FILED
DEC 03 2008
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	ANSWER TO FORMAL COMPLAINT

Respondent, Charles A. Delehey, a Judge of the Superior Court, responding to the Formal Complaint of the Advisory Committee on Judicial Conduct, alleges and says:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

COUNT I

3. Paragraph 3 is admitted.

4. Respondent admits that Grievant Jeffrey Nemes is currently incarcerated.

   Respondent denies that the Grievant appeared for a status conference on separate indictments on August 20, 2007.

   Respondent asserts that the purpose of the August 20, 2007, proceeding was to resolve a motions filed by Grievant's counsel to be relieved from further representation.

(See Respondent's attached letter of February 28, 2008, to the ACJC.

5. **Paragraph 5 is admitted.**

6. **Respondent admits the essence of the conversation set forth in Paragraph 6.**

7. **Respondent admits communication with C. Matthew Nemes, but denies violation Canon 3A(6) of the Code of Judicial Conduct and further denies any intent to violate Canon 3A(6).**

8. **Respondent admits communication with C. Matthew Nemes, but denies violation Canons 1, 2A, and 2B of the Code of Judicial Conduct or the provisions of Rule 2:15-8(a)(6) and further denies any intent to violate Canons 1, 2A and/or Rule 2:15-8(a)(6).**

COUNT II

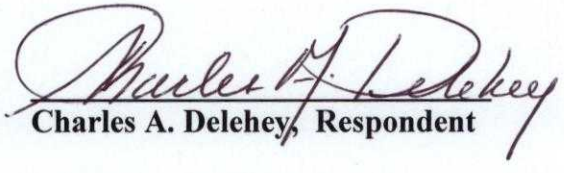
9. **Respondent incorporates herein his answers to the foregoing paragraphs.**

10. **Respondent denies that his communication with C Matthew Nemes was intended as a direction for him to communicate with Jeffrey Nemes, but was a precatory statement expressing a faint hope that C. Matthew Nemes might convince his**

brother, Jeffrey Nemes, that accepting the plea offer would be in his best interest.

11. **Respondent denies violation of Rule 3:9-3 and further denies any intent to violate Rule 3:9-3.**
12. **Respondent admits communication with C. Matthew Nemes, as set forth above, but denies that such communication constituted a violation of Canons 1, 2A, 2B, 3A(1), 3A(6) and Rules 3:9-3 and 2:15-8(a)(6) and further denies any intent to violate the aforesaid Canons and Rules.**

Pursuant to Rule 1:4-4(b), I certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.



Charles A. Delehey, Respondent

SUPERIOR COURT OF NEW JERSEY
MERCER VICINAGE

Charles A. Delehey
Judge
Criminal Part, Law Division
(609) 571-4120
(609) 571-4122

Mercer County Courthouse
P.O. Box 8068
Trenton, NJ 08650-0068

FILED
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February 28, 2008

Supreme Court of New Jersey
Advisory Committee on Judicial Conduct
Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037
Attn: Deidre M. Naughton, Counsel

Re: ACJC 2008-056

Dear Ms. Naughton:

I am advised in your letter of January 25, 2008, that Jeffrey Nemes has filed a grievance against me:

> Specifically, Mr. Nemes alleges that your Sheriff's Officer escorted Matthew Nemes to your chambers at your direction and then excused himself once you arrived. Mr. Nemes asserts that, in the privacy of your chambers, you told Matthew Nemes that you had heard "good things" about him and his father, and that you recognized that the incident involving his brother must be embarrassing to the family. According to Mr. Nemes, you advised Matthew that the plea deal offered to his brother by the prosecution was a good one that should be taken and asked Matthew to talk to Mr. Nemes about it.

Mr. Nemes' assertions are correct, but incomplete.

