SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2003-023

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

The Advisory Committee on Judicial Conduct, pursuant to Rule 2:15-15(a), presents to the Supreme Court its Findings that charges set forth in a formal complaint against William J. Kohlhepp, Jr., former Judge of the Municipal Court of the Township of Hillsborough, have been proved by clear and convincing evidence and its Recommendation that the Respondent be censured.

The Advisory Committee on Judicial Conduct issued a Formal Complaint that Respondent violated Rule 1:15-1(b) and engaged in conduct in violation of Canons 1, 2A, and 2B of the Code of Judicial Conduct and in violation of Rule 2:15-8(a)(6). The Complaint alleged that Respondent went to the police station of the municipality where he sat and told the police on duty that he wished to be present during the interview of a juvenile who had been arrested for possession of marijuana a short time earlier but then left when the arresting officer objected that it was inappropriate for Respondent to represent a defendant in a matter in the municipality where he sat as judge. The Formal Complaint also alleged that Respondent subsequently provided to the father of another juvenile, who had been arrested at the same time, a letter

indicating that Respondent, while at police headquarters, had observed the juvenile's eyes and that they were definitely not bloodshot.

In lieu of Answer, Respondent filed affidavits by himself and by Michael Coscia, the father of the juvenile on whose behalf he went to police headquarters. Respondent denied seeking to represent the juvenile and maintained he had gone to headquarters solely as a friend of the father, and the father supported his contention. Respondent further maintained that he had provided the letter about the other juvenile's eyes not in his capacity as a judge but as a private citizen who had observed the young man's eyes, and he described himself as a fact witness.

The Committee held a formal hearing. Respondent appeared, choosing not to retain counsel. He testified under oath, as did Michael Coscia and three officers of the Hillsborough Police Department. After carefully reviewing the testimony and the other evidence, the Committee made factual determinations supported by clear and convincing evidence that are the basis for its Findings and Recommendation.

FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1974. At all times relevant to this matter, Respondent served as Judge of the Municipal Court of the Township of Hillsborough, a position he no longer holds.

At approximately 9:30 p.m. on July 16, 2002, Patrolman Jeffrey VanderGoot of the Hillsborough Police Department was conducting a patrol of a wooded area when he took into custody four teen-aged juveniles for possession of marijuana and drug paraphernalia. Officer VanderGoot took the juveniles to police headquarters, at which time their parents were notified and asked to come to headquarters. When the parents arrived, they were seated in the lobby and then brought inside one at a time to be present during the interview of their respective children.

Michael Coscia, the father of one of the juveniles, called Respondent at his home, told him what had happened, and asked him to come to police headquarters to explain the procedures and the potential consequences for young Coscia. Respondent and Coscia had been friends for about eight years, and Respondent had represented Coscia in a few minor matters. Although Respondent was, as he testified, "apprehensive" about doing so, he obliged his friend.

Respondent entered the lobby of police headquarters as the interviews of the juveniles were progressing. He was permitted to proceed into the interior, where he began to question the shift commander, Corporal Kenneth Pryor, about the incident. Respondent told Pryor that he wished to sit in on the interview of one of the juveniles. Corporal Pryor had assumed that Respondent was at police headquarters on official business such as to sign a warrant or a restraining order. When he heard Respondent's request, he assumed Respondent was there in his capacity as an attorney to represent Coscia. Corporal Pryor thought it was a very unusual circumstance to have a municipal court judge acting as a defense attorney so he placed a telephone call to his lieutenant, who told him that Respondent should be allowed to do what he had requested.

Corporal Pryor then spoke with Respondent in the hallway. He told Respondent that it was very unusual to have him there as a defense attorney. Respondent replied that he was not there as a defense attorney but more as a friend or an observer.

Officer VanderGoot, who overheard Respondent's conversation with Corporal Pryor, protested. Respondent asked if his presence made the officer uncomfortable. Officer VanderGoot replied that it was inappropriate for a municipal court judge to represent a defendant in a criminal matter in the municipality where the judge sits.

Respondent, who testified that he regarded Officer VanderGoot's objection as a "bail-out," replied that then he would not sit in on the interview. He went out into the lobby of police headquarters, spoke to Coscia's father and to another parent, and left.

On September 25, 2002, Officer VanderGoot received a letter that had been delivered to police headquarters for him. The letter in question, dated September 25, 2002, bore the signature of Richard Prow, the father of another of the juveniles who had been taken into custody on July 16.

The letter argued the innocence of Mr. Prow's son. It also recited in pertinent part: "Attorney William J. Kohlhepp, Jr., who was present the evening the boys were arrested, has provided me with a letter stating '.... I can state emphatically that I did notice that your son's eyes were not bloodshot'."

Respondent had provided such a letter, dated September 10, 2002, in response to a request from Mr. Prow for Respondent's observations concerning his son's condition on July 16, 2002. Respondent had seen the young man during his visit to police headquarters, and he testified that when he wrote the letter he did not realize that his reported observation might have some significance with regard to Officer VanderGoot's police report concerning the incident of July 16.

By going to police headquarters on July 16, 2002, and seeking to sit in on the interview of young Michael Coscia, Respondent gave both Corporal Pryor and Officer VanderGoot ample reason to believe that he was there to serve as Coscia's attorney. Although he said that he was there as a friend of Coscia's and not as a defense attorney, both officers regarded him as being present in the latter capacity, there being no legal authority for mere friends to sit in on a police interview of an accused.

