Judicial Review Council State of Connecticut

Judge Seymour Hendel March 6, 1989

MEMORANDUM OF DECISION

Background

Information having come to the attention of the Judicial Review Council (Council) indicating reason to believe that judicial conduct under the provisions of the General Statutes Section 51-51i had occurred, the council initiated an investigation of the alleged conduct of Judge Seymour Hendel (Respondent), pursuant to C.G.S. Section 51-51*l* (a). The investigation resulted in a finding that probable cause existed, the respondent was notified under C.G.S. Section 51-51*l*(b). The respondent acknowledges that all statutory notices were duly received by him, and that there has been compliance with the procedural rules adopted by the council.

A public hearing pursuant to Section 51-51*l*(c) was held on February 23, 1989. The parties were fully heard. The hearing concerned two allegations of misconduct by the respondent:

1. That he willfully violated Canon 3A(6) of the Code of Judicial Conduct; and

2. That he had engaged in conduct "prejudicial to the impartial and effective administration of justice which brings the judicial office in disrepute" in violation of Section 51-51i(a)(1) of the General Statutes.

Facts

The council found the facts to be, substantially, as follows:

The case concerned off the bench discussions of sentences issued by the respondent at court on August 9, 1988. One case, State vs. Evans, involved a 12 year old boy who was paid for sexual favors; the other, State vs. Diaz, involved a stepfather having sexual relations with his two stepdaughters, both under the age of ten. Each case carried a recommendation, either by the prosecutor or the probation officer, of a suspended sentence when it reached the judge on a plea bargained guilty plea. Judge Hendel imposed suspended sentences in each case with extended probation and requirements for special sexual abuse therapy.

One day after the sentences were imposed, Steven Slosberg, a reporter for the New London Day, prepared a draft column on the cases contrasting them with a third case, emphasizing the fact that no jail sentence was imposed. He telephoned the judge in his chambers to ask questions concerning the sentences.

Judge Hendel had, in the past, talked to various reporters from the New London Day for over a decade and thought he was talking to the reporter by way of explanation, only for background and not for attribution and not for quotation. The reporter claimed the Judge did not state that the telephone call was "off the record".

The reporter quoted several comments made by the judge during the telephone conversations which, considered by themselves, could indicate that the judge was insensitive and callous in these types of cases.

Charge: First Count - Canon 3A(6)

In pertinent part, this section of the Code of Judicial Conduct provides that ...a judge should abstain from public comment about a pending or impending proceeding in any court,..." in the time that the respondent made the statements under scrutiny, there is no dispute and it is clearly established that the cases of State vs. Evans and State vs. Diaz were already disposed of by the acceptance of guilty pleas, imposition of sentences, and entry of final judgment. The State's Attorney for the Judicial District of New London has unconditionally testified that both of said matters were fully closed out. We are aware of no Connecticut precedent that speaks directly on this issue in the context of Canon 3A(6).

However, it has been held that public comments made by a judge immediately following a judgment of contempt did not constitute a violation of a comparable Canon 3A(6) because "(T)he contempt litigation had been concluded." Wenger vs. Commission on Judicial Performance, 630 P2d 954, 965 (Cal.1981). In final argument, the petitioners' attorney impliedly concedes that the application of this Canon to the facts of this case does not provide an adequate foundation for a finding of willful misconduct.

This council finds and concludes that the hearing did not provide clear and convincing evidence that the respondent violated the provisions of Canon 3A(6).

Charge: Second Count - C.G.S. Section 51-51i (a)(1)

The evidence clearly establishes that two telephone conversations took place between the respondent and Mr. Slosberg. The total length of the conversations together were between 10 and 25 minutes. The statements ascribed to the respondent as outlined in the newspaper column (Exhibit F) are disputed in part, and substantially admitted in part by the respondent. It is probable that the statements, as reported, do not represent the totally accurate context in which they were made. The evidence as to whether the respondent's comments were "off the record," or "for the record," is in sharp conflict. It is obvious that the columnist and the respondent never reached a clear meeting of the minds as to this

characteristic of their conversation. Reported, as they were, in the newspaper column, they were subject to misinterpretation by members of the public.

The respondent has admitted, without qualification, that the statements were decidedly inappropriate; it was a mistake to have made them; while they were responses well intended to give background to these cases and these types of cases, they were unfortunate and careless words. The respondent has expressed deep sorrow that his words may have been wrongly interpreted by any victims in these tragic types of criminal cases - and by any other people.

The council heard testimony that established that members of the public were upset and outraged that the respondent, in his position, would hold such beliefs and that such expressions gave the impression of a lack of understanding and a lack of sensitivity concerning such cases by the respondent.

