

STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT COMMITTEE

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Retired Special Justice Michael E. Jones, JC-10-069-C

REPRIMAND

Based upon review of the sound recordings of seven of the eight hearings cited by Chief Paul T. Donovan of the Salem Police Department in his grievance of December 1, 2010 (elevated to the level of a complaint by the Judicial Conduct Committee on February 11, 2011); Judge Jones' responses to this complaint of February 25, 2011 and March 24, 2011; and, pursuant to Judge Jones' stipulated violations of Canons 1, 2A, 3B(3), 3B(4), and 3B(7) of the Code of Judicial Conduct (Supreme Court Rule 38), the Committee has voted to publicly sanction Judge Jones for his violations of Canons 1, 2A, 3B(3), 3B(4) and 3B(7) by way of this Reprimand.

I. FINDINGS OF FACT

Based on a comprehensive review of the sound recordings of seven of the eight hearings cited by Chief Donovan in his grievance of December 1, 2010; Judge Jones' responses to this complaint of February 25, 2011 and March 24, 2011; and, pursuant to Judge Jones' stipulated violations of Canons 1, 2 A, 3 B(3), 3 B(4), and 3 B(7) of the Code of Judicial Conduct (Supreme Court Rule 38) with respect to his conduct in the matters of: State v. George Stanley, Docket Number: 10-CR-3014; State v. Joseph Musemeci, Docket Number: 10-

CR-2667; and, State v. Emerson Lockhart, Docket Number: 09-CR-2428, the Committee has determined that there exists clear and convincing evidence to support the following facts:

1. At all times relevant to these proceedings, Judge Jones was a part-time Justice of the District Court of the State of New Hampshire.
2. On November 10, 2010 in the context of a criminal matter (State of New Hampshire v. George Stanley) heard in the Salem District Court wherein the defendant appeared *pro se* for a trial on a Class B misdemeanor, Judge Jones informally inquired of the defendant as to whether he had any evidence showing that his drivers license was not suspended. Following colloquy in open court between the Court and the defendant, Judge Jones asked the defendant whether he would like to hear any more evidence. When the police prosecutor, Attorney Jason Groski, objected reminding the Court that Attorney Groski had not proffered any evidence, that this matter had been scheduled for trial and asked that the Court proceed with trial, Judge Jones informed the prosecutor that the State had indirectly put forward its evidence. When the prosecutor continued to request that the Court move forward with trial of this matter, Judge Jones responded that Attorney Groski, "Be quiet. Be quiet. OK? Hey. When you sit up here you can decide. All right? Be quiet. Listen, one more time, be quiet. One more time, and I'm going to have these folks take you out of here, OK? There is a certain protocol - certain protocol you have? Certain protocol that I have. And you are stepping over the line. Don't step over the line." When the prosecutor further attempted to address the Court, Judge Jones responded: "One more time, one more time, one more time and you're out of here. You decide. You decide." Under the threat of an apparent contempt finding, the prosecutor said nothing further.
3. On October 6, 2010 in the context of another criminal matter heard in the Salem District Court (State of New Hampshire v. Joseph Musemeci) wherein the defendant appeared with counsel for trial on a Class B misdemeanor complaint of domestic violence related simple assault, Judge Jones called the parties and lawyers to the bench following direct examination of the defendant's spouse and alleged victim remarking that, "I am more like a marriage counselor than a judge." Over the prosecutor's objection, Judge Jones then asked a series of questions of both the defendant and victim-spouse relative to their backgrounds and marital history. Over the prosecutor's objection and without allowing the State to complete its case-in-chief, Judge Jones then went on to place the matter on file without finding. When the prosecutor expressed his concern with respect to the defendant's request to reacquire his firearm which had been confiscated by the police, Judge Jones silenced the prosecutor advising him to "Shush".
4. On September 9, 2009 in yet another criminal matter heard in the Salem District Court (State of New Hampshire v. Everson Lockhart) wherein the defendant appeared *pro se*

for trial on a Class B misdemeanor complaint of possession of a controlled drug (marijuana) and entered a plea of guilty, the Court gratuitously engaged the defendant in a colloquy asking the defendant multiple questions concerning the defendant's background. Upon hearing that the defendant was born on the island of Dominique and that the defendant had previously worked on a catamaran sailboat, Judge Jones stated to the defendant in open court (relating to the charge of possession of marijuana) that, "... the State doesn't get this but this is just all part of your culture, this stuff. I, you know ...". Judge Jones then went on to relate a story in open court concerning another trial that Judge Jones had once presided over involving a Jamaican man who was also accused of possession of marijuana.

II. RULINGS OF LAW

The Respondent and the Judicial Conduct Committee stipulate that the following Canons of the Code of Judicial Conduct were violated by clear and convincing evidence:

Canon 1

"A judge shall uphold the integrity and independence of the judiciary." The commentary to Canon 1 provides in relevant part that, "Deference to the judgments and rulings of the court depends upon public confidence in the integrity and independence of judges. ... Although judges should be independent, they must comply with the law, including provisions of this Code."

5. Factual findings as set forth in Section I above are incorporated by reference.

6. The Committee finds that Judge Jones' behavior towards Prosecutor Groski in the context of the Musemece case was in direct violation of Canon 1 of the Code of Judicial Conduct in that Judge Jones failed to conduct this criminal trial in accordance with established procedures, failed to prevent the appearance of impropriety, and failed to allow the State (which had a legal interest in the proceeding) through Prosecutor Groski the right to be heard according to law.

Canon 2

“A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” The commentary to Canon 2 A provides in relevant part that, “Public confidence in the judiciary is promoted by responsible and proper conduct by judges. ... A judge must expect to be the subject of constant public scrutiny. ... and, ... The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of the judge.”

