SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2003-023

RE: IN THE MATTER OF
WILLIAM J. KOHLHEPP, JR.
FORMER JUDGE OF THE MUNICIPAL COURT

MEMORANDUM

I. Introduction

Former Municipal Court Judge William J. Kohlhepp, Jr. did not violate any Canon of the Code of Judicial Conduct or Rule of the Courts of New Jersey as alleged by the ACJC in their formal complaint dated September 11, 2003. Prior decisions by the Committee that resulted in disciplinary action involved egregious conduct in which the judge would knowingly make use of his status for personal gain or the gain of another. Moreover, the conduct would often involve the failure of a judge to recuse himself from presiding over a matter in which he has a personal relationship with one of the parties or otherwise has a stake in the outcome.[1] In other situations, judges have been reprimanded for communicating with other judges in sister courts who are presiding over a matter in which the reprimanded judge has a stake.[2] Although the most egregious violations seem to take place in the context of a formal proceeding, the Supreme Court has also found

[1] See generally ***In re Samay,*** 166 N.J. 25 at 41 (2001) (In which a judge authorized the arrest of an individual with whom he had a personal relationship with, knowing that the individual would be brought before him in court and furthermore, failing to recuse himself of the matter.)
[2] See generally ***In re Carton,*** 140 N.J. 330 (1995) (In which Respondent municipal court judge sent a fax to the office of another municipal court judge seeking a favorable disposition of a matter in which Respondent had a personal stake.)

disciplinary action appropriate where a judge has intentionally misled and misrepresented her status to other law officials in an effort to further her personal objectives.[3]

Under any circumstance, the ACJC has the burden to establish by clear and convincing evidence that the respondent was guilty of the alleged conduct. "Clear and convincing evidence is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be estalibshed."[4] Furthermore, it is apparent that although it is not an essential element of an alleged violation of the Judicial Code of Conduct, the effect of judicial misconduct on other persons is a relevant factor in assessing the gravity of the conduct.[5] The ACJC has failed to establish by clear and convincing evidence that the conduct of Respondent was a violation of the Judicial Code of Conduct or the Canons of Judicial Conduct. Furthermore, since Respondent's actions did not produce an effect upon any other person, the gravity of the conduct does not require disciplinary action.

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[3] ***In re Williams,*** 169 N.J. 264 (2001) (In which a municipal court judge, during an altercation with her boyfriend, falsely identified herself as a representative of the police station and falsely told police she had been followed to the restaurant by her boyfriend).
[4] ***In re Samay***, at 30.
[5] **Id.**, at 31.

II. Respondent's Letter Does Not Violate Any Rules Or Canons Of Judicial Conduct Because Respondent Did Not Sign The Letter With Judicial Letters And Respondent Was Only Attesting To Evidentiary Facts Of Which He Had Personal Knowledge.

In ***In re Samay***, the ACJC issued a presentment finding that the allegations in a complaint filed against Judge Samay were established by clear and convincing evidence and that the respondent had violated Canons 1, 2A, 2B, 3A(1), and 3C(1) of the Code of Judicial Conduct, and Rule 2:15-8(a)(1) and Rule 2:15-8(a)(6). Upon review of the ACJC Presentment, the Supreme Court of New Jersey ordered that Judge Samay be removed from the judicial office.

The portion of the ***Samay*** opinion that is relevant to the present matter involves Samay's letter to the President of the Board of Trustee's of his son's school. The letter addressed the subject of the Judge's arreages in tuition payments and was written as a response to the Headmaster's request that they be paid. The Supreme Court found that the "[t]he aspect of the respondent's letter that has disciplinary significance is the fact that respondent signed the letter as an attorney ("Esq.") and as a judge ("JMC")."[6] The Supreme Court concluded that "respondent violated Disciplinary Rule 2:15-8(a)(6) in that his purposeful and intentional use of the initials 'J.M.C.' in the letter to [the President] constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

In the present matter before the Committee, Respondent William J. Kohlhepp, Jr. drafted a letter as a response to an inquiry of a third party whose son was arrested in connection with underlying incident. The circumstances differ significantly because Respondent in the present case did not append the initials 'J.M.C.' to the letter.

