SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2011-173

IN THE MATTER OF LOUIS M.J. DiLEO, JUDGE OF THE MUNICIPAL COURT	FORMAL COMPLAINT

FILED
OCT 24 2011
A. C. J. C.

Candace Moody, Disciplinary Counsel, Advisory Committee on Judicial Conduct ("Complainant"), complaining of Municipal Court Judge Louis M.J. DiLeo ("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 1981.

2. At all times relevant to this matter, Respondent served as a judge in the City of Linden Municipal Court, a position he continues to hold.

3. On April 12, 2010, Respondent presided over the arraignments of defendants Anthony Kirkland and Wendell Kirkland in the matter of State v. Anthony Kirkland and Wendell Kirkland, Summons Nos. W-2009-00874, W-2009-00875, W-2009-00876, and W-2009-00877 (the "Kirkland matter"), in the Linden Municipal Court. Anthony and Wendell Kirkland were arrested on October 4, 2009 and charged with the following offenses: theft by unlawful taking for allegedly stealing five lug nuts; attempted theft by unlawful taking of the tire to which the lug nuts were attached; possession of burglary tools (e.g. a hydraulic floor jack and a lug wrench);

and possession of 50 grams or less of marijuana that was allegedly found on the floor of the car in which the defendants were riding at the time of their arrests.

4. During their arraignments, Respondent advised Messrs. Kirkland of the charges against them and the possible consequences each faced if convicted, including possible jail sentences. Respondent also reviewed with Messrs. Kirkland their rights, including their right to an attorney and the appointment of a public defender if they were indigent. Both Anthony and Wendell Kirkland advised Respondent that they wished to exercise their right to retain private counsel to represent them in the Kirkland matter. Respondent advised Messrs. Kirkland that they had until May 3, 2010 to retain counsel and advised each, on the record, that by electing to retain private counsel they had waived their rights to the appointment of a public defender.

5. On May 3, 2010, Respondent presided over a conference in the Kirkland matter at which both Anthony and Wendell Kirkland appeared pro se. When Respondent asked the defendants if they had retained counsel, Anthony Kirkland's response was inaudible. However, Wendell Kirkland was heard to say, "Just give me the public defender." In response, Respondent told both defendants that they had "waived the public defender." Respondent scheduled the matter to be tried on May 12, 2010 and told the defendants, "Be here. The public defender will be here. . . . Be here at that time ready to proceed."

6. On May 12, 2010, Respondent presided over the trial of the Kirkland matter, which began at 9:13 p.m. and concluded at 10:05 p.m. Neither defense counsel nor the municipal prosecutor was present at the trial. The only individuals to participate in the trial were Respondent, the arresting police officer and the defendants.

7. At the trial, Respondent conducted the direct examination of the arresting officer and thereafter permitted Anthony and Wendell Kirkland to cross-examine the officer. At the conclusion of the officer's testimony, Respondent asked the officer if he had any further evidence to present to which the officer responded, "There's no evidence here." Finding no further evidence, Respondent asked the officer if he intended to "rest" his case to which the officer responded, "Yes."

8. Following the officer's testimony, Respondent permitted the defendants an opportunity to present any witnesses in their defense. Although both defendants had witnesses they wished to present, none of those witnesses were present in the courtroom that evening. Finding there to be no witnesses for the defense, Respondent permitted the defendants an opportunity to testify in their own defense. Both Anthony and Wendell Kirkland testified at the trial after which Respondent permitted the arresting officer to cross-examine each of them.

9. Following the officer's cross-examination of the defendants, Respondent questioned Anthony Kirkland at length about his conduct on the evening of his arrest. Thereafter, Respondent questioned the arresting officer again about the events surrounding the arrest of both defendants.

10. At the conclusion of the trial in the Kirkland matter, Respondent found both defendants guilty on all charges. Respondent sentenced Wendell Kirkland to 180 days in the county jail, three consecutive one-year probationary terms, and fines totaling $2,700.00, exclusive of penalties and costs. Respondent sentenced Anthony Kirkland, whom he believed to be "the person who facilitated this crime," to two consecutive 180 day jail terms and three

consecutive one-year probationary terms. Respondent also imposed the maximum fines permitted for each offense, totaling $3,100.00, exclusive of penalties and costs.

11. Anthony and Wendell Kirkland appealed their municipal court convictions to the Union County Superior Court. Both defendants were represented by counsel on their appeals.

12. The Honorable Scott J. Moynihan, J.S.C. of the Union County Superior Court presided over the appeal. On March 4, 2011, Judge Moynihan found both defendants not guilty of the possession of marijuana charge and remanded the remaining charges against the defendants to the Elizabeth Municipal Court for a new trial.

