JUDICIAL REVIEW COUNCIL

FILE NO. J2006-023 HARTFORD, CONNECTICUT

IN RE: THE HONORABLE WILLIAM J. SULLIVAN DECEMBER 1, 2006

MEMORANDUM OF DECISION

On or about April 27, 2006, the Judicial Review Council (''the Council''), acting upon a complaint filed that date by Senior Associate Justice David M. Borden of the Supreme Court of Connecticut, initiated an investigation into the conduct of former Chief Justice William J. Sullivan (hereinafter ''the respondent''). The complaint alleged that the respondent improperly delayed release of a decision in the case of Clerk of the Superior Court, G.A. 7 v. Freedom of Information Commission, 278 Conn. 29 (2006), in order to assist his colleague, Justice Peter T. Zarella, who had been nominated to succeed him as Chief Justice, by seeking to prevent the legislature from having access to the decision prior to Justice Zarella's confirmation hearings.

Pursuant to Connecticut General Statutes § 51-51*l*, a confidential probable cause hearing was held on July 14, 2006, wherein the respondent appeared with counsel, introduced evidence and questioned witnesses. Notice of the probable cause hearing was provided as required by law. Following the hearing, the Council filed the following charges against him:

CHARGES

1. The Honorable William J. Sullivan, without any legitimate judicial purpose but rather to influence the appointment of his successor as Chief Justice of the Connecticut Supreme Court, improperly delayed release of the Connecticut Supreme Court's decision in Clerk of the Superior Court, G.A. 7 v. Freedom of Information Commission, 278 Conn. 29 (2006), which conduct is prejudicial to the impartial and effective administration of justice and brings the judicial office in disrepute, in violation of Connecticut General Statutes § 51-51i(a)(1).

2. The Honorable William J. Sullivan, without any legitimate judicial purpose but rather to influence the appointment of his successor as Chief Justice of the Connecticut Supreme Court, improperly delayed release of the Connecticut Supreme Court's decision in Clerk of the Superior Court, G.A. 7 v. Freedom of Information Commission, 278 Conn. 29 (2006), thereby failing to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, in violation of Canon 1 of the Code of Judicial Conduct and Connecticut General Statutes § 51-51i(a)(2).

3. The Honorable William J. Sullivan, without any legitimate judicial purpose but rather to influence the appointment of his successor as Chief Justice of the Connecticut Supreme Court, improperly delayed release of the Connecticut Supreme Court's decision in Clerk of the Superior Court, G.A. 7 v. Freedom of Information Commission, 278 Conn. 29 (2006), thereby allowing his social or other relationships to influence his judicial conduct or judgment, in violation of Canon 2(b) of the Code of Judicial Conduct and Connecticut General Statutes § 51-51i(a)(2).

4. The Honorable William J. Sullivan, without any legitimate judicial purpose but rather to influence the appointment of his successor as Chief Justice of the Connecticut Supreme Court, improperly delayed release of the Connecticut Supreme Court's decision in Clerk of the Superior Court, G.A. 7 v. Freedom of Information Commission, 278 Conn. 29 (2006), thereby failing to promptly dispose of the business of the court, in violation of Canon 3(a)(5) of the Code of Judicial Conduct and Connecticut General Statutes § 51-51i(a)(2).

5. The Honorable William J. Sullivan, without any legitimate judicial purpose but rather to influence the appointment of his successor as Chief Justice of the Connecticut Supreme Court, improperly delayed release of the Connecticut Supreme Court's decision in Clerk of the Superior Court, G.A. 7 v. Freedom of Information Commission, 278 Conn. 29 (2006), thereby failing to diligently discharge his administrative responsibilities, in violation of Canon 3(b)(1) of the Code of Judicial Conduct and Connecticut General Statutes § 51-51i(a)(2).

