SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2008-223

IN THE MATTER OF PETER M. TOURISON, JUDGE OF THE MUNICIPAL COURT	**PRESENTMENT**

The Advisory Committee on Judicial Conduct, pursuant to Rule 2:15-15(a), presents to the Supreme Court its Findings that the charges set forth in a Formal Complaint against Peter M. Tourison, Judge of the Municipal Court, have been proven by clear and convincing evidence and its Recommendation that the Respondent be publicly disciplined.

The Advisory Committee on Judicial Conduct issued a Formal Complaint alleging that Respondent, Municipal Court Judge Peter M. Tourison, engaged in conduct in violation of Canons 1, 2A, and 5A(2) of the Code of Judicial Conduct and in violation of Rule 2:15-8(a)(1) and (6) of the New Jersey Court Rules in connection with his involvement in a Driving While Intoxicated incident on March 27, 2008. Specifically, Respondent was arrested and charged with Driving While Intoxicated ("DWI") in violation of N.J.S.A. 39:4-50 and Careless Driving in violation of N.J.S.A. 39:4-97 and was eventually convicted, based on a guilty plea, of the charge of DWI, which resulted in a fine of $400, plus costs, a $50 Violent Crimes assessment, a $200

DWI surcharge, a $75 Safe Neighborhood assessment, the revocation of Respondent's driving privileges for 90 days, and an order to complete 12 hours at the Intoxicated Drivers Resource Center.

Respondent filed a response in lieu of Answer to the Complaint, representing that ". . . the respondent in this matter will not challenge the allegations set forth in the complaint, with the full understanding that the committee will deem the allegations as admitted and proved by clear and convincing evidence." Respondent waived his right to a Formal Hearing. Presenter's Exhibits P-1 and P-2 were admitted into evidence. Respondent with counsel appeared before the Committee and offered testimony related to the quantum of discipline to be recommended by the Committee to the Supreme Court.

FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1976. At all times relevant to this matter, Respondent served as a part-time judge in the Municipal Courts of the City of Cape May, Borough of Stone Harbor, and Middle Township.

The facts giving rise to the Complaint demonstrate that at approximately 10:58 p.m. on March 27, 2008, Respondent was operating his vehicle on Bayshore Road in Lower Township,

Cape May County. The Lower Township Police Department received a report of a motor vehicle, a blue or black BMW, traveling in the wrong lane on Bayshore Road. The police were informed that the BMW may have struck another vehicle in the North Cape May Wawa parking lot. Patrolman McEwing and Supervising Officer Sanders of the Lower Township Police Department were dispatched to the area. They arrived at the North Cape May Wawa. Patrolman McEwing observed a black BMW parked next to a white Ford Explorer. Patrolman McEwing was informed by a witness that the BMW had earlier pulled out of the parking lot of C.J.'s Bar and Grille and crossed over the center line into opposing traffic, and that the witness was forced to swerve his vehicle onto the shoulder of the roadway to avoid colliding with the BMW. The witness related that he made a U-turn and followed the BMW into the North Cape May Wawa parking lot and there observed the BMW strike the white Ford Explorer that was parked in an adjoining space. Patrolman McEwing observed some markings on the rear tire on the driver's side of the Ford Explorer, as well as debris on the ground from the broken lens cover of the parking light of the BMW.

Officer Sanders spoke with the driver of the BMW, later identified as Respondent. Respondent provided Officer Sanders with his license, insurance card and registration. Patrolman McEwing asked Respondent if he had been drinking. Respondent replied: "Yes." Patrolman McEwing detected an order of alcohol emanating from Respondent's breath.

Patrolman McEwing asked Respondent how much he had to drink, to which Respondent replied: "Two drinks." Patrolman McEwing conducted several field sobriety tests on Respondent, most of which Respondent failed. Patrolman McEwing then placed Respondent under arrest.

