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A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

IN THE MATTER OF

GERALD GORDON,

JUDGE OF THE MUNICIPAL COURT

DOCKET NOS.: ACJC 2003-264, 2004-031, 2004-034 & 2004-176

FORMAL COMPLAINT

Patrick J. Monahan, Jr., Secretary, Advisory Committee on Judicial Conduct ("Complainant"), complaining of Municipal Court Judge Gerald Gordon ("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 1971.

2. At all times relevant to this matter, Respondent held the position of Judge of the Municipal Court of New Brunswick, Middlesex County, a position that he continues to hold.

3. On May 29, 2003, Respondent presided over State v. Packwood. The defendant in that case had been fined $1,017 on November 23, 1993, after having been found guilty in a traffic matter in the New Brunswick Municipal Court. The defendant had then obtained a time payment order but made only one payment of $45, not responding to several delinquent payment notices. In February 2000, a warrant was issued for the defendant's arrest, and he was arrested on that warrant on April 16, 2003, leading to his appearance before Judge Gordon on May 29, 2003.

4. Respondent began the proceeding on May 29, 2003, by informing Defendant Packwood that he owed $972. He asked the defendant if he could pay that amount at that time, and the defendant replied that he could pay about $150 in cash and could write a check for about

$300. Respondent replied: "No, it's nothing." He told the defendant that in addition to the outstanding balance of $972, he was also imposing a penalty of $100 per year for each year that had passed, for a total of $1,100, and that although he would normally add thirty days in jail for contempt for each of those years, he could not in this case because that would exceed the six-month maximum he could impose. Therefore, Respondent told the defendant that he owed a total of $2,072 and would be sentenced to jail for six months for contempt.

5. The defendant protested that he wanted to stay out of jail. Respondent said that he would suspend the sentence of confinement if the grievant paid $2,072. The defendant replied that his wife was outside and could write a check, and Respondent said that he would not accept a check. Respondent told defendant that he should have said at the start that he could pay the entire amount owed instead of offering $150 in cash and $300 in a check. Respondent closed the hearing by saying that a police officer would inform the defendant's wife that she needed to present $2,072 in cash in order to have the defendant released from jail.

6. At no time during the aforementioned proceeding did Respondent advise the defendant that he was facing a consequence of magnitude, that he had a right to be represented by counsel, and that counsel would be appointed to represent him if he could not afford to retain an attorney. Respondent thus violated the rule of Rodriguez v. Rosenblatt, 58 N.J. 281 (1971), Canon 3A(1) of the Code of Judicial Conduct, which requires judges to be faithful to the law and to maintain professional competence in it, and engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8a(6).

7. By holding a summary contempt proceeding when the alleged contempt did not occur in the face of the Court, Respondent violated Canon 3A(1) 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 2:15-8a(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 May 29, 2003, Respondent presided over State v. Eva Sas, in which the defendant had received a parking summons and had attempted to pay the fine by sending a check to the New Brunswick Municipal Court.

3. On her check, the defendant wrote a vulgar remark ("assholes") on the memo line, because of which the check was not accepted and the defendant was instructed to report to court.

4. Respondent held a summary contempt proceeding and fined the defendant $500 but then reduced it to $100 and said that he would accept the check that had been sent in payment of the parking fine.

5. By holding a summary contempt proceeding when there was no contempt in the face of the Court, Respondent violated Directive #5-99, that was issued by the Acting Administrative Director of the Courts on June 22, 1999, specifically instructing judges that summary contempt proceedings are not appropriate in response to remarks written on checks sent to pay fines. Respondent thus violated Canon 3A(1) 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 I and II of this Complaint as if each were set forth fully and at length herein.

2. On May 10, 2003, a parking summons was issued and placed on a vehicle registered to Respondent for violation of a local ordinance prohibiting parking in a certain area. The summons had a return date of May 27, 2003.

3. Respondent did not pay the fine or appear in court, and a computer-generated failure to appear notice was mailed to him on June 10, 2003.

4. On July 19, 2003, a notice of proposed suspension of Respondent's driver's license was sent to him.

5. When Respondent failed again to respond, a notice of suspension of driver's license was sent to him on August 18, 2003.

