SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2006-162 &
2008-169

IN THE MATTER OF F. MICHAEL GILES, 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 charge set forth in the Amended Formal Complaint against F. MICHAEL GILES, Judge of the Superior Court ("Respondent"), has been proven by clear and convincing evidence. The Committee's Recommendation is that the Respondent be publicly disciplined.

On March 18, 2008, the Committee issued an Amended Formal Complaint against the Respondent, which alleged that Respondent as a Judge engaged in conduct that was intemperate, discourteous, vulgar and disrespectful and inappropriate and improper, on several occasions, April 10, 2006, December 11 and 12, 2007 and February 8, 2008; and in the past he had engaged in

discourteous and disrespectful conduct against litigants, in violation of Canons 1, 2A and 3A(2) and 3A(3) of the New Jersey Code of Judicial Conduct and Rule 2:15-8(a)(4) and 2:15-8(a)(6) of the New Jersey Court Rules. The Respondent on April 22, 2008 filed an Answer in which he admitted certain factual allegations of the Formal Complaint and denied others and presented a Statement in Mitigation.

The Committee conducted a formal hearing on June 18, 2008. Respondent appeared with counsel and offered testimony in his defense. Exhibits were offered by both parties and accepted into evidence, which included Presenter's Exhibit List (P-1 through P-23), and documents relating to Respondent's medical condition and personal and familial circumstances.

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

FINDINGS

A. As to Count I of the Amended Complaint, on the morning of April 10, 2006, Grievant, an attorney, with the prior consent of Respondent, appeared in Respondent's courtroom with his client, Altereek Dunne, in response to a bench warrant previously issued on Mr. Dunne and to set bail. Mr. Dunne's matter was not reached by Respondent before lunch. When

Respondent recessed court for the lunch break, the Grievant escorted Mr. Dunne to the Essex County Sheriff's Department for processing. After lunch, the Grievant learned that Mr. Dunne had been remanded to the custody of the Essex County Sheriff's Department on several outstanding municipal warrants. Around 3:00 p.m., the Grievant appeared before Respondent and requested Respondent address Mr. Dunne's bench warrant. Respondent advised the Grievant that he could do nothing about Mr. Dunne's recent incarceration on the outstanding municipal warrants. The Grievant then requested that Respondent address only the Superior Court warrant. Prior to answering the Grievant, Respondent asked if he was still on the record. After ascertaining that he was no longer on the record, Respondent stated to the Grievant:

> I said get the . . . [expletive] . . . out of my courtroom, what the . . . [expletive] . . .don't you understand, shut the . . . [expletive] . . .up and get the . . . [expletive] . . .out of here, I have a meeting this afternoon.

Respondent's conduct, violated Canons 1, 2A, 3A(2) and 3A(3) of the Code of Judicial Conduct in that he did not maintain high standards of conduct, did not act in a manner that promotes public confidence in the integrity and impartiality of the Judiciary, did not maintain order and decorum in judicial proceedings and was not patient, dignified or courteous to the

Grievant or Mr. Dunne. Respondent's conduct also constitutes intemperate conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(4) and Rule 2:15-8(a)(6).

B. As to Count II of the Amended Complaint, Respondent was the trial judge in the matter of Ritschel and Allied Realty Assoc. LLC v. Spencer Savings Bank, SLA, Docket No. ESX-L-145-05. On December 11, 2007, Respondent initiated settlement discussions in the Ritschel matter. The settlement discussions continued through December 12, 2007. During the settlement conference on December 12, 2007, which occurred in Respondent's chambers with Respondent and counsel for all parties, Respondent cursed at counsel for the defendant, Spencer Savings Bank, SLA, stating "Did you wake up on the wrong . . . [expletive] . . .side of the bed?"

On February 5, 2008, following argument on several pre-trial motions in the Ritschel matter, Respondent, after ascertaining that he was no longer on the record, asked counsel if they had read the newspaper articles regarding the Formal Complaint that was filed against him by the Advisory Committee on Judicial Conduct on January 29, 2008. When all counsel answered affirmatively, Respondent volunteered to counsel that when the Honorable Patricia K. Costello, A.J.S.C. removed him from the criminal bench for cursing at a lawyer, Respondent told Judge

Costello that he could just as easily curse at a civil defense attorney as he could a criminal defense attorney. In response to that remark, counsel for the defendant, Spencer Savings Bank, SLA, reminded Respondent that he had cursed at her during a settlement conference in Respondent's chambers on December 12, 2007. Respondent did not deny that it had occurred, but claimed to have no recollection of the incident. Respondent further stated that he would call defense counsel as a witness at his hearing before the Committee because she seemed to have survived the incident and was faring well before him. Despite Respondent's disclaimer, the evidence fully demonstrates that in these several incidents, Respondent had made vulgar, offensive and insulting remarks to counsel and that he made inappropriate and disrespectful comments about the judiciary.

