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May 11, 2005

Via Lawyers Service

The Supreme Court of New Jersey
Advisory Committee on Judicial Conduct
Attn: Patrick J. Monahan, Jr., Esq.
P.O. Box 037
Trenton, New Jersey 08625-0037

RE: In the Matter of David A. Saltman, J.M.C.
ACJC 2004-022, 2004-098, 2004-268

Dear Mr. Monahan:

Please accept this letter memorandum on behalf of David Saltman, Esq. in the above matter.

Mr. Saltman acknowledges that is conduct was inappropriate and unacceptable; he will not, in this letter, seek to justify it.

However, there is some additional information of which the Committee should be aware in assessing the propriety of any penalty that might be imposed. Accordingly, this letter will discuss Mr. Saltman's conduct, solely as it relates to the propriety and magnitude of any penalty. Before turning to a discussion of these issues, I wish to inform the Committee that Mr. Saltman retired as a Municipal Court Judge in October 2004. That month, he relocated to Florida, and no longer has a residence in this State. As a result, I would hope that he might be excused from appearing before the Committee at its scheduled meeting on May 25.

A. The Purpose of Judicial Discipline

For over thirty years, the Supreme Court has recognized that

> The single overriding rationale behind our system of judicial discipline is the preservation of public confidence in the integrity of the independence of the judiciary. As we have noted before, "This Court cannot allow the integrity of the judicial process to be compromised in any way be a member of either the Bench or the Bar.
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> * * *
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> Consistent with those institutional concerns, the determination of sanctions in judicial-discipline cases is not so much to punish the offending judge as to "restore and maintain the dignity and honor of the position and to protect the public from future excesses." (Citation omitted).

Matter of Seaman, 137 N.J. 67, 97 (1993). To this end, disciplinary power is reserved for matters involving moral turpitude and a lack of integrity and character. Id.

The most extreme of the disciplinary measures, removal requires misconduct flagrant and severe. That sanction is imposed rarely." In re Williams, 169 N.J. 264, 276 (2001). See e.g. In re Coruzzi, 95 N.J. 557 (1984) (Judge removed for accepting bribe) and In re Imbriani, 139 N.J. 262 (1995) (Judge removed for theft). Where the alleged misconduct is less offensive, the Supreme Court has endorsed suspension, In re Williams, supra. 169 N.J. 264 (assaultive behavior and providing misleading information to police warrants three months suspension); Matter of Seaman, supra 137 N.J. 67 (60 day suspension for sexual harassment) and Matter of Connor, 124 N.J. 18 (1994) (censure for driving under the influence of alcohol, leaving the scene of an accident and careless driving).

Most of the charges against Mr. Saltman involve intemperate behavior. Research has revealed three cases involving similar charges. In each, the appropriate discipline was censure or reprimand. See e.g. In re Albano, 75 N.J. 509 (1978); In re Horan 85 N.J. 535 (1981) and Matter of Sadofski, 98 N.J. 434 (1985).

In In re Albano, supra., Judge Albano was charged with

> (a) intemperate conduct during judicial proceedings; (b) repeated misapplication of law; (c) bias against attorneys from Essex-Newark Legal Services Corporation; (d) criticism of tenant oriented laws [and an improper ex parte communication].

75 N.J. at 511. Characterizing the respondent's conduct, the Court wrote:

> Others, however, clearly manifest a lack of judicial demeanor, patience and understanding and, in some instances, an attempt at sarcasm and humor that does not belong in a courtroom

Id at 511 to 512. Although the precise number of incidents is not set forth in the opinion, it is clear there were several and the one described reflected misconduct well beyond anything charged here. Moreover, this was the second appearance of Judge Albano on a disciplinary charge. Id. at 515. Nonetheless, the Court censured the respondent.

Three years later, the Supreme Court considered another case involving intemperate behavior. In Re Horan, 85 N.J. 535 (1981). There, the respondent made what the Court described as "insulting and injudicious remarks" about the property of one of the parties. The respondent failed to conduct a hearing before him in a

"dignified, courteous, patient and impartial manner." Id. at 537. The Court determined that a reprimand was the appropriate discipline.

Finally, In Matter of Sadofski, supra, a Superior Court Judge, Joseph E. Sadofksi, was reprimanded for conduct far more offensive than that charged here. In the course of a hearing, Judge Sadofski responded to a reference about another case, venued in New York, involving the parties before him, and said "Don't start the dragging in okay?" The New York case reflected, the Judge stated, a "real horsing around," Among other things, the Judge used phrases such as "that's for baloney,"" he [didn't] give a damn," and similar words. At one point, the Judge threatened to send a litigant to the Middlesex County Workhouse. Referring to a litigant, the Judge said "I don't know what your jollies are, grinning like an idiot." Id. at 437. Addressing another defendant, the respondent complained "Seventeen years old, and you're behaving like a raving eleven year old asshole." Id. at 438. Continuing, he said "That's crap son," and "it's nothing but garbage."