Pursuant to Connecticut General Statutes § 51-51*l*(c), the Council thereafter conducted public hearings on the above-listed charges on September 6, 2006, October 18 and 20, 2006, and November 17, 2006. Notice of the charges and public hearing was provided as required by regulation. The Council accommodated various requests by the respondent to modify the schedule of the public hearing. The respondent appeared with counsel at all hearing dates. The Interim Executive Director of the Council, Attorney Peter A. Clark, presented testimonial and documentary evidence pertaining to the conduct of the respondent. The respondent testified personally and presented the testimony of twelve other witnesses, including fact, character, expert witnesses, and one witness who appeared by videotaped deposition. In addition, the respondent introduced numerous exhibits for the Council's consideration. The Council did not exclude any witness or exhibit proffered by the respondent. The Council commends the respondent's counsel and the Interim Executive Director for the extraordinary skill, courtesy, and professionalism they demonstrated throughout this process.

After deliberating in executive session, to which the respondent did not object, the Council reached the following Findings of Fact and Conclusions:

FINDINGS OF FACT

The Council finds that the following facts are established by clear and convincing evidence:

1. With the sole exception of the conduct at issue in this matter, the respondent's record as a public servant and jurist is unblemished and exemplary. The Council recognizes and commends the respondent for his decades of service and devotion to his family, country, state, community, and profession. As the uncontroverted evidence amply demonstrated, the respondent's contributions to the practice of law and the administration of justice in the State of Connecticut have been numerous, significant, and valuable.

2. The respondent was appointed Justice of the Supreme Court of Connecticut in September 1999, became Chief Justice in January 2001, and retired from that position on April 15, 2006.

3. The Chief Justice is the chief administrative judge of the Court, ultimately responsible for managing all of the business of the Court.

4. On March 17, 2006, the respondent announced his retirement effective April 15, 2006.

5. On March 17, 2006, the Honorable M. Jodi Rell, Governor of the State of Connecticut, nominated Justice Peter T. Zarella to succeed the respondent as Chief Justice of the Supreme Court of Connecticut. However, based on a conversation with Governor Rell in December of 2005, the respondent was aware of a likelihood of Justice Zarella's nomination as Chief Justice prior to its being publicly announced.

6. Appointment of the Governor's nominee for Chief Justice is by vote of the legislature, prior to which the nominee typically appears at legislative hearings, testifies under oath about his background and qualifications, and is subject to questioning by legislators.

7. In the course of their duties as justices of the Supreme Court, the respondent and Justice Zarella both sat on the case of Clerk of the Superior Court, G.A. 7 v. Freedom of Information Commission, 278 Conn. 29 (2006) (''the G.A. 7 case''). The G.A. 7 case generally concerned whether certain judicial records were subject to the Connecticut Freedom of Information Act (''FOIA''), Connecticut General Statutes §§ 1-200 *et seq.* In light of recent controversies involving public access to court records and proceedings, the G.A. 7 case involved issues of public concern and potential public controversy.

8. The G.A. 7 case was initially argued on February 10, 2005. The panel hearing the case at the time of argument consisted of the respondent and Justices Borden, Norcott, Katz, and Zarella.

9. After argument, the respondent ordered that the case be reheard en banc pursuant to Connecticut Practice Book § 70-7, and added Justice Palmer and Chief Judge Lavery of the Appellate Court to the panel.

10. Following the rehearing, the respondent wrote the G.A. 7 majority opinion, in which Justice Zarella joined.

11. In the ordinary course of the Court's business, after circulation and discussion of draft opinion among participating justices, agreement is reached at regularly

scheduled conferences of all justices of the Court that a decision is ready for publication and release.

12. After being deemed ready for publication, the Reporter of Judicial Decisions is notified, and that office processes the decision and prints it in final form. Once a decision is referred to the Reporter of Judicial Decisions for publication, subsequent changes to the decision are generally restricted to matters of form.

13. Once in final written form, the decision is released to a Judicial Branch website and thereafter published in the *Connecticut Law Journal*, which is the official publication of the decision.

14. At a conference of the justices on March 14, 2006, the G. A. 7 decision was deemed ready to be released to the Reporter of Judicial Decisions to begin the publication process. No justice, including the respondent, indicated that any further substantive revisions to the decision were required.

15. The respondent's secretary notified Reporter of Judicial Decisions Kevin Loftus late on the afternoon of March 14, 2006, that the G. A. 7 decision was ready for publication.

