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A.C.J.C.

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SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT
DOCKET NO. ACJC 2017-059

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IN THE MATTER OF :
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WILFREDO BENITEZ, :
JUDGE OF THE MUNICIPAL COURT :
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Civil Action

***VERIFIED ANSWER TO
COMPLAINT, SEPARATE
DEFENSES, MITIGATING
FACTORS, DEMAND FOR
DISCOVERY AND
DESIGNATION OF TRIAL
COUNSEL***

Respondent, WILFREDO BENITEZ (“Respondent”), by way of Verified Answer to the Complaint filed on behalf of the New Jersey Supreme Court Advisory Committee on Judicial Conduct (the “ACJC”), hereby states:

1. Admitted.

2. Admitted.

3. Denied as stated, except to admit that at some point in time late in the evening of

November 11, 2016, or early in the morning of November 12, 2016, Respondent was operating a

motor vehicle when he decided to pull onto the shoulder of the road to get some rest, and activated the flashers on the car.

4. Upon information and belief, admits the allegations in Paragraph 4, but he is unsure of the exact mile post location where Respondent's vehicle was parked.

5. Upon information and belief, admits the allegations in Paragraph 5.

6. Respondent neither admits nor denies the allegations in Paragraph 6 since they are not within his knowledge, and leaves the ACJC to its proofs.

7. Admitted.

8. Admitted.

9. Admits that at some point after the field sobriety tests were performed and while the State Police were in the process of placing handcuffs on him, Respondent spoke the words quoted in this Paragraph.

10. Respondent admits that the State Police placed him under arrest, but is not in a position to admit or deny the reasons for that decision by the State Police, and leaves the ACJC to its proofs.

11. Denied as stated, but admits that while the State Police were placing handcuffs on Respondent, he said the words quoted in this Paragraph and further states that these words were in response to being handcuffed since it was his understanding and belief at the time that it was not a requirement of the State Police to use handcuffs in all circumstances.

12. Respondent admits that while the State Police were placing him in handcuffs, he complained about the fact that the handcuffs were hurting him, and intended to convey that the handcuffs were unnecessary since he was a Judge and he was not going to harm them in any way.

13. Respondent admits that the words quoted in this Paragraph were spoken during the encounter, and further states that the reference to “any courtesy” was intended to apply to the use of handcuffs, and that Respondent never asked the State Police not to administer any field sobriety tests, and never asked not to be placed under arrest.

14. Admitted, and further states that Respondent understood the comment by the Police that they are sure that he knew about the Miranda Rights as a sarcastic comment, to which Respondent replied inappropriately, for which he is regretful and apologetic.

15. Admitted

16. Admitted.

17. Admitted.

18. The allegations in this Paragraph are not factual, but rather constitute legal conclusions, to which no response is required. Insofar as the allegations in this Paragraph contain factual assertions, those allegations are denied.

19. The allegations in this Paragraph are not factual, but rather constitute legal conclusions, to which no response is required. Insofar as the allegations in this Paragraph contain factual assertions, those allegations are denied.

20. The allegations in this Paragraph are not factual, but rather constitute legal conclusions, to which no response is required. Insofar as the allegations in this Paragraph contain factual assertions, those allegations are denied.

SEPARATE DEFENSES

First Separate Defense

The Complaint fails to state a cause of action under the New Jersey Code of Judicial Conduct (“CJC”) against Respondent and he reserves the right to move at or before any hearing to dismiss the allegations.

Second Separate Defense

Respondent’s conduct did not violate Canon 1, Rule 1.1, Canon 2, Rule 2.1, or Canon 2, Rule 2.3(A) of the CJC.

Third Separate Defense

Respondent at all relevant times personally observed the highest standard of conduct.

Fourth Separate Defense

Respondent’s conduct at all relevant times did not create the appearance of impropriety, and he acted at all times in a manner that promoted public confidence in the integrity and impartiality of the Judiciary.

Fifth Separate Defense

At no time did Respondent attempt to or intend to use his position as a Municipal Court Judge to advance his personal or private interests.

Sixth Separate Defense

Any misconduct that may be found is only of a minor nature.

Seventh Separate Defense

The ACJC cannot prove the allegations set forth the Complaint by clear and convincing evidence.

Eighth Separate Defense

Respondent reserves the right to amend his Verified Answer to assert additional Separate Defenses prior to or at the time of any hearing.

WHEREFORE, Respondent, Wilfredo Benitez asserts that discipline in this instance is inappropriate and requests that the Complaint be dismissed.

MITIGATING FACTORS

First Mitigating Factor

Respondent has fully cooperated with the investigation in this matter.

Second Mitigating Factor

Respondent has a good reputation and character, and this is the first Complaint filed against him.

Third Mitigating Factor

Respondent has shown contrition and remorse.

Fourth Mitigating Factor

Respondent gives service to the community.

Fifth Mitigating Factor

Respondent has had exemplary conduct both prior to and since this incident.

Sixth Mitigating Factor

There is no likelihood of a similar incident.

Seventh Mitigating Factor

This was an isolated incident.

Eighth Mitigating Factor

A Superior Court Judge found Respondent not guilty of driving under the influence of alcohol.

Ninth Mitigating Factor

This incident occurred on November 12, 2016, almost eighteen (18) months ago, and in that time Respondent has conducted himself in a manner fully compliant with the CJC.

DEMAND FOR A HEARING

Respondent, Wilfredo Benitez, hereby requests a hearing on all issues raised in the Complaint.

DEMAND FOR DISCOVERY

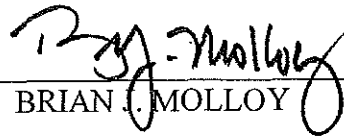
Respondent, Wilfredo Benitez, hereby requests the following discovery:

1. All writings or other tangible objects including audio tapes, transcripts, either retained from or which belong to Respondent, which the ACJC intends to utilize at a hearing.
2. Written statements including any memoranda, reporting or summarizing oral statements made by any witness, including Respondent.
3. The identity and contact information for any fact witness, who the ACJC intends to call at the time of a hearing.
4. Any investigation reports.
5. Any expert report.
6. Any documents the ACJC intends to rely upon at the time of the hearing or which relates in any way to the allegations in the Complaint.

DESIGNATION OF TRIAL COUNSEL

Trial counsel on behalf of Respondent is Brian J. Molloy, Esq.

WILENTZ, GOLDMAN & SPITZER, P.A.
Attorneys for Respondent
Wilfredo Benitez

BY: 
BRIAN J. MOLLOY

Dated: February 8, 2018

VERIFICATION

I, Wilfredo Benitez, am the Respondent in the within disciplinary action and hereby certify as follows:

1. I have read every Paragraph in the foregoing Verified Answer to the Complaint and verify that the statements therein are true based on my personal knowledge, except for those upon information and belief.

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



WILFREDO BENITEZ

Dated: February 8th, 2018

CERTIFICATION

I hereby certify that the above is an electronic signature of the original signature of Wilfredo Benitez. A document bearing the original signature will be filed with the Court and served on any party upon request.


BRIAN J. MOLLOY

Dated: February 8, 2018