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A.C.J.C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NOS: ACJC 2013-160
ACJC 2013-170

IN THE MATTER OF

THOMAS J. SCATTERGOOD
FORMER JUDGE OF THE
MUNICIPAL COURT

FORMAL COMPLAINT

Tracie H. Gelbstein, Esq., Disciplinary Counsel, Advisory Committee on Judicial Conduct (“Complainant”), complaining of Municipal Court Judge Thomas J. Scattergood (“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 1971.
2. Respondent served intermittently as a judge of the municipal court in various jurisdictions for more than 23 years.
3. At all times relevant to these matters, Respondent served as a judge in the Municipal Court of the City of Burlington, a position he has not held since September 30, 2013 when he was not reappointed for an additional term.

COUNT I

4. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

5. Respondent knew Charles Smith because of Mr. Smith's residency in Burlington City.

6. Respondent knew John McGee because of Mr. McGee's position as the Headmaster of Doane Academy, a private school located in Burlington City.

7. Respondent knew James Fisher as the proprietor of a restaurant formerly located in Burlington City called the Café Gallery, which has since closed. During its years in operation, Respondent dined and attended functions at Café Gallery.

8. Respondent determined that his familiarity with Mr. Smith, Mr. McGee, and Mr. Fisher created conflicts of interest that necessitated his disqualification from any municipal court matter in which they were involved.

9. On June 26, 2012, Mr. Smith was charged with driving with a suspended license in violation of N.J.S.A. 39:3-40 ("the Smith matter").

10. On September 6, 2012, Mr. Smith appeared unrepresented before Respondent in Burlington City Municipal Court to answer for the motor vehicle violation. The municipal prosecutor was absent from the September 6, 2012 court session.

11. Respondent addressed the charges against Mr. Smith at which time Respondent and Mr. Smith engaged in the following discussion:

THE COURT: Okay. Now, I indicated that if this going to be a trial I can't hear this case because I know you from town here

...

THE COURT: Do you want me to disqualify myself from proceeding any further with this?

MR. C. SMITH: No, that's fine.

THE COURT: But if there was going to be no trial I can proceed and tell you what I normally do in these cases --

MR. C. SMITH: That's fine.

THE COURT: -- so you're not -- nobody feels I'm giving you any favoritism here. If you had been restored it's -- and this is done with the sanction of our prosecutors and he's not here today. We normally amend these 39:3-10. However, because it is -- it was revoked on the day, unless you had a good excuse like Motor Vehicles messed up, that's a good excuse, that's something you want to frame, but other than that it's a \$250 -- it's half of the 39:3-40 fine is normally what I do --

MR. C. SMITH: Okay.

THE COURT: -- 250 and court costs.

MR. C. SMITH: Okay.

THE COURT: All right. Do you want me -- are you pleading guilty to the amended charge then of 39:3-10?

MR. C. SMITH: I'll plead guilty to that.

THE COURT: Okay. You're waiving a right to a trial, right to remain silent --

MR. C. SMITH: Yes.

THE COURT: -- and a right to have me disqualified as well.

12. Respondent accepted Mr. Smith's guilty plea and imposed a fine for the violation.

13. On August 24, 2012, a citizen's complaint was filed against Mr. McGee in which he was accused of simple assault. Respondent disqualified himself from hearing the simple assault matter and marked the summons as "Judge Scattergood disqualified." He instructed his then Deputy Court Administrator to transfer the case to the Burlington Township Municipal Court for a probable cause determination, which she did.

14. Less than two weeks later on Thursday, September 6, 2012, Mr. McGee appeared at the Burlington City Municipal Court to answer for a second matter, State v. John McGee, Complaint No. SC 2012 017807, charging him with failing to secure a boat ramp permit before launching canoes at the Burlington City public boat ramp in violation of a local ordinance (“McGee matter”).

15. Prior to the start of the court session, Mr. McGee approached Respondent in the public hallway and asked Respondent about the charge. Although he declined to answer any inquiries, Respondent advised Mr. McGee that he could consult with the municipal prosecutor who, although not present that day, would be available at the following Monday evening court session. Mr. McGee subsequently left the courthouse prior to his case being called.

16. When Respondent learned that Mr. McGee had left the courthouse prior to his case being called, he instructed his court staff not to issue a Failure to Appear notice but to relist the matter to appear before him on a future court date when the prosecutor would be present.

17. On October 1, 2012, Mr. McGee made a second appearance before Respondent in the McGee matter. Prior to calling the case, the prosecutor and Mr. McGee reached a plea agreement, whereby Mr. McGee agreed to plead guilty on behalf of Doane Academy and the prosecutor would recommend a reduced fine.

