



STATE OF NEW JERSEY

In the Matter of Samantha Becker,
Judiciary, Cumberland/Gloucester/
Salem Vicinage

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2020-2089
OAL DKT. NO. CSV 02695-20

ISSUED: MAY 18, 2022

The appeal of Samantha Becker, Judiciary Clerk 3, Cumberland/ Gloucester/ Salem Vicinage, Judiciary, removal, effective October 23, 2019, on charges, was heard by Administrative Law Judge Jeffrey N. Rabin (ALJ), who rendered his initial decision on April 4, 2022. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting of May 18, 2022, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Samantha Becker.

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 18TH DAY OF MAY, 2022

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02695-20

AGENCY DKT. NO. N/A
2020-2089

**IN THE MATTER OF SAMANTHA BECKER,
NEW JERSEY STATE JUDICIARY,
GLOUCESTER/CUMBERLAND/SALEM VICINAGE.**

Samantha Becker, appellant, pro se

Susanna J. Morris, Esq., appearing for respondent (Deputy Counsel to the
Administrative Director, Administrative Office of the Courts)

Record Closed: January 4, 2022

Decided: April 4, 2022

BEFORE **JEFFREY N. RABIN**, ALJ:

STATEMENT OF THE CASE

Appellant, Samantha Becker (Becker or appellant), an employee of respondent, New Jersey State Judiciary, Gloucester/Cumberland/Salem Vicinage (respondent) appeals from the determination of respondent that she be removed for an incident that occurred on September 10, 2019 (Incident). Respondent argues that she violated: N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a Public Employee; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(8) Misuse of Public Property; and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause, that being violations of Canons 1, 2, 3 and 4 of the

Code of Conduct, as well as a violation of the Title IV-D Confidentiality Agreement. The appellant denies the allegations.

PROCEDURAL HISTORY

On October 23, 2019, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) suspending appellant without pay indefinitely, beginning October 18, 2019. On February 11, 2021, respondent issued a Final Notice of Disciplinary Action (FNDA) sustaining the charges and the removal of appellant from her position. Appellant filed a timely notice of appeal.

The Division of Appeals and Regulatory Affairs of the Civil Service Commission transmitted the case to the Office of Administrative Law, where it was filed on February 24, 2020. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A settlement conference was held via telephone on November 18, 2020, due to the ongoing Covid-19 pandemic, but the matter did not settle. Hearings were held on June 2 and 3, 2021, via Zoom due to the ongoing Covid-19 pandemic. Written summations were received from appellant on September 20, 2021, and from respondent on September 27, 2021.

On October 7, 2021, the parties were advised that the judge presiding over this matter, Administrative Law Judge (ALJ) John Kennedy, had been appointed to the Superior Court and would not be available to complete this case. The parties agreed to have this matter assigned to a new ALJ without a new hearing or new testimony. On October 19, 2021, this matter was transferred to ALJ Jeffrey N. Rabin. The record was re-opened on that date, and was closed on January 4, 2022, without any new documentation.

FACTUAL DISCUSSION

Undisputed Facts:

1. Appellant began working for Gloucester County in March 2018, at which

time she executed a copy of the Code of Conduct. She again acknowledged receipt of and executed the Code of Conduct in January 2019.

2. In June 2019, appellant received a promotion to Judiciary Clerk III, and was moved to the Salem County Child Support Unit.
3. Child support units use a data system called NJ Kids Deserve Support (NJKids). It is not maintained by the judiciary but by the New Jersey Division of Family Development (DFD). New employees were presented with a thirty-minute training video describing NJKids. Employees signed annual Confidentiality Agreements stating that they were not permitted to disclose confidential information from NJKids. DFD could print a "footprint" of an NJKids user's activities in the site for any given time, which could be compared against office telephone logs.
4. An Incident occurred on September 10, 2019, when a work friend of appellant, Christy Williams, telephoned appellant and asked her to look up personal child support information for her. Williams told appellant that her ex-husband had been arrested the prior weekend on a bench warrant, and she wanted to know if that was in any way related to a child support action she had against her ex-husband.
5. Appellant went into NJKids, entered Williams' ex-husband's name, and found two cases. Appellant relayed information to Williams.

Testimony for respondents

Carley McCloskey was an employee of the State of New Jersey Judiciary, in the Salem County Child Support Unit. She had been there for four years as an investigator.

Prior to the pandemic, people would walk into the office, through security and would go to a clerk's window, which clerk would provide them a security pass and direct them to the proper personnel. As of June 2019, that clerk was the appellant. Any telephone inquiries went through a call center. It was rare for telephone calls to come

into the child support unit, and usually would be from a co-worker.

In order to access NJKids, there was a three-day training session and documents you had to sign. NJKids is a computer system run by the federal government which held case information pertaining to children and parents, covering payment records and anything having to do with the case. Court employees signed a Confidentiality Agreement every year in the child support unit. Page 2 of the Agreement states "I shall not disclose any child support program information or PII [Personal Identifiable Information] to any party not authorized to receive said information by any means such as orally, in writing, or electronically." That meant you were not allowed to disclose any information to any parties or third parties or any other employees that were not supposed to be privy to the information. You were not even allowed to share information with the client even if it is their own case. The Agreement stated in bullet point number 3, "I shall not access nor disclose any child support program information or PII when any system to which I've been granted access pertaining to any individual with whom I am familiar with or related to such as myself, a relative by blood or marriage, personal acquaintance, business acquaintance, friend, current/former partner, peer, co-worker, colleague, or supervisor in an open or closed case." This meant you were not allowed to provide information to anyone that might possibly have a conflict with the department, unless you filled out a form and advised your supervisor.

When you logged into NJKids, you needed to go through security, by entering a username, password and PIN, and to check a box agreeing to confidentiality and acknowledging that the system was monitored.

On September 10, 2019, appellant Becker had received a telephone call to her work phone at around 4:00 p.m., which was rare. McCloskey overheard appellant, who was speaking in full voice and not whispering. Appellant was spelling out a name and McCloskey heard her tell the person on the phone that the information had to do with a bench warrant on his Cape May case. This caught her attention because it was clear that they were not talking about that person's case, because they referred to another case. Another employee, Brandi Brown, also heard part of this conversation, and her eyes opened "big," and McCloskey talked to her about appellant discussing another

party's out-of-county case, and they agreed that McCloskey should say something to the supervisor. McCloskey's supervisor was not in that day, so she went to appellant's supervisor, Tierra Thompson, and explained what happened.

The second witness was **Tammy Taylor**, who was employed by the State of New Jersey Judiciary, working in Salem County Child Support as a Court Service Supervisor II. Prior to that she was a Senior Probation Officer for Gloucester County. Prior to March 2020 she would oversee the day-to-day operations of the probation child enforcement unit Salem County, mostly dealing with bench warrants. She supervised the processing, issuing, and scheduling of bench warrants. Bench warrants were used for a failure to appear or failure to pay. A caseworker would review a file then request a bench warrant to be issued. Taylor would review the request for a bench warrant and forward the request to the judge. After the judge reviewed the request and he came back to the office, Taylor would send it to the Sheriff's Department. Taylor supervised five people. There was another Court Services Supervisor II who co-supervised with her, named Tierra Thompson. From her first-floor office she was able to see her staff. Taylor's supervisor was Lois Kawajiri.