16. Shortly thereafter the respondent spoke to Kevin Loftus and told him to hold publication of the G. A. 7 decision until further notice.

17. The respondent did not give Kevin Loftus any reason for placing a hold on the decision, nor did he advise any other members of the G. A. 7 panel that he had done so.

18. There are no written rules of the Supreme Court concerning the placing of a hold on, or otherwise delaying publication of, a decision once it has been approved at conference for publication.

19. It is generally agreed that an author of a decision or the Chief Justice has the inherent authority to place a hold on release of a decision in the service of a legitimate judicial purpose, and that, although holds are rare, there can be various legitimate reasons for doing so.

20. The respondent ordered a hold on release of the G. A. 7 decision so that Justice Zarella would not have to be questioned by legislators during the appointment process about a decision that he, the respondent, had written.

21. The respondent knew at the time that he placed the hold on the G. A. 7 decision that it was a ''hot button'' case because, as mentioned above, it dealt with issues of public access to certain court files and records.

22. There is no evidence that Justice Zarella knew prior to April 17, 2006, of the actions taken by the respondent to place a hold on the release of the G.A. 7 decision.

23. The respondent's retirement as Chief Justice became effective April 15, 2006, at which time Justice Borden became Senior Associate Justice and assumed the duties of Chief Justice.

24. On April 3 and 13, 2006, the respondent reiterated to Kevin Loftus his March 14, 2006, order to withhold publication of the G. A. 7 decision.

25. At some time prior to March 14, 2006, Justice Palmer had prepared a proposed separate concurring opinion in the G. A. 7 case.

26. On or about April 7, 2006, Justice Palmer asked his law clerk to inquire of the Reporter of Judicial Decisions about the status of his concurring opinion in the G.A. 7 case and learned on April 8, 2006, by e-mail, that the respondent had placed a hold on the decision until further notice.

27. On April 10, 2006, Justice Palmer advised Justice Borden that the respondent had placed a hold on the G. A. 7 decision.

28. On April 11, 2006, Senator Andrew McDonald and Representative Michael Lawlor, co-chairs of the Judiciary Committee of the General Assembly, sent official notification to committee members that a public hearing on Justice Zarella's nomination was scheduled for April 18, 2006, which was thereafter cancelled for procedural reasons, and a committee vote on the nomination was scheduled for April 24, 2006.

29. On April 17, 2006, Justice Palmer asked the respondent about the hold on the G. A. 7 decision. The respondent advised Justice Palmer that he had placed the hold on the decision because he did not want release of the decision to create a problem for Justice Zarella in his appointment process.

30. On April 18, 2006, the respondent told Senior Associate Justice Borden that he had no evil intent in delaying the decision and would have done so for any member of the Court who had been nominated to succeed him.

31. At the time he placed a hold on the release of the G.A. 7 decision, the respondent knew Justice Zarella was likely to be nominated to succeed him as Chief Justice, that Justice Zarella would likely appear before the legislature during his appointment process, and that the issues dealt with in the G.A. 7 case and Justice Zarella's vote in the case would likely be of interest to the legislature in considering Justice Zarella's appointment as Chief Justice.

32. The respondent's efforts to protect Justice Zarella from questions by the legislature, a coequal branch of government vested with judicial appointment authority, served no legitimate judicial purpose and constituted an improper exercise of judicial authority and discretion.

33. In placing a hold on the G.A. 7 decision to assist the appointment of Justice Zarella as Chief Justice, the respondent's conduct failed to meet high standards of conduct and degraded the integrity and independence of the judiciary.

34. In placing a hold on the G.A. 7 decision to assist the appointment of Justice Zarella as Chief Justice, the respondent allowed his relationship with Justice Zarella to influence his judicial conduct.

35. On April 18, 2006, after having been questioned about the hold by Senior Associate Justice Borden and Justice Palmer, the respondent instructed Thomas Smith, an employee in the Office of the Reporter of Judicial Decisions, to release the hold on the G. A. 7 decision and, in a subsequent conversation later that day, urged him to expedite its publication, resulting in its release to the Judicial Branch website on April 21, 2006. No substantive changes were made to the G.A. 7 decision between the time that it was approved at conference for publication and when it was published.

