SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT
DOCKET NO: ACJC 2005-264

IN THE MATTER OF

HENRY G. BROOME, JR.
JUDGE OF THE MUNICIPAL COURT

STIPULATIONS

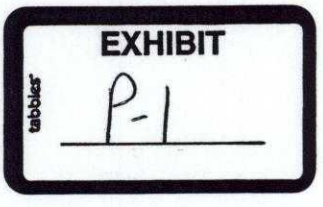
The undersigned Disciplinary Counsel ("Presenter") to the Advisory Committee on Judicial Conduct (the "Committee") and the Honorable Henry G. Broome, Jr., J.M.C. ("Respondent"), through counsel, hereby enter into these Stipulations:

1. The parties have no objection to the admittance into evidence of their respective exhibits at the Formal Hearing scheduled in this matter for July 10, 2007. The aforementioned exhibits consist of the following: Presenter's exhibits P-1 through P-38, excluding P-8 and P-16; Respondent's exhibits R-1 through R-3.

2. The initial impetus for the Committee's investigation into Respondent's conduct stemmed from various newspaper articles published in widely circulated newspapers in the Atlantic/Cape May Vicinage, copies of which the Committee received from Howard Berchtold, Jr., Trial Court Administrator in the Atlantic/Cape May Vicinage (i.e. Vicinage One).

COUNT I

3. On November 15, 2002, Louis J. Belasco, Jr., P.J.M.C. in Vicinage I and Howard H. Berchtold, Jr., then A.T.C.A./Municipal Division Manager in Vicinage I, issued a memorandum to all Vicinage I municipal judges, court directors, and administrators ("Belasco Memorandum"), regarding, in part, N.J.S.A. 39:4-50.14 (the "Baby DWI Statute"). See P-2.



4. By virtue of Respondent's position as a municipal court judge in Vicinage I in November 2002, he would have received a copy of the Belasco Memorandum.

5. With respect to the Baby DWI Statute, the Belasco Memorandum states the following:

> 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. [The Baby DWI Statue] is found under Article 9 of the Motor Vehicle Code. The general penalty for the Article, if it did apply, is $50.00. 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 pp.3-4

6. On February 27, 2004, Richard J. Williams, J.A.D., Acting Administrative Director of the Courts, issued a memorandum to all municipal court judges, directors, and administrators (the "Williams Memorandum"), disseminating a revised form of Order and Certification for Intoxicated Driving and Related Offenses (the "Revised Order"). See P-3.

7. By virtue of Respondent's position as a municipal court judge in February 2004, he would have received a copy of the Williams Memorandum.

8. The Williams Memorandum directs all municipal court judges to use the Revised Order whenever they impose penalties for driving or boating under the influence of drugs or alcohol. See P-3.

9. The Revised Order was adopted to reflect the legislative changes to the penalties associated with driving under the influence of drugs or alcohol and reflects all of the current penalties that may be assessed in those circumstances. Id.

10. Included in the Revised Order are the permissible penalties under the Baby DWI Statute, as summarized by the Conference of Presiding Municipal Court Judges, for those drivers who are under the legal age to purchase alcoholic beverages and are caught driving with a blood alcohol concentration of at least 0.01% but less than 0.08%. Id.

11. The Revised Order provides, in part, that no fines may be assessed against drivers found guilty solely under the Baby DWI Statute. Id.

12. Respondent, in eleven cases between February 2004 and May 2005, imposed fines and surcharges against drivers found guilty of violating the Baby DWI Statute, ranging from $250.00 to $780.00.[1]

13. On June 28, 2005, Judge Belasco notified Judge Valerie H. Armstrong, A.J.S.C., of Respondent's imposition of fines and surcharges against drivers found guilty of violating the Baby DWI Statute. See P-4.

14. On July 22, 2005, Judge Armstrong issued an Order to reopen the eleven cases referenced above for the purpose of re-sentencing those defendants whom Respondent had fined and assessed surcharges under the Baby DWI Statute. By letter dated July 26, 2005, Judge Armstrong provided Respondent with a copy of the Order. See P-5.

15. Judge Armstrong assigned Judge Belasco as the trial judge for the eleven reopened matters. Id.

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[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, Summons Nos. C29914, C29915, C29916, C29917, C29918, C29919; 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. See P-18 to P-28.

16. Following a hearing, Judge Belasco issued an Order which required the court to refund to all eleven defendants the fines and surcharges previously assessed by Respondent, with the exception of a $6 fine and court costs. See P-6.

