

In the Matter of the Honorable Sharon N. DeVries

JC-17-013-C

REPRIMAND

I. INTRODUCTION AND ALLEGATIONS

A report of alleged judicial misconduct dated March 29, 2017 was filed by Joyce M. LaFrance concerning Judge DeVries. This report was received and docketed by the Executive Secretary on April 4, 2017 and arose in the context of a criminal matter heard in part before Judge DeVries at the 10th Circuit Court – Rockingham County – District Division – Plaistow entitled, State of New Hampshire v. Joyce LaFrance, Case Number: 468-2014-CR-0906 and a civil matter heard before Judge DeVries in the same venue entitled, Joyce LaFrance v. Jordan Shallow, Case Numbers: 435-2015-CV-0165 and 468-2014-CV-0104.

Ms. LaFrance alleged on the face of the report Cover Sheet that the dates upon which the alleged misconduct occurred involving Judge DeVries were May 1, 2015; and, June 1, 2015 through December 2015.

Ms. LaFrance indicated that she was a witness to the alleged misconduct and described the nature of the conduct about which she complained as, "..., Numerous expressions of bias against me without ever hearing any evidence; causing unnecessary costs and delays for no apparent reason, interfering with an agreement to dismiss all charges, offering legal advice to a non-party to the case, etc.."

In sum, Ms. LaFrance reported that on or about December 12, 2014 she was arrested and charged with four counts of misdemeanor false reporting to the Atkinson, New Hampshire Police. Ms. LaFrance alleged *inter alia* that:

- Judge DeVries caused her to experience unnecessary and costly delays by refusing to sign off on a settlement agreement without a "no contact" provision;
- Ms. LaFrance suggested that Judge DeVries may have engaged in improper *ex parte* communications with the police or prosecutor leaving Judge DeVries privy to information concerning Ms. LaFrance which lie outside of the case record;

- Judge DeVries allowed a stalker to read a victim's impact statement objecting to the dismissal of the charges against Ms. LaFrance in close proximity to Ms. LaFrance while Ms. LaFrance was protected by a stalking order formerly issued by Judge DeVries;
- Judge DeVries repeatedly referred to Mr. Shallow as a "victim" before hearing any evidence regarding Mr. Shallow's claim(s);
- Judge DeVries inquired of Ms. LaFrance's attorney whether Ms. LaFrance suffered from any mental health issues; Judge DeVries released a court audio recording pursuant to a Rule 91 A request before redacting private medical information from the recording; Judge DeVries improperly and without cause to do so ordered a mental health evaluation regarding Ms. LaFrance; and,
- Judge DeVries made offensive public statements about Ms. LaFrance during a hearing including statements such that, "... I don't know if what you tell me about defense contractors helps or hinders this..." and "... It concerns me that someone who has presented here in varying degrees of stability is involved in that level of defense contract work".

In this Judicial Conduct Committee disposition, Judge DeVries stipulates to a violation of Canon 2 Rule 2.8 (B), *Decorum, Demeanor*, holding that "A judge shall be patient, dignified and courteous to litigants and others with whom the judge deals in an official capacity ..." and the issuance of the within reprimand. The Committee hereby dismisses the remaining portions of the subject Complaint.

II. PROCEDURAL HISTORY

Appended to the report Cover Sheet and intended by Ms. LaFrance to be incorporated therein by reference was a five-page, typewritten document entitled "Complaint of Joyce LaFrance Against Judge Sharon DeVries" in which Ms. La France more particularly set forth her conduct concerns.

