STATE OF NEW JERSEY

In the Matter of Rhonda Harland
Camden Vicinage, Judiciary

CSC DKT. NO. 2019-1520
OAL DKT. NO. CSV 18078-18

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: JANUARY 29, 2020 BW

The appeal of Rhonda Harland, Senior Probation Officer, Camden Vicinage, Judiciary, removal effective March 9, 2018, on charges, was heard by Administrative Law Judge David M. Fritch, who rendered his initial decision on January 7, 2020. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of January 29, 2020, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge'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 Rhonda Harland.

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 29TH DAY OF JANUARY, 2020

Deirdré L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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Christopher S. Myers
Director
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 18078-18
AGENCY DKT. NO. 2019-1520

IN THE MATTER OF RHONDA HARLAND,
SUPERIOR COURT OF NEW JERSEY,
CAMDEN VICINAGE.

Paul R. Melletz, Esq., for appellant Rhonda Harland (Gerstein, Grayson, Cohen & Melletz, LLP, attorneys)

Susanna J. Morris, Staff Attorney, for respondent (New Jersey Administrative Office of the Courts)

Record Closed: November 27, 2019 Decided: January 7, 2020

BEFORE **DAVID M. FRITCH**, ALJ:

STATEMENT OF THE CASE

Senior Probation Officer Rhonda Harland (appellant) appeals the decision of her employer, the Superior Court of New Jersey, Camden Vicinage (SCNJ) (respondent), to remove her from her position for charges of conduct unbecoming a public employee, and violations of the Code of Conduct for Judiciary Employees. The appellant denies the allegations that form the basis for these charges.

PROCEDURAL HISTORY

SCNJ issued a Preliminary Notice of Disciplinary Action (PNDA) dated March 8, 2018, notifying Harland of the charges against her. (R-20.) After a departmental hearing on October 11, 2018, SCNJ sustained the following charges which were incorporated into a Final Notice of Disciplinary Action (FNDA) dated November 14, 2018, with a proposed penalty of removal effective March 9, 2018: 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), and N.J.A.C. 4A2:2-2.3(a)(12), other sufficient cause, for violation of the Code of Conduct for Judiciary Employees. (Ibid.)

The appellant timely requested a hearing and the matter was transferred to the Office of Administrative Law (OAL), where it was filed on December 19, 2018, to be heard as a contested case. N.J.S.A. 52-14B-1 to 15 and 14F-1 to 13. The matter was heard on August 7 and August 22, 2019. The record remained open for the parties to provide post-hearing submissions and, following the granting of extensions at the parties' request for additional time to complete these submissions, the record closed on November 27, 2019, upon the receipt of the parties' submissions.

TESTIMONY AND FACTUAL DISCUSSION

Robert DiGerolamo, is a detective with the Winslow, New Jersey police department (WPD), currently assigned to the WPD narcotics unit. He has been a detective for the past eleven years, and with the WPD a total of eighteen years. In January 2018, WPD received information that Irving Rogers was staying at 31 Medford Court and was involved in selling narcotics. Detective DiGerolamo was familiar with Rogers from previous law enforcement interactions. In February 2018, a confidential informant (CI) provided information that they had purchased crack cocaine from Rogers at the [redacted] address. Rogers was also known to the CI as "North." (August 7, 2019, Tr. at 18:1–5.) WPD set up two controlled buys using their CI where the CI contacted Rogers via cellular telephone to initiate a narcotics purchase. WPD accompanied the CI to the [redacted] address where WPD observed the CI meeting

with Rogers and purchasing crack cocaine from him. During these controlled buys, Detective DiGerolamo saw Rogers and the appellant's daughter, Jaida Harland, at the property, but not the appellant. (Id. at 32:17–33:9.)

Based upon the information gathered in their investigation, WPD obtained a knock-and-announce search warrant for the [redacted] address. (Id. at 22:1–7.) WPD obtained the assistance of the Camden County Sheriff's Department, Emergency Response Team (SERT) to assist in executing the warrant. On March 6, 2018, WPD and members of the Camden County Sheriff's SERT team assembled to execute the search warrant at the [redacted] address. They arrived at the house at approximately 6:00 a.m. It was daybreak, so it was not completely dark outside, but the sun had not completely risen yet. (Id. at 24:21–25.) Detective DiGerolamo observed officers from the SERT team and WPD approach the house. He saw officers from the SERT team pounding on the front door of the residence and could see someone inside the house looking out an upstairs window. Detective DiGerolamo described the SERT team's approach to the residence as:

> Q. Tell us what you observed when the SERT team went up to the door and the window.
>
> A. I observed from where I was, I observed and heard them obnoxiously banging and yelling.
>
> Q. What do you mean by "obnoxiously?"
>
> A. They're not small men, and they actually hammer pound, you know, the[y] hammer fist the door. It's actually very loud.
>
> Q. Okay. And—
>
> A. A lot of the times more of the neighbors come outside to see what's going on. That's how loud it is.
>
> [Id. at 25:1–11.]

The SERT team forced entry into the residence and, after they secured the residence, Detective DiGerolamo entered the house.

When Detective DiGerolamo entered the house, the appellant was inside on the floor near the front door. (Id. at 26:18–24.) She was not arrested at that time, but she asked for medical treatment from an EMT due to a head injury. The house had three bedrooms which were all upstairs. After going upstairs, Detective DiGerolamo entered the front bedroom where Rogers was located. Rogers was in the room with his girlfriend (the appellant's daughter Jaida Harland) and two small children in what appeared to be a "pack and play" next to the bed where Rogers and Jaida had been sleeping. (Id. at 28:15.) On the dresser, in plain view, Detective DiGerolamo found a plastic bag which contained thirteen heat-sealed baggies containing crack cocaine. (Id. at 27:12–28:6.) Detective DiGerolamo also found a digital scale containing suspected cocaine residue, and a black plate containing suspected cocaine residue and visible cut/scratch marks also in plain view on the dresser. (See R-1.) Numerous plastic baggies of the type commonly used to package narcotics were found in a dresser drawer in the room. (Ibid.)

Rogers was arrested and the evidence in the room secured. Rogers admitted that the narcotics in the room were all his (August 7, 2019, Tr. at 28:17–22), and he was charged with third-degree distribution of heroin or cocaine (N.J.S.A. 2C:35-5b(3)), third-degree distribution of narcotics near school property (N.J.S.A. 2C:35-7), third-degree possession of a controlled dangerous substance (N.J.S.A. 2C:35-10A(1)), and the disorderly persons offense of possession of drug paraphernalia (N.J.S.C. 2C:36-2). (R-1.) At the time of his arrest, Rogers told police the [redacted] address was his home address. (August 7, 2019, Tr. at 29:16–30:2.) On January 14, 2019, Rogers pled guilty to the third-degree drug possession charges and the other charges were dismissed pursuant to a negotiated plea agreement. (R-19.)

Charles Seixas, is an investigator with the Camden County Sheriff's Department (CCSD). He has been with CCSD approximately seventeen years and is currently assigned to work on the SERT team. The SERT team provides assistance to municipalities and other law enforcement agencies in the execution of search warrants. CCSD received a request from WPD on March 1, 2018, for assistance in executing a search warrant for the appellant's home at [redacted] (August 7, 2019, Tr. at

48:2–20) and Investigator Seixas was with the SERT team that executed the warrant on March 6, 2018. The warrant was executed with a team of approximately twelve law enforcement officers from SERT and WPD. The target of this warrant was Rogers, who was alleged to be selling crack cocaine out of the residence.

Prior to the execution of the search warrant, Investigator Seixas and Sergeant Kolins of the CCSD performed reconnaissance at the [redacted] address, identifying the residence and checking it for cameras or anything else that may present an issue in executing the warrant. (Id. at 49:7–23.) The warrant was executed at approximately 6:00 a.m. on March 6, 2018. (Id. at 50:1–2.) Investigator Seixas and Sergeant Kolins were the first ones to approach the residence that morning. Investigator Seixas looked inside the front windows of the residence while Sergeant Kolins knocked on the front door. (See R-3.) Investigator Seixas could see inside the residence through the large picture window located to the right of the front door. (Ibid.) There was a porch light located above the front door on the residence that was lit at the time and Investigator Seixas was standing in the light of that porch light as he was looking in the window to see inside the house. (Ibid.) Investigator Seixas was in uniform which clearly identified him as a police officer by the insignia on his vest. When he first looked into the residence, he did not see anyone inside. (Id. at 62:24–25.) He did not recall seeing any televisions on inside the residence, since that would have been a source of light and there were no visible lights on in the house at that time. (Id. at 62:19–21.)

When Sergeant Kolins began knocking on the front door, Investigator Seixas saw the appellant get up from a couch located just below the front window of the house and look at him through the window. (Id. at 52:9–16.) The couch was located below the front window just inside and to the left of the front door. (See A-1 8/7/19.) The appellant was lying on the couch with her head on the side of the couch closest to the front door. Investigator Seixas did not notice her lying on the couch until Sergeant Kolins began knocking on the door and the appellant sat up from lying on the couch. (August 7, 2019, Tr. at 63:9–17.) He told her through the window that they were police officers and were there with a warrant. The appellant was looking directly at him

through the window as he was trying to communicate with her. He recalled shouting "police with a warrant" to the appellant through the window about three or four times. (Id. at 52:17–53:5.) As Sergeant Kolins continued to bang on the front door, Investigator Seixas heard other officers there that morning say that someone was spotted looking out the upper window in the front of the house. (Id. at 53:18–21.) That person was later identified as Rogers.

Investigator Seixas saw the appellant get up from the couch and move towards the front door out of his line of sight. (Id. at 54:14–55:10.) After about ten seconds passed, and it appeared that she had retreated out of his line of sight and had not opened the front door or indicated to the officers outside that she was going to open the door, he gave Sergeant Kolins the okay to breach the door. (Id. at 55:2–13.) Sergeant Kolins forced the front door open, and he and Investigator Seixas entered the residence. When they entered the residence, Investigator Seixas saw the appellant inside seated on the floor about four or five feet inside from the door, clothed in a t-shirt. (Id. at 56:10–14.)

As the rest of the warrant team entered the residence, they proceeded to "flood" the space to secure the house. As the team entered, the appellant identified herself to Investigator Seixas as a probation officer and asked what was going on. (Id. at 56:15–18.) Investigator Seixas recognized the appellant because the CCSD provides security for probation at the courthouse and he recognized her from his time being assigned to work in that unit. (Id. at 59:2–6.) Investigator Seixas observed a lump on the appellant's forehead and called for a medic to evaluate her for injury. (Id. at 56:25–57:10.) The appellant refused medical care at the scene. (R-7.) Other officers went upstairs to secure Rogers, and anyone else who was present in the house that morning.

In his operations report, Investigator Seixas noted that the appellant told him that she had been hit in the head with the door when the door was forced open. (R-5.) Because of the location of the appellant's injuries on her forehead, Investigator Seixas believed that the appellant was looking out the peephole on the front door when the

door was forced open. (August 7, 2019, Tr. at 75:3–16.) Had she been attempting to open the door when it was forced open, he would expect the door to hit the appellant's hand, rather than her face. (Id. at 81:24–82:16.)

The appellant was not arrested at the scene. After returning to the station for a debriefing, they reviewed the warrant execution with their supervisor. Their supervisor asked why the appellant was not charged with obstruction for failing to open the door and it was determined that she should be criminally charged with obstruction. Sergeant Kolins returned to the residence, accompanied by a WPD officer, to arrest the appellant and charge her with obstruction of justice.

