

Removing Judges

By CHARLES D. RAY

On February 10, 2022, a state marshal served a summons on Judge Alice Bruno. Included with the Summons was an Order to Show Cause:

Pursuant to Article XXV of the Amendments to the Constitution of the State of Connecticut, General Statutes § 51-51j, and Rules 2.14, 2.15 and 2.16 of the Code of Judicial Conduct, the Connecticut Supreme Court hereby orders the Honorable Alice Bruno, a Judge of the Superior Court, to appear before this Court on April 5, 2022 at 10:00 A.M., to show cause why this Court should not commence proceedings to either suspend or remove Judge Bruno from her judicial office for potential violations of the Code of Judicial Conduct. Specifically, Judge Bruno shall show cause why her failure to perform judicial functions for at least the last two years is not a violation of the following Rules contained within the Code of Judicial Conduct: 1.2 (Promoting Confidence in the Judiciary); 2.1 (Giving Precedence to the Duties of Judicial Office); 2.5 (Competence, Diligence, and Cooperation). Judge Bruno may be accompanied by counsel if she chooses.

To our knowledge, this was a first-of-its-kind hearing for the Supreme Court.

The Supreme Court's order, hearing, and the ensuing aftermath mark the culmination of what was a more than two-year-old dispute between the Judicial Branch and Judge Bruno over the extent to which she could or would be granted accommodations for her claimed disabilities. The



hearing took place as scheduled, with the justices posing questions, in reverse order of seniority, first to Judge Bruno's counsel and then, eventually, to the judge herself. A week later, the Court ordered the commencement of an investigation "to determine whether there exist grounds for removal or suspension of Judge Bruno from her judicial office" and appointed Inspector General Devlin to conduct that investigation. About a month after his appointment, Inspector General Devlin and Judge Bruno presented a Statement of Resolution to the Court. Under that agreement, Judge Bruno's application for a disability retirement will be decided by the Judicial Review Council. If the application is denied or withdrawn, Judge

Bruno will resign from judicial office but remain free to seek a pension based on her government service.

All told, resolution of this saga took just over three months once the Supreme Court issued its show cause order. Impressive! But let's stop for a moment and consider the question of why the Supreme Court even has a right to act in this situation. After all, judges are nominated by the governor and appointed by the legislature. How is it that a judge can be removed by the Supreme Court? Turns out that until 1976, they couldn't. Our 1818 Constitution, in Article Fifth, Section 3, originally provided that judges were appointed by the General Assembly,

held their offices during good behavior, and could be removed by impeachment or by the governor “on the address of two-thirds of the member of each House of the General Assembly....” Article XII of the amendments to the 1818 Constitution, adopted in 1856, instituted eight-year terms for judges but limited removal to the same two methods: impeachment and by the governor on address from the General Assembly. The 1965 Constitution provided for nomination of judges by the governor, but did not change the scheme for removing judges, although the operative language was moved from Section 3 to Section 2 of Article Fifth.

The change we’re interested in was adopted in 1976, as Article XI of the amendments to the 1965 Constitution. That amendment added a new Section 7 to Article Fifth and did two things. First, along with removal by impeachment and by the governor, it provided that “judges of all courts, except those courts to which judges are elected, may, in such manner as shall by law be prescribed, be removed or suspended by the supreme court.” Second, it authorized the General Assembly to create a Judicial Review Council which could, “in such manner as shall by law be prescribed, censure any such judge or suspend any such judge for a definite period not longer than one year.” There has been additional tinkering with the constitutional amendments since 1976 such that the Supreme Court’s power to remove or suspend judges now appears in both Section 2 and Section 7 of Article Fifth.

The statutory framework governing the removal of judges is in Chapter 872a of Title 51 of the General Statutes. The terms of that chapter apply to judges of the Superior Court, the Appellate Court, the Supreme Court, administrative law judges, and family support magistrates. The term “judges” refers to the judges mentioned, as well as to senior judge

es and state referees. Conn. Gen. Stat. § 51-51h.

Together with the constitutionally provided methods of removal, Section 51-51i provides that judges are subject to censure, suspension, or removal from office for:

1. Conduct prejudicial to the impartial and effective administration of justice which brings the judicial office in disrepute;
2. Wilful violation of section 51-39a or any canon of judicial ethics;
3. Wilful and persistent failure to perform the duty of a judge;
4. Neglectful or incompetent performance of the duties of a judge;
5. Final conviction of a felony or of a misdemeanor involving moral turpitude;
6. Disbarment or suspension as an attorney-at-law;
7. Wilful failure to file a financial statement or the filing of a fraudulent financial statement required under section 51-46a; or
8. Temperament which adversely affects the orderly carriage of justice.

The Judicial Review Council emerged by way of Section 51-51k. Procedures for complaints and investigations by the Council can be found in Section 51-51l. When judges are involved, the Council, at the end of an investigation, has five options:

1. Publicly censure the judge;
2. Suspend the judge for a definite term not to exceed one year;
3. Refer the matter to the Supreme Court with a recommendation that the judge be suspended for a period longer than one year;
4. Refer the matter to the Supreme Court with a recommendation that the judge

be removed from office; or
5. Exonerate the judge.

Section 51-51j provides the nuts and bolts for action by the Supreme Court. That section allows the Court to remove or suspend a judge for any period either upon recommendation by the Council or on the Court’s own motion. Once the process begins, the Court “shall make an investigation of the conduct complained of and hold a hearing thereon, unless such an investigation and hearing has been held by the Judicial Review Council.” Hearings under Section 51-51j “shall not be public unless requested by the judge ... under investigation.” And a final determination of the judge’s fate “shall be made by a full court ...”

This is not quite what happened in Judge Bruno’s case. Indeed, the Court avoided the closed hearing provision by initiating its proceedings with an Order to Show Cause why the Court “should not commence proceedings” The hearing on that Order was clearly held in full public view, save for Judge Bruno’s medical records. All in all, some skillful maneuvering by the Court, but probably for the better, given the public interest and attention Judge Bruno’s case engendered.

A final note. My hearty congratulations to Matt Weiner (now The Honorable Matthew A. Weiner) upon his nomination and confirmation as a Judge of the Superior Court. Judge Weiner is taking a sabbatical from Supreme Deliberations. It remains to be seen for how long. I thank Matt for his writing, guidance, insight, and friendship during the many years we have been at this. ■



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■ Any views expressed herein are the personal views of the author.