Respondent's use of expletives and vulgarity and offensive and disrespectful language violated Canons 1, 2A, 3A(2) and 3A(3) of the Code of Judicial Conduct in that he did not maintain high standards of conduct, did not act in a manner that promotes public confidence in the integrity and impartiality of the Judiciary, did not maintain order and decorum in judicial proceedings and was not patient, dignified or courteous to counsel.

Respondent's conduct towards defense counsel also constitutes intemperate conduct prejudicial to the

administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(4) and 8(a)(6). Further, in commenting openly and in a sarcastic and disrespectful manner about a pending grievance before the Committee to persons not involved in the matter, Respondent impugned the integrity of the Judiciary and demonstrated disrespect for the Judiciary. Such conduct undermines public confidence in the integrity of the Judiciary contrary to Rule 2:15-8(a)(6).

C. As to Count III, on February 18, 1998, the Committee sent a letter of caution to Respondent regarding two separate complaints, recounting Respondent's discourteous conduct toward several litigants who had appeared before him in landlord-tenant matters. Respondent acknowledged that he had been discourteous to the litigants but he represented to the Committee that he had apologized to the litigants to whom he had been discourteous, and assured the Committee that he would not repeat that conduct. The Committee closed the matters with private discipline issuing Respondent a letter of caution.

It clearly appears that Respondent's prior and recent transgressions demonstrate a pattern of improper conduct that calls into question his judgment and his ability to conform his conduct to the requirements of the Code of Judicial Conduct.

It is established by clear and convincing evidence that Respondent 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; and Canon 3A(3), which requires judges to be patient, dignified, and courteous to all those with whom they deal in an official capacity. Further, Respondent's conduct was prejudicial to the administration of justice thereby bringing the judicial office into disrepute, in violation of Rule 2:15-8(a)(4) and 8(a)(6).

Respondent, with consent, incorporated into the record his Statement in Mitigation and presented both testimonial and documentary evidence relating to personal and familial matters to explain and mitigate his conduct. These demonstrate, and the Committee determines, that Respondent had experienced profound and tragic familial loses, the death of a child and the resulting responsibility of assuming parental care of his grandchildren. He also suffered serious personal health

conditions that impaired his ability to function effectively and required the curtailment of his judicial responsibilities.

The mitigating circumstances do not negate Respondent's misconduct. They are, however, entitled to consideration and weight in determining appropriate discipline.

RECOMMENDATION

The Committee recommends that Respondent be publicly disciplined. Its recommendation accounts for the gravity of the Respondent's misconduct. It also acknowledges the existence of mitigating circumstances.

The Committee determines that Respondent had breached his duty to preserve and protect the dignity of courtroom proceedings contrary to the mandates of Canons 1 (a judge shall uphold the integrity and independence of the judiciary); Cannon 2A (a judge should avoid impropriety and the appearance of impropriety in all his activities); and Cannons 3A(2) and (3) (a judge should perform the duties of his office impartially and diligently). Common to these complaints was the use of intemperate, vulgar, discourteous and offensive language during judicial proceedings, as well as expressions of disparagement and disrespect for the judiciary.

There is no question that Respondent engaged in the conduct set forth of in the Complaint. Respondent himself has acknowledged these actions and to using expletives and insulting

disrespectful and discourteous language, as well as disparaging judicial proceedings. The Committee finds that such language and conduct were inappropriate, intemperate and failed to maintain the dignity and decorum required of judicial proceedings and failed to foster the integrity and independence of the judiciary. See In re Sadofski, 98 N.J. 434, 441 (1985) ("No matter how tired or vexed, however, judges should not allow their language to sink below a minimally-acceptable level . . . [A] judge must conduct court proceedings in a manner that will maintain public confidence in the integrity and impartiality of the judiciary."). The personal pressures endured by Respondent neither explain nor excuse his misconduct. "Although a judge may have been under great strain and frustrated with a litigant or his attorney, that sentiment should not and cannot translate to a judicial officer's inappropriate behavior. The Canons of Judicial Conduct, to which all judges are bound, hold judges to a higher standard." Ibid. Moreover, the Committee cannot consider Respondent's conduct to have been aberrational. Similar prior incidents involving intemperate, insulting and offensive behavior demonstrate that the recent misconduct was not isolated or exceptional.

Despite this determination, the Committee notes the significant extenuating circumstances present in this case. Further, Respondent has acknowledged his misconduct, he has

apologized to the parties offended, and has expressed regret and contrition.

Although Respondent's inappropriate language and conduct during court proceedings were improper and violated the Rules and Canons of Judicial Conduct, the Committee finds that the full record in this matter demonstrates the presence of several mitigating circumstances that are relevant to appropriate discipline.

Accordingly, the Committee recommends the imposition of a public reprimand against Respondent.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

DATED: July 30, 2008

By: Alan B. Handler

Alan B. Handler, Chair