Zachary Kolins, is a sergeant with the CCSD. He has been with the CCSD since 2012. He is currently the sergeant in charge of court security and special operations and is a team leader with the SERT team. He was part of the SERT team which executed the search warrant at the appellant's residence on March 6, 2018. Sergeant Kolins served as the "breacher" on that team. (Id. at 88:15.) He also accompanied Investigator Seixas to do reconnaissance at the home before executing the warrant. This reconnaissance consisted of driving by the residence, taking pictures of the house, checking for any signs of cameras, dogs, or anything else that they would need to know prior to entering the residence.

When the warrant was executed the morning of March 6, 2018, Investigator Seixas led the approach to the house. Investigator Seixas went to cover the window because that was a "danger spot" where someone could potentially come out of the house and harm the officers. (August 7, 2019, Tr. at 89:19–25.) Detective Houck was also a "breacher" on the team that morning. Detective Houck was at the door of the house knocking while Sergeant Kolins positioned himself to the left of the door, between the door and window in the front of the house. (See R-3.) Sergeant Kolins maintained this position so he would not be in Detective Houck's way. (August 7, 2019, Tr. at 90:19–23.) There was an outside light located above the door which was on and illuminated the officers who were in front of the house at that time.

Detective Houck began to bang on the door. The knocking started with a "regular knock" to see if it elicits a response from anyone inside, but then got louder. (Id. at 91:2–3.) Detective Houck's knock was "loud enough that people on the second floor woke up and came to the window." (Id. at 91:6–7.) Sergeant Kolins heard Investigator Seixas report a female was on the couch inside the home on the other side of the front window. He heard Investigator Seixas knocking on the window and telling the person inside the house that they were police there with a warrant and ordering her to open the door. (Id. at 91:15–18.) He heard Investigator Seixas repeating the command to the person inside on the couch. (Id. at 91:15–22.) Sergeant Kolins could see the appellant through the window as she stood up from the couch, and he saw her retreat into the residence where he lost sight of her. (Id. at 92:1–10.) He also heard other officers at the scene report that they saw an individual, who was later identified as Rogers, looking out the front window on the second floor of the house. (Id. at 92:10–15.) This concerned Sergeant Kolins because he knew that people inside the house knew they were there and why they were there but were not opening the door. This worried Sergeant Kolins because persons inside the house could be destroying evidence or preparing to ambush officers upon entry to the house and jeopardizing their safety. (Id. at 92:16–93:4.) Sergeant Kolins and other officers serving the warrant that morning were attired in black uniforms with vests spelling "sheriff" clearly on the front of the vest to identify them as police officers. (Id. at 94:5–13.)

The appellant was out of view for at least ten seconds, a period which "seemed like forever" to Sergeant Kolins as he and the other officers waited outside to enter the residence. (Id. at 94:14–22.) There were no communications from inside the house to alert officers outside that anyone was coming to open the door and, after waiting "more time than we probably should have" with no response from inside the house, Investigator Seixas called on him to breach the front door. (Id. at 95:12–20.) Sergeant Kolins utilized a battering ram to force the door open. The door remained on the hinges as it opened, but it did not make it all the way open before hitting something. (Id. at 96:8–10.)

Sergeant Kolins confirmed that the couch the appellant was lying on when the officers arrived was located below the window in the front of the house about three feet next to the front door. He estimated that it would take two seconds at most to go to the front door from the couch based on where the couch was located in the house that morning. (Id. at 97:16–25.) Sergeant Kolins was one of the last officers to enter the house after the door was opened. Because the house is fairly small, they were able to clear the house quickly with the twelve officers on the warrant team.

The appellant was inside the residence when he entered it, and she was being secured by police officers. She had a lump on her head, and Sergeant Kolins was inside the house when the medics arrived to check the appellant. The job of the SERT team is to "go in, render the residence safe, detain the individuals inside the residence so detectives could come in and safely do their search for whatever their investigation is." (Id. at 99:18–21.) After the house was secured, the SERT team left the residence to allow the detectives to search the home. After leaving the home, the SERT team remained on the scene outside to provide perimeter security during the search.

After executing the search warrant, Sergeant Kolins and Investigator Seixas reviewed the search warrant execution in a debrief with their supervisor, Chief Warrant Officer Fetzer. After hearing about the appellant's failure to open the front door when ordered to do so by the officers at the scene, Chief Fetzer asked if the appellant was charged with obstruction. When they said no, the Chief agreed that the appellant had committed obstruction, and Sergeant Kolins returned to the residence where he was met by members of the WPD to arrest the appellant and charge her with obstruction of justice. Sergeant Kolins typed up the criminal complaint against the appellant charging her with obstruction of justice, in violation of N.J.S.A. 2C:29-1A, a disorderly persons offense. (See R-6.)

Gil Velasquez, Chief Probation Officer, Camden Vicinage, oversees approximately 191 people in the Camden Vicinage's probation division. The probation division has three units: adult supervision, juvenile, and service and collection. The position of a probation officer (PO) requires integrity and the officers should set a living

court officers. (R-11.) This code governs POs both on and off-duty, as they are judiciary employees twenty-four hours per day, seven days per week, and need to be mindful of appearances of impropriety at all times.

The appellant began as a PO in 2004. (See R-8 (appellant's oath of office).) She began as a PO in the juvenile unit, worked in the domestic violence unit, and then in the community service and collections unit, where she was assigned in March 2018. This unit works with the adult supervision unit. POs in that unit are required to see clients under their supervision, account for probationers' community service obligations, and may even have to testify in court regarding the completion or non-completion of those obligations.

The code of conduct for judiciary employees, Cannon 3, requires judiciary employees, like the appellant, to "observe high standards of conduct so that the integrity and independence of the courts may be preserved, and shall avoid impropriety or the appearance of impropriety." (R-10 at 5.) Judiciary employees all receive training on the judiciary code of conduct, and the appellant specifically acknowledged receipt of the code of conduct in February 2013, January 2014, January 2015, January 2016, January 2017, and January 2018, as well as attended training on the code of conduct on January 30, 2014. (R-12.)

The judiciary, and its employees, has an "obligation to maintain a high degree of integrity and to avoid any actual, potential or appearance of partiality or conflict of interest in the adjudication or handling of all cases. Even the appearance of a potential conflict of interest undermines the core values of the New Jersey Judiciary and hampers its mission." (R-11.) Judiciary employees, like the appellant, are required to report to their senior manager whenever they, or a member of their immediate family, is involved in any matter pending in a New Jersey state or municipal court. (Ibid.) As a judiciary employee, the appellant received specific training since her hiring on the judiciary code of conduct which is recorded in her personnel training transcript. (R-12.)

In the fall of 2017, the appellant submitted a written "personal or family member involvement in litigation form" to the Camden trial court administrator. (R-9.) This form reported that the appellant's daughter, Jaida Harland, was in a "car with her boyfriend, [Rogers][,] when he was arrested." (Ibid.) The report further stated that the appellant had "no knowledge of [Rogers'] charges or any court appearance" and that "[Rogers] does not reside in my home." (Ibid.) After this report was received, it was confirmed that Rogers was, at that time, currently under probation's supervision by the Camden Vicinage. After learning of Rogers' association with the appellant through his relationship with her daughter, the trial court administrator, in conjunction with the assignment judge, transferred Rogers' probationary supervision to another vicinage. The appellant was not subjected to any discipline as a result of the reported incident from November 2017. (August 7, 2019, Tr. at 160:8–17.)

Even without pending litigation, Velasquez believed that the appellant had an affirmative obligation to notify the court once her daughter became involved with an individual currently under probationary supervision. (Id. at 155:10–17; Id. at 160:18–161:11.) This disclosure would be required to avoid giving the appearance that anyone was receiving preferential treatment because they are involved with someone who is the immediate family of a probation officer. (Id. at 156:2–15.) This appearance of impropriety could be as simple as someone showing up for their probation reporting and saying "hey" to a probation officer whom they know on a personal level. (Id. at 156:16–23.) This alone could lead someone to believe "oh, he's getting special treatment because he knows her." (Id. at 156:21–25.) The court would need to know about these relationships because they may need to make appropriate changes, either reassigning the officer, or the person on probation, to avoid the appearance of impropriety. (Id. at 157:1–3.)

Human Resources contacted Velasquez in March 2018 and told him that a search warrant was executed at the appellant's home. (Id. at 137:3–20.) Velasquez also learned that there was alleged narcotics activity at the appellant's home and that she was arrested and charged with obstruction. (Id. at 138:1–10.) Velasquez was aware that the appellant went to trial on the obstruction charge and was subsequently

found not guilty; however, the perception and public trust was damaged by the criminal charge regardless of whether or not the appellant was convicted. (Id. at 139:17–140:6.) This matter also directly involved an individual who was, until recently, under probation supervision by the Camden Vicinage, creating a further appearance of potential impropriety. Although POs are supposed to notify the trial court supervisor if they are arrested, the appellant did not notify the court of her arrest, Velasquez heard about the arrest through other means. (Id. at 143:3–24. Id. at 142:4–13 (Velasquez explaining he heard about the appellant's arrest "from people" talking about it the day it happened).)

Velasquez has known the appellant for a while, and he has supervised her since becoming chief in 2015. (Id. at 145:8–11.) He is not aware of any prior discipline issues with the appellant. (Id. at 145:12–17.)

Jim Grazioli, is the human resources manager for the Camden Vicinage where he has worked for over twenty-four years. Grazioli reports to the trial court administrator and the assignment judge. (Id. at 162:23–25.) All judiciary employees receive a copy of the judiciary employee code of conduct upon hire, and they are required to sign off each year to acknowledge that they have received a copy of the code. (Id. at 163:7–18.) They are also required to attend specific training on the code of conduct. (Id. at 163:18–24.)

Cannon 3 of the judiciary employee code of conduct requires employees to avoid actual or even the appearance of impropriety. (Id. at 164:6–16.) POs, like the appellant, must adhere to an even higher standard because they enforce the orders of the court. (Id. at 164:17–25.) "Any time an employee is made aware of any kind of conflict, a potential conflict, they must report it. They must report it not to the division managers, not to even human resources. They report it directly to the trial court administrator, as much information as they know, and they need to do it as soon as possible." (Id. at 165:6–15.)

Grazioli received a call around 8:00 a.m. on March 6, 2018, from the assignment judge in the Camden Vicinage. (Id. at 166:3–10.) The assignment judge relayed that

they were informed of the appellant's arrest by the sheriff's office. (Ibid.) Grazioli took the information from the assignment judge and contacted counsel's office within the Administrative Office of the Courts. He also confirmed with Velasquez that the appellant was, at that time, still an active judiciary employee and not on leave, and provided Velasquez with "the generalities of what happened." (Id. at 167:10–13.)

The vicinage made the determination that, because of the presence of the narcotics in the appellant's home and her lack of cooperation with the sheriff's department in the execution of the search warrant, they would immediately suspend the appellant for violation of the judiciary's code of conduct, and conduct unbecoming, and move towards termination of her employment. (Id. at 167:21–168:11.) The appellant was given a PNDA and the union appealed it before a hearing officer. The hearing officer affirmed the charges, and a FNDA was issued. (Id. at 169:1–19.)

The fact that the appellant was subsequently found not guilty on the charge of obstruction had no impact on the decision of the vicinage to move forward with the appellant's termination. (Id. at 169:17–22.) Her termination was based on her violation of the Code of Conduct for Judiciary Employees rather than a criminal conviction. (Id. at 169:22–170:3.) The appellant "was disciplined as a judiciary employee with our Judiciary Code of Conduct . . . for having drug paraphernalia in her home as well as not cooperating with law enforcement." (Id. at 170:17–22.) As a PO, Grazioli believed Harland should have the whereabouts to know what is going on in her own home when something like this is occurring. (Id. at 171:5–16.) The individual who was selling narcotics was living in the appellant's home, and gave the appellant's address as his home address to police when he was arrested. (Id. at 171:23–172:1.) The appellant knew that Rogers had a criminal history, she already reported one of his prior arrests in 2017. (Id. at 172:11–14.) "As a [PO] upholding the law and enforcing the law, she should not have been—she should have taken herself out of that situation somehow" knowing Rogers' background and history with drugs. (Id. at 172:17–22.) In addition, they considered the appellant's "lack of cooperation of cooperating with law enforcement when they gave her an order to open the door." (Id. at 172:22–24.)

