SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

IN THE MATTER OF	:	DOCKET NO. ACJC-2021-286
MICHAEL J. KASSEL JUDGE OF THE SUPERIOR COURT	: :	VERIFIED ANSWER WITH AFFIRMATIVE DEFENSES

Michael J. Kassel, respondent, by way of verified answer to complaint states:

FACTS

1 – 3. Admitted

COUNT I

4. Admitted.

Respondent acknowledges that the litigants and their attorneys had the right to expect a judge they were appearing before was fully capable of performing his role as the trial judge in their matters. In this, Respondent failed the litigants, their attorneys, and the judiciary. Respondent admits that his comments concerning his lack of experience in the Family Division failed to maintain the high standards required of judges and failed to promote public confidence in the judiciary. Respondent regrets his comments.

Respondent further states that while his comments were inappropriate, they were usually coupled with stating the reason for disclosing same, and Respondent would also usually say he would "do his best" and request that he be "walked through the motions" so he would have a better understanding of same. Respondent was well aware that most of the Family Practitioners that appeared before him knew that he was not a regular Family Division judge.

Respondent also states that at all times he was respectful and courteous to the litigants and their counsel and always maintained appropriate judicial demeanor. The audio tapes confirm same, and Respondent believes demonstrates the spirit in which his comments were made.

5. (a) through (p) Respondent incorporates his answers to paragraph 4 as if each were set forth fully and at length herein, with the following admissions:

5(a) Admitted.

5(b) Admitted.

5(c) Admitted. Respondent adds that he stated, "I think that transparency is one of most important things in the Superior Court, impartiality and transparency are probably the two most important things that we can expect from a Superior Court judge."

5(d) Admitted.

5(f) Admitted.

5(g) Admitted.

5(h) Admitted. Respondent adds that the context for the comment concerning "Getting a guy off the street that was more experienced" than Respondent was to recommend mediation to the self-represented litigants, and that the professional mediator had a lot more experience than Respondent. Respondent would also like to add that he specifically told the litigants, "You don't want a stranger deciding these personal issues. You're adults, you're the parents." This is consistent with *Tahan v Duquette*, 259 N.J.Super. 328, 336 (App. Div. 1992).

5(i) Admitted.

5(j) Admitted. Respondent adds, in regard to the length of the briefs, that he stated, "When a judge reads a brief the judge is not reading a Stephen King novel or Life or Time magazine. It's not that the Judge has to read the stuff, the judge has to compartmentalize each discreet issue in his or her brain in such a way that is meaningful..."

Respondent also points out that he told the litigants, "I will devote whatever time is needed on the case, but it is not going to be this morning", and then indicated that when the case was re-listed he would give it an entire afternoon.

5(k) Admitted. Respondent acknowledges that his comments concerning his unhappiness in the Family Division were inappropriate.

5(l) Admitted. Respondent points out that in explaining why he would not set the matter for a full day, Respondent explicitly stated, "I can't

just spend all my time on one case and tell five other cases, some of them that have been waiting months to be heard, to come back in another couple of months. That's not fair to them."

5(m) Admitted. Respondent adds that he explicitly told the litigants, "I am capable of understanding all of this..."

5(n) Admitted.

5(o) Admitted.

5(p) Admitted.

6. Admitted.

7 & 8. Admitted. While Respondent denies that his conduct was "willful misconduct", Respondent admits that despite the very difficult and emergent situation he was placed in, Respondent could have and should have worked harder to prepare for and understand the Family matters that were on his Wednesday list. Respondent would like to note that if he had been transferred to Family as a usual September reassignment, Respondent would have been sent to New Judge Orientation class since it had been 18 years since he had last been in Family and would also have been able to shadow an FD/FM judge for several weeks. Due to the emergent nature of Respondent's assignment to Family, Respondent had none of that, and was simultaneously still working fulltime in the Civil Division

COUNT II

9. Respondent incorporates his answers to paragraphs 1 through 8 as if each were set forth fully and at length herein.

10. Admitted.

11. Admitted.

12. Admitted. Respondent's failure to wear his robes and having his legs propped up on the desk impugned the solemnity of the court proceeding in violation of the Canons and Rules cited.

COUNT III

13. Respondent incorporates all his answers from the first twelve paragraphs as if each were set fully and at length herein.

