SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2004-186

IN THE MATTER OF

JAMES M. NEWMAN,

JUDGE OF THE
MUNICIPAL COURT

ANSWER TO COMPLAINT

FILED
DEC 0 8 2005
A. C. J. C.

Respondent James M. Newman, Esq., Judge of the Municipal Courts of the Township of Marlboro, the Borough of Englishtown, the Township of Manalapan, the Borough of Farmingdale and formerly of the Borough of Fair Haven, with offices at 64 West Main Street, Freehold, Monmouth County, New Jersey by way of Answer to the Complaint says:

1. Respondent James M. Newman ("Respondent Newman") admits the allegations of paragraph 1. He has practiced continuously in New Jersey since 1975 with neither an ethics nor an Advisory Committee On Judicial Conduct ("A.C.J.C.") complaint.
2. Respondent admits the allegations of paragraph 2. He has served continuously in Marlboro since October of 1986, in Englishtown since January of 1990, in Manalapan since 1992 and in Farmingdale since January 1990. Moreover, he served as the municipal court judge in Fair Haven from 1996 through 2001. Respondent's service has continued despite multiple political party changes in the various municipalities.
3. Respondent admits the allegations of paragraph 3. The divorce between Dawn Sidoti Argen and Michael G. Argen was extremely contentious. In point of fact, Respondent was retained initially to settle the form of the judgment since the parties, with or without prior counsel, could not do so without court intervention.

4. Respondent admits the allegations of paragraph 4; however, a clarification of the allegation "upon the advise of Respondent" is warranted. Respondent denies that he specifically advised Mrs. Argen to file a complaint against Mr. Argen. Respondent did give generic advice to Mrs. Argen (as he does to all clients who believe they are the victims of domestic violence) to the effect she could file a domestic violence action and/or a disorderly persons complaint. Mrs. Argen chose to file both. Deputy Court Administrator Susan Thomas found probable cause and a complaint was issued against Mr. Argen. The Honorable Thomas X. Foley, also a Judge of the Marlboro Municipal Court, issued a temporary restraining order.

5. Respondent admits the allegations of paragraph 5.

6. Respondent admits the allegations of paragraph 6; however, he had no knowledge prior to taking the bench on August 13, 2003 that Mr. Argen would be in the courtroom. Respondent was not scheduled to sit that day and did so on an emergent basis only because Judge Foley became suddenly ill.

7. Respondent admits the allegations of paragraph 7.

8. Respondent admits the allegations of paragraph 8.

9. Respondent admits the allegations of paragraph 9.

10. Respondent admits the allegations of paragraph 10. As the transcript and audiotape will reveal, the verbal exchange between Respondent and Mr. Argen was courteous, professional, uneventful and entirely consistent with those types of brief exchanges which typify an arraignment, a generally ministerial proceeding.

11. Respondent has insufficient personal information with which to form a belief as to the truth of the allegations of paragraph 11 because he pointedly and purposely had no further contact whatsoever with Mr. Argen's file. Upon information and belief, however, the allegations of paragraph 11 are correct.

12. Respondent denies the allegations of paragraph 12, except to admit that a conflict of interest would have resulted if Respondent had had any substantive contact with the file.

13. Respondent denies the allegations of paragraph 13.

14. Respondent denies the allegations of paragraph 14. Respondent followed a practice which was, theretofore, customary among some municipal court judges. Respondent opted to arraign Mr. Argen and save him the necessity of missing another day of work and reappearing either before Judge Foley in Marlboro or another municipal court judge in a conflict court.

15. Respondent denies the allegations of paragraph 15.

WHEREFORE, Respondent demands dismissal of the complaint.

SEPARATE DEFENSES

1. The complaint fails to state a cause of action because of the following:

   a. Respondent had no prior knowledge that Mr. Argen would be in court on August 13, 2003.

   b. Respondent was sitting on an emergent basis because the other municipal judge suddenly became ill. Consequently, whereas the Respondent would normally review a calendar one week in advance to check for conflicts, he had no notice whatsoever.

   c. Arraignments are presented to the Marlboro Municipal Court Judge as sheets of paper in a pile and are handled top to bottom. An arraignment is generally considered a ministerial proceeding. It is not uncommon for municipal judges to arraign persons even though they may ultimately have a conflict of interest relevant to any further substantive contact with that file.

   d. Respondent comported with the aforementioned customary procedure for the benefit of Mr. Argen, namely: to permit him to get back to work so that he would

not have to take any further time off to be arraigned by Judge Foley or by another municipal court judge in a conflict court.

e. As the transcript reflects, the exchange between Respondent and Mr. Argen was courteous, unequivocally professional and purposefully brief. Respondent advised Mr. Argen of the charges, took his not guilty plea and advised him that he would receive a hearing date from the court administrator. Respondent clearly stated that any further involvement on his part would be a conflict of interest and, in point of fact, had absolutely no further involvement with the file. As such, neither the integrity nor the independence of the judiciary was compromised. Public confidence in the judiciary in general and the Marlboro municipal court in particular was preserved.

2. This matter is factually distinguishable from *In re: Samay*, 166 N.J. 25 (2001) and *In re: Saltman*, 185 N.J. 242 (2005), the two seminal cases relating (in part) to ethical considerations in arraignments.

LEIB, KRAUS, GRISPIN & ROTH

Dated: December 6, 2005

Kenneth J. Grispin