

Preface: Counsel for the ACJC has an obligation of proving the allegations of the Formal Complaint to the Committee by clear and convincing evidence. This is Judge Sasso's first and only formal charge before the Committee.

STATEMENT OF FACTS

The Complaint contains various allegations of misconduct broken down into Counts. The allegations in general are as follows:

First Count- Being impaired on the bench on December 6, 2006 (Bridgewater) and April 17, 2007 (Warren)

Second Count- Bound Brook Bar incident November 29, 2007.

Third Count- Imposing Sanctions under R. 1:2-4 for attorneys and parties "minutes late" for court..

Fourth Count- Inappropriate Comments to Litigants Canon 1 and 2A in St. v. Lisa Brown and against attorney in St. v. Sostre and comments to defendant St. v. Mike Roberson

Fifth Count- Failure to follow R. 1-10-1 in St. v. Tina Sears and St. v. Lisa Brown

Sixth Count- High School Student Fine Discount

Seventh Count- Watchung Chemical Engine Co. conflict of interest in alleged representation of the company

The factual and legal positions of the Respondent has been incorporated into the following Points herein.

TRANSCRIPT REFERENCES

1T Transcript of proceedings held on November 10, 2008

2T Transcript of proceedings held on November 12, 2008

Point I

**THE SANCTIONS IMPOSED PURSUANT TO
RULE 1:2-4 WERE PROPER (COUNT III)**

The Complaint (Count III) alleges that the respondent sanctioned parties and attorneys who were “minutes late” for Court. See Count III. The Committee’s counsel argues that it was improper to assess a monetary penalty to parties or attorneys who failed to show up at the municipal court calendar call. The contention, as expressed by Judge Schaul, is that as long as a defendant shows up some time during that same day, a sanction is inappropriate. However, neither the applicable Court Rule R. 1:2-4, the case law, or the standard procedure in municipal court supports this position.

It is urged that the Committee recognize that these sanctions are not a finding of contempt of Court. It is the Respondent’s use of Rule 1:2-4 that is at issue. The Respondent was responsible for the handling of over 30,000 cases per year in his 4 courts. In the municipal courts a specific written Order scheduling the calendar call is sent by the Court to the litigant and his or her attorney that directs them to be in court on that date and at a specific time by order of the judge. This direction to appear is in the form of an ORDER from the named municipal judge (1T 60-9).

**THE CALENDAR CALL IS AN IMPORTANT COMPONENT
OF THE COURT’S SESSION**

Different than the Superior Court calendar call, at the municipal level a judge will have a court full of witnesses including the police officers, other drivers, private complainants (ie. store security personnel for shoplifting cases or victims of assaults or theft). Many times there are over 150 complaints on the docket for a given session. As verified on the New Jersey Courts

web site in 2004 our municipal courts handled over 6.6 million cases. The failure of litigants to show up in municipal court is a recognized widespread problem that is a product of the nature of those courts as described by Robert Ramsey in the **Municipal Court Practice Manual**:

Failures to appear are an enormous, widespread and expensive problem in the State's municipal courts. However, it is now clear that a willful failure to appear by an attorney, defendant or other party subject to the jurisdiction of the court does not constitute contempt in the face of the court. 51 NJPRAC § 16:6

The municipal judge calls the trial list in the court room to determine if the defendant has shown up. When the defendant fails to appear, witnesses are excused as the judge issues an FTA or bench warrant for the defendant. Officers with only one case on the list for that evening or private complainants and victims who have taken time off from their work and family responsibilities should not have to remain to see if the defendant eventually decides to show up. This practice promotes the orderly disposition of cases scheduled for trial. It is the standard practice in municipal court.

The respondent testified that it was his belief that everyone present in court, the defendants, witnesses, police officers and the court staff should not have to wait all night to have their matter adjudicated. Judge Sasso adhered to this concept and had the Court personnel function with a high level of service for the participants in Court, many of whom will have their only court experience in the municipal courts. Judge Sasso testified that if a person was going to be late for Court and called there would not be a sanction imposed (1T; 76:14). It was only the inconsiderate and irresponsible party that interfered with the process that could be subjected to a sanction without further explanation.

Counsel for the Committee argues that the Rule utilized by the judge should not be applied as long as the person showed up in Court, even if it was over an hour after the calendar

call is complete. This position is flawed logically and pragmatically.

Municipal Courts function on an expedited basis and the position of counsel demonstrates a lack of appreciation for the practices and procedures of the municipal courts. Each court date is a peremptory trial date by Order of the Court. There is no prior case management where schedules of litigants are revealed or accommodated. When a defendant fails to appear the complainant and witnesses are excused and leave. This has been the procedure in the municipal courts for decades. The record further demonstrates that Judge Sasso did not use the Rule 1:2-4 sanction power excessively in light of the volume of cases that he handled over the approximately 10 years he sat as judge. The examples presented herein over a multi-year period are few and sporadic.

Besides the power given to a trial judge to impose a sanction pursuant to the Rules of Court, our courts have long recognized an inherent power in the common law to impose sanctions to facilitate the Court's operation.

The requirements of *R. 4:46-2(a)* and *(b)* for filing statements of material facts by parties to a motion for summary judgment are designed to “focus ... attention on the areas of actual dispute” and “facilitate the court's review” of the motion. Pressler, *Current N.J. Court Rules*, Comment *R. 4:46-2*. Indeed, we noted in *Housel v. Theodoridis*, 314 *N.J. Super.* 597, 604, 715 *A.2d* 1025 (App.Div.1998), that those requirements are “critical” and “entail[] a relatively undemanding burden.”

Rule 1:2-4(b), the rule utilized by Judge Sasso, expressly states that for failure to comply with motion requirements, a court “may dismiss or grant the motion or application, continue the hearing to the next motion day or take such other action as it deems appropriate....” Moreover, “a range of sanctions is available to the trial court when a party

violates a court rule.” *Abtrax Pharms., Inc. v. Elkins-Sinn, Inc.*, 139 N.J. 499, 513, 655 A.2d 1368 (1995) (quoting *Zaccardi v. Becker*, 88 N.J. 245, 252-53, 440 A.2d 1329 (1982)). Judges have “an inherent authority” to impose sanctions for blatant violations of our court rules apart from any specific provisions setting forth those sanctions. *Summit Trust Co. v. Baxt*, 333 N.J.Super. 439, 450, 755 A.2d 1214 (App.Div.), *certif. denied*, 165 N.J. 678, 762 A.2d 658 (2000). “Our standard of review of the imposition of *83 sanctions requires us to abstain from interfering with those discretionary decisions unless an injustice has been done.” *Cavallaro v. Jamco Prop. Mgmt.*, 334 N.J.Super. 557, 571, 760 A.2d 353 (App.Div.2000).

Mandel v. UBS/PaineWebber, Inc. 373 N.J.Super. 55, 81-83(App Div. 2004)

(Emphasis added)

This inherent power must apply to unexcused tardiness as well as a complete failure to appear contrary to counsel’s position in this matter. To hold otherwise would leave the Court at the mercy of the litigants and attorneys in terms of moving its calendar.

