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SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2008-317

IN THE MATTER OF

WILSON J. CAMPBELL,
FORMER 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 charges set forth in the Formal Complaint against Wilson J. Campbell, Former Judge of the Municipal Court ("Respondent"), have been proven by clear and convincing evidence. The Committee recommends that the Respondent be publicly reprimanded.

On February 2, 2009, the Committee issued a Formal Complaint in this matter, which accused Respondent of engaging in an inappropriate, intimate relationship with a subordinate municipal court employee over whom he exercised supervisory control, a relationship that he failed to report to his superiors as required, in violation of Canons 1 and 2A of the

Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. The Respondent filed an Answer to the Complaint on February 26, 2009 in which he admitted certain of the factual allegations of the Formal Complaint and denied others. Respondent also set forth Defenses and Affirmative Defenses.

On December 16, 2009, the Committee convened a formal hearing in this matter. Although Respondent did not appear at the formal hearing, his counsel did. Exhibits were offered by the Presenter (P-1 through P-13), which were accepted into evidence, as was a set of joint Stipulations agreed to by both parties. See Stipulations of Parties dated December 15, 2009 ("Stipulations"). Both parties also submitted post-hearing summation briefs.

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 1999. Stipulations at ¶1. At all times relevant to this matter, Respondent was a part-time judge with the Jersey City Municipal Court, a position he no longer holds. Id. at ¶2. Respondent

officially resigned from his judicial position with the Jersey City Municipal Court on October 23, 2009. Id. at ¶3.

For approximately three months while he was still employed as a part-time municipal court judge with Jersey City, Respondent engaged in an intimate, romantic relationship with A.K., a bailiff in the Jersey City Municipal Court. Id. at ¶4. Throughout the duration of that relationship, which ended on June 26, 2008, A.K. was assigned to Respondent's courtroom and served as his bailiff. Id. at ¶5. The relationship appears to have been consensual. P-12 (Transcript of September 26, 2008 Interview of Rebecca Mason, Jersey City Municipal Court Assistant Court Administrator ["Mason Transcript"]) at T25-19 to 22; P-11 (Transcript of September 26, 2008 Interview of A.K. ["A.K. Transcript"]) at T14-22 to 15-2.

On June 26, 2008, A.K. took an overdose of prescription medication both before and while she was at work, prompting the need for A.K. to be taken to the hospital via ambulance from the Jersey City Municipal Courthouse. P-1. During a supervisor's inquiry into the matter, A.K. revealed that she "was upset because she was having an affair with [Respondent] and that now he wants nothing to do with her." Id.

On June 30, 2008, the Honorable Maurice J. Gallipoli, A.J.S.C. interviewed Respondent in the presence of Trial Court Administrator Joseph Davis and the Honorable Nesle Rodriguez,

C.J.M.C., Chief Judge of the Jersey City Municipal Court, concerning Respondent's involvement with A.K. P-3. During the interview, Respondent admitted to engaging in an intimate relationship with A.K. and subsequently terminating that relationship. P-3 and P-4; Transcript of December 16, 2009 Formal Hearing In the Matter of Wilson J. Campbell, Former Judge of the Municipal Court, ACJC 2008-317, ("Hearing Tr.") at 28-7 to 17. It is uncontested that throughout the duration of Respondent's intimate relationship with A.K., Respondent did not notify his superiors of the existence of his relationship with A.K. Stipulations at ¶6; Hearing Tr. 30-17 to 20.

Subsequent to A.K.'s overdose on medication and her eventual return to work as a bailiff with the Jersey City Municipal Court, A.K. was purposefully reassigned by her superiors to a courtroom and hours of work that differed from Respondent's. See P-4 at ACJC 011; P-6; Hearing Tr. 27-21 to 28-3.

At the hearing in this matter and in his December 30, 2009 post-hearing brief, Respondent, through his attorney, asserted two primary arguments, both of which claim Respondent deserves complete exoneration from the Complaint's allegations: (1) that the Judiciary's EEO Policy expressly permits consensual dating relationships between judges and judiciary employees; and (2) allegations of judicial misconduct based upon an intimate

relationship between a judge and judiciary employee only have viability when they are linked with claims of sexual harassment. In support of these arguments, Respondent stressed that the relationship between Respondent and A.K. was not only consensual but initiated by A.K, and that A.K. never asserted a claim of sexual harassment against Respondent. See December 30, 2009 Post-Hearing Summation Brief of Respondent at 3; Hearing Tr. 28-21 to 25. He also pointed out that both Respondent and A.K. were single and unmarried during the relationship, and that the private, intimate conduct between Respondent and A.K. never occurred at work, therefore shielding the Judiciary from allegations concerning its integrity and impartiality. Respondent's Post-Hearing Brief at 2-3, 17.