36. Following extensive discussions, the members of the Supreme Court determined that the Court would not make an institutional referral of the respondent's conduct relative to the release of the G.A. 7 decision to the Council, but that individual justices were free to refer the matter at their discretion.

37. Prior to the release of the G.A. 7 decision on the Judicial Branch's website, Senator Andrew McDonald and Representative Michael Lawlor, did not know that the G.A. 7 case had been argued or that the decision would be forthcoming.

38. Senator McDonald was aware that, as of April 21, 2006, a bill was then pending in the legislature dealing with a proposal to publish certain Judicial Branch information on the internet and, after reading the G. A. 7 decision, he recognized that the issues dealt with in the decision were similar to those raised by the proposed legislation.

39. As a general matter, legislators often question Supreme Court nominees during appointment proceedings about cases and decisions in which the nominees have participated. More particularly, issues of openness and accessibility of the judicial system had been of interest and concern to both the public and the Judiciary Committee in recent years. The Judiciary Committee would, therefore, have had an interest in exploring those issues with Justice Zarella as a nominee for the position of Chief Justice of the Supreme Court and the chief administrator of the Judicial Branch. In particular, Justice Zarella's vote in the G.A. 7 case would have been of interest to the Judiciary Committee in any hearing held on Justice Zarella's nomination.

40. On April 24, 2006, the Judiciary Committee voted favorably upon Justice Zarella's appointment. However, because he had not yet had a public hearing and the legislative session was nearing a conclusion, it became apparent that Justice Zarella would not be appointed that session.

41. At the time he placed a hold on the G.A. 7 decision, the respondent did not and could not know that the Judiciary Committee would not hold a public hearing on Justice Zarella's appointment as Chief Justice.

42. On April 24, 2006, the legislature and Governor Rell were notified of the respondent's having placed a hold on the G.A. 7 decision.

43. On April 24, 2006, the respondent visited Senator McDonald at the Legislative Office Building. During their brief meeting, the respondent frankly and in strong language acknowledged to Senator McDonald that it was wrong to place a hold on the G.A. 7 decision.

44. Later in the day on April 24, 2006, Justice Zarella delivered a letter to Governor Rell's office asking her to withdraw his nomination for Chief Justice, which she did that date.

45. The respondent candidly and forthrightly acknowledged in his testimony before the Council that he had made a mistake in placing a hold on the G.A. 7 decision, that what he did was "stupid," and that he would not do it again because he had hurt the Court.

46. The respondent acknowledged to Justice Zarella on numerous occasions his regrets for having been responsible for the withdrawal of Justice Zarella's nomination and for what he had done to the Court. The Council appreciates his dignified and helpful testimony provided under difficult circumstances.

47. The Council also appreciates and credits the testimony of former Chief Justice Robert J. Callahan who, while disputing the seriousness of the respondent's actions, testified that those actions created a great deal of controversy, impugned the judiciary, and caused it to suffer a "black eye."

48. On April 27, 2006, Senior Associate Justice Borden filed an official complaint about these events with the Council, ultimately leading to this decision. Justice Borden testified at the public hearing in this matter. The Council finds that his complaint was motivated by his duties and responsibilities as the acting head of the Judicial Branch. The Council is particularly grateful to Justice Borden for his public service in bringing this important matter to its attention and providing critical testimony about the events in question.

49. The respondent and the Interim Executive Director both presented expert testimony from respected legal scholars. The testimony of the respondent's expert, Professor John Leubsdorf of Rutgers University School Of Law, focused primarily on the absence of historical discipline of judges whose conduct was arguably similar, although clearly not identical, to that of the respondent. Professor Leubsdorf concluded, based on this historical record, that the exercise of judicial discretion generally should not form the basis for judicial discipline. While the Council appreciates the testimony of Professor Leubsdorf, it finds it of limited relevance. The absence of discipline under different circumstances in different jurisdictions governed by different rules of conduct (or, in the case of the Supreme Court of the United States, no code of conduct at all) does little to illuminate whether discipline is appropriate here. Moreover, Professor Leubsdorf and other witnesses for the respondent frankly conceded that the exercise of judicial discretion is not categorically immune from judicial discipline, at least not where such discretion is exercised for an improper purpose, as was the case here. The Council finds the testimony of Professor Geoffrey C. Hazard, Jr., of Hastings College Of The Law, while not essential to its conclusions or determinative of the issues in this matter, to be more relevant and applicable. In particular, the Council credits Professor Hazard's testimony that the improper exercise of judicial discretion can indeed form the basis for judicial discipline and that discipline in this case is appropriate, the absence of precise historical precedent notwithstanding.