Also appended to the report Cover Sheet in support of Ms. La France's allegations were the following additional documents:

- A document entitled, *Agreement*, in the matter of State of New Hampshire v. Joyce LaFrance, Docket Number: 468-2014-CR-906 (There is a handwritten marginal note on the bottom portion of the document which states that, "In weighing all respective considerations in this matter, this agreement is approved with amendments added by the Court. Ms. La France shall have no contact with Jordan Shallow or his family. So Ordered. S. DeVries 6-1-15");
- A "Right to Know Request Under RSA 91-A" filed by Leon Artus;

- A two-page, typewritten letter addressed to Judge Kelly c/o the Circuit Court Administrative Office dated June 15, 2015 signed by Joyce La France;
- A letter to Joyce LaFrance dated June 24, 2015 from Paula J. Hurley, Circuit Court Administrator regarding the Judicial Conduct Committee;
- A letter from Ms. La France to Chief Albert Brackett of the Atkinson Police Department;
- Clerk's Notice of Decision dated July 15, 2015;
- A pleading entitled, "Notice of Withdrawal of Consent to Disclosure of Private Information" from State of New Hampshire v. Joyce LaFrance, Case Number: 468-2014-CR-0906;
- Clerk's Notice of Decision dated January 5, 2016; and,
- Motion for Recusal (of Judge DeVries) filed by Ms. La France in the case of Joyce LaFrance v. Jordan Shallow, Case Numbers: 435-2015-CV-0165 and 468-2014-CV-0104 with a marginal note Order from Judge DeVries granting the same.

Ms. LaFrance's report was elevated by the Judicial Conduct Committee to the level of a Complaint requiring Judge DeVries' response pursuant to New Hampshire Supreme Court Rule 40 (7) (c) on June 12, 2017.

In addition to the report filed by Ms. LaFrance (later elevated to the level of a Complaint by the Committee), the additional documents filed by Ms. LaFrance in support of her conduct concerns, and the Answer of Judge DeVries together with her supporting documents, the Committee also examined the case records of each of the cases cited by Ms. LaFrance inclusive of Odyssey Case Summaries and the sound recordings of all hearings.

III. RESPONSE TO ALLEGATIONS

Judge DeVries responded to this Complaint by way of her Answer dated July 25, 2017.

Judge DeVries explained therein that this Complaint references three cases (Case Numbers: 468-2014-CR-906; 435-2015-CV-165 and 468-2014-CV-104) – with the first a criminal action and the second and third, civil stalking actions. Judge DeVries indicated that there are also three other civil stalking actions brought by Ms. LaFrance which she believed were relevant to the instant Complaint citing Case Numbers: 435-2012-CV-48, 468-2012-CV-91 and 435-2015-CV-166.

Judge DeVries noted for the Committee that Case Number: 218-2016-CR-1332 (the Superior Court jury trial which originated in the 10th Circuit Court – Rockingham County – District Division – Plaistow as Case Number: 468-2014-CR-00906) is presently on appeal at the Supreme Court.

Unnecessary Delay Caused by Judge Refusing to Sign Off on a Settlement Agreement Without a "No Contact" Provision:

With respect to whether or not Judge DeVries may have caused Ms. LaFrance to experience an unnecessarily prolonged involvement with the prosecution of the four Class A misdemeanor charges of false reports to law enforcement in the case of State of New Hampshire v. Joyce LaFrance, Case Number: 468–2014–CR–906 by not summarily signing off on an agreement that was proposed to Judge DeVries for approval and resolution of these criminal charges, Judge DeVries explained that had the State wanted to nolle prosequere these cases, it could have and would have. Rather, Judge DeVries explained that the State chose not to do so and instead sought a Court Order of conditional discharge.

Judge DeVries further explained that once the parties had involved her in the dispositional orders of these cases given the history of animosity between the defendant, Ms. LaFrance, and Mr. Shallow and after hearing Mr. Shallow's victim impact statement, she exercised her discretion and required that if she was going to approve and order the proposed agreement it would have to include a "no contact" provision regarding Mr. Shallow. Judge DeVries stated that she found Mr. Shallow's victim impact statement to have been both credible and persuasive.

Judge DeVries concluded that when Ms. LaFrance was unwilling to have this condition of no contact included as part of the dispositional orders, her right and remedy, which Ms. LaFrance exercised, was to proceed to trial. Ms. LaFrance's cases, because of her recusal request addressed and granted on December 14, 2015, were administratively reassigned to Judge Bamberger and Judge DeVries reported that her involvement in these cases ended in December of 2015.

