

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2009-063

IN THE MATTER OF :
: **PRESENTMENT**
: DENNIS BAPTISTA, :
: JUDGE OF THE MUNICIPAL COURT :
:

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 charges set forth in the Formal Complaint against Dennis Baptista, Judge of the Municipal Court ("Respondent"), have been proven by clear and convincing evidence. The Committee recommends that the Respondent be publicly reprimanded.

On December 7, 2009, the Committee issued a Formal Complaint in this matter, which accused Respondent of violating Canons 1, 2A, and 2B of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules as a result of his conduct in a private matter relating to damage caused to his minor son's car, which was registered in Respondent's name.

Respondent filed an Answer to the Complaint on January 11, 2010 in which he admitted certain of the factual allegations of the Formal Complaint and denied others.

Prior to the issuance of the Presenter's Complaint, Respondent participated in an Informal Conference with the Committee, conducted in accordance with Rule 2:15-11 of the New Jersey Court Rules.

Respondent waived his right to a formal hearing in this matter. Exhibits were offered by the Presenter and accepted into evidence by the Committee. Both the Presenter and Respondent offered legal memoranda in support of their respective positions, which were also considered by the Committee.

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

I. FINDINGS

A. Factual and Procedural Background

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1985. At all times relevant to these matters, Respondent served as a part-time judge in the Municipal Court of Phillipsburg, a

position he continues to hold. Respondent is the only municipal court judge in the Phillipsburg Municipal Court.

During the 2008-09 school year, Respondent's son, C.B., was a junior at Phillipsburg High School. On or about Wednesday, October 29, 2008, a senior student at the same school, K.H., damaged C.B.'s vehicle while it was parked in the school's parking lot. At the time of the incident, K.H. was eighteen years of age, and C.B.'s vehicle was registered to Respondent. Later that same day, C.B. filed an incident report with the Phillipsburg Police Department regarding the damage to his car. P-1.

After the accident, Respondent wished to speak to K.H.'s parents about the matter but was unable to ascertain the phone number of K.H.'s parents from the school. P-22 at T6-9 to 25. Respondent went to the Phillipsburg Police Department on Friday, October 31, 2008 to "follow up" on the report filed by his son and to attempt to ascertain contact information for K.H.'s parents. P-2. Patrolman Robert Marino of the Phillipsburg Police Department informed Respondent that he could not release the sought information to Respondent. The Officer further indicated, however, that he "would try and make contact" with K.H.'s parents. Id. See also P-19 at T5-17 to T6-4.¹

¹ Respondent now claims that he only entered the "Records Room" to obtain the police report, and that he happened to "run into"

Respondent gave Officer Marino permission to give K.H.'s parents his telephone number. P-19 at T7-21 to T8-5. He also told the Officer that if he did not hear back from K.H.'s parents by the end of that day, he was going to file a complaint against K.H. P-2; P19 at T15-3 to 10. Officer Marino was already familiar with Respondent at the time of Respondent's visit to Police Headquarters as Officer Marino would appear before Respondent "quite often" to testify in cases before Respondent. P-19 at T3-14 to 22.

Immediately following his discussion with Respondent, Officer Marino both telephoned and traveled to K.H.'s residence "to try and speak with the parents" but was unsuccessful. P-2; P-19 at T6-7 to 14. He did leave a voicemail message. P-19 at T15-20 to 25. He subsequently called Respondent and informed him of his efforts. Id. at T15-15 to 23.

Later in the evening that same day, Respondent spoke with another officer of the Phillipsburg Police Department, Patrolman Justin Koeller, via telephone. P-20 at T7-12 to 20; T8-10 to 24. Officer Koeller was also familiar with Respondent from

Officer Marino and "a fellow officer by the front door of Town Hall" on his way back to his car. See Answer, ¶10; Respondent's Brief in Opposition to Complaint at p.5. This allegation, however, is supported neither by the police report Officer Marino prepared after discussing the matter with Respondent (P-2) nor by Officer Marino's sworn testimony given in connection with this matter (P-19 at T4-8 to T5-16).

having appeared before him on cases. Id. at T4-9 to 20. Respondent and Officer Koeller discussed the difficulty Respondent was having in contacting K.H.'s parents, and Respondent informed Officer Koeller he was contemplating filing a complaint. Id. at T7-1 to 11. Respondent informed the Officer that he wanted to be "treated like a normal citizen." Id. at T8-10 to 24.