18. Respondent accepted Mr. McGee’s guilty plea, amended the complaint to reflect Doane Academy as the proper defendant, and imposed the reduced fine against Doane Academy.

19. On December 6, 2012, Mr. Fisher appeared before Respondent in the Burlington City Municipal Court in the matter of State v. Fisher, SC 2012 019028, to answer for the charge of abandoning his unregistered motor vehicle in violation of a local ordinance (“the Fisher matter”).

20. During his appearance, Mr. Fisher explained that his vehicle was not abandoned and was properly registered on the date in question. Respondent initially considered disqualifying himself from the Fisher matter, but decided he did not need to unless and until the matter “involves anything where I have to make a decision.” Respondent rescheduled the matter for a case management conference with the prosecutor and complaining police officer to review the case.

21. On January 7, 2013, Mr. Fisher made a second appearance before Respondent regarding the Fisher matter at which time Respondent disclosed on the record a conflict with Mr. Fisher. Respondent and Mr. Fisher engaged in the following colloquy:

THE COURT: Mr. Fisher. All right, Mr. Fisher, you’re charged on the – go over to this microphone over her, please – on the 10th day of November of 2012 with abandoned unregistered vehicle. The prosecutor has represented to me after I revealed that I knew you and could not hear a trial on this case. He indicated that he’s reviewed your documents. It appears your car was broken into and your credentials were missing for that reason?

MR. FISHER: Yes

THE COURT: Okay. And the prosecutor recommended dismissal. Again, revealing that I could not hear this case and make a decision in your case because I know you; however, the prosecutor has recommended dismissal anyway, so I’ll follow his recommendation. Anything you want to say, sir?

MR. FISHER: Thank you, your honor.

THE COURT: Okay, thank you.

22. Respondent dismissed the Fisher matter and wrote on the back of the complaint form the following notation: “Conflict of Judge disclosed & waived by State & Def.” Next to “DISMISSED,” he wrote “recommendation of Prosecutor.”

23. Respondent had an actual conflict of interest with Mr. Smith, Mr. McGee and Mr. Fisher that required his immediate disqualification from any municipal court matter in which

they were involved. By his conduct of failing to disqualify himself from the Smith, McGee, and Fisher matters despite his conflicts of interest, Respondent violated Canon 3C(1) of the Code of Judicial Conduct and Rule 1:12-1(g) and impugned the public's confidence in the integrity and impartiality of the Judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct.

24. By his conduct of securing the consent of Mr. Smith and Mr. Fisher to preside over their matters despite the conflicts of interest, Respondent also violated Canon 3D of the Code of Judicial Conduct, which expressly prohibits judges from avoiding the disqualification by disclosing on the record the disqualifying interest and securing the consent of the parties.

COUNT II

25. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

26. Respondent knew Robin Snodgrass because of her position as Management Assistant in the Office of the Mayor of Burlington City and as one of three designees to serve as acting mayor in the Mayor's absence.

27. On November 15, 2011, Robin Snodgrass's daughter, Casey Snodgrass ("Miss Snodgrass"), was charged with violating N.J.S.A. 2C:35-10(a)(4) under Complaint S 2011 000658 for the possession of a controlled dangerous substance without a valid prescription, a disorderly persons offense ("Snodgrass matter").

28. On November 28, 2011, Respondent arraigned Miss Snodgrass for the disorderly persons offense, after which she met with the municipal prosecutor.

29. On December 1, 2011, Miss Snodgrass appeared unrepresented before Respondent in the Snodgrass matter, at which time she applied for a conditional discharge with

the consent of the prosecutor. Respondent granted the conditional discharge and imposed the mandatory fines and assessments against her.

30. One year later on December 6, 2012, Respondent received and reviewed the Notice to the Court issued by the Burlington County Probation Department dated November 20, 2012 reporting Miss Snodgrass's satisfactory completion of the program. Respondent checked her Computerized Criminal History and wrote on the bottom of that form to dismiss Miss Snodgrass's case based on her successful completion of the conditions attendant to her conditional discharge.

31. At the time Respondent presided over the Snodgrass matter, Respondent knew about a familial relationship between Miss Snodgrass and Robin Snodgrass with whom he had a conflict.

32. When the Snodgrass matter was first docketed in the Burlington City Municipal Court, court personnel alerted Respondent to a possible conflict of interest with Miss Snodgrass because of a familial relationship with Robin Snodgrass. Despite knowing of a familial relationship, Respondent presided over the Snodgrass matter believing, without further inquiry, that the relationship was remote and not immediate when in fact they shared a mother/daughter relationship.

