SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2008-072

IN THE MATTER OF ARNOLD H. MINIMAN, 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 the Formal Complaint against Arnold H. Miniman, Judge of the Municipal Court ("Respondent"), has been proven by clear and convincing evidence. The Committee recommends that the Respondent be publicly reprimanded.

On March 10, 2008, the Committee issued a Formal Complaint against the Respondent, which alleged that Respondent engaged in a conflict of interest as a municipal court judge in 2007 in violation of Canons 1, 2A and 3C(1) 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 on March 26, 2008 in

which he admitted certain factual allegations of the Formal Complaint and denied others.

The Committee convened a formal hearing on April 17, 2008. Respondent appeared with counsel and offered testimony in his defense. Exhibits were offered by both parties and accepted into evidence, as was a set of joint Stipulations. See Stipulations of Parties Dated April 14, 2008 ("Stipulations").

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

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1971. At all times relevant to this matter, Respondent held the position of Judge of the Municipal Court of Mount Arlington. See Stipulations at ¶2.

On October 11, 2007, the Appellate Division of the Superior Court of New Jersey reversed and remanded the matter of Linda Cook v. Martin W. Struble, A-4887-05T3, a municipal domestic violence matter that Respondent handled in the Mount Arlington Municipal Court. Id. at ¶3. Prior to and at the time that Respondent handled the Cook case, Linda Cook, the plaintiff in

the matter, was the Court Administrator for the Mount Arlington Municipal Court. Id. at ¶4.

As articulated by the Appellate Division, Ms. Cook and the defendant, Martin Struble, had a "lengthy live-in relationship during which a child was born." Cook, A-4887-05T3 at 2. At some point prior to Ms. Cook's initiation of the municipal court matter against Mr. Struble, Ms. Cook discussed with Respondent her decision to leave Mr. Struble, as she had learned he had sexual relations with her older daughter from a previous relationship. See Stipulations at ¶5. Ms. Cook also told Respondent about her decision to take her younger child with her. Id.

Subsequently, Ms. Cook went to the Mount Arlington Police Department seeking a temporary restraining order ("TRO") against Mr. Struble. Id. at ¶6. A Mount Arlington police officer contacted Respondent and told him that Ms. Cook was seeking a TRO against Mr. Struble due to numerous harassing telephone calls Mr. Struble had made to Ms. Cook at work. Id. After eliciting a factual basis from the police officer for the imposition of the TRO, Respondent spoke with Ms. Cook about the application. Id. Ms. Cook reiterated to Respondent the factual basis for the TRO. Id. Following these telephone discussions, Respondent found that probable cause existed for the issuance of the TRO and signed it. Id. The terms of the TRO were restricted to "no contact" between

the parties as Ms. Cook had already moved out of the home she shared with defendant. See Transcript from April 17, 2008 ACJC Hearing ("Tr.") at 19:1-10. The Superior Court of New Jersey subsequently issued a final restraining order ("FRO") against Mr. Struble. See Stipulations at ¶6.

Mr. Struble appealed the Superior Court's issuance of the FRO to the Appellate Division, alleging, among other things, that Respondent engaged in a conflict of interest when he presided over Ms. Cook's TRO application. Id. at ¶7. The Appellate Division determined that Respondent should have disqualified himself from hearing Ms. Cook's TRO application, and that his failure to do so rendered the TRO he authorized a nullity. Id. See also Cook, A-4887-05T3 at 8-9. It reversed and remanded the Cook matter to a different municipal court for a new TRO application. See Stipulations at ¶8.

In the Stipulations and by his testimony before the Committee, Respondent conceded that his professional relationship with Ms. Cook created a conflict of interest that required his recusal from any and all matters involving Ms. Cook. See Stipulations at ¶9; Tr. 19:17. Respondent further testified, however, that at the time he considered Ms. Cook's TRO application, the fact that he was engaging in a conflict of interest "wasn't something that surfaced in [his] mind when the application was made." Tr. 19:17-19. He testified that he would

have granted the TRO to "anyone else" based upon the same set of facts. Tr. 19:24 to 20:1. See also January 1, 2008 Letter from Judge Miniman to ACJC attached to Respondent's Answer.

