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IN THE MATTER OF WILBUR H. MATHESIUS, JUDGE OF THE SUPERIOR COURT	SUPREME COURT OF NEW JERSEY ADVISORY COMMITTEE ON JUDICIAL CONDUCT DOCKET NOS.: ACJC 2005-072 & 2005-103 AMENDED ANSWER AND ANSWER TO AMENDED COMPLAINT

Superior Court Judge Wilbur H. Mathesius, by way of Answer to the Formal Complaint of the New Jersey Supreme Court Advisory Committee on Judicial Conduct, says that:

AS TO COUNT I

1. Respondent admits the allegations of Paragraph 1.

2. Respondent denies the allegations of Paragraph 2, insofar as, in 2001, he was a Judge in the Municipal Court. All other allegations of this paragraph are admitted.

3. Respondent admits the allegations of Paragraph 3.

4. Respondent admits the allegations of Paragraph 4.

5. Respondent denies the allegations of Paragraph 5.

6. Respondent admits the allegations of Paragraph 6.

7. Respondent admits the allegations of Paragraph 7.

8. Respondent admits the allegations of Paragraph 8.

Respondent admits that neither the prosecutor nor the defense attorney were present for the post verdict comments. Respondent believes that the prosecutor was aware of the Respondent's (and other Mercer County Judge's) practice of visiting with the jury. Although it was the defense counsel's first trial before the Respondent, he believes, as well, that the Public Defender was familiar with this practice. It was normally the Respondent's practice to thank the jury in person and to obtain information from the jurors. As to the conduct at the trial, Respondent usually discussed the jury's comments with counsel. Respondent admits that the discussions with the jury were as described in paragraphs 6 and 7, and more extensive than was the Respondent's normal practice. However, the information provided to the jury was largely in the public domain as a result of newspaper and media distribution.

9. Respondent admits the allegations of Paragraph 9.

10. Respondent denies the allegations of Paragraph 10.

AS TO COUNT II

1. Respondent repeats his responses to the allegations contained in Count I of the Complaint as if such responses were set forth fully and at length herein.

2. Respondent admits the allegations of Paragraph 2.

3. Respondent admits the allegations of Paragraph 3, but notes that he was accompanied by a Sheriff's Officer when he entered the jury room. The purpose of Respondent's entry into the

jury room was to perform a ministerial act: advise the jury that they had the option to continue to deliberate or return the following day; and to request the jurors to confer and report their decision. Respondent believed that it was appropriate to do so for several reasons. The defendants in this case were incarcerated and charged with felony murder; each had lengthy and violent criminal records; each had been confined in a separate building. Both were aggressive, vociferous and threatening during trial. Additionally, Respondent has had, and continues to have, concerns about security in the 100 year old Mercer County Court house. Moreover, neither counsel was in Court or in the vicinity of the Court room. Finally, it would have taken 40 to 45 minutes to retrieve the defendants. Given the Respondent's concerns about security and the behavior of the defendants, coupled with the Respondent's desire not to further inconvenience the jury, he believed it would have been imprudent to await the defendants' return to the courtroom for jury dismissal. Respondent has not, and will not in the future, dismiss a jury other than in the presence of the parties unless the right to be present is waived by counsel.

4. Respondent admits the allegations of Paragraph 4, as clarified in paragraph 3 above.

5. Respondent admits the allegations of Paragraph 5. However, he was under the belief that it was permissible to discuss

scheduling outside the presence of counsel as scheduling was not a "critical stage of the proceeding."

6. Respondent admits the allegations of Paragraph 6.

7. Respondent denies the allegations of Paragraph 7, insofar as he believes that the Sheriff's Officer, not the Respondent, informed the jury that they were released. Counsel was not asked to accompany the Sheriff's Officer.

8. Respondent denies the allegations of Paragraph 8.

9. Respondent denies the allegations of Paragraph 9 insofar as he did not return to the courtroom from the jury room, but admits that a motion was made by the attorney for Defendant Dean.