Judge Bamberger apparently found Ms. LaFrance guilty on all four charges. The misdemeanors that Ms. LaFrance was found guilty of were four counts of false reports to law enforcement on four different dates. These false reports all involved accusations made by Ms. LaFrance to the police involving Mr. Shallow. The sentence imposed on each charge was a fine of \$2000 plus penalty assessment of \$480 all suspended conditioned upon good behavior for one year and "no contact with Jordan Shallow or his family".

Ms. LaFrance appealed this finding to the superior court for a trial *de novo*. In February of 2017 a jury found Ms. LaFrance guilty of all charges and the sentence imposed by Judge Shulman included suspended fines, suspended jail time, and "no contact with victim Jordan Shallow or Kendra R." Judge DeVries explained that it is this case that is now on appeal to the Supreme Court.

Judge DeVries maintained that it was Ms. LaFrance's own actions and her resistance to accepting a resolution that included a "no contact" provision in May of 2015 that created any prolonged involvement with the legal process in this matter. Judge DeVries maintained that her rulings in overseeing this and other matters involving Ms. LaFrance were consistent with the required Canons of the Code of Judicial Conduct.

Improper Ex Parte Communications with the Police or Prosecutor:

Judge DeVries categorically denied having had any *ex parte* communication with any prosecutor or Atkinson police officer and/or any other person involved with Ms. LaFrance. Judge DeVries noted that her knowledge of the matters involving Ms. LaFrance was derived solely from the several cases brought and the hearings, pleadings and testimony among and between Ms. LaFrance, Mr. Shallow and the State of New Hampshire from 2012 through 2015.

Judge DeVries affirmatively denied as alleged by Ms. LaFrance that she had any prior knowledge of the status of the police investigation, friendship with the police and Mr. Shallow, Ms. LaFrance hairdresser's relationship with Mr. Shallow, the presence and/or identity of members of the community in attendance at court to observe the proceeding or any of the evaluations for PTSD Ms. LaFrance indicated that the police knew about. Judge DeVries further denied that there was any reliance on her part on any extrinsic information other than that which had come before her during hearings, testimony and pleadings.

Victim Impact Statement:

As far as allowing Mr. Shallow to speak at the May 1, 2015 hearing and Ms. LaFrance's feeling that Judge DeVries may have improperly allowed Mr. Shallow to be physically close to her in doing so, Judge DeVries pointed out that the available space in the Plaistow courtroom is very limited. Judge DeVries explained that in order to have Mr. Shallow's statement preserved on the record, Mr. Shallow was required to stand near the recording devices at counsel table.

Judge DeVries stated that there was ample security present to ensure that nothing unsafe would occur and added that Mr. Shallow displayed no indices of threatening, angry or violent behavior that would have caused fear or alarm.

As to Mr. Shallow's request to offer a victim impact statement and Judge DeVries grant of this request, Judge DeVries asserted that this was a ruling of the Court well within her discretion.

Mental Health History and Request for Evaluation:

Regarding her inquiries as to Ms. LaFrance's mental health, Judge DeVries offered that it is her responsibility in structuring criminal cases or with respect to approving negotiated dispositions to, when indicated, address competency and related issues. Judge DeVries stated that in her judgment the circumstances presented warranted just such an inquiry. Judge DeVries asserted that she has a duty to the accused, the purported victim and to the community to do so.

Release of Audio Recording Pursuant to a NH RSA 91-A or FOIA Request:

Regarding the claim by Ms. LaFrance such that Judge DeVries unlawfully released her medical records pursuant to a RSA 91-A or FOIA request, Judge DeVries pointed out that Ms. LaFrance and her counsel gave consent to the release. Judge DeVries also asserted that the change in Ms. LaFrance's position came only after the record had been provided. Judge DeVries stated that she did not listen to the record as there was no request that she do so and there was proper consent by counsel and Ms. LaFrance. Judge DeVries also pointed out that there was no effort made by anyone to conceal any information from Ms. LaFrance. Judge DeVries stated that she requested her clerk to keep the record on at all times for all proceedings.

