

**Retired Associate Superior Court Justice John M. Lewis**

**JC-13-042-C**

**REPRIMAND**

Based upon the facts and circumstances surrounding the disclosure by the New Hampshire Supreme Court of certain comments made by Judge Lewis at several meetings occurring in July of 2013; the Committee's own inquiry into this matter and pursuant to Judge Lewis' stipulated violation of Canon 1; Rule 1.2 of the Code of Judicial Conduct, the Committee has voted to publicly sanction Judge Lewis for his violation of Canon 1; Rule 1.2 by way of this Reprimand for his failure to avoid the appearance of impropriety by conduct in the form of words that may have been reasonably perceived as prejudiced or biased.

**I. FINDINGS OF FACT**

On or about August 9, 2013 the Judicial Conduct Committee received a letter from Chief Justice Dalianis sent on behalf of the New Hampshire Supreme Court regarding certain concerns raised with respect to the conduct of Superior Court Associate Justice, John M. Lewis.

The Committee acknowledged receipt of this submission and specifically inquired of the Chief Justice whether it was the intention of the New Hampshire Supreme Court to file one or more reports with the Committee alleging judicial misconduct involving Judge Lewis or whether it was instead the Supreme Court's intention to provide the Committee with certain facts as to these allegations.

The Chief Justice advised the Judicial Conduct Committee that the Supreme Court intended only to advise the Judicial Conduct Committee of this information regarding Judge Lewis. The Chief Justice clarified that neither she nor the New

Hampshire Supreme Court intended to file anything further with the Judicial Conduct Committee regarding Judge Lewis.

The Committee considered this submission only as a factual predicate upon which to initiate its own inquiry pursuant to Supreme Court Rule 40 (6).

These concerns arose after meetings Judge Lewis had conducted with the Strafford County Attorney's office and the Strafford County Public Defender's office in July of 2013 regarding the general administration of justice in Strafford County.

On Thursday, July 11, 2013, Judge Nadeau received an e-mail from Attorney Abby Albee, then the Deputy Director of the Public Defender's Office, asking Judge Nadeau to call her regarding a meeting Judge Lewis had with the Strafford County Public Defender's Office.

Judge Nadeau spoke with Attorney Albee on Friday, July 12, 2013.

Attorney Albee indicated that during a meeting with Judge Lewis the previous week, Judge Lewis allegedly made disparaging comments about female attorneys and Attorney Albee indicated that, as witnesses to the alleged misconduct, the Public Defender's Office was considering filing a judicial conduct complaint.

Later on in the morning of July 12, 2013, Judge Nadeau contacted the managing attorney of the Strafford County Public Defender's Office and the Strafford County Attorney, each of whom attended separate meetings with Judge Lewis and Judge Nadeau asked for an accounting of what had transpired at those meetings.

The managing attorney of the Public Defender's Office indicated to Judge Nadeau that Judge Lewis made concerning remarks about the potential negative effect the presence of female attorneys may have on the public's perception of the legal profession.

The County Attorney indicated to Judge Nadeau that Judge Lewis stated that the aggressive prosecution of child sexual assault cases may ultimately do more harm than good to the families and the public. The County Attorney suggested to Judge Nadeau that the above comment reflects a negative reaction on the part of Judge Lewis with respect to certain cases involving sexual assault between family members and other criminal cases of a more general nature. Additionally, the County Attorney raised the following concerns:

- Judge Lewis had made a pronouncement such that Superior Court Rule 98 would be applied differently to the prosecution and defense bar;

- Judge Lewis had been exacting a higher level of scrutiny with respect to sexual abuse and/or physical abuse cases especially involving children than occasioned in other criminal cases;
- Judge Lewis asserted that he does not believe that there are “victims” of crime prior to a conviction and consequent assertion that the victim’s bill of rights (NH RSA 21-M:8-K) does not apply to alleged victims of crime;
- Judge Lewis had directed the County Attorney and Victim Witness Advocate to inform victim/witnesses to refrain from attending hearings altogether if they do not want to address the court;
- Judge Lewis has not treated prosecutors fairly with respect to cases involving physical/sexual assault of children;
- Victims of crimes routinely leave the Superior Court believing that Judge Lewis does not care about them and/or that the Office of the County Attorney either cannot or will not support these victims in enforcing their statutory rights to be treated fairly and with respect, to be free from intimidation and to be reasonably protected from the accused in accordance with NH RSA 21-M:8-k II (a), (c).