10. Respondent admits the allegations of Paragraph 10.

11. Respondent admits the allegations of Paragraph 11.

12. Respondent admits the allegations of Paragraph 12.

13. Respondent admits the allegations of Paragraph 13.

14. Respondent denies the allegations of Paragraph 14, as the ex parte dismissal of the jury under the circumstances set forth in Paragraph 3 above does not constitute a violation of Canon 3(A) of the Code of Judicial Conduct.

15. Respondent denies the allegations of Paragraph 15, as the language does not constitute a commendation.

16. Respondent admits the allegations of Paragraph 16.

17. Respondent denies the allegations of Paragraph 17.

AS TO COUNT III

1. Respondent repeats his responses to the allegations contained in Counts I and II of the Complaint as if such responses were set forth fully and at length herein.

2. Respondent admits the allegations of Paragraph 2.

3. Respondent admits that he spoke to the law clerk of the judge who authored the opinion, but denies that he made derogatory and denigrating remarks about the Judge.

4. Respondent admits the allegations of Paragraph 4, except that he denies that he "sharply criticized" the author of the opinion.

5. Respondent denies the allegations of Paragraph 5, but admits that he "publicly identified" one of the Judges of the panel. The reference to the Judge occurred in the course of a "Law and Literature" seminar in which a round-table discussion among the twenty attendee Judges was encouraged. During the discussion, the lay-moderator opined that many persons were improperly jailed as a result of what were believed to be involuntary confessions. Respondent responded to this remark by noting that the New Jersey courts are particularly sensitive to these concerns, and cited to the Fletcher opinion and other decisions as an illustration. In doing so, he identified Judge Skillman, present in the room, as a member of the Appellate Panel in that decision. When the Respondent was informed that his comments made the Judge

uncomfortable, he immediately called Judge Skillman and apologized. This call preceded the filing of the Complaint in this matter and the letter of complaint written by Judge Skillman.

6. Respondent denies the allegations of Paragraph 6.

7. Respondent denies the allegations of Paragraph 7.

8. Respondent denies the allegations of Paragraph 8.

AS TO COUNT IV

1. Respondent repeats his responses to the allegations contained in Count I, II and III of the Complaint as if such responses were set forth fully and at length herein.

2. Respondent admits the allegations of Paragraph 2, but notes that there has been no recurrence by Respondent of the conduct which engendered the allegation.

3. Respondent admits the allegations of Paragraph 3, but notes that there has been no recurrence by Respondent of the conduct which engendered the allegation.

4. Respondent admits the allegations of Paragraph 4, but notes that there has been no recurrence by Respondent of the conduct which engendered the allegation.

5. Respondent denies the single allegation of Paragraph 5 that his opinion in State v. Harris "gave rise to a reasonable perception that he was biased and lacked fairness . . ." As noted in Paragraph 5, he admitted at the informal conference that his reference within the formal opinion to "current and former members

of the Court" was unwise and inappropriate, explaining that he had personally apologized to those members. There has been no recurrence by Respondent of the conduct which engendered the allegation.

6. Respondent denies the allegations of Paragraph 6.

7. Respondent denies the allegations of Paragraph 7.

AFFIRMATIVE DEFENSE

First Affirmative Defense

Except insofar as specifically admitted in this Answer, Respondent denies that his conduct constitutes a violation of the Code of Judicial Conduct.

Second Affirmative Defense

Insofar as Defendant's conduct may have been wrongful, it was an error of judicial judgment, and not marked with moral turpitude which reveals a shortage of integrity and character. In re Mattera, 34 N.J. 259, 270 (1961).

Third Affirmative Defense

The allegations set forth in Counts III, paragraphs 3, 4 and 5; and IV, paragraphs 2 and 5 cannot form the basis of discipline insofar as the Respondent's comments are protected by the First Amendment of the Constitution of the United States.

SZAFERMAN, LAKIND, BLUMSTEIN, BLADER & LEHMANN, P.C.
Attorneys for Respondent

By: _____
Arnold C. Lakind, Esq.

Dated: March 8, 2006