SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2007-112

IN THE MATTER OF C. WILLIAM BOWKLEY, JR., JUDGE OF THE MUNICIPAL COURT	**REPORT TO SUPREME COURT**

The Advisory Committee on Judicial Conduct ("Committee" or "ACJC") presents this Report to the Supreme Court in accordance with Rule 2:15-15(b) of the New Jersey Court Rules. Although the Committee believes the charges set forth in a Formal Complaint against C. William Bowkley, Judge of the Municipal Court, have been proven by clear and convincing evidence, it recommends the dismissal of the Complaint with a private reprimand to Respondent in light of the extenuating circumstances present in this matter.

On June 13, 2007, the Advisory Committee on Judicial Conduct issued a Formal Complaint against the Respondent, which alleged that Respondent engaged in two separate conflicts of interest as a municipal court judge in 2006 in violation of Canons 1, 2A and 3C(1) of the New Jersey Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules.

The Respondent filed an Answer on July 16, 2007 in which he admitted certain factual allegations of the Formal Complaint and denied others. He also offered facts in mitigation.

The Committee convened a formal hearing on December 20, 2007. Respondent appeared with counsel and offered testimony in his defense. Exhibits were offered by both parties and, with the exception of Presenter's Exhibit P-2, accepted into evidence. The Committee also accepted into evidence a set of Stipulations ("Stipulations") entered into by Disciplinary Counsel for the Committee and Respondent prior to the hearing. See Stipulations of Parties Dated December 17, 2007. After carefully reviewing all of the evidence, the Committee made factual determinations, supported by clear and convincing evidence, which form the basis for its Findings and Recommendation.

I. FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1971. At all times relevant to these matters, Respondent served as Judge of the Municipal Courts of the Borough of Hopatcong and the Township of Vernon in Sussex County and the Township of Jefferson in Morris County. He has served as a Judge in the Borough of Hopatcong since August 1978, in the Borough of

Chester since January 1980, and in the Township of Jefferson since 1990. Respondent holds all three judicial positions on a part-time basis.

Between the Summer of 2004 and January 11, 2005, Respondent represented Paula A. (Mazur) Slegers ("Ms. Slegers") in his capacity as a private attorney in a family court matter venued in the Sussex County Superior Court, Family Part (the "Family Court Matter"). See Paula Mazur Slegers v. William DiMuccio, Docket No. FD-19-321-01. The Family Court Matter concerned Ms. Slegers' post-judgment application for the computation of child support, day care expenses and related issues. Damiano Fracasso, Esquire (the "Grievant") represented the defendant and father of the minor child at issue in the Family Court matter, William DiMuccio ("Mr. DiMuccio"). It was Mr. Fracasso who filed the complaint against Respondent in the current matter. See Stipulations at ¶2.

In January 2005, Respondent also began to represent Ms. Slegers in a civil action venued in the Sussex County Superior Court, Civil Part (the "Civil Court Matter"). See Paula A. Mazur v. Richard Pavia, et al., Docket No. L-118-05. That matter and representation continue today. The Civil Court Matter, unrelated to the Family Court Matter, involves a claim of fraud by Ms. Slegers incident to her purchase of real estate. Mr. DiMuccio is not a party to the Civil Court Matter.

On April 17, 2006, a Hopatcong municipal official issued a Complaint against Mr. DiMuccio in the Hopatcong Municipal Court, which alleged that Mr. DiMuccio failed to connect to the municipal sewer system (the "Municipal Court Matter"). The Hopatcong Municipal Court Administrator scheduled the trial to begin on October 16, 2006 before Respondent. Despite his representation of Ms. Slegers against Mr. DiMuccio in the Family Court Matter, Respondent did not recuse himself from sitting as the trial judge in the Municipal Court Matter. See Stipulations at ¶9. In fact, when Mr. DiMuccio failed to appear for the October 16, 2006 trial date, Respondent issued a warrant for Mr. DiMuccio's arrest and set bail at $500.00 without a 10% option. Id. at ¶10. The bail amount set by Respondent for Mr. DiMuccio was on par with bail amounts set by Respondent for similarly situated defendants. Id. See also R-1.

On October 25, 2006, the Grievant in this matter filed a Notice of Appearance in the Municipal Court Matter in which he indicated that he would be representing Mr. DiMuccio. At that time, he also requested that Respondent recuse himself from presiding over the Municipal Court Matter due to his representation of Ms. Slegers against Mr. DiMuccio in the Family Court Matter. See Stipulations at ¶11. On October 26, 2006, Respondent signed an order transferring the Municipal Court

Matter to the Municipal Court of Stillwater for disposition. Id.

