SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2005-264

IN THE MATTER OF HENRY G. BROOME, JR. JUDGE OF THE MUNICIPAL COURT	FORMAL COMPLAINT

FILED
FEB 16 2007
A. C. J. C.

Candace Moody, Disciplinary Counsel, Advisory Committee on Judicial Conduct ("Complainant"), complaining of Municipal Court Judge Henry G. Broome, Jr. ("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 1966.

2. At all times relevant to these matters, Respondent served as judge of the Municipal Courts of Somers Point, Northfield, Linwood, Absecon, Longport, Egg Harbor City, Mullica Township and Brigantine, Atlantic County.

3. On November 15, 2002, a memorandum was issued by Louis J. Belasco, Jr., Presiding Judge of the Municipal Courts for Atlantic and Cape May Counties and Howard H. Berchtold, Jr., Assistant Trial Court Administrator/Municipal Division Manager for Atlantic and Cape May Counties, to all Vicinage I municipal judges, court directors and administrators ("Belasco Memorandum"), stating, in part, that N.J.S.A. 39:4-50.14 (the "baby DWI Statute") does not provide for the imposition of fines.

4. The Belasco Memorandum further makes clear that the fines attributable to violations of N.J.S.A. 39:4-50 are not applicable to violations of the baby DWI Statute.

5. Thereafter, on February 27, 2004, a memorandum was issued by the Acting Administrative Director of the Courts, Richard J. Williams, J.A.D., to all municipal court judges, directors, and administrators (the "Williams Memorandum"), promulgating a revised form of Order and Certification for Intoxicated Driving and Related Offenses (the "Revised Order").

6. The Williams Memorandum directs all municipal court judges to use the Revised Order whenever they impose penalties for driving or boating under the influence of drugs or alcohol.

7. The Revised Order was adopted to reflect the legislative changes to the penalties associated with driving under the influence of drugs or alcohol and reflects all of the current penalties that may be assessed in those circumstances.

8. Included in the Revised Order are the permissible penalties under the baby DWI Statute for those drivers who are under the legal age to purchase alcoholic beverages and are caught driving with a blood alcohol concentration of between 0.01% and 0.07%.

9. The Revised Order provides, in part, that no monetary fines or surcharges may be assessed against drivers found guilty solely under the baby DWI Statute.

10. Nonetheless, Respondent, in eleven known cases[1] between February 2004 and May 2005, imposed fines and surcharges against drivers found guilty of violating the baby DWI Statute, ranging from $250.00 to $780.00.

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[1] The eleven cases include: State v. Phillips, Linwood Municipal Court, Docket No. 0114 020106; State v. Kaleck, Longport Municipal Court, Docket No. 0115 018926; State v. Linblad, Longport Municipal Court, Docket No. 0115 029136; State v. Calareso-Hodges, Longport Municipal Court, Docket No. 0115 028544; State v. Soucier, Northfield Municipal Court, Docket No. 0118 C029246; State v. Kyle, Northfield Municipal Court, Docket No.

11. On June 28, 2005, after learning of Respondent's improper imposition of fines and surcharges, Judge Belasco notified Judge Valerie H. Armstrong, Assignment Judge of the Superior Court in Atlantic and Cape May Counties, of Respondent's misconduct.

12. Thereafter, Judge Armstrong issued an Order to reopen the eleven cases for the purpose of resentencing those defendants who were fined and assessed surcharges improperly by Respondent.

13. Judge Armstrong assigned Judge Belasco as the trial judge for the eleven reopened matters.

14. Following a hearing, Judge Belasco issued an Order which required the court to refund to all eleven defendants the fines and surcharges previously assessed by Respondent, with the exception of a $6 fine and court costs.

15. By his conduct in imposing fines and surcharges, improperly, against the eleven defendants found guilty of violating the baby DWI Statute, Respondent violated Canons 2A and 3A(1) 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 R. 2:15-8(a)(6).