COUNT II

17. 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") attaching 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.

18. By virtue of Respondent's position as a municipal court judge in June 2005, he would have received a copy of the Carchman Memorandum.

19. As amended, Guideline 4 prohibits the dismissal by plea agreement of a charge of a refusal to submit to a breathalyzer test (the "Refusal Charge") (N.J.S.A. 39:4-50.4a) for first offenders. See P-7.

20. The Carchman Memorandum advised the municipal judges that the provisions in the amended Guideline 4 would become effective on July 1, 2005 "and should be applied to 'pipeline' cases (see State v. Cummings, 184 N.J. 84, 875 A.2d 906 (2005)) that is, to all pending cases whether or not the offense(s) occurred prior to the effective date." Id.

21. In mid July 2005, Respondent permitted the dismissal of a Refusal Charge for first offenders in three cases – State v. Kinard, Somers Point Municipal Court, Summons No. 088284; State v. Care, Somers Point Municipal Court, Summons No. 088294; and State v.

Larkin, Northfield Municipal Court, Summons Nos. 032127, 032128, 032129, 032130, 032131, and 032132. See P-29 to P-32.

22. At the initial hearing in the Larkin matter, Respondent permitted the dismissal of the Refusal Charge over the objection of the prosecutor who specifically referenced the amended Guideline 4. See P-31.

23. In July 2005 and August 2005, Respondent reopened the Larkin, Kinard, and Care matters, necessitating the reappearance of the litigants in each case, for the sole purpose of adjudicating the previously dismissed Refusal Charge in accordance with amended Guideline 4. See P-29 to P-30 and P-32.

24. At the rehearing in the Care matter, counsel for Mr. Care objected to the assessment of court costs on the grounds that the Refusal Charge could have been dealt with at the initial hearing. See P-30 at T5-3-17.

25. Respondent, in refusing to waive the court costs, replied to counsel: "But what I think and what you think and what we were taught in law school . . . seem to be two different things with these people." Id. at T5-13-17.

COUNT III

26. On February 27, 2001, Respondent presided over State v. Plaud, Somers Point Municipal Court, Summons Nos. 74087, 74089, in which defendant Plaud was charged with careless driving, leaving the scene of an accident and failure to report an accident. See P-33.

27. Respondent 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. Id. at T2-12 to T4-3.

28. Respondent, thereafter, accepted the defendant's guilty plea without first ascertaining from the defendant the factual basis for the plea. Id.

29. On April 6, 2004, Respondent presided over State v. McErlain, Egg Harbor City Municipal Court, Summons No. A033240, in which defendant McErlain was charged with failure to yield to an emergency vehicle. See P-34.

30. When the defendant rejected the prosecutor's offer to downgrade the charge to a no-point ticket in exchange for a guilty plea, Respondent reminded the defendant that if she were convicted on the present charge she would receive two points on her license. Respondent further pressed defendant twice about her decision to reject the prosecutor's offer of a "no-point ticket." Id. at T2-15 to T3-3.

31. The prosecutor (referenced in the transcript as "unidentified speaker") after speaking further with Ms. McErlain, dismissed the charge against her. Id. at T4-8-13.

32. On July 22, 2004, Respondent presided over State v. Palmer, Longport Municipal Court, Summons No. 026686, in which defendant Palmer was charged with allowing an unlicensed driver to operate his vehicle. See P-35.

33. The prosecutor offered to amend the charge to driving without a license. 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." Id. at T9-6-10.

34. Following Respondent's remarks, defendant, who was not driving the car at the time in question but was a licensed driver, accepted the prosecutor's offer and pled guilty to the charge of driving without a license. Id. at T9-17-18.[2]

35. Respondent accepted defendant's guilty plea without first ascertaining from the defendant the factual basis for his plea. Id. T9-19-25.

COUNT IV

36. On February 10, 2005, Respondent presided over the trial of State v. Wood in the Linwood Municipal Court. See P-36.

37. Defendant Wood had been charged with smearing eggs on a car owned by Steven Jump, the boyfriend of defendant's ex-girlfriend Amanda Bracken, and bending that car's wipers. Id. at T3-8-10.

38. Defendant Wood, appearing without counsel, entered a plea of not guilty. Id. at T3-11.

39. When defendant Wood took the stand to testify in his own defense, Respondent asked him if he knew the meaning of the word perjury. When defendant indicated that he understood the meaning of the word perjury, 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 T16-25 to T17-5.

