SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2005-264

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| IN THE MATTER OF<br><br>HENRY G. BROOME, JR.<br>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 Counts II through VI of the Formal Complaint against Henry G. Broome, Jr., Judge of the Municipal Court, have been proven by clear and convincing evidence and its Recommendation that the Respondent be publicly reprimanded.

On February 16, 2007, the Advisory Committee on Judicial Conduct issued a Formal Complaint against the Respondent, which alleged as follows:

> (1) By inappropriately, and without authority, imposing fines and surcharges against drivers found guilty of violating N.J.S.A. 39:4-50.14 (the "Baby DWI Statute"), Respondent violated Canons 2A and 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules (see Count I);
>
> (2) By dismissing charges of refusal to submit to a breathalyzer test for first offenders in contravention of mandatory plea agreement guidelines, Respondent violated Canons 2A and 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules (see Count II);

(3) By improperly participating in plea negotiations in cases over which he presided and by accepting guilty pleas without ascertaining a factual basis for the pleas, Respondent violated Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules (see Count III);

(4) By failing to advise the defendant in State v. Wood, a case over which he presided in the Linwood Municipal Court, that he had the right to be represented by counsel and the right to remain silent, Respondent violated Rule 7:3-2 and Rule 2:15-8(a)(6) of the New Jersey Court Rules and Canon 3A(1) of the Code of Judicial Conduct, and by demonstrating a bias against the defendant and abusing his judicial authority, Respondent violated Canons 1, 2A, 3A(3) and 3A(4) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules (see Count IV);

(5) By creating and enforcing, without authority, his "$100 policy" concerning a litigant's obligation to pay fines, Respondent violated case law and Canon 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules (see Count V); and

(6) By failing to report his personal involvement in a lawsuit as required by an Administrative Directive issued by the Administrative Office of the Courts, Respondent violated Canon 3B(1) of the Code of Judicial Conduct (see Count VI).

Respondent filed an Answer on March 27, 2007, in which he admitted certain factual allegations of the Formal Complaint and denied others.

The Committee convened a formal hearing on July 10, 2007. Respondent appeared with Counsel and offered testimony in his defense. Exhibits were offered by both parties and accepted into evidence. 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.

## I. FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1966. At all times relevant to these matters, Respondent served as judge of the Municipal Courts of Somers Point, Northfield, Linwood, Absecon, Longport, Egg Harbor City, Mullica Township and Brigantine.

The facts are not in dispute. See P-1 (Stipulations).

### A. As to Count I

On November 15, 2002, a memorandum was issued by Louis J. Belasco, Jr., Presiding Judge of the Municipal Courts for Atlantic and Cape May Counties, and Howard H. Berchtold, Jr., Assistant Trial Court Administrator/Municipal Division Manager for Atlantic and Cape May Counties ("Vicinage I"), to all Vicinage I municipal judges, court directors and administrators ("Belasco Memorandum"), discussing N.J.S.A. 39:4-50.14 (the "Baby DWI Statute"). See P-2. By virtue of Respondent's position as a municipal court judge in Vicinage I at the pertinent time, Respondent would have received a copy of the Belasco Memorandum. See P-1 at ¶ 4.

In discussing the Baby DWI Statute, the Belasco Memorandum states as follows:

> The statute does not contain a fine, although other penalties are included, such as license suspension, community service and IDRC. Some courts throughout the state have looked to N.J.S.A. 39:4-203 as authority to impose a fine under the [Baby DWI Statute]. That statute, however, allows a general fine only where no penalty is provided. [The Baby DWI Statute] does provide for

> penalties.... Some courts throughout the State have used the fine portion of 39:4-50 to impose the fine under the [Baby DWI Statute] under the theory that it is referenced in the law. The Committee Statement attached to the law makes clear that the reference to 39:4-50 is only there so as not to preclude prosecution under that section.

See P-2 at 3-4.

On February 27, 2004, Acting Administrative Director of the Courts, Richard J. Williams, J.A.D., issued a memorandum to all municipal court judges, directors, and administrators (the "Williams Memorandum"), which attached a revised form of Order and Certification for Intoxicated Driving and Related Offenses ("Revised Order"). See P-3. The Williams Memorandum directs all municipal court judges to use the Revised Order and provides that the Order "reflects all current possible penalties and is to be used whenever a court imposes penalties for driving or boating under the influence of alcohol or drugs." Id. With respect to Baby DWI or underage drinking violations, the Revised Order reflects the "Monetary Penalty" to be assessed by municipal judges as "$0." Id. at ACJC206.