If a member of the public wanted information about their child support case they would come into her building, go through security and go to the reception window. The receptionist would help them by getting them in ID badge, taking their information and then getting a caseworker to assist them. As of June 2019, the person manning that desk was Samantha Becker. The receptionist could provide basic information, such as pay history. But to obtain information beyond that, they would have to have a caseworker assist them. Becker would go into the computer system to obtain pay history, from NJKids. Becker had other duties such as sorting and distributing the mail and scheduling files for court on the court calendar, using NJKids. Taylor and Thompson trained Becker on handling these chores.

NJKids was a web-based computer system that allows a department to interface with other agencies, and track cases from start to finish. Court notices and bench warrants were generated through NJKids.

If a custodial parent came to the window and asked Becker for pay history, she had been trained to then make a case note in the computer saying that a custodial parent had come in for a pay history and received the information requested.

When Becker came to child support in Salem at the end of June 2019, and before she was given access to NJKids, she received basic training through the New Jersey Child Support Institutes website, known as the NJ CSI website. She would have had to sign a "4D Confidentiality Agreement" and watch the web-based training. Exhibit R-18 was a transcript of a New Jersey Child Support Institute Learning Management System program. There was an entry in the transcript indicating that the safeguard video was seen by Becker on June 26, 2019. There is an entry showing that Becker signed off on the Confidentiality Agreement on June 25, 2019.

Every time you enter NJKids, there was a four or five paragraph section informing the user that they are being monitored, that you were not allowed to do any unauthorized viewing, or unauthorized disclosures, and advising the penalties for such an unauthorized use.

Exhibit R-20 was the text on the video of the security awareness video from New Jersey Learning Management System. On page 8 it stated that every employee who completes the training needed to sign a form acknowledging their understanding of the requirements to protect FTI [(federal tax information)]. Exhibit R-7 was the electronic version of the 4D Confidentiality Agreement. Employees who had access to NJKids were required to review and sign off on that form yearly. Basic training discussed confidentiality and security; employees receive the classroom training again every three years and annually go through a web-based training. Basic level training warns employees about the improper disclosure of information.

Appellant Becker never came to Ms. Taylor during the two and a half months that she was there to complain that she did not understand the restrictions.

Exhibit R-3 was the Code of Conduct. Canon 2 stated, "A court employee may not disclose to any unauthorized person for any purpose, any confidential information

acquired in the course of employment or knowingly acquired through unauthorized disclosure by another." In the context of child support, this meant that a person could not disclose any information in NJKids to anyone who was not a party to the case. Someone has to have a business purpose for viewing that information and they have to have a business purpose for disclosing such information. The only time a person would be able to disclose information would be to a caseworker enforcing the case or talking to a party, someone that is a party to the case like a plaintiff or defendant, or an authorized third party, as long as the third party was authorized to receive such information. Paragraph B required that if an employee felt there had been some sort of improper disclosure, it must be reported to their supervisor. When it comes to child support, there was an additional level of reporting required: if there was an improper disclosure regarding child support, the employee should, within twenty-four hours, complete a form which went to the office of Child Support Enforcement. That office would then complete an incident security reporting form and send that to DFD. Confidentiality was very important because her department interfaces with the Internal Revenue Service, as well as the Department of Defense and the United States Postal Service. Maintaining confidentiality also preserved the public's perception of her department as being able to keep things confidential. This is important regarding family court issues because they deal with domestic violence; confidentiality encourages clients to share information because they believe it will remain confidential, which will protect their safety.

Taylor was the supervisor in Cumberland County Child Support on September 10, 2019, due to them being down a supervisor. Tierra Thompson was the supervisor in Salem on that date. Thompson called Taylor around 5:30 p.m. that day to discuss that a staff person thought that someone in the office had given information over their office phone to a friend or co-worker. That raised an alarm for Taylor because disclosing information to a friend or co-worker was a violation of the confidentiality agreements. Requests for information should go through the call center, so there really should not be any staff on the telephone providing information unless they are returning a call. Becker was aware that inquiries were to be referred to the call center. Because of the late hour, when most workers had already left for the day, Thompson and Taylor decided to discuss this in the office the next day, when Taylor would be back in Salem.

The next morning Taylor spoke with Thompson, and Carley McCloskey came in and told Taylor what she had heard. They both decided to send an email to their vicinage assistant chief probation officer, whom they report to, named Lois Kawajiri. Taylor sent a text first to Kawajiri and then an email, both telling her to look for an email that was going to come from Taylor. Exhibit R-19 was the email chain with the email sent by Taylor to Kawajiri on September 11, 2019. The information in Taylor's email was based on information provided by Thompson and McCloskey. Taylor quoted McCloskey directly in her email to Kawajiri. Taylor reported to Kawajiri that McCloskey said she heard Becker say, "So it's your case, okay, give me his name. Nothing came up spelling his name." Case information was then provided, specific content of information was not provided to me as it was not recalled. Taylor also reported that McCloskey had said that she overheard Becker say, "He also has a case with another girl in Cape May that a warrant was just executed on." That last statement is what threw up a red flag to Taylor. That would be an unauthorized viewing because she was viewing a Cape May case with someone on the phone that was not a party to the case. To have a business purpose for viewing the case you would need to have, for example, a custodial parent on the phone. So, since no party to the case was on the phone, Becker should not have taken the phone call to start with, should not have viewed the case information on the computer, and should not have provided unauthorized disclosure.

The email from Taylor to Kawajiri was at 12:20 p.m. on September 11, 2019. Kawajiri responded by saying she would be meeting with McCloskey and Brandi Brown on Friday. Taylor did not interview Becker about this because she was told after the incident was reported to Kawajiri and that she was not to discuss the case further. Once Taylor sent the email to Kawajiri, she was no longer involved with the investigation.

Taylor had no evidence of Becker's action except for what she was told by McCloskey. Taylor was aware that somebody could pull a blueprint from NJKids which could confirm that something had happened. Taylor had never dealt with a breach of this type before.

Kawajiri completed the Office of Child Support Services Security Incident Report Form. This was supposed to be done immediately, or within twenty-four hours, but Taylor acknowledged that Lois dated that form September 24, even though the incident happened September 10.

Becker had access to the FBI screens, so it was common in Becker's daily duties she was authorized to look at confidential information if she was specifically working on a case.

During her cross-examination of Taylor, Becker admitted to doing the 4D training/web video, which was a series of "do's and don'ts" put out by the IRS and various child support agencies as a general training of confidentiality. The video was not about the NJKids system and did not instruct a person on how to access NJKids.

Taylor was able to confirm that Becker had gone into NJKids for information on cases that she was not working on, for people who were not parties to the cases, because the blueprint from the system confirmed that.

