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SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2008-201

IN THE MATTER OF EMERY Z. TOTH, JUDGE OF THE MUNICIPAL COURT	**PRESENTMENT**

The Advisory Committee on Judicial Conduct ("Committee" or "ACJC") hereby presents to the Supreme Court its Findings and Recommendation in this matter in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's Findings demonstrate that the charges set forth in the Formal Complaint against Emery Z. Toth, Judge of the Municipal Court ("Respondent"), have been proven by clear and convincing evidence. The Committee recommends that the Respondent be publicly reprimanded.

On January 5, 2009, the Committee issued a Formal Complaint against the Respondent, which alleged that Respondent violated Canon 2A of the New Jersey Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules by abusing his contempt authority under Rule 1:10-1, and that Respondent violated Canons 1, 2A, 3A(2) and 3A(3) of the Code of Judicial

Conduct and Rule 2:15-8(a)(4) and Rule 2:15-8(a)(6) of the Court Rules by speaking disrespectfully and intemperately to a litigant appearing before him. The Respondent filed an Answer to the Complaint on February 25, 2009, in which he admitted certain factual allegations of the Formal Complaint and denied others.

By letter dated May 4, 2009, Respondent, through his Counsel, waived his right to a formal hearing. The parties did agree to a set of joint Stipulations, which were considered by the Committee in its review of this matter. See Stipulations of Parties dated May 4, 2009 ("Stipulations"). Exhibits were offered by the Presenter and Respondent and accepted into evidence.

After carefully reviewing all of the evidence, the Committee made factual determinations, supported by clear and convincing evidence, which form the basis for its Findings and Recommendation.

I. FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1974. At all times relevant to this matter, Respondent served as a part-time judge in the Municipal Court of the Borough of South River, Middlesex County, a position he continues to hold. Stipulations at ¶¶2-3.

On March 4, 2008, Respondent presided over an arraignment in the matter of State v. Esmanuel A. Buldoni in the South River Municipal Court. Id. at ¶4. The defendant, Esmanuel Buldoni, A.K.A. Luis Martinez, was charged with three non-moving traffic violations, including failure to inspect, broken side brake lamp, and broken rear-view mirror. Id. As Mr. Buldoni was in prison at the time of his arraignment, he appeared before Respondent via video conference. Id. at ¶5.

After entering a plea of not-guilty, Mr. Buldoni attempted to discuss his case with Respondent, which prompted Respondent to reply as follows:

> THE COURT: All right. We'll get - we'll decide that at trial. I can't hear anything about the case. I'm just wanting to know - you obviously failed to appear in the court in November, so I guess you felt that since you worked for the cab company you didn't feel like coming or you didn't have to come to court pursuant to the order, so that's why you got arrested. So we'll set it down for trial maybe next week.

As stipulated by the parties, if Respondent testified before the Committee about the foregoing exchange at a hearing, he would have indicated that, after entering his not-guilty plea, Mr. Buldoni "attempted to 'stare down' the Respondent and gestured disrespectfully with his hand." Id. at ¶6.

After Mr. Buldoni verbally denied that he had been arrested for failure to appear in court in November 2007, Respondent replied:

> THE COURT: All right. Well, if you'd stop getting arrested, then you wouldn't have any of these problems, right?
>
> MR. MARTINEZ: Excuse me, Your Honor.
>
> THE COURT: Look. Well - stop here. I don't want to have a debate with you. I don't want to have an Oprah Winfrey conversation with you. All right? You're pleading not guilty to three non-moving violations. That's your right. And I'll give you a trial date next week. See you around. Good-bye.

According to Respondent, after this dialogue, Mr. Buldoni "made a 'raspberry' sound, spitting at Respondent, and then gestured to Respondent with his middle finger touching his mouth, which Respondent interpreted as Mr. Buldoni's signal to 'kiss off.'" Id. at ¶8. Respondent also indicated that Mr. Buldoni directed profanity towards him. Id. The South River Court Administrator corroborated Respondent's recollection of Mr. Buldoni's conduct. R-1.

Respondent thereafter called Mr. Buldoni back to the video camera, at which time Respondent engaged in the following colloquy with him:

> MR. MARTINEZ: Yes, I didn't do --
>
> THE COURT: No. Let me explain something to you. Yes, I'm a street - you're not a street guy. I don't want to tell you what you really are, but I'm a street guy, so when I said, 'See you around,' hey I didn't get offended when you gave me the old fist up in the air. That's okay. I didn't really care about that. But when you give me the raspberries walking out and you give me some kind of disrespect like that, I'm just

> telling you that's contempt in the face of the Court. You're going to jail. You're going to stay there for another 30 days. So, you're going to hang out there 30 days and it's going to be a detainer. So, I don't care what your sentence is or what jail you're going to, you're going to do 30 days consecutive on this. Now, you can leave like a gentleman, and I'm telling you right now, you open your mouth, you give me any more attitude, I'm going to give you some more jail time. So, leave.
>
> MR. MARTINEZ: Appreciate it.
>
> THE COURT: No. Okay, I'm giving you 40 days, 45 days. I told you don't give me any attitude. You want to give me the (indiscernible) and you want to give me the lip. You want to disrespect -
>
> MR. MARTINEZ: (Indiscernible)
>
> THE COURT: Sixty days. Get out of here. Sixty days. Give him 60 days.
>
> MR. MARTINEZ: No, give me 70.
>
> THE COURT: Seventy-five.

