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A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

IN THE MATTER OF

HENRY RZEMIENIEWSKI,

JUDGE OF THE MUNICIPAL COURT

DOCKET NOS.: ACJC 2004-007 & 014

FORMAL COMPLAINT

Patrick J. Monahan, Jr., Secretary, Advisory Committee on Judicial Conduct ("Complainant"), complaining of Municipal Court Judge Henry Rzemieniewski ("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 1970.

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

3. On July 21, 2003, Respondent presided over the evening session of the Hillsborough Municipal Court.

4. James Spano was scheduled to appear in court at 5:00 p.m. that day in response to a complaint charging him with careless driving and on a cross-complaint he filed against Marta Heliotis for disregarding a stop sign.

5. Respondent began the calendar call at 5:22 p.m.

6. When Respondent called Ms. Heliotis's case, she appeared with her attorney,

Charles W. Clemens, Esq. Mr. Clemens stated that he was ready to proceed to trial but that Mr. Spano was not present. Therefore Mr. Clemens moved to dismiss the cross-complaint against Ms. Heliotis. Respondent granted the motion with prejudice.

7. Because Mr. Spano was not present, Respondent issued a warrant for his arrest, revoked his license, and set bail at $500, all cash, no ten percent and no bond.

8. At 5:28 p.m. Respondent called the list of defendants who had failed to answer the call of the calendar.

9. James Spano arrived at court at approximately 5:30 p.m. Mr. Spano was late because he had to attend to his fifteen-year-old daughter, who suffers from cerebral palsy.

10. Respondent called Mr. Spano to the bench at 5:40 p.m. and told him that his cross-complaint had been dismissed with prejudice and that a warrant had been issued for his arrest.

11. Respondent told Mr. Spano that he was in custody and that he needed $500 bail. Respondent said, "Court started at 5. We got started a little late."

12. Mr. Spano was not given an opportunity to explain why he was late and was handcuffed by a police officer and escorted away.

13. Mr. Spano was then handcuffed to a bench in the police department where he remained for an hour and a half until he posted bail.

14. By issuing a bench warrant for Mr. Spano's arrest before the court session ended, and by the subsequent arrest and detention of Mr. Spano, Respondent violated both the rule of *In re Bozarth*, 127 N.J. 271 (1992), and Canon 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 II

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

2. On January 29, 2003, Respondent presided over a session of the South Bound Brook Municipal Court, at which Anthony Jennings was scheduled to appear in response to complaints alleging DWI, no tail lamps, careless driving, and driving without a seat belt.

3. Respondent called Mr. Jennings's case and instructed him to approach the bench. Respondent asked Mr. Jennings if he had had anything to drink that night.

4. Even though Mr. Jennings replied that he had not, Respondent instructed the court officer to approach Mr. Jennings to determine if she detected the odor of an alcoholic beverage on Mr. Jennings's breath. The court officer said, "No, your honor" and Respondent said, "It looked like you did because you stumbled a little."

5. Mr. Jennings gave no indication of being under the influence of alcohol and was embarrassed by Respondent's remarks and instructions to the court officer.

6. Respondent reviewed with Mr. Jennings the penalties for a drunk driving offense. Mr. Jennings said he would obtain the services of a private attorney, and Respondent gave him a trial date of March 5, 2003.

7. On June 24, 2003, Respondent again presided over *State v. Jennings* in the South Bound Brook Municipal Court.

8. Mr. Jennings appeared with his public defender, James Wronko, Esq. Mr. Wronko requested a brief postponement because a witness for Mr. Jennings did not appear. When Respondent asked if the witness had been subpoenaed, Mr. Wronko replied that he had not subpoenaed the witness because Mr. Jennings said that he would be able to contact the witness and bring him to court.

9. Respondent asked Mr. Jennings if he had his license with him and Mr. Jennings said, "Yes." Respondent told Mr. Jennings that he would grant an adjournment, but because Mr. Jennings had not asked for a subpoena to be issued for his witness, he was suspending Mr. Jennings's driving privileges until his trial was complete in order to "give him the added incentive" to have his witness appear in court. Respondent said that he "had to make sure that everyone stayed interested in this case."

10. Respondent rescheduled the case for trial the following week on July 2, 2003.

11. Mr. Jennings protested to Respondent that he needed his license to work because he was a taxicab driver, and he pleaded with Respondent not to take his license. Respondent said, "Don't please. Don't beg. It's improper. Give me your license. Next time you'll cooperate with the public defender who you got for free and who has been handling this case from January of this year. No. You have to understand, Mr. Jennings, there's quid pro quo here."

12. Even though Mr. Jennings had not found guilty of any violation, Respondent summarily suspended his driving privileges. Respondent told Mr. Jennings that if he were found not guilty at trial he would get his license back. Otherwise, if found guilty, he would get a few days credit toward his license revocation.

13. Respondent violated Canons 1, 2A and 3A(3) of the code of Judicial Conduct by instructing his court officer to determine if she detected the odor of an alcoholic beverage on Mr. Jennings's breath, even though Mr. Jennings told Respondent that he had not been drinking and showed no signs of being under the influence of alcohol.

14. Respondent's decision to suspend Mr. Jennings's license although he had not been found guilty of DWI or of any other offense violated Canons 1, 2A and 3A(1) of the Code of Judicial Conduct and constitutes 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 Henry Rzemieniewski, 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 it in; and

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.

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: 2/3/05

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