In this matter Judge Sasso had the implicit authority under the common law and the express authority pursuant to R. 1:2-4 to impose the subject sanctions which as noted below are the lesser of the two available tools he could have used, namely contempt of court. It should be noted that despite of 10 years of service and a high volume of cases handled, on the bench the respondent is alleged to have improperly used the contempt procedure less than 5 times. Our case law indicates that the sanction under the Rules is the preferred method and that is what he used. A review of submitted transcripts, court records and the Complaint only lists a few incidents attempting to portray an inaccurate picture of the way the Respondent handled his court sessions and the litigants. This creates a distorted picture and is in direct contrast to the overwhelming opinion of the attorneys who appeared before him on a regular

basis and who are actually familiar with municipal court law (P-25; T 27-28; P-57; T 22-23).

Rule 1:2-4 allows for the imposition of sanctions in appropriate instances. The Rule provides:

1:2-4. Sanctions: Failure to Appear; Motions and Briefs

(a) Failure to Appear. If without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party on the call of a calendar, on the return of a motion, at a pretrial conference, settlement conference, or any other proceeding scheduled by the court, or on the day of trial, or if an application is made for an adjournment, the court may order any one or more of the following: (a) the payment by the delinquent attorney or party or by the party applying for the adjournment of costs, in such amount as the court shall fix, to the Clerk of the Superior Court, or, in the Tax Court to its clerk, or to the adverse party; (b) the payment by the delinquent attorney or party or the party applying for the adjournment of the reasonable expenses, including attorney's fees, to the aggrieved party; © the dismissal of the complaint, cross-claim, counterclaim or motion, or the striking of the answer and the entry of judgment by default, or the granting of the motion; or (d) such other action as it deems appropriate.

(b) Motions; Briefs. For failure to comply with the requirements of R. 1:6- 3, 1:6-4 and 1:6-5 for filing motion papers and briefs and for failure to submit a required brief, the court may dismiss or grant the motion or application, continue the hearing to the next motion day or take such other action as it deems appropriate. If the hearing is continued, the court may impose sanctions as provided by paragraph (a) of this rule.

(EMPHASIS SUPPLIED)

The sanctions imposed under this Rule are generally considered to be civil in nature and do not require the same level of procedural protections as provided under Rule 1:10-2. The sanction may be imposed for careless (as opposed to willful) conduct and **is not considered to be a punishment for contempt of court.**

See 17 NJPRAC § 20:10 . (emphasis supplied)

Our published case law indicates that the use of this Rule is preferable to a trial judge wielding contempt power:

Defendant's explanation in this case, if true, would be adequate to render her not guilty of contempt. The judge *585 disbelieved her explanation in light of his knowledge that he had said court would begin at 9:00 a.m.. He would also have disbelieved any witnesses she produced to testify that he said 10 a.m.. Finding defendant's explanation so clearly inadequate, the judge could view her tardiness as a direct contempt. *Id.* at 126-27, 417 A.2d 533. **While defendant was subjected to no greater sanction than would have been appropriate under R. 1:2-4 for failure to appear, we are persuaded that the best practice would have been to proceed under this administrative rule, rather than direct contempt. See Matter of Milita, 195 N.J.Super. 1, 477 A.2d 824 (App.Div.1984).** The remaining incidents were clearly direct contempts.

State v. Kordower, 229 N.J.Super. 566, *584-585, 552 A.2d 218, **228 (.App.Div.1989)
(emphasis supplied)

In addition, besides holding that using R.1:2-4 is the preferred technique, a sanction under the Rule does not provide for a time consuming hearing and transfer, while still allowing a party to appeal the sanction when he or she appeals the case, if they felt it was inappropriate or excessive.

We conclude that this sanction was in no sense imposed for contempt of the court. This sanction was imposed because counsel was not prepared to proceed to trial on a peremptory trial date. As a result, the case was dismissed. The \$500 sanction was imposed as a condition for reinstatement of the matter on the trial *184 list. As an aside, we observe that appellant was then able to negotiate a quite favorable disposition of the tax appeal on behalf of his client.

We repeat, this was not a contempt proceeding but simply an imposition of a sanction under R. 1:2-4. See *State v. Audette*, 201 N.J.Super. 410, 414, 493 A.2d 540 (App.Div.1985); see also R. 8:8-5.

Cedar Wright Gardens v. Lodi Borough 14 N.J.Tax 182, *183 -184 (App.Div.,1994)
(Emphasis added)

Judge Sasso's conduct in his application of R.1:2-4 has been challenged in the following

limited situations:

1. **DEFENDANTS WHO DON'T SHOW UP FOR YEARS:** Rule 1:2-4 was utilized by the respondent where defendants would appear in Court years after their scheduled court date. Most of the time the State could no longer prove their case since the records or officer were no longer available. In Bridgewater and Bound Brook the prosecutor on many occasions would include a sanction on a plea sheet that is agreed to by the defendant and his or her attorney. Even without an agreed upon plea agreement, Judge Sasso would only impose some sanction for defendant's failure to appear after giving them an opportunity to be heard to explain their long absence.

2. **DEFENDANTS & ATTORNEYS WHO DO NO APPEAR:** It is the Respondent's position that if a litigant is summoned to Court by court order and does not show up there should be some accountability. All it would take is the common sense and courtesy of a phone call and the court's working would not be affected as the witnesses could be told to stay and that the defendant or their lawyer would be running late. After entering appearances and not guilty please if a defendant fails to show with counsel and the attorney fails to show up he would impose a sanction subject, of course, to a reasonable excuse for the non-appearance. This occurred frequently and sanctions were rescinded. However, when the State is ready to dispose of the case and a litigant fails to appear without explanation, it just unfairly taxes the Court system.

3. **PEOPLE WHO ARRIVE AT COURT LATE:**

A. **USE OF SANCTION RULE & JUDGE SCHAUL-** Unfortunately it appears through the testimony of the witnesses called on this issue that they believe there is a right to a hearing and the matter being handled by a separate judge is the law in every case as in a

contempt situation. They are simply confused by the two different methods which are distinguished above by the Appellate Division in the State v. Kordower, Ibid. case.

The Committee's counsel is attempting to show that somehow the Respondent disregarded the instructions of the Presiding municipal court judge. The evidence shows that this allegation is inaccurate. Although a memo was issued by Judge Schaul to all judges in the vicinage regarding contempt of court, Judge Schaul did not direct the Respondent not to use R.1:2-4 sanctions until his letter of December 13, 2007 (P-46). Furthermore, after that letter was mailed but **before it was received**, Judge Sasso testified that he called Judge Schaul with the Court Administrator from Watchung specifically asking Judge Schaul's guidance on whether to impose a sanction on an attorney in the matter of State v. John Nagiewicz. The case was a special DWI session in which all of the parties and the expert were there for this special session. The attorney representing the defendant did not show up. Judge Sasso testified that the first words from Judge Schaul were "I guess you received my letter" but respondent questioned him as to what letter and advised Judge Schaul that no letter had been received yet.