The third witness was **Gary Farr**. Farr worked for the New Jersey Judiciary in the Gloucester Probation Office, as the Assistant Chief for Probation. There were four assistant chiefs aside from Farr in the vicinage. He had been with judiciary for eight years, all involving child support. He would oversee systems and databases, including NJKids. Prior to that, he spent five years in the private sector developing, implementing and training people on NJKids.

Exhibit R-7 was a 4D Confidentiality Agreement from the DFD. It needed to be reviewed and signed by judiciary employees or anybody that used NJKids. They would receive data security training every two years. Every year you received web-based training for Federal Tax Information. New employees also watched a security video. After you received your security and confidentiality training, then you would be trained for your particular job responsibilities.

If an employee in child support believed there had been a breach or disclosure of confidential information, they needed to notify their supervisor, and then the supervisor would notify the manager, which in this instance would be the assistant chief. Then the assistant chief would fill out a data security breach form and send it to DFD.

Regarding the Incident, Farr had become aware of the breach when he was contacted by the assistant chief, and he informed her that she would need to fill out the data security incident report form. She told Farr that a Judiciary Clerk had been overheard by an employee talking about a case. The employee who overheard the Judiciary Clerk discussing the case then disclosed this to her supervisor, Ms. Taylor, who disclosed the matter to the assistant chief, Ms. Kawajiri.

Exhibit R-10 was the data security incident report, completed by Kawajiri and reviewed by Farr. If an employee was overheard talking to somebody on the telephone about potentially their own case, that would be a breach of data security. If an employee was overheard talking about a case where the caller had no interest and was not the custodial parent or the noncustodial parent, that would also be a breach of data security.

A footprint is where the development firm that ran NJKids could look in the database, look at a user's profile of where they went, and see what they did at any specific time period. This is a security feature built into the database. If there was a potential breach, DFD could then request the vendor to provide the footprint for a specific time period to see what an employee was doing in NJKids. Exhibit R-8 was an example of what a footprint looked like when it came back from the State Office of Child Support. Exhibit R-8 covered Becker and the Incident of September 10, 2019. Becker's name appeared in the transaction column. The next column showed the date and time when Becker entered particular screens. There was a column that said "ID Unique." Under that it said, "Cumberland case." There was a CS number, indicating this was a child support case. Farr explained how to read the footprint, by saying the four letter acronym SRCH indicated that the user entered a search screen. One would go into that search screen and find a CS number, which would lead you to a docket number. There were many ways to find a particular case, such as inputting first names or last names or

social security numbers or the CS number if you had it. The footprint would not indicate exactly how the user had searched for a case, but indicated that they had entered keystrokes in order to find a case. If the user had inputted the name of a noncustodial parent, the search screen would bring up any case with that person's name. If it was a common name, you would get pages and pages of cases from all over the state. He would then have to scroll through the list to see if you found the case you were looking for. If you were inputting the name of the noncustodial parent, you could go down the list and then look for the custodial parent's name.

The next screen accessed, with the same time stamp as the search, was the bench warrant screen, so it was clear that the user was looking for an active or inactive bench warrant on that individual. You could also find the name of the police agency that did the arrest and any comments from the police agency. Next you could see that the user went back to the search screens. The user then looked for another case, because they went into another CS number, for a Cape May case. That meant the employee-user performing the search had cued up another case from one of the two individuals. It was possible the user was looking to see if Cape May had a warrant on the same individual that Cumberland was being searched for. The user then went to an event log screen, which gave all the financial transactions that occurred on the case in chronological order. You could then go into the federal tax information screen to see how funds had been allocated or disbursed. To be authorized to view the FTI federal tax information screen, you needed to have a business purpose, pursuant to the terms of the Confidentiality Agreement. DFD considered it a breach when somebody accessed an FTI screen without being so authorized. That was considered a non-authorized user, who then must be reported to the Federal Office of Child Support.

The DFD would send the footprint to the vicinage for determination as to whether the worker was authorized to look at those cases.

The breach that Farr saw from the footprint was a user looking up a case where a custodial parent had a case in Cumberland County and the non-custodial parent had another case with somebody else in Cape May County. The search went from search screen to bench warrant screen then back to search screen back to bench warrant

screen and then to the E Log screen. There would be no reason to go to the E Log screen unless you were looking up financial information on a Cape May case. The question then became why an employee in Salem County would be looking at a Cape May case.

Taking two weeks to complete an incident form after an incident would not be unreasonable.

It did not matter whether Becker was still on the phone while she was using NJKids. It would still be a security breach because she was unauthorized to look up those particular cases.

While Farr had not dealt with a security breach in his own department, he was aware that other security breaches had taken place in NJKids and every one of those breaches resulted in termination of the employee.

The fourth witness was **Lois Kawajiri**, the vicinage Assistant Chief Probation Officer in the Salem Probation Division since 2007. Before that she had been with Cumberland County since 1999. Since 2007 she had responsibility for child support in Salem County. She reported to Curtis Hurff, Chief Probation Officer for the vicinage.

NJKids was a computer system used to track child support cases. It contained data such as employer information, addresses, social security numbers, Federal Tax Information, and a lot of confidential information. Exhibit R-7 was the first document that somebody would sign who was on the child support staff, which explained the "do's and don'ts" as far as keeping information safe. A supervisor would meet with the employee and go through this document and explain all the rules. Anyone who worked in child support or had access to NJKids or the portal needed to sign this document. If the party you were speaking to had no reason to have information from NJKids, then you should not be sharing information with them. If you had any kind of relationship with the person asking for information, either through work or church or whatever, you were not to disclose information to that person, and must advise management.

Exhibit R-3 was the Code of Conduct that employees received and signed every year. Becker signed this form on March 20, 2018, before she came to work in the Salem child support unit. Canon 2 covered the protection of confidential information. Under Canon 3, everybody was treated equally; just because somebody worked for the judiciary did not mean they got special treatment.

The call center was their customer service department. If the call center could not resolve an issue, then a note was sent to the assigned caseworker to address the matter. Since the call center was established, they did not receive phone calls in the local offices. Once in a while a phone call would come through, but that would be redirected to the call center.

Becker was an employee as of March 2018 and joined Salem child support unit in June 2019 as a Judiciary Clerk III. She provided clerical support for the unit. She manned the front window. If somebody came to the customer service window and wanted information, that person would have to provide identification to show who they were. If that person wanted more than just a pay history or upcoming court date, Becker had been trained to then refer the matter to the assigned caseworker. Becker was not a caseworker, but had access to NJKids because it contained lots of information, such as scheduling information.

Kawajiri was in Trenton on September 10, 2019, and became aware of this issue because she received a phone call from Tierra Thompson. Thompson said Ms. McCloskey had overheard Becker talking about a case that might have been a breach of confidentiality. Exhibit R-19 was an email from Tammy Taylor stating that one of the staff people had reached out to her regarding a possible breach. This was very concerning to Kawajiri.

At that time Becker had only been in that department for two and a half months, but at that point in her career she was expected to be aware of confidentiality issues. Nobody had suggested to Kawajiri that Becker was having problems understanding NJKids. Becker had signed the 4D Confidentiality Agreement and had received security video training. Becker had been in receipt of the employee Code of Conduct for a year

and a half.

