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A.C.J.C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2010-283

IN THE MATTER OF	:	FORMAL COMPLAINT
	:	
GREGORY R. McCLOSKEY,	:	
JUDGE OF THE MUNICIPAL COURT	:	

Candace Moody, Disciplinary Counsel, Advisory Committee on Judicial Conduct (“Complainant”), complaining of Municipal Court Judge Gregory R. McCloskey (“Respondent”), says:

1. Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1977.
2. At all times relevant to this matter, Respondent served as a part-time judge in the Mount Laurel Township Municipal Court, a position from which he retired effective January 1, 2010.
3. Respondent continues to serve as a municipal court judge in Delanco Township and the Borough of Palmyra.
4. Beginning on January 15, 2008, Respondent presided over a trial in the matter of State v. Thomas M. Grabovich, Summons No. M073387-89, in the Mount Laurel Township Municipal Court (the “Grabovich Matter”). The defendant, Thomas M. Grabovich, was charged with driving under the influence, refusing to submit to an Alcotest and reckless driving.

5. The trial of the Grabovich Matter occurred over four non-consecutive days, beginning on January 15, 2008 and continuing on January 16, 2008, February 20, 2008 and March 26, 2008.

6. On January 16, 2008, at the end of the second day of trial in the Grabovich Matter and after the defendant and his counsel had left the courtroom, Respondent engaged in an *ex parte* conversation with the Mount Laurel Township Municipal Prosecutor (the “Prosecutor”) about the Grabovich Matter. A portion of the *ex parte* conversation appears on the record.

7. During his *ex parte* conversation with the Prosecutor, Respondent directed the Prosecutor to ask certain questions of his witnesses concerning issues relevant to the State’s case and critical to the defense.

8. At the conclusion of the trial in the Grabovich Matter, Respondent found the defendant guilty of driving under the influence and refusing to submit to an Alcotest. Respondent merged the charge of reckless driving and sentenced the defendant in accordance with the applicable penalties provided by law.

9. The defendant appealed his conviction. In conjunction with the appeal, transcripts of the trial of the Grabovich Matter were obtained and reviewed by defense counsel, at which time defense counsel learned of the *ex parte* conversation between Respondent and the Prosecutor.

10. On August 14, 2008, the Burlington County Superior Court, sitting as the Appellate Court, remanded the Grabovich Matter to the Mount Laurel Township Municipal Court to permit defense counsel an opportunity to file a Motion for a New

Trial based on Respondent's *ex parte* conversation with the Prosecutor. The Burlington County Superior Court, however, retained jurisdiction over the Grabovich Matter.

11. On remand, Respondent heard oral argument on the defendant's Motion for a New Trial on November 11, 2008 and again on December 17, 2008 and reserved decision.

12. On August 26, 2009, Respondent denied defendant's Motion for a New Trial. Although denying the Motion for a New Trial, Respondent acknowledged to the parties, on the record, his participation in an impermissible *ex parte* communication with the Prosecutor during the trial of the Grabovich Matter and further acknowledged that the *ex parte* conversation revealed his thought process about salient issues in the case, including issues pertinent to the defense.

13. On appeal, the Burlington County Superior Court remanded the matter for a new trial before a different municipal court judge and with a different prosecutor. The Superior Court found that Respondent's acknowledged initiation of and participation in an *ex parte* conversation with the Prosecutor denied the defendant his Constitutional right to a fair trial. The Superior Court likewise found that Respondent's "*ex parte* direction to the [P]rosecutor to ask two questions of the witness specifically central to the State's case and specifically critical to the defense theory demonstrated ... [Respondent's] partiality to the State and ... [Respondent's] interest in the outcome of the proceeding. That conduct cannot be permitted."

14. Following the appeal, the Burlington County Superior Court referred the issue of Respondent's conduct during the Grabovich Matter to the Advisory Committee on Judicial Conduct.

15. When questioned by the Advisory Committee on Judicial Conduct about his conduct in the Grabovich Matter, Respondent admitted to violating the Code of Judicial Conduct by engaging in an *ex parte* communication with the Prosecutor.

16. By his conduct in initiating and participating in an *ex parte* conversation with the Prosecutor during the trial of the Grabovich Matter, Respondent violated Canon 3A(6) of the Code of Judicial Conduct.

17. By his conduct In denying the defendant in the Grabovich Matter his Constitutional right to a fair trial, demonstrating a partiality for the State, and displaying an interest in the outcome of the Grabovich Matter, as determined by the Burlington County Superior Court, Respondent has violated Canons 1, 2A, and 3C(1)(a) of the Code of Judicial Conduct and Rule 1: 12-1 (e) and (f) of the New Jersey Court Rules.

WHEREFORE, Complainant charges that Respondent, Municipal Court Judge Gregory R. McCloskey, 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(6), which prohibits judges from either initiating or considering *ex parte* or other communications concerning a pending or impending proceeding; and

Canon 3C(1)(a), which requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including instances where the judge has a personal bias or prejudice concerning a party.

Complainant also charges that Respondent's conduct in failing to recuse himself from the Grabovich Matter despite his partiality for the State and his interest in the