Comments by Judge Regarding Litigant's Security Clearance:

However, Judge DeVries did agree with Ms. LaFrance that her comments made regarding the fitness of Ms. LaFrance for a security clearance with a defense contractor were unnecessary. Judge DeVries offered by way of explanation that there are times when she uses humor or sarcasm on the bench to ease adversarial tension that can arise in the courtroom. Judge DeVries also offered that while this is a practice which can at times be helpful, it can also at other times can be misinterpreted.

IV FINDINGS OF FACT

1. The Committee determined that its investigation had not disclosed probable cause to warrant formal proceedings arising from any of Ms. LaFrance's allegations but for Ms. LaFrance's allegations concerning Judge DeVries' comments regarding the propriety of her security clearance and hereby terminates its inquiry and dismisses these remaining portions of the complaint. Judge DeVries' conduct on the bench as otherwise alleged by Ms. LaFrance, given the totality of the circumstances, does not appear to rise to the level of a violation of the Code of Judicial Conduct.

2. Judge DeVries made the following remarks at hearing concerning Ms. LaFrance's security clearance: "... I don't know if what you tell me about defense contractors helps or hinders this..." and "... It concerns me that someone who has presented here in varying degrees of stability is involved in that level of defense contract work".

III. RULINGS OF LAW

Judge DeVries and the Judicial Conduct Committee stipulate that the following Canon and Rule of the Code of Judicial Conduct was violated by clear and convincing evidence.

Canon 2

Rule 2.8 Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

Professor James Alfini *et al* note in Judicial Conduct and Ethics that, “Although cases in which judges have been charged with indecorous or discourteous judicial behavior toward litigants largely mirror the range of behaviors exhibited towards attorneys, disciplinary bodies have generally been sensitive to the fact that a non-lawyer litigant is somewhat more vulnerable in the courtroom setting than is the attorney. (Judicial Conduct and Ethics, 5th Edition, *Geyh, Alfini, Lubet and Shaman*, Lexis Nexis 2013, part 3.02 (3))

In reprimanding a judge charged with treating a litigant discourteously and impatiently in a child custody matter, the Supreme Court of Florida wrote that:

... tyranny is nothing more than ill-used power. We recognize that it is easy to lose one's judicial temper but judges must recognize the gross unfairness of becoming a combatant with a party. A litigant, already nervous, emotionally charged, and perhaps fearful, not only risks losing the case, but also contempt and a jail sentence by responding to a judge's rudeness in kind. The disparity in power between a judge and a litigant requires that the judge treat the litigant with courtesy, patience and understanding. Conduct reminiscent of the playground bully of our childhood is improper and unnecessary. (See In Re: Eastmoore, 504 So.2d. 756, 758 (Florida 1987))

Alfina, *et al* also point out in Judicial Conduct and Ethics that, “apart from the obligation to be patient and courteous, a judge who is impatient with a litigant runs the risk of violating the duty to accord the litigant's full right to be heard according to law. (Judicial Conduct and Ethics, 5th Edition, *Geyh, Alfini, Lubet and Shaman*, Lexis Nexis 2013, part 3.02 (3))

Judges have also been disciplined for adopting a frivolous or sarcastic attitude towards litigants. (See In Re: Daniels, 340 So. 2d. 301 (La. 1976))

IV. DISPOSITIONAL ANALYSIS

Canon 2, Rule 2.8 (B)

After determining the existence of clear and convincing evidence supporting the finding of a violation of Canon 2, Rule 2.8 (B) of the Code of Judicial Conduct by Judge DeVries, the Committee examined the factors identified by the New Hampshire Supreme Court pursuant to its decision, In Re: Coffey's Case, 157 N.N.156 (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 inquiry and disciplinary proceedings and the judge's reputation and record on the bench.

A. The Nature of the Conduct:

The conduct occurred in the judge's official capacity. There was no indication that it was conducted in bad faith or for personal gain.

