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CLERK

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NOS.: ACJC 2008-180 and ACJC 2008-256

IN THE MATTER OF

JAMES N. CITTA,
JUDGE OF THE SUPERIOR 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 James N. Citta, Judge of the Superior Court ("Respondent"), have been proven by clear and convincing evidence. The Committee recommends that the Respondent be publicly reprimanded.

On April 1, 2009, the Committee issued a Formal Complaint in this matter, which contained two allegations against Respondent: (1) that, on April 13, 2006, Respondent made biased, disrespectful and insulting comments to a defendant appearing before him in violation of Canons 1, 2, 3A(2), 3A(3) and 3A(4) 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; and (2) that, on November 22, 2002, Respondent made biased, undignified and discourteous comments to and regarding a defendant appearing before him in violation of Canons 1, 2A, 3A(2), 3A(3) and 3A(4) 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. The Respondent filed an Answer to the Complaint on May 11, 2009 in which he acknowledged the accuracy of the specific comments attributed to him in the Complaint.

Respondent waived his right to a formal hearing in this matter. Exhibits were offered by both the Presenter and Respondent and accepted into evidence by the Committee. The Respondent submitted correspondence to the Committee, and his counsel filed a Letter Memorandum on Respondent's behalf, all of which were considered by the Committee. See P-2, P-9 and "Letter Memorandum on Behalf of Respondent" filed on August 13, 2009 ("Letter Memorandum").

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

A. Factual and Procedural Background

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1977. At all times relevant to this matter, Respondent served as a Superior Court Judge in the Ocean Vicinage Criminal Part, a position he continues to hold.

On April 13, 2006, Respondent presided over a sentencing hearing in the matter of State v. Alex Ramirez, Indictment No. 04-06-1127, relating to the Defendant's parole violation. After accepting the Defendant's guilty plea, Respondent heard from the Defendant's attorney regarding the reasons Defendant violated the terms of his parole, which included the Defendant's alleged inability to speak and understand English and his parole officer's inability to speak and understand Spanish. Respondent reacted as follows:

> THE COURT: Now, so let me understand this. Not only do we have to let him come into the country illegally and stay here, not only do we have to provide him with public assistance, not only do we have to provide him with free health care, not only do we have to provide him with a free attorney when he gets in trouble, now he wants a bilingual probation officer, because otherwise it's inconvenient for him. Is that my understanding of what you're saying?

P-1 at T5-13 to 20.

When the Defendant's counsel attempted to clarify his position regarding the Defendant's "inability to understand English," Respondent stated:

> THE COURT: But he's been here for five years.
>
> MR. VITO: Six years, your Honor, yes.
>
> THE COURT: Six years.
>
> MR. VITO: Yes.
>
> THE COURT: But who's counting?
>
> MR. VITO: Who's counting?
>
> THE COURT: And so in six years, he hasn't learned enough English to report to the probation department?

Id. at T6-3 to 12.

Later in the proceeding, Respondent afforded the prosecutor an opportunity to speak, at which time he sarcastically advised her that she could speak in Spanish if she wished as the court had the benefit of a bilingual prosecutor, bilingual probation officer and interpreter. Id. at T7-9 to 14. Respondent subsequently made the following remarks to the Defendant:

> THE COURT: Well, I think it's a miracle you haven't been sent back to Mexico as a result of being placed on probation and being charged with these crimes in the first place.
>
> . . .
>
> If it was up to me, I'd take you just as you're dressed and bound right now and have you escorted back to Mexico forthwith and

> forget the prison term, but it's not. All I can do is send you to prison and hope that the Department of Immigration and Naturalization will scoop you up when you're released and send you back to Mexico.

Id. at T9-2 to T10-15.