Irving Rogers testified that he is not related to the appellant or her husband but is in a relationship with their oldest daughter, Jaida. (August 22, 2019, Tr. at 8:10–25.) He currently lives with Jaida and their children and has lived with her since March 2019. (Id. at 9:1–14.) Rogers has known Jaida since high school. (Id. at 16:2–6.) They re-connected some time in 2015 and have been together ever since. (Ibid.) They have a one-year-old daughter together, "J." Jaida also has a five-year-old son whom Rogers refers to as "their" child (id. at 9:10), but the appellant's testimony clarified that Rogers was not the biological father of Jaida's son. (Id. at 165:2–10.) In October 2017, Rogers was homeless, spending time staying at friends' houses, but also spending time with Jaida and her son. (Id. at 16:12–17.) At this time, Rogers was on probation being supervised out of Camden County for a drug charge from 2015. (Id. at 15:12–21.) He was in a car with Jaida and her son, as well as another person who was driving the car, but Rogers could not remember the driver's name. (Id. at 27:11–16.) Jaida was pregnant with their daughter at the time and Rogers was arrested and charged with drug offenses. Rogers was still enrolled in a Drug Court program being supervised out of Camden County for those charges as well as the new drug charges from his arrest in March 2018. (Id. at 17:20–25.)

On March 6, 2018, Jaida was living with her mother in her mother's home on [redacted] along with her children. At this time, her son was two years old, and their daughter, "J," was an infant. Jaida and the children moved into the [redacted] house around February 2018. (Id. at 15:7–11.) Rogers was familiar with the appellant's house and had helped her and her family move into the home. (Id. at 34:16-18.) He went to the appellant's home the evening of March 5, 2018, around 9:30 or 10:00 p.m. and snuck into the house through the back door which was left unlocked. The appellant was sleeping on the couch when he arrived. Jaida met him in the kitchen (id. at 11:3–12), and he snuck upstairs to spend the night in Jaida's room with her and the children. After entering the house, he crouched down as he went upstairs to make sure the appellant wouldn't see him entering the home as he went upstairs to Jaida's room. The appellant had told him in the past that he was not allowed to be in her house, but she did not know he was sneaking in and staying there. (Id. at 12:10–24.) The

appellant's husband had also previously told Rogers to stay away from the appellant's house. (Id. at 28:17–22.)

Although the appellant had told him that he was not welcome at her house, he was sneaking into her house and staying with Jaida and the children each night during this time. (Id. at 37:21–24.) He was homeless and Jaida was helping him sneak into the house. He had been caught by the appellant at least twice in the first month or so that they lived in the house, and the appellant had told him to not be in her house each time. (Id. at 20:12–17.) One time, the appellant came upstairs because the baby was crying, and she saw Rogers upstairs. The other time, he was leaving the shower upstairs and the appellant spotted him in the upstairs hallway. (Id. at 31:10–23.) Both times, the appellant told him to get out when she caught him in her house. (Id. at 31:24–32:4.)

The appellant's house had three bedrooms, and the appellant's bedroom was upstairs along with Jaida's and her sister's bedrooms. (Id. at 25:24–26:6.) The appellant kept her clothing in her bedroom but did not use that room much and regularly slept downstairs on the couch. (Id. at 26:7–8; Id. at 30:1–7.) The morning of March 6, 2018, Rogers was upstairs in Jaida's room with the two children when he heard the police banging on the front door. (Id. at 11:19–24; Id. at 21:1–7.) He heard them announce that they were police officers and had a search warrant and heard them calling out to him using his nickname "North." (Id. at 11:24–12:1.) He got dressed and heard the front door being kicked in. (Id. at 12:10–16.) He was detained by the police officers using zip ties during the search and was charged with narcotics offenses as a result of the material recovered during that search. (Id. at 21:18.) When WPD officers asked him for his address when he was being arrested, he gave them the appellant's [redacted] address as his address. (Id. at 22:1–16.) He did so because he "was nervous at the time" but, he "definitely was not staying there." (Id. at 22:10–16.)

Rogers testified that he was not living at the appellant's house during this period, but he admitted that he was sleeping there at night and also dealing drugs out of the house during the afternoon, when the appellant was not home. (Id. at 23:9–11.)

Although Rogers did not have a key to the house, Jaida would let him in (id. at 23:15–22), but she was unaware that he was dealing drugs from the house. (Id. at 23:23–25.) During the execution of the search warrant, police found a plastic bag containing thirteen individually packaged baggies of crack cocaine on the bureau in the room he was sleeping in. (Id. at 24:19–24.) Police also recovered a digital scale that was "probably on the little dresser right there by the bed" in plain view in the bedroom. (Id. at 24:25–25:7.) The bag of flat plastic bags recovered inside the dresser were there "for, like different various reasons" but "weren't cocaine bags" (id. at 25:8–12) and the flat black plate the police recovered next to the dresser was not used by him. (Id. at 25:15–18.) The narcotics and the scale were Rogers', but he did not keep them at the house. (Id. at 40:17–24.) Rogers testified that he brought those items with him when he snuck into the house that evening and unpacked them in the bedroom after everyone else was "asleep and not paying attention." (Id. at 41:3–14.)

Rogers testified that the appellant did not know that he was dealing drugs from her house. (Id. at 33:17–34:1.) He believed that "[n]obody knew what I was doing at all. That's how discreet I was about it." (Id. at 34:1–2.)

Morris Harland testified that he was married to the appellant, although they are currently separated. Mr. Harland knew Rogers, who was dating his daughter Jaida, but he and Rogers "didn't click." (Id. at 44:9.) Mr. Harland tried to get Rogers out of Jaida's life, but "[i]t was like a Romeo and Juliet type thing. Every time I turned around, he was there and I tried to get rid of him every time." (Id. at 44:14–16.) His wife also tried to keep Rogers away from their family, trying "even harder than I did." (Id. at 44:19.) At one point, Jaida ran off to North Carolina with Rogers sometime around 2000 (id. at 50:21–24), but they "went and got her." (Id. at 44:21–22.) After they brought Jaida back to New Jersey, Rogers followed her back about two months later (id. at 44:22–25) and "[h]e's been appearing ever since." (Id. at 44:25–45:1.)

The appellant "lived her probation life." (Id. at 46:7–8.) She did "everything" as a probation officer. (Id. at 46:8.) "She cut off some of her family members because they weren't doing the right stuff in their life so she couldn't be around them." (Id. at

46:9–10.) Morris Harland and the appellant separated around August 2017. (Id. at 47:4–9.) He first met Rogers some time in 2016. (Id. at 48:9-11.) He did not know about Rogers' criminal history at that time, but he did not like him. He said that he could "tell the type of person" Rogers was, and he "pre-judged" him based on "the ins and outs, the way he moved" (id. at 48:20–23) and that Rogers did not have a job or plans for the future.

Mr. Harland did not know about Rogers' 2015 narcotics arrest and conviction, and he was sure if his wife knew about it, she would have told him at the time. (Id. at 49:1–8.) He learned that Rogers was on probation sometime around 2017, and he advised his wife that "we've got to get that out there. You've got to say something [to the Camden Probation Department] or we're going to be—you're going to be in a jam." (Id. at 49:18–21.) His wife told him about a conversation she had with her chief probation officer in January 2017, where she was asked about Rogers and why she did not report the relationship between their daughter and Rogers. (Id. at 54:16–24.) She was concerned that she was "going to lose [her] job because they're approaching me with this." (Id. at 55:1–2.)

When Mr. Harland was living with the appellant, he told Rogers "not to do anything crazy around my house" but he never caught Rogers trying to sneak into the house when he lived with the appellant. (Id. at 50:8–20.) There was an incident while he was living with the appellant when police came to their house to look for Rogers (Id. at 51:1–15.) Rogers, however, was with their daughter in North Carolina at the time.

About a week or two after she moved to her current house, the appellant was complaining to him that she did not want Rogers around their daughter. (Id. at 53:19.) She told Mr. Harland that "I think [Rogers] has been staying in the house. I don't know but I really got this feeling he's been in the house." (Id. at 53:23–25.) While Mr. Harland couldn't really do anything "without hurting this guy" (id. at 54:4), the appellant knew that "[s]he can't have the guy in the house." (Id. at 54:8–9.) the appellant was concerned about Rogers sneaking into the house at night, and she was sleeping on the couch at night "trying to catch him." (Id. at 52:12–20.)

S.H., the appellant's daughter, is seventeen years old, and currently lives with her father, Morris Harland. She was living with her mother and sister in March 2018, and they had been living in that house about three weeks at that time. She knows Rogers, who is her sister's boyfriend. She rarely saw Rogers at the house because she was usually at school all day and had cheerleading after school. Her mother was usually home by the time she got home, "so I would never really see him, unless he was getting the kids or something or picking something up." (Id. at 58:22–23.)

When the police came to the house in March 2018, S.H. was already awake and in the bathroom at the time. Her alarm goes off at 6:00 a.m., and her mother usually calls upstairs to her at 5:45 a.m. to make sure she gets up on time. (Id. at 59:7-11.) That morning, her mother had already called upstairs to wake her up (id. at 63:13–19), and she was already awake for "a couple of minutes before they came in." (Id. at 59:10–11.) She heard the police knocking on the door, and "within like 10 seconds" there was "like a big boom and I heard them running up the steps." (Id. at 59:22-24.) S.H. did not know anything about the narcotics or paraphernalia found in the house and did not believe her mother did either. Growing up, her mother did not want her getting in trouble at school, "like no nothing that would interfere with her job." (Id. at 60:14–15.)

With respect to Rogers being in her mother's house, her mother "didn't want him there." (Id. at 60:19–21.) Both her mother and father told Rogers that "he couldn't be around, he couldn't stay there" after they moved to their house on [redacted] (Id. at 65:12–16.) S.H. never witnessed Rogers dealing any drugs out of the house, she was in school during that time, and she never gave him a key. She did not know that Rogers was staying in the house in her sister's room because "she always kept her door shut at night," and she "never knew what was going on in there." (Id. at 63:22-25.)

Jaida Harland, the appellant's daughter, testified that she was living at her mother's house on [redacted] starting in February 2018. She was living there the morning of March 5, 2018, along with her children and she would "usually sneak [her boyfriend, Rogers,] in at nighttime." (Id. at 67:7–11.) "In the beginning" her mother was

"okay, but after awhile, she didn't want him there." (Id. at 67:13–14.) Her father did not like Rogers either. (Id. at 67:16–16.) Her mother did not know Rogers was coming over to the house and staying in her room in March of 2018. (Id. at 67:17–20.) Usually, she would sneak Rogers out of the house "in the morning before my mom would wake up." (Id. at 68:4–5.)

On the morning of March 6, 2018, she was asleep, but heard the police banging on the front door. (Id. at 69:6–8.) She peeked out the window, and that's "when they busted the door." (Id. at 69:8–9.) Her mother had already been awake that morning to wake up her sister for school but had gone back to bed. (Id. at 69:14–18.) The drugs that the police found in the room she was sleeping in belonged to Rogers, but neither she nor her mother knew anything about them. (Id. at 69:19–25.)