Exhibit R-23 was an email from Ms. Thompson saying that Ms. McCloskey and Brandi Brown had overheard Becker providing confidential information to someone who was either a third party or an employee of the Judiciary. Thompson's email also indicated that she checked the telephone logs and discovered that Becker had been speaking with Christy Williams, an employee in the Civil Division at Salem County. Thompson had run Williams' name through NJKids herself, and nothing came up. Kawajiri then advised Curtis Hurff, her supervisor, about the potential breach.

Kawajiri met with McCloskey. Exhibit R-26 was McCloskey's written statement, which confirmed what McCloskey told Kawajiri in their meeting. McCloskey overheard Becker spelling out K-O-N on the call, which must have been the name of a noncustodial parent, but clearly, she was not spelling "Williams." McCloskey wrote that she overheard Becker say that "he" had another case with another girl in Cape May County and that a bench warrant had been issued in that case. By mentioning another case, McCloskey knew that the other case had nothing to do with the person on the phone with Becker.

Kawajiri also met with Ms. Brown. Brown's information was somewhat vague. She said all she heard was something about a Cape May case.

Kawajiri then spoke with Human Resources (HR). She spoke with Gary Farr, who recommended getting a footprint of the NJKids access and a telephone log. Exhibit R-10 was the Incident Report that Kawajiri filed with DFD in order to get the NJKids footprint, in which she summarized the breach. She indicated she would be looking for any calls between 3:46 p.m. and 4:15 p.m., based on the "short log" phone logs which were readily available from the mini-screen on Becker's phone. Eventually Kawajiri requested the actual call log from Becker's phone.

Kawajiri received the footprint, Exhibit R-8, in early October, 2019. It showed that Becker went into NJKids, searched for a party, found the party, then did a bench warrant search. It was visible that Becker jumped to a Cape May case, did a search and

a bench warrant search, then an E Log search for payments. It concerned Kawajiri that Becker looked at a Cape May case because the party she was speaking with had nothing to do with the Cape May case. Kawajiri discussed the footprint with Gary Farr to make sure she was reading it correctly.

Exhibit R-24 was the call log from Becker's phone, showing that Becker received a call from internal extension 15832 at 3:54 p.m., which went on for three minutes and forty-nine seconds. The call was from Christy Williams; that was concerning because the two cases looked up by Becker during the three minute and forty-nine second call with Williams were the Cape May and Cumberland County cases, neither of which had anything to do with Salem County.

Kawajiri then contacted a union representative to advise them that she wanted to speak to employees. Curtis Hurff performed the interviews of Becker and Williams while Kawajiri took notes. The questions were prewritten, seen in Exhibit R-16. Union representative James Edwards was present. Becker was read her Weingarten Rights to make sure she was consenting to a union representative being present. Question 6 was whether the employee was aware that when one logged into NJKids there was a disclaimer box regarding security and confidentiality which had to be checked. The disclaimer language was read verbatim to Becker at the interview and Becker indicated she was aware of that language. Becker then acknowledged receiving a telephone call from Christy Williams between 3:45 p.m. and 4:15 p.m. on September 10, 2019. Becker answered question 9, acknowledging that she had worked with Williams at the Gloucester County Criminal Division. She answered question 10, stating that Christy wanted to know if her case had been closed and if there was any more information.

Becker answered question 11 by stating that she had become aware that Williams had a child support case, that it was in Cumberland County, but that she was not aware that there was a protocol in which she was to refer the inquiry to the call center.

Question 13 was whether Becker accessed and discussed with Williams any other child support cases not involving her, but possibly involving another person on her

case. Becker said no. But it was clear to Kawajiri that Becker had accessed and discussed a Cape May case with Williams, because McCloskey reported hearing Becker discuss a Cape May case. When asked if she had anything else to add in the interview, Becker said no.

After an interview, cases would go to Human Resources, which would then deal with discipline.

The fifth witness was **Tierra Thompson**. She had been with the Judiciary for thirteen years, currently as a Child Support Services Supervisor II (CSS II) in Salem County, monitoring employees, preparing them for court, and scheduling them for trainings. She was previously a Senior Probation Officer, dealing with child support.

In 2019 she and another CSS II (Ms. Taylor) were each supervising four or five Child Support employees. Thompson reported to Kawajiri. Becker was supervised by Thompson.

Becker came to Salem as a Judiciary Clerk III. Becker did clerical work, answered the window and the phones, if they rang. Becker did mail runs, filing, and scheduled cases for court. Becker's desk was right in front of the customer service window, where clients would come to ask about their cases.

There were training sessions, but most employees learned from other employees. There were booklets that explained things like NJKids. Employee Natasha Stewart taught Becker how to schedule cases, Carly McCloskey trained Becker on NJKids and answered Becker's questions. Mostly everyone helped everyone.

Becker was permitted to provide certain information to people who showed proper identification. She could give payment history to people but, for anything more in-depth, the query would have to be referred to the person's caseworker.

Exhibit R-22 was a document signed by Becker a month after starting. The document had a Part A regarding customer service, which Thompson went over with

Becker. The next section was duties, such as scheduling ELR hearings (enforcement of litigants' rights), which training Natasha Stewart provided to Becker. Ms. Stewart would have shown Becker how to schedule things in NJKIds. Becker then signed the Confidentiality Agreement (Exhibit R-18) on June 25, 2019. Becker received the safeguard security training by watching a video on June 26, 2019.

Thompson was in the office on September 10, 2019, Taylor was not. Thompson was told by McCloskey that Becker might have given information to someone about a case that was not one of their cases, particularly a Cape May case. It was the end of the workday, and Thompson called Taylor to say they might have a problem. Before leaving, Thompson looked at Becker's call log and saw she had received a phone call from Christy Williams. Thompson did not know Williams, and assumed she worked in their courthouse. Thompson then went into NJKIds, typed in "Williams" and nothing came up.

The next morning Thompson emailed Kawajiri, as shown in Exhibit R-23. Thompson wrote, using initials, that Carly McCloskey and Brandi Brown told her on September 10, 2019, that Becker might have given confidential information to a third party or possibly a current employee. Thompson indicated she had not spoken to Becker because she learned of this at the end of the day. Thompson did nothing further on this matter and was not involved with the investigation.

Becker, possibly the next day, came to see Thompson about this but Thompson told her she could not speak with her about it because the matter was now out of her hands and being handled by Lois.

The sixth witness was **Tiffany Carter**. She was employed by the State of New Jersey Judiciary, at the Cumberland, Gloucester and Salem Vicinage, currently working in the Bridgeton office as Assistant Human Resources Division Manager, overseeing day-to-day functions like payroll, benefits, and boarding new hires. She had been there for three years; before that she was in other HR positions for ten years, and before that she was in Civil Division for two years.