33. By his conduct of presiding over the Snodgrass matter in which the defendant was the daughter of the Management Assistant to the Burlington City Mayor with whom Respondent had a conflict, Respondent created the appearance of a conflict of interest that required his disqualification. By failing to disqualify himself from that matter, Respondent violated Canon 3C(1) of the Code of Judicial Conduct and Rule 1:12-1(g) and impugned the public's confidence

in the integrity and impartiality of the Judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct.

COUNT III

34. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

35. On November 4, 2011, while Respondent was eliciting a factual basis from a defendant for his guilty plea to an amended charge in respect of a moving, no-point violation (N.J.S.A. 39:4-97.2), the defendant became argumentative, belligerent and challenged his obligation to pay a surcharge of \$250.00 together with fines of \$156.00 and costs of \$33.00 as a consequence of his guilty plea.

36. Respondent opined from the bench that while the fees did not seem fair and it may be a scheme for the State to make money, the defendant was receiving a benefit by avoiding an assessment of points to his license.

37. On December 6, 2012, Respondent was addressing a defendant in the matter of State v. Roy Heston, Complaint No. SC-2012-018303, who had failed to make payments under a payment plan for a fine that had been assessed in connection with a noise ordinance violation.

38. Respondent asked the defendant for his reasons for failing to pay the fines and costs when due under the payment plan at which time the following colloquy took place between Respondent and the defendant:

MR. HESTON: Yes. Sorry for — I was engaged a couple months ago to my fiancée and I had given her the money to pay my fine 'cause I did not have to appear in court. It was only a fine of \$224.

THE COURT: It was payable through violations.

MR. HESTON: Yes. And now I'm coming to find out I get pulled over, my license was suspended and I had two warrants from Burlington City and Florence Township. I never --

THE COURT: Is she still your girlfriend?

MR. HESTON: No. We've been separated about six months now.

THE COURT: Well, when you trust a woman that's what you get. What do you want to do about this?

39. By his conduct of disparaging the formula for the Judiciary's court fees and making gratuitous and detractive remarks about women in general, Respondent did not personally observe the high standards of conduct expected of judges and did not act in a manner that promoted public confidence in the integrity and impartiality of the Judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct.

COUNT IV

40. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

41. Joseph Zarzaca, a retired Burlington County Sheriff's officer, was charged on December 30, 2012 with improper parking on a sidewalk in violation of N.J.S.A. 39:4-138(f), and served with an E-ticket ("the Zarzaca matter").

42. Respondent knew Mr. Zarzaca as a consequence of his pre-retirement employment as a Sheriff's officer and as a process server whose duties required Mr. Zarzaca to interact with the Burlington County Judiciary and local lawyers.

43. On January 7, 2013, Mr. Zarzaca appeared before Respondent in the Burlington City Municipal Court to answer for the improper parking charge. Respondent disclosed his familiarity with Mr. Zarzaca on the record at which time the following colloquy took place between Respondent, the municipal prosecutor, and Mr. Zarzaca:

THE COURT: Mr. Zarzaca, I never represented you, but know you from the court systems –

MR. ZARZACA: Yes, sir.

THE COURT: -- and I don't know if you want me to hear your case or not. You're charged with improper parking on a sidewalk.

MR. ZARZACA: That's correct, sir.

THE PROSECUTOR: That's going to be dismissed whether it's you or anybody else.

THE COURT: Okay. So enter a plea of not guilty is dismissed. What was the reason for the dismissal on this?

THE PROSECUTOR: I just think there was a miscommunication with the police. It was – they told me earlier today, but I can't remember whether it was – a legitimate dismissal.

THE COURT: Okay. Do you have any objection to the dismissal, Mr. Zarzaca?

MR. ZARZACA: No, sir, I sure don't.

44. A Request to Approve Plea Agreement was provided to Respondent, but the form was unsigned and contained only a notation under "comments" which stated "Dismissed Per Sgt. Fine."

45. Though Respondent was provided with a vague reason and an unsigned Plea Agreement form, Respondent nonetheless entered "Dismissed – Lack of Prosecution" and noted the reason for the dismissal as "Motion of the State."

46. Respondent administered justice capriciously when he dismissed the Zarzaca matter without ensuring that there was a fully signed Request to Approve Plea Agreement or requiring that adequate reasons for the dismissal be placed on the record by the municipal prosecutor to justify the dismissal in contradiction to Rule 7:6-2(d) and the associated Guidelines for Operation of Plea Agreements in Municipal Court.

47. By his conduct, Respondent did not act in a matter that promoted public confidence in the integrity and impartiality of the Judiciary in violation of Canon 2A of the Code of Judicial Conduct, and he was not faithful to the law and did not demonstrate professional competence in it in violation of Canon 3A(1) of the Code of Judicial Conduct.

COUNT V

48. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

49. Between June 7, 2012 and September 6, 2012, Respondent engaged in plea discussions with certain unrepresented defendants making first appearances before him on charges of driving while on the suspended or revoked list (“N.J.S.A. 39:3-40 charge”).

