FILED
MAR 12 2013
A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2010-054

IN THE MATTER OF MICHAEL A. DIAMOND, JUDGE OF THE MUNICIPAL COURT	STIPULATIONS

Tracie H. Gelbstein, Disciplinary Counsel, Advisory Committee on Judicial Conduct ("Presenter"), and Municipal Court Judge Michael A. Diamond ("Respondent"), hereby enter into the following stipulations:

1. Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1982.

2. At all times relevant to this matter, Respondent served as a part-time judge in the Winslow Township Municipal Court, a position he continues to hold. Respondent also serves as a part-time judge in the Municipal Courts of the Borough of Chesilhurst, the Borough of Hi-Nella, and Voorhees Township.

3. On August 19, 2009, Respondent presided over the matter of State v. Foxworth, Summons/Complaint Nos. C-43416, C-43417, in the Winslow Township Municipal Court (the "Foxworth matter"). The Foxworth matter involved a single-car motor vehicle accident. A blood test was performed on the defendant, and as a result, the defendant was charged with driving while intoxicated and careless driving.

4. Prior to appearing before Respondent that day, the defendant's attorney met with the municipal prosecutor in a conference room adjacent to the courtroom to conference the case. Defense counsel presented an expert report to the municipal prosecutor during the conference.

5. Following the conference between the municipal prosecutor and defense counsel, the municipal prosecutor left the conference room with the expert report, and engaged Respondent in an *ex parte* conversation about the Foxworth matter.

6. The *ex parte* conversation between Respondent and the municipal prosecutor was conducted in the courtroom, at sidebar, and was recorded.

7. During that conversation, Respondent advised the municipal prosecutor on the issues regarding the admission of certain evidence.

8. After learning of the *ex parte* conversation, defense counsel made an oral motion on that same day for Respondent's recusal, which Respondent denied. In denying the motion, Respondent assured defense counsel that the *ex parte* conversation did not concern any substantive issues in the case. Respondent invited defense counsel to listen to the recording of the *ex parte* conversation and indicated that he would entertain another motion for recusal if, after listening to the tape, defense counsel believed that his client was prejudiced by the *ex parte* conversation.

9. The contents of the August 19, 2009 *ex parte* conversation between Respondent and the municipal prosecutor and subsequent motion of defense counsel for Respondent's recusal have been transcribed in their entirety, and are attached hereto as Exhibit A.

10. Defense counsel obtained the transcript of the recorded *ex parte* conversation, and, on October 5, 2009, moved under Rule 1:12-2 for Respondent's recusal from the Foxworth matter.

11. Respondent granted defense counsel's motion, and recused himself from handling the Foxworth matter.

TRACIE H. GELBSTEIN, ESQ.
Advisory Committee on Judicial Conduct

DATED: March 12, 2013

MICHAEL A. DIAMOND, ESQ.
Pro Se

DATED: March 5th, 2013

EXHIBIT

A

WINSLOW TOWNSHIP
MUNICIPAL COURT
CAMDEN COUNTY, NEW JERSEY
SUMMONS NOS. C-43416 & 43417

Exhibit B

STATE OF NEW JERSEY,	)	
	)	TRANSCRIPT
	)	OF
vs.	)	HEARING
	)	
EUGENE FOXWORTH, JR.,	)	
	)	
	)	
Defendant.	)	

Place: Winslow Township
Municipal Court
125 South Route 73
Winslow Township, NJ 08037

Date: August 19, 2009

BEFORE:

HONORABLE MICHAEL DIAMOND, J.M.C.

TRANSCRIPT ORDERED BY:

CHRISTOPHER L. BAXTER, ESQ. (Baxter & Kourlesis)

APPEARANCES:

DONNA PLATT, ESQUIRE (Assistant Prosecutor)
Attorney for the State

CHRISTOPHER L. BAXTER, ESQ. (Baxter & Kourlesis)
Attorney for the Defendant

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(Sidebar discussion held at 10:54 a.m.)

THE COURT: Yes, Ms. Prosecutor?