Mr. Nemes was originally charged under Ind. **00-12-0159**, Prosecutor's File 00-2234, with Theft by Failure to Make Required Disposition of Property Received. Trial, which consumed 14 trial days, commenced on January 14, 2003, and concluded on February 19, 2003, with a guilty verdict. Evidence presented at trial disclosed four victims who were part of a repetitive scheme. All had suffered fire damage to their properties; all had been represented by Marc Rossi, a public adjuster, who shared office space with Mr. Nemes; all had been referred to Mr. Nemes by Rossi, who recommended him (for) repair of their damaged properties. Insurance proceeds were ultimately delivered to Mr. Nemes, but the promised repair work was never done. The Judgment of Conviction required Mr. Nemes to pay to Judith Tilton - $42,083, Richard Calla - $22,516, John Kim - $18,434, and Susan and Salvatore Masterpole - $47,800. On May 31, 2003, the defendant was sentenced to a seven-year term. A notice of appeal was filed on June 2, 2003. After several extensions for filing of briefs or obtaining of transcripts, the Appellate Division reversed and remanded predicated upon two errors in this court's charge. The Appellate Division did not address evidential issues raised by the defendant. A copy of the Appellate Division opinion, dated May 19, 2005, is attached.

On December 18, 2003, while the defendant's appeal on Ind. **00-12-0159** was pending, he was charged under Ind. **03-12-0225**, Prosecutor's File 04-0114, with Bribery in an Official Matter – 2nd Degree, Conspiracy – 3rd Degree, and Bribery in an Official Matter – 3rd Degree.

On June 9, 2004, a third indictment, Ind. **04-06-0094**, charged Mr. Nemes and John Fiore with one count of 2nd Degree Conspiracy and one count of 3rd Degree Bribery in an Official Matter.

Thus, on May 19, 2005, when the defendant's conviction on Theft by Failure to Make Required Disposition of Property was reversed and remanded, this court had before it three separate indictments charging the defendant with various crimes:

Ind.: 00-12-0159

Theft by Failure to Make Required
Disposition of Property Received

Ind.: 03-12-0225

Bribery – 2nd Degree
Conspiracy – 3rd Degree
Bribery – 3rd Degree

Ind.: 04-06-0094

Conspiracy – 2nd Degree
Bribery – 3rd Degree

Because the Appellate Division had declined to rule on certain evidential questions which I thought might be problematic on a subsequent appeal (See page 20 of Appellate Division opinion) and because of the probable length of a retrial – fourteen days, I decided to move Ind. **03-12-0225**, charging Bribery in Official Matters, for trial before addressing the more problematic indictment – Ind.: **00-12-0159**.

Based on pre-trial conferences, I was aware that trial of the bribery charges in Ind. **03-12-0225** did not contain the same problematic issues found in Ind. **00-12-0159**. I therefore scheduled Ind. **03-12-0225** for trial on August 22, 2005. The defendant appealed my scheduling order to the Appellate Division, which denied the appeal.

Mr. Nemes' trial on bribery charges in Ind. **03-12-0225** commenced on August 30, 2005. On the fifth day of trial, a State's witness, William Kiernan, informed the jury

that he had submitted to a polygraph examination. His disclosure required the immediate granting of a mistrial. The defendant then claimed double jeopardy. I conducted a hearing and concluded that the State had not invited the disclosure, that the witness had been warned not to make the disclosure, and that the disclosure was inadvertent. I then rescheduled the matter for trial. Asserting a double jeopardy defense, the defendant appealed. The matter remained in the Appellate Division for 14 months before affirming my determination and ordering a new trial.

Ind. **03-12-0225** was re-tried between February 22, 2007 and March 22, 2007, and resulted in guilty verdicts on all three charges - Bribery in Official Matters – 2nd Degree, Conspiracy – 3rd Degree, and Bribery in Official Matters – 3rd Degree. On June 22, 2007, the defendant was sentenced to an aggregate term of eight years. At the time of sentencing, Mr. Nemes' attorney, Harold Ruvoldt, Jr., asked to be relieved as counsel with respect to the remaining indictments. It is my recollection that Mr. Nemes agreed. However, the court required that Mr. Ruvoldt file a motion or letter brief in support of this application to be relieved.