50. The respondent emphasized that no rule of court, statute, or other source of authority specifically prohibited him from placing the hold on the G.A. 7 decision. This observation, while true, is of little relevance. The question before the Council is not whether a particular rule of court existed and was violated, but rather whether the respondent violated one or more provisions of the Code of Judicial Conduct, which prescribes standards governing all judicial conduct, even in those circumstances not specifically governed by a particular rule. As our Supreme Court has emphasized, a judge need not know that his conduct was prohibited in order to violate the Code of Judicial Conduct. See In Re Flanagan, 240 Conn. 157, 181-82 (1997). Rather, a judge may violate the Code of Judicial Conduct even though the application of the Code to particular circumstances "may not be readily apparent." In Re Zoarski, 227 Conn. 784, 792 (1993) (quoting Patterson v. Council on Probate Judicial Conduct, 215 Conn. 553, 567 (1990)).

CONCLUSIONS

Based on the foregoing, the Council finds by clear and convincing evidence and upon motions made and seconded that:

As to Charge 2, the respondent, the Honorable William J. Sullivan, willfully violated Canon 1 of the Code of Judicial Conduct and Connecticut General Statutes § 51-51i(a)(2), when, between March 14 and April 18, 2006, with no legitimate judicial purpose, but rather to influence the appointment of his

successor as Chief Justice of the Connecticut Supreme Court, he deliberately, willfully, and improperly delayed release of the Connecticut Supreme Court's decision in Clerk of the Superior Court, G.A. 7 v. Freedom of Information Commission, 278 Conn. 29 (2006), thereby failing to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The vote of the Council on this charge was eight in favor of finding a violation and four against.

As to Charge 3, the respondent, the Honorable William J. Sullivan, willfully violated Canon 2(b) of the Code of Judicial Conduct and Connecticut General Statutes § 51-51i(a)(2) when, between March 14 and April 18, 2006, with no legitimate judicial purpose, but rather to influence the appointment of his successor as Chief Justice of the Connecticut Supreme Court, he deliberately, willfully, and improperly delayed release of the Connecticut Supreme Court's decision in Clerk of the Superior Court, G.A. 7 v. Freedom of Information Commission, 278 Conn. 29 (2006), and, in doing so, allowed his social or other relationships to influence his judicial conduct and judgment. The vote of the Council on this charge was eleven in favor of finding a violation and one against.

The respondent did not commit the violations alleged in Charges 1, 4, and 5. The vote of the Council on Charge 1 was two in favor of finding a violation and ten against. The votes of the Council on Charges 4 and 5 were unanimous for not finding a violation.

ORDER

Based on the foregoing and pursuant to its authority set forth in Connecticut General Statutes § 51-51n(a)(2), the Council, by a vote of nine in favor and three opposed, hereby suspends the Honorable William J. Sullivan for a period of fifteen days, during which time he may not exercise any of the duties, powers, or privileges of a judge. During the period of suspension, the Honorable William J. Sullivan's judicial salary, including any benefits relating thereto, shall to the extent applicable and permitted by law be suspended and time shall not be accrued for any rights in any pension plan. See Conn. Gen. Stat. § 51-51p. This suspension shall occur on dates to be determined by the Judicial Branch of the State of Connecticut, at the earliest occasion consistent with the orderly administration of court business but not before the expiration of the appeal period set forth in Practice Book § 74-1.

JUDICIAL REVIEW COUNCIL

s\ Raymond M. Hassett
Chairman