MS. PLATT: Okay. This is for another matter. Sorry. Okay, the two types of DWIs that are always the most challenging are the blood in the (inaudible) cases.

THE COURT: Right.

MS. PLATT: Right. Hopefully, there's not that many in this town. But, in any event, we have one that's interesting, it's a blood. I just got an expert report (inaudible). This is not that other one that begins with a "G."

Obviously, what's raised were chain of custody issues --

THE COURT: They have to give you notice that they are going to do that.

MS. PLATT: Yes, and he did do that. Okay. He did send his letter in.

The chain of custody issues, this is the -- this attorney, he used to be a Prosecutor in Burlington County and now he's doing all private practice. So, he's become a little challenging; however, I'm monitoring it. Okay.

But, the point is, is that they're always difficult because you have to get the toxicologist in,

1 you have to get, you know, yada, yada, yada.
2 The officer is okay with the three months.
3 You know, I don't want to spoil the attorney --
4 THE COURT: Is it blood?
5 MS. PLATT: It's blood.
6 THE COURT: What was the reading?
7 MS. PLATT: Wait, am I confusing the cases?
8 THE COURT: It's a blood case.
9 MS. PLATT: Yes, yes, that's a blood case.
10 I'm sorry, I should have that answer for you, I don't
11 know. No, it isn't. I really should know that. But,
12 I forget -- it was all prescription drugs. It was --
13 no, no, no, that was this one. I don't know what the
14 percentage is. I think it was pretty high, though.
15 THE COURT: This guy is wrong. Okay, this
16 guy is wrong on his (inaudible).
17 MS. PLATT: I know with the kit. I already
18 addressed that with him. I told him that we had that
19 issue before. That you even had it -- you had it like
20 a year ago in Chesilhurst. I told him that, you know,
21 you don't accept that. So, he knows that. Because his
22 kit, interestingly, is two years old. But, it doesn't
23 matter so I do know that.
24 THE COURT: No, but, he's saying then it took
25 five days there that was stored. Once you have blood,

1 it doesn't matter, it's (inaudible).
2 MS. PLATT: It doesn't matter, right. I
3 actually don't -- I don't -- I honestly feel if push
4 comes to shove that we'll be fine. You know, I really
5 do. The question is, is that --
6 THE COURT: As long as we can produce the
7 chain of custody stuff.
8 MS. PLATT: Well, shouldn't we -- I think
9 what we should do is -- my thought is, is what I think
10 we should try it first.
11 THE COURT: Is this the first --
12 MS. PLATT: If they're going to -- how old is
13 this case actually, Foxworth. I don't know that it's
14 that old.
15 THE COURT: I don't care how old it is.
16 MS. PLATT: Yes, that's true, too, that's
17 true, too.
18 THE COURT: It's a DWI --
19 MS. PLATT: Yes, it -- he's only been here
20 like a couple of times on it.
21 I mean, we'd have to subpoena the
22 toxicologist and we'd have to subpoena the nurse from
23 the --
24 THE COURT: And, the officer who grabbed the
25 thing and took it to the --

1 MS. PLATT: There's like four officers
2 involved. So, we have to subpoena all of them. So, do
3 you want to do that as a first step or do you want
4 to --
5 THE COURT: I think it's the only way we can
6 really put it on the record, especially if it's a high
7 reading.
8 MS. PLATT: Yes. I don't know what the
9 number is, but it was high.
10 THE COURT: And, then -- and then, tell him
11 he has to bring his expert in to testify, too.
12 MS. PLATT: Correct. Okay.
13 THE COURT: And, that way --
14 MS. PLATT: Then, we'll see -- okay, that's
15 number one. Okay.
16 (Sidebar discussion concluded at 10:58 a.m.)
17 (Judge hears other matters)
18 (Sidebar discussion heard at 11:00 a.m.)
19 MS. PLATT: This one I think we should
20 subpoena everybody. But, there's going to be a lot of
21 officers in the actual report that will all touch that
22 chain of custody that we have to -- it's so involved in
23 that sense, it's Foxworth.
24 THE COURT: You have to tell him --
25 THE CLERK: (Inaudible).