9. Factual findings as set forth in Section I above are incorporated by reference.

10. The Committee finds that Judge Jones’ behavior in the context of the Lockhart case was in direct violation of Canon 2 A of the Code of Judicial Conduct in that Judge Jones failed to respect and comply with the law and otherwise act in a manner promoting public confidence in the integrity and impartiality of the judiciary.

Canon 3B(3)

“A judge shall require order and decorum in proceedings.”

11. Factual findings as set forth in Section I above are incorporated by reference.

12. The Committee finds that Judge Jones’ behavior towards Prosecutor Groski in the context of the Stanley case was in direct violation of Canon 3B(3) of the Code of Judicial Conduct in that Judge Jones failed to require and maintain order and decorum over the course of this proceeding and otherwise failed to act in a patient, dignified and courteous manner towards Prosecutor Groski as required of his judicial office.

Canon 3B(4)

“A judge shall be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity.”

13. Factual findings as set forth in Section I above are incorporated by reference.

14. The Committee finds that Judge Jones' behavior towards Prosecutor Groski in the context of the Stanley case was in direct violation of Canon 3B(4) of the Code of Judicial Conduct in that Judge Jones failed to require and maintain order and decorum over the course of this proceeding and otherwise failed to act in a patient, dignified and courteous manner towards Prosecutor Groski as required of his judicial office.

Canon 3B(7)

“A judge shall accord to every person who has a legal interest in a proceeding or that person’s lawyer, the right to be heard according to law.”

15. Factual findings as set forth in Section I above are incorporated by reference.

16. The Committee finds that Judge Jones' behavior towards Prosecutor Groski in the context of the Musemeci case was in direct violation of Canon 3B(7) of the Code of Judicial Conduct in that Judge Jones failed to conduct this criminal trial in accordance with established procedures, failed to prevent the appearance of impropriety, and failed to allow the State (which had a legal interest in the proceeding) through prosecutor Groski the right to be heard according to law.

III. DISPOSITIONAL ANALYSIS

After determining the existence of clear and convincing evidence supporting the finding of a violation of Canons 1, 2A, 3B(3), 3B(4) and 3B(7) of the Code of Judicial Conduct by Judge Jones, the Committee examines the factors identified by the New Hampshire Supreme Court pursuant to its decision In Re: Coffey’s Case, 949 A.2d 102 (NH 2008) in determining a sanction.

Specifically, the Committee considered the nature of the misconduct, the extent of the misconduct, the judge’s culpability, the judge’s conduct in response to the Committee’s inquiries and the judge’s reputation and record on the bench.

a. The Nature of the Misconduct:

The conduct involved occurred in the context of the Judge Jones' official capacity. Misconduct on the bench is more serious than the same conduct occurring off the bench.

b. The Extent of the Misconduct:

The Committee determined that the misconduct at issue on the part of Judge Jones was not in the nature of an isolated instance but instead appeared to be part of an identifiable pattern or course of conduct. The identified misconduct appeared to have occurred over the course of at least one year and involved either actual or potential harm to the court system *per se* or to the State of New Hampshire as a litigant.

c. The Judge's Culpability:

There is no evidence suggesting that Judge Jones' conduct in these matters as identified hereinabove was somehow attributable to stress, personal or emotional problems, or physical or mental disability.

d. The Judge's Conduct in Response to the Committee's Inquiry and Disciplinary Proceedings:

The Committee is concerned with respect to Judge Jones' initial response to this complaint of February 25, 2011 wherein he somewhat cavalierly asked that, "the Committee close this matter" given his retirement effective January 31, 2011 suggesting that he was "not subject to any disciplinary action were the Committee to consider imposing any."

Judge Jones' second and considerably more substantive response of March 24, 2011 was even more troubling to the Committee for the following reasons:

- Judge Jones suggested that the Chief Donovan was somehow motivated to file this grievance against him for personal reasons arising out of a hearing decided by Judge Jones in January of 2005;

- Judge Jones intimated that the basis of each sub-part of the grievance relates to findings, rulings or decisions which, in effect, is a substitute for appeal and therefore should not be considered by the Committee;
- Judge Jones justified the tone and substance of his colloquy with Attorney Groski in the matter of State of New Hampshire v. George Stanley by maintaining that the prosecutor had been “inconsiderate and bordering on a rude to the court staff and the court” and that your remarks to Attorney Groski, “...had to be said in that manner and tone to keeping some semblance of order and respect for the staff and the court.”;
- Judge Jones justified his comment to the parties in State of New Hampshire v. Joseph Musemeci such that he “... is more like a marriage counselor than judge” as simply “stating the obvious”;
- Judge Jones justified his colloquy with the defendant in the matter of State of New Hampshire v. Everson Lockhart as attendant to the benefit of sharing his “life outside the bench in far away places where people live by different customs, different standards and different rules” making him a better judge.;
- Judge Jones also attempted to justify his conduct on the basis that the defendants in most of these cases were convicted.

e. The Judge’s Reputation and Record on the Bench:

The Committee recognizes that Judge Jones has had no prior disciplinary history as a district court judge since his appointment to the bench in 1989.

IV. DISCIPLINE

Upon a finding that Judge Jones has violated Canons 1, 2, 3B (3), 3B (4), and 3B (7) of the Code of Judicial Conduct, based upon the above analysis, and finding that no such violations will recur by virtue of Judge Jones’ retirement effective January 31, 2011, the Committee finds that the violations are not of a sufficiently serious nature to warrant the imposition of formal discipline by the court. Pursuant to Supreme Court Rule 40 (8) (f) and with the consent of Judge Jones, the Committee issues a Reprimand.

