ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NOS:ACJC 2004-022, 2004-098, 2004-268

IN THE MATTER OF DAVID A. SALTMAN, FORMER JUDGE OF THE MUNICIPAL COURT	:	PRESENTMENT

The Advisory Committee on Judicial Conduct, pursuant to Rule 2:15-15(a), presents to the Supreme Court its Findings that charges set forth in a Formal Complaint against David A. Saltman, former Judge of the Municipal Court, have been proved by clear and convincing evidence and its Recommendation that the Respondent be censured.

The Advisory Committee on Judicial Conduct issued a Formal Complaint alleging that Respondent engaged in conduct in violation of Canons 1, 2A, 3A(3), and 3C(1) of the Code of Judicial Conduct and in violation of Rule 2:15-8(a)(6) by entering into a contingent fee agreement to represent a married couple in a civil action relating to an automobile accident that had occurred in the municipality where he sat as judge and then by taking a plea from and sentencing the driver who would have been the defendant in that civil action; by demonstrating a pattern of disregard for the obligations of a part-time judge who is also engaged in the private practice of law in that the Committee had previously admonished him for representing a police officer of the municipality where he sat as judge; and by making sarcastic and discourteous remarks to defendants in two cases before him. The Formal Complaint also alleged that

Respondent had demonstrated a pattern of discourteous and improper remarks in that the Committee had previously admonished him for such conduct in several matters.

After a delay occasioned by the fact that Respondent had moved out of state, Respondent filed an Answer to the Complaint, admitting the allegations and offering facts in mitigation.

The Committee held a formal hearing. Respondent's attorney appeared and explained to the Committee that Respondent waived his right to appear because he had retired to Florida after resigning from his municipal judgeships and closing his law practice. After carefully reviewing the evidence, the Committee made factual determinations supported by clear and convincing evidence that are the basis for its Findings and Recommendation.

FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1972. At all times relevant to these matters, Respondent served as Judge of the Municipal Courts of Pennington and West Windsor, Mercer County.

AS TO COUNT I

On September 20, 2002, Nadia and Ilya Ben entered into contingent fee agreements with Respondent whereby he agreed to represent them in a civil action in connection with a motor vehicle accident that had occurred in the township of West Windsor on August 24, 2002. On October 29, Daniel Cessaro, who was the other driver in the automobile accident in which Nadia and Ilya Ben had been involved, appeared before Respondent in the West Windsor Municipal Court and entered a plea of guilty to an amended charge of unsafe operation of a motor vehicle in violation of N.J.S.A. 39:4-97.2. Respondent accepted the plea and imposed the

maximum fine of $150, plus $30 costs. The violation for which Daniel Cessaro appeared arose out of the automobile accident that involved with Nadia and Ilya Ben. According to Respondent, he did not know that at the time he took Cessaro's plea.

On June 9, 2004, Respondent met with Nadia and Ilya Ben concerning the automobile accident and informed them that he did not intend to pursue their case. By letter dated June 14, 2004, he informed Ilya Ben that he did not think that Mr. Ben met the threshold qualifications for a viable lawsuit. By letter of the same date, he referred Nadia Ben to another attorney for final evaluation of her case and its viability, and he asked Ms. Ben to inform the attorney that it was Respondent who had referred her.

By letter of June 28, 2004, Respondent informed Nadia Ben that he had received a letter from the other attorney and that he did not think that Ms. Ben had a case "that hurdles the threshold requirements of the state of New Jersey."

Canon 1 of the Code of Judicial Conduct requires judges to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, and Canon 2A requires judges to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

By agreeing to represent Nadia and Ilya Ben in a civil action arising out of a matter in which a complaint had been filed in the court where he sat as judge, Respondent violated a longstanding proscription against such representation (Municipal Court Manual, at X-1 to X-2), violated Canons 1 and 2A, and engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(6).

