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A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

IN THE MATTER OF

WILBUR H. MATHESIUS,

JUDGE OF THE SUPERIOR COURT

DOCKET NOS.: ACJC 2005-072
& 2005-103

FORMAL COMPLAINT

Patrick J. Monahan, Jr., Secretary, Advisory Committee on Judicial Conduct ("Complainant"), complaining of Superior Court Judge Wilbur H. Mathesius ("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 1965.

2. At all times relevant to this matter, Respondent was a Judge of the Superior Court of New Jersey, assigned to the Mercer Vicinage, a position that he continues to hold.

3. In February 2005, Respondent presided over a jury trial in State v. McDaniels, after which the jury found the defendant not guilty of unlawful possession of a handgun.

4. On February 3, 2005, after the jury had delivered its verdict and had returned to the jury room to prepare to leave the courthouse, Respondent entered the jury room and criticized the jurors for their decision.

5. Respondent said to the jurors: "What the hell were you thinking?"

6. Respondent proceeded to discuss the evidence in the case with the jurors, informing them that the defendant had a prior criminal record, that the defendant had not testified because of his prior criminal record, that the defendant would have testified if he had been not

guilty, and that an additional witness would have testified for the prosecution but had been threatened by either the defendant or the defendant's family.

7. Respondent also told the jurors that the principal witness for the prosecution was the most credible witness that Respondent had ever seen. Respondent asked the jurors how they could not have believed that witness' testimony.

8. Before entering the jury room, Respondent did not inform either the prosecutor or defense counsel of his intentions, and neither attorney was present when Respondent made the aforementioned remarks.

9. By criticizing the jurors for their verdict, Respondent violated Canon 3A(10) of the Code of Judicial Conduct, which prohibits judges from commending or criticizing jurors for their verdict.

10. By his conduct, Respondent also violated Canons 1 and 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 of this Complaint as if each were set forth fully and at length herein.

2. In July 2004, Respondent presided over a jury trial in the matter of State v. Byrd and Dean.

3. On July 22, 2004, as the jury in the aforementioned case was deliberating in the jury room, Respondent entered the jury room to ask the jurors whether they wished to continue deliberating that day or to go home and return in the morning.

4. Respondent did not inform the prosecutor or defense counsel before entering the jury room, and neither attorney was present as he spoke to the jurors.

5. When Respondent went back on the record in the courtroom, the attorney for Defendant Dean objected to Respondent's speaking to the jurors off the record in the jury room. That attorney said that he also thought that the jurors should be brought into the courtroom and dismissed on the record in the presence of the court.

6. Respondent replied: "Thank you. You can do that when you're a judge. I'll do it the way I do it when I'm a judge."

7. Respondent then read a note that he had just received from the jurors, asking that they be released for the day. Respondent told counsel that he was going in to release the jury, but he did not ask counsel to accompany him.

8. In the jury room, outside the presence of counsel but on the record, Respondent instructed the jury concerning what materials they could bring home with them, and he released them for the day.

9. When Respondent returned to the courtroom, the attorney for Defendant Dean moved that any communication with the jury should be only in court.

10. Respondent replied: "It doesn't sound like a motion. Was there a motion attached to that?"

11. The attorney replied: "That's the motion. I think all of the communications between the judge and the jury should be in open court on the record."

12. Respondent replied: "Mr. Schneider, I appreciate very much your motion." With that, the matter was concluded for the day.

13. On July 23, 2004, after the jury had delivered its verdict finding the defendants guilty of certain charges and not guilty of other charges, Respondent addressed the jury and said: "Once again, ladies and gentlemen, you have vindicated this Court's faith in the jury system. Your verdict has been adequately and amply supported by the evidence. You have deliberated long, and you've deliberated hard. You've overcome disagreements and the strife that

necessarily is imposed upon jurors in such critical and difficult decision-making. You are not the television shows. You are the bulwark and the foundation of the jury system in this country and you have acquitted nicely."

14. By entering the jury room outside the presence of counsel, Respondent violated Canon 3A(6) of the Code of Judicial Conduct, which requires judges to accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law.