On November 1, 2008, Officer Marino made contact with K.H.'s mother, J.H., via telephone. He informed her that her son was accused of "punch[ing] a dent in a Mercedes that belongs to Judge Dennis Baptista the Municipal Court Judge in Phillipsburg," and that "Judge Baptista wanted to speak" to her. P-9 at ACJC 016. J.H. authorized Officer Marino to give Respondent her contact information and took Respondent's phone number down as well. Id.

Approximately one to two hours later, J.H. received a phone call on her cell phone from Respondent. Id. Respondent questioned J.H. about why she had not contacted him earlier and advised her that he wanted her to pay for the damage to his car. Id. at ACJC 017. He brought up J.H.'s participation in the Kiwanis organization, opining that if she perhaps spent "less time" working with the Kiwanis group and "more time" with her son, perhaps her son would not have such "problems." Id. See also P-22 at T23-7 to 12. Respondent pointed out what he saw as

"the glaring irony that [J.H] is a past president of the Kiwanis whose mission statement is making the world a better place one child at a time." P-22 at T9-19 to 25. According to Respondent, he was attempting to "embarrass" J.H. "into doing the right thing." Id. at T23-7 to 12. J.H. informed Respondent that her son was "18 years old and he would be responsible for the damage he caused" P-9 at ACJC 017. Respondent replied, "'Some parent you are.'" Id.

On November 14, 2008, subsequent to learning that the Phillipsburg Police Department would not be pursuing criminal charges against K.H., Respondent filed a lawsuit against K.H. and J.H. in the Special Civil Part of the Superior Court in Warren County. P-15 at ACJC 050-052. The first two counts of Respondent's complaint asserted claims against K.H., respectively, for "intentionally and maliciously" and "negligently" causing damage to his car. Id. at ACJC 050-051. The third count asserted a claim against J.H. for failing "to adequately control, supervise or otherwise parent" K.H. Id. at ACJC 051.

Respondent reported his involvement in litigation to the Administrative Office of the Courts on November 19, 2008. P-11. That report prompted Chief Justice Stuart Rabner of the New Jersey Supreme Court to issue an order dated December 8, 2008 transferring the matter to the Middlesex County Special Civil

Part. P-12. Unfortunately, that Order was not received and processed until after the matter had been tried in the Warren County Special Civil Part on December 16, 2008.² During the trial, J.H. indicated that Respondent did not refer to or otherwise mention his judicial office during the course of their interactions. P-22 at T10-2 to 7. The Warren Special Civil Court thereafter vacated its decision and transferred the file to the Middlesex County Superior Court.

On December 6, 2008, Respondent returned to the Phillipsburg Police Department with his son to amend his son's October 29, 2008 complaint. P-7.

On January 27, 2009, Respondent's suit against K.H. and J.H. was mediated in the Middlesex County Superior Court, and a settlement was reached. P-16 and P-17. Pursuant to the Settlement Agreement, K.H. and J.H. agreed to pay Respondent \$600, and J.H. agreed to file a claim with her Homeowners' Insurance. P-17.

On June 25, 2009, Respondent testified before the ACJC in connection with this matter during a Rule 2:15-11 Informal Conference. On that occasion, Respondent admitted the following: (1) speaking with police officers of the Phillipsburg

² The trial court in the Warren County Special Civil Part dismissed the First and Third Counts of Respondent's complaint and awarded judgment in Respondent's favor in the amount of \$616.00. See P-15 at ACJC 053.

Police Department in connection with his efforts to get in touch with K.H. (P-22 at T6-23 to T8-22); (2) making an "ironic" reference to K.H.'s participation in the Kiwanis organization given her son's involvement in the damage caused to Respondent's car (P-22 at T9-19 to 25) and indicating that if she had spent less time with the Kiwanis organization and more time with her child, the incident might not have happened (P-22 at T23-7 to 12); (3) making intentional statements to J.H. during the course of the trial in Warren County that "probably hurt her feelings largely because they were based in truth" (P-22 at T14-1 to 7); (4) asserting the negligent supervision allegation against J.H. as a means of "keeping the mother in the case" and to provide him with additional "leverage" (P-22 at T16-19 to T17-14); and (5) that the Phillipsburg Police officers were aware that Respondent was the Phillipsburg Municipal Court judge as they dealt with him in connection with the underlying incident (P-22 at T16-3 to 10).

During the Informal Conference, Respondent was specifically questioned about the tactics he pursued to ascertain J.H.'s contact information before involving the Phillipsburg police. Respondent indicated that he attempted to get the information through the Phillipsburg school, and that he does not recall if he asked K.H. for the information even though Respondent was communicating with K.H. via text message. P-22 at T31-16 to

T32-23. When asked if J.H.'s phone number was located in the public telephone directory, Respondent responded, "I don't know." Id. at T34-6 to 8. He immediately changed his testimony, however, and stated, "I do know. No, they're not in the phone book." Id. at T34-10 to 14.

