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A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2009-003

IN THE MATTER OF STEVEN P. PERSKIE JUDGE OF THE SUPERIOR COURT	FORMAL COMPLAINT

Candace Moody, Disciplinary Counsel, Advisory Committee on Judicial Conduct ("Complainant"), complaining of Superior Court Judge Steven P. Perskie ("Respondent"), says:

Facts

1. Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1969.

2. At all times relevant to this matter, Respondent served as a judge in the Superior Court of New Jersey, assigned to the Civil Division in the Atlantic Vicinage, a position he continues to hold.

3. Beginning in February 2005 and extending through early October 2006, Respondent presided over the matter of Bruce Kaye, et al. v. Alan P. Rosefielde, et al., Docket No. ATL-C-000017-05, in the Superior Court of New Jersey, Chancery Division, Atlantic County (the "Rosefielde Matter").

4. The Rosefielde Matter, which was initiated with the filing of a complaint in February 2005, concerned issues relating to Defendant Alan Rosefielde's ("Rosefielde") termination from employment with a company or group of companies in which Plaintiff Bruce Kaye ("Kaye") was a principal.

5. One of the issues raised by both the plaintiffs and the defendants in the Rosefielde Matter concerned the termination and subsequent re-issuance of insurance for the corporate plaintiffs with Frank Siracusa ("Siracusa"), a local insurance broker in Atlantic City. Consequently, both parties anticipated calling Siracusa as a witness at the trial of the Rosefielde Matter.

6. On October 12, 2005, Respondent presided over a motion hearing in the Rosefielde Matter at which Siracusa's name was specifically referenced in connection with a discovery dispute between the parties. At that time, Respondent notified the parties, on the record, that he knew Siracusa. Respondent further disclosed, on the record, that he had obtained his personal insurance through Siracusa's brokerage office many years earlier, and that he continues to have a business relationship with Siracusa's office up to the present day. Respondent also disclosed that, "many years ago," he and Siracusa were associated in some of Respondent's "endeavors in public office."

7. During that same motion hearing, Respondent stated, on the record, that although he did not know what Siracusa's role, if any, was in the Rosefielde Matter, he did not perceive that his "historic relationship" with Siracusa would pose a problem for him as the judge in the Rosefielde Matter. However, Respondent indicated that the parties would need to make their own determinations on that issue.

8. Respondent did not disclose to the parties during that motion hearing in October 2005 that Siracusa had made monetary contributions to his campaigns for a seat in the New Jersey Assembly in 1975 and the New Jersey Senate in 1977. Respondent likewise did not inform the parties that he had appointed Siracusa as the Treasurer of his Senate campaign in May 1977.

9. Respondent also did not specify that he and Siracusa, along with several other individuals, worked together in connection with the effort to bring legalized gambling to New Jersey in the 1970s.

10. On February 7, 2006, Respondent signed an Order directing that several depositions occur on dates certain, including the deposition of Siracusa.

11. On May 26, 2006, Respondent again presided over a motion hearing and management conference in the Rosefielde Matter. At that hearing, Rosefielde's counsel raised the fact that Respondent, as the trier of fact, would likely have to make credibility determinations with respect to Siracusa, and that perhaps, in light of Respondent's previously disclosed business relationship with Siracusa, Respondent should direct that the claims for which Siracusa's credibility would be in issue be tried to a jury.

12. In response, Respondent disclosed, *for the first time*, that in addition to getting his insurance through Siracusa's office and interacting with Siracusa during his bids for elective office, Respondent and Siracusa, along with several other individuals, shared an interest in a restaurant approximately 30 years earlier. Respondent further opined that:

> There is nothing from any of that that from my point of view requires me to recuse on my own motion. But I'm sure I indicated then, and I'll indicate now, if any party has any concerns or questions about it, I'll deal with it.
>
> I don't perceive that there's anything about the nature or extent of my historic relationship with him that would preclude me from making the kind of credibility evaluation of his testimony that I would make of somebody I didn't know.

13. On September 8, 2006, Respondent again presided over a motion hearing and management conference in the Rosefielde Matter. At that hearing, Rosefielde's counsel again raised with Respondent the issue of Respondent's prior and existing business relationship with

Siracusa and questioned whether Respondent should submit the claims that involved Siracusa, who he classified at that time as a "pretty important witness," to a jury. At the time of this hearing, a Motion to Dismiss was pending before Respondent, returnable on October 6, 2006, which sought the dismissal of one of the claims that implicated Siracusa's credibility.

14. In response, Respondent stated the following on September 8, 2006:

> At the appropriate time, and today isn't it, what somebody's going to need to do is essentially summarize whose witness he would be and what the substance of ... the testimony that he's presenting ... If this is a jury trial and ... if I can't get out of it, the fact that I had and have a relationship with him, wouldn't trouble me in the least. If it's a non-jury trial, and I'm trying it, and his credibility is a factor I would need to determine, that's something I need to think about in whatever the context in which it's presented is.