0118 C029915; State v. Lawlor, Northfield Municipal Court, Docket No. 0118 C029993; State v. Hudock, Northfield Municipal Court, Docket No. 0118 C030614; State v. D. Thomas, Northfield Municipal Court, Docket No. 0118 C030783; State v. Hagel, Pleasantville Municipal Court, Docket No. 0119 P019120; and State v. C. Thomas, Somers Point Municipal Court, Docket No. 0121 082664.

COUNT II

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

17. On June 24, 2005, a memorandum was issued by the Acting Administrative Director of the Courts, Philip S. Carchman, J.A.D., to all municipal court judges (the "Carchman Memorandum"), attaching the following: (a) a copy of the Notice to the Bar on the Amendments to Guideline 4 of the Guidelines for Operation of Plea Agreements in the Municipal Courts, (b) a copy of the June 7, 2005 Order of the Supreme Court adopting the amended guideline, and (c) the amended guideline itself.

18. As amended, Guideline 4 prohibits the dismissal by plea agreement of a charge of a refusal to submit to a breathalyzer test (the "Refusal Charge") (N.J.S.A. 39:4-50.4a) for first offenders.

19. The Carchman Memorandum advised the municipal judges that the provisions in the amended Guideline 4 would become effective on July 1, 2005 **"and should be applied to 'pipeline' cases . . . that is, to all pending cases whether or not the offense(s) occurred prior to the effective date."** (emphasis supplied)

20. Contrary to the Carchman Memorandum, Respondent permitted the dismissal of a Refusal Charge for first offenders in three known cases in mid July of 2005 – State v. Kinard, Somers Point Municipal Court, Summons No. 088284; State v. Care, Somers Point Municipal Court, Summons No. 088294; and State v. Larkin, Northfield Municipal Court, Summons Nos. 032127, 032128, 032129, 032130, 032131, and 032132.

21. At the initial hearing in the Larkin matter, Respondent permitted the dismissal of the Refusal Charge over the objection of the prosecutor.

22. Subsequently, in August 2005, Respondent was required to reopen the Kinard, Care, and Larkin cases, necessitating the reappearance of the litigants in each case, for the sole purpose of adjudicating the Refusal Charge.

23. At the rehearing in the Care matter, counsel for Mr. Care objected to the assessment of court costs on the grounds that the Refusal Charge could have been dealt with at the initial hearing.

24. Respondent, in refusing to waive the court costs, replied to counsel: "But what I think and what you think and what we were taught in law school . . . seem to be two different things with these people."

25. By his conduct in permitting the dismissal of the Refusal Charge for first offenders whose cases were pending when the Carchman Memorandum and amended Guideline 4 were issued expressly prohibiting such dismissals, Respondent violated Canons 2A and 3A(1) 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 R. 2:15-8(a)(6).

26. Respondent's gratuitous remark to counsel for Mr. Care was inappropriate and violated Canons 1 and 2A of the Code of Judicial Conduct.

COUNT III

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

28. On three separate occasions - State v. Plaud, Somers Point Municipal Court, Summons Nos. 74087, 74089; State v. McErlain, Egg Harbor City Municipal Court, Summons No. A033240; and State v. Palmer, Longport Municipal Court, Summons No. 026686 -

Respondent participated in the negotiation of plea agreements with defendants while sitting as the judge in the case.

29. Rule 7:6-2(a)(1) requires, in part, that prior to accepting a guilty plea the court must first ascertain from the defendant the factual basis for the plea.

30. Rule 7:6-2(d)(1) and Guideline 3 of the Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey require, in part, that the prosecutor participate in all plea agreements.

31. On February 27, 2001, Respondent presided over State v. Plaud in which the defendant was charged with careless driving, leaving the scene of an accident and failure to report an accident.

32. Without the prosecutor or the police officer present in the courtroom, Respondent negotiated with the defendant for a dismissal of the charge of leaving the scene of the accident, an amendment of the charge for careless driving to a no-point violation to which the defendant agreed to plead guilty, and a guilty plea to the charge of failure to report an accident.

33. Respondent accepted the defendant's guilty plea without first ascertaining from the defendant the factual basis for the plea.