When boarding new hires, HR's role included making sure they were aware of policies and procedures, and that acknowledgements were reviewed and received. Exhibit R-2 was the form used for boarding Becker as a new hire. The new person would sign the form to acknowledge that they received the policies listed on the form. The form stated that an electronic copy of each of the policies listed had been given to the employee. Becker was given a compact disc (CD) of all the policies; Exhibit R-1 was the CD acknowledgement form showing that she received the CD with HR-related information. During the boarding conversation, the new hire would check-off as they review each item, then would execute the form when done with each document review. Becker signed Exhibit R-1 on April 16, 2018. During the conversation, the HR person would do a cursory review with the employee, then the employee would take the CD to review the documents themselves and then sign the acknowledgement. The new hire could reach out to their HR representative if they had any questions.

Exhibit R-3 was the acknowledgement form for the Code of Conduct. On their first day, the new employee would be given a copy and an overview of the Code of Conduct. This was signed by Becker while she was a Judiciary Clerk II in the Gloucester Criminal Division. Employees would have to acknowledge the Code of Conduct annually and Becker had done so in January 2019.

Exhibit R-4 was a transcript from their Judiciary Learning Management System, listing all trainings given and acknowledgements received regarding Becker.

The seventh witness was **Curtis Hurff**. He was the Vicinage Chief Probation Officer for the three counties that made up Vicinage 15: Cumberland, Gloucester and Salem. He reported to trial court administrator Jason Corter, and supervised the five Vicinage Assistant Chief Probation Officers. In Salem County, there was one assistant chief, Lois Kawajiri. There were approximately fifteen employees working in the child support unit in Salem.

Hurff did not have access to NJKids, but did have access to its precursors, ACIS. He used the security video. He was aware that those using NJKids needed to execute the confidential 4D Confidentiality Agreement. He was aware that one could not access

NJKids without acknowledging the security disclaimer.

Hurff became aware of the September 10 Incident on September 11, 2019. Kawajiri told him at a monthly chief's meeting in Trenton that there might have been a security breach. Hurff asked Kawajiri to follow up on it. Kawajiri met with Carley McKlusky and Brandi Brown and reviewed McCloskey's report, and so advised Hurff on September 13, 2019. Hurff was given a copy of McCloskey's report, Exhibit R-26.

Kawajiri requested the footprint from DFD, Exhibit R-8, and Hurff reviewed it with her. He saw that Becker had looked up information, and was concerned that she had shared that information. He decided that a formal investigation was warranted, and an interview of Becker was initiated, with a union representative involved. The questions asked were summarized in Exhibit R-16. Hurff conducted the Becker interview, and the summary was written by Kawajiri. In answering question six, Becker confirmed she was aware of the security disclaimer that came up every time someone logged into NJKids. Question nine was regarding Christy Williams; Becker said she came to know Williams when they worked together in Gloucester Criminal Division. To question ten, Becker indicated that Williams had called her and asked Becker to look up her child support case to see if it had been closed, and if there was any new information on the noncustodial parent. To question twelve, Becker indicated that she went into NJKids in order to provide Williams with information. Question thirteen was whether Becker accessed and discussed with Williams any other child support case not involving Williams but involving some other party on her case, and Becker said no. Based on Hurff's review of the footprint, Becker's response to question thirteen was not accurate. Further, Becker's response was not accurate because McCloskey's statement in Exhibit R-26 indicated that Becker had looked up a Cape May case in NJKids for Williams.

The next step in the investigation was for Hurff to confer with his Trial Court Administrator and HR department, which resulted in the decision to discipline Becker. Hurff concluded that Becker had violated Canon 2 of the Code of Conduct, violating the requirement for protection of confidential information which was one of the most important aspects of the Code. Judicial employees signed the Code of Conduct and also the 4D Confidentiality Agreement and IRS regulations. They were not supposed to

be giving information to other judiciary employees. There was a process for advising the Judiciary and DFD when there was a breach of confidentiality,

Canon 3 required avoiding actual or apparent impropriety. An employee was prohibited, for example, from providing information to their family members, because there could not be the appearance that one party to a dispute was given more information about a case from a court employee than other parties received. Having a court employee telephoning in lieu of coming in-person and asking Becker for information, gave the appearance that a court employee had more influence in the system; members of the public were required to come in person to get information or go through the help line.

In the within matter, information was being given out unbeknownst to management; information was given out that was not approved; information was given out in such a manner as to create the appearance of one judiciary employee receiving inside information from a fellow judiciary employee.

Exhibit R-7 was the Confidentiality Agreement for child support staff. It prohibited an employee from disclosing any child support information to any party not authorized to receive that information, which prohibition was violated in the Becker case. A judiciary employee was not allowed to disclose child support information to any person they were familiar with, such as a relative or friend of acquaintance or business acquaintance or co-worker; that was violated here.

Hurff concluded that there was a breach: a staff person, Becker, accessed information not appropriate for her to access, then gave information to a co-worker without authorization. A person with a child support question must go through the hotline and talk to their caseworker. A person cannot just call the child support office and get information. The footprint showed Becker looked up other cases that she was not authorized to access, and then shared that information with a co-worker. The footprint disclosed, and Williams confirmed, that Williams sought information from Becker and Becker provided it.

Hurff determined that Becker's violations necessitated the penalty of immediate suspension and separation from the judiciary. That was in line with disciplines handed out in prior situations where judiciary employees wrongly accessed and shared confidential information from NJKids. Even though this was Becker's first disciplinary issue, this was a severe violation of the high confidentiality standards they have for judiciary employees.

Although there was a risk Becker could have breached again during the investigation period, they needed to adhere to due process and not merely rush through an investigation.

Testimony for appellant

Samantha Becker testified on her own behalf. She did not call Christy Williams as a witness, nor did she call any other witnesses.

On September 10, 2019, appellant was working as a Judicial Clerk III (JCIII) and received a phone call from Christy Williams, someone she had worked with previously in Gloucester County. Williams said her ex-husband had called her over the weekend and said he had been arrested "on child support." Williams told appellant she denied any responsibility for his problems, and that he had another case with another girl out of Cape May County which was probably the reason behind it. Williams then asked appellant to confirm if her case with her ex-husband had been closed; Williams did not ask about any other case. Appellant did not see anything wrong with accessing the system to see if Williams' case had been closed, because that is what she does on a daily basis. Appellant repeated a couple of pieces of information on the phone to Williams just to clarify, then went into the system and confirmed to Williams that her child support case had been closed. The phone call ended, and appellant walked away from her computer, as shown in the footprint.

When appellant returned, she again went into the system, to confirm that the information she had given Williams was accurate. Appellant referred to it as Williams'

“personal case.” The workday ended and appellant went home not thinking anything she had done was wrong.

Sometime later, Brandi Brown came to appellant and said she had been interviewed about something Becker had done wrong on a phone call. Appellant went to Tierra Thompson, then Lois Kawajiri, but neither would discuss the matter with her. So, appellant just continued to do her job with continued access to NJKids. She was eventually questioned as part of the investigation, but was not told what she specifically did wrong.

During cross-examination, appellant was asked about Exhibit R-12, an email from Becker explaining her side of the Incident to her union representative, Mike Blasiac, who had forwarded the email to Carmelita Vasquez, the HR Division Manager at Cumberland County. Appellant was copied on that email forward.

