SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2008-001

IN THE MATTER OF XAVIER C. RODRIGUEZ, JUDGE OF THE MUNICIPAL COURT	:	**PRESENTMENT**

The Advisory Committee on Judicial Conduct ("Committee" or "ACJC") hereby presents to the Supreme Court its Findings and Recommendation in this matter in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's Findings demonstrate that the charge set forth in a Formal Complaint against XAVIER C. RODRIGUEZ, Judge of the Municipal Court ("Respondent"), has been proven by clear and convincing evidence. The Committee recommends that the Respondent be publicly disciplined.

On May 12, 2008, the Committee issued a Formal Complaint against the Respondent, which alleged that Respondent engaged in improper and political activity as a municipal court judge on September 6, 2007 in violation of Canons 1, 2A and 7C of the New Jersey Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. The Respondent filed an Answer in which he admitted certain factual allegations of the Formal Complaint and denied others.

The Committee convened a formal hearing on May 22, 2008. Respondent appeared with counsel and offered testimony in his defense. Exhibits were offered by both parties and accepted into evidence, which included a letter from Respondent to the Advisory Committee on Judicial Conduct, dated October 31, 2007, and Transcript of Informal Conference IMO XAVIER RODRIGUEZ ACJC 2008-001, dated January 31, 2008.

After carefully reviewing the evidence, the Committee made factual determinations, supported by clear and convincing evidence, which form the basis for its Findings and Recommendation.

I. FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1987. At all times relevant to this matter, Respondent held the position of Chief Judge of the Municipal Court of Passaic City.

On September 7, 2007, The Record, a newspaper, published an article regarding criminal charges that had been filed against Passaic City Mayor Samuel Rivera for allegedly taking a $5,000 bribe. In conjunction with the Article, The Record printed a photograph of a number of individuals who were standing outside of the Mayor's home on the day of his arrest. The individuals featured in the photograph included the Respondent, as well as a Passaic City councilman and a campaign treasurer.

Respondent explained in his letter to the Committee, his comments at the informal conference with the Committee and at the public hearing that he was prompted to go to the Mayor's home at the suggestion of the Mayor's driver, that his purpose in going to the Mayor's home was to console the Mayor's wife, and that he did not anticipate the presence of other public figures or officials or persons involved in politics. Further, he did not anticipate the presence of the press or that his visit would receive any publicity or press attention. Respondent stated that the Mayor was not at home at the time of his visit.

The Committee finds by clear and convincing evidence that Respondent believed and felt that the indictment of the Mayor for bribery justified a personal expression of consolation for the Mayor's wife. Nevertheless, it is fully inferable that Respondent understood that his actions could also serve as an expression of comfort and support for the Mayor and that they might reasonably be so construed by the Mayor or others who were or would become aware of his actions. The circumstances forcefully demonstrate that Respondent's visit was not private. Other persons, such as the Mayor's driver who had called him and those who were present at the Mayor's home, friends, officials and political supporters of the Mayor, were publicly and openly visiting at the Mayor's home. Notwithstanding Respondent's

explanation for his visit, he was at best unconcerned or indifferent to the likelihood that his actions would be or would become public. The context inescapably implies that even though Respondent's intent was to convey privately purely personal feelings of sympathy, his actions were undertaken in a setting that could be seen to demonstrate political as well as personal support for the Mayor. That the occasion was political in nature is illustrated, as well as confirmed, by the newspaper photograph depicting Respondent at the Mayor's home with other political figures.

Respondent's presence at Mayor Rivera's house on the day of the Mayor's arrest for allegedly taking a bribe created the appearance or perception of impropriety that had the potential to weaken public confidence and to negatively derogate from the integrity and independence of the judiciary, contrary to Canons 1 and 2A of the Code of Judicial Conduct.

