

FILED

MAY 25 2006

A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

IN THE MATTER OF

LESTER J. MAISTO,

JUDGE OF THE MUNICIPAL COURT

DOCKET NO.: ACJC 2005-175

FORMAL COMPLAINT

Patrick J. Monahan, Jr., Secretary, Advisory Committee on Judicial Conduct
("Complainant"), complaining of Municipal Court Judge Lester J. Maisto
("Respondent"), says:

Count I

1. Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1986.
2. At all times relevant to this matter, Respondent served as Judge of the Municipal Court of the City of Trenton, Mercer County, New Jersey, a position to which he was not reappointed. Respondent also serves as Judge of the Municipal Court of the Township of Willingboro, Burlington County, New Jersey.
3. On April 19, 2005, Respondent presided over the matter of State v. Howard, in the Trenton Municipal Court.
4. Defendant Howard informed Respondent that he did not want the services of a public defender and that he had a witness who would testify that Howard was not the person who had committed the offense with which he had been charged. Defendant Howard added that he had information about the identity of the person who actually committed the offense.

5. Respondent replied that the defendant should give that information to the police officer. Respondent ordered that bail continue and that a new trial date be set.

6. A member of the court staff suggested that trial be set for May 20, 2005 at 8:30 a.m. Defendant Howard asked why the matter could not be scheduled for the evening because he had to work during the day. Respondent replied that the police officer worked days. He directed court staff to have Defendant Howard sign a document, and he said that Howard was free to go. At that point, an attorney approached Respondent, and Respondent directed that the tape recorder be turned off.

7. Defendant Howard became aggravated, and he nosily left the courtroom, banging the door behind him. Respondent called to the court attendant to bring Howard back. The attendant went outside the courtroom, saw Howard down the hallway, and told Howard that Respondent wanted him back in the courtroom. Defendant Howard uttered an expletive regarding Respondent and ran away.

8. The court attendant returned to the courtroom and told Respondent what Howard had said.

9. Respondent ran from the courtroom, still wearing his judicial robe. He was followed by the police officer who was assigned as security in the courtroom.

10. Respondent and the police officer ran down the street in pursuit of Howard.

11. When Respondent and the officer were unable to locate Howard, they returned to the courtroom. Respondent then revoked Howard's bail and issued a warrant for his arrest.

12. By leaving the bench to pursue Defendant Howard out of the building and down the street, Respondent violated Canon 3A(2) of the Code of Judicial Conduct, which requires judges to maintain order and decorum in judicial proceedings.

13. By his conduct, Respondent also violated Canons 1 and 2 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).

Count II

1. Complainant repeats the allegations contained in Count I of this Complaint as if each were set forth fully and at length herein.

2. On April 19, 2005, Respondent also presided over the matter of State v. Navarro, in which the defendant had been charged with failing to stop for a red traffic signal.

3. Defendant Navarro pled guilty to the violation, and Respondent told her that the fine could have been paid through the Violations Bureau.

4. When Respondent asked Navarro if she had gone through the red light, she said: "Yes."

5. Respondent misheard Navarro's response and he told her: "Don't be guessing." Navarro replied: "I said yes."

6. Respondent asked again if Navarro had gone through the red light, and she replied: "I said yes."

7. After Navarro said that she was guilty, Respondent imposed a fine of \$85, plus \$33 in court costs. He then told a court staffer: "Mark it guilty, \$85 because of the mouth."

8. Because Respondent misunderstood Navarro to say: "guess" instead of what she actually said: "yes," he retaliated against Navarro by imposing a higher fine.

9. By his conduct toward Navarro, Respondent violated Canon 3A(1) of the Code of Judicial Conduct, which requires judges to be faithful to the law, and he also

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).

Count III

1. Complainant repeats the allegations contained in Counts 1 and 2 of this Complaint as if each were set forth fully and at length herein.

2. On April 19, 2005, Respondent also presided over a status conference in the matter of State v. Perez, in which the defendant had been charged with simple assault and with preventing a law enforcement officer from effecting a lawful arrest.

3. Respondent told Defendant Perez that she had been arraigned almost a month earlier and had been advised at that time that she was facing a sentence of six months incarceration or a fine of up to \$1,000, or both. He asked her why she had not previously completed an application for the appointment of a public defender.

4. Defendant Perez replied: "I wasn't aware." Respondent then told Perez: "Yes, you were. Don't stand there and tell me a blatant lie like that."

5. When Perez said that she did not know she had to fill out an application, Respondent said: "You also didn't know you had to be here on December the 20th, did you, when you got arrested on the 19th. You forgot about coming in on the 20th. Take your hands out of your pockets. I'm not real thrilled with a liar in the courtroom. Do you understand me?"

6. When Perez replied in the affirmative, Respondent continued: "Don't tell me blatant lies."

7. Respondent's remarks to Perez about lies and about her being a liar violate Canon 3A(3) of the Code of Judicial Conduct, which requires judges to be patient, dignified, and courteous to litigants.

8. Respondent's remarks to Perez demonstrate his belief that she was not credible. Because of that, Respondent should have disqualified himself in accordance with Canon 3C(1)(a) of the Code of Judicial Conduct, which requires judges to disqualify themselves from proceedings if they have a personal bias or prejudice concerning a party.

9. By his remarks to Perez, Respondent also 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).

Count IV

1. Complainant repeats the allegations contained in Counts I through III of this Complaint as if each were set forth fully and at length herein.