14. Admitted.

15. Denied. Respondent initially notes that there is authority for the proposition that even an erroneous failure to recuse is legal error and not judicial misconduct, *see In Re Cudahy*, 294 F. 3 d 947, 953 (7th Cir. 2002), ("...An erroneous failure to recuse oneself is a legal error rather than judicial misconduct.") Assuming a judge's mistaken failure to recuse himself/herself can be judicial misconduct, Respondent respectfully submits that, at minimum the failure to recuse should be made in bad faith in order for it to be judicial misconduct.

In this matter, the attorney in question was the municipal prosecutor in Respondent's DWI case (which was dismissed after the state police lab demonstrated no alcohol and only Ambien, which Respondent had a prescription for) eleven years earlier. The attorney in question is not and has never been a friend of Respondent. Respondent, as required, ***disclosed all of the underlying relevant facts***, and explicitly commented that he "liked" the attorney because it was important to place on the record that Respondent held no grudge against him. The attorney was only doing his job.

Respondent further notes that the situation did not present facts of which there is either a rule or statute that specifically covers same. Neither attorney had any objection, after disclosure was made, and Respondent specifically stated, "***Before we go any further with anything in regard to the case, does anyone have any questions or concerns [indecipherable] I want everyone to feel comfortable with what I do or don't do in the case. Anybody have anything they want to ask me or put on the record?***" There were neither objections nor questions.

Respondent further notes that pursuant to rule 3.17(B)4(f), my law clerk from any past year can appear before me even though he/she knows far more about me personally and professionally, and for one year was closer to me personally and professionally than any lawyer who might appear before me, including of course.the attorney in question. Respondent notes that "...judges are not free to err on the side of caution;" *State v Marshall*, 148 N.J. 89, 276 (1997).

Finally, on this issue, Respondent notes the case of *Cutler v. Dorn.*, 390 N.J. Super. 238 (App. Div. 2007). *In Cutler* Respondent had an approximate one-hour consultation with Plaintiff's counsel in 1992 about a law firm break-up, in which Plaintiff's counsel provided the Respondent with legal advice and charged Respondent for the hour. Fast forward 12 years later, and Plaintiff's counsel is appearing before the undersigned in *Cutler*. Plaintiff's counsel moved to disqualify Respondent, and

Respondent denied the request. The Appellate Division in *Cutler* held that the recusal issue wasn't even worth commenting on in their published opinion affirming the judgment below.

COUNT IV

16. Respondent incorporates his answers to paragraphs 1 through 15 as if each were set forth fully and at length herein.

17. Denied. Respondent respectfully points out that he did not state that the *sole* reason for relisting the hearing was Plaintiff's counsel's unstated concern about Respondent's impartiality. The audiotape reveals that Respondent stated "I'm inclined to grant your request for a new listing for ***two*** reasons. The ***first*** reason...," (emphasis added) Before Respondent stated the second reason on the record, Respondent got sidetracked with a discussion of other matters in the case.

After giving the attorneys time to privately speak with their clients, Plaintiff's attorney stated her preference for Judge Bernardin to hear Defendant's motion, explicitly stating that the motion was a "more complex matter." Respondent believed it was reasonable to relist the matter before Judge Bernardin, who was due back in two weeks, and Defendant's counsel requested a ruling on interim visitation pending the disposition of Defendant's motion before Judge Bernardin.

Respondent decided the request for interim visitation, but would not permit the in-person contact requested by Defendant's counsel. Given the facts of the case, Respondent would not permit any in-person contact between the father and ten-year-old child but saw nothing unreasonable about a twice a week thirty-minute FaceTime video chat.

18. Denied.

SEPARATE DEFENSES

1) Respondent's demeanor during all of the hearings in question was exemplary. Respondent was never demeaning, discourteous, condescending or anything but respectful to the litigants and their attorneys.

2) Respondent was placed in a very difficult and emergent situation over the course of the nine-week temporary assignment.

3) Respondent has a completely unblemished disciplinary record throughout his almost 21-year career sitting on the Superior Court, as well as a completely unblemished disciplinary record as an attorney.

VERIFICATION OF ANSWER

I, Michael J. Kassel, am the respondent in the within judicial conduct matter and hereby certify as follows:

1. I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements herein are true and based on my personal knowledge.

2. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Michael J. Kassel, Respondent

Date: April 27, 2022