While being processed at the police station, Respondent, on two occasions, attempted to apply chapstick to his lips. After the first attempt, Patrolman McEwing took the chapstick from Respondent and advised him that he was not permitted to put anything near or around his mouth. As Patrolman McEwing turned his head for a brief period of time, Respondent took out another tube of chapstick. Patrolman McEwing again took the chapstick from Respondent and advised him once again that he was not allowed to apply anything to his lips or mouth area, to which Respondent replied: "OK." Corporal Macomber of the Lower Township Police Department was assigned to administer the Alcotest to Respondent. He waited about twenty minutes after Respondent had applied the chapstick to begin the test. When he was about to read the New Jersey Motor Vehicle Commission Standard Statement for Operators of a Motor Vehicle to Respondent, Corporal Macomber observed that Respondent had something in his mouth. Corporal Macomber asked Respondent what was in his mouth, to which Respondent replied: "a penny." Corporal Macomber asked Respondent to remove the penny from his mouth, which Respondent did, and then had Respondent empty his pockets. After waiting an additional twenty minutes, Respondent consented to and was administered the Alcotest by Corporal Macomber.

According to the results of the Alcotest, Respondent's blood alcohol level on the evening of his arrest was 0.08.

The clear and convincing evidence demonstrates that Respondent drove his motor vehicle while intoxicated in violation of N.J.S.A. 39:4-50. Respondent's conduct in operating his motor vehicle while intoxicated was reckless, endangered third persons and caused damage to the property of others. Further, he engaged in obstructive conduct at police headquarters subsequent to his arrest that was intended to impede and interfere with the proper enforcement of the law. This conduct violated Canons 1, 2A, and 5A(2) of the Code of Judicial Conduct and Rule 2:15-8(a)(1) and (6) of the New Jersey Court Rules.

RECOMMENDATION

Respondent's conduct constituted a first offense for driving while intoxicated. Discipline for that misconduct usually merits a public reprimand. In re Annich, ACJC 92-165. Respondent's conduct in the commission of that offense, however, was aggravated. Respondent's operation of his motor vehicle created a high risk of injury to others and actually caused property damage. His behavior in the course of the continuing investigation of the matter by the police in their attempt to administer a breathalyzer test was evasive and obstructive, intended to frustrate and alter the results of that test. Every citizen has an obligation of cooperation in such circumstances. See In re Williams, ACJC 2006-100. Respondent's failure

to cooperate with the police officers constitutes an aggravating factor. Respondent's conduct violated a judge's overriding responsibility to maintain and uphold the law. It seriously demeaned and impugned the judicial office and prejudiced the administration of justice.

Respondent has proffered evidence in mitigation. He has recounted through a treating psychologist that he "abused alcohol on an episodic basis," has undertaken an "outpatient treatment program involving cognitive behavioral and motivational enhancing interventions," and, importantly, has been "successfully abstinent from alcohol and has implemented effective relapse strategies." We credit and give weight to these representations.

Canon 1 requires judges to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved; Canon 2A 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 5A(2) requires judges to conduct all of their extra-judicial activities so that they do not demean the judicial office. Rules 2:15-8(a)(1) and (6) of the New Jersey Court Rules require judges to avoid conduct that prejudices the administration of justice by bringing the judicial office into disrepute.

Respondent's conduct impugned the integrity and impartiality of the judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct and demeaned the judicial office in violation of Canon 5A(2). Respondent's actions also constituted misconduct in office and

conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(1) and Rule 2:15-8(a)(6).

Respondent has recognized and acknowledged his alcohol problem. He has undertaken professional treatment. Further, Respondent's reputation as a knowledgeable and impartial judge is also a mitigating factor.

Under the circumstances, taking into account both mitigating and aggravating factors, the Advisory Committee on Judicial Conduct respectfully recommends that Respondent be censured.

Respectfully submitted,
Advisory Committee on Judicial Conduct

By: Alan B. Handler /JMK
Alan B. Handler, Chair