After being told of the circumstances Judge Schaul instructed Judge Sasso to sanction the attorney, a Mr. Levine \$1,000 which was done. Judge Schaul confirmed his authorization of the use of this sanction (2T:78-6).

Judge Schaul curiously testified that he had never heard of Rule 1:2-4, yet he criticized Judge Sasso's use of the rule as inappropriate (2T:76-5). In most instances, he was totally unaware of the circumstances in which the rule was applied. In fact, his opinion is that if an attorney appears late to Court, no matter how late, no sanction should be imposed (2T:110-12).

After Judge Schaul's letter of December 13 was received by the Watchung Court and provided to the Respondent he immediately sent a comprehensive legal memorandum regarding the ability of a trial judge to use R. 1:2-4 and asking for guidance from Judge Schaul as to the circumstances under which a judge could use the Rule (R-7). No response was ever received. Despite the lack of a reply respondent immediately stopped using the rule for sanctions (1T; 106:9).

B. PARTICULAR CASES

State v. Orellana (Watchung) sanction Ms. Wong Taylor- Although the Complaint alleges sanctions for people who show up "minutes late" the facts show instead substantial tardiness. Ms. Wong Taylor on August 27, 2007 was the attorney for the defendant on a serious case, it was a DWI case along with other additional charges. Judge Sasso testified that Ms. Wong Taylor had previously appeared regularly in Respondent's courts with an active municipal court practice but had a habit of appearing late. On the date in question she did not appear for the calendar call nor did her client. (the calendar call took place at 4:07 PM.) (P-39; T-5). In fact she didn't appear before the court until after 5:00 PM.(P-39; T-5). Ms. Wong Taylor admitted her tardiness. She was sanctioned and then, instead of filing an appeal, wrote Judge Schaul on August 30, 2007 misrepresenting to him that she ".....arrived at the Court at four fifteen (4:15 PM)." (P-41). Besides this obvious misrepresentation she also told the Presiding municipal court judge that her client had been there since 4:04 PM. The truth is that his name wasn't even called until after that time and he did not respond. Judge Schaul wrote a letter to the Respondent dated August 31, 2007 (P-42). Judge Sasso responded by letter of September 7, 2007 explaining what had happened and why (P-43). In addition, the letter to Judge Schaul indicated the legal basis for the sanction and indicated that

it would be the respondent's intention to sanction her again if she failed to appear at the calendar call. It is respectfully submitted that the sanction, as to Ms. Wong-Taylor, was appropriate and reasonable under the circumstances, nor was it ever lawfully appealed.

State v. Lisa Brown (Watchung)- Ms. Brown was charged with a serious offense, a criminal charge of harassment under NJSA 2C: 33-4c (P-36). She was sent an Order directing her to appear in municipal court. That Order required the defendant to appear at 9:00 AM. Judge Sasso explained that these private cases are the more difficult cases for a municipal court to schedule as it involved a private citizen's Complaint who was not represented by a private attorney pursuant to St. v. Storm. There was no attorneys to interface with on behalf of the alleged victim. At the calendar call Ms. Brown didn't appear. At approximately 10:46 AM she appeared before the Respondent and flippantly told him that she was late due to child care, even though she failed to call to advise the Court that she would have any difficulty getting there on time. She also represented falsely that she was in Court at 9:08 AM. Judge Sasso testified that the Court session is staffed by two (2) officers who direct people arriving in Court to appropriately check-in. Ms. Brown did not appear until one (1) hour and forty-six minutes after the start of Court (P-36; T-4). A sanction of \$500 was imposed. The Respondent admits that his discussion with Ms. Brown was discourteous and intemperate, however, the sanction was appropriate due to her attempted misrepresentations and extreme tardiness.

Finally, the Committee is asked to note that Judge Sasso's use of R 1:2-4 sanctions were extremely limited. Judge Sasso testified that when explanations were provided, the sanctions were vacated (1T; 89:9). The few cases presented do not show a pattern of use but, instead, confirm the isolated use of this sanction over a 10 year tenure on the bench. It is equally

important for the Committee to note that once Judge Sasso received direction from Judge Schaul, the use of R 1:2-4 was completely discontinued (T1; 106:9).

Point II

THE LOWERING OF FINES FOR HIGH SCHOOL STUDENTS WAS PROPER (COUNT VI)

In the Sixth Count of the Complaint it is alleged that lowering fines for non-working high school students was improper judicial conduct. The Respondent submits that the sentencing of a student-defendant based on their ability to pay is appropriate and authorized by the law. Furthermore, this practice provides a pragmatic and meaningful sentencing experience for young people so that they will accept responsibility and not have their parents simply get out the checkbook and take care of the child's problems. Judge Sasso testified that this practice was a valid and justifiable technique in his attempt to "Do the right thing" and make a difference with the children that came before him. Importantly, Judge Sasso, on most occasions, **simply followed the recommendation of the prosecutor.**

Judge Sasso explained that a student driver (from anywhere, not only from Bridgewater Township or Somerset County) would meet with the prosecutor and possible the police officer, most of the time accompanied by a parent. Once they came before the Respondent for disposition the Respondent would take the factual basis and then ask them if they were a full time student in school then he would ask the student who was standing next to them and whether that person (the parent) was driving the vehicle. The student would admit that they were driving not their father or mother and the Respondent would ask them if they understood the student discount (ie. Immaculata student the "Spartan" discount, Plainfield H.S. The "Cardinal" discount, South Plainfield the "Tiger" discount). They would indicate that they did not and the Respondent would say that the fine was going to be lowered because

he or she was a full time student but that the fine had to be paid by them and NOT by the parent. The student was instructed that whether they had to go out on a weekend when they did not have school and wash cars or some other work they had to make the payment even if it was at \$5 per week to the Court.

This was done not to make extra work for the Court staff in collecting payments or to diminish the amount of fines the State or municipality took in, but rather to try and make a difference with these young students. The same sentencing criteria, namely, unemployment and no limited assets, yielded the same treatment to other non-student defendants. Judge Sasso explained the treatment also applied to the indigent and the poor elderly. The sole difference is that the practice, as applied to students, was referred to by the name of a school mascot.

Our laws have always compelled a judge to take into consideration a defendant's "ability to pay" when assessing a fine in Court. This is a fundamental sentencing principle.

In State v. Gardner , 252 N.J.Super. 462, 465 (Law Div.1991) the Court confirmed that "ability to pay is indeed the standard to utilize:

There are no mandatory fines set by the New Jersey Code of Criminal Justice except for shoplifting, *N.J.S.A. 2C:20-11c*. The criteria used to determine the appropriateness and amount of a fine are: **defendant's ability to pay**, whether defendant derived a pecuniary gain from the offense and/or whether a fine is specially adapted to deter the type of offense involved or to correct the offender. *N.J.S.A. 2C:44-2*. (emphasis supplied)

The Appellate Division held in State v. Alford , 191 N.J.Super. 537, 542, (App.Div 1983)

In arriving at that determination the judge should consider all the circumstances including the amount of the fine, **defendant's ability to pay** and the relative significance of the fine compared with the benefits defendant received under the plea agreement. *See State v. Taylor, supra*, 80 N.J. at 366-67, 403 A.2d 889. (emphasis supplied)

The statute allowing a fine under our criminal code requires taking a persons financial status into consideration when accessing the fine:

2C:44-2. Criteria for imposing fines and restitution

a. The court may sentence a defendant to pay a fine in addition to a sentence of imprisonment or probation if:

(1) The defendant has derived a pecuniary gain from the offense or the court is of opinion that a fine is specially adapted to deterrence of the type of offense involved or to the correction of the offender;

(2) The defendant is able, or given a fair opportunity to do so, will be able to pay the fine; and

(3) The fine will not prevent the defendant from making restitution to the victim of the offense.

