SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

IN THE MATTER OF GERALD GORDON, FORMER JUDGE OF THE MUNICIPAL COURT	DOCKET NOS.: ACJC 2003-264, 2004-031, 2004-034 & 2004-176 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 Gerald Gordon, former Judge of the Municipal Court, have been proven by clear and convincing evidence and its Recommendation that the Respondent be publicly reprimanded.

The Advisory Committee on Judicial Conduct issued a Formal Complaint consisting of four counts alleging that Respondent engaged in conduct in violation of Canons 1, 2A, 3A(1), 3A(3), and 3C(1)(d)(i) of the Code of Judicial Conduct and in violation of Rule 2:15-8(a)(6) by failing to inform a defendant who faced a consequence of magnitude of his rights to counsel and then holding a summary contempt proceeding for conduct that did not occur in the face of the court (Count I); by violating a directive prohibiting summary contempt proceedings in response to remarks written on checks sent to pay fines (Count II); by failing to respond to multiple court notices regarding a parking ticket issued to him and instructing his court staff in connection with that ticket (Count III); and by gratuitously inquiring into the immigration status of a defendant who was before him and making inappropriate remarks from the bench in the course of a telephone conversation about the defendant with the on-call Superior Court Judge (Count IV). Respondent filed an Answer and, through counsel, admitted certain factual allegations of the

Formal Complaint but denied others and denied violating the Code of Judicial Conduct. Respondent also offered facts in mitigation.

The Committee convened a formal hearing at which exhibits were introduced and accepted into evidence. Respondent appeared, represented by counsel, and offered testimony in his defense. After carefully reviewing the evidence, the Committee made factual determinations, supported by clear and convincing evidence, which form the basis for its Findings and Recommendation.

I. FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1971. At all times relevant to this matter, Respondent held the position of Judge of the Municipal Court of New Brunswick, Middlesex County. Respondent no longer holds judicial office.

A. As to Count I

On May 29, 2003, Respondent presided over State v. Packwood. The defendant had been fined $1,017 almost ten years earlier, on November 23, 1993, after being 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. Thereafter, he did not respond to several delinquent payment notices.

In February 2000, a warrant was issued for the defendant's arrest. He was arrested on that warrant on April 16, 2003, leading to his appearance before Respondent.

Respondent began the May 29, 2003 proceeding by informing Packwood that he owed $972 and asking him if he could pay that amount. When the defendant said he could pay about $150 in cash and could write a check for another $300, Respondent replied: "No, it's nothing." He told the defendant that there was an outstanding balance of $972 and that he was also imposing a penalty of $100 per year for each year that the fine had remained unpaid. The

Respondent also said that although he would normally add thirty days in jail for contempt for each of those years, he could not do so because that would exceed the six-month maximum he was able to 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.

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 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 had to present $2,072 in cash to have the defendant released from jail.

It is clear from the exchange between Respondent and Packwood, and from Respondent's facetious reference to a "too late rule," that Respondent became annoyed because Packwood claimed at first to be able to pay only part of the fine but then turned out to have the ability to pay the entire amount on the spot; he thought Packwood was toying with him. As Respondent made clear when he told Packwood, "Once somebody pulls that on me it's cash," that annoyance led Respondent to insist on full payment in cash and to order Packwood confined, even though Packwood was not on notice that he would have to pay more than $2,000 in cash. Respondent's behavior was not judicious and demeaned the judicial office.

Respondent sentenced Packwood to incarceration, but at no time during the proceeding did Respondent advise him 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), and 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. Respondent's conduct in this

matter was also prejudicial to the administration of justice thereby bringing the judicial office into disrepute, in violation of Rule 2:15-8a(6).

Further, by holding a summary contempt proceeding when the alleged contempt did not occur in the face of the court, Respondent again 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).

B. As to Count II

On May 29, 2003, Respondent presided over State v. Eva Sas, in which the defendant had received a parking summons and had mailed a check to the New Brunswick Municipal Court to pay the fine. On the memo line of the check, the defendant wrote "assholes"; because of that the check was not accepted, and the defendant was instructed to report to court.

Respondent held a summary contempt proceeding and fined the defendant $500, but then reduced the fine to $100. Ultimately, Respondent accepted Ms. Sas' check in payment of the parking fine.

By holding a summary contempt proceeding when there was no contempt in the face of the Court, Respondent violated Directive #5-99 (the "Directive"), issued by the Acting Administrative Director of the Courts on June 22, 1999, which specifically instructs judges that summary contempt proceedings are not appropriate in response to remarks written on checks sent to pay fines. When Sas brought the Directive to Respondent's attention during her proceeding, Respondent told her: "I ignore it. I ignore it because [the chief judge of the New Brunswick Municipal Court] ignores it. And I don't care if I get in trouble for what I said. I'm not going to allow anybody to write this kind of stuff on a check that's going to offend anybody."

That and similar remarks demonstrate Respondent's contumacious defiance of a clear and lawful directive in preference for his own personal views of propriety. 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).

C. As to Count III

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

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. Respondent did not answer the notice, and on July 19, 2003, a notice of proposed suspension of his driver's license was mailed to him.

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

Respondent testified that he had not received the initial summons, and that it was not until the failure to appear notice issued that he became aware of the matter. Wishing to contest the ticket, he approached one of the deputy court administrators of the New Brunswick Municipal Court and told her that he was going to plead not guilty and that venue should be transferred to another court. However, shortly thereafter, Respondent received a notice that his driver's license was subject to suspension for his failures to respond. In response to receiving the notice of possible suspension, Respondent discussed the matter with a deputy court administrator, who told him the matter would be taken care of.