Initially, Mr. Ruvoldt filed a bland certification which failed to contain any meaningful information concerning the retainer agreement, time expended and monies paid by Mr. Nemes. I then contacted Mr. Ruvoldt's office and asked for a detailed explanation. I was told by Mr. Ruvoldt's office that he did not have the necessary information. (In the middle of the trial he had switched firms, moving from Edwards and Angell, Esqs. to Nixon Peabody, Esqs.). I then contacted the managing partner of Edwards and Angell, who ultimately supplied me with the critical information. I then entered an order relieving both law firms and Mr. Ruvoldt as attorneys for Mr. Nemes. A

day later, I received a letter from Mr. Nemes insisting that Edward and Angell should remain his attorneys. I promptly vacated the order relieving counsel and scheduled the matter for a hearing on August 20, 2007. Satisfied that the defendant owed his counsel more than $300,000 and had no ability to pay, I signed an order relieving both firms and Mr. Ruvoldt.

Throughout the course of the three trials (one aborted), I observed the defendant's brother, Matthew Nemes, and other members of the family to be in the courtroom. Sheriff's officers had repeatedly told me that Matthew Nemes and his father were both highly respected police officers. The trials, motion hearings and sentencing procedures all produced vivid newspaper articles. I was aware that the defendant and his second wife, from whom he was divorced, had two daughters ages 14 and 12, whom I assumed lived locally. Given the page one – page three coverage of Mr. Nemes' trials, I was aware of the hurt and the embarrassment that his family and in particular his daughters, must be experiencing. So, at the end of the proceedings on August 20, 2007, I asked Sheriff's Officer Michael Pintenalli to ask the defendant's brother, Matthew, a Ewing Township Police Officer, to come into my office.

Matthew Nemes entered my office. I shook hands with him and told him that I wanted to take but a moment of his time to tell him that I knew the proceedings involving his brother must be a source of embarrassment and humiliation to the family and that he should know, notwithstanding the defendant's criminal charges, that sheriff's officers in the courthouse, and police officers generally, held his father and him in high regard. During the course of our conversation, Matthew Nemes related to me that he believed that his brother was the smart member of the family, and that he could have become a

captain someday, except that "With Jeff it has always been about the money." I informed him that the prosecutor had made an offer of concurrent terms for pleas of guilty to the remaining indictments, but that his brother had rejected those offers. I said, "Maybe you can convince him otherwise, but if there's one thing I've learned it is that people make decisions for their reasons, not for mine." I briefly explained that conviction in a subsequent trial could result in a consecutive sentence, or even if concurrent, it would have the effect of a consecutive sentence. I then repeated that I was sorry for the family's troubles and that I just wanted him to know that other officers held him in high regard. Matthew Nemes thanked me. We shook hands and he left. The entire conversation did not take more than 2 ½ minutes. The door to the office was open and both of us were clearly visible. Neither of us sat down. Whether the conversation was overheard by Mr. Pintenalli, the Sheriff's Officer, or members of our staff I do not know, but it certainly wasn't secretive. In fact, within days of that meeting with Matthew Nemes, I discussed it with Linda Stein, the Trenton Times reporter who ultimately published the newspaper setting forth Mr. Nemes' grievance against me. (Mrs. Stein reminded me of our conversation when she sought comment prior to publishing the newspaper article.)

My sole purpose was to ameliorate the hurt that I knew the Nemes family must be experiencing and I knew that a kind or understanding word from a judge might go a long way toward reducing that hurt. The mention that the defendant should consider the concurrent plea offer was incidental to my purpose or to the conversation that I had with Matthew Nemes. I was fully aware that the defendant had previously rejected the plea offers, and I think that the record will reflect that I attempted to persuade him to consider those offers. Bear in mind, that I sat through the first trial, which was remanded, and I

knew the strength of the State's case and the witnesses who would testify against the defendant. At the time that I spoke with Matthew Nemes I perceived no wrongdoing on my part nor did I sense any violation of any of the rules governing judicial conduct.

I take this matter most seriously and I am willing to appear before the Committee without representation of counsel at any time.

Respectfully yours,

Charles A. Delehey, J.S.C.

CAD/vsa
Enc.