Other testimony of the state's attorney, chief judge, persons of the educational and psycho therapeutic communities, other judges and lawyers endorsed the general judicial demeanor, legal scholarship and human kindness of the respondent. They indicated that the subject allegations of impropriety represent an aberration and not a measure of the quality of justice brought to the bench by the respondent. Many testified specifically as to this

wisdom, honor, integrity and thoughtfulness as well as his concern for others as demonstrated over a decade of service on the bench.

The hallmark of an effective judiciary is an independent one. That a judge makes an unpopular decision, uses unpopular words or expresses unpopular views is not alone ground for finding improper judicial conduct. Rather, only conduct specifically within the parameters of the statutory requirements may lead to such a finding.

The charge here requires a finding of "conduct prejudicial to (both) the impartial and effective administration of justice which brings the judicial office in disrepute". Conn. Gen. Stat. Section 51-51i(a)(1). There are a number of separate elements all of which must be found. The legislative requirements are not overly technical or difficult but recognize the need for caution before any harsh sanctions are imposed upon a member of the judiciary. Otherwise, the independence of the judiciary might be impaired.

Here, the conduct complained of is the use of some dozen words to a reporter about closed cases in a telephone discussion the judge believed was confidential. The discussion was indiscreet and the language inappropriate, but the council recognizes the dispute as to the context in which the judge presented the comments and his claim that some items were misstated.

Considered, in balance, the evidence does not establish to a clear and convincing degree that the respondent engaged in conduct "prejudicial" to the impartial and effective administration of justice which brings the judicial office in disrepute.

These views do not indicate that the council condones indiscretion in connection with talking with the press. Nor does it approve language importing negative attitudes toward a victim of a sexual crime. The council does not accept any lowering of judicial or legal protection for children. On the other hand, the council recognizes that in each case a plea bargain was made by the prosecutor with the defendant for various compelling reasons all of which were presented in the testimony before the council and that in one case that prosecutor recommended a suspended sentence and in the other case the probation officer did These conditions and factors are part of the testimony before the council.

That this respondent made a mistake is established and indeed admitted by him. He has humbly apologized for it, is publicly humiliated and shamed. He has indicated a commitment to change his practices with respect to the press. He has served for over a decade as a judge of the courts of Connecticut, with high integrity, intelligence and effectiveness. He is genuinely concerned about the victims of sexual crimes.

The judge has made a serious error, one that merited consideration by this council and which was illuminated by the public hearing, the testimony of the judge and the examination and cross examination of the reporter. Nevertheless, a single mistake by a judge in less that two dozen words in displaced context off the bench is not, in and of itself, misconduct by a judge that is actionable within the jurisdiction of this council under the statutes.

This council finds and concludes that the hearing did not provide clear and convincing evidence that the respondent violated the provisions of C.G.S. Section 51-51i(a)(1).

The council makes no finding on the respondent's motion to dismiss considering it moot.

JUDICIAL REVIEW COUNCIL

By:_____
S. William Bromson, Chairman

Judicial Review Council State of Connecticut

Judge Seymour Hendel March 6, 1989

DISSENTING OPINION (A)

This is a minority vote for censure of Judge Hendel. I find under a broad interpretation of Sec. 51-51 i(a) (1) the Judge's conduct prejudicial to the impartial and effective administration of justice which brings the judicial office in disrepute.

The Judge's statements to the press and the notoriety his statements received particularly in the New London area, and which the Judge should have anticipated, reflect poorly on the dignity of his position and bring the judicial office in disrepute. These statements erode public confidence and have a detrimental influence on the impartial and effective administration of justice. Our system requires the public's confidence and respect.

At the same time I recognize Judge Hendel's significant accomplishments. From all accounts he has been an excellent Judge. In considering the circumstances of this unfortunate incident I find no reason to believe that his performance in the future will not meet the same high standards that it has in the past.

By s/ Michael J. Daly
Michael J. Daly

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DISSENTING OPINION (B)

As a public member of the Judicial Review Council, I hold the opinion that under my interpretation of Sec. 51-51i(a)(1) the conduct of Judge Seymour Hendel, as aired at the Public Hearing on February 23, 1989, has brought into disrepute the judicial office which he holds.

Judge Hendel's unfortunate and irresponsible statements to the press created a furor in Connecticut, particularly in New London County, which he should have anticipated in view of his extensive experience on the bench. His injudicious and careless comments reflect poorly on his judgment and are beneath the dignity of his position.

Our judicial system, if it is to maintain both the confidence of the public and its respect as well, must be beyond reproach. This requires not just legal ability and dignity on the part of the judiciary, but also a degree of responsibility not shown in the statements of Judge Hendel.

Judge Hendel has made significant contributions during his period of service on the bench, but I believe, nonetheless, his aberrations as revealed at the public hearing of the Judicial Review Council on February 23, 1989, gives me no alternative but to file a minority report calling for the censure, if not for the suspension of, Judge Hendel for a period to be determined by the Council.

By s/ Richard C. Lee
Richard C. Lee