Testimony at the hearing and argument in the post-hearing summation briefs focused, in part, on the Judiciary's EEO Policy and its applicability to Respondent and his intimate relationship with A.K. The Policy in question, the Judiciary's "Policy on Consensual Dating in the Workplace," states as follows:

> Consensual dating relationships between Judiciary employees are generally not the Judiciary's business. However, when the two people currently or previously involved in such relationships work as supervisor and subordinate, the supervisor must promptly inform his or her immediate superior of the personal relationship so that the Judiciary may take action to change the reporting

> relationship between the individuals. This is necessary in order to eliminate any appearance of, or actual, impropriety in the workplace. For justices, judges and Judiciary employees subject to the New Jersey Tort Claims Act, *N.J.S.A.* 59:1-1, et seq., failure to give proper notice to the supervisor's immediate superior may result in the denial of legal representation and indemnification by the State in the event that a discrimination or sexual harassment lawsuit is filed in connection with the relationship.

Judiciary of the State of New Jersey Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination, Dated July 3, 2007 (in effect at time of the events at issue in this matter); Revised Judiciary of the State of New Jersey Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination, Dated October 29, 2008 ("Judiciary EEO Policy")(emphasis added). Respondent takes the position that he was not A.K.'s supervisor as he had "no role in hiring A.K.," "no authority to determine A.K.'s assignments, to promote A.K. or to determine her compensation," and he "did not rate or evaluate A.K. for purposes of her job performance." Respondent's Post-Hearing Brief at 5. Respondent asserts that A.K.'s direct supervisor was the chief bailiff of the Jersey City Municipal Court. Id. Respondent therefore maintains that he was not obligated, in accordance with the Policy in question, to report his relationship with A.K. to his superior. Id. at 5.

In contrast, Judge Nesle Rodriguez, who is the Chief Municipal Court Judge for Jersey City and who was Respondent's superior at the time Respondent and A.K. were intimately involved, described the role of a bailiff in the Jersey City Municipal Court as follows:

> The bailiff is there to assist the judge and the court administrator. Basically, they take on many roles. They're in court to make sure that there's decorum. If people are speaking, they'll tell them to be quiet. They're there to assist the judge in terms of if there has to be a file pulled, if I need - if an attorney walks in, I'll ask the bailiff to go find out what the attorney may have. ... It's basically someone who is there to assist with all sorts of different tasks that arise during a court session.

Hearing Tr. 19-6 to 23. Judge Rodriguez testified that a bailiff "absolutely" takes direction from judges, and that judges have "many recourses" in situations where the judge is unhappy with a bailiff's job performance, including "writing up" the bailiff directly, instructing the bailiff's administrative supervisor to write the bailiff up, or speaking with the court director or the Chief Municipal Court Judge. Hearing Tr. 20-16 to 24. According to Judge Rodriguez, municipal court judges in the Jersey City Municipal Court have "supervisory rule" and "control" over bailiffs both inside and outside of the courtroom. Hearing Tr. 73-14 to 22. To this end, if a bailiff needs time off from work, the bailiff "would ask the judge and

then the judge, if the judge is okay with it, would tell the supervisor so accommodations could be made for another bailiff to be assigned." Hearing Tr. 74-5 to 11.

B. Analysis

The Formal Complaint in this matter charged Respondent with violating Canons 1 and 2A of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules as a result of his intimate relationship with a subordinate employee assigned to his courtroom coupled with his failure to report that relationship to his superiors. We find that the charges in question are supported by clear and convincing evidence, and, consequently, that Respondent's conduct violated the cited Canons of the Code of Judicial Conduct as well as Rule 2:15-8(a)(6).