Stipulations at ¶8. Respondent continued to engage Mr. Buldoni in an adversarial manner, at the conclusion of which Respondent imposed a 180-day jail sentence on Mr. Buldoni for contempt in the face of the court. Id. at ¶9.

Prior to issuing its Complaint against Respondent, the Committee corresponded with Respondent about the above incident, which prompted Respondent to submit a written statement to the Committee in which Respondent apologized for his conduct and

accepted "full responsibility" for his actions. Id. at ¶10. The parties further stipulated as follows:

(1) By holding Mr. Buldoni in contempt of court and by sentencing him to prison for 180 days without affording him the opportunity to respond substantively and without entering the appropriate order, Respondent abused his contempt powers under Rule 1:10-1. Id. at ¶11;

(2) By failing to comply with the requirements of Rule 1:10-1, Respondent violated Canon 2A of the Code of Judicial Conduct and Rule 2:15-8(a)(6). Id. at ¶12;

(3) Respondent's remarks to Mr. Buldoni were "disrespectful and insulting" in violation of Canons 1, 2A, 3A(2) and 3A(3), intemperate in violation of Rule 2:15-8(a)(4), and brought the judicial office into disrepute in violation of Rule 2:15-8(a)(6). Id. at ¶13.

Based on the foregoing facts and stipulations, the Committee initially finds, by clear and convincing evidence, that Respondent violated Canon 2A of the Code of Judicial Conduct and Rule 1:10-1 and Rule 2:15-8(a)(6) of the New Jersey Court Rules by holding Mr. Buldoni in contempt of court without first following the mandatory protocol established by Rule 1:10-1.

Rule 1:10-1 of the New Jersey Court Rules grants judges the authority to adjudicate conduct as contemptuous but only after certain conditions are met, including allowing the alleged contemnor an "immediate opportunity to respond" and issuing a contemporaneous order that recites the facts and contains a certification from the judge. See Rule 1:10-1(e). Canon 2A directs that judges should conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. Rule 2:15-8(a)(6) prohibits judicial conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Respondent conceded not only his failure to follow the prerequisites set out in Rule 1:10-1 of the New Jersey Court Rules before holding Mr. Buldoni in contempt of court, but he further admitted that this failure amounted to a violation of Canon 2A of the Code of Judicial Conduct and Rule 2:15-8(a)(6). Respondent neither afforded Mr. Buldoni the opportunity to respond to his contempt finding on the date in question nor did he issue the requisite order and certification delineating his findings. He likewise did not suspend his sentence for five days as required. As discussed in the Comments to Rule 1:10, the parameters surrounding an immediate finding of contempt of court are "restrictive." See Comment 2.1 to Rule 1:10-1 ("Clearly an adjudication without the required recitation and

certification is fatally defective."). Respondent simply lacked the authority to find Mr. Buldoni guilty of contempt of court without following the Rule's delineated procedures. For all of these reasons, the Committee finds that Respondent violated Rule 1:10-1, Rule 2:15-8(a)(6) and Canon 2A of the Code of Judicial Conduct.

The Committee also finds, by clear and convincing evidence, that Respondent violated Canons 1, 2A, 3A(2) and 3A(3) of the Code of Judicial Conduct and Rule 2:15-8(a)(4) and Rule 2:15-8(a)(6) of the New Jersey Court Rules by treating Mr. Buldoni disrespectfully and impatiently during Mr. Buldoni's appearance before Respondent on March 4, 2008. Canon 1 requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary is preserved. Canon 3A(2) provides that a judge "should maintain order and decorum in judicial proceedings," while Canon 3A(3) explains that judges should be "patient, dignified, and courteous" to litigants, attorneys and all those with whom the judge interacts in an official capacity. Rule 2:15-8(a)(4) prohibits intemperate conduct by a judge.

By making references to "Oprah Winfrey conversations" and "street guys," Respondent was both undignified and sarcastic in the manner in which he treated Mr. Buldoni, a litigant appearing before him to be arraigned. We further find that his sentencing

of Mr. Buldoni more closely resembled an auction than a judicial proceeding that is supposed to be marked by dignity and decorum. See Canon 3A(2). Respondent's conduct in this regard was highly intemperate, inappropriate and objectionable. Even if Mr. Buldoni's conduct contributed to the decline in decorum that took place during his appearance before Respondent, such contribution is immaterial. Judges are obligated, without exception, to treat all those who appear before them with dignity, patience and courtesy. See Canon 3A(3). Respondent's conduct was not in keeping with his obligations. For his part, Respondent recognized the inappropriateness of his conduct and stipulated that it violated the pertinent Canons and Rules of Court.

For the foregoing reasons, the Committee concludes that Respondent's conduct violated Canons 1, 2A, 3A(2) and 3A(3) of the Code of Judicial Conduct and Rule 2:15-8(a)(4) and Rule 2:15-8(a)(6) of the New Jersey Court Rules.

II. RECOMMENDATION

The Committee recommends that Respondent be publicly reprimanded. This recommendation accounts for Respondent's discourteous and distasteful conduct to Mr. Buldoni and his failure to abide by the Court Rules to which he is bound, but similarly recognizes Respondent's full acceptance of

responsibility for such conduct and representation that similar conduct will not occur in the future.

For these reasons, the Committee respectfully recommends that Respondent be publicly reprimanded for the conduct at issue in this matter.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

July 14, 2009 By: Alan B. Handler

Alan B. Handler, Chair