Township of Hillsborough
MUNICIPAL COURT
379 So Branch Rd.
Hillsborough, New Jersey
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HENRY E RZEMIENIEWSKI
Judge

SANDRA J. SMITH
Court Administrator

DOROTHY M. QUIRICO
Dep. Court Administrator

LORI ZELASKO
Dep. Court Administrator

FILED

FEB 28 2005

A. C. J. C.

February 28th, 2005

FAX 609-292-6848

Supreme Court of New Jersey
Advisory Committee on Judicial Conduct
The ACJC
P. O. Box 037
Trenton, New Jersey 08625-0037

Attention: Patrick J. Monahan, Jr., Esq.

CONFIDENTIAL

RE: ACJC 2004-007, 2004-014

Dear Mr. Monahan:

Concerning the above matter, enclosed you will find my response to the above Complaints.

I further certify that all of the statements made in both responses are truthful and are made by me under oath.

Very truly yours,

Henry E. Rzemeiniewski

HER/dar
Encs.
Express Mail

RESPONSE CONCERNING COMPLAINT OF JAMES SPANO

The calendar call that commenced on July 21st, 2003 commenced at approximately 5:00 p.m.

The case involving James Spano was called shortly after 5:00 p.m.

Additionally, the matter against James Spano was a motor vehicle Complaint issued by a Hillsborough Twp. Police Officer. The Complaint was initially issued for following too closely, and then as a result of a request by the Police Officer within the 30 days after the Complaint was issued, it was amended to careless driving.

The defendant, James Spano, signed a Complaint against the other driver one Marta C. Heliotis.

That defendant appeared with her attorney, Mr. Charles Clemens, and answered the call.

After the completion of the calendar call, approximately 30 minutes after the calendar call started, Mr. Clemens as attorney for Ms. Heliotis moved to dismiss the motor vehicle Complaint signed by James Spano against his client. My recollection was that in that application that attorney referenced in some indirect way the fact that the Complaint signed against his client not only was without merit, but I was led to believe that it was a "retaliatory" Complaint signed by James Spano.

The impression that I obtained from Mr. Clemens was consistent with a practice that occurs in Municipal Court when there are two or more vehicles involved in an accident and only one of the parties is charged with a motor vehicle violation.

Often, and unfortunately, the party who is charged will then sign a Complaint of a motor vehicle nature against the other party, generally careless driving so as to obtain leverage when the parties appear in Court. Many times what will occur in a multi car accident, be it two cars or more, the parties will discuss among themselves that neither one of them wishes to testify and because the Police Officer did not observe the accident, generally the Complaints are then dismissed. It was my impression that that is what occurred in this particular case as a result of the Complaint signed by James Spano against the other driver.

Additionally, that other driver appeared with an attorney and obviously had to pay that attorney to be in Court.

At the request of that attorney I dismissed the Complaint.

Because James Spano did not appear, I imposed a $500.00 bail on a Warrant.

Sometime shortly thereafter I was alerted to the fact that a person known as James Spano appeared. Apparently, my Court staff was familiar with this individual because he has had prior contact with them in the Court on other unrelated matters which occurred prior to my term as a Municipal Court. Apparently, also this person was a friend of the former Municipal Judge.

When the defendant, James Spano, appeared before me I inquired if he could post the $500.00 bail. He indicated he could and I directed him to the side to go to the Court offices to post the bail.

Unbeknownst to me the defendant was processed through the Police Dept.

I found out subsequently that that is the way that particular matter was handled by the Police Dept.

It was my intention and I directed that he go to the Court offices and post his bail.

The purpose of the posting of the bail was to insure a timely return the next time.

More importantly, the other party, Ms. Heliotis, appeared with an attorney in a timely fashion.

While it is not reflected on the record, because I did not say it, had the defendant responded to me that he could not post the $500.00 bail, the next question I would have asked would have been how much could he post.

It was not my intention to have the defendant arrested.

My purpose was to insure a timely response to the Court.

My other concern was that the Complaint signed by James Spano appeared to be nothing more than and nothing less than a retaliatory Complaint.

A subsequent review of the Police report, indicates that that would appear to be the only basis for the Complaint signed by James Spano.

Subsequently, I have found out that James Spano was not unfamiliar with Court processes and I set forth in detail in my prior response to this matter some long time ago additional information, which I presume is part of this record.

I have reviewed the case cited In re Bozarth, 127 N.J. 271 (1992) and I do not believe that this case approaches in any similar or qualitative fashion the circumstances of that case.

Apparently, the Committee has determined that my actions were inappropriate.

I must accept the Committee's determination.

However, I merely explain the factual background that occurred at the time not as an excuse, but as an explanation.

I also rely upon the prior position that I submitted with the various documents attached previously.

