

FILED

AUG 21 2018

A.C.J.C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2017-225

IN THE MATTER OF

JOHN F. RUSSO, JR.
JUDGE OF THE SUPERIOR COURT

AMENDED
FORMAL COMPLAINT

Maureen G. Bauman, Disciplinary Counsel, Advisory Committee on Judicial Conduct (“Complainant”), complaining of Superior Court Judge John F. Russo, Jr. (“Respondent”), says:

Facts

1. Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1997.
2. At all times relevant to this matter, Respondent served as a judge of the Superior Court of New Jersey, assigned to the Family Division in the Ocean County Vicinage, a position to which he was appointed in December 2015 and continues to hold. Effective May 18, 2017, Respondent was placed on paid administrative leave.

Count I

3. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.
4. In the matter of M.R. v. D.H., the Plaintiff sought a Final Restraining Order (“FRO”) against the Defendant after he physically and verbally abused her, disabled her car and left her stranded, threatened to burn her house down, stole from her, threatened to take their daughter away from her if she ever left him, and forced her to have sex with him against her will.

5. The parties appeared before Respondent on May 16, 2016 for an FRO hearing. During that hearing, the Plaintiff testified concerning events that occurred on March 24, 2016 when she alleged the Defendant forced her to have sex with him against her will. The following colloquy occurred between Respondent and Plaintiff:

RESPONDENT: Well, you have to tell me about it.

PLAINTIFF: Well, we got back from Home Depot and - -

RESPONDENT: About what time?

PLAINTIFF: It was, I'm not really sure about the time. It might've been around maybe one, two o'clock. And we did have sex against my will, but I'm not pressing charges against it.

RESPONDENT: Right. But you have to tell me what happened.

PLAINTIFF: Well, he - -

RESPONDENT: I understand that you're not pressing charges, but that's not what we're dealing with here.

PLAINTIFF: Yeah. Okay. Okay.

RESPONDENT: So you have to tell me what happened.

PLAINTIFF: Okay. Well, we got back from Home Depot and I made a joke, saying, "what time does your wife come home? We have a couple minutes." And next thing I know, that's what happened. So I was like, you know, I wasn't planning on having sex with him. So, you know what I mean?

RESPONDENT: No, I don't.

PLAINTIFF: I don't know how to make it any clearer. I - - we had sex, but it was against my will. I wasn't planning on having sex with him. So he was like - - we were standing in the kitchen and he pulled my pants down, and that's what happened.

RESPONDENT: Right.

6. Subsequently, during cross-examination by Defendant's attorney, the following colloquy occurred:

DEFENSE COUNSEL: Okay. Would it be fair to say that you got many unwanted advances from men that were overly sexual during your time as a dancer, correct?

RESPONDENT: Objection. Where are we going here?

DEFENSE COUNSEL: That she's more capable of asserting herself in a situation where she's confronted by somebody with unwanted sexual advances.

RESPONDENT: Maybe ask the question. See what she gives you, and see if you need to go - -

DEFENSE COUNSEL: Would it be fair to say, Ms. R. that you are capable of asserting yourself against unwanted sexual advances?

PLAINTIFF: I guess so. I don't really know.

RESPONDENT: I'm sorry, but, "I guess so," is not an answer. Do you understand the question?

PLAINTIFF: Not really, I don't understand the question.

RESPONDENT: I'll ask the question then.

PLAINTIFF: Okay.

RESPONDENT: Do you know how to stop somebody from having intercourse with you?

PLAINTIFF: Yes.

RESPONDENT: How would you do that?

PLAINTIFF: I'd probably physically harm them somehow.

RESPONDENT: Short of physically harming them?

PLAINTIFF: Tell them no.

RESPONDENT: Tell them no. What else?

PLAINTIFF: To stop.

RESPONDENT: To stop. What else?

PLAINTIFF: And to run away or try to get away.

RESPONDENT: Run away, get away. Anything else?

PLAINTIFF: I - - that's all I know.

RESPONDENT: Block your body parts?

PLAINTIFF: Yeah.

RESPONDENT: Close your legs? Call the police?
Did you do any of those things?

