

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

IN RE: SAMUEL L. GUY, ESQ.)	
)	
		C.A. No. N12M-10-163
)	
)	

Memorandum Opinion

On August 6, 2012, this Judge presided over a routine case review calendar which included a First Case Review styled *State v. Omari Jones*. Respondent, who previously entered a formal appearance on behalf of Mr. Jones, was not present in the courtroom when defendant Jones' case was called during the calendar. Respondent's whereabouts were unknown to those in the courtroom at that time. Respondent eventually appeared at the Case Review more than an hour after the scheduled beginning of the case review. By the time he arrived, Respondent's client had been excused and his case review had been rescheduled. The court initially sanctioned Mr. Guy \$200.00 for his absence, but thereafter it vacated the sanction order and entered a Rule to Show Cause directing Mr. Guy to show why sanctions should not be entered against him. The court conducted the Rule to Show Cause hearing for October 26, 2012 at which time Respondent appeared and offered several documents into evidence. This is the court's findings of fact and conclusions.

A. Criminal Case Review Calendars

The First Case Review plays an important role in the prosecution of criminal cases:

- It insures that the defendant is represented by counsel and that the defendant has entered a plea with the assistance of his or her counsel.
- It provides an opportunity to resolve any preliminary disputes which have arisen between the parties. If those disputes cannot be resolved at the First Case Review, the court can arrange for their presentation at a later time.
- If a plea offer has been extended by the State which has been accepted by the defendant, the court can take the plea and, if appropriate, impose sentence.
- If a plea offer has been extended which has been rejected by the defendant, the court can make a record that the plea offer has in fact been conveyed to the defendant and that the defendant has rejected that offer after adequate opportunity to consult with defense counsel.

The call of the calendar usually proceeds in the following fashion. The Prothonotary prepares the Case Review calendar which typically consists between 10 and 25 cases. Defense counsel, as well as the defendant, is required to appear. Incarcerated defendants are transported to the

courthouse by the Department of Correction for the calendar. The State is represented by a prosecutor at the calendar.

The prosecutor largely determines the order in which the cases are called. As each case is called defense makes whatever report is required by the court. In many instances, however, it is not necessary for defense counsel to make a report to the court at the First Case Review. No judicial intervention is needed if defense counsel has entered an appearance, there are no disputes between the parties and no plea offer has been extended. In such cases the prosecutor and defense counsel may simply agree that the matter will be set for a Final Case Review. When this occurs defense counsel is free to go (unless he or she has another case on the calendar) and the prosecutor will report to the court what has occurred. It should be emphasized that this process requires the presence of defense counsel.

B. The Case Review Calendar of August 6

The court has reviewed a recording of the August 6 Case Reviews and makes the following factual findings about what occurred:

The Case Reviews were scheduled to begin that morning at 10:00 o'clock and got underway shortly thereafter. Mr. Guy was not present when the case reviews began, but his client was present in the court room. At 10:42 the prosecutor, Renee Hrivnak, Esq., advised the court that she had not yet seen Mr. Guy and that court personnel were looking for him. The calendar was winding down with only a case or two left, so at 10:49 the prosecutor had little choice but to call the *Omari Jones* case. The court

explained to Mr. Jones that it would not force him to proceed without his attorney, Respondent, being present, and his First Case Review was rescheduled for August 20, 2012. The court also directed the Prothonotary to prepare an order directing Mr. Guy to pay \$200 because of his absence.

Shortly after this occurred, the case review calendar was unexpectedly prolonged when an incarcerated defendant who had rejected a plea earlier in the calendar changed his mind and wished to enter the plea. There was a further delay as the defendant was brought from the holding cell and paper work was completed. At 11:26, almost an hour and a half after the scheduled start of the calendar and nearly 40 minutes after his client's case was called Mr. Guy entered the court room. The court room recording device did not pick up Mr. Guy's voice, but the court recalls that Mr. Guy made no apology or explanation why he was late. At the Rule to Show Cause hearing Respondent confirmed that he said nothing, ostensibly because "there was nothing left to say."