50. In each case, Respondent questioned the unrepresented defendant about the restoration of his or her license and whether that defendant would plead guilty to a lesser charge. Respondent represented to the defendants that, although not present in court, the municipal prosecutor had sanctioned Respondent’s plea discussions.

51. Each of the defendants expressed an intent to plead guilty to the lesser charge at which time Respondent downgraded the N.J.S.A. 39:3-40 charge to the lesser offense of an unlicensed driver charge, N.J.S.A. 39:3-10.

52. Respondent negotiated the plea deal without the participation, recommendation or consent of the municipal prosecutor and without submission of signed Requests to Approve Plea Agreement from the parties as required under Rule 7:6-2(d) and the associated Guidelines for Operation of Plea Agreements in Municipal Court.

53. By his conduct of routinely negotiating plea deals with the unrepresented defendants without participation of the municipal prosecutor or submission of signed Requests to Approve Plea Agreements in contradiction to the Rules of Court, Respondent did not act in a manner that promoted public confidence in the integrity and impartiality of the Judiciary in violation of Canon 2A of the Code of Judicial Conduct, and he was not faithful to the law and did not demonstrate professional competence in it in violation of Canon 3A(1) of the Code of Judicial Conduct.

COUNT VI

54. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

55. On January 17, 2013, Respondent presided over a day court session involving arraignments and first appearances.

56. At the beginning of the court session and consistent with his practice, Respondent made his opening statement pursuant to Rule 7:14-1 in which he stated in relevant part:

THE COURT: Therefore, so we don't have a muddled record, I must insist upon no talking or unnecessary noise in the courtroom, and particularly cell phones. Anybody that has a cell phone, I would suggest you turn it off now and take it out in your car because if it goes off in court and disrupts the proceedings, you're going to be sanctioned up to \$100 and your cell phone is going to be parked right here until the very last case later today. So I suggest all cell phones off at this point.

57. On that same day, William Rodgers appeared unrepresented in Burlington Municipal Court to answer for the charges in the matter of State v. Rodgers, Complaint No. SC 2012 717 (“Rodgers matter”).

58. Mr. Rodgers appeared fifteen minutes late for his calendar call, and did not hear Respondent’s opening remarks regarding use of cell phones in court.

59. At some point while Mr. Rodgers was waiting for his case to be called, Respondent’s court officer confiscated his cell phone. When Mr. Rodgers attempted to retrieve his phone at the conclusion of his case, Respondent chastised him for using it in court and sanctioned him \$50.00 for its return. Respondent premised the confiscation and the \$50.00 sanction on the hearsay statement of his court officer who claimed to have observed Mr. Rodgers text messaging during the court session.

60. Mr. Rodgers advised Respondent that he was not text messaging but looking up something on the internet on his phone. He further advised Respondent that he did not hear Respondent’s opening remarks regarding cell phone use because he was late to court and did not have \$50.00 to pay for the return of his cell phone.

61. Respondent did not personally observe Mr. Rodgers texting on his cell phone, and Mr. Rodgers’ use of his cell phone did not cause interruption to court proceedings.

62. Mr. Rodgers became frustrated with Respondent’s action to confiscate his phone and sanction him \$50.00 at which time Respondent and Mr. Rodgers engaged in a heated exchange. Mr. Rodgers refused to sit down and “cool off” as instructed by Respondent causing Respondent to become combative stating: “You say one more word to me, you’re out of here, one more word. Go ahead and say it. Tempt me.”

63. Respondent's conduct of confiscating a litigant's cell phone and sanctioning him \$50.00 for its return without weighing the gravity of the litigant's conduct on court proceedings and without due regard for explanation or reason was an arbitrary exercise of authority and constituted a lack of judicial temperament in violation of Canons 1, 2A, and 3A(3) of the Code of Judicial Conduct.

WHEREFORE, Complainant charges that Respondent, Municipal Court Judge Thomas J. Scattergood, 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;

Canon 3A(1) which requires judges to be faithful to the law and maintain professional competence in it;

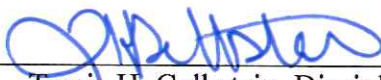
Canon 3A(3), which requires judges to be patient, dignified, and courteous to all those with whom they deal in an official capacity;

Canon 3C(1) which requires judges to disqualify themselves in a proceeding in which the judge's impartiality might reasonably be questioned; and

Canon 3D which prohibits judges from avoiding disqualification by disclosing on the record the disqualifying interest and securing the consent of the parties.

Complainant also charges that Respondent's conduct was in violation of Rule 1:12-1(g) of the New Jersey Court Rules.

DATED: July 20, 2015



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