

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 17th DAY OF APRIL, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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Christopher S. Myers
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 05794-18

AGENCY REF. NO. 2018-2903

**IN THE MATTER OF MICHAEL MEFFEN,
JUDICIARY, SUPERIOR COURT OF NEW JERSEY,
BERGEN COUNTY VICINAGE.**

James McAsey, CWA representative, for petitioner

Thomas Russo, Esq., for respondent Judiciary, Superior Court, Bergen County
Vicinage (Meryl G. Nadler, Counsel to the Administrative Director,
Administrative Office of the Courts)

Record Closed: October 22, 2018

Decided: March 7, 2019

BEFORE ANDREW M. BARON, ALJ:

STATEMENT OF THE CASE

The Judiciary, Superior Court of New Jersey, Bergen County Vicinage, (Bergen Vicinage) suspended and subsequently removed probation officer Michael Meffen effective December 17, 2017, for conduct unbecoming a public employee, violation of the Code of Conduct and the Agreement between the Judiciary and the State AFL-CIO, of which Meffen

was a member, because Meffen had written and posted in a public building visible to all his co-workers, an insulting and derogatory poem about his boss who was about to retire.

PROCEDURAL HISTORY

Due to acts which were deemed contrary to his employment as a probation officer, on December 19, 2017, Mr. Meffen was served with written notice informing him of the Vicinage's intention to place him on immediate, unpaid suspension pending further proceedings. On December 22, 2017, Mr. Meffen was also served with a Preliminary Notice of Disciplinary Action, (PNDA), which formally charged him with violating the Judiciary Code of Conduct. On February 1, 2018, the charges were sustained by a departmental hearing officer, which was followed by a formal Final Notice of Disciplinary Action (FNDA) on March 30, 2018 wherein Mr. Meffen was terminated.

The matter was then transmitted as a contested case to the Office of Administrative Law on April 18, 2018. A hearing was conducted on August 7, 2018. The transcript of the proceedings was filed on September 18, 2018. Post hearing submissions were filed on October 22, 2018.

FACTUAL DISCUSSION

Background

The following material facts are not in dispute. Accordingly, I **FIND** them to be the **FACTS** of this case:

1. Meffen began his employment with the Bergen Vicinage on October 31, 2011 to work as an Investigator in the Probation Division of the Bergen County Vicinage. At the time of his employment, Meffen was provided with a copy of the Code of Judicial Conduct. Meffen and his co-workers were required to periodically participate in updated training regarding the Code and related employment issues.
2. Prior to his employment with probation, Meffen had a long career in public service, starting with the United States Marines, and the City of Clifton Police Department.

3. Until the incident which gave rise to the within appeal, Meffen had never been the subject of formal discipline in any of his other public sector jobs. While in this job, he had received generally favorable review from his superiors for his work.
4. On December 18, 2017, Meffen arrived at work earlier than usual, and posted in four conspicuous places in the public building where Meffen and his co-workers conducted business, a derogatory poem about the Chief Probation Officer John Furman, entitled, "Ode to Our Fearless Leader." Mr. Furman was two weeks away from retirement, and his co-workers had scheduled a party in his honor.
5. The poem was discovered and read by several of Meffen's co-workers on the day it was posted. Security footage in the building confirmed that it was Meffen who had posted the poem. Among other things, the poem mocked Furman's physical appearance, his leadership skills and his divorce.
6. When confronted with the document by Trial Court Administrator Laura Simoldini and other Court and Probation supervisors, Meffen admitted he had written and posted the poem.
7. Shortly thereafter, Meffen was charged with Conduct Unbecoming a Public Employee, and Other Sufficient Cause that is considered a Violation of the Code of Conduct for Judicial Employees.
8. Following an investigation of the incident, Ms. Simoldini, the Trial Court Administrator concluded that an immediate unpaid suspension was warranted, until an adjudication could be conducted on the Vicinage's determination that Meffen should be terminated. At a departmental hearing on February 1, 2018, the charges and penalty assessed against Meffen were sustained.

9. Efforts by Meffen to apologize directly to Mr. Furman were unsuccessful, and Meffen ultimately wrote a short letter of apology, which was given to Mr. Furman by a third party.