Appellant stated in the email that she worked in Gloucester County beginning in April 2018, and had a co-worker named Christy Williams; appellant worked in Judiciary, Williams in Criminal Division. Appellant testified that she and Williams developed a working relationship. When appellant was promoted to JCIII in Salem County on June 8, 2019, she ran into Williams during her first week. They had a conversation and, at some point, became Facebook friends.

On September 10, 2019, appellant received a call from Williams on the Judiciary phone line. Williams did not come to the customer service window, which was unusual because most of the time when a custodial or non-custodial parent wanted information they came to the customer service window, where they had to show identification. Williams explained that her ex-husband had been arrested on a bench warrant from a child support case they had together, and that she wanted to confirm the status of her case. Appellant did not type in Christy Williams' name; Williams was asking information about her ex-husband's bench warrant, so appellant typed in the ex-husband's name, spelling the name out loud, which was what Carly McCloskey overheard. After inputting his name, two cases came up, but this information did not make appellant think she had gone beyond where she should be.

The Exhibit R-7 Confidentiality Agreement had been read and executed by appellant. On page 2, bullet point three says, "I shall not access or disclose any child support information or PII on any system to which I've been granted access to any individual with whom I am familiar with or related to such as myself, a relative, by blood or marriage, personal acquaintance, business acquaintance, friend, current/former partner, peer, co-worker, colleague, or supervisor in an open or closed case." But at the time of the Incident appellant did not put any thought into Williams being at least a personal acquaintance, business acquaintance or co-worker or colleague; appellant looked at Williams as just a custodial parent seeking information on her case, even though those inquiries typically go through the customer service desk and the requestor must present identification.

Bullet point one says, "I shall not disclose any child support program information or PII to any party not authorized to receive said information by any means such as orally, in writing or electronically." Appellant agreed that Williams would not have been authorized to receive information about her ex-husband's Cape May case.

Exhibit R-8, the footprint from September 10, 2019, indicated that appellant had typed in Williams' ex-husband's name, and two cases popped up on the bench warrant screen. It indicated there was no bench warrant issued in Williams' case, and appellant so informed Williams. It only took a minute for appellant to look up Williams' case and advise her that her case was closed and that no bench warrant had been issued. After their phone call, appellant continued by going into the second case on the search screen, unbeknownst to Williams. Appellant continued to look at the second case on the bench warrant screen. Appellant then left the bench warrant screen and walked away from her computer from 3:57 p.m. until 4:05p.m. When she returned to her work area, her computer was on the search screen. Appellant then went from the search screen and looked up the second case on the E-Log screen, which would tell if there was a missed child support payment and if a bench warrant was issued. After spending some time in E-Log, appellant backed out of that screen.

Appellant contended that she continued searching on a case unrelated to Williams, for information which Williams was not authorized to receive, simply to understand the case herself, to see if there was an actual bench warrant, but that appellant never gave the results of that search to Williams. Appellant contended that Williams telephoned and asked her about two child support cases; Williams told appellant that the second case was between the ex-husband and a different woman in Cape May County and that a bench warrant had been executed the previous weekend and the ex-husband had been arrested; and within a one minute span appellant was able to type in the ex-husband's name and not Williams' name, and confirm there were two cases, but only shared her search results with Williams for Williams' case. Then, appellant hung up with Williams and continued searching on the second case for another ten minutes, but never shared the results of that research with Williams.

Discussing Exhibit R-12 (improperly referred to at the hearing as Exhibit R-13), appellant's statement to Carmelita Vazquez, appellant stated to Vazquez that she looked up Williams' case per her request "to see the financial history," and did find two cases connected to Williams' ex-husband. Appellant did not write in her email to Vazquez that she gave Williams the information on her case but then continued searching on the second case.

When appellant realized the second case she found in her search for Williams was not related to Williams and was from another county, she never thought to contact Tammy Taylor or Tierra Thompson and advise them that a court employee was asking about cases that might have nothing to do with her. Nor did she think to tell Williams that this had gone too far and that Williams ought to use the customer service line like members of the public do. Appellant was unfamiliar with the customer service line. The call from Williams was the only time appellant ever received a child support information request on her phone, but that fact did not prompt appellant to get a supervisor involved.

FINDINGS OF FACT

For testimony to be believed, it must not only come from the mouth of a credible

witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Although the hearing in this matter was heard by Administrative Law Judge (ALJ) John Kennedy before his appointment to the Superior Court, the parties agreed to have this matter assigned to a new ALJ without a new hearing or new testimony. Accordingly, any assessment of credibility could not be based on the demeanor of the witnesses during the hearing, but only on their testimony as transmitted by a transcript of the hearing.

I found the testimony of respondent's witnesses to be credible in that they answered all questions on direct and cross-examination without any apparent defensiveness, argumentativeness, confusion, or underlying motive. The testimony of appellant was more concerning, as much of her testimony appeared self-serving and argumentative. Her own testimony assisted the respondent in proving the facts of the case by a preponderance of the evidence. She denied violating the Code of Conduct and statutes cited by respondent but, throughout her testimony, she made it clear that she had committed the acts she was accused of. She, however, chose to blame her superiors claiming they did not train her properly on the various computer systems used

in her position. This defense is problematic for appellant because the issues herein had to do with preliminary issues of security and confidentiality and it appears she received appropriate training and was provided notice of the confidentiality requirements, on an almost daily basis. There were written acknowledgements of notification of confidentiality requirements that were executed by appellant which belie any claim she had that she was not properly trained.

Further, her testimony that she looked up information on two cases related to Ms. Williams' ex-husband, but only relayed information on the first case to Ms. Williams, was not credible. She failed to advise her superiors of her activities on the day of the Incident, and in her summary of the Incident emailed to Ms. Vazquez, appellant admitted to providing information to Williams about her case with her ex-husband, but omitted any reference to her continuing to use search functions in NJKids to further research the second case unrelated to Ms. Williams. While denying that she shared confidential information with Ms. Williams about the second case unrelated to her, appellant never addressed whether she provided that information to Ms. Williams later that day or at any subsequent time period. It was also possible that when appellant walked away from her screen after one minute, that she went to speak directly with Ms. Williams, and then returned to her computer and continued searching deeper into the Cape May case on behalf of Williams. Ms. Williams was not called to testify on behalf of appellant; she could have clarified under oath what confidential information appellant had actually shared with her.

Therefore, after reading the testimony and reviewing the evidence, I **FIND**, by a preponderance of credible evidence, the following additional **FACTS**:

Vicinage 15 covered Cumberland, Gloucester and Salem counties; appellant was working for Salem County at the time of the Incident; prior to the Covid-19 pandemic, people seeking child support information for Salem County would walk into the child support office, through security, and would go to a clerk's window, who would provide them a security pass and direct them to their caseworker; as of June 2019, that clerk was the appellant; any telephone inquiries for child support information went through a call center; it was rare for telephone calls to come into the child support unit; appellant

was authorized to provide payment information to an authorized party to a case, via NJKids, but any additional information would have to be provided by the party's caseworker.