7. In determining whether a Final Restraining Order should be issued, the judge must determine whether the plaintiff has proven that one or more of the predicate acts set forth in N.J.S.A. §2C:25-19(a) has occurred and whether there exists immediate danger to person or property.

8. By his conduct in assuming the role of defense counsel and asking the above noted questions, which are irrelevant for purposes of addressing an application for an FRO, Respondent was discourteous and mistreated the victim in violation of Canon 3, Rule 3.5, Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct.

Count II

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

10. Beginning March 2016, Respondent was assigned to the FD (non-dissolution) docket and presided over two (2) calendars every Thursday. In the mornings, Respondent heard motions in respect of the FD docket and in the afternoons he heard other matters outside the FD docket.
11. Jill Vito, Family Division Manager in the Ocean Vicinage, oversaw the operations of the Family Part, including supervision of personnel assigned to the FD docket.
12. In or around March 2017, Respondent was notified that his personal Family Part matter, venued in Burlington County, was scheduled for a hearing on Thursday, March 23, 2017.
13. On or about March 10, 2017, Respondent called Ms. Vito on her personal cell phone.
14. Respondent discussed with Ms. Vito his personal Family Part matter and the upcoming hearing. Respondent expressed to Ms. Vito that the date of the hearing was inconvenient and asked Ms. Vito if she would call her “counterpart” (i.e. the Family Division Manager) in the Burlington Vicinage and request the hearing be rescheduled.
15. Ms. Vito did not call the Family Division Manager as Respondent had requested.
16. On March 23, 2017, Respondent appeared, with his counsel, in Burlington County Superior Court for the hearing.
17. By his conduct in requesting Ms. Vito’s assistance in rescheduling a hearing in his Family Part matter, Respondent attempted to use the judicial office to advance a personal interest and created the risk that his judicial office would be an influential factor in the Burlington County Vicinage Family Division Manager’s decision to rearrange the hearing at a date and time more convenient for Respondent. In doing so, Respondent violated Canon 1, Rule 1.1, Canon 2, Rule 2.1 and Rule 2.3(A) of the Code of Judicial Conduct.

Count III

18. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.
19. Beginning in March 2016, Respondent presided over the matter of Celestina Carbonetto v. Alfio Carbonetto, in the Superior Court of New Jersey, Chancery Division/Family Part, Ocean County.
20. The Carbonetto Matter concerned post-judgment issues relating to a Property Settlement Agreement (PSA) that the parties entered into on July 25, 2013.
21. Defendant Alfio Carbonetto failed to comply with the PSA, which led to the filing of several applications for spousal support and arrears by Plaintiff Celestina Carbonetto.
22. On August 28, 2013 and September 9, 2013, the Court ordered Mr. Carbonetto to pay Mrs. Carbonetto her alimony then due, or a warrant would be issued for his arrest.
23. On October 30, 2015, the Honorable Steven F. Nemeth, J.S.C. entered an Order denying Mr. Carbonetto's various applications with respect to his spousal support obligation and arrears and granted Mrs. Carbonetto's applications with respect to enforcement. A bench warrant for the arrest and incarceration of Mr. Carbonetto was to issue at 11:00 AM on November 13, 2015 for his failure to pay \$10,000.00 in support arrears.
24. On January 5, 2016, Judge Nemeth issued a bench warrant for Mr. Carbonetto based on his failure to comply with the Court's order of October 30, 2015.
25. On March 9, 2016, Mr. Carbonetto was brought before Respondent on that bench warrant. Mrs. Carbonetto was not present.
26. Respondent began the proceeding as follows:

RESPONDENT: Sir, your name is Alfio Carbonetto and you were picked up on a warrant signed by Judge

Nemeth for failure to comply with an order of October 30, 2015 of Judge Nemeth.

MR. CARBONETTO: Yes, Judge.

RESPONDENT: Face the clerk to be sworn in.

After Mr. Carbonetto was sworn, Respondent stated:
RESPONDENT: Al.

MR. CARBONETTO: Yes, Judge. Yeah, we're divorced and it's a nightmare.

RESPONDENT: For the record, I've known Al Carbonetto and his wife since high school. Tina Bizzucci at that point. We haven't really kept up. I don't believe I have a conflict in this matter.

MR. CARBONETTO: No, I don't believe so.