I believe that there are other underlying facts which are irrelevant which have led to what has occurred here and I will, therefore, not place them on the record.

In closing, however, I would note that James Spano crashed into the rear of the vehicle operated by the other driver, Marta C. Heliotis. Yet, James Spano, on his own, after he was issued a Summons for careless driving, signed a Complaint against the other driver for careless driving. The matter was completely investigated by the Police officer at the scene of the accident, and that Police officer did not sign a Complaint against the other driver, Marta C. Heliotis.

RESPONSE CONCERNING COMPLAINT OF ANTHONY JENNINGS

Concerning Anthony Jennings and his drunk driving complaint, it is necessary for me to point out that the Municipal Court Judges have been directed by the Administrative Office of the Courts and the Supreme Court of New Jersey to insure and to try to dispose of drunk driving Complaints within sixty (60) days from the date of issue.

There have been a number of meetings scheduled over the last three to five years involving the presiding vicinage Municipal Judge Pollock and Municipal Judges of the vicinage, and on occasion with either the presiding criminal judge, Judge Coleman and on occasion with the Assignment Judge, Judge Ross and with other personnel discussing among other issues the emphasis on the 60 (sixty) day directive for processing of drunk driving complaints.

As a matter of fact over the last three to four years at each one of these meetings, Statewide and vicinage statistics have been presented indicating how each Municipal Court in the Somerset County-Warren County-Hunterdon County vicinage is processing motor vehicles complaints, disorderly complaints, and specifically drunk driving complaints. Statewide statistics are provided. Statistics for every Municipal Court are provided and compared.

There is a strong and constant emphasis that the 60 day directive is to be complied with as reasonably and as practically and as completely as possible.

To that end I have undertaken, as I believe other Municipal Judges in this vicinage have done, a procedure whereby at least every two weeks I receive a print out from the Municipal Courts where I preside indicating the status of drunk driving complaints.

That print out provides among other things the name of the defendant, the name of defense counsel, and the number of days that it has been since that particular drunk driving complaint has been issued.

To that end, I have conducted special drunk driving sessions in the three Municipal Courts when called for, to address the cases that are the oldest on that list, and the cases that exceed the 60 (sixty) day directive.

Additionally, when a defendant who is charged with drunk driving appears, as that defendant is required to appear, on the 1st appearance in Court an Order is given to that defendant scheduling not only the pretrial date but the trial date, and generally information as to when defense counsel is to obtain discovery.

It is rare indeed that the pretrial date is adjourned. The pretrial date is used for the purposes of managing that particular case to insure that the discovery has been requested, to determine whether expert reports are going to be required, and to determine whether there truly will be a trial or a potential plea.

In this particular case the defendant did not hire an attorney although he said he was going to. He was then given the public defender.

As the attached sheet indicates there is a date chronological history of when the defendant did not appear in Court, or when he appeared he was not ready to proceed.

I recognize that I have been charged with taking the defendant's license before his trial.

At the time that action was taken by me, the defendant's case was already over six (6) months old. He had already had one failure to appear, and he had already appeared for a second trial date but was not prepared because he had not given information to his public defender, so that the witnesses could be subpoenaed.

When the license was taken, it was then the third trial date and still the defendant had not provided information to his public defender to subpoena witnesses.

I recognize that by virtue of the charges made against me that clearly it is the position of the Committee that those actions taken by me were improper.

I do not and cannot deny what occurred.

I can only offer an explanation to the Committee as to what the facts were at the time and what the history of this case was that was before me at the time I took that action.

I would note that there were two subsequent trial dates all within a month and one-half scheduled for this defendant and on each occasion he still had not provided the information to his public defender, so that that public defender could subpoena the witnesses.

I would also point out that the conviction of the defendant was a second conviction for drunk driving.

And I would also point out that the prior charge of drunk driving against the defendant was on February 6th, 1996, and over three (3) years later on March 13th, 1999

he was found guilty. Apparently, in that case, the defendant was able to delay his drunk driving trial for over three (3) years.

Finally, a review of the recording of the sentencing of the defendant by the conflict judge in the South Bound Brook Municipal Court indicated that the defendant's driving abstract was 14 pages long.

Again, the actions that I took are not denied.

I do not excuse those actions, because they were in fact taken by me.

I merely explain them based upon the facts that were before me at the time I took those actions.

I was faced with the prospect of a case going six (6) months old wherein the defendant was not cooperating with the public defender, and having to deal with the 60 (sixty) day directive mandated by the Supreme Court and the Administrative Office of the Courts as it relates to the disposition of drunk driving cases.

I did what I thought was appropriate under the circumstances to balance a recalcitrant defendant who had a public defender and was not providing the public defender with the witnesses that he wanted subpoenaed, against the 60 (sixty) day mandate to dispose of drunk driving cases. It would appear that the Committee has determined that my actions were wrong and improper.