Between February 2004 and May 2005, Respondent, in eleven known cases[1], imposed fines and surcharges, ranging from $250.00 to $780.00, against drivers found guilty of violating the Baby DWI Statute. This conduct was reported to Judge Valerie H. Armstrong, Assignment Judge of the Superior Court in Atlantic and Cape May Counties, by Judge Belasco in a June 28, 2005 memorandum. See P-4. Subsequently, Judge Armstrong issued an Order to reopen the eleven pertinent cases "for the purpose of resentencing" those individuals that had been assessed

[1] The eleven cases include: State v. Phillips, Linwood Municipal Court, Docket No. 0114 020106; State v. Kaleck, Longport Municipal Court, Docket No. 0115 018926; State v. Linblad, Longport Municipal Court, Docket No. 0115 029136; State v. Calareso-Hodges, Longport Municipal Court, Docket No. 0115 028544; State v. Soucier, Northfield Municipal Court, Docket No. 0118 C029246; State v. Kyle, Northfield Municipal Court, Docket No. 0118 C029915; State v. Lawlor, Northfield Municipal Court, Docket No. 0118 C029993; State v. Hudock, Northfield Municipal Court, Docket No. 0118 C030614; State v. D. Thomas, Northfield Municipal Court, Docket No. 0118 C030783; State v. Hagel, Pleasantville Municipal Court, Docket No. 0119 P019120; and State v. C. Thomas, Somers Point Municipal Court, Docket No. 0121 082664.

fines and surcharges by Respondent. See P-5 at ACJC231-232. On September 23, 2005, Judge Belasco ordered that all eleven defendants be refunded the fines and surcharges assessed by Respondent for their Baby DWI violations except for minimal costs. See P-6.

Count I of the Complaint charges that Respondent's foregoing conduct violated Canons 2A and 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. Canon 2A requires judges to conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary, while Canon 3A(1) requires that judges remain faithful to the law and maintain professional competence in it. Rule 2:15-8(a)(6) prohibits conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

During his appearance before the Committee, Respondent testified that it was "inconceivable" to him that the New Jersey Legislature intended there to be no fines associated with a violation of the Baby DWI statute, and that his review of the statute led him to conclude that he was allowed to assess penalties. Transcript of Formal Hearing ("Tr.") 14:3-23. He further testified that he did not believe that either the Belasco Memorandum or the Revised Order precluded his ability to assess fines for underage drinking and driving violations. Tr. 27:17-21; 35:3-22.

The Committee finds that at the time Respondent imposed the fines at issue, a genuine uncertainty existed regarding a municipal court judge's ability to assess fines under the Baby DWI statute and interpreting documents. The Committee appreciates that the language of the statute and legislative history could be construed as ambiguous. In addition, the Belasco Memorandum points out that other municipal court judges were interpreting the Baby DWI Statute in the same manner as Respondent, demonstrating that Respondent's statutory

interpretation was shared by other judges. See P-4. Finally, the Respondent indicated that he ceased imposing such fines once Judge Armstong's involvement in the issue commenced. Based upon all of the above, the Committee does not believe that discipline is appropriate with respect to Count I of the Complaint.

**B. As to Count II**

On June 24, 2005, Philip S. Carchman, J.A.D., Acting Administrative Director of the Courts, issued a memorandum to all municipal court judges (the "Carchman Memorandum"), which attached the following: (a) a copy of the Notice to the Bar on the Amendments to Guideline 4 of the *Guidelines for Operation of Plea Agreements in the Municipal Courts*; (b) a copy of the June 7, 2005 Order of the Supreme Court adopting the amended guideline; and (c) the amended guideline itself. See P-7. By virtue of Respondent's position as a municipal court judge in June 2005, he would have received a copy of the Carchman Memorandum. P-1 at ¶ 18.