Testimony

Dana West, Eilish Bresnan, Laura Simoldini and Lynda Villareal, testified for the Vicinage.

Ms. West testified that she had been working as a Senior Probation Officer with the vicinage for 13 years. Her primary job was adult supervision of individuals at various stages of probation.

After answering some general questions about her duties and the office itself, Ms. West acknowledged that she had seen the poem when it was posted on the first floor of the building where she and Mr. Meffen worked, and after reading it, it made her angry. She further explained that she felt the poem was disrespectful and inappropriate, and she had concerns due to where the poem was placed, where it could be seen by co-workers and clients of the office. In fact, another co-worker Brian Rzepka, brought the poem to her attention. Upon receiving a copy of the poem, Ms. West took it to her supervisor who was the Assistant Chief of Probation.

Also testifying for the Vicinage was Eilish Bresnan. Ms. Bresnan said she started working for the Vicinage in 2003 and is currently serving as a team leader in the child support enforcement unit of probation. She indicated that she was Mr. Meffen's immediate supervisor.

She testified as to the layout of the building located at 39 Hudson Street, Hackensack where probation was located. She indicated that when she arrived at work on December 17, 2017, she noticed several co-workers milling around an area where they seemed to be reading something on the wall. She also said several of the employees were taking pictures of the item with their cellphones. When Ms. Bresnan got closer and was able to read what had been posted on J-1, she ripped it off the wall. Initially, Ms. Bresnan was unaware that Mr. Meffen was the author of the poem, until the next day when Mr.

Meffen told her himself, as he was removing his belongings from his desk. He also shared an earlier incident with her wherein Mr. Meffen was offended by a reassignment which he felt had been orchestrated by Mr. Furman.

Ms. Bresnan confirmed that prior to the incident, Mr. Meffen had generally been considered a good employee, had treated her with respect, and that he displayed a willingness to help his co-workers.

The next witness called on behalf of the Vicinage was Laura Simoldini, the Trial Court Administrator. She indicated that she had been working in a variety of positions in the Vicinage for twenty years, and prior to her current job, she had worked in child support, as the Equal Opportunity Affirmative Action Officer, and as the Human Resource manager. As part of her training and experience in labor relations, she was involved in several employee discipline matters, and she is a licensed attorney in New Jersey. She reports directly to the Bergen County Assignment Judge, and to the Director of the Administrative Office of the Courts in Trenton. She is responsible for supervising 525 employees.

During her testimony, Ms. Simoldini relayed that all employees receive a copy of workplace policies when they commence work and are re-trained every year on updates to policies and practices. All Vicinage employees are also required to sign off that they have received and review the Code of Judicial Conduct.

Among other things, the Code requires "all employees to observe high standards of conduct so that integrity and independence of the courts can be preserved, and the appearance of impropriety shall be avoided." She went on to say the Code tells court employees that the court system is one of public trust and trust is sustained by the conduct that maintains the confidence of the citizenry and the integrity of officers and employees of the judicial branch.

Ms. Simoldini was asked to identify and testify about Exhibit J-2 which was a copy of the retirement party notice for Mr. Furman, which indicated that the date of the celebration was December 19, 2017.

Ms. Simoldini then described the process that was followed leading to Mr. Meffen's termination. Essentially, following standard protocol including an investigation, she met with Mr. Meffen and his union representative and placed him on immediate unpaid suspension following Mr. Meffen's admission that he had written and posted the poem in a public building. Ultimately, following the receipt of the preliminary Notice of Disciplinary Action and a Departmental hearing, it was determined that the offense Mr. Meffen committed was so egregious that it warranted termination. In her opinion, she thought Mr. Meffen's conduct was malicious and disgraceful, and was deliberately done to coincide with Mr. Furman's retirement party. In all her years of public service, she recounted that she had never seen anything remotely similar to what Mr. Meffen wrote and publicly posted.

Towards the end of her testimony, a video was shown documenting footage of Mr. Meffen entering the building and posting the poem in certain areas of the building. She also indicated that she had been contacted by several employees who expressed their outrage over the incident.

