SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2004-186

IN THE MATTER OF JAMES M. NEWMAN, JUDGE OF THE MUNICIPAL COURT	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 James M. Newman, 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 alleging that Respondent engaged in conduct that violated Canons 1, 2A, and 3C(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) by presiding over the initial court appearance of the former husband of one of Respondent's clients, who was appearing as a defendant in a harassment matter initiated by that client, and who was also acting as Respondent's pro se adversary in post-divorce proceedings.

The Committee held a formal hearing. Respondent appeared, 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 form 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 1975. Respondent is also a member of the Bar of the State of New York, having been admitted to the practice of law in New York in 1970. At all times relevant to this matter, Respondent held the position of Judge of the Municipal Court of the Township of Marlboro, Monmouth County, New Jersey. Respondent also currently serves as Judge of the Municipal Court of the Borough of Englishtown, the Borough of Farmingdale, and the Township of Manalapan.

On May 9, 2002, a final judgment of divorce was entered for Michael G. Argen and Dawn Sidoti Argen. Thereafter, Respondent began representation of Mrs. Argen in post-judgment matters. As was his custom with all new clients, Respondent advised her concerning the procedure for filing a complaint and for seeking a temporary restraining order against her former husband.

On August 6, 2003, Dawn Argen filed a complaint with the Marlboro Township Deputy Court Administrator, Susan Thomas, charging her former husband with harassment. She requested a temporary restraining order. Judge Thomas X. Foley, a second judge then sitting in the Marlboro Municipal Court, issued a temporary restraining order against Mr. Argen.

On August 12, 2003, there was a hearing in Superior Court regarding the issuance of a final restraining order. Judge O'Brien Kilgallen denied Mrs. Argen's application for a final order and vacated the temporary restraining order. Respondent represented Mrs. Argen at that proceeding and Mr. Argen appeared pro se.

The following day, August 13, 2003, Mr. Argen appeared in the Marlboro Township Municipal Court in response to the harassment complaint filed by Mrs. Argen. Respondent was presiding over the court that day because he had been asked on short notice to cover for Judge Thomas Foley, who was unable to preside as scheduled.

When Mr. Argen's case was called, Respondent said, "Good morning, Mr. Argen. I wasn't supposed to be here, so this situation wasn't going to happen. This is not my day. But, I will arraign you, read you your rights. And then the matter will be referred to Judge Foley for disposition."

Respondent read the charges and told Mr. Argen that he was entitled to be represented by an attorney and if he could not afford an attorney one would be appointed for him. Mr. Argen said that he understood the charges. He pled not guilty.

Respondent then said, "The next thing is you will get a notice from the Court as to when to come back. And it will be before Judge Foley so it will be on a Wednesday morning. I don't usually sit for him. He had an emergency, he couldn't be here. So, it will be before him. I have marked on it that I have a conflict."

Mr. Argen appeared before Judge Foley on January 28, 2004, and Judge Foley dismissed the harassment complaint.

When Respondent saw Mr. Argen before him in court, he should have immediately disqualified himself from the matter because there was a conflict of interest. Respondent was representing Argen's former wife against him, and relations between the parties were far from harmonious. Although Respondent had not advised Mrs. Argen to seek a temporary restraining order or to file municipal court charges against her husband, he had explained to her, as he does with all of his clients, the procedures for doing so. Further, the harassment charge that brought Mr. Argen before Respondent was based on the same allegations that were the basis for the temporary restraining order on which Respondent had appeared in Superior Court the previous afternoon.

Respondent recognized that there was a conflict. He testified that he proceeded in spite of it because his involvement in the arraignment proceeding was merely ministerial, limited to advising Mr. Argen of his rights and then sending him on his way. According to Respondent,

that course of action was preferable to the alternative: bringing Mr. Argen back for his initial court appearance before a different judge, which would have cost Mr. Argen another day. However, nowhere in the Code of Judicial Conduct or in the Court's opinions is there a special exception to the conflict rules for alleged ministerial proceedings.

The key to public confidence in the integrity and independence of our judicial system is the impartiality of the judge who presides over a given matter. That impartiality must be apparent as well as actual because it is important not only that justice be done but also that justice be seen to be done.

For that reason, Canon 3C(1) of the Code of Judicial Conduct requires judges to disqualify themselves from matters in which their impartiality "might reasonably be questioned." A reasonable observer would certainly question Respondent's impartiality in respect of Mr. Argen. Indeed, Respondent was not impartial with regard to Mr. Argen, who, as a pro se litigant, was both his adversary and the party in opposition to his client in a contentious matter.

Contrary to the position taken by Respondent and his witnesses, the fact that a proceeding may involve ministerial, rather than discretionary, action is irrelevant to the issue of conflict. The reasonable observer sees only the conflict, the exercise of the judicial office by one who lacks, or appears to lack, impartiality. Further, the fact that a proceeding may be intended as ministerial in nature does not necessarily mean it will turn out that way. Respondent acknowledged that he had experienced situations in which defendants sought to argue about the charges against them or professed not to understand their right to counsel.

Likewise, a judge's good intentions are irrelevant. Although malicious intent would clearly exacerbate a matter, Respondent's well-meaning desire to spare Mr. Argen a return trip to court does not absolve him of proceeding in the face of a conflict. Cf. In re Sciuto, 2003 N.J. LEXIS 1132 (imposing censure for presiding over matters involving attorney who had arranged personal loan for judge).

Respondent testified that he would not have continued had Mr. Argen objected. But Mr. Argen's objections or acquiescence would also be irrelevant. Canon 3D of the Code of Judicial Conduct makes it very clear that a conflict is not neutralized if the judge puts it on the record and has consent to proceed: "A judge disqualified by the terms of this Canon may not avoid disqualification by disclosing on the record the disqualifying interest and securing the consent of the parties."

The Committee finds that Respondent violated Canon 3C(1) by continuing with the proceeding once he recognized the defendant. He also violated Canon 1, which requires judges to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, and 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, 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).

Recommendation

Respondent testified that it was common practice for municipal court judges to act as he had acted. In support of that contention, he called as witnesses attorneys who were experienced in municipal court practice.

The attorneys' testimony was largely anecdotal and concerned instances when the conflict was somewhat ephemeral, as in cases involving defendants known to the judge from community relations – not a clear conflict of interest arising from representation just a day earlier of a party adverse to the defendant.

Given the prohibition against remittal of disqualification contained in Canon 3D of the Code of Judicial Conduct, supra, no one, be it a party or an attorney or a judge, may properly waive a conflict – for any reason.

As the Court observed in In re Samay, 166 N.J. 25, 43-44 (2001)

> Municipal courts are critical to our judicial system. More cases are processed annually through those courts than any other branch of the judicial system. The large number of litigants who appear in those courts daily makes it all the more important for the judges who serve in those courts to act responsibly and be sensitive to the public perception of their actions. It is the court of first and last resort for many, and for that reason, those courts are responsible "for the popular image of the entire system." [citations omitted]

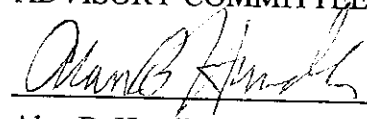
Respondent should have been sensitive to the public perception of his actions. He knew he had a conflict, but he proceeded in spite of it. His good intentions notwithstanding, he should be publicly disciplined.

Conclusion

For the foregoing reasons, the Advisory Committee on Judicial Conduct respectfully recommends that Respondent, Municipal Court Judge James M. Newman, be publicly reprimanded.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

DATED: 11/17/06 By: 

Alan B. Handler, Chair