On November 22, 2002, Respondent presided over a sentencing hearing in State v. Peeples, Indictment No. 02-05-0607, stemming from the Defendant's plea of guilty to the charge of attempted murder. Prior to imposing the sentence, Respondent permitted the Defendant, the victim and the victim's family the opportunity to make statements to the court. When hearing from the mother of the victim, Marie Blake, Respondent engaged in the following colloquy with her:

> MS. MARIE BLAKE: Yes, Your Honor. Marie Blake. I am Susan Blake's mother. You have my impact statement, but I have something else. If I had known, I would've brought two articles today, Judge, for you to see speaking to Mr. Peeples' veracity. After having heard some of the things I've heard from him, as I say, I wish I had brought these articles for you to see because I'm going to ask you now to just accept my word. On 9/11 -
>
> THE COURT: As opposed to Mr. Peeples' word?
>
> MS. MARIE BLAKE: Yes.
>
> THE COURT: I don't think you have any problem with that, ma'am.

P-3 at T31-14 to T32-2.

After hearing from all concerned parties, Respondent addressed the Defendant directly, calling him a "pathological liar" and stating that the Defendant "wouldn't know the difference between truth and a lie if it hit you in the face." Id. at T36-13 to 15. Respondent continued as follows:

> THE COURT: You look up domestic violence in the dictionary, your picture should be next to it. The only difference between you and O.J. Simpson is he had more money and he got off for some reason in a land of fruits and nuts. And the only difference between Susan Blake and Nicole Brown Simpson is that she got lucky and somebody was able to get her some medical assistance before she bled to death on her living room floor.

Id. at T38-1 to 9.

Respondent addressed his remarks in both matters in correspondence he submitted to the Committee as well as in the Letter Memorandum filed on his behalf. See P-2 and Letter Memorandum. With respect to the Ramirez matter, Respondent denies that his comments are indicative of bias, prejudice or impartiality. Letter Memorandum at 2. Rather, he describes his comments as "intemperate" and caused by a "sense of frustration" at the Defendant's underlying conduct. Id. at 3. Respondent admits to a "momentary lack of self-restraint" during which time he "said an awful lot which was not relevant to the issues at hand and an awful lot which … should not have [been] said." Id. at 2. He believes his conduct to be an aberration and points to

a "lack of repetitive conduct or pattern present." Id. at 2-3. Respondent also proffers that the number of years that he has sat in the Criminal Division "has exacted a toll which, on occasion, has led me to say things better left unsaid." P-2 at ACJC 084.

With respect to the Peeples matter, Respondent indicates that, at the time of his remarks, he had just heard from the Defendant and found his comments to be incredible and offensive to the victim and her family members. P-9 at ACJC 088-89. According to the Respondent, he thought it "appropriate" to make the Defendant and the others present in the courtroom aware of his reaction to the Defendant. Id. Respondent further submits that his comparison of the Defendant to O.J. Simpson was intended "to let Mr. Peeples know in language that he understood and using an example that he would understand that his present circumstances were the result of his predilection to abuse women and that unlike the Simpson case he was going to be punished for his act." Id. at ACJC 089. Respondent "categorically den[ies]" that his comments were racially-motivated. Id.

By way of mitigating evidence, Respondent submitted several reports from doctors attesting to both cardiac and stress conditions Respondent has experienced over the past several years. R-1 and R-2. Respondent was, in fact, unable to work

for approximately one year from March 2008 until February 2009 upon the recommendation of his cardiologist. R-2.

B. Analysis

The Formal Complaint against Respondent charged him with two separate violations of Canons 1, 2, 3A(2), 3A(3) and 3A(4) 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 as a result of the comments he directed to Defendant Ramirez and Defendant Peeples. Regarding the Ramirez matter, the Committee unanimously finds that the charges in question are supported by clear and convincing evidence, and that Respondent's conduct violated the cited Canons of the Code of Judicial Conduct and Rules of Court. With respect to the Peeples matter, a majority of the Committee finds that the charges in question are supported by clear and convincing evidence, and that Respondent's conduct violated the cited Canons of the Code of Judicial Conduct and Rules of Court.[1]

Canon 1 requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary is preserved. Canon 2A directs that judges conduct themselves in a manner that promotes public confidence in the integrity and

[1] Four members of the Committee, Chief Justice Zazzali, Edward Dauber, Esq., Alice Olick, and M. Karen Thompson, Esq., did not find Respondent's remarks in the Peeples matter to be violative of the charged Canons or Rules of Court and dissent from the majority's conclusion that such remarks amount to judicial misconduct deserving of discipline.

impartiality of the Judiciary. The cited provisions of Canon 3A of the Code of Judicial Conduct state:

(a) Canon 3A(2): A judge should maintain order and decorum in judicial proceedings.