2. On April 19, 2005, Respondent also presided over the matter of State v. Monts, in which the defendant had been charged with violation of a loitering ordinance that had since been repealed and with possession of drug paraphernalia.

3. The defendant's attorney asked that the loitering charge be dismissed because the ordinance had been repealed and Respondent granted that application.

4. The defendant's attorney told the judge that the drug paraphernalia charge dated back to 1999 and that the police had been unable to find a file or a report on the incident. Respondent questioned the defendant about his reasons for not coming to court, and he replied that he had been in prison. In response to questions from Respondent, the defendant also said that he had been imprisoned for drugs and that he had gone through drug rehabilitation while in prison.

5. Respondent asked the defendant's attorney to approach and then said he wished to speak off the record, but the brief conversation was actually recorded and appears in the transcript.

6. In the conversation with the defendant's attorney that he thought was off the record, Respondent asked the attorney if the defendant had paid him. When the attorney replied that he had been paid, Respondent said that he "[j]ust wanted to make sure."

7. Respondent then directed that the proceeding go back on the record, and he dismissed all charges.

8. By asking the defendant's attorney, in a conversation that he thought was off the record, if that attorney had been paid, Respondent gave at least the appearance of conditioning his subsequent dismissal of the charges against the defendant on the defendant's having paid the attorney. That violated Canon 2B of the Code of Judicial Conduct, which prohibits judges from allowing family, social, or other relationships to influence judicial conduct or judgment and from conveying the impression that others are in a special position of influence.

9. Respondent's conduct also violated Canons 1 and 2A 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).

Count V

1. Complainant repeats the allegations contained in Count I through IV of this Complaint as if each were set forth fully and at length herein.

2. On April 19, 2005, Respondent also presided over the matter of State v. Ezekiel. During the proceeding, a cell phone rang in the courtroom, and Respondent said: "That's alright. Use your phone. It doesn't bother me."

3. When the owner of the phone said that he would turn it off, Respondent replied that it did not bother him either way.

4. Respondent then engaged in colloquy with an unidentified speaker about the use of cell phones in the courtroom, and Respondent said: "They are allowed to use cell phones in the courtroom if they like, they just can't talk on them. I can't tell them to take them out, I can't tell them to do anything."

5. When the unidentified speaker asked when that policy had been put into effect, Respondent said that it had been the preceding Friday. Respondent added: "I don't care if they come in, read the newspaper, kick back, have a cup of coffee, smoke a cigarette, enjoy themselves. It's not a Court anymore."

6. Respondent's remarks were inappropriate and violated Canons 1 and 2A of the Code of Judicial Conduct. They also constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(6).

Count VI

1. Complainant repeats the allegations contained in Counts I through V of this Complaint as if each were set forth fully and at length therein.

2. On May 30, 2003, the Advisory Committee on Judicial Conduct sent Respondent a letter of admonition concerning his conduct in two matters: ACJC 2002-196 and ACJC 2003-056. The conduct in those matters included Respondent's making remarks to a defendant suggesting that he had prejudged that defendant, making gratuitous remarks during court sessions, insulting defendants and others, and telling a defendant that he had told a "fake bullshit story."

3. In the letter, the Committee informed Respondent that it was giving him the benefit of a doubt because of his assurances that his remarks were aberrational, and it added that further incidences of such conduct would likely lead the Committee to conclude that discipline would be warranted.

4. Respondent's conduct as set forth in Count I through V of this Complaint, together with his prior conduct as outlined in this Count VI, constitute a pattern of improper conduct in violation of Canons 1, 2A, and 3A(3) of the Code of Judicial Conduct, as well as conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

WHEREFORE, Complainant charges that Respondent, Municipal Court Judge Lester J. Maisto, has violated the following Canons of the Code of Judicial Conduct:

Canon 1, which requires judges to personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved;

Canon 2A, which 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;

Canon 2B, which prohibits judges from allowing family, social, or other relationships to influence judicial conduct or judgment and from conveying the impression that others are in a special position of influence;

Canon 3A(1), which requires judges to be faithful to the law and to maintain professional competence in it;

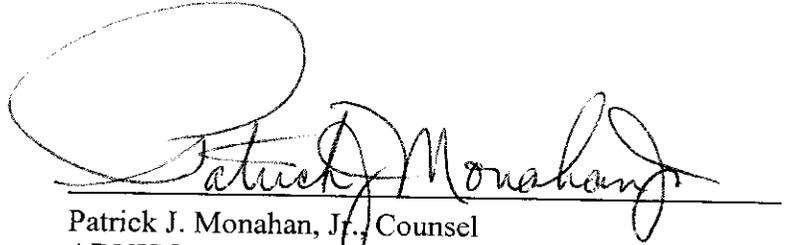
Canon 3A(2), which requires judges to maintain order and decorum in judicial proceedings;

Canon 3A(3), which requires judges to be patient, dignified, and courteous to litigants and others with whom they deal in an official capacity; and

Canon 3C(1)(a), which requires judges to disqualify themselves from proceedings in which their impartiality might reasonably be questioned, including incidences where the judge had a personal bias or prejudice concerning a party.

Complainant also charges that Respondent has 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).

DATED: 5/25/06

A handwritten signature in black ink, appearing to read "Patrick J. Monahan, Jr.", written over a horizontal line.

Patrick J. Monahan, Jr., Counsel
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