

January 9, 2013

STATEMENT BY THE SUPREME COURT
CONCERNING AN INVESTIGATION BY THE
ADVISORY COMMITTEE ON JUDICIAL CONDUCT
IN THE MATTER OF ALLEGATIONS OF JUDICIAL AND
ATTORNEY MISCONDUCT IN ESSEX COUNTY

The Supreme Court has reviewed the report of an investigation undertaken at its direction in connection with certain allegations of judicial and attorney misconduct in Essex County. The investigation was conducted by the Advisory Committee on Judicial Conduct (ACJC), which worked cooperatively with the Office of Attorney Ethics (OAE).

The Court is making known portions of the ACJC's report in this matter because the allegations were reported in the press. All of the excerpts that follow are quoted from the ACJC's report:

The Advisory Committee on Judicial Conduct (the "Committee") presents this Report to the Supreme Court in accordance with Rule 2:15-10(a) of the New Jersey Court Rules. The Committee has completed a comprehensive investigation into the allegations of judicial misconduct raised by former Acting Governor and Senator Richard J. Codey and Senators Ronald R. Rice and Nia H. Gill against various Essex County Superior Court judges, including the Honorable Patricia K. Costello, Assignment Judge of the Essex County Superior Court (the "Respondents"). The Committee's investigation has revealed that the allegations of judicial misconduct lack evidential support, and as such the

Committee has dismissed the ethics grievance against the Respondents.

BACKGROUND

On June 21, 2012, former Acting Governor and Senator Richard J. Codey and Senators Ronald R. Rice and Nia H. Gill wrote a letter (the "Letter") to Chief Justice Stuart Rabner in which they alleged that an unnamed "State Senator" communicated with the Honorable Patricia K. Costello, A.J.S.C. concerning the re-nominations of "two Essex County Superior Court Judges" and advised Judge Costello that those Judges' re-nominations were in "jeopardy." They further alleged that this unnamed "State Senator" told Judge Costello that "neither Judge would be reappointed unless Senator Gill 'signed off' on a particular judicial nominee" and "directed Judge Costello to ask both Judges to contact Senator Gill and advise her to 'sign off' on the nominee." Finally, it was alleged that Judge Costello met with "both Judges" and their respective presiding judges and "informed" them that "if they were unwilling or unable to convince Senator Gill to 'sign off' on the judicial nominee, the Governor would end their judicial careers."¹ [Footnote in original report.]

On July 24, 2012, Chief Justice Rabner referred this matter to the Committee for an investigation consistent with Rule 2:15-1 et seq. The Chief Justice simultaneously requested the Office of Attorney Ethics work cooperatively with the Committee to the extent the Letter referenced allegations concerning the conduct of attorneys.

¹ Senators Codey, Rice and Gill have no direct knowledge of the allegations to which they make reference in their Letter to the Chief Justice. Rather, each was informed about the telephone call between a "State Senator" and Judge Costello, and the subsequent conversations between Judge Costello and the Essex County Superior Court judges awaiting nomination indirectly.

In accordance with the Chief Justice's referral, the Committee conducted an investigation into the allegations of judicial misconduct. As part of that investigation, the Committee interviewed fifteen (15) individuals, [including judges, legislators, and staff members of the Judiciary and the Legislature].

In addition, the Committee reviewed [certain] typewritten notes, . . . [and] email communications . . . in respect of the events at issue in this matter.

. . . .

INVESTIGATION OF ATTORNEY MISCONDUCT

The Office of Attorney Ethics ("OAE"), consistent with the Chief Justice's directive, worked cooperatively with the Committee during the Committee's investigation of this matter and participated in the interviews of Judge Costello and Senator O'Toole [the unnamed State Senator referred to in the Letter]. In addition, the Committee provided the OAE with copies of the transcripts of the interviews conducted in this matter, including those the OAE did not attend, as well as copies of the documents obtained by the Committee as part of its investigation into this matter.

Having conducted an independent review of those materials, the OAE concurs with the Findings of the Committee and finds no basis on which to proceed further with this matter in respect of attorney misconduct.

CONCLUSION

There exists no evidential support for the allegations of judicial misconduct or attorney misconduct raised by Senators

Codey, Rice and Gill in their Letter to the Chief Justice. The evidence of record indicates, clearly, that Senator O'Toole called Judge Costello on May 2, 2012 to discuss the reappointments of several Essex County Superior Court judges whose nominations for reappointment were in jeopardy. The mere fact that this telephone call occurred, however, is not itself evidence of judicial impropriety, but rather consistent with the past and present practice of the three branches of government in respect of judicial reappointments.

Though it is undisputed that Senator O'Toole called Judge Costello concerning the reappointments of several Essex County Superior Court judges on May 2, 2012, there is no evidence to substantiate the allegation that during that conversation Senator O'Toole told Judge Costello the success of any jurist's reappointment was dependent upon Senator Gill's agreement to "sign off" on a particular judicial nominee. There is, likewise, no evidence to substantiate the allegation that Senator O'Toole directed Judge Costello to ask the judges awaiting nomination for reappointment to communicate with Senator Gill and advise her to "sign off" on any judicial nominee.

In addition, while it is undisputed that Judge Costello met with [the judges facing reappointment] and their presiding judges following her telephone conversation with Senator O'Toole on May 2, 2012, there is no evidence to demonstrate that during those meetings she informed any one of them that their reappointments were dependent upon their ability to convince Senator Gill to "sign off" on a particular judicial nominee. Indeed, by all accounts no such conversation occurred.

Given the lack of any evidence to substantiate the allegations of judicial or attorney misconduct, the Committee has

decided to dismiss this ethics grievance
against the Respondents.

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The ACJC's dismissal of the grievance, and the
OAE's concurrence with the findings of the Committee,
bring this matter to a close.