DONINI & RAMSEY
448 HAMILTON AVENUE
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ATTORNEY FOR RESPONDENT

IN THE MATTER OF :	SUPREME COURT OF NEW JERSEY ADVISORY COMMITTEE ON JUDICIAL CONDUCT
LESTER J. MAISTO, JR. :	DOCKET NO. ACJC 2005-175
JUDGE OF THE MUNICIPAL COURT:	ANSWER

LESTER J. MAISTO, JR., JUDGE OF THE MUNICIPAL COURT, residing at 131 Hartley Avenue, Hamilton, Mercer County, New Jersey, by way of verified answer to the complaint does say:

COUNT I

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted, although Respondent would add that there apparently was no witness present to testify, nor any name given as to the identity of the witness or a proffer of what the witness would testify to.
5. Admitted.

6. Admitted, except at this point, Respondent I believe it was the prosecutor who approached me and he asked that the tape recorder be turned off.

7. At the Court's direction, the defendant in the matter of State vs. Howard went to a side table to sign scheduling documents. At that time, it appeared that the defendant was becoming more and more agitated. After completing the scheduling documents, the defendant walked away from the table toward the exit door of the courtroom. Apart from police and court staff as well as the prosecutor and defense attorneys, only two or three other individuals were in the spectator section of the courtroom. One was there for a domestic violence restraining order, which was placed on the records. As the defendant got to the exit doors of the courtroom, he banged them loudly with both of his hands forcing them into the walls and continuing with an upward motion with both hands above his head with the middle finger on each hand extended, a gesture that was clearly visible and within hearing range of every person in the courtroom. It was intended to insult and disrespect the Court's authority in the presence of the Court. The defendant then proceeded through a second set of doors out into the hallway outside the courtroom. In response to this,

Respondent directed the court attendant who was standing near the first set of doors to bring the defendant back into the courtroom. The court attendant appeared a moment later and reported to the judge that the defendant was running away down the hall while shouting profanities. Respondent was able to hear those profanities in the courtroom chambers from the hallway.

8. Admitted.

9. Denied. Respondent in response to what he saw, got up from the bench as indicated "I'm not going to put up with this" or words to that effect. Respondent then walked off the bench, walked out of the courtroom into the court chamber area which is only accessible to members of the judiciary, went out through a different door into the common hallway, then made a right to go out of the building in an attempt to locate the defendant. Respondent maintains that he was wearing his judicial robe at the time. At no time did Respondent run after the defendant or anyone else. Respondent was not accompanied by a police officer, but did this by himself. Respondent walked from the Trenton Municipal Court building to a small convenience deli across the street. Upon approaching the entrance to the deli, he was met by a Trenton police lieutenant who inquired "Judge, what are you doing here?"

Respondent explained that a contemptuous defendant had just bolted from his courtroom. The lieutenant responded, "Well, he is not inside of the deli, let's try to find him". Respondent and the lieutenant then walked approximately forty feet to the next corner and looked down the street to see if there was any sign of the defendant. When there was no sign of the defendant, Respondent then walked back across the street in the company of the lieutenant and returned to the bench. The police officer assigned to security was outside but was on the same side of the street as the court and never crossed once to the side of the street of the deli. At no time did I run after anyone.

10. Denied.

11. Admitted to the extent that Respondent initially revoked the defendant's bail and issued a warrant for his arrest. Denied that Respondent and a security officer were unable to locate the defendant and returned to the courtroom together. At the conclusion of the court session, after issuing a TRO, and a warrant, in an unrelated matter, Respondent on his own motion reconsidered his actions and reinstated the bail and vacated the warrant, regarding defendant, Howard. See attached court order. Respondent's motivation in so doing was that after having had time to reconsider the facts, he

decided that the emotional state the defendant was in, the type of charge he was originally facing that he should get the benefit of the doubt. Respondent was also concerned that this might have been a case of mistaken identity in that the defendant had indicated that he was not the correct party to be charged in this matter. Respondent made a determination that he could address any contempt issues at the next listing in the presence of the defendant.