Four days later, in yet another matter, Respondent presided over the arraignment of Ms. Slegers in the Hopatcong Municipal Court in reference to charges that had been filed against her by Mr. DiMuccio for alleged interference with custody regarding their minor child. Id. at ¶12.

Neither in his Answer nor during his testimony before the Committee did Respondent dispute the factual predicates of either conflict of interest allegation leveled against him by the Committee. With regard to the first allegation, Respondent admitted both that he represented Ms. Slegers, who was adverse to Mr. DiMuccio, in the Family Court Matter, and that he issued a warrant for Mr. DiMuccio's arrest in the Municipal Court Matter. Id. at ¶¶4-5, ¶¶9-10. Similarly, with regard to the second conflict of interest allegation, Respondent admitted that he presided over the arraignment of his own client, Ms. Slegers, in the Hopatcong Municipal Court despite having represented her in the Family Court Matter and continuing to represent her in the Civil Court Matter. Id. at ¶12.

Notwithstanding these admissions, Respondent offered further testimony in his defense during the hearing before the Committee. Respondent testified that the Family Court Matter in which he represented Ms. Slegers against Mr. DiMuccio occurred

almost two years prior to Mr. DiMuccio's failure to appear before him in the Municipal Court Matter. See Tr. 35:18-21. Respondent further testified that he had no knowledge, prior to the October 16, 2006 trial date, that Mr. DiMuccio was scheduled to appear, and that he simply did not know "that this was the DiMuccio that had to be the adverse party some year and a half, two years before." Tr. 35:2-12; 38:13-15. Accordingly, although Respondent admits that he issued the warrant for Mr. DiMuccio's arrest, he indicates he simply was not aware of Mr. DiMuccio's identity when he did so, and that Mr. DiMuccio "was treated no differently, exactly like each and every other person who was scheduled for trial and failed to appear for connection to the sewer system." Tr. 39:16-20.

Unlike the foregoing matter, Respondent testified that when Ms. Slegers appeared before him to be arraigned, there was no question in his mind that he knew who she was, and that she was a client. Tr. 27:18 to 28:1. In defense of his actions, however, Respondent asserted that the arraignment occurred prior to the release of the Supreme Court's opinion in In re Newman, ACJC 2004-196, 189 N.J. 477 (2006), which made clear that judges should recuse themselves from taking even ministerial judicial actions where a conflict of interest exists. Respondent stated that as his arraignment of Ms. Slegers pre-dated the Newman decision, he considered the arraignment to be a ministerial act

that he was not precluded from taking. Tr. 28:3-7; 30:4:18. He further testified that had he been aware of the Newman opinion prior to the date on which he arraigned Ms. Slegers, he would not have presided over the arraignment. Tr. 30:15-18.

The Committee finds that Respondent's actions in issuing the arrest warrant against Mr. DiMuccio and presiding over his own client's arraignment represent Respondent's engagement in two distinct conflicts of interest that violate Canons 1, 2A and 3C(1) of the New Jersey Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. Canon 1 requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary is preserved, while Canon 2A requires judges to conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. Canons 3C(1) requires judges to disqualify themselves from proceedings in which the judge's impartiality might reasonably be questioned. Finally, Rule 2:15-8(a)(6) prohibits conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

A. Analysis of Respondent's Issuance of Arrest Warrant

Here, there is no question that Respondent issued the arrest warrant against Mr. DiMuccio but should not have. As indicated above, Canon 3C(1) of the Code of Judicial Conduct requires a

judge to disqualify himself or herself in any proceeding "in which the judge's impartiality might reasonably be questioned." Obviously, Mr. DiMuccio's failure to appear in court in response to a municipal charge, which resulted in the issuance of a warrant for his arrest, qualifies as a judicial proceeding within the contemplation of Canon 3C(1). In fact, the Committee finds the issuance of an arrest warrant to be a significant judicial act that merits careful consideration. See State of New Jersey v. Jones, 143 N.J. 4, 13 (1995) ("Warrants are issued pursuant to *Rule 3:3-1*. The issuance of a warrant does more than simply place a duty on the police to execute it; its issuance suggests that the sought-after suspect may be wanted for a grave offense or that the suspect has ignored less intrusive process.").