In order to access NJKids, there was a three-day training on confidentiality and there were confidentiality documents an employee would have to execute; appellant received the training, executed 4D confidentiality documents on an annual basis, and acknowledged receipt of a compact disc containing all the applicable departmental policies; the safeguard training video was seen by appellant on June 26, 2019; appellant executed a Confidentiality Agreement on June 25, 2019; Confidentiality Agreements for child support staff prohibited an employee from disclosing any child support information to any party not authorized to receive that information and prohibited disclosing child support information to any person you were familiar with, such as a relative or friend of acquaintance or business acquaintance or co-worker; if such a conflict existed, an employee was required to complete a form and advise their supervisor, which appellant did not do; appellant never advised her supervisor that she did not understand the restrictions.

Any time an employee logged into NJKids, they had to go through security by entering a user name, password and PIN; every time you entered NJKids, there was a section that popped up informing the user that they were being monitored, that they were not allowed to do any unauthorized viewing, or unauthorized disclosures, and which listed the penalties for such unauthorized use; the user had to check a box agreeing to those confidentiality requirements.

Appellant and Ms. Williams were acquaintances from prior jobs in the Gloucester County Criminal Division and both were subsequently promoted to jobs at Salem County, and had become work friends and Facebook friends; on September 10, 2019, appellant Becker received a telephone call to her work phone at 3:54 p.m. from Ms. Williams on her work phone; Ms. Williams asked for information on her personal child support case involving her ex-husband, which was a Cumberland County case, asking whether her case had been closed and asking for any other information on her ex-husband, the non-custodial parent; appellant went into NJKids while on the telephone

with Ms. Williams, typed-in the ex-husband's name but not Ms. Williams' name, then performed a bench warrant search for a Cape May case; appellant told Ms. Williams that there were two cases involving her ex-husband; appellant told Ms. Williams, "He also has a case with another girl in Cape May that a warrant was just executed on"; after hanging up with Ms. Williams, appellant continued using NJKids to look at Williams' ex-husband's Cape May case, performing an E-Log search for payment information.

The Code of Conduct, Canon 2 stated, "A court employee may not disclose to any unauthorized person for any purpose, any confidential information acquired in the course of employment or knowingly acquired through unauthorized disclosure by another"; regarding child support, Canon 2 meant that a person could not disclose any information in NJKids to anyone who was not a party to the case or did not have a business purpose for receiving such information; Paragraph B of Canon 2 required that if an employee in child support believed that there had been a breach or disclosure of confidential information, they were required to notify their supervisor and then the supervisor would notify the assistant chief, who would complete a data security breach form and forward it to the Division of Family Development; Canon 3 required the avoidance of actual or apparent impropriety, meaning you were prohibited from supplying confidential information to a friend or family member because there could not be the appearance that one party to a dispute was given more information about a case from a court employee than other parties received; because members of the public were required to come in person to get information or go through the help line, having a court employee telephoning, not coming in person, and asking an employee such as appellant for information could give the appearance that a court employee had more influence in the system.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The issue is whether the respondent acted properly in terminating appellant's employment.

The issues are twofold: first, did appellant commit the violations she had been

charged with; and if so, was the discipline of termination appropriate.

Both parties submitted Closing Statements. Appellant, doing her best as a pro se litigant, offered a letter which blamed her supervisor and co-workers for inadequate training skills which attempted to impeach their testimony from the within hearing and which appeared to blame her violations on what she perceived (without offering evidence) to be a hostile work environment. But appellant's assertions did not jibe with the witness testimony proffered by respondent, appellant failed to offer any defenses, legal grounds or arguments that respondent failed to meet its burden of proof, and no legal arguments regarding the application of discipline in this matter. Appellant testified at the hearing, but offered no witness testimony in her defense or proffer any evidence to contradict respondent's case.

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a).

This matter involves a major disciplinary action brought by the respondent appointing authority against the appellant. Appellant's filing of an appeal required the OAL to conduct a hearing de novo to determine the appellant's guilt or innocence as well as the appropriate penalty, if the charges were sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987). Respondent had the burden of proof to establish by a fair preponderance of the credible evidence that appellant was guilty of the charges.

Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

The appellant was charged with violations of N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a Public Employee; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(8) Misuse of Public Property; and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause, that being violations of Canons 1, 2, 3 and 4 of the Code of Conduct, as well as a violation of the Title IV-D Confidentiality Agreement.

Respondent sustained charges against appellant for Conduct Unbecoming a Public Employee, N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

"Conduct unbecoming" folds into the language set forth in Canons 3 and 4 of the departmental Code of Conduct. Canon 3 required the avoidance of actual or apparent impropriety, meaning an employee was prohibited from supplying confidential information to a friend, family member or fellow employee. No special favors could be provided to anyone. Canon 3 sought to preclude the appearance that one party to a dispute was given more information about a case from a court employee than what had

been provided to other parties. Canon 4 sought to prevent actual or apparent conflicts of interest and proffered no evidence.

In the within matter, appellant Becker disclosed information to her work friend and acquaintance, Ms. Williams, about her own case, without Williams going through standard protocol (coming to the office in person like members of the public and having to get information through her caseworker). Appellant performed an additional favor for Ms. Williams when she disclosed information to Ms. Williams about a case Ms. Williams was not a party to, that being Williams' ex-husband's case with another woman in Cape May County. Appellant agreed when she executed her Title IV-D (4D) Agreement (the Confidentiality Agreement) that she would not provide child support information to a person she knew; disclosure of this child support information to her friend Ms. Williams violated that Agreement and created a conflict of interest which Canons 3 and 4 sought to protect against. Appellant had received ample training on security and confidentiality issues, and was reminded of these issues every time she logged into NJKids.

I **CONCLUDE** that appellant's actions constituted unbecoming conduct unbecoming a public employee, as well as a violation of her Confidentiality Agreement, and the charge of N.J.A.C. 4A:2-2.3(a)(6) is hereby **SUSTAINED**.

Respondent further sustained charges against appellant for violating N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty, N.J.A.C. 4A:2-2.3(a)(8) Misuse of Public Property, and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause, that being violations of Canons 1, 2, 3 and 4 of the Code of Conduct.

Neglect of Duty can arise from an omission or failure to perform a duty as well as negligence. The term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. See State v. Dunphy, 19 N.J. 531, 534 (1955). While "neglect of duty" is not specifically defined in the New Jersey Administrative Code, it has been interpreted to mean that an employee has neglected to

perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep't of Military and Veterans Affairs, 97 N.J.A.R.2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Safety, 92 N.J.A.R.2d (CSV) 214.

Respondent further asserted that appellant's actions constituted the use of public property for an employee's own personal or private purposes, citing to Myers v. New Jersey Water Supply Authority, OAL Dkt No. CSV 00067-94, 96 N.J.A.R. 2d (CSV) at 417. This violation occurred when appellant used her work computer to provide unauthorized information on a personal matter to her work friend, Ms. Williams.