(b) Canon 3A(3): A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity….

(c) Canon 3A(4): A judge should be impartial and should not discriminate because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or disability.

Finally, Rule 2:15-8(a)(4) prohibits intemperate judicial conduct, while Rule 2:15-8(a)(6) prohibits judicial conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

1. Respondent's Comments to Defendant Ramirez

Respondent admits making the cited remarks to Defendant Ramirez on April 13, 2006 and acknowledges their inappropriateness though he denies their implication of bias or prejudice. We find that Respondent's remarks were not only inappropriate but highly objectionable, at least outwardly indicative of bias, and wholly unbefitting a court of law.

As recognized by the Supreme Court in In re Mathesius, 188 N.J. 496, 528 (2006), "We understand that 'the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians - those impersonal convictions that make a society a civilized community, and not the victims of personal views.'" (citing Dunlap v. Friedman's, Inc., 213 W.Va. 394, 582 S.E.2d 841, 850 n.4 (W.Va. 2003)). Such subordination is indispensible to the maintenance of the integrity and impartiality of the judiciary. See Canons 1 and 2A of the Code of Judicial Conduct.

Bias, whether in fact or appearance, has no place in a court of law and deserves judicial censure. State v. Marshall, 148 N.J. 89, 279, cert. denied, 520 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997) ("We … acknowledge that it is not necessary to prove actual prejudice on the part of the court, and that the mere appearance of bias may require disqualification. *R.* 1:12-1(f)"). "Bias is manifested if its expression generates a reasonable and objective belief that the judicial proceedings are tilted or unfair." In re Gaeta, ACJC 2002-171, Presentment at 8 (adopted by May 8, 2003 Supreme Court Order in D-140) (citations omitted).

While Respondent denies that his comments to Defendant Ramirez were, in any way, motivated by bias or ethnic animus, his intention is, in fact, immaterial under the circumstances of

this matter. The specific remarks at issue include several references to the Defendant's nationality, and Respondent's expressed desire for the Defendant to be returned to his country of origin by the U.S. Department of Homeland Security. Respondent also expressed strong disrespect, disbelief and incredulity at Defendant Ramirez's professed inability to speak English and used sarcasm to highlight that disbelief.

We find that such remarks and conduct, when construed together, minimally created the appearance that they were motivated by bias or prejudice. We further find that the average, reasonable person, upon hearing such remarks, would question whether Respondent harbors prejudice against individuals who reside in this country illegally. The possibility, if not probability, of such interpretation highlights the comments' impropriety and their violation of the charged Canons and Rules of Court. Any "private views" that Respondent may have regarding foreign individuals who are not lawfully present in this country are immaterial to his legal duties and judicial obligations and should never have been raised or discussed. Such individuals have the same rights to a fair and impartial hearing as any other individual. See In re Yengo, 72 N.J. 425, 450 (1977) ("The poorest, weakest most hapless or illiterate defendant standing before an American court, is entitled to exactly the same respect, rights and

hearing as would be the Chief Justice of the United States standing before the court and similarly accused."). It was Respondent's paramount obligation to act in a manner that would promote the integrity and impartiality of the New Jersey Judiciary, and Respondent failed to uphold that obligation.

In conclusion, we determine that Respondent's remarks to Defendant Ramirez created the appearance that they may have been triggered by bias or prejudice in violation of Canon 3A(4) of the Code of Judicial Conduct. Necessarily then, such comments were also undignified, disrespectful and not in keeping with a judge's duty to maintain decorum in all court proceedings in violation of Canons 3A(2) and 3A(3) of the Code. We also conclude that Respondent's remarks neither upheld the integrity and impartiality of the Judiciary nor the public's confidence in the integrity and impartiality of the Judiciary in violation of Canon 1 and 2A. Such remarks were intemperate in violation of Rule 2:15-8(a)(4) and prejudicial to the administration of justice, bringing the judicial office into disrepute in violation of Rule 2:15-8(a)(6) of the New Jersey Court Rules.