By presiding over the case of Daniel Cessaro concerning a violation that occurred in the same automobile accident with regard to which he had contracted to represent Nadia and Ilya

Ben, Respondent engaged in a conflict of interest in violation of Canon 3C of the Code of Judicial Conduct, in conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(6), and also violated Canons 1 and 2A of the Code of Judicial Conduct.

AS TO COUNT II

In ACJC 2002-004, this Committee admonished Respondent for violating both Rule 1:15-1(b), which bars a municipal court judge from representing the municipality in which the judge sits or any agency or officer thereof, and the rule of In re Blackman, 124 N.J. 547 (1991), by representing an officer of the West Windsor Police Department while Respondent was serving as Municipal Court Judge of the Township of West Windsor. That conduct and the conduct outlined in Count I constitute a pattern of disregard for the ethics obligations of part-time judges who also engage in the practice of law. In this regard, Respondent has violated Canons 1 and 2A of the Code of Judicial Conduct and engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(6).

AS TO COUNT III

On February 20, 2003, Respondent presided over the matter of State v. Warren in the Pennington Municipal Court. The named defendant was Laura Warren, who had been charged with violating a municipal ordinance by leaving her automobile parked on the street after snow had fallen and had accumulated to a depth of more than two inches.

Stewart Warren, the named defendant's husband, appeared in her place and informed Respondent that it was he and not his wife, the registered owner, who had parked the car on the

street. Respondent replied that it was Mrs. Warren who had been cited and that she was the one who had failed to appear. He added: "I think it's like $1,000 for not showing up and five days in jail?" When Mr. Warren agreed, Respondent said: "She just didn't show up. All right. We can use the money." Mr. Warren said, "Okay," and Respondent asked: "All right. You got the money on you?" Mr. Warren replied that he would have to write a check, but Respondent said: "We don't take checks here."

After taking other matters, Respondent said to an unidentified individual: "Sarge, what do you think about some guy letting his wife go to jail?" Shortly thereafter, the court tape recorder was turned off. When taping resumed, Respondent called the Warren matter again and amended the complaint to name Stewart Warren as the defendant. After a discussion of the relevant ordinance, Respondent said to Stewart Warren:

> Okay. Now, let me make this real plain for you so we don't have any problems. The young lady at the window is much cheaper and much nicer than the Judge is. I would anticipate it's probably a simple ordinance. It, basically, says, if there's snow on the ground you can't be on - - parked on the street. If you're there, you're it. There's - - after that there's really no justification, you know, I was only there for a short time, I didn't mean to be there. Those things don't work, and the prices are higher here, just that's my nature. Are you sure you want to do this?

Mr. Warren said that he wanted to proceed, and Respondent then heard testimony from the police officer who had issued the summons.

After extensive colloquy about the relevant ordinance and after Mr. Warren's testimony, Respondent found Mr. Warren guilty. He then asked both the municipal prosecutor and Mr. Warren for their suggestions concerning sentencing. When Mr. Warren replied that he had been told by the court clerk that the fine was $32, Respondent said: "Well, I told you she's cheap. Not

easy, but cheap. I gave you an option." Respondent then imposed the fine of $50, plus $30 court costs.

Respondent's remarks to and about Stewart Warren were sarcastic, gratuitous, and discourteous, in violation of Canon 3A(3) of the Code of Judicial Conduct, and constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(6).

By his remarks, Respondent also violated Canons 1 and 2A of the Code of Judicial Conduct in that he did not maintain high standards of conduct and did not act in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

AS TO COUNT IV

On December 18, 2003, Respondent presided over the matter of State v. McCormick in the Pennington Municipal Court. The named defendant, Elizabeth McCormick, was charged with a parking violation. When the case was called, the defendant's son, Kevin McCormick, appeared and informed Respondent that although the car was registered in his mother's name, it was he who had committed the violation. Respondent then amended the complaint to name Kevin McCormick as the defendant.