15. At this hearing, Respondent described Siracusa as having been a "very close associate" and "friend" of his in the 1970s and early 1980s when Respondent was involved in politics. Respondent further indicated that since the early 1980s, his only association with Siracusa is the insurance he purchases through Siracusa's office. Respondent also added, *for the first time*, that he sees Siracusa at lunch a couple of times a month as well.

16. Following Respondent's remarks, Rosefielde's counsel advised Respondent that he would be filing a motion for Respondent's recusal based upon Respondent's relationship with Siracusa and Siracusa's role in the Rosefielde Matter as a witness whose credibility and conduct Respondent, as the trier of fact, would need to evaluate.

17. On October 6, 2006, Respondent presided over, *inter alia*, the motion hearing relating to Rosefielde's Motion for Recusal in the Rosefielde Matter. Respondent denied the Motion for Recusal stating, on the record, that if Siracusa were to be called as a witness his prior and current relationship with Siracusa would not impede his ability to evaluate Siracusa's

credibility. Respondent declared that he felt "perfectly comfortable retaining responsibility for the matter even if Mr. Siracusa were to testify."

18. During this hearing, Respondent also revealed, *for the first time*, that in addition to purchasing his personal insurance through Siracusa's office, associating with Siracusa during his bid for elective office, participating as an investor with Siracusa and several other people in a restaurant venture, and seeing Siracusa at lunch a couple of times a month, Respondent also occasionally played bridge with Siracusa until "a few years ago."

19. Respondent did not disclose to the parties that the bridge games he occasionally played with Siracusa continued until the year 2000 and to a lesser degree thereafter. Respondent also did not inform the parties that Siracusa had played bridge in Respondent's home and Respondent had likewise played bridge in Siracusa's home.

20. At this motion hearing, Respondent ultimately recused himself on his own motion, citing his "inappropriate reaction" to Rosefielde's counsel at a previous hearing as his reason for recusing himself from the case.

21. The Rosefielde Matter was subsequently transferred to the Honorable William E. Nugent, J.S.C. before whom the case was tried.

22. Following his recusal from the Rosefielde Matter, Respondent appeared in the back of Judge Nugent's courtroom during the trial of the Rosefielde Matter on two occasions – once on May 16, 2007 and once on May 21, 2007.

23. Respondent did not speak to anyone during his appearance in the back of Judge Nugent's courtroom on May 16, 2007, but remained for approximately one hour and observed a portion of the testimony being offered by Kaye.

24. During his appearance in the back of Judge Nugent's courtroom on May 21, 2007, Respondent again remained in the courtroom for approximately one hour and observed a portion of the testimony being offered by Kaye. On this occasion, at a break in the proceedings, Respondent spoke with Kaye and his counsel in full view of Rosefielde and his counsel.

25. On October 16, 2008, Respondent appeared before the New Jersey Senate Judiciary Committee and offered testimony, under oath, with regard to his reappointment, with tenure, as a Superior Court Judge ("Reappointment Hearing").

26. At his Reappointment Hearing, Respondent was questioned by a member of the Senate Judiciary Committee about his failure to recuse himself from the Rosefielde Matter and his appearances in the back of Judge Nugent's courtroom during the trial of the Rosefielde Matter.

27. With regard to the recusal issue, Respondent testified before the Senate Judiciary Committee as follows:

> [W]hen the matter was first presented to me, it was suggested that there was an individual [Siracusa] who was not a party to the case. He was neither a plaintiff nor a defendant, nor was he going to be a witness. His name was going to be used or referred to in the course of the testimony with respect to one or several issues.
>
> I indicated that if he, indeed, had been a party or a witness in the case that I would not hear the case. But because he was neither going to be a witness nor a party, there was no reason at that point that I should not hear the case. And at that point, on that basis, I declined to excuse myself from the case. Later on, for unrelated reasons having to do with matters that made me uncomfortable, on my own motion I excused myself from the case and it was assigned to another judge.

28. When questioned further by a member of the Senate Judiciary Committee about his failure to recuse himself from the Rosefielde Matter, Respondent similarly denied excusing himself from the case due to a conflict of interest he had with Siracusa, stating:

> Because the individual in question was never going to be a witness in the case. His name was going to be referred to by some of the witnesses. But his credibility and his interests were never going to be involved in the case. If they had been – I put it on the record. If he were going to be a witness and I had to evaluate his credibility, or if he were going to be a party and interests that he had were at stake, I should not be in the case. And I said that. But he was not.

