FILED
AUG 11 2009
A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2009-245

IN THE MATTER OF

WILLIAM L'E. WERTHEIMER
JUDGE OF THE SUPERIOR COURT

AMENDED
FORMAL COMPLAINT

Candace Moody, Disciplinary Counsel, Advisory Committee on Judicial Conduct ("Complainant"), complaining of Superior Court Judge William L'E. Wertheimer ("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 1970.

2. At all times relevant to this matter, Respondent served as a judge in the Superior Court of New Jersey, assigned to the Civil Division in the Union Vicinage, a position he continues to hold.

Count I

3. In early April 2009, Respondent presided over a jury trial in the matter of Brown, et al. v. Boreal, et al., Docket No. UNN-L-2154-05, in the Superior Court of New Jersey, Civil Division, Union Vicinage.

4. William L. Gold, Esq. (the "Grievant") of Bendit Weinstock, P.C. represented the plaintiffs in the Brown matter and Michael Bubb, Esquire of Bubb, Grogan & Cocca, L.L.P. represented the defendant in the Brown matter.

5. On April 8, 2009, during the trial in the Brown matter, the Grievant advised Respondent that he needed to leave by 4:00 p.m. that day because it was the first night of Passover and he had plans to attend a Seder.

6. At approximately 3:30 p.m. on April 8, 2009, with the jury present, Respondent called both counsel to sidebar and asked counsel, off the record, if he should inform the jury that the trial would conclude for the day so that one or both counsel could attend a "Bund meeting."

7. The Bund is an anti-Semitic organization with ties to Adolph Hitler's Nazi regime whose members participated in various anti-Semitic demonstrations between 1936 and 1939.

8. On April 9, 2009, the Grievant informed Respondent, on the record, that he was offended by Respondent's reference to the Bund organization. In response, Respondent acknowledged, on the record, that he had made reference to the Bund organization, but denied any intention to offend the Grievant and further denied that the reference was directed at the Grievant. Respondent claimed that his reference to the Bund organization was directed at the Grievant's adversary, Mr. Bubb. Respondent apologized to the Grievant for offending him.

9. Respondent's reference to the Bund organization, a historically anti-Semitic group, during the trial in Brown, et al. v. Boreal, et al., Docket No. UNN-L-2154-05, created the appearance of an ethic and religious bias in violation of Canon 3A(4) of the Code of Judicial Conduct, was undignified and discourteous to the Grievant in violation of Canon 3A(3) of the Code of Judicial Conduct, and was prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

10. By his reference to the Bund organization, Respondent also violated Canons 1 and 2A of the Code of Judicial Conduct in that he did not maintain high standards of conduct and did

not act in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

Count II

11. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

12. On December 19, 2001, the Advisory Committee on Judicial Conduct (the "Committee") issued a letter of admonition to Respondent for his conduct in presiding over various pre-trial motions in the matter of William v. Malcolm despite his realization of a clear conflict of interest that prevented him from presiding over the trial. Respondent's sheriff's officer was the brother of the defendant in the Malcolm matter, which created a clear conflict of interest for Respondent that prevented him from presiding over any aspect of the matter. The Committee informed Respondent that the conflict existed with respect to any and all aspects of the Malcolm case, not just the trial, and as such Respondent should not have participated in any pre-trial motions. The Committee further advised Respondent that his failure to recuse himself, *sua sponte*, from the Malcolm matter despite a clear conflict of interest violated Canon 3C(1) of the Code of Judicial Conduct.

13. On June 5, 2007, the Committee issued a letter of caution to Respondent for his conduct on three separate occasions in November 2005 and October 2006. First, in November 2005, in the presence of an assistant prosecutor of Nigerian descent, Respondent stated, in jest, that most Nigerians who come through the court are in handcuffs. Second, in October 2006, in response to a question regarding why the jury was hung, which was posed by a prosecutor at the conclusion of a trial over which Respondent had presided, Respondent stated that he felt the prosecutor had a good shot at a guilty verdict except that she had selected two "lower class

blacks" and they usually have problems with transit cops. Respondent's remark was overheard by the same assistant prosecutor to whom Respondent had made the offensive remark in November 2005. Finally, on October 10, 2006, Respondent engaged in a colloquy with the same assistant prosecutor of Nigerian descent during which Respondent called her a "crappy attorney." The Committee found Respondent's remarks on these three occasions to be inappropriate and had the potential to demonstrate a bias. The Committee reminded Respondent to be cognizant of the perceptions that are created by his words and actions and of his obligation to act at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

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

15. 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 William L'E. Wertheimer, 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(3), which requires judges to be patient, dignified, and courteous to all those with whom they deal in an official capacity;

Canon 3A(4), which requires judges to be impartial and to not discriminate because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or disability; and

Complainant also charges that Respondent's reference to the Bund organization was prejudicial to the administration of justice that brought the judicial office into disrepute in violation of Rule 2:15-8(a)(6) of the New Jersey Rules of Court.

DATED: August 11, 2009

Candace Moody, Disciplinary Counsel
ADVISORY COMMITTEE ON JUDICIAL CONDUCT
Richard J. Hughes Justice Complex
25 Market Street
4th Floor, North Wing
P. O. Box 037
Trenton, NJ 08625
(609) 292-2552