1 MS. PLATT: No, ours is Foxworth.
2 THE COURT: You'll have to tell him that he
3 has to get his expert to come to Court and then we'll
4 see what the chain is.
5 MS. PLATT: I will do that. I will
6 definitely do that. I agree with you. Ours is
7 Foxworth
8 THE CLERK: (Inaudible)
9 MS. PLATT: Foxworth, our officers, right.
10 THE COURT: And, well have to do the chain of
11 custody.
12 MS. PLATT: There's probably -- Kovba is
13 involved, I mean, there's like four officers.
14 THE CLERK: Okay. Are you going to give me
15 all the names?
16 MS. PLATT: They're all in the police report.
17 Do you want me to go through them and list them, would
18 that help?
19 THE CLERK: (inaudible).
20 MS. PLATT: You got it. Okay. You got it.
21 THE COURT: Why don't you do it later.
22 THE CLERK: Yes, we can do it later.
23 MS. PLATT: Okay. You got it. All right.
24 Thank you. Thank you, Your Honor.
25 (Court handles other matters)

1 MS. PLATT: Your Honor, may I approach?
2 THE COURT: You sure can.
3 (Sidebar)
4 MS. PLATT: This is the attorney for Mr.
5 Foxworth.
6 THE COURT: Yes.
7 MS. PLATT: I indicated to the defense
8 attorney that I spoke with you and I indicated that
9 there was the -- this is the matter with the blood draw
10 -- and that you indicated that you wanted everyone
11 subpoenaed and yada, yada, yada.
12 He indicated to me, which is I want to
13 articulate, that he has a problem that I obviously had
14 this (inaudible) conversation with you and he is going
15 to be asking that you recuse yourself. So, I just
16 wanted to --
17 THE COURT: All right. We may as well put it
18 on the record.
19 Ms. Platt: Yes, that's what I wanted to do.
20 But, he wanted to (inaudible).
21 THE COURT: Okay. We'll put it on the
22 record.
23 MS. PLATT: Okay.
24 THE COURT: This is Foxworth?
25 (Sidebar concludes)

1 THE COURT: This is the matter of Eugene
2 Foxworth. I'll take your --
3 MR. BAXTER: My client is here. I think he
4 might be outside having a cigarette. Do you want me to
5 get him in here?
6 THE COURT: Okay. Better get him in.
7 (Court handles other matters)
8 THE COURT: This is the matter of Eugene
9 Foxworth. I'll take representations for the record.
10 MS. PLATT: Donna Platt for the State, Your
11 Honor.
12 MR. BAXTER: Good morning, Judge.
13 Christopher Baxter from Moorestown on behalf of Mr.
14 Foxworth. (Inaudible) on his behalf?
15 THE COURT: Yes, sir.
16 MR. BAXTER: Judge, I understand this matter
17 was to be set down for trial and I had a conversation
18 with the Prosecutor regarding that and I provided her
19 an expert report from Dr. Patel. And, then I found
20 that there had been a conference in the case which I
21 would like to have been involved in.
22 I have the upmost respect for Your Honor and
23 I've been in front of Your Honor on many occasions.
24 But, when cases are conferenced, my experience is we're
25 usually invited to the conference to discuss whatever

1 the proof issues are, the facts, and certain things
2 with the case. So, it is a controlled environment.
3 And, at that point, if it's going to be a
4 trial and the lines are drawn the same, sobeit. But,
5 at least, it's an informed decision and I can at least
6 participate in the discussion.
7 (Inaudible) before Your Honor and I get the
8 sense that did not occur in this particular case. I'm
9 not faulting anybody for it. I understand Municipal
10 Court's a fluid thing; things have to move quickly, the
11 Prosecutor has a busy list.
12 But I just feel that based on that, I was not
13 there for whatever presentation of facts occurred or
14 the proffer of this expert report and I think it would
15 be in the best interest of everybody involved,
16 including my client, if the matter transferred to
17 another jurisdiction.
18 THE COURT: Yes, Ms. Platt.
19 MS. PLATT: I did indicate to defense counsel
20 what we did discuss which was a very brief discussion
21 regarding the case.
22 The conclusion was that I was going to be
23 requesting that the toxicologist and the nurse and
24 officers all be subpoenaed and that I would supply
25 those lists to the Court Administrator in order to do

