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A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO. ACJC 2008-056

IN THE MATTER OF

CHARLES A. DELEHEY,
JUDGE OF THE SUPERIOR COURT

FORMAL COMPLAINT

Candace Moody, Disciplinary Counsel, Advisory Committee on Judicial Conduct ("Complainant"), complaining of Superior Court Judge Charles A. Delehey ("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 1966.

2. At all times relevant to this matter, Respondent was a Judge of the Superior Court of New Jersey, assigned to the Mercer Vicinage.

COUNT I

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

4. On August 20, 2007, Jeffrey Nemes, ("Grievant"), was an inmate at the Midstate Correctional Facility in Fort Dix, New Jersey, pursuant to a sentence that had been imposed upon his convictions of guilt of bribery and conspiracy in March 2007 following the conclusion of a jury trial presided over by Respondent. On said date, August 20, 2007, the Grievant appeared before Respondent for a status conference relating to his indictment on a separate offense.

5. At the conclusion of the status conference, Respondent invited C. Matthew Nemes, the brother of the Grievant, into his chambers. There, off the record, Respondent told C. Matthew Nemes that he heard "good things" about the Nemes family but he recognized that the incident involving the Grievant, which was the subject of the current indictment, must be embarrassing. The purpose for communicating with C. Matthew Nemes was to "ameliorate the hurt" that the Nemes family was experiencing.

6. The conversation with C. Matthew Nemes turned to the remaining cases. Respondent indicated that the prosecution had offered a concurrent sentence. Respondent advised C. Matthew Nemes that the plea deal offered to the Grievant was a "good one," that the Grievant should take the plea, and that C. Matthew Nemes should "speak to him about it." Respondent also stated: "it's in your brother's best interest to take it because if he's convicted at a later date, even if he gets a concurrent sentence, it will be so along in his first sentence that it'll be – the effect of it will be a consecutive sentence." Respondent further adjured C. Matthew Nemes that "maybe you could make some sense to him [Jeffrey Nemes]."

7. Respondent's conversation with C. Matthew Nemes was in effect an impermissible ex parte communication in violation of Canon 3A(6) of the Code of Judicial Conduct.

8. By initiating and holding the conversation with C. Matthew Nemes, Respondent also violated Canons 1, 2A, and 2B of the Code of Judicial Conduct and engaged in conduct prejudicial to the administration of justice that brings the Judicial Office into disrepute in violation of R. 2:15-8(a)(6).

COUNT II

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

10. Respondent's ex parte communication with C. Matthew Nemes was intended to be related or conveyed to Jeffrey Nemes, who was then a defendant subject to indictment in a criminal case before Respondent.

11. Respondent's ex parte communication constituted the discussion and negotiation of a guilty plea in the criminal case of Jeffrey Nemes. The ex parte communication was in violation of Rule 3:9-3 which governs plea discussions, agreements and withdrawals and which specifically provides that "the judge shall take no part in such discussions," Rule 3:9-3(a). Further, the discussion was not "[o]n request of the prosecutor and defense counsel;" nor was it undertaken "in the presence of both counsel;" nor did it involve "the disclosure to [the judge] of [a] tentative [plea] agreement;" nor did it relate to "the status of negotiations toward a plea agreement," contrary to Rule 3:9-3(c).

12. By his conduct in initiating and participating in plea negotiations in a criminal case over which he was presiding, Respondent violated Canons 1, 2A, 2B, 3A(1) and 3A(6) of the Code of Judicial Conduct and Rule 3:9-3, and engaged in conduct prejudiced to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(6).

WHEREFORE, Complainant charges that, by the aforementioned conduct, Respondent, Superior Court Judge Charles A. Delehey, has violated the following Canons of the Code of Judicial Conduct:

Canon 1, which requires judges to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved;

Canon 2A, which requires judges to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

Canon 2B, which prohibits judges from conveying the impressions that they are in a special position of influence;

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

Canon 3A(6), which prohibits judges from initiating or considering ex parte or other communications concerning a pending or impending proceeding except as authorized by law;

Complainant also charges that Respondent has engaged in conduct involving improper plea negotiations and discussions, in violation of Rule 3:9-2; and conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(6).

DATED: November 5, 2008

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