2. Respondent's Remarks to Defendant Peeples

While Respondent admits making the comments in question to Defendant Peeples, he does not agree they were inappropriate. Respondent takes the position that his comments, while "harsh," were required by the "need to occasionally speak in language"

that can be "understood by those to whom it is addressed." P9 at ACJC 089. We disagree. A majority of the Committee finds that such comments, stated in open court and on the record, strayed far beyond the boundaries of civility and violated the charged Canons of the Code of Judicial Conduct and Rules of Court.

The Supreme Court held as follows in In re Albano, 75 N.J. 509, 514 (1978):

> [I]t is the judge's obligation to see that justice is done in every case that comes before him. This includes not only reaching the correct legal result in the particular case, but also the exhibiting at all times of judicial demeanor, patience and understanding. People come to the court to be heard. They have a right to expect that in presenting their grievances they will be treated with respect.

Further, as provided in In re Sadofski, 98 N.J. 434, 441 (1985), "No matter how tired or vexed, … judges should not allow their language to sink below a minimally-acceptable level. Judges, like other members of society, will occasionally have a 'bad day.' Even on such days, however, a judge must conduct court proceedings in a manner that will maintain public confidence in the integrity and impartiality of the judiciary." "… [P]etulance, sarcasm, anger, and arrogance … have no place in the exercise of judicial duties." In re Mathesius, 188 N.J. at 525. A judge's conduct and remarks should not exhibit or foster

the impression of bias that undermines impartiality, objectivity and fairness in the discharge of judicial responsibilities. E.g. State v. O'Brien, _____ N.J. _____ (2009) (A-89-08) (slip. op. at 21, 28) (indicating this Respondent's direct examination of witnesses expressed "'impatience ..., [a] severe attitude, and disbelief'" which suggests bias that interfered with fair presentation of case).

In Respondent's case, we understand the pressures he faces in handling a criminal docket and appreciate the highly-charged, tense and emotional situation he confronted during the sentencing of Defendant Peeples. Nevertheless, it was Respondent's resolute obligation, in accordance with governing case law and the Code of Judicial Conduct, to conduct himself and his courtroom with dignity and decorum. See Canon 3A(2) of the Code of Judicial Conduct. While it may have been difficult to do so, Respondent was further obligated to treat Defendant Peeples with patience and courtesy. See Canon 3A(3) of the Code of Judicial Conduct.

Respondent's remarks failed to uphold these obligations. In his comments to Defendant Peeples, Respondent crossed the line of legitimately expressing his shock and condemnation of the deplorable crimes committed as well as his disbelief of Mr. Peeples's claims to engaging in an extreme, vituperative and personal condemnation of the Defendant. This condemnation

included comparing Defendant Peeples to O.J. Simpson, calling him a "pathological liar," and suggesting that Defendant's picture should be featured in the Dictionary next to the term, "domestic violence."

While Respondent may have felt that such an attack was merited due to Mr. Peeples's underlying conduct and to accomplish Respondent's goal of getting Mr. Peeples to "understand," it was highly inappropriate for Respondent to speak to a party appearing before him in that manner. Respondent, as a judicial officer of this State, is held to higher standards of conduct. See Canon 2A of the Code of Judicial Conduct. More importantly, however, Respondent should not choose his vernacular and diction based upon the caliber of person to whom he is speaking. E.g. Sadofski, supra, 98 N.J. at 441-42. At all times, no matter the party, judges must strive to be dispassionate, steady and dignified. Ibid. See Canon 3A(3) of the Code of Judicial Conduct. Here, Respondent's comments were so extreme, opinionated and intemperate, we find they bespoke an intolerance and lack of detachment that have no place in a court of law. We are concerned that Respondent's emotional and ruthless comments created the risk that his subsequent sentencing of the Defendant was interpreted as influenced by such subjective thoughts, personal animus and outrage. Even in a criminal sentencing setting where judges are

free to analyze a defendant's character, judges must remain outwardly objective and composed.