On the afternoon of July 12, 2013 Judge Nadeau conducted a teleconference with the Superior Court Executive Committee to discuss these allegations. After that meeting, Judge Nadeau determined that Judge Lewis should not return to Strafford County and contacted Judge Lewis on Wednesday, July 17, 2013 to let him know about the allegations and to request that Judge Lewis attend a meeting with Judge Nadeau and the Executive Committee the following day.

Judge Lewis attended a conference from July 13, 2013 through July 17, 2013 and conducted no hearings on July 18 or 19, 2013.

On Thursday, July 18, 2013, Judge Lewis attended the Executive Committee meeting, and the members of that Committee discussed their concerns regarding the alleged comments.

Judge Lewis informed Judge Nadeau and the Superior Court Executive Committee that he did not agree with the interpretation of the statements at issue and vigorously denied that he said or intended what was alleged but nevertheless, according to Judge Nadeau, acknowledged that the wording could have been reasonably perceived as prejudiced or biased.

Judge Nadeau explained to Judge Lewis that he would be placed on paid administrative leave for two weeks beginning July 22, 2013, until she and the Superior Court Executive Committee could determine the appropriate measures to take and that in any event that Judge Lewis would not be returning to Strafford County.

While on administrative leave, Judge Lewis decided that he would retire and not return to the bench.

On July 26, 2013, Judge Lewis' attorney contacted Judge Nadeau to inform her of his decision.

Judge Nadeau received Judge Lewis' letter of retirement on Wednesday, July 31, 2013, effective September 6, 2013.

Judge Lewis did not preside over any hearings since Judge Nadeau and the Executive Committee learned of the allegations; had not sought to serve in senior status; and, will not be returning to the bench in any capacity in the future.

On or about September 16, 2013 Judge Lewis was advised by the Judicial Conduct Committee that the Committee had initiated its own inquiry into the circumstances of his being placed on paid administrative leave from the bench in July of this year pursuant to Supreme Court Rule 40 (6).

As part of its inquiry, the Committee interviewed a number of individuals including Strafford County Attorney Thomas P. Velardi, various members of the New Hampshire Public Defender Program, all of the attorneys from the Strafford County Public Defender's Office who were present at the meeting with Judge Lewis on July 10, 2013, Judge Nadeau and Judge Lewis.

Attorneys interviewed from the New Hampshire Public Defender Program each reported that during a meeting on July 10, 2013 Judge Lewis cautioned that the legal profession risks losing the respect of our society because so many more women are becoming lawyers. Judge Lewis apparently expounded on this point for some minutes pointing out that: 1- in Russia no one respects doctors anymore because medicine is now seen as a female dominated profession; 2- Judge Lewis sees the same thing happening here in this country with the legal profession; 3- people respect leaders in the business world because the business world is largely male-dominated; and, 4- the influx of new female lawyers is negatively affecting the teaching profession because women are becoming lawyers as opposed to educators.

Judge Lewis denied that he made any disparaging remarks about the potential negative effect the presence of female attorneys may have on the public's perception of the legal profession. Judge Lewis stated that he thought that he was speaking collegially to the attorneys from the Public Defender's Office and was trying to make the point that sexism and gender discrimination still exist in our society and that these issues must continue to be confronted and overcome.

As to the context of this remark, Judge Lewis stated that he was tired; it had been a long week; and, that he was trying to make the point that the value of the legal profession has diminished in the public's perception over the years and he was speculating as to the various reasons.

Judge Lewis explained that the remarks attributed to him by the Public Defender's Office were not his words. Judge Lewis stated that he was speaking to members of the Strafford County Public Defender's Office in an off the cuff, collegial, manner trying to probe at those reasons as to why the legal profession does not appear to be held in the same regard that it had been. Judge Lewis stated that also discussed in the context of this same conversation were: 1- the current *pro se* phenomena; 2- that lawyers are no longer perceived as problem solvers; and, 3- that law schools are hurting for dollars and closing at an alarming rate. Judge Lewis stated that he believes that his points were not properly understood by the members of the Public Defender's Office.

Attorney Velardi acknowledged that Judge Lewis had indeed stated to him at a meeting in July of 2013 that, "... the aggressive prosecution of child sexual assault cases may ultimately do more harm than good to the families and the public ..." Velardi also stated that in his judgment this statement did not constitute an ethical breach or violation of the Code of Judicial Conduct warranting Attorney Velardi's filing a report of alleged judicial misconduct with the Judicial Conduct Committee. Attorney Velardi also indicated that in spite of apparent philosophical differences, "There is no doubt in my mind that Justice Lewis executed his duties as a Superior Court judge with the best of intentions."

