

FILED

OCT 07 2010

A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2010-054

IN THE MATTER OF

MICHAEL A. DIAMOND,
JUDGE OF THE MUNICIPAL COURT

FORMAL COMPLAINT

Candace Moody, Disciplinary Counsel, Advisory Committee on Judicial Conduct
("Complainant"), complaining of Municipal Court Judge Michael A. Diamond ("Respondent"),
says:

1. Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1982.
2. At all times relevant to this matter, Respondent served as a part-time judge in the Winslow Township Municipal Court, a position he continues to hold. Respondent also serves as a part-time judge in the Municipal Courts of Chesilhurst, the Borough of Hi-Nella, and Voorhees Township.
3. On August 19, 2009, Respondent presided over the matter of State v. Foxworth, Summons/Complaint Nos. C-43416, C-43417, in the Winslow Township Municipal Court (the "Foxworth Matter").
4. Prior to appearing before Respondent that day, defense counsel in the Foxworth Matter met with the municipal prosecutor to discuss the case.
5. Following the conference between the municipal prosecutor and defense counsel, Respondent engaged in an *ex parte* discussion with the municipal prosecutor about the Foxworth

Matter. During their discussion, Respondent expressed his opinion about the efficacy of the defendant's case, advised the municipal prosecutor on the pertinent issues regarding the admission of certain evidence, and referred to himself and the municipal prosecutor as "we" when discussing the proofs necessary to prosecute the case.

6. The *ex parte* conversation between Respondent and the municipal prosecutor was conducted in the courtroom, at sidebar, and was recorded.

7. Defense counsel in the Foxworth Matter did not consent to the *ex parte* conversation and was unaware it had occurred until informed about it subsequently by the municipal prosecutor.

8. After learning of the *ex parte* conversation, defense counsel immediately moved for Respondent's recusal, which Respondent denied. In denying the motion, Respondent assured defense counsel that the *ex parte* conversation did not concern any substantive issues in the case. Respondent invited defense counsel to listen to the recording of the *ex parte* conversation and indicated that he would entertain another motion for recusal if, after listening to the tape, defense counsel believed that his client was prejudiced by the *ex parte* conversation.

9. On October 2, 2009, defense counsel again moved for Respondent's recusal, which Respondent granted.

10. By engaging in an *ex parte* conversation with the municipal prosecutor about the Foxworth Matter in which he offered his opinion about the defendant's case, provided legal guidance to the municipal prosecutor, and referred collectively to himself and the municipal prosecutor as "we" when discussing the prosecution of the case, Respondent violated Canons 1, 2A, and 3A(6) of the Code of Judicial Conduct.

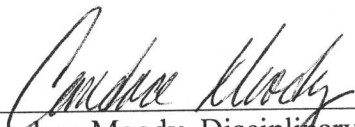
WHEREFORE, Complainant charges that Respondent, Municipal Court Judge Michael A. Diamond, has violated the following Canons of the Code of Judicial Conduct:

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; and

Canon 3A(6), which prohibits judges from either initiating or considering *ex parte* or other communications concerning a pending or impending proceeding.

DATED: October 7, 2010


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