Regarding the Code of Conduct, respondent asserted that appellant's actions during the Incident violated Canon 1, which required an employee to perform their official duties "properly, courteously and with diligence," as well as Canon 2 which required that an employee "not disclose to any unauthorized person for any purpose any confidential information acquired in the course of employment or knowingly acquired through unauthorized disclosure of another."

Appellant received training on confidentiality and security issues when she began her position as a Judicial Clerk III in Salem County, and had to check a box on the screen every time she went into NJKids, acknowledging the confidentiality requirement. Yet, on September 10, 2019, she accepted a telephone call from a friend seeking confidential child support information; she failed to tell her friend that she needed to come in person to the office to meet with a caseworker to get that information; appellant accessed NJKids to give information to a friend, co-worker and fellow employee; she did not enter Ms. Williams' name into the NJKids search function, but rather searched using Williams' ex-husband's name, which should have been a clue to appellant that she was looking up information that Williams was not authorized to receive; she accessed NJKids and viewed confidential information on a case from outside Salem County, that being a Cape May case; she used NJKids to find information on a case regarding an unrelated person, that being Williams' ex-husband, which information Williams was not authorized to receive and appellant was not authorized to search for; and appellant provided information on a Cape May case to Williams', which she was unauthorized to receive and appellant was not authorized to search for.

I **CONCLUDE** that appellant's actions constituted violations of N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty, N.J.A.C. 4A:2-2.3(a)(8) Misuse of Public Property, and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause, that being violations of Canons 1, 2, 3 and 4 of the Code of Conduct, and these charges are hereby **SUSTAINED**.

PENALTY

Having met its burden of proving the above-referenced violations of regulations, Code of Conduct and Confidentiality Agreement, this Court may then look to whether respondent acted properly in applying discipline against appellant in the form of termination of employment.

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty and in determining the reasonableness of a penalty. West New York v. Bock, 38 N.J. 500, 523-24 (1962). Factors determining the degree of discipline include the employee's prior disciplinary record and the gravity of the instant misconduct.

However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See Henry v. Rahway State Prison, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a fixed and immutable rule to be followed without question. Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter v. Bordentown, 191 N.J. 474 (2007). Absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency's judgment. See In re Herrmann, 192 N.J. 19, 32 (2007). "There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).

The determination of a penalty is both subjective and fluid, following no specific formula. One may consider the seriousness of the infraction, the length of employment, the amount of training received, as well as prior disciplinary matters. West New York v. Bock, 38 N.J. at 523-24. In the case of appellant Becker, she violated a key tenet of working in the judicial system: confidentiality. She acknowledged being trained on confidentiality issues, receiving the Code of Conduct and Canons, and reviewing and executing a Confidentiality Agreement. She clicked on an acknowledgement of her confidentiality responsibilities every time she logged into NJKids. Yet she chose to violate her responsibilities by researching information she was not authorized to research, and providing confidential information to a friend/co-worker/acquaintance who was not authorized to receive that information and was not a party to one of those cases. She did not identify Ms. Williams' request as one in violation of the Code of Conduct, and did not advise her supervisor of this breach. She did not acknowledge that she continued researching the Cape May case which she was unauthorized to research, even when interviewed as part of the investigation into her wrongdoing. It was only because fellow employees overheard part of the conversation between Williams and appellant that appellant's eschewing of confidentiality protocol was brought to light. It begs the issue of whether appellant breached her responsibilities at other times. There is no reason for a governmental employer to have to keep an employee who so blatantly violated a Code of Conduct and Confidentiality Agreement in addition to violating New Jersey law, when that employee's behavior could lead to a disintegration in the public's confidence in that agency's operations. This is particularly true when, as in the within matter, the employee never acknowledged that she made a mistake or committed a violation.

Considering the foregoing and the record in the present matter, including the appellant's attitude, disciplinary record, the nature of the job duties and the nature of the charges, I **CONCLUDE** that the respondent's action terminating appellant's employment be **AFFIRMED**.

DECISION AND ORDER

I **ORDER** that the charges of N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a

Public Employee, N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty, N.J.A.C. 4A:2-2.3(a)(8) Misuse of Public Property; and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause, that being violations of Canons 1, 2, 3 and 4 of the Code of Conduct, as well as a violation of the Title IV-D Confidentiality Agreement, be **SUSTAINED**. I **FURTHER ORDER** that respondent's termination of appellant's position as Judicial Clerk III with Salem County be **AFFIRMED**.

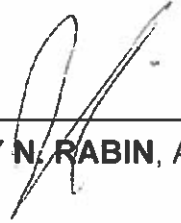
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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, DIVISION OF APPEALS AND REGULATORY AFFAIRS, 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 other parties.

April 4, 2022

DATE



JEFFREY N. RABIN, ALJ

Date Received at Agency:

April 4, 2022

Date Mailed to Parties:

April 4, 2022

JNR/dw

APPENDIX

LIST OF WITNESSES:

For respondent:

Carley McCloskey
Tammy Taylor
Gary Farr
Lois Kawajiri
Tierra Thompson
Tiffany Carter
Curtis Hurff

For appellant:

Samantha Becker, appellant

LIST OF EXHIBITS:

For respondent:

- R-1 Becker Vicinage XV New Hire CD form, dated March 20, 2018
- R-2 Becker Judiciary Signed Policy/Acknowledgement Forms, dated March 20, 2018
- R-3 New Jersey Judiciary Code of Conduct
- R-4 Learning Transcript
- R-5 Information Technology Security Policy (2015)
- R-6 Judiciary Internet Access and Use Policy
- R-7 Confidentiality Agreement for Child Support Staff
- R-8 New Jersey Kids Footprint of Becker usage from September 10, 2019
- R-9 Email from Lois Kawajiri to Carmelita Vasquez relaying Security Incident Report dated October 3, 2019
- R-10 Office of Child Support Service Security Incident Report Form

- R-11 Kawajiri Interview Summary dated October 1, 2019
- R-12 Email from Mike Blaszyk to Carmelita Vasquez dated October 17, 2019 attaching letter from Samantha Becker
- R-13 Immediate Suspension without Pay – Non-Criminal to Samantha Becker from Curtis Hurff dated October 16, 2019
- R-14 Letter to Samantha Becker from Carmelita Vasquez dated October 18, 2019
- R-15 Preliminary Notice of Disciplinary Action dated October 23, 2019
- R-16 Weingarten Questions from October 1, 2019
- R-17 Samantha Becker Weingarten Statement dated October 1, 2019
- R-18 Transcript of Becker training
- R-19 Email chain started September 11, 2019
- R-20 Transcript of Safeguard Training video
- R-21 Email from Samantha Becker to Alyssa Costello dated May 16, 2019
- R-22 Annual Performance Advisory, dated July 29, 2019
- R-23 Email from Tierra Thompson to Lois Kawajiri, dated September 11, 2019
- R-24 Telephone Call Log
- R-25 Carley McCloskey Weingarten Statement dated September 13, 2019
- R-26 McCloskey Statement

For appellant:

None

BRIEFS

For respondent:

Closing Statement, dated September 17, 2021

For appellant:

Closing Statement, undated, received September 20, 2021