29. With regard to his appearances in the back of Judge Nugent's courtroom during the trial of the Rosefielde Matter, Respondent testified before the Senate Judiciary Committee as follows:

> The case presented some very interesting questions, at least for me – intellectual questions having to do with the responsibilities of a lawyer and a claim of fraud on behalf of a lawyer, things that, frankly, I was interested in because they're not quite run-of-the-mill.
>
> When the case came up for trial, as it happened, that particular week I was just finishing a jury trial. So when the jury was out deliberating, and I was waiting for the verdict, I had some time. So I made two visits to the courtroom where the case was being tried, and I sat in the back, inconspicuous – I spoke to nobody – watched one of the witnesses testify for a while. Then I got my verdict, so I had to leave.
>
> Two or three days later, when the other witness that I wanted to hear – the expert on legal fraud – the testimony I really wanted to hear. When he came in to testify, I had nothing that morning on my schedule. So I went down and spent an hour or so in the back of the courtroom, watching the testimony. That's what I did.

30. Respondent's court calendar for May 16, 2007 -- the date of his first appearance in the back of Judge Nugent's courtroom – indicates that there was no court activity in Respondent's courtroom on that date. Rather, Respondent presided over a jury trial that concluded with a jury verdict on May 15, 2007.

31. Respondent's court calendar for May 21, 2007 -- the date of his second appearance in the back of Judge Nugent's courtroom -- indicates that, contrary to Respondent's testimony to the Senate Judiciary Committee, he did have a matter on his calendar that morning, which began at 8:30 a.m. and concluded at 11:49 a.m. Respondent took a break from that court matter, beginning at 9:20 a.m. and concluding at 11:44 a.m.

32. The expert to whom Respondent made reference in his testimony before the Senate Judiciary Committee testified neither on May 16, 2007 nor on May 21, 2007, but rather testified on May 22, 2007. The plaintiff Kaye was the witness testifying at the time of Respondent's first and second appearances in Judge Nugent's courtroom.

Count I

33. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

34. Respondent's long-standing business and personal relationship with Frank Siracusa, as well as his prior dealings with Mr. Siracusa over the course of many years, as set forth above, created a conflict of interest for Respondent that required his recusal from the Rosefielde Matter in which Respondent was advised that Mr. Siracusa would be a witness whose credibility and conduct Respondent, as the trier of fact, would need to evaluate. Respondent's failure to recuse himself in the face of this conflict of interest violated Canon 3C(1), which requires a judge to recuse himself or herself in any proceeding in which the judge's impartiality

might reasonably be questioned. Likewise, Respondent's failure to recuse himself from the Rosefielde Matter violated Rule 1:12-1(f).

35. By his conduct as described above, Respondent also violated Canons 1 and 2A of the Code of Judicial Conduct and engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

Count II

36. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

37. By his lack of candor while testifying under oath to the Senate Judiciary Committee about his conduct with respect to the Rosefielde Matter, Respondent impugned the integrity of the Judiciary, demonstrated disrespect for the Judiciary and an inability to conform his conduct to the high standards of conduct expected of judges and exhibited poor judgment. Such conduct undermines public confidence in the integrity of the Judiciary and violates Canons 1 and 2A of the Code of Judicial Conduct. Further, such conduct is prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

Count III

38. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

39. Respondent's two appearances in the back of Judge Nugent's courtroom during the trial of the Rosefielde Matter after recusing himself from the case, and his conversation with plaintiffs' counsel during one of those visits to the courtroom, was inappropriate and demonstrated or created the appearance that Respondent had an interest in or supported the

plaintiffs in the Rosefielde Matter, or was using his judicial office to influence or advance a matter of personal interest in the outcome of the Rosefielde Matter. Such conduct impugns the independence and integrity of the Judiciary and undermines public confidence in the integrity and impartiality of the Judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct.

40. Such conduct, likewise, violates Canon 2B of the Code of Judicial Conduct, which prohibits a judge from lending the prestige of the judicial office to advance a private interest. Further, such conduct is prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

WHEREFORE, Complainant charges that Respondent, Superior Court Judge Steven P. Perskie, has violated the following Canons of the Code of Judicial Conduct:

Canon 1, which requires judges to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved;

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;

Canon 2B, which prohibits judges from lending the prestige of their office to advance private interests;

Canon 3C(1), which requires judges to recuse themselves in any proceeding in which their impartiality might reasonably be questioned; and

Complainant also charges that Respondent's conduct in failing to recuse himself from the Rosefielde Matter in the face of a conflict of interest violated Rule 1:12-1(f); and

Complainant also charges that Respondent's conduct in failing to recuse himself from the Rosefielde Matter despite a conflict of interest, demonstrating a lack of candor while testifying before the Senate Judiciary Committee, and appearing in the back of the courtroom during the trial of the Rosefielde Matter after recusing himself, was prejudicial to the

administration of justice that brought the judicial office into disrepute in violation of Rule 2:15-8(a)(6).

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Candace Moody, Disciplinary Counsel
ADVISORY COMMITTEE ON JUDICIAL CONDUCT
Richard J. Hughes Justice Complex
25 Market Street
P. O. Box 037
Trenton, NJ 08625
(609) 292-2552