13. In his oral opinion, Judge Moynihan characterized the trial of the Kirkland matter as a "perversion of justice" and cited multiple instances in which Respondent violated the defendants' constitutional rights.

14. Specifically, Judge Moynihan condemned Respondent's denial of defendants' request for a public defender as the "most glaring error" in the trial necessitating a remand of the Kirkland matter for a new trial before a different jurist. Judge Moynihan rejected outright Respondent's determination that the defendants had waived their right to a public defender when they indicated at their arraignments their desire to retain private counsel: "Neither defendant waived his right to a public defender . . . . Although the municipal court judge never explored the reasons why the defendants did not secure the services of private counsel when they returned to court on May 3, there is no indication that they knowingly waived their right to appointed counsel. They wanted a public defender on May 3. The fact that they tried to secure private counsel . . . does not amount to a knowing, voluntary waiver of their right to have a lawyer

represent them in a trial that resulted in county jail sentences for each defendant." Judge Moynihan concluded that Respondent had "forced [the] defendants to go to trial pro se."

15. Likewise, Judge Moynihan criticized Respondent's actions in questioning the arresting officer and Anthony Kirkland during the trial, finding such actions deprived the defendants of their due process rights and further necessitated a remand of the Kirkland matter for a new trial before a different jurist. Respondent "pointedly cross-examine[d] witnesses" and, in so doing, behaved like a prosecutor, "especially since he [then] used the testimony which he elicited" to find the defendants incredible. As determined by Judge Moynihan, Respondent's "actions transformed the role of the court from a neutral and detached magistrate and evoked the specter of the backwater 'judge, jury and executioner' figure that has never had any place in American jurisprudence. The court's intervention deprived both defendants of their due process rights."

16. As further determined by Judge Moynihan, the "perversion of justice" in the Kirkland trial was compounded by Respondent's decision to allow the arresting officer to cross-examine the defendants: "There is no authority for allowing a non-attorney to participate in a trial as the State's sole representative, especially where no attorney is present and engaged in the proceedings."

17. Although not included as a basis for remanding the Kirkland matter, Judge Moynihan also noted several procedural errors committed by Respondent during sentencing. These errors included the following: (a) Respondent's failure to "set forth his findings as to the . . . applicable aggravating and mitigating factors" he considered when sentencing the defendants as required by N.J.S.A. 2C:44-1 and Rule 7:9-1(b); (b) Respondent's imposition of consecutive

sentences without providing the requisite basis as required by State v. Yarbough, 100 N.J. 627 (1985); (c) Respondent's imposition of a period of parole ineligibility in a case where such a sanction is not authorized by law; (d) Respondent's imprisonment of the defendants for a term in excess of 90 days as a condition of probation on a disorderly persons offense in violation of N.J.S.A. 2C:43-2b(2); (e) Respondent's failure to consider the defendants' eligibility for release on parole when sentencing the defendants as required by N.J.S.A. 2C:44-1c(2); (f) Respondent's imposition of the maximum fines against Antony Kirkland without first determining each defendant's ability to pay as required by N.J.S.A. 2C:44-2c; (g) Respondent's failure to provide Anthony Kirkland with an opportunity to allocute before sentencing in violation of Rule 7:9-1(a); and (h) Respondent's failure to advise each defendant of his appeal rights in violation of Rule 7:14-1(c).

18. By his conduct in denying the defendants in the Kirkland matter their constitutional right to counsel and in depriving Messrs. Kirkland of their due process rights during the trial in the Kirkland matter, and by his conduct in committing multiple procedural errors when sentencing the defendants in violation of statutory law, case law and the New Jersey Court Rules, Respondent has violated Canons 1, 2A and 3A(1)of the Code of Judicial Conduct.

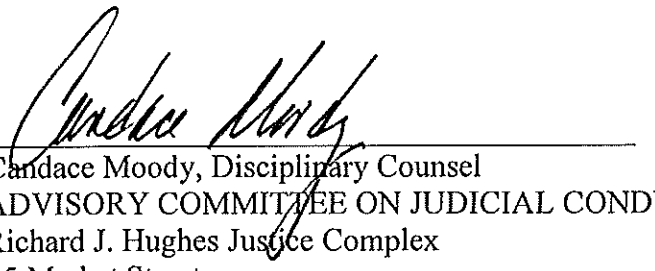
WHEREFORE, Complainant charges that Respondent, Municipal Court Judge Louis M.J. DiLeo, has violated the following Canons of the Code of Judicial Conduct:

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; and

Canon 3A(1), which requires judges to be faithful to the law and to maintain professional competence in it.

DATED: October 24, 2011



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