RESPONDENT: Although I reserve the right to recuse myself because of the nature of the relationship of both me and your ex-wife.

27. Following these remarks, Respondent presided over the matter in respect of the bench warrant issued as the result of Mr. Carbonetto's non-payment of \$10,000.00 in support arrears.

28. Respondent took testimony from Mr. Carbonetto concerning his indigency claim:

RESPONDENT: I need to conduct a hearing as to indigency. I'm going to ask questions and I urge you just to answer the questions I'm asking.
When was the last time you were gainfully employed?

MR. CARBONETTO: When I had my pizza shop in September 2014.

RESPONDENT: Al's Pizza? You sold that business?

MR. CARBONETTO: No, we got evicted by the Stella family, the owner. Someone came and took the lease over.

RESPONDENT: Al's Pizza? You didn't sell the

business? You got evicted?

MR. CARBONETTO: Yes.

RESPONDENT: By the way, it's not as good.

MR. CARBONETTO: Thank you, Your Honor.

29. Respondent continued to question Mr. Carbonetto about his weekly income, monthly expenses, and the amount Mr. Carbonetto believed he was able to afford, given his recent employment with Rosato's Pub and Pizza.

30. Respondent found that Mr. Carbonetto was not indigent given his employment. Respondent reduced the purge amount stated in Judge Nemeth's October 30, 2015 order from \$10,000.00 to \$300.00.

31. Respondent vacated the warrant that Judge Nemeth issued on January 5, 2016 and released Mr. Carbonetto based on his promise to pay \$300.00 in support arrears by 10:00 AM on March 14, 2016. Respondent ordered the automatic issuance of a bench warrant if Mr. Carbonetto failed to make the \$300.00 payment on March 14, 2016.

32. Respondent's acknowledged personal relationship with Mr. and Mrs. Carbonetto and comments about Mr. Carbonetto's business created the appearance of a conflict of interest that required Respondent's recusal from the Carbonetto matter. Respondent's failure to recuse in that matter violated Canon 3, Rule 3.17 (B) of the Code of Judicial Conduct, which requires a judge to recuse himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. Likewise, Respondent's failure to recuse from the Carbonetto matter violated New Jersey Court Rule 1:12-1 (g).

33. By his conduct as described above, Respondent also impugned the integrity and impartiality of the Judiciary in violation of Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct.

Count IV

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

35. On May 26, 2016, in the matter of T.B. v. C.P., Respondent entered a Default Order as Defendant/Mother failed to appear for the hearing. The Order provided that Ocean County Board of Social Services was to facilitate paternity testing for Defendant/Mother and the child, that Plaintiff may file for sanctions if Defendant/Mother does not comply with paternity testing, and the matter was to be relisted for July 6, 2016 before Respondent.

36. On or about July 6, 2016, Respondent telephoned the Defendant/Mother to determine whether she complied with the Order compelling paternity testing. Plaintiff/Father was not present or connected to the call.

37. The Defendant/Mother advised Respondent that she did not receive notice of a hearing that resulted in the Order to compel a paternity test. She further advised Respondent that she does not live in New Jersey and her son never lived in New Jersey.

38. Respondent urged the Defendant/Mother to comply with the Order for a paternity test and noted that if she did not comply, he would assess financial penalties against her.

39. By his conduct in communicating *ex parte* with the Defendant/Mother, Respondent violated Canon 3, Rule 3.8 of the Code of Judicial Conduct.

WHEREFORE, Complainant charges that Respondent has violated the following Canons of the Code of Judicial Conduct and Court Rules:

Canon 1, Rule 1.1, which requires judges to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved;

Canon 2, Rule 2.1, which requires judges to avoid impropriety and the appearance of impropriety and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

Canon 2, Rule 2.3 (A), which requires judges to avoid lending the prestige of judicial office to advance personal or economic interests;


Canon 3, Rule 3.17(B), which requires judges to disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned;

Canon 3, Rule 3.5, which requires judges to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity;

Canon 3, Rule 3.8, which prohibits a judge from initiating *ex parte* communications concerning a pending or impending proceeding; and

New Jersey Court Rule 1:12-1(g), which requires judges to disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned.

DATED: August 21, 2018



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