34. On April 6, 2004, Respondent presided over State v. McErlain in which the defendant was charged with failure to yield to an emergency vehicle.

35. When the defendant rejected the prosecutor's offer to downgrade the charge to a no-point ticket in exchange for a guilty plea, Respondent reminded the defendant that if she were convicted on the present charge she would receive two points on her license. Respondent further pressed defendant twice about her decision to reject the prosecutor's offer of a "no-point ticket."

36. Eventually, the prosecutor, after speaking further with Ms. McErlain, dismissed the charge against Ms. McErlain in its entirety.

37. On July 22, 2004, Respondent presided over State v. Palmer in which defendant was charged with allowing an unlicensed driver to operate his vehicle.

38. If convicted, defendant would be subject to a fine of $500.00 and the loss of his license for six months.

39. The prosecutor offered to amend the charge to driving without a license, the penalty for which does not include a suspension of the defendant's driver's license.

40. When the defendant expressed a reluctance to accept the prosecutor's offer, Respondent stated to the defendant: "I understand . . . You don't have to take it. I mean, you know, but, if you were my brother, I'd say you're lucky. You know, to run the risk of losing your license for six months, which is a suspension which comes with the 3-40."

41. Following Respondent's remarks, defendant, who was not driving the car at the time in question but was a licensed driver, accepted the prosecutor's offer and pled guilty to the charge of driving without a license.

42. Respondent accepted defendant's guilty plea without first ascertaining from the defendant the factual basis for his plea.

43. By his conduct in participating in plea negotiations while sitting as the judge in the case, accepting guilty pleas without first ascertaining the factual basis for those pleas, and negotiating and approving a plea agreement in the absence of the prosecutor, Respondent violated Canons 1, 2A, 3A(1) and 3A(4) 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 IV

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

45. On February 10, 2005, Respondent presided over the trial of State v. Wood, in the Linwood Municipal Court.

46. Defendant Wood had been charged with smearing eggs on a car owned by Steven Jump, the boyfriend of defendant's ex-girlfriend Amanda Bracken, and bending that car's wipers.

47. Defendant, appearing without counsel, entered a plea of not guilty.

48. When the defendant took the stand to testify in his own defense, Respondent asked the defendant if he knew the meaning of the word perjury. When defendant indicated that he understood the meaning of the term perjury, Respondent stated: "Okay. Before you testify if I think you're lying under oath, I'm telling you, I'll have you indicted. Do you understand me?"

49. At no time during the trial did Respondent give the same warning regarding perjury to the prosecution's witnesses.

50. At the conclusion of the trial, Respondent found defendant guilty of the charges of smearing eggs on the car owned by Steven Jump and bending that car's wipers.

51. After rendering his verdict, Respondent stated to the defendant: "But that's not the end of it, young man. I'm going to direct the Lieutenant to take . . . [Mr. Jump and Ms. Bracken] . . . and . . . talk to them, because I think the crime, the indictable offense of stalking, has been done in this case. And I think that probably Mr. Wood should be charged with the

indictable offense of stalking. And the indictable offense of stalking will – means that your – you leave people alone."

52. Respondent further stated to the defendant: "You are not allowed to follow them around. You're not allowed to ride by their house on a constant basis. You're not allowed to egg their homes. You leave them alone. They have the same rights that you have to live in peace. And, unfortunately, it appears to me, Mr. Wood, that you haven't learned that and I don't know why."

53. Defendant appealed Respondent's decision to the Superior Court of New Jersey, Atlantic County.

54. The Superior Court, Judge Neustadter, remanded the matter for a new trial before a different judge, finding a new trial necessary because of Respondent's "inappropriate remarks to [the] defendant and the appearance of bias against [the] defendant . . . ."

55. At no time during the aforementioned trial did Respondent advise the defendant that he had a right to be represented by counsel, and that counsel would be appointed to represent him if he could not afford to retain an attorney. Respondent further failed to advise the defendant that he had a right to remain silent and that any statement made by him might be used against him. Respondent thus violated Rule 7:3-2, Canon 3A(1) 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).

