

July 18, 2018

Hon. Robert Torres
Bronx Supreme Court
265 East 161st Street
Bronx, New York 10451

Re: Part IDV

Dear Judge Torres:

At yesterday's meeting held in your Chambers and attended by you, Hon. George Silver and myself, Judge Silver gave me until 9:00am to notify you whether or not I would assume judicial responsibility in the Integrated Domestic Violence for Bronx Supreme Court as requested by him.

Although Judge Silver informed me that if I failed to appear today in Part IDV he would seek my immediate suspension and lock me out of my Chambers, I hereby inform you in writing that I respectfully decline the request.

To date I have not received a written request that I go to Part IDV, nor of the basis therefore. Although, on Thursday morning, July 12, 2018, I respectfully requested to be provided written notice as to the contemplated assignment and the basis therefore you advised me that very afternoon that after consulting with your administrative judicial supervisors that I would not be provided anything in writing. Instead you advised me that I was being orally requested to appear in Part IDV on Monday, July 16, 2018, to sit with Judge Judith Lieb the judge currently assigned thereto for training.

My response on Monday, July 16, 2018, was that I was declining the oral request expressed by you on Thursday, July 12, 2018, and that the issue as to the request would need to be resolved by the Commission on Judicial Conduct.

In advising me that there would be consequences if I refused to assume judicial responsibility for Part IDV as requested, Judge Silver acknowledged that it would constitute a substantial loss for the judiciary if I was no longer a judge. I concur with this statement by Judge Silver. Judge Silver also acknowledged being personally familiar with my lawyering skills as I litigated matters for which he was the presiding judge. In fact, it was Judge Silver who in December, 2017, requested me to accept assignment to the Criminal Term of Bronx Supreme Court as he needed someone who knew what he was doing.

As you are well aware of, other than taking a one (1) week vacation and two (2) days for religious observance, I have not had any absences since my assignment in January, 2018, to Bronx Supreme Court, Criminal Term. In fact, my Time Record reflects fifty-eight (58) days of accrued annual leave.

I have authored one hundred eighty-six (186) decisions in Bronx Supreme Court since the beginning of this calendar year and my two (2) quarterly motion reports reflect no delays over sixty (60) days from when issue was joined. My work is up to date.

I furthermore analyzed the Part 96 Weekly Report of Criminal Case Activity, Forms UCS-153F and UCS-153M, for the week commencing January 22, 2018, and ending the week of June 26, 2018. This twenty-one (21) week period contains a total of one-hundred two (102) days of court. In this time period I obtained one hundred forty-one (141) felony indictment guilty pleas, forty-two (42) felony indictment dismissals, which on a daily basis translate into a daily average of 1.38 felony guilty pleas per day, .41 felony dismissals per day, with a combined resolution for felony indictments of 1.87 per day. With inclusion of twenty-five misdemeanor complaints resolved over this time period, the resolved misdemeanors translate to .245 per day. In effect I resolved in the aggregate 2.12 cases, felony and misdemeanor, on average, per day.

Since becoming a judge, three (3) years in Bronx Criminal Court and one-half ($\frac{1}{2}$) year in Bronx Supreme Court, Criminal Term, I have authored approximately sixty (60) published decisions of which approximately fifteen (15) were published in the Official Miscellaneous Reports. In serving one (1) year as an Acting Hybrid Supreme Court Justice assigned primarily to Bronx Supreme and Civil Court I had approximately twenty-seven (27) published opinions.

I doubt that Judge Silver is fully aware of all the particulars pertaining to my judicial record and productivity.

I can not comprehend why I am being compelled to handle essentially civil/family court matters when I have a proven record of handling complicated felony matters and getting a high volume of felony dispositions to address the overwhelming backlog of felony cases beyond the Office of Court Administration standards and goals.

Query, whether the assignment to the IDV Part maximizes my knowledge, experience and productivity.

Prior to becoming a judge, I was a trial litigator for approximately thirty-four (34) years. I had conducted no less than approximately two hundred (200) jury criminal trials, primarily felony trial, misdemeanor trials and federal felony trials. I have conducted approximately seventy-five (75) family court non-jury trials and approximately five (5) matrimonial non-jury trials, all as a litigator.