She reunited with Rogers sometime in 2015. (Id. at 71:6–8.) At that time, Rogers was on probation, and he told her that he was on probation. (Id. at 71:20–24.) She told her mother about Rogers' arrest in 2017, explaining that "we were pulled over and the drugs were found in the trunk and he took the charges." (Id. at 73:15–16.) In February and March 2018, she was working during the day, so she was not usually home in the afternoons, but she did have the occasional day off. (Id. at 74:10.) She normally snuck Rogers into the house in the evening and back out of the house in the morning before her mother went to work. (Id. at 75:10–76:3.) Rogers could still get back into the house during the day because "[t]he door was never really locked." (Id. at 76:4–9.) She did not know anything about Rogers dealing drugs out of the home during the day when her mother was at work. (Id. at 76:10–17.) Her mother was okay with Rogers coming to the house to see the children for short periods of time, but not with him living there. (Id. at 76:8–25.)

Regarding the narcotics and other items recovered by police from the bedroom during the execution of the search warrant, she had heard there were drugs and a scale recovered "on the dresser or something," but did not recall seeing any of these items. (Id. at 78:25.)

Rhonda Harland, the appellant, testified that she is currently staying with her mother in [redacted], New Jersey. Her daughter Jaida currently has her own apartment and her other daughter lives with her father, Mr. Harland, in [redacted] She and her husband are currently separated.

Mrs. Harland worked as a PO for the past fourteen years. (August 22, 2019, Tr. at 82:10.) When Rogers first got back into her daughter's life, she "knew that he had went through things in his life as a juvenile." (Id. at 83:15–16.) From her experience as a PO, and working with juveniles in the past, she tried to "mentor him in a way, in the beginning" to help him "change [his] life." (Id. at 83:17–19.) After she realized that Rogers was not going to change, she "wanted him away." (Id. at 83:22.) Because of her job as a PO, she could not have "any negativity around." (Id. at 83:24.) As a PO, she would not "jeopardize [her] career for anybody doing anything negative, even my kids." (Id. at 84:4–5.)

Mrs. Harland knew through her daughter that Rogers was on probation, but she did not know exactly why and did not "ask any specific details." (Id. at 84:15–16.) When she returned to work in January 2017 after a personal leave, her chief called her into his office with her supervisor and assistant chief. Her chief asked her if she knew Rogers, and she told him that Rogers was her daughter's boyfriend. (Id. at 84:22–24.) Her chief asked if she knew Rogers was on probation, and she told them "I heard that he was on probation but I don't know why and I don't know who he is supervised by." (Id. at 85:25–86:2.) Her chief confirmed that Rogers was on probation. At that time, Rogers and Jaida were living together in a separate apartment in Sicklerville, New Jersey, although that living arrangement "didn't last." (Id. at 168:2–18.)

She never allowed Rogers to stay at her house overnight. If he stayed at her house, it was because her daughter allowed it. Sometime around August or September 2016, when she was living with her husband, she tried to contact WPD to tell them that "I think he [Rogers] is doing criminal activities. I don't want him in my house" and asked if they could remove him from her house, but WPD couldn't do anything. (Id. at 85:22–86:11.) She and Rogers "always had this going on" and she told everyone

around her, including her husband, that she "cannot have him around me because of my career." (Id. at 86:19–23.) The appellant also reported that "maybe March or April or May 2017," she contacted the WPD regarding Rogers. (August 22, 2019, Tr. at 126:2–5.) At that time, she was living with her husband, their daughters, and one grandchild. (Id. at 126:10–127:8.) She called 911, and the police responded to the house. (Id. at 126:15–24.) She told the WPD officers that Rogers "was disrespectful to me" during an argument, and that he had to leave the house. (Id. at 127:13–20.) She also told police that she "believed that [Rogers] sells drugs" and that he was on probation. (Id. at 128:19–24.) As a probation officer, "it's a conflict for him to be around me" and "I do not want to get into any trouble and he is bringing negativity into my home." (Id. at 128:19–24.)

After she moved to her new house in February 2018, she caught Rogers in that house on two occasions. Each time, she "went ballistic" and threatened to call the police if he did not leave her house immediately. (Id. at 87:14–16.) She was aware that he had been involved in "a major drug deal" in October 2017, and she did not want him around. (Id. at 87:17–22.)

The morning of March 6, 2018, she was sleeping on the couch downstairs. She always sleeps downstairs on the couch because she has a "great big, giant TV" down there and she often sleeps with the television on. (Id. at 88:12–14.) While her bedroom was upstairs, she "didn't sleep in it." (Id. at 143:1–5.) She only kept her clothing in that room. (Ibid.) She woke up that morning to wake her daughter for school at 5:45 a.m., like she does every morning. (Id. at 88:17–18.) She usually wakes her daughter up by calling her on the cellular phone, telling her it is time to wake up, and then she goes back to sleep until her daughter leaves for school around 6:40 a.m. each morning. (Id. at 88:19–24.) That morning, however, her phone was not working, so she had to yell upstairs to tell her daughter to get up. (Id. at 151:19–22.) After her daughter leaves for school, she gets up and gets ready for work and leaves the house around 7:30 a.m. (Id. at 88:24–89:1.)

Appellant recalls "somebody knocking on my window, not on the door" that morning. (Id. at 89:3–5.) She woke up and saw a police officer looking in the window, and she looked at him "eye to eye." (Id. at 89:7.) She immediately identified him as a police officer, noting "I consider myself in the community of law enforcement, so right away, I know this is a police office[r]." (Id. at 89:9–11.) She denied hearing the knocking on the door, or anyone yelling to open the door that they have a warrant. (Id. at 154:17–20.) She got up off the couch and went to the door, but she was still "a little bit not clear what was going on." (Id. at 89:15–16.) As she reached to open the door, "they kicked the door in" and her hand was injured by the door. (Id. at 89:16–19.) "If they given me 11 seconds, maybe I would have had that door open, instead of 10 seconds." (Id. at 102:14–16.) She testified that her "hand was hit because I'm going to open the door and my head was hit when they kicked it" causing her to drop to the floor.[1] (Id. at 89:23–24.)

When she went to sleep the night before, appellant had no idea that Rogers was coming into the house or was staying in the house. (Id. at 90:15–19.) She went to sleep that night around "9:30ish, 10 o'clock" on the couch by her television. (Id. at 91:4.) She did not know where Rogers was staying during this time, she "never really paid attention to where [he] resided." (Id. at 91:13.) After the search of her house, the police left the house, but came back about thirty to forty-five minutes later and placed her under arrest for obstruction. (Id. at 92:1–18.) The officers allowed her to text her supervisor from the police station to let them know she would not be at work that day. (Id. at 93:4–12.) After she was released and returned home, she contacted her union representative. (Id. at 93:24–25.) When she called them that day, they already knew and told her that she was being suspended without pay and could not return to work. (Id. at 94:3–8.) She tried to report it to her employer, but "it was already reported from the Sherriff's so they already knew." (Id. at 94:14–16.) She was sent written notice

[1] Mrs. Harland testified that the door hit her hand and injured it, and she offered her medical records from Urgent Care on March 6, 2018, to show evidence of her injuries to her head and wrist and that "both injuries were as a result of them coming into—me actually trying to open the door." (August 22, 2019, Tr. at 109:14–20.) The contemporaneous medical report from her visit to Urgent Care on March 6, 2018, however, records that she reported to treating medical professionals there that "police entered her home by kicking her door in" and causing the "door to hit the [patient] in the head" causing bruising and knocking her over and "possibly breaking weight with [her] left hand" causing pain in her left wrist. (A-13.)

dated March 8, 2018, informing her that she was suspended without pay effective March 9, 2018, but she "never spoke with anybody in administration about what happened besides my union. (Id. at 107:1–3. See A-12.)

In October 2017, appellant's daughter was in a car with Rogers when he was arrested. (See R-9.) Her daughter was pregnant with Rogers' child (the appellant's granddaughter) at that time. (August 22, 2019, Tr. at 130:13–131:5.) She was staying with her mother at the time, and she received a phone call from her husband telling her that their daughter had gotten into some kind of trouble. (Id. at 132:20–25.) She talked to her daughter and learned the details that they were in a car with a female driver when they got pulled over and police found drugs in the car. (Id. at 133:8–19.) Although appellant's daughter was not arrested, Rogers claimed ownership of the drugs in the car and he was arrested. (Id. at 133:25–134:1.) Appellant filled out the litigation reporting form and submitted it to report this incident "even though [Rogers] wasn't my child, he's no relation to me" her daughter was still in the car. (Id. at 134:18–22.) Although she knew that Rogers was arrested on drug charges (id. at 135:2–5), she filled out that she had "no knowledge of any charges" on the reporting form. (R-9.) While her daughter knew when she and Rogers got back together in 2016 that he had a history of criminal drug charges, Mrs. Harland says that she didn't "know anything about that" at the time. (Id. at 137:13.) Mrs. Harland believes that her actions did not violate the Code of Conduct, and she "always did the right thing as a probation officer." (Id. at 160:13–14.) She believed that she "did everything [she] was supposed to do" and she did not "think that [the] incident on March 6th, had anything to do with a code of conduct on my behalf–nothing." (Id. at 160:16–20.)

FACTUAL FINDINGS

Based upon the testimony and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** the following **FACTS** are uncontested on the record:

1. The appellant has been working as a PO for the Superior Court, Camden County vicinage, for the past fourteen years. (August 22, 2019, Tr. at 82:10.)

2. As an employee of the New Jersey Judiciary, the appellant was subject to the Code of Conduct for Judiciary Employees and other policies and practices implemented for all judiciary employees including a requirement to avoid even an appearance of impropriety (R-10) and a policy requiring judiciary employees to report involvement of themselves or immediate family members in litigation or adversarial proceedings to their senior manager. (August 7, 2019, Tr. at 122:9—123:1; Id. at 126:5–129:22; R-11.) During the course of her employment with the judiciary, the appellant received regular and extensive training on this code of conduct and its implementation. (See August 7, 2019 Tr. at 130:2–132:1; R-12.)

3. Sometime in 2015, Rogers resumed a relationship with the appellant's daughter, Jaida. (Id. at 16:2–6.)

4. At the time they reunited, Rogers told Jaida that he was under probationary supervision. (Id. at 71:20–24.)

5. Rogers' probation at that time was for a criminal charge of possession of a controlled dangerous substance with the intent to distribute, a fourth degree offense, in violation of N.J.S.A. 2C:35-5B(12) and 35-5A(1) which Rogers pled guilty to on September 21, 2015. (R-17.)

6. The appellant knew, through her daughter, that Rogers was under probationary supervision. (August 22, 2019, Tr. at 84:15–16.)

7. Rogers and Jaida have a one-year-old daughter together who was born in December 2018. (Id. at 9:1–6; Id. at 164:1–5.)

8. Jaida also has a five-year-old son whom Rogers refers to as "their" child, however, Rogers is not the biological father of this child. (Id. at 9:10; Id. at 165:2–10.)

9. In August or September 2016, while still living with her husband, Morris Harland, the appellant tried to contact WPD to report her suspicions that Rogers was "doing criminal activities" and asked for them to remove Rogers from her house. (Id. at 85:22–86:11.) WPD told the appellant that there was nothing they could do at that time. (Ibid.)

10. In January 2017, the appellant was called into a meeting with her supervisor and assistant chief who asked her if she knew Rogers and if she was aware that Rogers was on probation. (Id. at 84:17–86:7.) At that meeting, the appellant indicated that she was aware that Rogers was on probation, and that fact was confirmed for her by her supervisors. (Ibid.)

a. In January 2017, Rogers and Jaida were living together in an apartment in [redacted] however, that living arrangement did not last. (Id. at 168:1–18.)

b. Following this meeting, Rogers' probation remained supervised out of the Camden Vicinage. (Id. at 167:20–23.)