We conclude, for the reasons stated above, that Respondent's remarks violated Canons 3A(2), (3) and (4) of the Code of Judicial Conduct. We also conclude that Respondent's remarks neither upheld the integrity and impartiality of the Judiciary nor the public's confidence in the integrity and impartiality of the Judiciary in violation of Canon 1 and 2A. Such remarks were intemperate in violation of Rule 2:15-8(a)(4) and prejudicial to the administration of justice, bringing the judicial office into disrepute in violation of Rule 2:15-8(a)(6) of the New Jersey Court Rules.

II. RECOMMENDATION

The Committee recommends that Respondent be publicly reprimanded for his behavior in the Ramirez and Peeples matter. The Committee's recommendation takes into account Respondent's inappropriate and excessive remarks. The Committee is mindful that Respondent has, in another circumstance, engaged in conduct that created the appearance of a hostile attitude toward a criminal defendant. See O'Brien, supra, ____ N.J. at ____.

At the same time, we are aware of Respondent's sound reputation as an effective and hard-working officer of the court. We are likewise aware that Respondent suffered from certain medical conditions for a prolonged period of time.

Finally, with specific regard to the Peeples matter, we recognize the extended length of time, i.e. six years, that Defendant Peeples waited to file his complaint with the Committee.

For all of these reasons, the Committee respectfully recommends that Respondent be publicly reprimanded.

DISSENT BY: Chief Justice Zazzali, Edward Dauber, Esq., Alice Olick, and M. Karen Thompson, Esq. (In Part)

DISSENT

We dissent from the Committee's determination that the Respondent's comments in the Peeples matter warrant public discipline. In the context of a sentencing and particularly this sentencing, we do not believe that the remarks, objected to for the first time by the defendant six years after his sentencing, went beyond the bounds of permissibility.

Included in the record of this matter was an Affidavit of Richard H. Archer, Esq., the public defender who represented Mr. Peeples. J-1. Mr. Archer's Affidavit recounts some of the circumstances of the crime and of the sentencing. Mr. Peeples was charged with the attempted murder of a former girlfriend (and mother of his child) after encountering her new boyfriend at the victim's house. Once the boyfriend left, the "victim was stabbed multiple times and left lying on the floor, bleeding.

The telephone lines were also cut to prevent any calls for help" and the victim was left to die. While Mr. Archer's Affidavit doesn't provide further details of the attempted murder, Judge Citta cites in his sentencing remarks that the eleven stab wounds were made in front of the defendant's own two year old son and the victim's fourteen year old daughter. Mr. Archer does, however, proceed to discuss what happened at sentencing, after he argued to the Judge that this was a crime of passion, unlikely to be repeated:

> 6.) When Judge Citta asked Mr. Peeples if he had anything to say, Mr. Peeples told the Judge that he (Mr. Peeples) could have killed the victim if he chose because he had military training and that if he wanted to he could kill a person, eat her, throw her up and then kill her again.
>
> 7.) I interpreted this statement as a threat to the victim….
>
> 8.) Mr. Peeples told Judge Citta he spoke to the victim's father because he was concerned about the victim. Police reports indicated that Peeples told the victim's father "You're next".

In light of these facts, other remarks made by the defendant during the sentencing hearing, and the defendant's history with regard to abuse of women, we do not believe that

the "pathological liar" and "domestic violence" picture remarks made by Judge Citta as part of this sentencing were inappropriate. We do believe that Judge Citta's remarks concerning the O.J. Simpson case are not appropriate because a judge not directly involved in the appeal of a case who impugns a jury verdict could be undermining the public's trust in the judicial system. However, given the context in which these remarks were made in the Peeples case, we do not believe that they warrant public discipline. Nor do we believe that the O.J. Simpson case references in any way demonstrate any racial bias that would violate Canon 3A(4).

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

January 27, 2010 By: Alan B. Handler /DMN
Alan B. Handler, Chair