In Bronx Criminal Court I presided over approximately fifteen (15) jury trials and in Bronx Civil Court I presided over twelve (12) civil jury trials and about twenty-five (25) non-jury bench trials.

In fact, when I was first assigned to the Criminal Term of Bronx supreme Court you stated that the plan you envisioned for me was to assign me into a felony trial part.

Even prior to your decision to recommend me for assignment to the IDV Part, as apparently ratified by Judge Lawrence Marks and Judge George Silver, was to recommend me for my first certification next calendar year as I turn seventy (70) years old this October, and that I should not have any problem.

Not only have I passed my physical examination but I have been approved by the New York City and Bronx County Bar Associations for First Certification, and unanimously so, by the Bronx County Bar Association.

At yesterday's meeting Judge Silver was candid in providing a copy of the Determination rendered in 1982 by the Commission on Judicial Conduct in the case of the Matter of James J. Leff, a Justice of the Supreme Court, First Judicial District. I have reviewed the Determination. According to the Determination, Justice Leff enjoyed a broad reputation for good judicial

performance and possessed the intellect, ability and experience necessary to adequately discharge his judicial duties. However, there exist significant differences with my situation despite that Judge Leff was censured over his refusal to perform assigned duties. However, Judge Leff was not assigned to handle non-Supreme Court level work.

Putting aside that I have yet to be provided with a written request to go to the IDV Part, such an assignment would undermine the electorate of Bronx County as I was elected to handle traditional Supreme Court litigation and matters. As to an assignment to the Criminal Term of Supreme Court that would mean felony level matters for which I was elected to handle.

The Integrated Domestic Violence Part is primarily a civil part as it conducts child custody and visitation non-jury trials, non-jury family offense orders of protection, occasionally a matrimonial case which would deal with ancillary issues such as child custody, visitation, spousal maintenance, child support and equitable distribution of marital property. And as to criminal matters where only Class B misdemeanor non-jury trials are conducted it is a lower Criminal Court.

As to the indicted felony crimes between spouses and intimate relationships, the IDV Part does not conduct suppression hearings or trials, whether jury or non-jury, of these felony matters.

In addition, the only two (2) judges that have served in the IDV Part in Bronx County, Judges Diane Kiesel and Judith Lieb, respectively, were and continue to be Acting Supreme Court Judges, not an elected Justice as I am. I even question whether any other elected Justices within the Supreme Court, Criminal Term, for the other Counties within the City of New York, have ever been assigned to an IDV Part.

To my knowledge other than an Article 78 proceeding recently filed against me for decisions rendered by other judges, which you yourself acknowledged in an e-mail to Judge Ralph Fabrizio, there are no complaints lodged against me by any litigants that have appeared before me, whether prosecutors or defense counsel. Nor have you ever advised me that my performance was unsatisfactory, nor have you had occasion express any deficiencies in my performing my assigned duties nor made any suggestions to improve my performance.

Even though you orally represented that the basis for the request to assign me to the IDV Part was made by you based on my qualifications it is difficult for me to understand that after clearing up the chaos in Part 96 you show no appreciation for having the Part function effectively as you would rather force me to confront the Office of Court Administration and run the risk of being disciplined and possibly removed from public office.

Your purported basis to assign me to the IDV Part is deemed by me to be pretextual. Said assignment constitutes a disguised punishment. It is no wonder that you refuse to put anything in writing, you have no valid justification for your actions. It is very arrogant of you as your position is tantamount to essentially telling me "You're going to the IDV Part because I say so."

Without a determination having been made as to the need and advisability thereof consistent with the objectives of the Unified Court System or providing any basis for your request to temporarily assign me to IDV there has not been any due regard for my official and appropriate interests. Nor has there been a cost/benefit analysis as to my optimal assignment.

In addition, I have heard from more than one (1) source that there is an Acting Supreme Court Judge that would willingly like to be assigned to the IDV Part. Said judge was a criminal litigator, has served in Bronx Family Court and has matrimonial experience.

As you know, I have continued to report daily to my chambers and have told you that I am willing to be assigned to any traditional Criminal Term Part.