12. Denied. Respondent's purpose for leaving the bench was to be able to point out the defendant to police officers who should be pursuing him and place him under arrest for a contempt in the face of the Court; thereby, maintaining the order and decorum of the judicial proceedings as required by New Jersey law. The police had already been advised to bring the defendant back to the courtroom. It is not prejudiced to keep order in a court setting and require all parties to act properly.

13. Denied.

COUNT II

1. No response.
2. Admitted;
3. Admitted;
4. Admitted. But, Respondent did not understand the response.

5. Admitted. Respondent did not understand the response.

6. Admitted.

7. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceedings.

8. Denied. Eighty-five dollars is in fact within the normal range of fines that Respondent would impose for this type of violation as that is the amount on the violation schedule for a red light ticket. To the extent that this defendant received any additional sanction, it was only the court costs that she had to pay. N.J.S.A. 39:4-203 provides that the normal range of fines for this type of violation is from $50.00 to $200.00 plus an additional $6.00 assessment(N.J.S.A. 39:5-41) and court costs of as much as $33.00(N.J.S.A. 39:2A-34).

9. Denied. The fine and costs were in accordance with the normal and appropriate range as provided by the violation schedule.

COUNT III

1. No response.

2. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceedings.

3. Admitted.

4. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceedings as well as a copy of the original complaint. The complaint will show whether or not the defendant had been initially advised about a right to counsel by Respondent or another Trenton Municipal Court judge at her appearance as required by the Rule 7:3-2(a).

5. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceedings.

6. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceedings.

7. Admitted.

8. Denied. Respondent was not conducting any type of resolution of this defendant's case on the merits. It is also important to note that municipal court judges make credibility calls in matters involving representations by defendants constantly outside the context of a formal trial. Judges make credibility calls on defendants during the course of motions to suppress evidence, bail and reconsideration

hearings, domestic violence restraining order applications and a host of other pretrial types of proceedings wherein representations are made by defendants that are rejected as untruthful by the judges. It is anticipated that judges in municipal court when they try cases on the merits are able to place these credibility calls behind them and judge each case on it own merits based upon the law and the evidence. Moreover, a defendant who makes blatantly untruthful representations to the Court on a minor matter and who is castigated for that misconduct may be in a better position to speak the truth later on during the course of a trial when it really matters. The evidence in this case does not indicate that Respondent had developed any type of personal bias or prejudice concerning anyone in this case.

9. Denied. The case was ultimately decided by another municipal court judge at the request of Respondent.

COUNT IV

1. No response.
2. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceeding.

3. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceeding.
4. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceeding.
5. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceeding.
6. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceeding.
7. Admitted. Although Respondent maintains that it is important to review the reasons placed on the record for the dismissal, and Respondent may have to amend this answer pending a receipt and review of the transcript of the proceeding.
8. Denied. In taking the action that he did, Respondent was concerned that the defendant in this matter appeared to be a marginal type person who normally would have been represented by the municipal public defender. Beyond that, it appeared to Respondent that the

defense attorney had done an excellent job in researching the matter and representing his client. Because the defendant appeared to be a marginal person Respondent was concerned that the attorney had not been paid for his efforts and Respondent wanted to know if this was a pro-bono case and if so, the Respondent would have placed same on the record. Respondent always intended to dismiss the charges as indicated on the record but would have afforded the defense attorney an opportunity to adjourn the matter for a brief period to finalize his financial arrangements with his client if that was in fact necessary. It is also very important to review the entire record where the reason for dismissal were placed on the record.

9. Denied.

COUNT V

1. No response.
2. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceeding.
3. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceeding.

4. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceeding.

5. Admitted. Although Respondent maintains that he may have to amend this answer pending a receipt and review of the transcript of the proceeding. It should be noted that if the quote is accurate, Respondent's recollection is that it was made to the court security officer who was standing to his immediate right. It was not directed generally to everyone in the court, but to one individual in a quite manner. It was also said so that the police would not bother anybody sitting in the courtroom that engaged in these types of activities during court sessions. It should be added that Respondent's comments to the officer were in response in some measure to his level of frustration over policy that was implemented by the chief judge of the Trenton Municipal Court at that time. Respondent disagreed with the policy because he felt it was disrespectful and hindered his ability to maintain an atmosphere of austerity, order and decorum in his courtroom. However, as a subordinate of the chief judge of the Trenton Municipal Court, Respondent was required to go along with the policy.