56. By his remarks to defendant about perjury and stalking, and by his direction to the Lieutenant to investigate a potential charge of stalking against the defendant, Respondent demonstrated a bias against the defendant, abused his authority, and gratuitously inquired into matters that were not properly before the Court. In doing so, he violated Canons 1, 2A, 3A(3)

and 3A(4) 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 R. 2:15-8(a)(6).

COUNT V

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

58. Respondent begins each of his court sessions with a videotape of himself describing for the litigants in the courtroom their legal rights, the procedures of the municipal court, and until June of 2005, Respondent's "$100 Policy."

59. Respondent's self-described "$100 Policy" is as follows:

> If in fact you are fined today, and the fine is less than $100, that fine is due and payable in full. If the fine in cost is more than $100, at least a [sic] $100 is due today.
>
> What does this mean to you? If you think you may have to pay a fine today, and you came to court without any money, I would suggest you go out and use the phone and call your mother, or your best friend, or whomever and tell him to get down here with some money because the fines are in fact due and payable in full today.

60. In or around June of 2005, at the urging of Judge Belasco, Judge Broome revoked his "$100 Policy" and removed all references to it from his videotaped remarks.

61. Respondent's position as a municipal court judge did not authorize him to make policy for the judiciary.

62. Respondent's "$100 Policy" did not provide defendants found guilty of a violation punishable by a fine the opportunity to plead and prove their indigency status and thereby qualify for a payment plan. Respondent's "$100 Policy" thus violated the rule of State v.

De Bonis, 58 N.J. 182, 276 A.2d 137 (1971), Bulletin Letter #11/12-81, and Canon 3(A)(1) of the Code of Judicial Conduct, which requires judges to be faithful to the law and to maintain professional competence in it, and engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule. 2:15-8a(6).

COUNT VI

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

64. On July 13, 2005, a civil complaint was filed against Respondent in his individual capacity. The case was caption Loretta and George Brewster v. Henry G. Broome, Jr. Esquire, et al., Superior Court of New Jersey, Atlantic County (the "Brewster Complaint).

65. Respondent was personally served with the Brewster Complaint on July 27, 2005.

66. Pursuant to Administrative Directive #4-81, "[p]ersonal involvement by any judge in any type of litigation should be the subject of an official report . . . A report should be filed not only in matters where the judge is personally named but also in those in which the judge is a party in interest."

67. A reminder of the requirements of Directive #4-81 was issued to all judges on September 26, 1988, by the Acting Administrative Director of the Courts Robert D. Lipscher.

68. Respondent did not report his involvement in the Brewster matter as he was required to do by Directive #4-81.

69. By failing to report his involvement in litigation as required by Directive #4-81, Respondent violated Canon 3B(1) of the Code of Judicial Conduct.

WHEREFORE, Complainant charges that Respondent, Municipal Court Judge Henry G. Broome, Jr., has violated the following Canons of the Code of Judicial Conduct:

Canon 1, which requires judges to 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 and maintain professional competence in it;

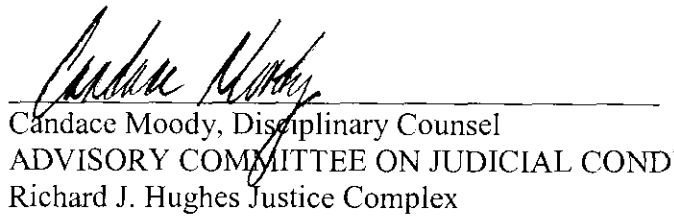
Canon 3A(3), which requires judges to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity;

Canon 3A(4), which requires judges to be impartial; and

Canon 3B(1), which requires judges to diligently discharge their administrative responsibilities and maintain professional competence in judicial administration.

Complainant also charges that Respondent's remarks, as set forth in Counts II, III, and IV above, were inappropriate and prejudicial to the administration of justice thereby bringing the judicial office into disrepute, in violation of Rule 2:15-8(a)(6).

DATED: February 16, 2007



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