Mr. McCormick said that he was pleading guilty but that he wished first to know what the total fines would be. Respondent replied: " Well, you just made a deal with the prosecutor for 40 and 30," and when Mr. McCormick said he did not know what that meant, Respondent replied: "Forty dollars American, $30 American." When Mr. McCormick protested that the original fine was less than that, Respondent asked him why he had not paid the fine at the window. Respondent then asked him: "Did you want to plead guilty in here or did you want the

cheaper price at the window?" Before Mr. McCormick could answer, Respondent told him to have a seat and said that he would speak to him at the end of the session. Although Mr. McCormick then said he would pay at the window, Respondent repeatedly directed him to have a seat.

After unrelated matters were taken, Respondent asked Mr. McCormick: "Mr. McCormick, did you want to see me or did you want to see the kind lady at the window?" When Mr. McCormick said he would see the lady at the window if that were the easiest way to resolve the matter, Respondent said: "Oh my god. Oh my god. Oh my god. You've got two choices, son. You can see the kindly lady at the window, very sweet lady, or you can see the judge. Which one did you want to do?" Mr. McCormick replied that he would see the woman at the window.

Respondent's remarks to Mr. McCormick were sarcastic and discourteous, in violation of Canon 3A(3) of the Code of Judicial Conduct, and constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(6). By his remarks, Respondent also violated Canons 1 and 2A of the Code of Judicial Conduct in that he did not maintain high standards of conduct and did not act in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

AS TO COUNT V

In two previous matters, ACJC 2000-102 and 2000-136, the Committee admonished Respondent for his demeanor in several cases over which he had presided, with specific reference to a series of discourteous and improper remarks. In the Committee's letter of admonition, it observed that his remarks "were highly improper and gratuitous and showed a

pattern of conduct that needs correction." Respondent's demeanor as described in Counts III and IV of the present matter demonstrates a continued pattern of improper conduct in violation of Canons 1, 2A, and 3A(3) of the Code of Judicial Conduct and conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(6).

RECOMMENDATION

Almost thirty years ago, the Court observed that "it is the judge's obligation to see that justice is done in every case that comes before him. This includes not only reaching the correct legal result in the particular case, but also the exhibiting at all times of judicial demeanor, patience and understanding. People come to court to be heard. They have a right to expect that . . . they will be treated with respect." In re Albano, 75 N.J. 509, 514 (1978). Respondent did not exhibit at all times judicial demeanor, patience and understanding, nor did he treat with respect those who appeared before him. Instead, he was sarcastic and disrespectful of them. What is worse, he continued to be so even after the Committee admonished him about his behavior. Public discipline should be imposed.

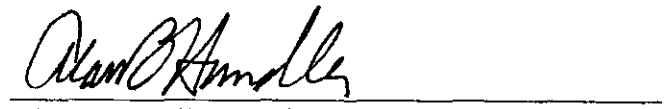
Further, Respondent did not take appropriate measures to prevent conflicts between his role as a part-time judge and his role as an attorney in private practice. When he learned from the Bens that they sought to retain him to represent them in a civil action that arose out of an automobile accident that had occurred in the municipality where he sat as judge, he should have realized that he could not undertake such representation if a traffic matter relating to the accident would come before his court. He should have made an appropriate inquiry, but he did not do so.

Respondent should have been alert to problems arising out of his dual roles because the Committee had previously admonished him in that regard. He was not alert, and he brought his judicial office into disrepute. Public discipline should be imposed.

Respondent has retired and has taken up permanent residence in Florida. Were he still sitting as a judge, the Committee would recommend severe disciplinary action to ensure that there be no further ethics violations. Under the circumstances, however, the Committee respectfully recommends that Respondent be censured.

Respectfully submitted,

DATED: 10/3/05



Alan B. Handler, Chair
ADVISORY COMMITTEE ON JUDICIAL CONDUCT
Hughes Justice Complex
P. O. Box 037
Trenton, NJ 08625
(609) 292-2552