6. Denied.

COUNT VI

1. No response.

2. Admitted.

3. Admitted.

4. Denied.

Pursuant to Rule 1:4-4(b), I certify the foregoing statements made by me are true to the best of my knowledge. I am unaware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Lester J. Maisto, Jr.
Judge of the Municipal Court

Dated: August 2 2006

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LESTER J. MAISTO, JR. :	DOCKET NO. ACJC 2005-175
JUDGE OF THE MUNICIPAL COURT:	CERTIFICATION

I, Lester J. Maisto, Jr., Judge of the Municipal Court, E MUNICIPAL COURT, of full age do certify the following to be true:

1) I am a judge of the municipal court of Willingboro Township and was formerly a judge of the Trenton Municipal Court.

2) I am the subject of a disciplinary proceeding under docket ACJC 2005 - 175 which is a formal presentment in VI counts.

3) On or about August 2, 2006, I filed my answer to the allegations set forth in the presentment.

4) I should now like to amend my answers to Count I of the presentment and acknowledge that by my actions I violated the provisions of Canon 3A(2) as well as Canons 1 and 2 of the Code of Judicial Conduct. By extension, this also constitutes a violation of Rule 2:15-8(a)(6).

I admit that on April 19, 2005 following the hearing in the matter entitled State of New Jersey vs. Howard I walked off the bench, walked out of the courtroom into the court chamber area which is only accessible to members of the judiciary, went out through a different door into the common hallway, then made a right to go out of the building in an attempt to locate the defendant. I maintain that I was wearing my judicial robe at the time. At no time did I run after the defendant or anyone else. I was not accompanied by a police officer, but did this by myself. I walked from the Trenton Municipal Court building to a small convenience deli across the street. Upon approaching the entrance to the deli, I was met by a Trenton police lieutenant who inquired "Judge, what are you doing here?" I explained that a contemptuous defendant had just bolted from the courtroom. The lieutenant responded, "Well, he is not inside of the deli, let's try to find him". The lieutenant and myself then walked approximately forty feet to the next corner and looked down the street to see if there was any sign of the defendant. When there was no sign of the defendant, I then walked back across the street in the company of the lieutenant and returned to the bench. The police officer assigned to security was outside but was on the same side of the street as the court and never crossed once to the side of the street of the deli.

5) After having taken the time to reflect on this event and review the applicable law, I am satisfied that my conduct constituted a violation of the aforementioned Canons and Rules of Court.

6) Generally speaking, a violation of the canons of judicial conduct is a "strict liability offense" in the sense that my thoughts and motivations are not relevant to whether the conduct constitutes a violation. However, my motivation may be considered by way of mitigation.

7) Canon 3(A)(2) requires that a judge maintain order and decorum in judicial proceedings. I view this responsibility as non-delegable. I am responsible as a judge for maintaining order in an atmosphere that engenders a sense of austerity and respect for the judiciary and the judicial process.

8) By my leaving the bench under the circumstances, I created a risk that members of the public would interpret my actions as not maintaining order and decorum in the courtroom.

9) By way of mitigation, I would respectfully ask this committee to consider the following:

   a. At the time of this incident until this date, I have been a full time judge. As a direct result of this incident, I lost my Trenton judgeship which paid $54,680 per year. I also lost my Mercer County cross-

assignment order, which amounted to an additional monetary loss of approximately $20,000 per year.

b. I took, at the request of my vicinage assignment judge, for the good of the judiciary, a week off without pay.

c. Prior to speaking with my assignment judge regarding this incident, I contacted the lawyers assistance program in New Brunswick. I thereafter engaged in therapeutic counseling through the program. I have since successfully completed the program.

d. With the permission of my vicinage assignment judge, I released through her a public apology for my actions that was widely disseminated in the local newspapers

Pursuant to Rule 1:4-4(b), I certify the foregoing statements made by me are true to the best of my knowledge. I am unaware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Lester J. Maisto, Jr.
Lester J. Maisto, Jr.
Judge of the Municipal Court

Dated: 10/26/06