11. Sometime between March and May 2017, the appellant was living with her husband, their daughters (including Jaida), and grandchild, and she contacted the WPD by calling 911 following an argument with Rogers to ask WPD to remove him from her home. (Id. at 126:2–127:20.) She also reported to WPD that she believed Rogers was selling drugs and was on probation, noting to WPD that it was a conflict for her to have Rogers around. (Id. at 128:19–24.)

12. The appellant and her husband separated sometime around August 2017. (Id. at 47:4–9.)

13. In October 2017, Rogers was still on probation being supervised out of Camden County. (Id. at 15:12–21.)

a. At this time, Rogers was homeless, spending his time staying at friends' houses, and also spending time with Jaida and the children. (Id. at 16:12–17.)

b. Neither the appellant, nor her husband, agreed to allow Rogers to stay overnight in their house. (Id. at 85:15–20; Id. at 44:14--16.)

c. Despite the efforts of the appellant and her husband to keep Rogers away from their daughter, he remained in Jaida's life. (Id. at 44:22–45:1.)

14. On October 13, 2017, Rogers was in a car with Jaida and her son, as well as another person who was driving the vehicle. (Id. at 27:11–16.) Jaida was also pregnant with Rogers' daughter at the time.

a. The vehicle they were in was pulled over by law enforcement, and illegal narcotics were found in the trunk of the car. (Id. at 73:15–16.)

b. Rogers took responsibility for the illegal narcotics found in the car, and he was criminally charged with manufacturing/distribution of a controlled dangerous substance (in violation of N.J.S.A. 2C:35-5A, a third degree crime), possession of a controlled dangerous substance (in violation of N.J.S.A. 2C:35-10A, a third degree crime), and failure to surrender a controlled dangerous substance to law enforcement (in violation of N.J.S.A. 2C:35-10C, a disorderly persons' offense). (See R-18.)

c. Rogers pled guilty to one count of possession of a controlled dangerous substance, in violation of N.J.S.A. 2C:35-10A(1), a crime of the third degree, on January 14, 2019 as a consequence of this arrest. (Ibid.)

15. On October 24, 2017, the appellant filed a confidential reporting form with the Superior Court, reporting that her daughter "was in a car with her boyfriend [Rogers] when he was arrested." (R-9.) The appellant also indicated on this reporting form that she had "no knowledge of any charges or court appearance" and that Rogers "does not reside in my home." (Ibid.)

a. After this report was filed and it was confirmed that Rogers was presently on probationary supervision in the Camden Vicinage, the trial court administrator, in conjunction with the assignment judge, transferred Rogers' probationary supervision to another vicinage. (August 7, 2019, Tr. at 136:20–23.)

16. In February 2018, the appellant, her two daughters, and her two grandchildren moved into a new home at [redacted], New Jersey. (August 22, 2019, Tr. at 87:1–4.)

a. Both the appellant and her husband told Rogers to stay away from the appellant's home. (Id. at 12:10–24; Id. at 28:17–22.)

17. Despite both the appellant and her husband telling Rogers he was not welcome at the appellant's house, Rogers was homeless at this time and slept in the appellant's house each night, staying in an upstairs bedroom with Jaida and the children. (Id. at 37:21–24.)

18. On two separate occasions during the first month she was living in the Medford Court address, the appellant discovered Rogers was staying in her house. (Id. at 87:14–16.) On both occasions, the appellant told Rogers to leave her house. (Ibid.)

a. The appellant confided in her husband, Morris Harland, that she believed that Rogers was staying in her house even if he was doing so without her permission. (Id. at 53:23–25.)

19. In January 2018, WPD received information that Rogers was involved in the sale of illegal narcotics. (August 7, 2019, Tr. at 16:5–23.)

20. In February 2018, WPD received information from a CI that they had purchased crack cocaine from Rogers at the appellant's house at [redacted]. (Id. at 18:1–5.)

21. During the week of February 25, 2017, WPD set up a controlled buy, where the CI contacted Rogers via cellular telephone to initiate a purchase of crack cocaine. (Id. at 19:3–25.)

a. The CI contacted Rogers, and he instructed the CI to come to the [redacted] address to execute the purchase of illegal narcotics. (R-1.)

b. WPD provided the CI with money to complete the purchase and accompanied him to the [redacted] location. (Ibid.)

c. Under surveillance by WPD, the CI parked in front of the appellant's house at [redacted]. (Ibid.) Rogers exited the residence through the front door and delivered a quantity of crack cocaine to the CI in exchange for the currency WPD provided to the CI. (Ibid.) After the exchange, Rogers went back inside the residence through the front door. (Ibid.) The CI turned the contraband crack cocaine over to WPD. (Ibid.)

22. During the week of February 25, 2018, WPD set up a second controlled buy, using their CI to contact Rogers to arrange for the purchase of crack cocaine. (Ibid.)

a. The CI contacted Rogers and he instructed the CI to come to the [redacted] address to execute the purchase of illegal narcotics. (Ibid.)

b. WPD provided the CI with money to complete the purchase and accompanied him to the [redacted] location. (Ibid.)

c. Under surveillance by WPD, the CI parked in front of the appellant's house at [redacted]. (Ibid.) Rogers exited the residence through the front door and delivered a quantity of crack cocaine to the CI in exchange for the currency WPD provided to the CI. (Ibid.) After the exchange, Rogers went back inside the residence through the front

door. (Ibid.) The CI turned the contraband crack cocaine over to WPD. (Ibid.)

23. During his surveillance of these two controlled buys, Detective DiGerolamo of the WPD observed Rogers and the appellant's daughter, Jaida, at the residence, but did not see the appellant. (August 7, 2019, Tr. at 32:17–33:9.)

24. Based upon the information gathered in its investigation, WPD obtained a knock-and-announce warrant to search the appellant's home on Medford Court. (Id. at 22:1–7.)

25. The search warrant was executed by members of the WPD and members of the CCSD SERT team on March 6, 2018.

a. Law enforcement arrived at the appellant's house at approximately 6:00 a.m. the morning of March 6, 2018. (Id. at 50:1–2.)

b. Investigator Seixas of the CCSD went to the front window of the appellant's house, looking inside the house to see if he could spot anyone inside. (Id. at 62:24–25.)

c. Police began by knocking loudly on the front door of the appellant's residence. (Id. at 90:15–91:5.) After the knocking started, Investigator Seixas saw the appellant get up from a couch that was positioned inside the house under the window, and the appellant looked at Investigator Seixas through the window. (Id. at 52:9–16.)

d. Investigator Seixas tapped on the window and yelled to the appellant, through the closed window, "police with a search warrant. Open the front door." (Id. at 52:18–19.) Investigator Seixas repeated this command three or four times. (Id. at 53:2.)

e. After the third or fourth time Investigator Seixas repeated his command to open the front door, the appellant got up from the couch and moved towards the front door. (Id. at 54:14–19.)

f. The appellant retreated into the house out of sight of Investigator Seixas and did not attempt to communicate with the officers outside that she was moving to open the door. (Id. at 53:3–55:10.)

g. Approximately ten seconds after Investigator Seixas lost sight of the appellant, and the front door was still not opened, he ordered the team to breach the front door to the appellant's residence. (Id. at 54:20–24. See also Id. at 95:12–20.)

h. Upon receiving the order to breach the door from Investigator Seixas, Sergeant Kolins utilized a battering ram to force open the front door of the appellant's residence. (Id. at 96:8–10.)

i. In forcing the door open, the front door hit the appellant in the head, causing a visible bump on her forehead. (Id. at 79:18–80:1. See also A-13.)

j. After forcing the door open, law enforcement entered the appellant's residence and performed a search of the premises.

k. In an upstairs bedroom of the appellant's residence, which was occupied by Rogers, Jaida, and two children, police recovered thirteen pink heat-sealed baggies containing crack cocaine that was sitting in plain view on a dresser in the room, a digital scale containing crack cocaine residue also on the dresser in plain view, a black plate containing cocaine residue and visible scratch marks on the floor next to the dresser, and a number of blue plastic baggies commonly used to package illegal narcotics were found in a dresser drawer. (August 7, 2019, Tr. at 27:18–21. See also R-1.)

26. Rogers confessed to ownership of the illegal narcotics and other contraband recovered in the search of the appellant's home and he was placed under arrest at the scene. (Ibid.)

a. Rogers was charged with possession of a controlled dangerous substance, third degree, in violation of N.J.S.A. 2C:35-10A(1), possession with intent to use drug paraphernalia, a disorderly persons' offense, in violation of N.J.S.A. 2C:36-2, possession of cocaine with an intent to distribute, third degree, in violation of N.J.S.A. 2C:35-5B(3), and possession of a controlled dangerous substance with intent to distribute in or near school property, third degree, in violation of N.J.S.A. 2C:35-7A. (See R-19.)

b. Rogers pled guilty to the charge of possession of a controlled dangerous substance, third degree, in violation of N.J.S.A. 2C:35-10A(1) on January 14, 2019. (Ibid.)

c. Rogers was sentenced on this charge, along with the charges he pled guilty to from his October 2017 arrest, to a sentence of drug court. (Ibid.)

d. Rogers also pled guilty to a violation of probation for violating the terms of his then-current probation with these new criminal charges. (R-17.)

27. Neither the appellant, nor her daughters or grandchildren, were arrested at the time of the execution of the search warrant at the appellant's home on March 6, 2018.

28. After the warrant's execution, Sergeant Kolins and Investigator Seixas reviewed the search warrant execution with their supervisor, Chief Warrant Officer Fetzer. (August 7, 2019, Tr. at 111:5–115:6.) After reviewing the warrant execution, Chief Fetzer asked if the appellant was charged with obstruction for failing to open the door to the house. (Ibid.) Sergeant Kolins and others in the post-warrant debriefing believed that the appellant's conduct at the scene constituted obstruction, and Sergeant Kolins returned to the appellant's house with members of the WPD to arrest her and charge her with obstruction of justice. (Id. at 118:2–20.)

a. The appellant was arrested and charged with the disorderly persons offense of obstruction of justice, in violation of N.J.S.A. 2C:29-1A. (See R-6.)

b. Following a trial on the obstruction charge, the appellant was found not guilty. (August 7, 2019, Tr. at 139:17–140:6. See also A-9.) The appellant's record on this charge was expunged pursuant to a court order entered on August 27, 2018. (A-10.)

29. The CCSD notified the assignment judge in the Camden Vicinage of the execution of the search warrant and the appellant's subsequent arrest on March 6, 2018. (August 7, 2019, Tr. at 166:3–10.) The assignment judge notified human resources at the Camden Vicinage (ibid.) and the appellant was immediately suspended without pay on March 6, 2018. (R-14. See also R-15.)

30. On March 8, 2018, the appellant was served with a PNDA. (See R-20.) Following a hearing on October 11, 2018, the appellant was served with a FNDA which sustained the following charges: N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, violation of the Code of Conduct for Judiciary Employees and failure to file reporting litigation notice. (Ibid.) The FNDA called for the appellant's dismissal from her position effective March 9, 2018. (Ibid.)

31. The appellant does not have a history of prior workplace discipline in her history as a PO. (August 7, 2019, Tr. at 145:12–17.)

These factual findings are supported by a residuum of legal and competent evidence in the record.

To fully evaluate the appellant's account of the events on the morning of March 6, 2018, and her explanation of events leading to that date, requires a determination of credibility to make a determination of certain contested facts. Credibility is the value that a finder of the facts gives to a witness' testimony. It requires an overall assessment of the witness' story in light of its rationality or 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). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

The first contested issue of fact is whether the appellant was or was not aware of Rogers' presence in her house and the illegal activities being conducted there. The respondent, in its briefing, asserts that the appellant's claims of ignorance "about what was happening in her own home strains logic and credulity." (Resp. Br. at 23.) In her testimony, the appellant adamantly denied knowing that Rogers was sneaking into her home each night and sleeping there. (August 22, 2019, Tr. at 90:15-19. See also App. Br. at 2.) The appellant's daughter, S.H., also denied knowing that Rogers was staying in the house with them (id. at 63:22–25) and both Rogers and Jaida testified that the appellant did not know that Rogers was regularly staying in the appellant's home. (Id. at 12:10–4; Id. at 67:17–20.)