Respondent further testified that although he employed "aggressive" strategies when pursuing his case against J.H., he did so as J.H.'s "adversary" and not as a judge:

I made some arguments that were designed to embarrass her, but that was not - - in no way could that be confused with a judicial capacity. And as far - - okay, so I have a dual status now and that comes with the turf and you have to take it whether you like it or not. Yes, you have to be . . . held to a higher standard if you hold a judicial office and there's certain things that you can't do even though you may have a right to do those, and I understand that. . . . But, I have a right and I had an obligation, I believe, to vigorously argue my case, but what I did, I did it rationally, I did it polished and I did it very professionally.

Id. at T35-5 to 20.

Finally but notably, Respondent assumed a different position in his brief in opposition to the ACJC's Complaint than he did during the Informal Conference regarding his efforts to track down J.H. In his brief, he asserts he attempted to locate J.H.'s information "through an internet search" but was unsuccessful, and also that he does not possess a hard copy of the public telephone directory nor has he used one in several

years. Respondent's Opposition Brief at p. 4. In contrast, the Presenter offered Exhibit P-8, which features an excerpt of the "White Pages" referencing J.H. and her contact information (ACJC 012) as well as J.H.'s contact information as ascertained and printed from www.whitepages.com.

B. Analysis

The Formal Complaint in this matter advances three charges against Respondent: (1) that by appearing at the Phillipsburg Police Department and discussing his son's complaint with police officers who regularly appear before him and by using the Police Department to ascertain J.H.'s contact information instead of other means available, Respondent violated Canons 1, 2A and 2B of the Code of Judicial Conduct (Count I); (2) that by insulting J.H.'s parenting skills during his telephone conversation with her and by using arguments designed to embarrass her, Respondent violated Canons 1 and 2A of the Code (Count II); and (3) that by demonstrating a lack of candor when testifying during his Informal Conference about his efforts to locate J.H.'s contact information, Respondent violated Canons 1 and 2A of the Code (Count III). We find that each charge is supported by clear and convincing evidence, and, consequently, that Respondent's

conduct violated the cited Canons of the Code of Judicial Conduct.³

1. Count I

Count I charges Respondent with violating Canons 1, 2A and 2B of the Code of Judicial Conduct as a result of his personal interaction with the Phillipsburg Police Department in connection with his son's complaint against K.H. for damage to a vehicle registered to Respondent.

Canon 1 requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary is preserved. Canon 2A directs that judges conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. Canon 2B provides that a "judge should not lend the prestige of office to advance the private interests of others," nor should a judge "convey the impression that they are in a special position of influence." The commentary to Canon 2 of the Code of Judicial Conduct provides that judges "must avoid all impropriety and appearance of

³ Each of the three counts of the ACJC Complaint also charged Respondent with violating Rule 2:15-8(a)(6) of the New Jersey Court Rules. In accordance with the Supreme Court's recent instruction in In re Boggia, 203 N.J. 1, 10, n.1 (2010), that Rule 2:15-8 "not be used as a basis for a substantive ethical violation" in future ACJC matters, the Committee will not consider Rule 2:15-8 as a basis for an ethical violation in this matter.

impropriety and must expect to be the subject of constant public scrutiny."

Although Respondent belatedly disputed the details of his interaction with at least two officers of the Phillipsburg Police Department, the evidence demonstrates clearly and convincingly that Respondent contacted that Department on two or three separate occasions and spoke, minimally, with Officers Marino and Koeller in connection with the damage caused to his vehicle by K.H. The evidence further demonstrates Respondent contacted those officers to "follow up" on the police report his son filed and for assistance in contacting K.H.'s mother, J.H. See P-2 and P-19. Indeed, the pertinent police reports and the sworn testimony of the involved officers all indicate that Respondent "wanted to know how he [could] go about getting in touch with the kid or the kid's parents," and that Respondent spoke to the officers in furtherance of this desire. P-19 at T5-8 to 24; P-20 at T6-18 to T7-4. See also P-2.