As amended, Guideline 4 prohibits the dismissal by plea agreement of a charge of refusal to submit to a breathalyzer test (the "Refusal Charge") (see N.J.S.A. 39:4-50.4a) for first offenders. See P-7 at ACJC249. In his June 24, 2005 Memorandum, Judge Carchman advised all municipal court judges that the provisions of the amended Guideline 4 would become effective on July 1, 2005 "and should be applied to 'pipeline' cases . . . that is, to all pending cases whether or not the offense(s) occurred prior to the effective date." Id.

Despite the Carchman Memorandum, Respondent permitted the dismissal of Refusal Charge for first offenders in three cases in July 2005: (1) State v. Kinard, Somers Point Municipal Court, Summons No. 088284; (2) State v. Care, Somers Point Municipal Court, Summons No. 088294; and (3) State v. Larkin, Northfield Municipal Court, Summons Nos. 032127, 032128, 032129, 032130, 032131, and 032132. With regard to the Larkin matter, the

Respondent permitted the dismissal of the Refusal Charge over the specific objection of the prosecutor. P-1 at ¶ 22. In August 2005, Respondent independently reopened the Kinard, Care, and Larkin cases for the sole purpose of re-adjudicating the Refusal Charges. P-1 at ¶23.

Count II of the Complaint against Respondent charges that by permitting the dismissal of the Refusal Charge for first offenders whose cases were pending when the Carchman Memorandum and amended Guideline 4 were issued, Respondent violated Canons 2A and 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. During his hearing before the Committee, Respondent testified that he reopened the cases because he "reread Judge Carchman's memorandum and ... decided that I had not done [the sentencing] correctly. So I called them back in and I resentenced them." Tr. 47:17-20. Respondent further testified that his decisions to dismiss the Refusal Charge in the concerned cases were based upon what he thought was "the law" and not to defy Judge Carchman's memo. Tr. 45:20 to 46:4. Respondent's actions in reopening the cases necessitated the reappearance of the litigants in each case and their need to pay additional court costs, which Respondent refused to waive despite the objection of at least one of the party's counsel. P-1 at ¶ 24-25.

The Committee finds that Respondent's conduct in permitting the dismissal of the Refusal Charge in the Kinard, Care and Larkin matters violated the pertinent Canons and Rule 2:15-8(a)(6) of the New Jersey Court Rules. The Carchman Memorandum, issued to Respondent prior to the dismissal of the pertinent three cases, succinctly states that Guideline 4, as amended, "no longer permits the dismissal by plea agreement of a refusal to provide a breathalyzer charge ... for first offenders." P-7 at ACJC249. It further succinctly states that "the procedure established in amended Guideline 4 becomes effective on July 1, 2005 and should be applied to 'pipeline' cases..., that is, to all pending cases whether or not the offense(s) occurred prior to the

effective date." Id. In the face of such clarity, the Committee can conceive of no reasonable basis for the Respondent to conclude that it was appropriate for him to dismiss the Refusal Charges in the three pertinent matters. Respondent, like all judges, is charged with remaining faithful to the law and maintaining professional competence in it. See Canon 3A(1) of the Code of Judicial Conduct. The dismissal of the three Refusal Charges at issue demonstrates Respondent's failure in this regard. Further, the Committee believes that this failure necessarily failed to promote public confidence in the Judiciary in violation of Canon 2A and Rule 2:15-8(a)(6) of the New Jersey Court Rules.

Although the Committee credits Respondent's efforts in reinstituting the three matters for resentencing purposes, the Committee does not believe these actions can wholly excuse Respondent's disregard of binding authority and the inconvenience caused to the involved litigants. Under these circumstances, the Committee finds that public discipline is merited with respect to Count II of the Complaint.

**C. As to Count III**

On February 27, 2001, Respondent presided over State v. Plaud, Somers Point Municipal Court, Summons Nos. 74087 and 74089, in which the defendant was charged with careless driving, leaving the scene of an accident and failure to report an accident. Respondent admits that he "appears to have negotiated with the defendant for a dismissal of the charge of leaving the scene of the accident, an amendment of the charge for careless driving to a no-point violation to which the defendant agreed to plead guilty, and a guilty plea to the charge of failure to report an accident." P-1 at ¶27. Respondent further accepted the defendant's guilty plea without first ascertaining the defendant's factual basis for the plea. Id. at ¶ 28.