Jaida explained that she kept Rogers' presence in their home from her mother by sneaking Rogers out of the house each morning, before her mother woke up. (Id. at 68:4–5.) The appellant explained her daily weekday schedule in detail, stating that she woke up each morning around 5:45 a.m. to make sure her daughter, S.H., was awake for school and she goes back to sleep until around 6:40 a.m. when her daughter leaves for school (id. at 88:24–89:1) until she leaves for work around 7:30 a.m. (Id. at 88:24–89:1.) S.H. stayed in a bedroom on the same floor as Jaida's bedroom where Rogers was staying, yet she testified that she was also unaware of Rogers' regular presence in the house. (Id. at 63:22–25.) It would stand to reason that, in order to successfully sneak Rogers out of the house without the appellant or S.H.'s knowledge, Jaida would have to have Rogers out of the house before S.H. was awake and getting ready for school or risk having Rogers' presence in the house discovered by her sister before Jaida could sneak him downstairs and out the back door unnoticed. Despite this, it remains uncontested that on the morning of the warrant execution, the appellant had already been awake to make sure S.H. was awake for school (id. at 86:17–18), S.H.

was awake and getting ready to go to school (id. at 59:10–11), and Rogers was still in the house when the police arrived. Jaida, according to her testimony, was still asleep when the police arrived that morning (id. at 69:6–8) and she did not get Rogers out of the house before her mother and sister woke up that day.

While the appellant testified that she was unaware that Rogers was staying at her home during this period (id. at 90:15-19), Morris Harland testified that the appellant had confided in him shortly after moving into her new residence in February 2018 that she believed Rogers was staying in her house. (Id. at 53:23-25.) The appellant had already caught Rogers staying in her house on at least two occasions in the last month before the execution of the search warrant in March 2018. (Id. at 87:14–16.) Although the appellant testified that she was sleeping on the couch downstairs to be near her television (id. at 88:12–14), Morris Harland contradicted the appellant's testimony with his explanation that the reason the appellant was sleeping on the couch downstairs was to try to catch Rogers sneaking into the house. (Id. at 52:12–20.) Having had the opportunity to observe the appearance and demeanor of the witnesses, and having reviewed the records and testimony presented, I **FIND** that the appellant was aware that Rogers was regularly staying at the appellant's home on [redacted] even if he was doing so without her express permission to do so.

The next issue is whether the appellant was aware of the illegal activity in her home while Rogers was staying there. Rogers testified that he was, in fact, dealing narcotics out of the appellant's home, and the narcotics and paraphernalia seized by the police during the execution of the warrant at the appellant's home on March 6, 2018, belonged to him. (August 22, 2019, Tr. at 23:9–11; Id. at 40:17–24.) Both of the appellant's daughters, who were living in the house at that time, denied that they, or their mother, knew anything about Rogers' narcotics activities. (See Id. at 60:6–15; Id. at 76:10–17.)

Rogers attempted to explain this knowledge gap with his testimony that no one, including the appellant or her children, knew of his illegal activities at the house because he was "discreet" about his narcotics activities. (Id. at 34:1–2.) It is clear, however, that

Rogers' illegal activities were not so discreet that they avoided the attention of local law enforcement who conducted two controlled buys of illegal narcotics through Rogers at the appellant's address under the observation of officers from the WPD (August 7, 2019, Tr. at 32:17–33:9) and gathered sufficient evidence of illegal conduct being conducted at the appellant's home to obtain a search warrant for the premises. (Id. at 22:1–7.)

Although Jaida denied knowing anything about Rogers' narcotics related activities or even the narcotics and associated paraphernalia the police recovered from her bedroom during their search (August 22, 2019, Tr. at 78:25), police recovered a plastic bag containing thirteen individually packaged baggies of crack cocaine in plain sight on the bureau and a digital scale on the dresser in the bedroom Jaida was sharing with Rogers and the appellant's two grandchildren. (Id. at 24:19–25:7.) While Rogers explained that he did not leave the narcotics and associated paraphernalia in the appellant's house when he was not there, and he brought these items with him and unpacked them in the bedroom after everyone else was "asleep and not paying attention" (id. at 41:3–14), Rogers did not hide the items or otherwise place them out of plain sight the morning of March 6, 2018, before Jaida was awakened by the arrival of the police. Given that Jaida knew about Rogers' history with narcotics, even being in his presence when he was arrested on drug charges in October 2017 (id. at 27:11–16), it certainly stretches the bounds of credibility to believe that Jaida did not question or even notice the presence of bags of narcotics and digital scales sitting out in plain sight in the bedroom she was sharing with Rogers and her two children.

The appellant was also aware of Rogers' history with illegal narcotics, including Rogers' involvement in what the appellant described as a "major drug deal" as late as October 2017. (Id. at 87:12–22.) The appellant also testified that she believed that Rogers continued to be involved in "criminal activities" and even went so far as to report her suspicions to the WPD in August or September 2016 (id. at 85:22–86:11) and reported her belief Rogers "sells drugs" to WPD sometime between March and May 2017. (Id. at 128:19–24.) The appellant claimed she did not know where Rogers was living at the time of the warrant execution (id. at 91:13) but she had expressed her

strong suspicion to her husband that Rogers was staying at her new house, even if she did not approve of his doing so. (Id. at 53:23–25.) If the appellant knew that Rogers was, and continued to be involved in the sale and distribution of illegal narcotics, he had no known address to call home, and she believed he was staying in her house, even if he was doing so against her wishes, I **FIND** that the appellant had ample reason to believe that her home was being utilized in some way to further Rogers' illegal activities, even if it was being done without her consent. This is further borne out by the fact that authorities recovered narcotics, as well as associated packaging materials and a digital scale sitting in plain sight in a room of the appellant's home—indicating that Rogers was conducting more than distribution of narcotics from the appellant's home but also engaged in the packaging of these narcotics for distribution while he was at the appellant's home as well.

The next factual issue in contention is the appellant's response to the police who showed up at her house on the morning of March 6, 2018, to serve a search warrant for the property. The responding officers contend that the appellant did not respond to their command to open the door to the residence that morning in a timely manner, forcing them to break the front door to execute the warrant. (See, e.g., August 7, 2019, Tr. at 55:2–13 (Investigator Seixas' account that he saw the appellant get up from the couch and disappear into the residence without opening the door or indicating that she was going to open the front door); Id. at 92:1–10 (Sergeant Kolins' account of the appellant's response to commands to open the front door); R-6 (police report detailing basis for charging appellant with obstruction of justice for refusing to comply with police commands to open the front door).) The appellant contends that she did not hear anyone knocking on the front door or anyone telling her to open the door because they have a warrant (August 22, 2019, Tr. at 154:17–20) and that she was trying to open the door when the police broke it in that morning. (Id. at 109:15–20.)

The appellant was on the couch, with her head right next to the front door of the residence that morning when the police arrived. (See August 7, 2019, Tr. at 26:14–24; Id. at 65:5–66:12; Exhibit A-1 8/7/19.) While the appellant denied hearing the police banging on the door (August 22, 2019, Tr. at 153:21–154:11), Detective DiGerolamo

described Detective Houck's banging on the door that morning as "very loud" and "obnoxiously banging." (August 7, 2019, Tr. at 25:1–11.) Sergeant Kolins similarly described Detective Houck's banging on the door that morning as "loud enough that people on the second floor woke up and came to the windows." (Id. at 91:6–7.) Other persons in the house, who were upstairs in their respective bedrooms at the time, also heard the police banging on the door that morning. (See August 22, 2019, Tr. at 59:22-24 (S.H.'s testimony that she heard the police banging on the door); Id. at 69:6–8 (Jaida Harland's testimony that she was awakened by the sound of police banging on the door); Id. at 11:24–12:1 (Rogers' testimony that he heard the police banging on the door that morning).)

The appellant also denies hearing Investigator Seixas telling her that they had a warrant and ordering her to open the front door. (August 22, 2019, Tr. at 154:17–20.) Investigator Seixas recalled shouting to the appellant through the window "police with a warrant" and "open the front door" three or four times that morning. (August 7, 2019, Tr. at 52:17–53:2.) Sergeant Kolins also recalled Investigator Seixas repeatedly yelling to the appellant through the window "Police with a warrant. Open the door." (Id. at 91:16-18.) These commands were loud enough that Rogers testified that he heard them while upstairs in a bedroom. (August 22, 2019, Tr. at 11:24–12:1. See also Id. at 77:14–17 (Jaida Harland's testimony that she heard "yelling" before the knocking on the door).) While the appellant notes that she was asleep at the time the police arrived that morning, she testified that she had just gone back to sleep after getting up to wake her daughter for school minutes before the police arrived. (Id. at 152:4–7.)

The appellant also contends that, although she did not hear the commands to open the front door, she was in the process of opening the door when the police broke the door in that morning. (Id. at 155:18–19 (appellant's testimony that she "got up with no clothes on and went directly to that door.")) The officers at the scene saw the appellant get up from the couch and disappear from their line of sight for approximately ten seconds before they breached the front door. (See August 7, 2019, Tr. at 54:14–55:13; Id. at 92:1–10.) When asked about the reasons for such a delay, the appellant offered the following explanation:

> Q. Saw the word "sheriff" and it takes you 10 seconds to walk three feet?
>
> A. When I got up, I'm disoriented. I got to get myself together, thinking what is going—just like [S.] said she thought it was a dream. So I'm thinking, what is going on? I go to the door, don't even put anything on me, and go to open the door. If I had one more second—because I'm at the door.
>
> (August 22, 2019, Tr. at 157:6–14.)

The appellant also claimed, in her testimony, that her hand was injured because she was "actually trying to open the door" when the police broke the door in that morning. (Id. at 109:15–20.) This testimony was an apparent response to the testimony of Investigator Seixas, who testified that he observed the appellant's head injury when he entered the house that morning and noted that had she been attempting to open the door when it was forced open, he would expect to see injuries to the appellant's hand rather than her face. (August 7, 2019, Tr. at 81:24–82:16.) The appellant's testimony regarding the nature of the injury to her hand and wrist, however, was notably different from the account she provided to the treating nurse at Urgent Care where she visited for treatment after the police executed the warrant at her house. (See A-13.) The notes from the appellant's visit to Urgent Care on March 6, 2018, report that she provided the following account of her injuries:

> 47-year-old female here complaining of bruise on the forehead and also left wrist pain status post-injury today. Pt had an incident at her house, the police entered her home by kicking her door in. Causing the door to hit the pt in the head (forehead) and falling possibly breaking weight with left hand. Also mentioned that police zip tied hands. Pt states that the zip ties were so tight that the wrist is very painful. Denies loss of consciousness/nausea/vomiting/headache /dizziness.
>
> [A-13.]

While the appellant testified on August 22, 2019, that her hand was hit by the door and injured because she was trying to open the door when it was broken open by police

(August 22, 2019, Tr. at 109:14–20), the contemporaneous medical report from her visit to Urgent Care on March 6, 2018, documents that she attributed her hand injury to either breaking her fall after being hit in the head with the opening door or the restraints placed on her wrists by police officers securing the scene at her house. (A-13.) This contemporaneous account makes no mention of the injury to her wrist being caused by her trying to open the front door to comply with law enforcement officers' orders to do so. (Ibid.)

