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JAN 05 2009

A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2008-201

IN THE MATTER OF

EMERY Z. TOTH
JUDGE OF THE MUNICIPAL COURT

FORMAL COMPLAINT

Candace Moody, Disciplinary Counsel, Advisory Committee on Judicial Conduct (“Complainant”), complaining of Municipal Court Judge Emery Z. Toth (“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 1974.
2. At all times relevant to this matter, Respondent served as a part-time judge in the Municipal Court of the Borough of South River, Middlesex County, a position he continues to hold.
3. On March 4, 2008, Respondent presided over an arraignment in the matter of State v. Esmanuel A. Buldoni in the South River Municipal Court. The defendant, Esmanuel Buldoni, A.K.A. Luis Martinez, was charged with non-moving traffic violations, i.e. failure to inspect, broken side brake lamp, and broken rear-view mirror.
4. Mr. Buldoni was incarcerated at the time of his arraignment on March 4, 2008 and consequently appeared in court via video conference from the prison.
5. After entering a plea of not-guilty, Mr. Buldoni attempted to explain to Respondent the details of his offenses, to which Respondent replied:

THE COURT: All right. We'll get – we'll decide that at trial. I can't hear anything about the case. I'm just wanting to know – you obviously failed to appear in the court in November, so I guess you felt that since you worked for the cab company you didn't feel like coming or you didn't have to come to court pursuant to the order, so that's why you got arrested. So we'll set it down for trial maybe next week.

6. When Mr. Buldoni denied that he had been arrested for failure to appear in court in November 2007, Respondent replied:

THE COURT: All right. Well, if you'd stop getting arrested, then you wouldn't have any of these problems, right?

MR. MARTINEZ: Excuse me, Your Honor.

THE COURT: Look. Well – stop here. I don't want to have a debate with you. I don't want to have an Oprah Winfrey conversation with you. All right? You're pleading not guilty to three non-moving violations. That's your right. And I'll give you a trial date next week. See you around. Good-bye.

7. Prior to exiting the room, Mr. Buldoni made a noise which prompted Respondent to recall Mr. Buldoni. When Mr. Buldoni returned to the video conference, Respondent engaged in a colloquy with him that became increasingly adversarial:

MR. MARTINEZ: Yes, I didn't do --

THE COURT: No. Let me explain something to you. Yes, I'm a street – you're not a street guy. I don't want to tell you what you really are, but I'm a street guy, so when I said, 'See you around,' hey I didn't get offended when you gave me the old fist up in the air. That's okay. I didn't really care about that. But when you give me the raspberries walking out and you give me some kind of disrespect like that, I'm just telling you that's contempt in the face of the Court. You're going to jail. You're going to stay there for another 30 days. So, you're going to hang out there 30 days and it's going to be a detainer. So, I don't care what your sentence is or what jail you're going to, you're going to do 30 days consecutive on this. Now, you can leave like a gentleman, and I'm telling you right now, you open your mouth, you give me any more attitude, I'm going to give you some more jail time. So, leave.

MR. MARTINEZ: Appreciate it.

THE COURT: No. Okay, I'm giving you 40 days, 45 days. I told you don't give me any attitude. You want to give me the (indiscernible) and you want to give me the lip. You want to disrespect –

MR. MARTINEZ: (Indiscernible)

THE COURT: Sixty days. Get out of here. Sixty days. Give him 60 days.

MR. MARTINEZ: No, give me 70.

THE COURT: Seventy-five.

8. Respondent continued to engage Mr. Buldoni in an adversarial manner, at the conclusion of which Respondent imposed a 180 day jail sentence on Mr. Buldoni for contempt in the face of the court.

9. In a subsequent written statement to the Advisory Committee on Judicial Conduct, dated October 1, 2008, Respondent apologized for his conduct and accepted “full responsibility” for his actions.

10. By holding Mr. Buldoni in contempt of court and immediately imposing a jail sentence of 180 days, without affording Mr. Buldoni an immediate opportunity to respond, and without issuing the necessary order of contempt and certification, and without staying the sentence for five days, Respondent abused his contempt powers under Rule 1:10-1.

11. By Respondent's conduct in failing to comply with the strict requirements of Rule 1:10-1, Respondent violated Canon 2A of the Code of Judicial Conduct, which requires judges to respect and comply with the law. Respondent's conduct was likewise prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

12. Respondent's remarks to Mr. Buldoni, as cited in paragraphs 5 through 7, were disrespectful and insulting, in violation of Canon 3A(2) and 3A(3) of the Code of Judicial

Conduct, intemperate in violation of Rule 2:15-8(a)(4), and prejudicial to the administration of justice that brought the judicial office into disrepute, in violation of Rule 2:15-8(a)(6).

13. By his remarks, Respondent also violated Canons 1 and 2A of the Code of Judicial Conduct in that he did not maintain high standards of conduct and did not act in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

WHEREFORE, Complainant charges that Respondent, Municipal Court Judge Emery Z. Toth, 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;

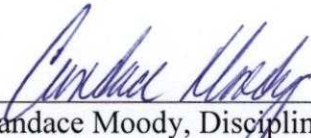
Canon 2A, which requires judges to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

Canon 3A(2), which requires judges to maintain order and decorum in judicial proceedings;

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

Complainant also charges that Respondent's remarks were intemperate and prejudicial to the administration of justice thereby bringing the judicial office into disrepute in violation of Rule 2:15-8(a)(4) and Rule 2:15-8(a)(6) of the New Jersey Rules of Court.

DATED: January 5, 2009


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