Furthermore, during the Respondent's interaction with the third party, Respondent never availed himself of his status as a judge either to staple the credibility of his assertions or for his personal gain.

The substance of the letter itself should not be the fulcrum for disciplinary action because it does not rise to the status of a communication that would erode public confidence in the judiciary. The Code of Judicial Conduct anticipated that such communication might fall into the purview of the rule and thus carves out an exception in the Commentary of Canon 2. The exception allows a judge to testify as a witness to evidentiary facts of which the judge has personal knowledge.[7] Respondent was present the night of the arrest and had personal knowledge of the facts he asserted. The substance of his letter is expressly permitted by the Canons.

III. Respondent's Conduct On The Evening Of July 16th, 2002 Does Not Constitute A Violation Of The Judicial Code of Conduct or Canons Of Judicial Conduct Because Respondent Did Not Knowingly Engage In Conduct Which Would Bring The Judicial Office In Disrepute.

In ***In re Yaccarino***[8], the Supreme Court considered disciplinary action against a Superior Court Judge who had engaged in questionable conduct over the course of his career. The court eventually upheld his removal from office because the judge had improperly used his position and status in at least seven instances and because his behavior was not episodic or abberational, but repetitive. Most of these instances involved proceedings over which the judge was presiding but the relevant one is the instance in which his daughter was arrested and the judge attempted to use his status to influence law enforcement officials.

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[6] ***In re Samay,*** at 41.
[7] ***CODE OF JUDICIAL CONDUCT*** **Canon 2** (West Group 2003).

The judge called officials on four separate occasions including the chiefs of police for two different stations as well as two municipal prosecutors. The judge repeatedly identified himself as a Superior Court judge.[9] Furthermore, the judge repeatedly requested that the chief of police return his call. When the chief of police finally returned his call, "[r]espondent identified himself as a Superior Court Judge. Respondent said that Sergeant Niewender, the arresting officer, had acted improperly and should be disciplined by "firing the big cop." Respondent then finished by warning that if Long did not take action against Niewender by 9:00 a.m. the next day...respondent would turn the matter over to his legal counsel and sue Niewender..."[10]

The Supreme Court found that beyond a reasonable doubt, the judge's conduct had the appearance of impropriety. The court cited several factors such as the respondent's "numerous personal contacts with law enforcement officials, his use of intermediaries to contact law enforcement officials, and repeated references to his official position".[11] In conclusion the Court held that "[r]espondent used his judicial position in an attempt to influence other public officials in the performance of their lawful duties and to interfere with the orderly administration of justice".[12]

The present matter differs substantially from ***In re Yaccarino.*** According to the affidavits of Respondent and of Joseph J. Coscia, Respondent came to the police station and represented himself only as a friend of Mr. Coscia. The complaint confirms the fact that Respondent immediately removed himself from the situation when he became aware

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[8] ***In re Yaccarino,*** 101 N.J. 342 (1985).
[9] "Respondent identified himself as a Superior Court Judge and...told [the Detective] that he was the holder of silver and gold P.B.A. cards and had helped write the rules and laws governing campus police." ***In re Yaccarino***, 101 N.J. 342 (1985).
[10] ***Id.,*** at 361-362.
[11] ***Id.,*** at 362-363.
[12] ***Id.***

that the police officer was uncomfortable with the situation. This action evinces Respondent's concern that his actions are consistent with his role as a judge and that they not give any notion of impropriety. Finally, Respondent emphasized that he would be unable to represent Mr. Coscia son in a legal capacity.

Thereafter, Respondent did not take any role in the matter in any legal capacity. He never represented himself as a judicial officer. He never requested that any law enforcement officer take any action on his behalf. He never testified as a character witness. Respondent never involved himself in any formal proceeding that would require recusal. Respondent's conduct does not fall within the scope of prohibited conduct hereto condemned by the Supreme Court as a violation of the Code of Judicial Conduct or the New Jersey Court Rules.