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A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NOS: ACJC 2008-122
2008-136

IN THE MATTER OF JAMES B. CONVERY JUDGE OF THE SUPERIOR COURT	FORMAL COMPLAINT

Candace Moody, Disciplinary Counsel, Advisory Committee on Judicial Conduct ("Complainant"), complaining of Superior Court Judge James B. Convery ("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 1969.

2. At all times relevant to this matter, Respondent served as a judge in the Superior Court of New Jersey, assigned to the Chancery Division, Family Part, in the Essex Vicinage, a position he continues to hold.

3. On September 20, 2007, Respondent presided over the matter of Martha A. Kozielski v. Joseph Kozielski, Jr. in the Superior Court of New Jersey, Chancery Division, Family Part, Essex Vicinage, FM-07-819-01. The parties were before Respondent on a motion hearing (the "Hearing") to address several issues regarding child support.

4. Plaintiff, Ms. Kozielski, was not represented by counsel at the Hearing. Defendant, Mr. Kozielski, was represented by counsel.

5. During the Hearing, Mr. Kozielski's counsel advised Respondent that her client wears a hearing aid, to which Respondent replied, "What?" Respondent's remark elicited laughter from those present in the courtroom.

6. Shortly before concluding the Hearing, Mr. Kozielski's counsel placed on the record a brief summary of Mr. Kozielski's prior surgical history, stating: "[S]ince the divorce, he's had five knee operations, a back operation, a hip and knee replacement and a separated shoulder."

7. In response, Respondent stated: "It's that new show, Bionic Woman. You might be better off."

8. Both Mr. Kozielski and his counsel filed grievances with the Advisory Committee on Judicial Conduct (the "Committee") regarding Respondent's conduct during the Hearing, including Respondent's statements to Mr. Kozielski and his counsel as referenced in paragraphs 5 and 7.

9. On January 4, 2008, Respondent presided over the matter of Benjamin Taylor v. Sandra Mazara Taylor in the Superior Court of New Jersey, Chancery Division, Family Part, Essex Vicinage, FM-07-1453-07. The parties were before Respondent for oral argument (the "Argument") on several pre-judgment motions and cross motions. The plaintiff, Benjamin Taylor, was represented at the Argument by Ivette R. Alvarez, Esquire. The defendant, Sandra Mazara Taylor, was represented at the Argument by Lesley R. Adams, Esquire.

10. During the Argument, an issue was raised regarding Mr. Taylor's production of his Social Security earnings statements. When advised by Mr. Taylor's counsel, Ms. Alvarez, that Mr. Taylor did not have his Social Security earnings statements, Respondent expressed

disbelief and began asking those in the courtroom, including counsel for both parties, if they had received their Social Security earnings statements annually.

11. When Ms. Alvarez advised Respondent that she had not received a Social Security earnings statement for the last three years, Respondent replied: "Well, when did you become an illegal alien?"

12. In response, Ms. Alvarez advised Respondent that she thought his remark was "totally inappropriate," after which Ms. Alvarez exited the courtroom prior to the conclusion of the Argument.

13. Ms. Alvarez returned to the courtroom approximately ten minutes later, at which time Respondent apologized to her.

14. Ms. Alvarez filed a grievance with the Committee regarding Respondent's remark to her during the Argument, as referenced in paragraph 11.

15. On March 6, 2008, Respondent appeared before the Committee for an informal conference to discuss his conduct in both the Kozielski and Taylor matters.

16. In addressing his conduct during the Kozielski matter, Respondent denied any intention to "impugn" Mr. Kozielski's hearing condition by his comment, as referenced in paragraph 5, but acknowledged and apologized for the appearance created by his remark. Further, with respect to his comment to Mr. Kozielski, as referenced in paragraph 7, Respondent denied any intention to offend Mr. Kozielski, stating that he only meant to imply that Mr. Kozielski may be better off than he was before his surgeries. Respondent acknowledged that the comment could be offensive.

17. In addressing his conduct during the Taylor matter, Respondent expressed regret for the statement he made to Ms. Alvarez, acknowledged that it was inappropriate, and stated that he did not intend it to be an expression of bias or derogatory towards Ms. Alvarez.

18. Respondent's remarks to Mr. Kozielski in the matter of Martha A. Kozielski v. Joseph Kozielski, Jr., as referenced in paragraphs 5 and 7, were disrespectful and insulting to Mr. Kozielski in violation of Canons 3A(2) and 3A(3) of the Code of Judicial Conduct, and prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

19. Respondent's remark to Ms. Alvarez in the matter of Benjamin Taylor v. Sandra Mazara Taylor, as referenced in paragraph 11, created the appearance of a racial bias in violation of Canon 3A(4) of the Code of Judicial Conduct, were undignified and discourteous to Ms. Alvarez in violation of Canons 3A(2) and 3A(3) of the Code of Judicial Conduct, intemperate in violation of Rule 2:15-8(a)(4), and prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

20. By his remarks to Mr. Kozielski and Ms. Alvarez, Respondent also violated Canons 1 and 2A of the Code of Judicial Conduct in that he did not maintain high standards of conduct and did not act in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

WHEREFORE, Complainant charges that Respondent, Superior Court Judge James B. Convery, 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 3A(2), which requires judges to maintain order and decorum in judicial proceedings;

Canon 3A(3), which requires judges to be patient, dignified, and courteous to all those with whom they deal in an official capacity;

Canon 3A(4), which requires judges to be impartial and to not discriminate because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or disability; and

Complainant also charges that Respondent's remarks were intemperate and prejudicial to the administration of justice thereby bringing the judicial office into disrepute in violation of Rule 2:15-8(a)(4) and Rule 2:15-8(a)(6) of the New Jersey Rules of Court.

DATED: April 1, 2009

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