On April 6, 2004, Respondent presided over State v. McErlain, Egg Harbor City Municipal Court, Summons No. A033240, in which the defendant was charged with failure to yield to an emergency vehicle. When the defendant rejected the prosecutor's offer to downgrade the charge to a no-point ticket in exchange for a guilty plea, Respondent questioned the defendant regarding whether she was certain of her decision and asked the prosecutor to remind her of how many points she would face if convicted of the offense. P-1 at ¶30; P-34 at 2:15 to 3:2. The prosecutor eventually recommended the dismissal of the charge against Ms. McErlain in its entirety. P-1 at ¶31.

On July 22, 2004, Respondent presided over State v. Palmer, Longport Municipal Court, Summons No. 026686, in which the defendant was charged with allowing an unlicensed driver to operate his vehicle. In the Respondent's presence, the prosecutor offered the defendant a plea pursuant to which the prosecutor would agree to amend the charge to driving without a license, which does not carry the penalty of suspension of the defendant's driver's license. P-35 at 5:12-22. When the defendant expressed a reluctance to accept the prosecutor's offer, Respondent stated to the defendant: "I understand . . . You don't have to take it. I mean, you know, but, if you were my brother, I'd say you're lucky. You know, to run the risk of losing your license for six months, which is a suspension which comes with the 3-40." P-1 at ¶33. Following Respondent's remarks, defendant accepted the prosecutor's offer and pled guilty to the charge of driving without a license. Id. at ¶34. Respondent accepted defendant's guilty plea without first ascertaining from the defendant the factual basis for his plea. Id. at ¶35.

Count III of the Complaint against Respondent charges that by participating in plea negotiations while sitting as the judge in the case, negotiating and approving a plea agreement in the absence of the prosecutor, and accepting guilty pleas without first ascertaining the factual

basis for those pleas, Respondent violated Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct and Rule 2:15-8(a)(6). Canon 1 requires judges to maintain high standards of conduct. Canon 3A(4) requires judges to be impartial. See, supra, Section A for discussion of other pertinent Canons.

During the hearing before the Committee, Respondent testified in his defense that the defendants in all three cases would necessarily have spoken to the prosecutor first, without Respondent's involvement. Tr. 56:8-17. He further stated that he considers it his responsibility to inform defendants, who express hesitation about accepting a plea bargain, of the "collateral consequences" they may face upon conviction of the offense for which they have been charged. Tr. 60:21-14. According to Respondent, this responsibility is motivated by his desire to help those before him avoid "mak[ing] mistakes." Tr. 65:2-6. With respect to the allegation of accepting guilty pleas without first establishing the appropriate factual predicate, Respondent explained he thought he "could relax the court rule," and relied upon Rule 1:1-2 in support of his assertion. Tr. 77:4-8; 79:20-25. See Rule 1:1-2 ("[A]ny rule [of Court] may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice.").

The Committee finds that, with respect to State v. Plaud and State v. Palmer, Respondent violated the pertinent Canons and Rule of Court by participating in and negotiating plea agreements. It is well-settled that the role of negotiating plea agreements is for the prosecutor and not the judge. State of New Jersey v. Williams, 277 N.J. Super. 40, 47 (App. Div. 1994) ("What the trial court clearly may not do, however, is participate in plea negotiations."). The Supreme Court recognized the unique role of the municipal court prosecutor in plea negotiations in State of New Jersey v. Hessen, 145 N.J. 441, 452 (1996): "The regulation governing the

practice of plea bargaining in municipal courts recognizes the fundamental role of the prosecution in the enforcement of penal laws and accommodates prosecutorial discretion." In this regard, Guideline 3 to Rule 7:6-2(d) is also instructive:

> Nothing in these Guidelines should be construed to affect in any way the prosecutor's discretion in any case to move unilaterally for an amendment to the original charge or a dismissal of the charges pending against a defendant if the prosecutor determines and personally represents on the record the reasons in support of the motion. The prosecutor should appear in person to set forth any proposed plea agreement on the record....

Pressler, New Jersey Court Rules, Guideline 3 of *Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey* (2007).