This Committee found that the respondent "engaged in a stream of impertinent, uncouth and vulgar language which demeaned the judicial process." Id. at 439. The Supreme Court ordered that the Judge be reprimanded.

In two instances, a Judge who had used inappropriate language, was removed. However, that allegation, in each case, was one of several more extensive charges. See In re Yengo, 72 N.J. 425

(1977) (intemperate language; advising litigant not to hire attorney; failure to advise of right to an attorney; disrespect for the law and precedents of the Court; improper failure to recuse) and Matter of Yaccarino, 101 N.J. 342 (1985) (improper use of judicial position; failure to disclose interest in alcoholic beverage business, engaging in business venture prohibited by the Constitution).

B. The Facts in This Matter

Respondent acknowledges that the factual allegations against him are substantially true and accurate. In a few minor instances, however, he wishes to supplement the record with an explanation for his conduct, offered solely to address the propriety of any penalty that might be imposed.

1. Count I (Nadya and Ilya Ben v. Daniel Cessaro)

Respondent erred when he undertook to represent the Bens. Having done so, it was wrong to accept a plea from Mr. Cessaro.

For purposes of assessing the appropriate discipline, however, we would ask that the Committee consider the fact that Respondent was not aware of Mr. Cessaro until he had negotiated a plea to reduced charges, with the West Windsor Prosecutor for a standard fine. Mr. Cessaro was the defendant in one of 120 cases before the Court that day. At no time prior to Mr. Cessaro's appearance in Court had Respondent obtained a police report or any information identifying Mr. Cessaro as a potential defendant. In addition, the fine assessed was $150, which is the standard fine for this type of offense. Moreover, as a consequence of accepting the plea, Mr.

Cessaro did not disclose in Court any evidence that might have been relevant to the Ben matter.

2. Count II (Pattern of Disregard)

Respondent can offer no further explanation other than as set forth in his Answer

3. Count III (State v. Laura Warren)

In this matter, Mr. Stewart Warren, an attorney, appeared in response to a summons issued to his wife for parking in a designated snow removal area. Judge Saltman was correct in his assessment of the law. The summons did not involve parking in a no-parking zone or staying beyond the allowed time on a meter, which are appropriately the responsibility of the operator. The charge here involved allowing a car to remain in a snow removal area, which is the responsibility of the owner. Mr. Warren should not have appeared in the place of his wife. It would have been preferable for the Judge to adjourn the matter until Mrs. Warren could appear, and the treatment of Mr. Warren was wrong. However, the fine, $50., was considerably below the maximum allowed, $200,[1] and the fine was consistent with the amount in all other cases over which Mr. Saltman presided.

4. Count IV (State v. Kevin McCormick)

Here the defendant paid the minimum penalty. Nonetheless, the treatment of Mr. McCormick was wrong.

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[1]Mr. Warren testified at the hearing that the Clerk told him that the maximum fine was $32. That fine would be the maximum for a State parking violation, but $200, is the maximum for a violation of this nature.

5. Count V (Continuous Misconduct)

Respondent can offer no further explanation other than as set forth in his Answer

Summary

Given this background, several factors are relevant to the assessment of penalty. Mr. Saltman's retirement does not divest this Committee of jurisdiction. Matter of Yaccarino, 101 N.J. 342, 395 (1985). However, it does eliminate the possibility that there will be any further misconduct.

In addition, the purposes of judicial discipline will not be advanced by a harsh penalty here. All Judges are aware of their duty to behave in a civil fashion. While a harsh penalty might restrain a sitting Judge who has demonstrated recalcitrance, Judge Saltman's resignation and removal to Florida eliminates the possibility of any repetition of this type of behavior by him.

Second, while Respondent's behavior was inappropriate, no defendant was assessed an inordinate fine. At no time did the Respondent exhibit disrespect for the relevant legal principles, or undermine any legal rights of those appearing before him.

Finally, While Mr. Saltman's language was inappropriate, it was less offensive that in Matter of Sadofski, and is more comparable to that of In re Albano.

In the cases cited above, the Supreme Court generally imposed penalties ranging from reprimand to censure. Given Mr. Saltman's retirement and the leniency he demonstrated to those before him in

sentencing, we respectfully request that the discipline be no more severe than a censure.

Thank you for your consideration in this matter.

Respectfully submitted,

SZAFERMAN, LAKIND, BLUMSTEIN,
BLADER & LEHMANN

Arnold C. Lakind

ACL:adn
cc: Pat Monahan, Esq.
Mr. David Saltman