

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 &
ACJC 2004-014

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 Henry Rzemieniewski, Judge of the Municipal Court, have been proved by clear and convincing evidence and its Recommendation that the Respondent be publicly reprimanded.

The Advisory Committee on Judicial Conduct issued a Formal Complaint alleging that Respondent in two proceedings engaged in conduct in violation of Canons 1, 2A, 3A(1), and 3A(3) of the Code of Judicial Conduct and in violation of Rule 2:15-8(a)(6) by issuing a bench warrant for the arrest of a defendant who was one-half hour late for court and having him taken into custody without giving him the opportunity to explain why he was late, and by instructing his court officer to sniff the breath of a defendant to determine if she detected the odor of alcohol and subsequently taking that defendant's driving license before trial as a way of ensuring that the defendant would not seek further adjournments.

In lieu of Answer, Respondent filed a statement detailing the factual backgrounds of the two underlying cases and explaining his reasons for acting as he had.

The Committee held a formal hearing. Respondent appeared, electing not to be represented by counsel, and testified under oath. After carefully reviewing the testimony and the other evidence, the Committee made factual determinations supported by clear and convincing evidence that are the basis for its Findings and Recommendation.

FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1970. At all times relevant to this matter, Respondent held the positions of Judge of the Municipal Court of Hillsborough Township and Judge of the Municipal Court of South Bound Brook, Somerset County, positions that he continues to hold.

AS TO COUNT I

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

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

Because Mr. Spano was not present, Respondent then issued a warrant for his arrest, revoked his license, and set bail at \$500, all cash, no ten percent and no bond. At 5:28 p.m. Respondent called the list of defendants who had failed to answer the call of the calendar.

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

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

Mr. Spano was not given an opportunity to explain why he was late. A police officer handcuffed him and escorted him to the police department, where he was then handcuffed to a bench. He remained handcuffed to the bench for an hour and a half until bail was posted.

Thirteen years ago, the Court publicly reprimanded a municipal court judge who had ordered that a bench warrant issue for the arrest of a defendant who had not answered the calendar call. In re Bozarth, 127 N.J. 271 (1992). The defendant arrived minutes later and, unbeknownst to the judge, the deputy court clerk drew up the warrant and had the defendant taken into custody, after which the defendant was shackled to a bench and remained there for a few hours until her predicament was brought to the judge's attention.

In the present matter, Respondent was fully aware that the warrant was executed even though the defendant had been present. It was he who called the officer forward to take the defendant into custody. In fact, it was he who told the defendant that he was in custody. He went beyond what the respondent in Bozarth had done.

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, supra, and Canon 2A of the Code of Judicial Conduct, 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. He 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).

AS TO COUNT II

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.

Respondent called Mr. Jennings's case and instructed him to approach the bench. He asked Mr. Jennings if he had had anything to drink that night. Mr. Jennings replied that he had not, but Respondent nevertheless instructed the court officer to approach Mr. Jennings to determine if she detected the odor of an alcoholic beverage on his breath. The court officer said, "No, your honor" and Respondent said, "It looked like you did because you stumbled a little."

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.

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.

Respondent testified that he acted as he had because he thought that Mr. Jennings was intoxicated and would not be able to comprehend the proceeding. However, if he truly had doubts about the defendant's competence, a mere sniffing of breath would by no means constitute proof that the doubts were ill founded. He could have taken other steps, but the only way he could have satisfied himself that Jennings was competent to appear would have been to question him and gauge the clarity of his responses.

Canon 3A(3) of the Code of Judicial Conduct requires judges to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. Respondent subjected Jennings to the indignity of having an officer sniff at his face in front of the courtroom.

Respondent violated Canons 1 (which requires judges to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved), 2A, and 3A(3) 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. Respondent's conduct was

prejudicial to the administration of justice and brought the judicial office into disrepute, in violation of Rule 2:15-8(a)(6).

On June 24, 2003, Respondent again presided over State v. Jennings in the South Bound Brook Municipal Court. 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 had said that he would be able to contact the witness and bring him to court.

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." Respondent then rescheduled the case for trial the following week, July 2, 2003.

Mr. Jennings protested to Respondent that he needed his license to work because he worked as a taxicab driver. 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."

Although Mr. Jennings had not been found guilty of any violation, Respondent summarily suspended his driving privileges by physically confiscating his license. He told Mr. Jennings that if he were found not guilty at trial he would get his license back. Otherwise, if found guilty, he would receive credit toward the resultant license suspension.

Respondent had no authority to take Mr. Jennings' license. Had Jennings failed to appear in response to a failure to appear notice, Respondent would have been authorized to report him to the Division of Motor Vehicles in accordance with Rule 7:8-9(b)(1). But he did appear, and Respondent had no authority to seize his license. Respondent simply chose to make him bear the burden of Respondent's own inability to manage his calendar.

Mr. Jennings had received a number of adjournments and the case was older than the sixty-day limit for DWI cases. Respondent took what he considered to be the easiest course of action to ensure that the case would move on the next trial date. It was his obligation to provide for the timely resolution of cases, and there were steps that he could have taken months earlier, such as the setting of a peremptory date for trial. Instead, he did that which he had no right to do: impose a consequence of magnitude without benefit of notice and a hearing.

Respondent's suspension of 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)(which requires judges to be faithful to the law and maintain professional competence in it) 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).

RECOMMENDATION

The Committee finds it difficult to understand how, so many years after Bozarth, any municipal court judge, let alone an experienced judge with twenty years service, could consider it acceptable to have a traffic defendant arrested for being one-half hour late to court and then watch that defendant taken away in handcuffs to await the posting of \$500.00 full cash bail. That is unacceptable, as Respondent now recognizes.

It is likewise difficult to understand how anyone could think that the absence of the smell of alcohol on someone's breath would demonstrate that person's competence to appear in court.

And it is impossible to understand how an experienced jurist could assume he had powers not granted to him by statute or by court rule.

Respondent's conduct requires public disciplinary action. Although there is sentiment on the Committee for a more severe sanction, the Committee respectfully recommends that Respondent, Municipal Court Judge Henry A. Rzemieniewski, be publicly reprimanded.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

By: 
Alan B. Handler, Chair

DATED: 10/1/05