15. By commending the jury on its verdict, Respondent violated Canon 3A(10) of the Code of Judicial Conduct, which prohibits judges from commending or criticizing jurors for their verdict.

16. By his remarks to Mr. Schneider in response to the latter's motion to have all communications with the jury take place on the record in the courtroom, Respondent violated Canon 3A(3) of the Code of Judicial Conduct, which requires judges to be patient, dignified, and courteous to attorneys and others.

17. Respondent's conduct, as detailed above, also violated Canons 1 and 2A of the Code of Judicial Conduct and constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(6).

Count III

1. Complainant repeats the allegations contained in Counts I and II of this Complaint as if each were set forth fully and at length herein.

2. On June 8, 2001, the Committee sent a letter of admonition to Respondent, admonishing him for sending two local newspapers a letter to the editor in which he expressed his gratitude to a local mayor for appointing him to a part-time municipal judgeship and in which he expressed his thanks to those with whom he had dealt during the course of a municipal

judgeship to which he had not been reappointed, including police officers and the State Police. The Committee informed Respondent that it was inappropriate for him to have expressed in the letter to the editor his personal opinion regarding a political matter, *viz.*, the procedure for reappointment of municipal court judges.

3. On May 11, 2004, the Committee sent Respondent a letter of admonition concerning gratuitous remarks he had made while sentencing a defendant in a criminal matter. The Committee emphasized to Respondent that the bench is not a forum for the expression of personal views, particularly if they indicate or suggest prejudgment or a fixed opinion. The Committee also noted that, because of its earlier admonition, there was sentiment on the Committee for referring the matter to the Supreme Court for public discipline.

4. On October 27, 2004, the Committee held an informal conference with Respondent concerning his asking a defendant if the defendant were "nuts" for rejecting a plea agreement and concerning his sarcastic remarks to that defendant regarding the defendant's attire. Respondent acknowledged that his remark "Are you nuts?" was inappropriate, and he said that it would not happen again.

5. At the same informal conference, the Committee also discussed with Respondent his conduct during a petition for post-conviction relief in State v. Harris. The Supreme Court had taken original jurisdiction of the matter because of what it referred to as Respondent's "outrageous, sarcastic and pejorative comments about this State's death penalty system and this Court's capital jurisprudence, including gratuitous personal attacks against current and former members of the Court." Respondent's comments gave rise to a reasonable perception that he was biased and lacked fairness in such a case. Respondent explained to the Committee that he had been on the Superior Court bench for only one year at the time of the Harris case and would not have written his decision in the same way if he had it to do over again.

6. Respondent's conduct as enumerated in the preceding paragraphs and in Counts I through III demonstrates a pattern of improper conduct that calls into question his judgment and his ability to conform his conduct to the requirements of the Code of Judicial Conduct.

7. By his conduct, Respondent has violated Canons 1 and 2A of the Code of Judicial Conduct and 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).

WHEREFORE, Complainant charges that Respondent, Superior Court Judge Wilbur H. Mathesius, has violated the following Canons of the Code of Judicial Conduct:

Canon 1, which requires judges to personally 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;

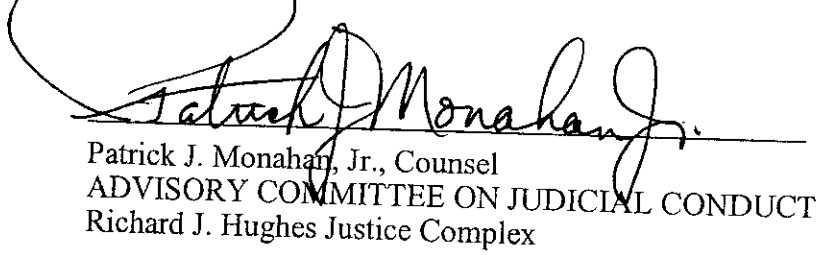
Canon 3A(1), which requires judges to be faithful to the law;

Canon 3A(3), which requires judges to be patient, dignified, and courteous to all those with whom they deal in an official capacity; and

Canon 3A(10), which prohibits judges from commending or criticizing jurors for their verdict.

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: 10/26/05



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