6. On August 26, 2003, Respondent went to the offices of the New Brunswick Municipal Court to find out why his license was suspended. After inquiring why the matter had not been transferred to another court, Respondent wrote out a check for the balance due, gave it to a member of the court staff, and directed that a notice be sent to the Division of Motor Vehicles to reinstate his driving privileges.

7. By failing to respond to multiple notices from the municipal court in which he served, Respondent violated Canons 1, 2A, and 3A(1) 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.

8. By directing the staff of the New Brunswick Municipal Court to send a notice to the Division of Motor Vehicles to reinstate his driver's license, Respondent engaged in conduct which constituted a conflict of interest in violation of Canon 3C(1)(d)(i), which requires judges to disqualify themselves from proceedings if they are a party to the proceeding.

Count IV

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

2. On July 6, 2002, New Brunswick police arrested one Paul Raul Rojas and charged him with violating N.J.S.A. 2C:21-2.1(c) for presenting to a police officer false identification in the form of a fraudulent social security card.

3. The county prosecutor remanded the case against Rojas to the New Brunswick Municipal Court.

4. Rojas was confined, after his arrest, at the Middlesex County Adult Correctional Center (MCACC) and was denied bail at first. Subsequently, bail was set in the amount of $500,000. Rojas was unable to make bail and remained at the MCACC.

5. On July 19, 2002, Ida Cambria, Esq., whom Rojas had retained, made an emergent bail application. A Superior Court judge lowered bail to $2,500, with a 10 percent option.

6. Bail was posted on behalf of Rojas after the aforementioned proceeding, but he was not released from the MCACC until that institution verified with the Immigration and Naturalization Service (INS) that Rojas was not a person sought by the INS.

7. On October 23, 2002, Rojas appeared with counsel before Respondent in the New Brunswick Municipal Court. Ida Cambria was otherwise engaged and arranged for Gail F. Belfert, Esq., to represent Rojas at the proceeding. After Belfert said that she wanted to file a motion to suppress evidence, she added that Rojas had been held for fourteen days on $500,000 for a disorderly person's offense. Respondent asked if Rojas had any identification, and Belfert refused to answer that question, saying that Rojas was asserting his privilege not to reply under the Fifth Amendment.

8. Respondent said he was entitled to see valid identification, and that it was not a Fifth Amendment issue. Belfert replied that it was a Fifth Amendment issue if there was an immigration issue, and Respondent ordered that Rojas produce identification immediately.

9. Belfert told Respondent that Rojas did not have identification, and she added that it was not "a crime to be an illegal alien." Respondent insisted that he wanted identification and Belfert said that Rojas could not produce identification if he were illegal. Respondent said: "Then I'll have him held for the INS," and Belfert said she would seek an interlocutory appeal because a Superior Court judge had already set bail and allowed Rojas to be released.

10. When Respondent said that he would not grant a stay pending an interlocutory appeal, Belfert replied: "See you in the Appellate Division, Your Honor." Respondent directed that Belfert sit down, and he told her that he would deal with her later during the court session, saying that it was disrespectful for her to walk out of his courtroom with her back to him and saying that she would see him in the Appellate Division. Belfert said that she wanted a hearing and the opportunity to call her attorney, and Respondent replied that she could have both.

11. When Ida Cambria, Esq., appeared in response to Belfert's call, she sought to have Respondent take the matter up at that point. When Respondent said that he would get to the matter after dealing with his calendar, Cambria replied that she would have no choice but to call the emergent-duty Superior Court judge. Respondent gave Cambria his cell phone number and said that he would speak to the emergent judge if that judge called him.

12. The emergent judge called Respondent as Respondent was hearing other matters. Respondent told him that his practice was to turn such defendants over to the MCACC, which would contact the INS. The INS would then decide whether to take the defendant into custody or to tell the MCACC to release the defendant. Respondent added: "And the INS may very well pass off -- pass off on him. They tend to do it on most of the -- and they will, but they can do it. They can be responsible for that, not me. I'm not going to be responsible for that." He added: "I'm not going to accept that responsibility unless somebody wants to give me a lifelong appointment."