One need to go no further than the New Jersey Practice Series on Municipal Court Practice to see that a trial judge would be violating the law if he or she did not consider the defendant's ability to pay:

17 N.J. Prac., Municipal Court Practice § 22:6 (3d ed.)

New Jersey Practice Series TM
Current Through the 2007 Update
Municipal Court Practice
Robert Ramsey[FNa0]
Part XI. Sentencing
Chapter 22. Sentencing of Disorderly Persons Offenses

§ 22:6. Criteria for imposing fines and restitution

A municipal court has the discretion to sentence a defendant to pay a fine in addition to a sentence of imprisonment if the defendant has derived a pecuniary gain from the offense or if the court feels that a fine will deter the type of offense or will deter the offender.[FN1] When imposing a fine, the court must also be satisfied that the defendant is able to pay the fine, or will be able if given a fair opportunity,[FN2] and that if a fine is imposed, it will not prevent the defendant from making restitution to the victim.[FN3] If

the court decides to impose a fine, it must take into account the financial resources of the defendant and the burden that payment of the fine will inflict upon the defendant when determining the amount of the fine.[FN4]

A municipal court is required to order the defendant to pay restitution to the victim if the victim suffered a loss,[FN5] and if the defendant is able or will be able to pay if given a fair opportunity.[FN6] Moreover, some offenses require restitution as part of the sentence regardless of the defendant's ability to pay.[FN7] In determining the amount of restitution a defendant owes a victim, the court must consider the defendant's financial resources, including likely future earnings.

17 NJPRAC § 22:6

A full time high school student who comes before the Court for sentencing must be evaluated in terms of ability to pay. The sole error which may have occurred is Judge Sasso's statement that he did not conduct an extensive inquiry into the employment of each student but, instead, we contend, reasonably presumed that if they were full time students, they did not have any substantial income. Surely this error does not rise to the level of judicial misconduct.

It is a total misapplication of Canons 1 and 2A of the Code of Judicial Conduct to conclude that the conduct of Judge Sasso, in any way, impugned the integrity of the Judiciary. Rather, it represented an attempted meaningful exercise of the Court's sentencing discretion in dealing with student defendants.

Point III

**THE INFORMAL & INFREQUENT
FREE ADVICE GIVEN TO A
SEPARATE NON PROFIT
CORPORATION VOLUNTEER
FIRE DEPARTMENT WAS NOT
IMPROPER JUDICIAL CONDUCT
(COUNT VII)**

In Count Seven the allegation is that the Respondent's informal advice given on a volunteer basis sporadically is a violation R. 1:15-1 which proscribes certain conduct:

**1:15-1. Limitation on Practice of Attorneys Serving as Judges and
Surrogates**

(a) Full Time Judges. An attorney who is a judge required by law to devote full time to judicial duties shall not practice law.

(b) Judges of Municipal Courts. An attorney who is a judge or acting judge of a municipal court shall not practice in any criminal, quasi-criminal or penal matter, whether judicial or administrative in nature, except to perform the official duties of a municipal attorney of another municipality. **Nor shall a municipal court judge act as attorney for the municipality or any of the municipalities served by that court or as attorney for any agency or officer thereof; nor practice before the governing body or any agency or officer thereof; nor be associated in the practice of law, either as "of counsel" to or as partner, employer, employee or**

agent of, or office associate, with an attorney who is a member of such governing body.

An attorney who is a judge of a municipal court shall be subject to the terms of that section of the New Jersey Conflicts of Interest Law which restricts involvement with specific casino industry activities (N.J.S.A. 52:13D-17.2).

(Emphasis to applicable provision is highlighted)

The evidence confirms that the Watchung Chemical Engine Co., Inc. is, in fact,:

1. A private non profit corporation
2. Was formed before the Boro was even incorporated in 1926
3. That it maintains its own By Laws
4. That it elects its own officers (P-58)

The Respondent testified that he was a fireman in the town (his hometown) for a period of almost 10 years through part of high school, college and law school years. During his term as Watchung's judge, Respondent testified he never went to any monthly meeting of the department or handled any extensive legal work. He explained that on limited occasions, he would answer organizational questions for the officers of the corporation. He never applied for any legal position, he never billed for his time and he never received copies of any documents each year "confirming" he was the named "attorney" for the fire company. In fact, he testified that the first time he knew he was named "as counsel" was in this proceeding. He further testified that he did not know he had been "replaced".

The Respondent provided his advice once or twice a year as a way of giving back to the

community where he was raised. It is laudable, uncompensated public service which never involved any interaction with the municipality or its agencies which might create a conflict. Judge Sasso's conduct is the type that should be encouraged, not sanctioned. There was clearly no real or apparent conflict in his service to the fire chemical company which is not even a part of Watchung's government. The Count should be dismissed. It is submitted to this Committee that there is no judicial impropriety in law or fact demonstrated in Count Seven.

Point IV

**RESPONDENT'S IMPAIRED SPEECH WAS
RELATED TO SERIOUS INJURIES SUSTAINED
IN AN AUTO ACCIDENT AND
PRESCRIPTION MEDICATIONS, MEDICALLY
PROVIDED TO HIM (COUNT 1)**

Judge Sasso has admitted, by way of undisputed Stipulations of Fact, that he presided over two (2) court sessions while under the influence of prescription medication and/or alcohol. He has further admitted, in his testimony, that this conduct was improper and impugned the integrity of the judiciary.

In mitigation of his admitted wrongdoing, we ask the Committee to consider the health and medical reasons which caused this conduct. We accept responsibility for his conduct but request the Committee's understanding and compassion in its decision to recommend public discipline.

Judge Sasso testified that he was on his way to court in Essex County to handle a civil matter on October 7, 2005 on Route 78 in Berkeley Heights, New Jersey when his stopped vehicle was struck in the rear at full speed by a Cadillac SRX pushing it into the car in front of him. The steel bolt holding the drivers seat snapped from the impact and Judge Sasso was thrown into the back seat. State Police from the Somerville barracks responded and he was taken by ambulance to Overlook Hospital (R-1). He has sustained the following injuries and procedures:

Date of Procedure

Explanation of Procedure

11/08/2005

Diagnostic arthroscopy; operative arthroscopy;
subtotal arthroscopic posterior horn medial

	meniscectomy; subtotal arthroscopic lateral meniscectomy; chondroplasty medial femoral condyle.
02/23/2007	Bilateral sacroiliac injections under fluoroscopic guidance and anesthesia; epidural injection under fluoroscopic guidance and anesthesia.
05/03/2007	Bilateral sacroiliac injections under fluoroscopic guidance and anesthesia.
11/02/2007	Cervical epidural injection under fluoroscopic guidance and anesthesia.
02/26/2008	Lumbar spinal laminectomy.
04/22/2008	Anterior cervical discectomy with decompression of neural structures C5-C6 and C6-C7 including bone graft and double cervical spinal fusion, involving insertion of metal plate and six (6) screws.