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[2] N.J.S.A. 39:3-10. This traffic violation requires personal operation of a motor vehicle and carries sanctions that include a fine of as much as $500 or up to 60-days in jail. The proper charge should have been N.J.S.A. 39:3-37.1(a) which provides that "a person who has been issued a driver's license shall not lend that driver's license for use by another person." Subsection (b) provides further that "a person who owns, leases or otherwise has control or custody of a motor vehicle registered under the provisions of this title shall not allow that motor vehicle to be operated by an unlicensed driver." Finally, subsection (c) provides that the penalty for a violation of this section shall be a fine of not less than $200 or more than $500, imprisonment for not more than 15 days, or both.

40. At no time during the trial did Respondent give the same warning regarding perjury to the prosecution's witnesses. See P-36.

41. At the conclusion of the trial, Respondent found defendant guilty of the charges of smearing eggs on the car owned by Steven Jump and bending that car's wipers. Id. at T32-18 to T33-20.

42. After rendering his decision, Respondent stated to the defendant: "But that's not the end of it, young man. I'm going to direct the Lieutenant to take . . . [Mr. Jump and Ms. Bracken] . . . 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 Mr. Wood 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 T33-21 to T34-3.

43. 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 T34-5-11.

44. On appeal to the Superior Court, Judge Neustadter, remanded the matter for a new trial before a different judge, finding a new trial necessary because of Respondent's "inappropriate remarks to [the] defendant and the appearance of bias against [the] defendant . . ." See P-37.

45. Although Respondent verified that the defendant was waiving his right to be represented by an attorney (P-36 at T3-15-16), at no time during the aforementioned trial did Respondent advise the defendant that he had a right to be represented by counsel, or that counsel

would be appointed to represent him if he could not afford to retain an attorney. At the close of the State's proofs, Respondent further failed to advise the defendant that he had a 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.[3] See P-36.

46. Following remand, the Wood matter was held in abeyance for 120 days at which point the matter was to be dismissed provided that during the 120-day period Mr. Wood remained law abiding, refrained from having any contact with the victims and paid restitution in the amount of $1,200. See R-1.

COUNT V

47. Respondent begins each of his court sessions with a videotape of himself describing for the litigants in the courtroom their legal rights, the procedures of the municipal court, and until June of 2005, Respondent's "$100 Policy."

48. Respondent's "$100 Policy" is 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

[3] See State v. Slattery, 239 N.J. Super. 534, 547, 571 A.2d 1314 (1990)(requiring searching and painstaking inquiry, including legal elements of crimes and possible lesser-included offenses); State v. Lach, 213 N.J. Super. 466, 469-471, 517 A.2d 882 (1986)(holding court must explain range of allowable punishments, possible defenses and circumstances in mitigation, and dangers and disadvantages inherent in defending oneself); State v. Abbondanzo, 201 N.J. Super. 181, 185, 492 A.2d 1077 (1985)(requiring court to advise *pro se* defendant of incarceration exposure before determining there has been effective waiver of counsel).

money because the fines are in fact due and payable in full today. See P-38.

49. In or around June of 2005, at the urging of Judge Belasco, Respondent revoked his "$100 Policy" and removed all references to it from his videotaped remarks.

50. At least two other municipal court judges provide similar instructions in their opening remarks. See R-2 at T6-20 to T7-11, R-3 at T9-13-21.[4]

COUNT VI

51. On July 13, 2005, a civil complaint was filed against Respondent in his individual capacity. The case is caption Loretta and George Brewster v. Henry G. Broome, Jr. Esquire, et al., Superior Court of New Jersey, Atlantic County (the "Brewster Complaint). See P-13.

52. Respondent was personally served with the Brewster Complaint on July 27, 2005. Id.

53. Pursuant to Administrative Directive #4-81, "[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." See P-10.

54. A reminder of the requirements of Directive #4-81 was issued to all judges on September 26, 1988, by the Acting Administrative Director of the Courts Robert D. Lipscher. See P-11.

55. Respondent did not report his involvement in the Brewster matter as he was required to do by Administrative Directive #4-81. See P-12.

[4] The Honorable Paul Catanese, P.J.M.C., and the Honorable Bonnie Goldman, P.J.M.C. and Chair of the Conference of Presiding Municipal Court Judges.

CANDACE MOODY, ESQ.
Advisory Committee on Judicial Conduct

DATED: July 2, 2007

ROBERT RAMSEY, ESQ.
Attorney for Respondent, Henry G. Broome, Jr.

DATED: July 2, 2007