13. Respondent continued saying that he would not take the responsibility of releasing Rojas. He said: "I will not let him go. I can tell you that now because I'm -- all he has to do is do something bad and then it's all over the world."

14. After additional colloquy of the preceding sort, Cambria told Respondent that it had been inappropriate for him to question Rojas about his identification when that was the ultimate issue to be tried. She told Respondent that she knew Rojas, had met with him, had spoken with members of his family, had seen photographs of him and his family, and that she knew him to be Raul Rojas. She added that she knew that the MCACC had held him after bail had been posted so that they could specifically check with the INS to make sure that that agency was not seeking him.

15. Respondent asked where Rojas worked. Cambria replied that she did not think that to be an appropriate question, and Respondent added that he just wanted to establish that Rojas had "some ties." Cambria replied that Rojas had a tie to the community, that she knew where he worked, but that she would not name the establishment. In response to a question by Respondent, she said that she would not name the establishment because Rojas was not required to give any evidence against himself that could be used to prove the charge of false identification.

16. Respondent asked Cambria if Rojas had ever shown her any identification. Cambria replied that she did not think she should be required to answer that, but she told Respondent that Rojas' wife had shown her his birth certificate.

17. Cambria told Respondent that it was inappropriate for him to have asked Belfert about Rojas' immigration status "because it violates the separation of powers clause of our state and federal constitution." Respondent replied:

> I don't know whether it does or doesn't, but I know in today's environment I want the answer to that question. I think that if there's -- if there are people in this country illegally, considering what's happened in this country especially over the last year and a half and it comes to the

> Court's attention or the Court has a reason to make an inquiry relative to that, especially someone who we have a level of concern with concerning his I.D. and the nature of the charge, that it makes sense for me to make that inquiry.
>
> I'll stand on top of the Constitution and make that inquiry every time considering what has happened in this country, especially what happened starting September 11th. And I don't care whether the person is from China, from Austria, or Russia. It doesn't matter to me, I'll make the inquiry.

18. After additional colloquy, Respondent moved on to hear other matters. At the end of the court session, Respondent announced that the emergent-duty Superior Court judge had authorized Rojas' release because Cambria had informed Respondent that she knew Rojas and had seen his birth certificate.

19. By questioning Belfert and Cambria about Rojas' immigration status and by demanding Rojas' identification, Respondent gratuitously inquired into matters that were not properly before the Court. In doing so, he violated Canons 2A and 3A(1) 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).

20. By his remarks during his telephone conversation with the emergent-duty Superior Court judge, Respondent showed his concern about and his motivation in holding Rojas, when there was no legal justification for his doing so, to be his own fear of the consequences to him and his reputation if he were to release Rojas and if Rojas were then to engage in illegal activity. Respondent thereby 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).

WHEREFORE, Complainant charges that, by the conduct set forth above, Respondent, Municipal Court Judge Gerald Gordon violated the following Canons of the Code of Judicial Conduct:

Canon 1, which requires judges to 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;

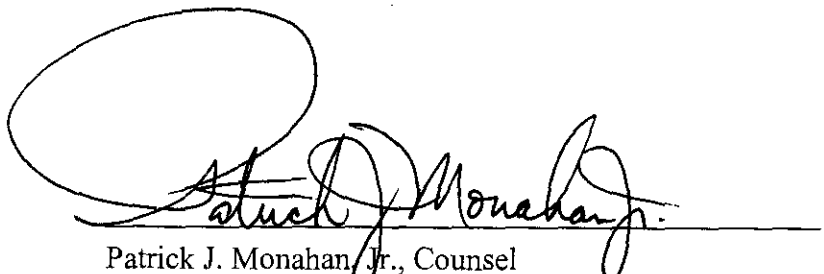
Canon 3A(1), which requires judges to be faithful to the law and maintain professional competence in it;

Canon 3A(3), which requires judges to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity; and

Canon 3C(1)(d)(i), which requires judges to disqualify themselves from proceedings to which they are parties.

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: 10/26/05



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