The tests confirmed the following injuries:

1. Torn meniscus right knee resulting in arthroscopic surgery at Somerset Medical Center; arthroscopic posterior horn medial meniscectomy; arthroscopic lateral meniscectomy; chondroplasty medial femoral condyle; torn posterior horn;
2. Disc herniation at C5-6 and C6-C7 with the herniation pressing on the anterior thecal sac at both levels
3. L2-L3 disc herniation with left paramedian disc herniation impingement of bilateral L5 nerve root at L4-L5;
4. Prominent right paramedian extruded disc herniation at L5-S1 with impingement on the right S1 nerve root
5. Cervical and lumbar radiculopathy.

The multitude of procedures Judge Sasso has undergone, as set forth above, finally resulted in the insertion of the cervical plate and screws and cervical fusions on April 22, 2008. His medical costs at this time are approaching close to \$ 250,000.00 (R-12).

Judge Sasso explained that he did not take a long leave of absence which would have resulted in all four municipalities being left without adequate judicial coverage from the rest of the vicinage. His testimony confirmed that despite the serious injuries and resultant substantial pain he continued to work with only short periods of time requiring judicial coverage after the surgeries. From the date of the accident until the date of his resignation he presided over 400 court sessions. This Complaint alleges a judicial ethical violation and wrongfully implies a pattern of inappropriate conduct. In fact, these violations are his first complaints in the 10 years of his judicial tenure.

Judge Sasso's unblemished record and favorable reputation are supported in the testimony of Judge Robert Schaul in which he stated that he has known Judge Sasso for many years and was not aware of any other complaints regarding his behavior. When Judge Schaul first learned of the December 2006 incident, he spoke to his predecessor, Judge Pollack, who also confirmed Judge Sasso's impeccable reputation (2T: 57-2). In fact, Judge Schaul did no investigation of the complaint because he believed the matter was inconsistent with Judge Sasso's long performance on the bench (2T: 57-5).

On the two dates cited in the Complaint the Respondent admits that his speech was affected while on the Vicodin and after having some wine at lunch time. This is not a situation where the Complaint cites improper handling of a single case on either date in Court, even after a thorough review of the record for both of the dates. A judge may exhibit impaired speech as a result of a medication disease or injury. Here, it was primarily the result of pain medications prescribed for a serious medical condition. There is no evidence, whatsoever, of intentional abuse of these medications by Judge Sasso.

In addition, the respondent suffers from sleep apnea confirmed by lengthy sleep behavior studies that pre-date any of the alleged violations. Dr. Penek in his medical report confirms

that the as a result of his condition a limited ingestion of alcohol, could cause the behavior described (R-3). Clearly with the four courts it was the very rare occasion (2 sessions out of over 400) where even his speech was affected. It is significant for the Committee to note that both court sessions were fully completed with the respondent handling every case on the docket. Furthermore, no one in the audience complained because of respondent's speech pattern or complained as to how they were handled on those evenings. The complaint was placed by a prosecutor who had a personal continuing vendetta against the respondent because of his complaints as to her skills as a prosecutor. We ask the Committee to note that the oversight of Judge Sasso's conduct during the time period by his disgruntled prosecutor and her law partner, Mr. Stine, confirms the very isolated occasions (2 out of 400) when the slurred speech occurred. If there were any other occasions, the Committee would certainly have been advised by Ms. D'Onofrio or Mr. Stine. We admit that even two (2) is unacceptable but request the Committee's mitigation of an appropriate public sanction.

Our Supreme Court has previously recognized that a judge's medical condition must be taken into consideration as a mitigating consideration and warranting a lesser quantum of discipline. **In re Piscal**, 177 NJ 525 (2003). In this matter this Committee is requested to evaluate Judge Sasso's conduct in light of the serious injuries he had sustained and the litany of medical procedures that terminated with his recent April 2008 surgery.

Furthermore, Judge Sasso testified that he immediately stopped taking any pain killers before a Court session after his meeting with the Assignment judge and promising that he would not. In addition the facts show undisputedly that the day after the Warren incident, respondent met with the township administrator and his Police Chief Leffert and voluntarily elected to receive counseling under Warren's Employee Assistance Program (EAP) to deal

with the use of the pain medication (P-13; P-15). That counseling was provided by Saint Barnabas' Family Treatment Center and included a review of all of the multitude of medications being taken by the respondent including their interaction ie. pain killers, anti-inflammatories, diabetes medicine, blood pressure medication, along with his supplements and vitamins (1T: 48:21).

The testimony confirms that by the time Judge Sasso met with Judge Ciccone, he had already surrendered all of his pain medications and voluntarily requested a complete review of any potential addiction issues (1T; 44:8-25; 2T 101-102).

This meeting with Judge Ciccone was the first and only occasion wherein Judge Sasso was ever called upon to address either these two (2) incidents. Neither Judge Schaul nor Judge Ciccone ever discussed the first incident in the Bridgewater Court with Judge Sasso. Each believed the other had acted (2T: 8-23; 9-2; 2T: 2T: 57-5; 59-1). Once addressed, there were never any allegations of further improper judicial conduct related to his use of prescription medication affecting his judicial performance.

The Committee is asked to consider that this improper conduct was the result of his use of prescribed medications which he misused due to a serious medical injury. His improper behavior was isolated, limited to two (2) occasions and was never repeated. We ask your consideration of the extensive medical evidence presented in mitigation of any discipline to be imposed.

Point VI

**RESPONDENT'S PRIVATE CONDUCT AFTER
HOURS IN BOUND BROOK ON 11/29/07 DID
NOT VIOLATE THE CANONS (COUNT II)**

After handling a normal Court session in Bound Brook on November 27, 2007 the Respondent got out late from Court and went to dinner in Somerville at Verve restaurant. While there, the Respondent was advised that the former chef at the restaurant, Mr. Walsh, needed a ride home to his residence in Piscataway. Respondent agreed to drive him home. While going back through Bound Brook, Mr. Walsh wanted to have a beer at the main restaurant/bar in Bound Brook, Torpedoes (R-13). This is not some seedy bar off on some side street, it is on Main Street just a few blocks south of the municipal building.