C. The Rule to Show Cause Hearing

Respondent made a rambling oral¹ presentation at the hearing.² As a result it is difficult to decipher exactly what he was trying to say. One thing is clear, however: Respondent offered no explanation why he did not timely

¹ Respondent made no written argument to the court.

² At one point during the hearing Respondent asserted he wanted Steven Wood, Esq., a prosecutor, who was not present during the August 6 calendar, to testify generally about how case reviews are conducted. Respondent conceded he had not asked Mr. Wood to be present. Nonetheless the court asked Respondent if he desired a continuance, which Respondent declined. In light of this and the fact that Mr. Wood apparently could not provide any information not already known to the court, the court proceeded with the hearing.

appear at the Case Review nor did he apologize to the court for his failure to be present.

The substance of Respondent's presentation seems to be that he believes he was sanctioned because of his race. At one point the court asked Respondent if he was claiming the court was racist to which Respondent replied:

I don't know anything about what you are. What I'm sharing with you is what my involvement has been, what I've been able to learn about where you've been positioned, and for you to have a clear understanding that from where I sit. I'm concerned as to whether or not I am being treated fairly, and why -- if I'm not being treated fairly, why. And I've investigated and tried to get some understanding. What did I ever do to you? That's the first thing that I was wondering. I'm like saying, what did I do to you, particularly when I thought back about you adding that sentence in there. And I said: What did I ever do to him for him to take these steps that are outside of the realm of what's normal? And so I began to look.

Elsewhere throughout his presentation Respondent seems to suggest that the proposed sanctions against him are racially motivated:

I've been black all my life. And when certain things start to happen to you in ways that are way outside of what you've seen as a norm, it causes a concern, especially when you're a person who has a history of fighting for civil rights and justice and fairness in the court system you become a person who, as the record will demonstrate, becomes the subject of conversation and becomes the subject of retaliation and becomes a person who folks try to victimize.

* * *

I'd just like to be treated equally. If they want to -- what happens is when people -- when people of color are

people who take on causes that sometimes people in power don't like, then in the effort to get the person who's fighting for fairness, it then puts in place requirements that have to be applied to everybody.

* * *

This Court [not this Judge] has previously held me in contempt without notice at all. And if there wasn't a record, the Supreme Court wouldn't have reversed it. They did that to me. That's what happens to you when you fight for civil rights. There's always some penalty. It isn't death anymore. It used to be lynching and all of that. So you don't die, but you do go through mess that other people don't have to go through and I've been through it multiple times. It's a matter of public record

* * *

But I'm just saying in light of what has taken place, I'm concerned that I can't -- I'm not even getting treated fairly. And I had to look and say, Well, why is this happening?

D. There is no evidence that Respondent was treated differently because of his race

Because of Respondent's assertions he is being treated differently because of his race, the court will examine the record to determine if Respondent has adduced any evidence to support them. The court notes initially that Respondent has provided absolutely no empirical evidence showing that minority lawyers are treated differently in this court than white lawyers. He did not even provide any anecdotal evidence other than his vague generalization that he has seen unidentified white lawyers treated differently from unidentified black lawyers in unidentified situations. In

short there is absolutely no evidence in this record of systemic racial bias on the part of this court.

The next inquiry is whether this particular Judge sanctioned respondent because of his race. Respondent points to this Judge's opinion in *Guy v. Christina School District*³--in which this Judge affirmed the Christina School District's dismissal of Mr. Guy as a mathematics teacher at a middle school--as evidence of this Judge's bias. In that opinion the court wrote: "Samuel Guy was a mathematics teacher at Bayard Middle School ("Bayard") in the Christina School District. **He is also a member of the Delaware Bar.**"⁴ Respondent believes that the sentence "He is also a member of the Delaware Bar" was gratuitous and he somehow infers from it that this Judge is racially biased against him.

The court is at a loss to understand how the mention that Mr. Guy is a member of the Delaware Bar evidences a racial animus on its part. Certainly Mr. Guy did not explain the logical basis for his inference at the Rule to Show Cause hearing. Moreover contrary to Respondent's contention, the reference to his membership in the Delaware Bar in the *Christina School* opinion was not gratuitous. This court ordinarily gives some latitude to *pro se* litigants who have not had the benefit of training in the law, and frequently excuses their failure to comply with technical

³ *Guy v. Christina School Dist.*, 2011 WL 3557782 (Del. Super. Aug. 8, 2011).