Respondent's presence at Mayor Rivera's house with a city councilman and a campaign treasurer, as depicted in the photograph in The Record, created the likelihood that the public would believe either that Respondent is somehow involved in politics or that Respondent is not completely independent of politics, politicians, and political influence. As such, Respondent's presence at the Mayor's house, in the company of such political figures, is countermanded by Canon 7C of the Code

of Judicial Conduct, which prohibits a judge from engaging in any political activity. Further, his conduct detracted from and was prejudicial to the proper administration of justice, serving to bring the judicial office into disrepute. Rule 2:15-8(a)(6).

Respondent, Municipal Court Judge Xavier C. Rodriguez, has violated the following Canons of the Code of Judicial Conduct: Canon 1, which requires judges to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved; Canon 2A, which requires judges to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; and Canon 7C, which prohibits judges from engaging in any political activity. Respondent's presence at the Mayor's house on the day of the Mayor's arrest in the company of political figures was conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Rule 2:15-8(a)(6).

II. RECOMMENDATION

The Committee recommends that Respondent be publicly disciplined. Its recommendation reflects the gravity of the Respondent's misconduct implicating political activity and constituting impropriety. It also acknowledges the existence of several mitigating circumstances.

There is a longstanding principle in New Jersey that "judges and politics do not mix - not at all, either in fact or appearance." Statement of Chief Justice Wilentz on behalf of the Supreme Court, 125 N.J.L.J. 243 (Feb. 1, 1990). The principle exemplified by this statement remains strong and undiluted, reflecting the essentiality of preserving public confidence in the integrity and impartiality of the judiciary. Respondent knew or should have known that it was highly improper for him to have visited the Mayor's home in the setting of a highly publicized and sensational indictment.

Public discipline is warranted consistent with our established disciplinary law imposing the strongest strictures against conduct that implicates political activity and generates the appearance of impropriety. This understanding was underscored by the Supreme Court in In re Blackman, 124 N.J. 547, 551 (1990):

> Canon 2 of the Code of Judicial Conduct requires judges to avoid impropriety and the appearance of impropriety in all activities. The commentary to that Canon notes:
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> > Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety, and must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on personal conduct that might be viewed as

> burdensome by the ordinary citizen and should do so freely and willingly.
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> The Canon makes clear that judges have responsibilities with regard to their personal conduct that greatly exceed those of ordinary citizens. The Canon specifically points out that judges must accept restrictions of their personal activities that other citizens might find burdensome and intrusive. The understanding of the Canon is that judges have a special responsibility because they are "the subject of constant public scrutiny;" everything judges do can reflect on their judicial office. When judges engage in private conduct that is irresponsible or improper, or can be perceived as involving poor judgment or dubious values, "[p]ublic confidence in the judiciary is eroded."
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> Improper conduct includes creating or acquiescing in any appearance of impropriety. When a judge chooses to attend a party hosted by a convicted criminal, there may be wholly innocuous reasons explaining such a decision. However, the judge must realize that members of the public cannot know the judge's subjective motives and may put a very different cast on his or her behavior. Such conduct could be perceived as evidencing sympathy for the convicted individual or disagreement with the criminal justice system that brought about the conviction. At worst, such conduct may raise questions concerning the judge's allegiance to the judicial system. Those impressions could generate legitimate concern about the judge's attitude toward judicial responsibilities, weakening confidence in the judge and the judiciary.

Respondent's record has been heretofore impeccable and, to his credit, he has expressed regret for his lack of judgment. Further, the Committee has found no evidence that political

concerns have ever affected his court. Cf. In re Fenster, 138 N.J. 134 (1994) (imposing six-month suspension without pay for municipal court judge who permitted mayor to make politically oriented remarks in court during a sentencing proceeding). Moreover, the occasion of Respondent's presence at the home of the Mayor was not an obvious scheduled and publicized political event. Cf. In re Blackman, 124 N.J. 547; In re Sanchez, 175 N.J. 332 (2003) (imposing public reprimand and adopting by order Presentment of ACJC).

In light of the foregoing, the Committee respectfully recommends that Respondent be publicly admonished.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

July 30, 2008

By: Alan B. Handler
Alan B. Handler, Chair