The Complaint alleges that respondent attempted to use his office as a judge to “.....advance his private interests” because he told them that he was a judge and allegedly threatened the manager with retaliatory measures. The allegation is that he violated Canons 1, 2A and 5(A) as a result of this conduct. The evidence demonstrates that the entire incident lasted a matter of minutes. Contrary to the allegations of the complaint, the Respondent never identified himself as a judge until after the bar demanded that he surrender his drivers license to the bartender if he was using a credit card for payment. This was unquestionably the bar’s policy. Judge Sasso’s identification was accompanied by an explanation as to why he would not surrender possession of his license. Judge Sasso explained that he had been the subject of threats on the bench. He has paid for an unlisted phone number/address with the telephone company for years. On the New Jersey State Police’s recommendations, he disposed of his prior mail box on the street which bore his family name. Respondent did not surrender possession of his license. He testified that he exhibited the license covered in plastic in his

wallet to the bartender but did not physically turn over the license to her.

Respondent, at that time, explained why he couldn't possibly do that as he was a judge and the license had all of his personal information including home address, etc. The providing of that information was not in the context of give the respondent a free meal or drink. There was absolutely no attempt to advance his private interests, he simply was explaining why he wasn't going to give his license over.

Despite the allegations in the Complaint the security personnel at the bar screened the Respondent when they came in as part of their policy not to serve anyone under the influence and the bartender who was speaking one on one with the respondent for a period of time indicates the respondent was not under the influence, in fact she did serve a beer to the respondent as the credit card/license "issue" arose.

The bartender would not accept the American Express card without the driver's license. The Respondent testified that, in an effort to avoid any controversy, pulled out 2 additional cards, a Visa and a MasterCard and proposed to have her hold all 3 credit cards behind the bar. This offer too was rejected, at which point the Respondent did tell her that their unreasonable practice was "bullshit" and attempted to persuade her that the requirement was improper. There were very few people in the bar at that time, it was after 1 AM.

Ms. Guadigli, the bartender, incredibly testified that Judge Sasso became hostile without any explanation as to the reasons for not surrendering his license (T2: 127-128). She states he began yelling, cursing and slamming his hands on the bar (T2; 128:11). She further testified that he identified himself as the Bound Brook Judge and stated he had left the "bar alone for three years (T2; 129:8). Her testimony must be rejected as incredible. The Committee must determine why Judge Sasso would have become irate except for Ms. Guadigli's rejection of his reasons for refusal to surrender his license. The more credible version is described by

Judge Sasso who testified that he had expressed concerns for his personal safety in surrendering possession of his license to a public bar. Ms. Guadigli admittedly never told him it was only to copy it (2T: 135-6). More importantly, how could Judge Sasso have “left the bar alone”, as she contends, if no complaints had ever been brought before him as a Judge. This fact was confirmed by Mr. Augustin, the bar’s manager (T2; 152-11). In fact, he had never ever seen Judge Sasso before. Her version simply does not make sense in the context of their discussion. Judge Sasso had no reason to become irrate or to identify himself absent a discussion of the need to surrender possession of his driver’s license to her. Judge Sasso confirmed, in his testimony, that the bar had never come before him, a Judge (2T 183:22).

The bar’s policy requiring the license to be surrendered is confirmed by Mr. Augustin in his testimony (2T; 150-19). This policy is further confirmed by his statements to Lt. Jannone on the day of the incident (P-28, bates 0158).

Ms. Guadigli called for the manager. The manager, Mr. Augustin came over and continued the discussion about the requirement of turning over one’s drivers license as a requirement to use a credit card. Judge Sasso testified that this was the first time he was ever there since taking the job in Bound Brook. This wasn’t a situation where he had been coming to the bar for the three years and been a troublesome customer. He simply wanted to use his American Express card without turning over his license with his personal information on it. Mr. Augustin confirmed that Judge Sasso never identified himself as a Judge in their discussions (2T 145:24; 149:4-8).

The manager asked the Respondent and his guest, Mr. Walsh, to leave. Mr. Augustin testified that Respondent threatened to make “trouble” for the bar. When asked whether that statement was in the context of a discussion concerning their demand for his driver’s license, Mr. Augustin simply claims he doesn’t remember (2T 155:2-17). This supports Judge

Sasso's testimony that if he reported the outlandish drivers license requirement to the credit card companies and the banks or any other person or entity related to the bar's credit card use he felt the bar would be in "trouble" with them (2T 186:15-25; 187:1-7). While the respondent continued to try and persuade the bar's personnel that they should simply use the American Express card and hold the additional cards behind the bar which should satisfy any concerns they might have. The bar employees certainly did not act like they cared whether Respondent was a judge or not. The bar's personnel kicked the legs out from the Respondent's chair while he was sitting in it and had his hands on the top of the bar. Contrary to the allegations of the Complaint, the end piece of trim on the bar became detached from the bar as the respondent unexpectedly was caused to fall to the floor (the Complaint wrongfully alleges that Respondent "...caused damage to the bar by ripping off part of the bar's ledge..". See Count II of Complaint, paragraph 10). The investigation revealed that, Mr. Augustin, the manager testified that molding came off when the bar stool tipped and Judge Sasso fell to the floor (2T 154:15-23). The "repair" was to simply take the molding and nail it back in to the bar. Clearly the evidence reveals that Judge Sasso was a victim and not an aggressor in this incident. His self-identification was not an attempt to exert judicial influence but rather an attempt to explain his concerns for his family's safety and objections to surrendering his license in order to use a credit card.

The Respondent was then transported to the Bound Brook Police Headquarters. The police were called to the scene by the bar as a normal procedure. Russell Leffert, the Warren Police Chief, was called to pick up the Respondent. Judge Ciccone testified this was improper judicial conduct (2T:19-13). The evidence revealed that it wasn't a "police chief" who picked Judge Sasso up, rather it was his childhood friend in Watchung. They had been friends who worked side by side in the Watchung Fire Department long before the Respondent became a

lawyer or a judge and long before Chief Russ Leffert became a police officer let alone a Chief of Police. This allegation of the Complaint and Judge Ciccone's characterization of their relationship is an attempt to make this unfortunate incident a judicial violation because a patron happens to be a judge, objecting to an unreasonable request for personal and confidential information who calls a friend for a ride home.

To the extent that the Complaint alleges that he attempted to use his position to "gain personal advantage", one must wonder what advantage was being sought? He was not looking to get food or drink for free, to the contrary he offered up 3 credit cards to ensure payment. He was forcibly removed from the bar. A review of the law and prior discipline against judges show that these facts are completely dissimilar.

The Committee must also note that only one (1) person involved in this incident described Judge Sasso as "intoxicated", namely, Officer Petrucelli (P-28). His report is misleading. He notes, at page 1, that "the subject was being refused service for being intoxicated". That report is contradicted by both the bartender and bar manager, both of who testified that Judge Sasso was not impaired (2T 141:15-22; 151:6-13). In fact, the police were called because he refused to follow the bar's policy and became irate (2T: 145-12; 153-22). Judge Ciccone, without any investigation (except for the collection of police reports), concluded that Judge Sasso's conduct was "injurious to the Judiciary" (2T: 39-1-7). He had created an "appearance of impropriety" by drinking in a tavern where he was a municipal judge (2T: 15-17). He had abused his authority by not following the bar's tab procedure (2T: 39-9). He had called the Chief of Police to give him a ride home (2T: 39-12). The facts as demonstrated in the trial testimony, show nothing more than a verbal contest over a questionable demand for personal and confidential information. Judge Sasso was forceably removed from the bar and received absolutely no advantage, whatsoever, in his self-identification to the bartender (2T 157-21).