B. The Extent of the Conduct:

This event occurred in the context of one case. Given the surrounding circumstances and nature of the conduct, there is no substantial basis to conclude that there has been actual or potential harm to the court system as a result of these actions.

C. The Judge's Culpability:

Canon 2, Rule 2.8(B) is unequivocal and prohibits the conduct at issue.

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

Judge DeVries was at all times cooperative with the Committee and its investigation. She responded timely and thoroughly to requests for information, has acknowledged that her conduct violated the applicable code provisions, and has consented to this resolution.

E. The Judge's Reputation and Record on the Bench:

A judge since 1989, Judge DeVries did have a previous judicial conduct complaint resulting in a Reprimand in 2009. This Reprimand involved Judge DeVries making an after-hours cell phone call to a Superior Court judge requesting that judge change his Order in

Superior Court and hold a juvenile over at YDC. The allegation was that Judge DeVries engaged in an unsolicited, ex-parte communication with this Superior Court judge which was made outside of the presence of the parties concerning an impending proceeding. Pursuant to Judge DeVries' stipulated violation of Canon 3 B (7) by way of her Answer to the Statement of Formal Charges, the Committee sanctioned Judge DeVries in January of 2009 for her violation of Canon 3 B (7) by way of a Reprimand.

Judge DeVries was again sanctioned by way of Reprimand in 2017 based on a stipulated violation of Canon 2 Rules 2.2 (B) *Impartiality and Fairness* and Rule 2.6 (A) *Ensuring the Right to be Heard*.

In April of 2017, Judge DeVries was reprimanded based upon her *sua sponte* revision of a negotiated plea agreement. Judge DeVries refused to allow the State to strike amendments to the complaints; abrogated the Court's duty and exceeded its authority to make charging decisions; and forced the State to go through with a plea after unilaterally renegotiating the terms of the plea agreement which were not in line with the negotiated agreement and which were previously agreed upon by the defendant and prosecutor. Her conduct from the bench was determined to have violated two provisions of Canon 2 of the Code of Judicial Conduct.

At the time that the instant Complaint (JC-17-013-C) and another (JC-17-015-C) were being investigated by the Judicial Conduct Committee, Judge DeVries had been working with the Committee to address her stipulated violations of Canon 2, Rule 2.2 (B), *Impartiality and Fairness* and Canon 2, Rule 2.6 A, *Ensuring the Right to be Heard* and is presently engaged in the process of retraining at the National Judicial College in Reno, Nevada.

V. STIPULATED DISPOSITION

Upon a finding that Judge DeVries has violated Canon 2, Rule 2.8 (B) in the context of the State of New Hampshire v. Joyce LaFrance case based on the above dispositional analysis, the Committee finds that these violations are not of a sufficiently serious nature to warrant the imposition of formal discipline by the Supreme Court. Pursuant to Supreme Court Rule 40 (8) (f) (2) and with the consent of Judge DeVries, the Committee issues this Reprimand together with the following additional sanction.

The Committee urges Judge DeVries to refrain from the conduct addressed in this Stipulated Disposition. Litigants have right to expect that they shall be treated in a patient, dignified and courteous manner.

1. National Judicial College Training


Judge DeVries at her own expense shall complete the seminar offered by the National Judicial College entitled, *Ethics – Reaching Higher Ground* before the end of 2018; and,

2. Judge DeVries' hearings shall be periodically monitored at random for one year in such manner as may be determined by the administrative judge or other suitable person for any further remedial action which may be required pursuant to New Hampshire Supreme Court Rule 40 (8) (f) (2).

Judge DeVries has stipulated to resolve this matter by way of agreement to accept the within Reprimand from the Judicial Conduct Committee and that by entering into this stipulation, she waives her right to a public hearing pursuant to New Hampshire Supreme Court Rule 40 (9) and agrees that the attached Reprimand shall serve as the official record of these proceedings.



Mary E. Collins, Committee Chair



Date



Judge Sharon N. DeVries



Date