While Respondent's act in visiting or calling the Phillipsburg Police Department in connection with a private matter is not *per se* offensive given the underlying incident's occurrence in Phillipsburg, his purposeful solicitation of the assistance of the police officers in tracking down J.H. is. We are persuaded that J.H.'s contact information was available through a means other than involving the police. It appears

clear that her information was accessible both on the internet and in the public telephone directory. See P-8. If Respondent did not possess a public telephone directory, he should have made efforts to acquire one or found one in his public library. Since Respondent was in contact with K.H. via cell phone, he could have asked K.H. for the phone number. Alternatively, Respondent could have asked his wife or his son to "follow up" and assist in locating J.H.

Rather than pursue any of those options, however, Respondent chose to go to the police department of the town in which he presides as municipal court judge to solicit their assistance in a wholly private matter. When he chose to do so, he created the very real possibility, if not reality, that the police officers would be affected by his judicial office and stature. See In re Rivera-Soto, 192 N.J. 109 (2007) (adopting ACJC Presentment in ACJC 2007-097) ("Respondent should have known that because of his official position . . . his call to [the Police Chief] would be interpreted as one of importance, perhaps some urgency, and deserving of special attention. . . . Respondent's call to [the Township Police Chief] . . . created the significant and unacceptable risk that the Respondent's judicial office could be an influential factor in the handling of a private matter relating to Respondent and his family."). We know for certain that the officers made several phone calls

to J.H. and several visits to her home in response to Respondent's discussions with them. When Officer Marino finally got in touch with J.H., he specifically identified Respondent as the Phillipsburg Municipal Court judge. Respondent's judicial office was therefore undeniably invoked in the police's handling of the matter. While the officers in question dispute being impacted by Respondent's judicial office, that denial is not dispositive of the issue with which we are confronted. For our purposes, it is enough to find, as we do, that by personally and unnecessarily soliciting the assistance of the Phillipsburg police, Respondent created a situation where his judicial office could, and may have, come to bear on the police's handling of his purely private matter. Such conduct violates Canon 2B of the Code of Judicial Conduct.

Consequently, as in Rivera-Soto, we find that Respondent's decisions and actions were an abuse of the power and prestige of his judicial office in violation of Canon 2B of the Code of Judicial Conduct and created an appearance of impropriety. By violating Canon 2B, Respondent likewise violated Canons 1 and 2A of the Code. Such conduct brings the Judiciary into disrepute and reduces public confidence in the Judiciary's overall integrity and independence.

2. Count II

Count II of the Formal Complaint charges Respondent with "gratuitously insulting" J.H.'s parenting skills in his initial telephone discussion with her and with purposefully attempting to embarrass her when pursuing his lawsuit against her in violation of Canons 1 and 2A of the Code of Judicial Conduct.

The evidence demonstrates that Respondent directed various remarks to J.H. about her outside interests and her involvement with her own children when dealing with her about the damage to his car. According to J.H., those comments were as follows:

- "'Well if you would spend less time with Kiwanis and more time with your son maybe you wouldn't have these problems. You claim to change the world one child at a time with Kiwanis; maybe you should start with your own kid.'"
- "'[I]f you were a better parent, maybe your son wouldn't have so many problems.'"
- "'Why don't you try spending more time being a better parent and watching what your kid is doing instead of running around with Kiwanis?'"
- "'So you're telling me you are not going to pay for your son's damage? . . . Some parent you are.'"

P-9 at ACJC 017. The evidence further demonstrates that Respondent asserted a claim against J.H. for negligent

supervision of her son, who was eighteen (18) years of age at the time the claim was asserted. See P-15 at ACJC 051. The specific language of Respondent's allegation as contained in the Special Civil Complaint reads: "At all times material to the within cause of action, Defendant [J.H.] knew, or in the exercise of due care, should have known that her son had become incorrigible and was engaged in a course of anti-social behavior. Defendant [J.H.] failed to adequately control, supervise or otherwise parent the Defendant [K.H.]" P-15 at ACJC 051. Defendant disputes neither sarcastically invoking the Kiwanis organization in his discussions with J.H. nor that his arguments both in and out of court were purposefully designed to "embarrass" J.H.

In our consideration of this matter, it is wholly irrelevant that Respondent's conduct occurred in his private life as opposed to on the bench. The Supreme Court's decision in In re Blackman, 124 N.J. 547, 551 (1991) is instructive in this regard:

[Canon 2] 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, 'public confidence in the judiciary is eroded.'

(Emphasis added.) Part-time municipal court judges, like Respondent, must be particularly alert to the impressions that even their private conduct may convey to members of the public. See In re Murray, 92 N.J. 567, 571 (1983) ("A municipal court judge must at all times be sensitive to the public's perception of his actions. . . . Part-time municipal court judges such as respondent, who maintain private practices, must be particularly circumspect.").