Judge Sasso's worst transgression was his self-identification which we contend was totally justified in the context of what occurred. Similar conduct, even when used to gain an advantage, has warranted a censure. In the Matter of Roberto A. Rivera-Soto 192 N.J. 109 (2007). Judge Sasso's conduct herein was isolated and less offensive even if accepted by the Committee as improper conduct.

Point VII

**RESPONDENT'S CONDUCT SET FORTH IN
COUNT IV OF THE COMPLAINT DID NOT
VIOLATE THE CANONS OF JUDICIAL
CONDUCT**

Trial judges are given broad discretion in the handling of their cases subject to conduct that does not violate the Canons of Judicial Conduct. For conduct to rise to the level of a violation it should be unequivocally improper and not a procedural error. That is not the case with the specific matters cited in the Complaint which are set forth below.

A. BOMBELYN- This incident involved a sanction of a disruptive attorney, Patricia Bombelyn, Esq., who had threatened and been abusive to the Bound Brook Court staff on August 8, 2007 (R-5). Ms. Loretta H. Duardo, the Court Administrator, confirmed that Ms. Bombelyn had threatened the Court staff before her scheduled appearance. Ms. Bombelyn was also expressly directed to appear for her client's video arraignment at 8:00 PM. She was eventually sanctioned \$500 for her conduct in refusing to allow the judge to speak and talking over him despite very clear warnings (P-49, p. 3-4). The Complaint fails to provide the salient facts that would allow the Committee to put the comments and sanctions in context. The Complaint alludes to the Superior Court decision reversing those sanctions which was granted primarily because "...the court rules were not properly followed", a procedural technicality. Judge Coleman, the Judge who heard the appeal, found that Ms. Bombelyn's conduct with the Court staff "... should be addressed because it seems to be the main underlying problem giving rise to what occurred on August 8th" (P-50, p. 22-23).

Ms. Bombelyn was representing an individual Margarita Sostre who was charged with

criminal charges arising out of a July 24, 2007 incident. She was to be arraigned on July 25th the day after. After calling the Court staff and attempting to get the matter put off the defendant appeared in Court late and the respondent called her name several times but the defendant did not respond so a bench warrant was issued. Ms. Sostre had actually been in the court room and then went to the court office and had her date changed based on her representation that she had just spoken to the deputy court clerk in the court room who directed her to go the office and get a new court date (R-5, bates 046-047) consisting of the Bound Brook court staff's memos to the judge outlining what had taken place. The following week the defendant appeared at the municipal building the night of court and was taken into custody by the police, subject to being released on bail.

On August 8, 2007 defendant's arraignment had been set up for that evenings court session. An attorneys office called the court and asked for a "ready hold" marking for the arraignment, however, the arraignment was going to be via video to the Somerset County jail and had to be coordinated with them. Attorney Patricia Bombelyn then got on the phone with the deputy clerk (Yesenia Rios) , identified herself and then demanded a ready hold marking for a particular time. At that time:

1. Ms. Bombelyn's voice became demanding and threatening (R-5, bates 038).
2. She said that the denial of a ready hold marking was "disturbing" to her.
3. She indicated that she didn't understand what the court staff was "doing" to this woman who was very ill.
4. That the court staff had no idea that they were "playing with fire" and that she hopes that everyone is in court that night so that they can see the "chaos" that was going to take place.

At that time the deputy clerk put Ms. Bombelyn on hold and told the Court Administrator that an attorney was on the phone who was being threatening and nasty. Ms. Duardo, the

Administrator then picked up the phone and spoke to Ms. Bombelyn. Ms. Bombelyn said:

1. In threatening tones.
2. That she has been practicing for over 20 years and she has never seen anything like what takes place in Bound Brook
3. That her client was ill and was deprived of “due process” because she wasn’t given an opportunity, before her bench warrant arrest, to tell the judge that she needs certain medications.
4. That if the Administrator did not immediately release the defendant ROR that the court staff would be held “responsible”.

The Administrator told Ms. Bombelyn that she didn’t appreciate being threatened and that every inmate at the jail gets screened medically upon entry to make sure that there isn’t anything from a medical basis that would prevent her admission. In addition her experience has been that if there is a bona fide medical problem the jail will call the court and advise them. She told the attorney that there couldn’t be a ready hold marking because the video of defendants at the jail takes place at a particular time as it requires a time slot with the jail personnel (R-5).

Judge Sasso was then called during the day at his office and was told of the trouble with the attorney and the threats about creating “chaos in the court room” that night. It was under those circumstances that Ms. Bombelyn appeared before the respondent that evening.

When Ms. Bombelyn appeared she began talking over the judge within a matter of the first few sentences showing complete disrespect for the Court (P-49). The respondent didn’t immediately sanction the attorney but rather put her on notice that if she did it again he would sanction her \$250. He, specifically asked her if she understood that instruction and warning (P-49; T 4-3 to 5-1). The attorney refused to answer the question and did what she wanted to

do by placing on the record her belief that the conduct is not “sanctionable” in her opinion (P-49; T 4-15 to 5-25). Any objective review of the transcript will show that Ms. Bombelyn constantly interrupted the judge who couldn’t proceed with the hearing due to the attorney’s conduct. She interrupted and interfered with the Court’s calendar.

She then demanded her own attorney and a hearing, although contempt in the face of the court does not require a hearing. It is clear from the transcript that Ms. Bombelyn was going to proceed in her own manner disregarding the Court. There would be no respect shown for the Bound Brook court or its staff.

Of all the types of contempt, the contempt in the face of the court (also known as a direct contempt or contempt in *facie curiae*) presents the greatest danger to the administration of justice. This is so because it constitutes a direct, public challenge to the authority of the court as well as the dignity and decorum of the proceedings. The power of the municipal court to punish for this type of contempt is set forth under N.J.S.A. 2A:10-1(a) and N.J.S.A. 2A:10-7.

17 NJPRAC § 20:4

Our case law dealing with a judge’s ability to sanction or hold a party or attorney in contempt to control the proceedings is considered to be an important right.

The contempt power is essential to the maintenance of respect for the courts and such orders as may be rendered by them.’ In re Newark Teachers' Ass'n, 95 N.J.Super. 117, 120, 230 A.2d 165, 167 (App.Div. 1967).

State v. Jones 105 N.J.Super. 493, 502(Co. 1969)

Our New Jersey cases **uniformly hold that any act or conduct which obstructs or tends to obstruct the administration of justice constitutes a contempt of court.** In re Caruba, 139 N.J.Eq. 404, 411, 51 A.2d 446 (Ch.1947), affirmed 140 N.J.Eq. 563, 55 A.2d 289 (E. & A. 1947), petition denied, 142 N.J.Eq. 358, 61 A.2d 290 (Ch.1948), Certiorari denied 335 U.S. 846, 69 S.Ct. 69, 93 L.Ed. 396 (1948); and State v. Zarafu, 35 N.J.Super. 177, 180, 113 A.2d 696 (App.Div.1955). As pointed out in In re Caruba,

Supra, 139 N.J.Eq. at p. 411, 51 A.2d at p. 452, "The essence of contempt is that it obstructs or tends to obstruct the administration of justice.' Fox, The History of Contempt of Court 216.'