On the other hand, it is the unique role of the courts, including municipal courts, to ensure that "exacting requirements" have been met before a guilty plea may be accepted:

> A defendant may plead not guilty or guilty, but the court may, in its discretion, refuse to accept a guilty plea. The court shall not, however, accept a guilty plea without first addressing the defendant personally and determining by inquiry of the defendant and, in the court's discretion, of others, that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea and that there is a factual basis for the plea.

Rule 7:6-2(a)(1). See also State of New Jersey v. Gale, 226 N.J. Super. 699, 704 (App. Div. 1988) ("Guilty pleas may be accepted by our courts, including our municipal courts, only after certain exacting requirements have been met."). The Comment to Rule 7:6-2 discusses "the necessity of scrupulous compliance with Rule 7:6-2(a)...." Pressler, New Jersey Court Rules, Comment to Rule 7:6-2 (2007).

By assisting in the negotiation of the pleas entered into by the defendants in both Plaud and Palmer, Respondent violated the pertinent Canons of Judicial Conduct as well as Rule 7:6-2(a)(1) and Rule 2:15-8(a)(6) of the New Jersey Court Rules. Respondent himself stipulated,

with regard to Plaud, that he "appear[ed] to have negotiated with the defendant for a dismissal of the charge of leaving the scene of the accident, an amendment of the charge for careless driving to a no-point violation to which the defendant agreed to plead guilty, and a guilty plea to the charge of failure to report an accident." P-1 at ¶27. Further, the record from both matters reveals that Respondent's conduct crossed the line into the realm of participating in plea bargaining, a function that is solely for the prosecutor. Although the Committee does not question Respondent's assertion that his motivation in involving himself in the plea discussions of both Plaud and Palmer was based upon his desire to help the defendants appreciate their situations, the Court Rules simply do not allow him the latitude to do so.

The Committee further finds that Respondent violated Rule 7:6-2(a)(1) in his handling of Plaud and Palmer by failing to ascertain a factual basis for the guilty pleas in those cases. Rule 7:6-2(a)(1) clearly provides that before a guilty plea can be accepted by a municipal court judge, the judge must personally address the defendant to ensure that the plea is made voluntarily, is understood, and a factual basis exists for the plea. Respondent stipulated that he failed to meet these requirements in either case and testified that he thought it was appropriate in those cases to "relax" the Rule in question. The Committee rejects Respondent's contention. Rather than justifying Respondent's interpretation, the Rule itself and interpreting case law speak of the need for "scrupulous compliance" with the Rule and the need for judges to fulfill the Rule's "exacting" requirements. The Committee finds that the requirements of Rule 7:6-2 simply could not be "relaxed" under the circumstances confronted by Respondent.

By violating Rule 7:6-2(a)(1) of the New Jersey Court Rules, the Committee finds that Respondent further violated Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct and engaged in conduct prejudicial to the administration of justice in violation of Rule 2:15-8(a)(6).

The Committee recommends the imposition of public discipline with respect to Count III of the Complaint.

The Committee does not find that the charge that Respondent engaged in judicial misconduct with respect to State v. McErlain was proven by clear and convincing evidence and does not rely upon that matter in reaching its recommendation.

**D. As to Count IV**

On February 10, 2005, Respondent presided over the trial of State v. Wood, venued in Linwood Municipal Court, in which the defendant was charged with smearing eggs on a car owned by the boyfriend of his ex-girlfriend and bending that car's wipers. Defendant, appearing without counsel, entered a plea of not guilty. P-1 at ¶38. The transcript from defendant's trial reveals that although Respondent verified that the defendant was waiving his right to counsel, Respondent failed to advise the defendant of his right to be represented by counsel. Id. at ¶45. Respondent further failed to advise the defendant that he had the right to remain silent, that if he elected not to testify the court would draw no adverse inferences against him, and that if he decided to testify, he would be subject to cross-examination by the prosecutor. Id.

When the defendant took the stand to testify in his own defense, Respondent asked the defendant if he knew the meaning of the word "perjury." When defendant respondent in the affirmative, Respondent stated: "Okay. Before you testify if I think you're lying under oath, I'm telling you, I'll have you indicted. Do you understand me?" Id. at ¶39. At no time during the trial did Respondent give the same warning regarding perjury to the prosecution's witnesses. Id. at ¶40.