As a result of the investigation, the act itself and the resulting responses from fellow employees, Ms. Simoldini felt Mr. Meffen had violated the Canons of the Judicial Code of Conduct and she lost all confidence in his fitness to serve as a judicial employee.

The last witness appearing for the Vicinage was Lynda Villareal. Ms. Villareal serves as the Human Resource Manager for the Vicinage, and reports to Ms. Simoldini. She confirmed that all employees, including Mr. Meffen receive training manuals and a copy of the Code of Conduct. Each year, all employees are required to go through refresher training. She also indicated that the union collective bargaining agreement, which Mr. Meffen is also required to abide by, references the need to act with respect and dignity in the workplace. In her view, Mr. Meffen's conduct on December 18th violated this provision, and termination was justified, even though he had no prior disciplinary record. Most of the employee penalties she dealt with were for five to sixty-day suspensions, but due to the grievous nature of this incident, she believed that termination was the appropriate remedy. However, she did confirm that his reviews included comments that Mr. Meffen followed directions well, and frequently volunteered to switch lunch breaks and hours with other employees when requested to do so.

At the conclusion of its presentation, counsel for the Vicinage moved Joint Exhibits J-1-J-12 into evidence.

Starting his testimony by providing his background in public service, Mr. Meffen briefly described his duties in the Probation Department, He discussed his twenty-seven years with the Clifton Police Department, as well as his time with the Marines and the Census Bureau. Meffen went on to discuss his performance evaluations, which, for the most part, were relatively positive. He then went on to discuss the incident which gave rise to his termination.

He admitted writing the poem and posting it in three areas of the building where Probation is housed. He denied that it was posted in areas accessible to the public. In his words, "this was the most idiotic thing I ever did in my life." He described the most difficult part of the fallout from what he did, which was going home to tell his wife, and her reaction to it. Meffen then admitted that if someone he was supervising in his other jobs did something like this, he would have been outraged, and he was seeking one more chance to demonstrate that he was willing to accept responsibility for what he did.

He relayed experiences with individuals working for him in other public service positions where he had to make discipline decisions such as taking away leave, departmental disciplines, but no terminations.

Regarding the incident that gave rise to his termination, he all but admitted it was premeditated, admitting that he wrote the poem two weeks to a month before he posted it. He said didn't think about posting it until he saw the retirement notice. In an effort to remediate the situation he created, Meffen said he spoke to his priest who advised him to ask Mr. Furman and the other co-workers that were impacted for forgiveness. Meffen acknowledged that he attended Code of Conduct training in 2011, and that he had received the Code of Conduct for Judiciary Employees.

LEGAL ANALYSIS AND CONCLUSION

Meffen is charged with conduct unbecoming a public employee, violation of the Code of Conduct, and other sufficient cause. Canon 3 of the Code of Conduct for Judicial Employees

states, in pertinent part: "A court employee shall observe high standards of conduct so that the integrity and independence of the courts may be preserved, and shall avoid impropriety or the appearance of impropriety." The comment to Canon 3 notes that the "holding of public employment is a public trust," which trust is "sustained by conduct that

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period, of permanent career service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline shall include removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for a number of reasons enumerated in N.J.A.C. 4A:2-2.3(a), including "conduct unbecoming a public employee" and "other sufficient cause." In appeals concerning such major disciplinary actions, the burden of proof shall be on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

Probation officers' function as an enforcement arm of the judicial system, and they perform services for the judiciary essential to the fair and efficient administration of justice. Passaic County Prob. Officers' Ass'n v. County of Passaic, 73 N.J. 247, 253 (1977). "Conduct unbecoming an officer" has been broadly defined as "any conduct which adversely affects the morale or efficiency of the bureau [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). Although Emmons involved a police officer, probation officers similarly play an important and indeed vital role in the administration of justice, both in the criminal and civil courts. Passaic County Prob. Officers' Ass'n, 73 N.J. at 253.