State v. Jones , Ibid at 503

We know that despite Ms. Bombelyn's position that she was entitled to a hearing on the sanctions or in the face of the court contempt the law provides otherwise. In Matter of Milita, 195 NJ Super 1 (App Div) the Appellate Division dealt with the issue in a sanction context:

The contempt citation arose at a Law Division criminal trial in which Milita represented the defendant. The trial judge found that Milita had been instructed to be in court at 9:30 A.M. the following morning to resume the trial, that he was specifically instructed not to attend a scheduled appearance at the Ventnor City Municipal Court, that he "did in fact make the prohibited appearance," that he did not appear to resume the criminal trial until 10:21 A.M. and that he "unduly delayed the commencement of court proceedings by his absence." The record fully supports those findings and the trial judge's rejection of Milita's contention that he misunderstood the judge's instruction. The findings, in turn, justify imposition of sanctions pursuant to R. 1:2-4(a):

1. (a) Failure to Appear. If without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party on the call of a calendar, on the return of a motion, at a pretrial conference or a settlement conference, or on the day of trial, or if an application is made for an adjournment, the court may order any one or more of the following: (a) the **826 payment by the delinquent attorney or party or by the party applying for the adjournment of costs, in such amount as the court shall fix, to the clerk of the county in which the action is to be tried, or, in the Tax Court to its clerk, or to the adverse party; (b) the payment by the delinquent attorney or party or the party applying for the adjournment of the reasonable expenses, including attorney's fees, to the aggrieved party; © the dismissal of the complaint, cross-claim, counterclaim or motion, or the striking of the answer and the entry of judgment by default, or the granting of the motion; or (d) such other action as it deems appropriate.

[2] [3] This administrative rule does not require an order to show cause, a proceeding before another judge or procedural safeguards of the kind accorded criminal defendants. The trial judge properly found, albeit in different words, that Milita *4 failed to appear at trial "without just excuse" and because of "failure to give reasonable attention" to the criminal trial; we find no abuse of discretion in the imposition of the \$1000 sanction. Matter of Milita Ibid. at 3-4

Furthermore, in Van Sweringen v. Van Sweringen 22 N.J. 440, 447(1956) the Supreme Court confirmed that there isn't any hearing in a contempt in the face of the court situation and that that law had been long established.

It has long been recognized that where a contempt has been perpetrated in the actual presence of a judicial officer he may himself summarily dispose of the offense. Ex parte Terry, 128 U.S. 289, 9 S.Ct. 77, 32 L.Ed. 405 (1888); Fisher v. Pace, 336 U.S. 155, 69 S.Ct. 425, 93 L.Ed. 569 (1949). Where, however, the contempt is not within the presence of the court, the course is to follow more rigidly the traditional demands of due process. Cooke v. United States, 267 U.S. 517, 45 S.Ct. 390, 69 L.Ed. 767 (1925). Van Sweringen v. Van Sweringen 22 N.J. 440, 447(1956)

The testimonial evidence shows that despite his length of time on the bench and the large volume of cases he handled, Judge Sasso was a neophyte in contempt matters because he didn't do that to attorneys or litigants. It was an extreme rarity for him to do it (less than 5 times in 10 years). We are not advocating that the Rules not be followed by a judge, instead we respectfully suggest that the complicated requirements and confusion related to the Rule be considered in mitigation in your review herein of Judge Sasso's conduct. We submit that his infrequent use of the contempt procedure and its resulting conduct demonstrate legal error not improper judicial conduct.

B. STATE V. TINA SEARS.- The Sears matter arose in the Warren Township municipal court on May 9, 2006. The defendant came to Court advising the respondent that she had previously been in Court on February 17th 2004 and had pleaded guilty to serious motor vehicle offenses (driving on the revoked list 39:3-40 which could involve mandatory jail time and unlicensed driver 39:3-10) under her sister Jaray Sears' name (P-54; T 2-3). She was asking the Court to reissue or change the record to reflect her name rather than her sister's. When told by the respondent that nothing was simply going to be changed without an investigator looking in to what happened and why the defendant said " FUCK YOU" to the

respondent (R-15; T 5).

The Respondent adjudicated her guilty and sentenced the defendant to ten days in jail. Contrary to the allegations in the ACJC Complaint, Judge Sasso explained that an Order was drafted and signed by the judge. The only error was the failure to stay the sentence.

The Respondent spoke to the presiding municipal judge the following morning and explained the circumstances. Respondent asked the presiding judge what he would have done under the circumstances. Although he could have released the defendant and then reconsidered her 5 days sentence, after a stay, the Respondent elected to video conference her that day and revisit the whole incident with Ms. Sears (R-14). That transcript shows the compassionate nature of Judge Sasso and contradicts the picture attempted to be painted in the Complaint. The defendant immediately apologizes to the respondent for being disrespectful. Judge Sasso explained that he was simply trying to get to the bottom of the situation with the use of her sister's name (R-14, T 3-18 and T 4-8).

The sentence is then completely vacated and Judge Sasso releases her. We ask the Committee to find that the Sears matter is merely an error of law in the contempt process and not in any way a violation of the Cannons of Judicial Conduct. A review of the totality of Judge Sasso's conduct on May 9, 2006 and May 10, 2006 support this conclusion.

C. STATE V. ROBERSON (Watchung) In this matter the Complaint alleges intemperate remarks to a defendant. Mr. Roberson came before the Court on September 24, 2007 for serious motor vehicle violations, driving on the revoked list (39:3-40), unlicensed driver (39:3-10) and improper turn (39:4-123). Pursuant to a plea agreement with the State the improper turn charge was amended to failure to keep right, the serious revoked list charge was completely dismissed and he plead guilty to being an unlicensed driver. He came before the

respondent and a factual basis was taken and he was fined. The transcript of the taking of the plea shows complete deference to the defendant (P-52; T 2).

After being released to go to the violations bureau to pay the tickets on a busy day where the line was down the entire hallway the deputy clerk had to leave her post in the bureau and walk into court to advise the Court that the defendant disputed the fine and wanted an explanation of the fines. We acknowledge that Judge Sasso's remarks, at that time, were inconsiderate and intemperate (Stipulation, paragraph 15)

CONCLUSION

On behalf of the Respondent it is respectfully submitted that the Complaint in its entirety demonstrates errors of law and judgment on the part of Judge Sasso. We submit, however, that none of the complaints of conduct was intentionally wrong or designed to achieve any personal gain on the part of Judge Sasso. In light of his prior unblemished record, in his 10 years of service, a censure is the appropriate discipline for the Committee to recommend in this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Anthony B. Vignuolo", is written over the typed name.

Anthony B. Vignuolo, Esq.

C - Drive (Sasso Brief (11-20-08))