We find Respondent's conduct as discussed in Count II deeply offensive and highly inappropriate. Respondent chose to deliberately and negatively comment on J.H.'s parenting skills and question her involvement in a civic organization in a private matter resulting from \$600 worth of damage to his vehicle. It goes without saying that J.H.'s participation in the Kiwanis organization and how she chooses to spend her time generally have nothing to do with Respondent and are none of Respondent's concern. Even more disturbing, however, is that Respondent's ignorant and ill-mannered judgments and comments about J.H. and her private life reflected negatively on Respondent in the context of his judicial office. We know for

certain that J.H. questioned how "someone in [Respondent's] position" could have treated her so disrespectfully. P-9 at ACJC 015. We are left with the same question. To be capable of such off-putting conduct in his private life leads to serious questions about Respondent's demeanor and abilities on the bench. Such questions are unacceptable and uphold neither the independence nor integrity of the Judiciary, nor the public's confidence in the Judiciary, in violation of Canons 1 and 2A of the Code of Judicial Conduct.

Our finding in this regard is also tied to the fact that, in our view, Respondent asserted a frivolous cause of action against J.H. in his Special Civil lawsuit. See Rule 1:4-8 of the New Jersey Court Rules. We cannot fathom how Respondent's theory that J.H. owed a duty of care based on her purported failure to "adequately control, supervise or otherwise parent" her eighteen-year old son is a claim warranted by existing law. In fact, Respondent himself admitted that the claim was merely a tactical way of "keeping [J.H.] in the case" and deliberately intended "to embarrass her." While Respondent attempted to excuse his conduct by indicating that his comments were advanced in his role as an advocate and not as a judge, we reject that distinction. It is not simply a matter of switching hats. Respondent is, at all times, a member of the Judiciary. His representation of the Judiciary does not cease when he steps off

the bench, and even his conduct as an advocate reflects on his judicial office. See In re Santini, 126 N.J. 291, 296 (1991) ("Municipal judges must remember, however, that their desire to serve their clients must yield to the restrictions of their judicial office.") To us, his frivolous claim and admission under oath that he intended to embarrass J.H. reflects on the entire Judiciary and does so poorly. Rather than underscoring the Judiciary's integrity, Respondent's conduct tarnished it.

We conclude that Respondent's conduct as discussed herein undermined the integrity and impartiality of the Judiciary as well as the public's confidence in the Judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct.

3. Count III

Count III of the Formal Complaint asserts that Respondent was less than candid with the Committee when he testified before it regarding the accessibility of J.H.'s telephone number in violation of Canons 1 and 2A of the Code of Judicial Conduct.

The evidence demonstrates that during his Informal Conference, Respondent initially testified he did not know if J.H.'s contact information was located in the public telephone directory; he quickly changed his mind, however, and indicated that he did, in fact, know the answer to that question, and that J.H.'s information was not available in the public telephone directory. At no time during the Informal Conference did

Respondent mention attempting to look up J.H.'s information via the Internet. Through the Committee's own investigation in this matter, it was determined that J.H.'s contact information was, in fact, public information and readily accessible via the Internet and the Phillipsburg public telephone directory. See P-8.

Based on the foregoing, we have no choice but to conclude that Respondent was less than candid with the Committee concerning the public availability and accessibility of J.H.'s contact information. Clearly, such information was available. See P-8. Moreover, Respondent's testimony on this subject was inconsistent and not reflective of the truth.

Respondent's conduct in failing to be forthcoming with the members of the ACJC is distasteful and offends the longstanding principles of integrity and independence on which the Judiciary was founded. We determine that such conduct undermined the integrity and impartiality of the Judiciary as well as the public's confidence in the Judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct.

II. RECOMMENDATION

The Committee recommends that Respondent be publicly reprimanded for the conduct at issue in this matter.

Respondent's conduct in involving the Phillipsburg Police in a purely private matter was needless, avoidable, and created the

significant risk, if not reality, that the Phillipsburg Police Department would handle the matter differently or more deferentially because of Respondent's position and stature. His treatment of J.H. both in and out of the courtroom was caustic, offensive and poorly reflective of the Judiciary. Finally, we have found that Respondent was less than forthcoming with the ACJC during his Informal Conference about his efforts to track down J.H. without involving the police. Such conduct cumulatively violated Canons 1, 2A and 2B of the Code of Judicial Conduct.

For all of these reasons, the Committee respectfully recommends that Respondent be publicly reprimanded for the conduct at issue in this matter.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

March 10, 2011

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