Lino Lipinsky de Orlov

Hon. Neeti Pawar

Hon. David Yun

Hon. Timothy Schutz

Hon. Katharine Lum

All Citations

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