Having had the opportunity to observe the appearance and demeanor of the witnesses, and having reviewed the records and testimony presented, I **FIND** that the appellant was ordered by police officers executing a search warrant for her house on the morning of March 6, 2018, to open the front door and the appellant, despite hearing these commands, did not cooperate with the officers' otherwise lawful command to do so in a timely manner forcing the officers to break down the front door to gain entrance to the appellant's residence and execute their search warrant.

LEGAL ANALYSIS AND DISCUSSION

"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). A civil service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this State is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provisions of the Civil Service Act may nonetheless be subject to major discipline for a wide variety of

offenses connected to his or her employment. The general causes for such discipline are enumerated in N.J.A.C. 4A:2-2.3.

In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987); N.J.S.A. 11A:2.21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Polk, 90 N.J. 550, 560 (1982). An appeal requires the OAL to conduct a de novo hearing and to determine the appellant's guilt or innocence, as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143, 151 (App. Div. 1987); Cliff v. Morris County Bd. of Social Serv., 197 N.J. Super. 307, 314 (App. Div. 1984).

CHARGES

The first charge against the appellant is 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 of 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 conduct complained of and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 150 A.2d 821, 825 (1959)). Such misconduct "need not 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 Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Service, 17 N.J. 419, 429 (1955)). "It is well settled that public employees are expected to exhibit appropriate behavior, both on and off the job, in order to project a positive image to the public that they serve and the taxpayers who fund their positions.

Any conduct that serves to diminish the public's trust in the integrity of its employees is intolerable." In the Matter of Matthew Green, Department of Human Services, DOP Dkt. No. 2006-286, 2006 N.J. AGEN LEXIS 632, *5 (citing Karins v. City of Atlantic City, 152 N.J. 532 (1998))

The appellant was a PO. POs, like the appellant, function as the enforcement arm of the judicial system, and they perform services for the judiciary essential to the fair and efficient administration of justice. Passaic County Prob. Officers' Ass'n v. County of Passaic, 73 N.J. 247, 253 (1977). Godfrey v. McGann, 37 N.J. 28, 34 (1962). Probation is an integral part of the judiciary, and everything that its officers do, they do as an arm of the judiciary. Williams v. State, 375 N.J. Super. 485, 494 (App. Div. 2005). "Conduct unbecoming an officer" has been broadly defined as "any conduct which adversely affects the morale or efficiency of the bureau . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (citation omitted). While Emmons involved a police officer, POs similarly play an important and indeed vital role in the administration of justice, both in the criminal and civil courts. Passaic County Prob. Officers' Ass'n, 73 N.J. at 253. POs, like law enforcement officers, are held to a higher standard of conduct than other state employees. In the Matter of Jeff Knitowski, Middlesex Vicinage, CSV-04714-2015, Initial Decision, (August 11, 2016), adopted, Civil Service Com'n (November 10, 2016) http://lawlibrary.rutgers.edu/oal/search.html (citing Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App.Div. 1965).)

Among its duties, probation is the entity that enforces judicial orders and must be "as impartial as the rest of the judiciary, totally so and scrupulously so." Id. The probation office in each county has been "aptly described as 'an arm of the state judicial system.'" Williams, 375 N.J. Super. at 508 (quoting Essex County Welfare Board v. Perkins, 133 N.J. Super. 189, 196 (App. Div. 1975)). POs, like the appellant "play an important and indeed vital role in the administration of justice, both in the criminal and civil courts, throughout the State." Williams, 375 N.J. Super. at 508.

The crux of the basis for this charge is the appellant's failure to open the door to her residence in a timely manner on the morning of March 6, 2018, despite being ordered by law enforcement officers possessing a search warrant for the premises to do so. (See R-20.) This conduct was the basis for a criminal charge of obstruction of justice which was filed by officers of the CCSO on March 6, 2018. While the appellant was acquitted following a trial on that criminal charge, the acquittal does not preclude a finding of conduct unbecoming a public employee for her conduct that morning. In re Darcy, 114 N.J. Super. 454, 458 (App. Div. 1971) (noting appellant's "acquittal of the criminal charges does not preclude a finding by the Civil Service Commission of conduct unbecoming an officer, sufficient to warrant termination of his public employment"). As the Appellate Division has noted:

> The quantum of proof in a criminal trial is different from and higher than in proceedings before an administrative agency. In the former the proof must establish guilt beyond a reasonable doubt; in the latter, "it is only necessary to establish the truth of the charges by a preponderance of the believable evidence and not to prove guilt beyond a reasonable doubt.'"
>
> [Id. (quoting Atkinson v. Parsekian, 37 N.J. 143, 149 (1962))]

Here, the preponderance of the credible evidence shows that the appellant did not comply with the lawful orders of a CCSO officer in a timely manner as he was executing a search warrant at her residence on March 6, 2018. The appellant failed to comply with Investigator Seixas' repeated orders to open the front door to admit the officers executing the search warrant to her residence, forcing the officers to break through the front door to gain entry to the property. The appellant's conduct was disruptive to the execution of a court-ordered search of the premises and contrary to her role as a sworn officer of the Court. The nature of the appellant's conduct that morning was made more egregious by the fact that the execution of this search warrant discovered narcotics and other materials utilized to package narcotics for sale and distribution in plain sight in a bedroom in her house which was occupied by Rogers, an individual then under probationary supervision, along with the appellant's daughter and grandchildren. I **CONCLUDE**, therefore, that the appellant's conduct on March 6, 2018,

did rise to a level of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6) and the respondent has met its burden of proof to sustain this charge.

The appellant has further been charged with violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause—specifically, a violation of the Code of Conduct for Judiciary Employees. Cannon 3 of the Code of Conduct for Judiciary Employees requires the appellant, and all judiciary employees, to not risk "subjecting themselves to improper influences" and avoid "participating in activities or allowing themselves to be used in such manner as to impair the dignity and esteem in which the court should be held." (R-10.) This code also requires, in pertinent part, that "[a] court employee shall observe high standards of conduct so that the integrity and independence of the courts may be preserved, and shall avoid impropriety or the appearance of impropriety." (Ibid.) The comment to Canon 3 notes that the "holding of public employment is a public trust," which trust is "sustained by conduct that maintains the confidence of the citizenry in the integrity of officers and employees of the judicial branch."

As an employee of the New Jersey Judiciary, the appellant was also subject to an employee reporting requirement to "immediately report" any involvement in criminal or quasi-criminal matters within any New Jersey state or municipal court. (See R-11.) This policy was established with the stated goal to:

> [M]aintain a high degree of integrity and avoid any actual, potential or appearance of partiality or conflict of interest in the adjudication or handling of all cases. Even the appearance of a potential conflict of interest undermines the core values of the New Jersey judiciary and hampers its mission. Accordingly, those covered by this policy must report any involvement concerning themselves, and any immediate family member's involvement known to the individual, in any litigation matter covered in this policy so that, if deemed necessary, the appropriate action may be taken to avoid or minimize any such appearance.
>
> (Ibid.)

The reporting obligation "commences upon being formally charged, indicted, summoned, or upon the filing of a complaint or other document which initiates the Court's or tribunal's jurisdiction or upon receipt of any such documents such as a subpoena." (Ibid.) This reporting obligation also extends to "immediate family members known to the employee in any matter" which also includes "all members of the individual's household." (Ibid.) The obligation to report family member involvement "commences upon such events being known to the individual." (Ibid.)

The testimony presented shows that the appellant's daughter Jaida resumed her romantic relationship with Rogers some time in 2015. (August 22, 2019, Tr. at 71:6–8.) Rogers told Jaida that he was on probation at that time (id. at 71:20–24) and the appellant knew, from her daughter, that Rogers was under probationary supervision from the Camden Vicinage where the appellant was employed as a Senior PO. (Id. at 84:15–16.) While the appellant testified that she did not know what the underlying charges that led to Rogers' probationary supervision were (id. at 15–22), Rogers' probation at that time was for an illegal narcotics charge which he pled guilty to in September 2015. (R-17.) Although the appellant testified that she did not know the details of Rogers' criminal history, she said that she sought the intervention of the WPD to remove Rogers from her house sometime in August or September 2016, and she suspected at that time that Rogers was involved in otherwise undefined criminal activities at that time which would, presumably, constitute a violation of Rogers' probationary terms. (Id. at 85:18–86:11.) See also N.J.S.A. 2C:45-3(a) (authorizing PO who has probable cause to believe a defendant has committed another offense prior to the discharge or termination of probation to arrest the defendant without a warrant); N.J.S.A. 2C:45-1(a) (noting purpose of probation is to impose conditions necessary for probationer to "lead a law-abiding life" or likely to assist them to do so).

By January 2017, Rogers and Jaida had moved in together and were living in a separate apartment. (Id. at 167:22–168:18.) The appellant still made no effort to report the obvious conflict her daughter's relationship with Rogers presented to the Court, even as her husband advised her that she had to get the information about her daughter's involvement with Rogers "out there" by telling her employer or she was

"going to be in a jam." (August 22, 2019, Tr. at 49:18–21.) The record is clear that the appellant did not disclose any information about her daughter's relationship with Rogers to her management at the Camden Vicinage until her she was confronted about it by her supervisor and assistant chief PO in a meeting in January 2017. (Id. at 84:17–86:7.) The appellant, a Senior PO, failed to disclose to her senior management that her daughter had been in a relationship since 2015 and was currently cohabitating with a person who was under probationary supervision by the Camden Vicinage and whom the appellant believed, despite being under probationary supervision, was continuing to engage illegal activities while under probation. As a PO, who has a duty to supervise the conduct of criminal defendants serving probationary sentences (see R-16 at ¶ 5), the appearance created by her daughter being in a relationship with and cohabitating with Rogers when he was under probationary supervision by the vicinage that employed her as a Senior PO and possibly engaging in continued illegal activities created the "appearance of a potential conflict of interest" which "undermines the core values of the New Jersey judiciary and hampers its mission" and the appellant should have immediately reported this apparent conflict of interest to her senior manager, but did not do so. (R-11.)

Following the January 2017 meeting with her assistant chief PO and supervisor where the appellant was asked about her relationship to Rogers and it was confirmed to the appellant that Rogers was, in fact, under probationary supervision by the Camden Vicinage where she was employed as a Senior PO, the appellant testified that sometime between March and May 2017, she believed that Rogers was "selling drugs." (August 22, 2019, Tr. at 128:19–24.) Despite this, the appellant still took no action to report this suspicion to her management in the Camden Vicinage. During this period, the appellant's daughter Jaida moved back into the appellant's house and was pregnant with Rogers' child. The appellant did not make any further report of Rogers to her management until October 2017, when Rogers was arrested in the presence of the appellant's daughter for his involvement in what the appellant described was "a major drug deal." (Id. at 87:17–22. See also R-9.) In reporting the incident to her management, the appellant reported that her daughter "was in a car with her boyfriend" when he "was arrested." (R-9.) The appellant did not provide details of the incident,

reporting that she had "no knowledge of any charges" and that Rogers "does not reside in my home." (R-9.)

Despite the lack of detail on the form which reported the incident to the vicinage, the appellant testified that she learned from her daughter some of the details of the offense, namely that illegal drugs were found in a car, and that Rogers had taken ownership of illegal drugs that were found in the vehicle and was arrested. (August 22, 2019, Tr. at 133:8–134:1.) Other important details such as the fact that, at the time, the appellant's daughter was pregnant with Rogers' child, were also omitted from the disclosure form. (R-9.) While the appellant's disclosure form states that Rogers "does not live in my home" (Ibid.), Jaida and Rogers no longer lived together in a separate apartment by this time and Rogers testified that, during this period, he was homeless and spending time at friends' houses as well as spending time at the appellant's house with Jaida and her child. (August 22, 2019, Tr. at 16:12–17.)