The Committee finds that Respondent's consideration and issuance of the TRO on behalf of Ms. Cook, his municipal court administrator, constituted his engagement in a conflict of interest that violated Canons 1, 2A, and 3C(1) of the New Jersey Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. Canon 1 requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary is preserved. Canon 2A enjoins judges to conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. Canon 3C(1) requires judges to disqualify themselves from proceedings in which the judge's impartiality might reasonably be questioned. Finally, Rule 2:15-8(a)(6) prohibits conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

There is no question in this matter that, by issuing the TRO against Mr. Struble in response to Ms. Cook's application, Respondent engaged in an impermissible conflict of interest in violation of the Code of Judicial Conduct. As indicated, Canon 3C(1) of the Code requires a judge to disqualify himself or herself in any proceeding "in which the judge's impartiality

might reasonably be questioned" and specifically recognizes that situations in which the judge "has a personal bias or prejudice concerning a party" will require disqualification. See Canon 3C(1)(a) of the *New Jersey Code of Judicial Conduct*. Obviously, Respondent's impartiality was questioned in this case as evidenced by Mr. Strubel's decision to appeal the issuance of the FRO by alleging, in part, that Judge Miniman operated in the face of a conflict of interest. Cook, A-4887-05T3 at 3. Further, prior to the issuance of the TRO, Respondent and Ms. Cook not only had a professional relationship, Ms. Cook also had shared with Respondent relevant information and personal details of her domestic situation involving Mr. Struble. See Respondent's Answer to Committee's Complaint at ¶¶4-5.

Further, the Committee accepts the Appellate Division's determination in Cook, which specifically recognizes that Respondent engaged in an impermissible conflict of interest that violated the Canons of Judicial Conduct: "Canon 3C(1)(a) applies here where the judge's impartiality may be reasonably questioned when he signed the TRO for his court administrator after she discussed the matter with him." Cook, A-4887-05T3 at 6. The Court further held:

> Municipal court administrators are directly supervised by the municipal judges in their municipality. The close working relationship between the clerk and the judges gives rise to an appearance of impropriety, as well as

> an actual conflict of interest. Plaintiff should have advised the municipal judge that she was seeking a TRO and asked him to direct her to another judge to consider her complaint.

Cook, A-4887-05T3 at 5. The Appellate Division concluded that Respondent "should have recused himself under paragraphs (d), (e) and (f) of [Rule 1:12-1 of the New Jersey Court Rules] because, according to plaintiff, she discussed the matter with him before filing the complaint and he advised her to seek the TRO." Id. at 8.

Finally, in his Answer to the Committee's Complaint, Respondent himself admitted the conflict of interest when he stated he "should not have issued a TRO because Ms. Cook was employed as the court administrator of the Municipal Court of Mount Arlington where respondent sat as Municipal Court Judge." See Respondent's Answer to Committee's Complaint at ¶10.

The Committee concludes that Respondent's handling of his court administrator's TRO application, especially in light of their professional relationship and previous discussions regarding Ms. Cook's domestic situation, constituted judicial misconduct in violation of 3C(1) of the Code of Judicial Conduct. Although the Committee acknowledges Respondent's testimony that he did not knowingly act in the face of a conflict of interest, it concludes that Respondent should have immediately recognized the conflict of interest at the time of

the TRO application given the significance of the conflict. In this regard, the Committee is strongly influenced not only by the gravity of TRO applications founded upon domestic violence allegations, but also the corresponding high level of judicial discretion involved in evaluating such applications. See State v. Dispoto, 189 N.J. 108, 199 (2007) (observing that under the New Jersey Prevention of Domestic Violence Act, "[t]he victim can request a temporary restraining order, which a court may issue against the abuser 'when necessary to protect the life, health or well-being of a victim.' *N.J.S.A. 2C:25-28f.*"); see also Cook, A-4887-05T3 at 4 ("Not all applications for TROs are granted. The judge must review the complaint to ascertain whether the plaintiff has alleged a prima facie case of domestic violence.").

The Committee further determines that by virtue of Respondent's violation of Canon 3C(1), Respondent likewise violated Canons 1 and 2 of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules.

II. RECOMMENDATION

The Committee recommends that Respondent be publicly reprimanded. This recommendation accounts for the seriousness of the conflict of interest in which Respondent engaged as well as the existence of several mitigating circumstances.

The Committee recognizes that Respondent has served as a municipal court judge in various municipalities for over eighteen years. During this period of time, Respondent has fashioned an exemplary record and enjoyed a reputation for professional excellence. In addition to his judicial responsibilities, Respondent has volunteered his time throughout the years to various organizations, including the Denville Junior Police Department, the Morris County Early Settlement Panel and the Morris County Domestic Violence Task Force. Respondent appears to be highly regarded by the attorneys who appear before him on a regular basis. See Respondent's Exhibits. Finally, the Committee notes Respondent's candor in admitting he engaged in a conflict of interest and his accompanying expressions of regret. The Committee views Respondent's conduct in this case as an aberration.

In light of the foregoing, the Committee respectfully submits the current Presentment to the Court with its Recommendation for Respondent's public reprimand.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

May 30, 2008

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