⁴ *Id.* at *1 (emphasis added).

requirements which are matters of form.⁵ The purpose of this sentence was to simply point out that Mr. Guy was not a typical *pro se* litigant and was therefore not entitled to the latitude usually accorded *pro se* litigants.

Respondent also seems to argue that this Judge's membership in his former law firm is indicative of racial bias because two lawyers in that firm (not this Judge) represented the Judicial Nominating Commission in a suit brought by Respondent against the JNC in 1994. His contention is frivolous. Mr. Guy fails to explain why the public service of those two lawyers shows any racial bias on their part, let alone on the part of this Judge. In this regard he does not claim that any filing by those lawyers in his case manifested any racial bias. In fact Respondent's suit against the JNC was ultimately dismissed because Respondent failed to file a brief on his own behalf in the Supreme Court.⁶

In sum, Respondent offered no explanation for his failure to timely appear at the Case Review calendar and provides no evidence whatsoever that he was subjected to sanctions solely because of his race.

E. This court was justified in imposing a sanction

Although the Supreme Court has the ultimate authority to regulate the Bar, it is undisputed that lower courts retain the power to sanction attorneys for conduct which impedes the efficient administration of justice

⁵ See *Anderson v. Tingle*, 2011 WL3654531, at *2 (Del. Super. Aug. 15, 2011) (citing *Vick v. Haller*, 522 A.2d 865 (Del. 1985) (“A *pro se* complaint, however inartfully pleaded, may be held to a somewhat less stringent technical standard than formal pleadings drafted by lawyers...” (internal citations omitted))).

⁶ *Guy v. Judicial Nominating Comm'n*, 1995 WL572010 (Del. July 25, 1995)

in a particular case. More than twenty years ago the Delaware Supreme Court wrote:

While we recognize and confirm a trial court's power to ensure the orderly and fair administration of justice in matters before it, including the conduct of counsel, the Rules may not be applied in extra-disciplinary proceedings solely to vindicate the legal profession's concerns in such affairs. Unless the challenged conduct prejudices the fairness of the proceedings, such that it adversely affects the fair and efficient administration of justice, only this Court has the power and responsibility to govern the Bar, and in pursuance of that authority to enforce the Rules for disciplinary purposes.⁷

Respondent's conduct in this case unquestionably impeded this court's efforts to fairly and efficiently resolve the *Omari Jones* matter. Although this court has the discretion to overlook a minor delay in counsel's appearance at a calendar, calendar calls are not like a social open house at which guests may come and go at any time convenient to them.⁸ It is inimical to the administration of justice to allow counsel to ignore the court's schedule and simply appear when it is convenient for them to do so. Thus if the court is to maintain any semblance of the orderly administration of justice, it must sanction attorneys such as Respondent who appear nearly an hour and a half late without excuse. Fortunately it has seldom been necessary for this Judge to sanction lawyers for being late. When such an event

⁷ *Appeal of Infotechnology, Inc.*, 582 A.2d 215, 216-7 (Del. 1990). The principles announced in *Infotechnology* were recently reaffirmed by the Supreme Court in *Crumplar v. Superior Court*, 2012 WL5194074, at *6 (Del. Oct. 22, 2012).

⁸ At the Rule to Show Cause hearing Respondent told the court that after the August 6 calendar he went to several calendars at 9 a.m. to see how many attorneys were present. According to Respondent, on each occasion few, if any, attorneys were present at that time. This is not surprising because Case Review Calendars start at 10 a.m.

occurs, however, it is this Judge's practice to impose a sanction of \$200 when counsel does not provide an adequate explanation.

Conclusion

The court finds that Respondent's failure to timely appear at its Case Review Calendar caused unnecessary disruption to the court's schedule and that his conduct was unjustified. Respondent is therefore sanctioned two hundred dollars, to be paid to the Prothonotary on or before December 31, 2012.

SO ORDERED this 14th day of November, 2012.

John A. Parkins, Jr.
Judge