After his October 2017 arrest, Rogers continued his relationship with the appellant's daughter and the appellant believed he continued to be involved in "criminal activities." (Id. at 85:22–86:2.) After she moved into her new house with in February 2018, the appellant confided in her husband that she believed that Rogers was staying in her house. (Id. at 53:23–25.) Rogers admitted that he was sleeping in the appellant's home every night at this time (id. at 37:21–24), and the appellant's suspicion that Rogers was staying in her house was confirmed when she caught him in her house on at least two separate occasions during the first month she lived there. (Id. at 31:24–32:24.) By February 2018, Rogers, whom the appellant knew was under probationary supervision by the Superior Court of New Jersey, where she was employed as a Senior PO, was still in a relationship with the appellant's daughter, and was the father of the appellant's grandchild. Both the appellant's daughter and grandchildren (one of whom was also Rogers' daughter) lived in the appellant's house at that time. The appellant knew that Rogers had been involved in what she described as "a major drug deal" just a few months before while he was also under probationary supervision for prior drug charges (id. at 87:17–22) even though his supervision had been transferred to another vicinage after the October 2017 incident. (August 7, 2019,

Tr. at 136:20–23.) The appellant nonetheless believed that Rogers was still involved in "criminal activities" (id. at 85:23–24) at that time and was now living in her house—even if he was doing so without her approval. (Id. at 53:23–25.) Rogers admitted that he was also dealing drugs out of the appellant's home during this time, while the appellant was at work. (Id. at 23:9–11.)

Despite the multiple conflicts, both actual and apparent, that the relationship between Rogers and the appellant's daughter created, the appellant did not report any of this to her management at Camden Vicinage. The ongoing ties between the appellant and Rogers were not reported to the appellant's management at Camden Vicinage until after law enforcement conducted two controlled buys of illegal narcotics through Rogers at the appellant's home in February 2018 (August 7, 2019, Tr. at 32:17–33:9) and a search warrant was executed at the appellant's home in March 2018, which found both Rogers and a trove of illegal narcotics and narcotics-related paraphernalia in the appellant's home. (Id. at 27:12–28:6.) The appellant's management at the Camden Vicinage learned about Rogers' activities at the appellant's home only after the CCSO notified the assignment judge in the Camden Vicinage of the search warrant execution and the appellant's subsequent arrest on obstruction charges for the appellant's lack of cooperation with law enforcement during the execution of that warrant. (Id. at 166:3–10.) The appellant's conduct in allowing her home to be utilized by Rogers for the trafficking of deadly illegal narcotics, her failure to avoid these obvious conflicts of interest or even to notify her management so that they could take appropriate action to insulate her and the vicinage from the multiple conflicts of interest her daughter's relationship with Rogers presented, and her failure to readily cooperate with law enforcement officers in their execution of a court-ordered search of her premises, all served to "impair the dignity and esteem in which the court should be held."[2] (R-10.)

[2] Cannon 3 of the Code of Conduct for Judiciary Employees also prohibits judiciary employees from using or attempting to use "the official position or the prestige of judicial affiliation to secure special privileges or exemptions for the employee or others." (R-10.) Investigator Seixas testified that, as the team entered the appellant's residence to execute the search warrant, the appellant identified herself to Investigator Seixas as a probation officer as she inquired of him what was going on. (August 7, 2019, Tr. at 56:15–18.) The appellant's unsolicited offering of her credentials as a probation officer to law enforcement officers entering her home to execute a search warrant appears to have been done for no

I **CONCLUDE** that the appellant's conduct was in violation of the Code of Conduct for Judiciary Employees and the respondent has met its burden of proof to sustain this charge.

PENALTY

The Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Board must utilize the evaluation process set forth in West New York v. Bock, 38 N.J. 500 (1962), and consider the employee's reasonably recent history of promotions, commendations and the like, as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated. Since Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct: to support the imposition of a more severe penalty for a public employee who engages in habitual misconduct, and to mitigate the penalty for a current offense. In re Herrmann, 192 N.J. 19, 30–33 (2007).

According to the Supreme Court, progressive discipline is a worthy principle, but it is not subject to universal application when determining a disciplined employee's quantum of discipline. Id. at 36.

> Although progressive discipline is a recognized and accepted principle that has currency in the [Civil Service Commission's] sensitive task of meting out an appropriate penalty to classified employees in the public sector, that is

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reason other than an effort by the appellant to improperly leverage her status as an officer of the Court to curry favor or advantage from the responding law enforcement officers who were conducting the search of her house. This type of conduct would also violate Cannon 3 of the Code of Conduct for Judiciary Employees. See, e.g., In the Matter of Martina Kotur, Judiciary, Superior Court, Middlesex County Vicinage, CSV-00013-10, Initial Decision (November 8, 2010), adopted, Civil Service Com'n, (February 11, 2011) http://lawlibrary.rutgers.edu/oal/search.html (dismissing a PO without prior disciplinary history for using judiciary letterhead for personal use in requesting dismissal of a parking ticket); In the Matter of Rosalba Dominguez, New Jersey Judiciary, Somerset Vicinage, CSV-4227-15, Initial Decision (August 14, 2017), adopted, Civil Service Com'n (September 21, 2017) http://lawlibrary.rutgers.edu/oal/search.html (dismissing a PO for improperly attempting to "curry favor with law-enforcement officers" by using her position in attempting to intercede in boyfriend's arrest).

> not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.
>
> Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580, 410 A.2d 686 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306, 633 A.2d 577 (App.Div. 1993), certif. denied, 135 N.J. 469, 640 A.2d 850 (1994).
>
> [Id. at 33–34.]

The theory of progressive discipline is not a fixed and immutable rule to be followed without question, as some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007). See also Herrmann, 192 N.J. at 33 (finding, progressive discipline may be "bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property"). The Supreme Court has noted that "the question for the courts is whether the punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness." Id. (citing In re Polk License Revocation, 90 N.J. 550, 578 (1982)). The Supreme Court also noted that the Appellate Division has likewise acknowledged and adhered to this principle where the acts charged, regardless of prior discipline, warranted the imposition of the sanction. In re Carter, 191 N.J. at 485. Even a single incident can be egregious enough to warrant removal without reliance on progressive discipline policies. Herrmann, 192 N.J. at 33. See, e.g., In the Matter of Martina Kotur, Judiciary, Superior Court, Middlesex County Vicinage, CSV-00013-10, Initial Decision (November 8, 2010), adopted, Civil Service

Com'n, (February 11, 2011) http://lawlibrary.rutgers.edu/oal/search.html (dismissing a PO without prior disciplinary history for using judiciary letterhead for personal use in requesting dismissal of a parking ticket).

Rogers was actively engaged in the distribution of crack cocaine out of Harland's residence. Engaging in the distribution of a controlled dangerous substance like crack cocaine is not a victimless crime. "According to the [Center for Disease Control], there were 10,375 cocaine-involved deaths in the United States in 2016." United States Department of Justice, Drug Enforcement Administration, 2018 National Drug Threat Assessment, available at https://www.dea.gov/sites/default/files/2018-11/DIR-032-18%202018%20NDTA%20final%20low%20resolution.pdf, at 46. That number rose to 13,942 deaths in the United States from drug overdoses involving cocaine in 2017. National Institute on Drug Abuse, Overdose Death Rates, available at https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates. This deadly and illegal conduct was carried on in the house of a senior PO, while Rogers remained under probationary supervision by the same court system that employed the appellant. In addition to failing to report Rogers relationship to her family and home to management at the Camden Vicinage, the appellant further engaged in conduct disruptive to the execution of a court-ordered search of her residence and contrary to her role as a sworn officer of the Court by her dilatory response to the lawful orders of law enforcement officers executing a search warrant, forcing them to break open the door to the appellant's residence to perform their duties. The appellant's conduct at issue in this matter only served to facilitate Rogers' trafficking in deadly illegal narcotics and frustrate the Court's efforts to rehabilitate Rogers through probationary supervision. See N.J.S.A. 2C:45-1(a). Such conduct is egregious and requires the appropriate penalty of removal of the appellant from her position as a senior probation officer.

CONCLUSION

After having considered all of the proofs offered in this matter, the impact upon the institution regarding the behavior by the appellant herein, and in light of the seriousness of the offense and in consideration of the appellant's prior disciplinary

record, I **CONCLUDE** that sufficient cause was established by the respondent to warrant the appellant's removal from her position with the court system.

ORDER

The respondent has proven by a preponderance of the credible evidence the following charges against Harland: N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, for violations of the Code of Conduct for Judiciary Employees. Accordingly, I **ORDER** that these charges be and are hereby **SUSTAINED** and the action of the respondent appointing authority removing the appellant from her position as a senior probation officer is hereby **AFFIRMED**. The appellant's appeal is **DISMISSED**.

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. 40A:14-204.

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.

January 7, 2020
DATE

DAVID M. FRITCH, ALJ

Date Received at Agency: 1/7/20

Date Mailed to Parties: 1/7/20

/dw

APPENDIX

LIST OF WITNESSES

For Appellant:

Irving Rogers
Morris Harland
S.H.
Jaida Harland
Rhonda Harland

For Respondent:

Robert DiGerolamo, Detective, WPD
Charles Seixas, Investigator, CCSD
Zachary Kolins, Sergeant, CCSD
Gil Velasquez, Chief Probation Officer, Camden Vicinage
Jim Grazioli, Human Resources Manager

LIST OF EXHIBITS IN EVIDENCE

For Appellant:

A-1 Photographs of appellant's facial injuries
A-2 Photograph of appellant's front door #1
A-3 Photograph of appellant's front door #2
A-4 Photograph of appellant's front door #3
A-5 Photograph of appellant's front door #4
A-6 Photograph of appellant's front door jamb #1
A-7 Photograph of appellant's front door jamb #2
A-8 Photograph of appellant's living room
A-9 Application for Expungement of Arrest, August 27, 2018
A-10 Order for Expungement of Arrest, August 27, 2018

A-11 Notice of Determination, April 19, 2018

A-12 Immediate Suspension Without Pay Decision, March 8, 2018

A-13 Urgent Care Medical Records, March 6, 2018

A-14 Pay stub, March 9, 2018

A-1 (8/7/19) Photograph of appellant's living room with Investigator Seixas' drawing, August 7, 2019

For Respondent:

R-1 WPD Master Incident Report, March 6, 2018

R-2 WPD Arrest Report, March 6, 2018

R-3 Exterior photo of 31 Medford Court, Sicklerville, NJ

R-4 Interior photo of 31 Medford Court, Sicklerville, NJ

R-5 CCSO, Special Operations Report, April 4, 2018

R-6 CCSO Investigation Report

R-7 Winslow EMS Foundation, Refusal/Recall Form, March 6, 2018

R-8 Oath of Office, March 22, 2018

R-9 New Jersey Judiciary Personal or Family Member Involvement in Litigation Confidential Reporting Form, October 24, 2017

R-10 Code of Conduct for Judiciary Employees, Cannon 3

R-11 Employee Reporting Involvement in Litigation Policy (Revised), July 5, 2018

R-12 JLMS Transcript of Rhonda Harland

R-13 Notice of Intent to Immediately Suspend Without Pay, March 6, 2018

R-14 Immediate Suspension Without Pay Decision, March 8, 2018

R-15 Letter from the State of New Jersey, Department of the Treasury regarding appellant's Retirement Application, Second Notice, August 31, 2018

R-16 Certification of Gilberto Velasquez, May 7, 2018

R-17 Change of Judgment of Conviction, VOP, Superior Court of New Jersey, Salem County, February 25, 2019

R-18 Judgment of Conviction, Superior Court of New Jersey, Salem County, Indictment 18-05-00190-I, February 25, 2019

R-19 Judgment of Conviction, Superior Court of New Jersey, Salem County, Accusation 19-01-00016-A, February 25, 2019

R-20 Final Notice of Disciplinary Action, November 14, 2018