At the conclusion of the trial, Respondent found defendant guilty of smearing eggs on the car and bending the car's wipers. After rendering his verdict, Respondent stated to the defendant:

"But that's not the end of it, young man. I'm going to direct the Lieutenant to take . . . [the victims] . . . and . . . talk to them, because I think the crime, the indictable offense of stalking, has been done in this case. And I think that probably [the defendant] should be charged with the indictable offense of stalking. And the indictable offense of stalking will – means that your – you leave people alone." Id. at ¶42. Respondent further stated to the defendant: "You are not allowed to follow them around. You're not allowed to ride by their house on a constant basis. You're not allowed to egg their homes. You leave them alone. They have the same rights that you have to live in peace. And, unfortunately, it appears to me, Mr. Wood, that you haven't learned that and I don't know why." Id. at ¶43.

Defendant appealed Respondent's decision to the Superior Court of New Jersey, Atlantic County. On June 7, 2005, Judge Neustadter entered an order remanding the matter for a new trial before a different judge due to Respondent's "inappropriate remarks to defendant and the appearance of bias against defendant's case." P-1 at ¶44; see also P-37.

Count IV of the Complaint against Respondent contains two charges: (1) that Respondent's remarks to the defendant in State v. Wood, including his comments and allegations regarding perjury and stalking, demonstrated Respondent's bias against the defendant and constituted an abuse of his authority in violation of Canons 1, 2A, 3A(3) and 3A(4) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules; and (2) that Respondent violated Rule 7:3-2 and Rule 2:15-8(a)(6) of the New Jersey Court Rules and Canon 3A(1) of the Code of Judicial Conduct by failing to advise defendant, a *pro se* litigant, of his rights to counsel and to remain silent. Canon 3A(3) requires judges to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and other with whom the judge deals in an official capacity. Rule 7:3-2 expresses the entitlement of every defendant to be informed of

certain rights, including the right to remain silent and the right to be represented by counsel, at their first appearance before a judge. See, supra, Sections A and C for discussion of other pertinent Canons.

During Respondent's hearing before the Committee, Respondent agreed that he committed "serious procedural errors" by failing to advise the defendant in Wood of his right to counsel and to inquire about the defendant's comprehension of the rights he was waiving. Tr. 88:8-20. See also P-1 at ¶45. Additionally, Respondent testified that he "probably shouldn't have said" certain of his comments, including his threat to have the defendant indicted if he thought the defendant was not testifying truthfully under oath. Tr. 89:7 to 90:3.

The Committee finds that Respondent's remarks regarding defendant's understanding of the term "perjury" and his threats to have the defendant indicted for lying under oath and stalking were inappropriate and violated Canons 1, 2A, 3A(3) and 3A(4) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. As Judge Neustadter indicated in his order for a new trial in the case, such comments communicated a bias against the defendant, whether or not that bias actually existed, and therefore denied defendant his constitutional right to a fair trial. In addition, Respondent's comments were unnecessarily confrontational, in violation of Canon 3A(3), and were made without any foundation or support. Respondent himself admitted to the inappropriateness of his comments. The Committee finds Respondent's overall attitude and demeanor towards the defendant, both disrespectful and inequitable, to constitute conduct that necessarily undermines the public's confidence in the integrity and independence of the Judiciary.

The Committee likewise finds that Respondent's admitted failure to apprise defendant of his right to counsel and his right to remain silent was a clear violation of Rule 7:3-2 and,

consequently, Rule 2:15-8(a)(6) of the New Jersey Court Rules and Canon 3A(1) of the Code of Judicial Conduct. The Committee therefore recommends the imposition of public discipline with respect to both charges of Count IV of the Complaint.

**E. As to Count V**

Respondent begins each of his court sessions by showing a videotape of himself to those present in the courtroom, which describes the legal rights of litigants, the procedures of the municipal court, and, until June 2005, Respondent's "$100 Policy." P-1 at ¶47. Respondent's self-described "$100 Policy" provided as follows:

> If in fact you are fined today, and the fine is less than $100, that fine is due and payable in full. If the fine in cost is more than $100, at least a [sic] $100 is due today. What does this mean to you? If you think you may have to pay a fine today, and you came to court without any money, I would suggest you go out and use the phone and call your mother, or your best friend, or whomever and tell him to get down here with some money because the fines are in fact due and payable in full today.