Judge Lewis had been made aware that the County Attorney indicated that Judge Lewis stated that the aggressive prosecution of child sexual assault cases may ultimately do more harm than good to the families and the public.

Judge Lewis explained that this is not really correct in so far as his making a blanket statement and it is not consistent with his viewpoint generally. He admitted to making a similar remark in the course of a particularly difficult sexual assault case to an Assistant County Attorney of the Strafford County Attorney's office - again thinking that he was sharing a professional concern with colleagues. Judge Lewis further explained

that in this case a young victim / witness gave a number of conflicting accounts of the assault at issue. Judge Lewis made a difficult decision to allow the Guardian Ad Litem to testify after a late disclosure of the Guardian Ad Litem as a witness and over the objection of the Assistant County Attorney.

## **II. RULINGS OF LAW**

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

### **Canon 1; Rule 1.2, *Promoting Confidence in the Judiciary***

Canon 1

A judge shall uphold and promote the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety

### **Rule 1.2, *Promoting Confidence in the Judiciary***

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

The comments to Canon 1 make clear that public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety and that this principle applies to both the professional and personal conduct of a judge.

## **III. DISPOSITION**

The Judicial Conduct Committee and Judge Lewis stipulate that:

1- Judge Lewis had violated Canon 1; Rule 1.2 of the Code of Judicial Conduct, by creating the appearance of impropriety through the use of words which may have been reasonably interpreted to manifest bias or prejudice based upon gender;

- 2- Judge Lewis has retired from the bench and has not taken senior status;
- 3- The Committee has the authority and discretion to move forward with these proceedings notwithstanding Judge Lewis' retirement pursuant to In Re: Thayer, 761 A2d 1052; 145 NH 177 (NH 2000);
- 4- Although the Committee and Judge Lewis have agreed to resolve this investigation with the charging and chargeable finding relating only to creating the appearance of impropriety, the Committee's investigation revealed concerns related to gender bias, treatment of purported victims in sexual assault cases, and other potential concerns related to his conduct while sitting as a judge.
- 5- Judge Lewis, while accepting the within articulated violation of the Code of Judicial Conduct by way of his failure to avoid the appearance of impropriety, denies any other potential violations;
- 6- Judge Lewis agrees that he will not serve in any judicial capacity in the future that is governed by the Code of Judicial Conduct; and,
- 7- If for any reason Judge Lewis does not honor this stipulation, the Committee reserves its right to file an additional complaint, if warranted, referencing conduct contained in this Reprimand or other conduct and to seek such additional remedies or other disposition as may be appropriate.

In light of the above, the Committee determines that it is not necessary to specifically address all the dispositional factors delineated in In re: Coffey's Case, 949 A.2d 102, 157 N.H. 156 (N.H. 2008). Consistent with the above paragraphs and with the consent of Judge Lewis, no formal discipline is sought or warranted and a Reprimand is hereby issued pursuant to New Hampshire Supreme Court Rule 40 (8) (f).

**STIPULATION**

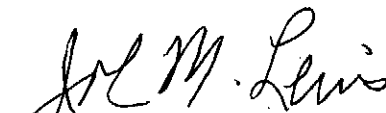
The Judicial Conduct Committee through its Chairperson, Robert O. Wilson, DDS, and the Honorable John M. Lewis stipulate to resolve this matter by way of Judge Lewis' agreement to accept the attached public reprimand from the Judicial Conduct Committee.

By entering into this stipulation, Judge Lewis hereby agrees that should he not honor the terms of this stipulation by seeking to hold any judicial office as may be governed by the Code of Judicial Conduct at any time, the present proceeding before the JCC may be revived without regard to the applicable period of limitation which shall be tolled from the date of this Stipulation and the Judicial Conduct Committee shall have the authority to file an additional complaint, if warranted, referencing conduct contained in this Reprimand or other conduct and to seek such additional remedies or other disposition as may be appropriate.

By entering into this stipulation, Judge Lewis waives his right to a public hearing pursuant to New Hampshire Supreme Court Rule 40 (9) and agrees that this Stipulation and the attached Reprimand will serve as the official public record of these proceedings.

  
Robert O. Wilson, DDS, Chair

March 31, 2014  
Date

  
Judge John M. Lewis

3/26/14  
Date



Judge Houran, Wilfred L. Sanders, Jr., Esq. and Lawrence O'Connell did not participate in this matter.