Respondent then received a notice that his license had been suspended. Because he needed his license for personal reasons, Respondent went to the clerk's office shortly before closing, asked what he owed, and wrote a check in that amount. He then asked a member of the court staff to send a fax to the Division of Motor Vehicles to have his driver's license reinstated.

Respondent's informal and essentially off-handed approach to have the venue changed demonstrates poor judgment on his part. As a judge, he had an obligation to respond in proper fashion to the various official notices he received. He chose instead to take advantage of the access he possessed to approach court staff informally. 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.

Respondent's most serious violation, however, is his direction to a member of the court staff to send a faxed notice to reinstate his driving privileges. He used his unique access to have someone subject to his supervision take action that was of personal benefit to him. Such conduct was grossly improper. 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 a conflict of interest in violation of Canon 3C(1)(d)(i), which requires judges to disqualify themselves from proceedings to which they are a party.

D. As to Count IV

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

Rojas was arrested and held at the Middlesex County Adult Correctional Center (MCACC) pending trial. At first, he was denied bail, but bail was later set in the amount of $500,000. Rojas was unable to make bail and remained in custody at the MCACC.

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. Bail was

then posted, but Rojas was not released until the MCACC verified with the Immigration and Naturalization Service (INS) that Rojas was not a person sought by the INS.

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

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. Respondent then ordered Rojas to produce identification immediately.

Belfert told Respondent that Rojas did not have identification. She added that it was not "a crime to be an illegal alien." Respondent continued in his insistence that Rojas produce some form of identification to which Belfert said that Rojas could not produce identification if he were illegal. Respondent said: "Then I'll have him held for the INS." Belfert replied that she would seek an interlocutory appeal because a Superior Court judge had already set bail and allowed Rojas to be released.

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 say 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.

Ida Cambria, Esq. appeared in response to Belfert's call and sought to have Respondent take the matter up at that point. When Respondent said that he would get to it 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-duty judge if that judge called him.

The emergent-duty judge called Respondent as Respondent was hearing other matters. Respondent took the call on the bench and 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."

Respondent continued saying that he would not take the responsibility of releasing Rojas: "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."

After additional colloquy of that 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 said 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 the MCACC had held him even after bail had been posted in order to check with the INS to make sure that agency was not seeking him.

Respondent asked where Rojas worked. Cambria replied that she did not think that to be an appropriate question. Respondent replied that he just wanted to establish that Rojas had "some ties" to the community. Cambria replied that Rojas had a tie to the community and that

she knew where he worked but 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.

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.

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.
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> 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.

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.

Respondent testified that he wanted to ensure that the person appearing before him was "truly the defendant" in the case. There can be no doubt that a judge may properly question the identity of an individual to make such a determination, but the identification of the defendant by

counsel is sufficient for that purpose. Unfortunately, Belfert, who could have defused the situation early on, did not identify the defendant. Respondent then insisted on seeing valid identification, to which Belfert understandably objected on Fifth Amendment grounds because the charge against her client was presenting false identification to a police officer.

Respondent testified that he rejected Belfert's Fifth Amendment objections because any information to the effect that Rojas was in this country illegally could not be used against Rojas at trial, from which Respondent would recuse himself. Respondent said nothing of the sort in court, however, and pressed for identification even after Belfert said: "He doesn't have any I.D., Your Honor. He's here illegally." Respondent then said he would have Rojas detained for the INS.

By basing Rojas' legal rights on his immigration status, 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).

By his remarks during his telephone conversation with the emergent-duty Superior Court judge, Respondent made it clear that his motivation in holding Rojas, when there was no legal justification for his doing so, was 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 terrorist activity. Such concerns are understandable, especially so soon after the events of September 11, 2001, but they are not excusable when they influence the exercise of the judicial office. Respondent gave the appearance of reacting to Rojas on the basis of a stereotype. He appeared to equate illegal immigrants with terrorists, which is a manifestation of impermissible bias. 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).

Respondent had originally requested that the Committee seek permission from the Court in accordance with Rule 2:15-20(b) to take evidence concerning certain personal information in confidence. At the hearing, Respondent withdrew that request and offered in evidence a report from his treating psychiatrist, who concluded that Respondent had long suffered from a previously undiagnosed bipolar disorder that led to much of the conduct covered by the Formal Complaint. Although the Committee is not without compassion for Respondent, his condition can have no bearing on the Committee's recommendation for discipline inasmuch as the purpose of judicial discipline is not punitive. In re Yaccarino, 101 N.J. 342, 394 (1985).

II. RECOMMENDATION

Respondent's conduct in the four matters that are the subject of the Formal Complaint reflects a refusal to follow the law and a tendency to react in a personal rather than judicial manner to matters not properly before the court and to give priority to personal interests over judicial propriety. Indeed, Respondent's own words to the emergent-duty judge, to Mr. Packwood, and to Ms. Sas demonstrate his intense focus on personal considerations rather than on the neutral and disinterested application of the law, which is the obligation of every judge.

Respondent suffered from a deep and profound personal illness that undoubtedly affected his judgment. Were he still sitting, the Committee would consider more severe discipline. As matters stand, the Committee respectfully recommends that Respondent, former Municipal Court Judge Gerald Gordon, be publicly reprimanded.

Respectfully submitted,
Advisory Committee on Judicial Conduct

By: Alan B. Handler
Alan B. Handler, Chair

DatedApril 23, 2007