Id. at ¶48. In or around June 2005, at Judge Belasco's urging, Judge Broome revoked his $100 Policy and removed all references to it from his videotaped remarks. Id. at ¶49.

Count V of the Complaint against Respondent asserts that as Respondent's $100 Policy did not provide affected defendants with the opportunity to prove their indigency status and thereby qualify for a payment plan, his adherence to that policy violated the rule of law in State v. DeBonis, 58 N.J. 182 (1971), Canon 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. The New Jersey Supreme Court held in State v. DeBonis that "[i]f a defendant is unable to pay a fine at once, he shall, upon a showing of that inability, be afforded an opportunity to pay the fine in reasonable installments...." Id. at 199. Respondent took the position during his hearing before the Committee that it was within his authority to require his $100 Policy. In making that argument, Respondent relied on the policies of at least

two other municipal judges who similarly require a minimal payment in their courtrooms. Tr. 93:17 to 94:1.

The Committee finds that Respondent's videotaped opening remarks regarding his $100 Policy disregarded the DeBonis rule of law, which clearly mandates that indigent defendants be provided the opportunity to pay fines in installment payments. Respondent's videotaped recitation of his "$100 Policy" failed to provide for any exception or qualification whatsoever for a defendant's inability to pay. Respondent's policy is, in fact, dissimilar to the minimal payment policies of the other two municipal judges as those judges acknowledged an exception for indigent defendants. See R-2; R-4. The Committee finds that by violating the rule of law in State v. De Bonis, Respondent likewise violated Canon 3(A)(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. The Committee recommends the imposition of public discipline with respect to Count V.

**F. As to Count VI**

On July 13, 2005, a civil complaint was filed against Respondent in his individual capacity. See Loretta and George Brewster v. Henry G. Broome, Jr. Esquire, et al., Superior Court of New Jersey, Atlantic County (the "Brewster Complaint). Respondent was personally served with the Brewster Complaint on July 27, 2005.

Pursuant to Administrative Directive #4-81 issued by the Director of the Administrative Office of the Courts, "[p]ersonal involvement by any judge in any type of litigation should be the subject of an official report.... A report should be filed not only in matters where the judge is personally named but also in those in which the judge is a party in interest." A reminder of the requirements of Directive #4-81 was issued to all judges on September 26, 1988 by then Acting Administrative Director of the Courts, Robert D. Lipscher. See P-11.

Count VI of the Complaint against Respondent charges that by failing to report his involvement in the Brewster matter as required by Directive #4-81, Respondent violated Canon 3B(1) of the Code of Judicial Conduct. Canon 3B(1) requires judges to diligently discharge their administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration. At the hearing, Respondent's counsel argued that the reporting required by the Administrative Directive in question "is not an administrative responsibility of the office of the judge, especially when it doesn't involve his judicial duties." Tr. 96:2-5.

The Committee finds that Respondent's failure to report his involvement with litigation in conformance with Directive #4-81 constitutes a violation of Canon 3B(1) of the Code of Judicial Conduct. Canon 3B(1) speaks broadly of the necessity for judges to "discharge the administrative responsibilities of the office." The Committee believes it self-evident that the requirements imposed upon judges pursuant to "Administrative Directives" of the Administrative Office of the Courts qualify as an "administrative" responsibility of the judicial office. Moreover, Administrative Directives generally function in the New Jersey Judiciary as expressions of the Supreme Court that are binding and controlling upon all judges. Respondent's failure to abide by an Administrative Directive, whose meaning was plain, violated Canon 3B(1).

The Committee recommends the imposition of public discipline with respect to Count VI.

## II. RECOMMENDATION

In light of the above findings and determinations, the Committee recommends that Respondent be publicly reprimanded. The Committee finds that Respondent's actions, as alleged in Count II, III, IV, V and VI of the Complaint, constitute improper conduct and violated the pertinent Canons of Judicial Conduct and Rules of Court. In recommending a public reprimand,

the Committee acknowledges and recognizes Respondent's thirty-one years of service to the State of New Jersey as a municipal court judge.

Respectfully submitted,

**Advisory Committee on Judicial Conduct**

By: Alan B. Handler

Alan B. Handler, Chair

Dated: September 25, 2007