1 so. And, that pretty much was the extent of the
2 conversation.
3 I did have the report in my hand. I did
4 indicate to the Court the name of the expert report. I
5 did also advise Your Honor that the issue was chain of
6 custody. I don't believe that there was any other
7 dialogue about the matter and I would leave it to the
8 Court's discretion.
9 THE COURT: This is easy because this one was
10 on the record. Because we didn't go off the record
11 when we had the sidebar.
12 The sidebar was, the Prosecutor came in, said
13 that you had an expert report. I didn't read the
14 expert report and it was purely a chain-of-custody
15 case.
16 And, I said to the Prosecutor in a chain-of-
17 custody case, you have to put notice that she's
18 supposed to come up with everybody. And, the
19 Prosecutor said that you did make that. I said all
20 right, we're going to have a trial.
21 We have a copy of the tape. All we have to
22 do is apply for the tape, everything was done on tape.
23 I didn't hear anything about the case other than it's a
24 chain of custody with the blood. So, I'm not even --
25 MR. BAXTER: It's not a function of whether

1 it was on tape or not on tape, Judge. It's the
2 function that my client wasn't represented in that
3 conversation.
4 THE COURT: How is he prejudiced?
5 MR. BAXTER: I -- I have no idea, I wasn't
6 part of the conversation.
7 THE COURT: Get a copy of the tape -- I'm
8 denying your application.
9 MR. BAXTER: I was told that -- that the
10 Prosecutor went back with the expert report and there
11 was a discussion about an alternate arrangement in this
12 case other than moving forward on the original charge
13 at the original levels.
14 So, there was -- there must have been some
15 discussion and I don't know what it was and I just -- I
16 think --
17 THE COURT: Sir, you can get a copy of the
18 tape. It was done on tape. Your client isn't
19 prejudiced. We're moving forward because there was a
20 suggestion that if they don't come up with everybody,
21 it may be reduced. But, that's only if nobody appears.
22 When you get this type of change of custody, there's
23 like eight or nine people we didn't substantially talk
24 about.
25 Anything about the case -- as a matter of

1 fact, I just noticed looking at it -- just looking at
2 the ticket, there was an accident involved, so I'm sure
3 there's other people who are going to have to be
4 subpoenaed for this.
5 Get a copy of the tape and if you think your
6 client's prejudiced, I'll hear another application.
7 But nothing that was said that -- it had more to do
8 with what do we do next. And what we do next is get
9 experts and we do our trial.
10 MR. BAXTER: Okay. I respect that, Judge. I
11 have to make application for my client.
12 THE COURT: I agree. And, if you can get a
13 copy of the tape or a copy -- you can listen to the
14 tape, you don't even have to get a copy of the
15 transcript. And, if you think your client was
16 prejudiced, I'll hear your application again.
17 MR. BAXTER: Judge, if you tell me he wasn't,
18 then I take your word for it.
19 THE COURT: Well, the only thing I know is
20 that we're going to need a chain of custody.
21 MR. BAXTER: Yes, sir. Judge, I'm told this
22 is marked for trial and once we get a date scheduled,
23 should I have my expert here?
24 THE COURT: I would have a date -- I would
25 have the expert here. I can't do date certain, but