Despite his attempt to justify his conduct with semantic niceties, Respondent violated Rule 1:15-1(b), which prohibits municipal court judges from practicing in any criminal, quasi-criminal or penal matter, whether judicial or administrative in nature. He appeared at police headquarters on behalf of an accused juvenile, and only Officer VanderGoot's objection prevented him from actually attending the interview of that juvenile.

Furthermore, the police officers knew Respondent to be the judge of their municipality. Indeed, the only reason he was buzzed into the restricted area of police headquarters was that he was recognized as the judge and thought to be there on official business. He used his judicial access on behalf of his friend, and he thereby violated Canon 2B of the Code of Judicial Conduct, which prohibits judges from lending the prestige of their office to advance the private interests of others. He did the same when he provided Richard Prow with information that Prow explicitly requested for use at a juvenile conference and later used, and attributed to Respondent, in his attempt to persuade Officer VanderGoot to drop the charges against his son.

The visit to police headquarters demonstrates a serious lack of judgment on Respondent's part. Because of his status, he created an unacceptable risk of influencing the police investigation that was taking place. In spite of almost thirty years as a member of the Bar and six years as a municipal court judge, he subordinated his ethical responsibility to his desire to please a friend and sometime client. Officer VanderGoot, with three years experience in the police department, saw the problem and gave voice to his objection.

The letter to Prow was also the result of poor judgment. Although Respondent attempted to justify it as tantamount to the testimony of a fact witness, he had not been called to testify at a proceeding. Prow had merely asked for Respondent's observation and indicated that

it would be used at an upcoming "juvenile conference committee," which he hoped would result in the case being closed. Respondent did not indicate in his reply that he was a judge, but he had every reason to expect Prow to identify him as such at the conference, especially since Prow had sent his letter of request to "Honorable William J. Kohlhepp" in care of the Hillsborough Municipal Court.

By his conduct on July 16, 2002, and by his letter to Richard Prow, Respondent engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute. R. 2:15-8(a)(6). He also violated Canon 1 of the Code of Judicial Conduct, which requires judges to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, and 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.

RECOMMENDATION

As this Committee observed in its presentments in In re McElroy, ACJC Docket No. 2002-219,and In re Wright, ACJC Docket No. 2002-111, municipal court judges may not appear on behalf of others in municipal court. There has been no reported instance of such actual appearance since In re Di Sabato, 76 N.J. 46 (1978) (imposing censure for municipal court judge who appeared in a speeding case in another municipal court on behalf of his son). There have been, however, reported instances over that twenty-five year period of municipal court judges who violated the ethical stricture against the misuse of their judicial office involving actions short of actual appearance to benefit themselves, their clients, or their friends: In re Murray, 92 N.J. 567 (1983) (issuing public reprimand for writing letter to another municipal court judge on behalf of long-time clients); In re Santini, 126 N.J. 291 (1991) (issuing public reprimand for

contacting staff and judge of another municipal court on behalf of a client); In re Carton, 140 N.J. 330 (1995) (issuing public reprimand for permitting request for adjournment for son of court staff member to be faxed from his private law office to another municipal court judge); In re Sonstein, 175 N.J. 70 (2003) (issuing public reprimand for contacting another municipal court judge about his own parking ticket pending in that judge's court); In re McElroy, supra (issuing Presentment recommending discipline for judge who advised client and through the client communicated with prosecutor of another municipality suggesting downgrade of traffic charges); In re Wright, supra (issuing Presentment recommending discipline for requesting prosecutor of another municipal court to amend traffic charges against his secretary's nephew). .

Respondent's conduct was far more serious than that in any of the foregoing matters. He went on behalf of a friend to the police headquarters in the municipality where he sat as the judge. He was given access to a restricted area therein because he was known to be the judge. It was only the commendable objection voiced by Officer VanderGoot that prevented him from attending the interview and engaging in conduct that would have been more serious still.

As for the letter to Prow, Respondent knew or should have known there was likelihood or, at minimum, a substantial risk it would be presented at the upcoming proceeding as a testimonial from a judge. Prow's letter of request was sent to Respondent in his judicial capacity at the municipal court and specifically mentioned a need for documents to be produced at the hearing. Although Respondent used his law office letterhead in his reply, he made no effort to prevent the implication of his judicial office.

What is worse is that Respondent still finds nothing inappropriate in his letter to Prow. And although he now admits that his visit to the police station was inappropriate, he actually knew at the time that it was wrong to comply with Coscia's request. That was why he

was apprehensive about going there and why he regarded VanderGoot's objection as a bail-out. He knew what he was doing was wrong, but he did it nonetheless because it was more important to him to please Coscia than it was to live up to his ethical responsibilities.

Respondent has shown that he does not have the judgment necessary to serve in judicial office. Were he still a municipal court judge, this Committee would recommend the institution of removal proceedings. Because he is no longer on the bench, the Committee respectfully recommends that Respondent, former Municipal Court Judge William J. Kohlhepp, Jr., be censured.

Respectfully submitted,

Advisory Committee on Judicial Conduct

By:

Alan B. Handler, Chair