In the present matter, Meffen was obligated to “observe the highest standards in order to preserve the integrity and independence of the New Jersey Judiciary” and avoid “impropriety or the appearance of impropriety.” Public respect and confidence in public employees is undermined when public employees use or attempt to use a position or the prestige of judicial affiliation to secure privileges or exemptions not available to the public. Despite having received the Code of Conduct and training on the topic, Meffen nevertheless wrote, copied and

As a result of his conduct, Meffen was removed from his employment. Though Meffen did not dispute that he prepared and posted the poem on three places within the building where Probation, its employees and clients are located. he contends that the penalty of removal is not warranted in this instance. The Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Commission must utilize the evaluation process set forth in West New York v. Bock, 38 N.J. 500 (1962), and consider the employee’s reasonably recent history of promotions, commendations and the like, as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated. Accordingly, my review of the case is de novo, and I am not bound by a prior penalty determination, and testimony adduced at the hearing relative to the manner in which the penalty was determined and approved is not relevant.

Since West New York v. Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct: to support the imposition of a more severe penalty for a public employee who engages in habitual misconduct, and to mitigate the penalty for a current offense. In re Hismann, 192 N.J. 19, 30–33 (2007). However, in an instance while an employee commits an act sufficiently egregious, removal may be appropriate notwithstanding the lack of a prior history of infractions. See, e.g., In re Hismann, 192 N.J. 19. According to the Supreme Court, progressive discipline is a worthy principle, but it is not subject to universal application when determining a disciplined employee’s quantum of discipline. Id. at 36.

Although progressive discipline is a recognized and accepted principle that has currency in the [Civil Service Commission's] sensitive task of meting out an appropriate penalty to classified employees in the public sector, that is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580, 410 A.2d 686 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306, 633 A.2d 577 (App.Div. 1993), certif. denied, 135 N.J. 469, 640 A.2d 850 (1994).

[Id. at 33–34.]

The theory of progressive discipline is not a fixed and immutable rule to be followed without question, as some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007). The Supreme Court has noted that “the question for the courts is ‘whether such punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness.’” Ibid. (quoting In re Polk License Revocation, 90 N.J. 550, 578 (1982)). The Supreme Court also noted that the Appellate Division has likewise acknowledged and adhered to this principle, while the acts charged, regardless of prior discipline, warranted the imposition of the sanction. In re Carter, supra, 191 N.J. at 485.

Given the testimony adduced at the hearing, the premeditated act of writing and then posting the poem in three public places in violation of the Code of Conduct for Judicial Employees. I further **CONCLUDE** Meffen's actions is sufficiently egregious and is a violation of the public trust. It is one thing to disagree with a supervisor and have a public argument, and/or ignore or disobey an instruction. This situation falls into a completely different area where an employee went out of their way to publicly humiliate a respected superior who was days away from retirement. Anything short of removal would send the

wrong message to other public employees, who didn't like or didn't get along with a co-worker or supervisor. Accordingly, under all the circumstances, I **CONCLUDE** that removal is the appropriate penalty.

I **CONCLUDE** that by submitting preparing the poem and then posting it in three public places two weeks later, Meffen had the opportunity to stop the act before it escalated into a public humiliation, and with all his years of experience in other public sector jobs, he understood the potential fallout of his actions.

In light of the foregoing, I **CONCLUDE** that respondent has met its burden of establishing by a preponderance of the believable evidence that Meffen violated the Code of Conduct and that Meffen's conduct was unbecoming a public employee.

ORDER

I **ORDER** that the charges against Meffen are **SUSTAINED** and that the respondent's removal of Meffen from his position of probation officer, effective December 18, 2017, is hereby **AFFIRMED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the othis parties.

March 7, 2019

DATE



ANREW M. BARON, ALJ

Date Received at Agency:

March 7, 2019

Date Mailed to Parties:

mm

APPENDIX

WITNESSES

EXHIBITS IN EVIDENCE

Joint

- J-1 Poem "Ode to Fearless Leader"
- J-2 Retirement Notice
- J-3 Apology
- J-4 Suspension Notice, dated December 19, 2017
- J-5 Union Response, dated December 21, 2017
- J-6 Suspension Without Pay Notice, dated December 22, 2017
- J-7 PNDA, dated December 22, 2017
- J-8 FNDA, dated March 30, 2018
- J-9 Code of Conduct
- J-10 Summary of Classes
- J-11 Union Agreement
- J-12 CD

- P-1 Evaluations