1 I'll tell you what I'll do, if your expert is here and
2 for some -- whatever reason, the Prosecutor can't do
3 everything they have to do, I don't have a problem with
4 your guy going out of time. But, you may not want to
5 do that.
6 MR. BAXTER: I wouldn't because he wouldn't
7 be --
8 THE COURT: I understand that because you
9 want him to hear other things that goes on. These
10 particular --
11 MR. BAXTER: It's expensive for my client to
12 have him reappear and if it's not going to be a date
13 certain.
14 THE COURT: I can't do date certain with a
15 DWI.
16 THE CLERK: It's going to be October 5 at
17 1:30.
18 THE COURT: It would October 5th at 1:30.
19 MR. BAXTER: I guess what I'm concerned
20 about, Judge, is, if the scenario unfolds where either
21 the phlebotomist or the State Police's lab analysts
22 does not show up, I would actually have a motion at
23 that point.
24 THE COURT: Sure you would.
25 MS. PLATT: But, I'm not sure if the

1 Prosecutor's motion would be to continue the matter and
2 my expert would have to come back a second time at
3 double the expense for my client. And, I'm not sure
4 that would be fair to my client.
5 So, I just wanted to -- but if you can't do
6 date certain is what you're saying, how do I resolve
7 that problem?
8 THE COURT: Well, actually file a motion
9 later on to get reimbursed for the costs. I've never
10 seen anybody successfully do it. But, that's what the
11 Court rules say.
12 MR. BAXTER: I'm not in the business of
13 trying to jam up the Prosecutors.
14 THE COURT: I understand that. But, what
15 happens is, we're the second largest DWI Court in
16 Camden County. We did close to 400 last year. And,
17 just to get everybody here -- and what happens with the
18 expert report is the expert is just going to testify to
19 whatever they think the problem is with the case.
20 I don't know -- I didn't read the report so I
21 don't know what your expert says. I don't know if he
22 says anything about the phlebotomist, I don't know if
23 he says anything about the chain of custody.
24 The other thing we can do and it's entirely
25 up to you, if you don't want to bring your expert at a

1 particular time, get a transcript. And, then your
2 expert can read it and that way you don't have to worry
3 about them paying for the expert twice. We try to do
4 everything we possibly can.
5 MR. BAXTER: Would you have any problem
6 adjourning, Judge, after the State's case so that I can
7 order that transcript and put my case on the next
8 listing?
9 THE COURT: Well, it depends on what the date
10 is. The problem is if I have a date where I could go
11 through the trial, I could go through it. And then --
12 you were a prosecutor, it's a little bit different in
13 Municipal Court because we get -- we get little nasty
14 notes every week about how old the case is and why am I
15 postponing it. If I postpone it for you to get a
16 transcript to your expert, it may take two months from
17 the time you get the transcript and your expert gets to
18 it.
19 MR. BAXTER: Okay.
20 THE COURT: So, I would like to accommodate
21 you and if it goes to the point where -- and I
22 understand, if I were the defense attorney, I don't
23 think I would want my expert coming out of time because
24 you want him to hear. But, I don't know what your
25 expert is testifying to.

1 MR. BAXTER: Okay. I'll be prepared to move
2 forward then.
3 THE COURT: We'll try the best we can. We
4 have special DWI money. Ms. Prosecutor, do you know
5 what happens with special DWI money?
6 MS. PLATT: No, tell me.
7 THE COURT: You're not the Prosecutor.
8 MS. PLATT: That's true, so I don't get it.
9 THE COURT: Because she doesn't like to get
10 paid nothing when she comes to Court. So, we have
11 another Prosecutor comes in on that day just for DWI
12 days. But we only list DWIs and if we know that
13 there's going to be 14 witnesses, I can list it so
14 that's the only case on that day.
15 So, it's pretty much assured that you'll go
16 on that day.
17 MR. BAXTER: Okay. Thank you, Judge.
18 MS. PLATT: Thank you, Your Honor.
19 THE COURT: I'll do the best I can.
20
21 * * * * *
22
23
24
25

CERTIFICATION

I, Deborah L. Reggio, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Winslow Township Municipal Court, on March 19, 2009, disk #1, Index 10:54:59 to 11:01:04; 11:06:32 to 11:07:04; and, 11:09:42 to 11:17:35, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate record of the proceedings.

Signature: Deborah L. Reggio
DEBORAH L. REGGIO
#605 CC
DIANA DOMAN TRANSCRIBING

Date: September 3, 2009