In closing, I wish to furthermore advise you how offensive it is to be told that if I do not accept the request to be assigned to the IDV Part, notwithstanding that I am well qualified to be First Certificated that it will never happen. I will not be coerced nor put under duress at my age to accept assignment to the IDV Part in order to be able to continue my judicial career and to provide public service to my community.

Respectfully submitted,

ARMANDO MONTANO, JSC

cc: Hon. Lawrence Marks
Hon. George Silver
Hon. Rolando Acosta
Hon. Janet DiFiore
Hon. Sylvia Hinds-Raddix,
(President, NYC Supreme Court Judges Assn)
Hon. Debra Karalunas,
(President, NYS Supreme Court Judges Assn)
Hon. Laura Douglas
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July 19, 2018

VIA HAND DELIVERY

Hon. Lawrence K. Marks, J.S.C.
Office of the Court Administration
25 Beaver St.
New York, N.Y. 10004

Re: Hon. Armando Montano, J.S.C.

Dear Justice Marks:

The undersigned represent the above referenced elected Justice of the Supreme Court sitting in Bronx County.

I am in receipt of the July 18, 2018 letter of Dep. Chief Administrative Judge George J. Silver to Justice Montano (the Silver letter) which accompanied your order of the same date suspending Justice Montano from his duties as an elected Justice of the Supreme Court, evicting him from his chambers, revoking his parking privileges and limiting his access to the court house to that of a visitor, all of which is effective today at the close of business. There is no reasonable justification for such an unprecedented, illegal and harsh treatment of Justice Montano, a jurist of exceptional ability, productivity and a man completely dedicated to his role as a Justice of the Supreme Court and as an elected judicial representative of his community. Justice Montano has enjoyed the wide support of bar associations, not only for his candidacy for Supreme Court Justice, but also for his more recent application for certification.

The Silver letter cites, as supporting authority for your unprecedented action, a decision by the State Commission on Judicial Conduct, State of New York ("the Commission") entitled *In re: James J. Leff*. The *Leff* case does not support your actions because the cases are entirely different on all material facts. Aside from the fact that both Justice Leff and Justice Montano served as elected Justices of the Supreme Court, all the remaining material facts are dissimilar. To specifically enumerate the major differences:

1. Judge Leff challenged an assignment to a Supreme Court Part. On the other hand, Justice Montano has been directed to a lower court assignment that has been manned by acting Supreme Court Judges. Justice Montano is aware and has informed O.C.A. that at least one acting Supreme Court Judge would accept this assignment.
2. Judge Leff's assignment, part of a judicial overhaul, was approved by every administrative judicial official including the Presiding Justice of the Appellate Division and the Chief Judge of the State of New York. Your action against Justice Montano has no additional approval.
3. Judge Leff was described as "personally troublesome." No such allegation has been leveled against Justice Montano.

4. In the *Leff* case the Commission found no evidence of a punitive or retaliatory basis for OCA's actions. In fact, as set forth by Judge Montano's letter of July 17, 2018, a copy of which is attached hereto, Justice Montano specifically alleged that he was threatened with rejection of his application for certification if he did not waive his objection to the demotion assignment presented to him without alternatives. An extortionate threat by a Justice in O.C.A. should be the subject of an investigation by the Commission. To ignore that allegation would be gross misfeasance.
5. Judge Leff refused his lateral assignment for 6 (six) months and then was presented with an assignment option, On the other hand Judge Montano is being summarily dismissed without the semblance of due process.

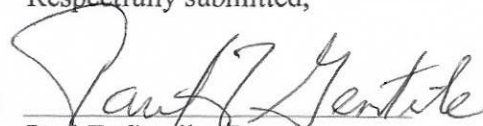
PROPOSED RESOLUTION

In order to avoid litigation, and in the interests of justice and fairness, Justice Montano respectfully requests that you stay your present order for a period of 30 days to provide the interested parties with the opportunity to work a resolution that provides for the rights and responsibilities of all sides and adheres to due process.

In conclusion, Justice Montano is a proud son of the Bronx and the first person of his immigrant Puerto Rican family to attend college. Justice Montano deserves nothing less than the continuing opportunity to provide his exceptional skills at the highest level of judicial activity.

Respectfully submitted,

By:


Paul T. Gentile, Esq.

cc. Hon. Armando Montano, J.S.C.