The Committee finds it equally clear that the fact that Respondent was adverse to Mr. DiMuccio in a judicial proceeding that occurred slightly less than two years prior to the issuance of the arrest warrant would likely raise, in the mind of the reasonable observer, a question, whether fair or not, as to Respondent's ability to be impartial. See In re Samay, 166 N.J. 25 (2001) (holding that Respondent's issuance of a search and arrest warrant against a person with whom he had a prior relationship represented a conflict of interest). It is the creation of this question as to Respondent's impartiality that

demonstrates the existence of Respondent's conflict of interest and that the Committee cannot overlook. Respondent not only represented Ms. Slegers against Mr. DiMuccio in the Family Court Matter, his representation of Ms. Slegers was ongoing at the time the arrest warrant was issued. Respondent himself testified that had he known it was the same William DiMuccio against whom he litigated two years prior, he would have recused himself from the case. Tr. 40:9-16. The Committee underscores the vital importance of the manner in which the public perceives all judicial acts, whether routine or not. See State of New Jersey v. Tucker, 264 N.J. Super. 549, 554 (App. Div. 1993) ("There must be an appearance of impartiality which fosters the confidence of litigants in the justice system. Any questions concerning that impartiality threatens the integrity of our judicial process.").

Despite this finding, the Committee must stress that it found the Respondent, during the hearing before the Committee, credible when he testified that he simply was not aware that the William DiMuccio against whom he issued the arrest warrant was the same party he was adverse to in the Slegers-DiMuccio Family Court Matter. The Committee was presented with no evidence to contradict this representation and notes the routineness with which Respondent issued arrest warrants for Borough of Hopatcong citizens who consistently refused to hook up to the sewer system

and the uniformity with which he imposed bail for that offense. See R-1. As the Committee accepts Respondent's testimony in this regard, it cannot find, by clear and convincing evidence, that Respondent was knowingly aware of the conflict of interest and yet purposefully operated in spite of it.

B. Analysis of Respondent's Arraignment of Client

The Committee finds that Respondent should not have presided over the arraignment of Ms. Slegers in October 2006. Ms. Slegers was a client of Respondent's at the time of the arraignment. Respondent testified that he recognized Ms. Slegers' name and was aware that she was his client prior to arraigning her. For Respondent to continue to exercise his judicial duties in the face of such a conflict represents Respondent's violation of Canon 3C(1) of the Code of Judicial Conduct as well as Canons 1 and 2 and Rule 2:15-8(a)(6) of the New Jersey Court Rules.

As the Committee recognized in In re Newman, ACJC 2004-186, 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." Id. at 4. The conflict of interest created by a part-time judicial

officer presiding over a client's arraignment is not and cannot be excused because the judicial proceeding in question is one that is "ministerial" or one that requires little judicial discretion. "[T]he 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 judicial office by one who lacks, or appears to lack, impartiality." Id.

Nevertheless, the Committee recognizes that the Newman decision had not yet been rendered by the Supreme Court at the time of Ms. Slegers' arraignment. Respondent testified that had he known of the Newman decision prior to Ms. Slegers' appearance before him, he would not have arraigned her. Tr. 29:12-14. The Committee further gives weight to Respondent's testimony that many municipal court judges were simply not aware, prior to Newman, that they could not preside over even ministerial matters when a conflict existed. Tr. 28:20 to 29:11.

In light of the foregoing, the Committee finds that Respondent did not knowingly violate the applicable Canons of Judicial Conduct when he arraigned Ms. Slegers.

II. RECOMMENDATION

Based on the above findings and discussion, the Committee recommends the dismissal of the Complaint and the imposition of

private discipline against Respondent. Although the Committee believes that Respondent's conduct in this matter represented two distinct conflicts of interest that individually and together violated Canons 1, 2 and 3C(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules, the Committee finds that the full Record in this matter demonstrates the presence of mitigating circumstances that make private discipline the more appropriate penalty. The Committee believes that Respondent did not purposefully engage in the first alleged conflict of interest. Moreover, the Newman decision, through which the Court made clear its mandate that judges should recuse themselves from even ministerial acts in the face of a conflict of interest, was issued after Respondent presided over the arraignment of Ms. Slegars. The Committee found Respondent credible in his testimony regarding his lack of recognition of Mr. DiMuccio and his failure to recognize that he should have recused himself from arraigning Ms. Slegers. For all of these reasons, the Committee believes private discipline to be the more appropriate penalty.

The Committee further offers, however, that the Court may wish to consider issuing a formal requirement that part-time municipal court judges, who maintain a private practice of law, keep and preserve a conflicts list that they can regularly consult in the performance of their judicial duties. This

requirement may help these judges avoid replicating the conflicts in which the Respondent engaged or engaging in any other conflicts of interest.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

March 11, 2008 By: Alan B. Handler, Chair