If that is the Committee's position, then I stand corrected. I believe what I did was appropriate and did not prejudice the defendant based upon the facts that were in front of me in the processing of this drunk driving complaint at the time the defendant appeared before me.

Subsequent circumstances, which I could not have known, confirmed that defendant continued to delay the processing of the case by refusing to cooperate with his public defender and give him the information for the witnesses that had to be subpoenaed. Subsequent circumstances also confirmed that the defendant once before apparently delayed a drunk driving matter for over three (3) years.

Subsequent circumstances have now shown that the defendant has not paid one penny of fines or Court costs to the Court and has never responded back to the Court since his conviction.

Finally, subsequent circumstances show that the defendant's driving abstract was apparently 14 pages long.

Finally, the defendant did receive full credit for the time his license was suspended before the trial.

Lastly, based on the facts of this particular case where a defendant is given the public defender, and does not cooperate with the public defender, and causes, directly because his lack of cooperation with the public defender, a continued delay in a drunk driving matter, I know of no other way that I could have obtained some type of cooperation from the defendant.

I certainly could not and would not have forced him to try the case without his witnesses. I could not lock him up because he refused to provide the witnesses to his public defender for subpoena purposes.

I did what I thought was appropriate to try and obtain cooperation from the defendant.

Additionally, when the defendant appeared before me on the one occasion when I asked the officer to go up to the defendant to smell his breath, the actions of the defendant that I observed led me to believe that he could very well have been under the influence of some type of substance. Had I not believed so I would not have asked of the officer to go up to the defendant. My concern was that if the defendant was under the influence of possibly alcohol, then that would present a bigger problem because possibly he would not be understanding what was occurring at that point in time in Court.

Finally, the defendant did receive full credit for the time that his license was suspended. At the time I took his license, it was my intention to insure that he would receive the full credit.

However, I would point out that on June 24 when he appeared for his third trial date and when his license was taken, the 4th trial date was rescheduled for July 2nd, 2003. I would have presumed that the defendant would have provided the information to the Public Defender within that period of time, so that the witnesses the defendant said existed could be immediately subpoenaed and be available to testify for the scheduled trial date.

There were a number of subsequently scheduled trial dates and on even one of those dates the defendant had not provided to his Public Defender the names and addresses of those witnesses. Finally, there was a trial held before a conflict Judge and the defendant was found guilty of his second offense drunk driving.

As I have stated above, the recording of that trial indicates that apparently the defendant had a 14 page motor vehicle driving abstract.

Finally, since that finding of guilty on November 5, 2003 until the present date, the defendant has ignored two Orders to come back to Court because he has not paid one single penny in fines or Court costs. The matter has been closed out, and a notice of revocation for non-payment has been sent to the Division of Motor Vehicles.

Dates

1/12/03 Summons for Drunk Driving issued

1/29/03 First Appearance by Defendant in Court. Defendant plead not guilty, refused Public Defender and indicated that he was going to obtain a private attorney.

3/5/03 Pre-trial date. Defendant appeared without an attorney. He then requested a Public Defender and the request was granted.

5/7/03 First trial date – defendant did not appear.

5/12/03 Warrant issued. Defendant called the Court and advised staff of a medical emergency.

5/13/03 Paper work faxed to Court offices – paper work supporting claim of defendant relative to medical emergency faxed to Court offices – Warrant recalled.

6/04/03 Second trial date. Defendant not prepared. Requested an adjournment to subpoena witnesses.

6/24/03 Third trial date. Defendant requested another adjournment to subpoena witnesses.

7/2/03 Fourth trial date. Defendant requested another adjournment to subpoena witnesses.

8/6/03 Fifth trial date. Defendant requested another adjournment to subpoena witnesses.

10/01/03 Sixth trial date. Public Defender advised Court that defendant had filed a judicial Complaint – case adjourned. Witnesses not subpoenaed.

11/05/03 Seventh trial date. Conflict Judge found the defendant guilty of a second offense drunk driving. He was ordered to pay $80.00 per month beginning 12/01/03.

1/02/04 Delinquent time payment notice sent to Defendant, because nothing had been paid.

1/30/04 Proposed suspension notice sent to defendant because of non-compliance with payment schedule. Nothing paid.

3/08/04 Driving license suspension notice sent to defendant.

It should be noted that the defendant had a prior drunk driving offense where the motor vehicle complaint was issued on February 6th, 1996 against the defendant, and his conviction date was three (3) years later on March 13th, 1999.

Also, on the record at the time of sentencing before the Conflict Judge, it was noted that the defendant's motor vehicle abstract was 14 pages long.

To date as of February 10th, 2004 when this list has been completed, the defendant has not paid one penny to the Court concerning any penalty or Court costs.