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. The commentary to Canon 2 of the Code of Judicial Conduct provides that judges "must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny." Rule 2:15-8(a)(6) prohibits judicial conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The Committee is governed in this case both by binding case law and the Judiciary's own EEO Policy on consensual dating relationships. In In re Hyland, 101 N.J. 631 (1985), the New Jersey Supreme Court considered a matter strikingly similar to the allegations currently under consideration by the ACJC. There, the Court publicly reprimanded the Judge in question "substantially for the reasons expressed in the presentment of the Advisory Committee on Judicial Conduct." Id. The ACJC, in its Presentment, dismissed allegations of sexual harassment advanced against the Judge but further concluded that the Judge violated Canons 1 and 2A of the Code of Judicial Conduct due to "sexual relations" he had with the Complainant, who was his legal secretary, on several occasions and due to his exchange of sexually-related gifts and materials with the Complainant. ACJC Presentment, Docket No. ACJC 1983-25, at 11-12.

With specific applicability to the present matter, Judge Hyland argued that he did not deserve public discipline for his intimate relations with his assistant as such relations were a private matter, and because "they occurred out of the courthouse during off duty hours and were consented to by the Complainant, who was actually the initiator of the sexual relationship." Id. at 16. The Committee rejected the Judge's position and affirmatively held that it was the intimate relationship itself

between the Judge and his subordinate employee that was improper:

> The fact that the intimacies did not take place in the courthouse is irrelevant in the mind of the Committee…. What is relevant and what Respondent continues to ignore is the fact that Complainant was his judicial secretary. He was her supervisor, and she had the right to expect that he would deal with her in a professional manner. She was his confidential assistant, and he had the right to expect her to perform her duties in a professional manner. By entering into a sexual relationship with her, no matter who may have initiated the relationship, Respondent placed himself in a [sic] untenable position in two ways. First, he permitted a situation to exist in which Complainant might herself think, or lead others to think, that she would be able to exert influence over a judge because of their intimate relationship. It goes without saying that such a situation cannot be tolerated because it leads, at the very least, to an appearance that the judicial office has been compromised. Second, the willingness of an employee to enter into such a relationship with a supervisor must always be suspect because of the power that the supervisor has with regard to the employee.

Id. at 16-17. See also In re Brenner, 147 N.J. 314, 319 (1997)("By hugging and kissing Roberts, a subordinate employee, even if those advances were not unwelcome, Respondent [a municipal court judge] engaged in conduct that embarrassed himself and his judicial office.).

We are equally mindful of the applicability of the Judiciary's own EEO policy on consensual dating relationships.

That policy, as expressed above, provides that although consensual dating relationships between Judiciary employees are "generally not the Judiciary's business," a notable exception applies when "the two people currently or previously involved in such relationships work as supervisor and subordinate…." Judiciary's EEO Policy (emphasis added). In such cases, "the supervisor must promptly inform his or her immediate superior of the personal relationship so that the Judiciary may take action to change the reporting relationship between the individuals. This is necessary in order to eliminate any appearance of, or actual, impropriety in the workplace." Id. (Emphasis added).

Here, by having an intimate relationship with his assigned bailiff, a relationship that he failed to report to his own superiors, Respondent violated the charged Canons of the Code of Judicial Conduct and Rules of Court. We start out with the fact that Respondent has stipulated to many of the allegations that form the basis of the Complaint. Respondent does not dispute the following assertions: (1) that, while he was still on the bench, he had an approximate three-month intimate relationship with A.K., a bailiff of the Jersey City Municipal Court; (2) that, during the romantic relationship between Respondent and A.K., she was assigned to his courtroom and worked as his bailiff; and (3) that he failed to report the existence of the relationship to his superiors. See Stipulations at ¶¶4-6.

Next, while Respondent disputes the notion that he was A.K.'s supervisor in any regard, we find it indisputable that Respondent was just that. As defined by the Merriam-Webster's Dictionary of Law, a supervisor is "one that directs or oversees a person, group, department, organization, or operation…." Dictionary.com., *Merriam-Webster's Dictionary of Law*, Merriam-Webster, Inc. (accessed: January 14, 2010). There is no question that Respondent directed A.K. in tasks she was to accomplish as she was assigned to his courtroom and operated as his bailiff. Stipulations at ¶5; P-11 (A.K. Transcript) at T4-6 to 18. Further, as revealed by Chief Judge Rodriguez, Respondent also had the authority to write up A.K. and to approve or deny her request for a day off. Hearing Tr. 74-5 to 11. The fact that the Jersey City Municipal Court chief bailiff also had supervisory authority over A.K. does not obviate or detract from Respondent's clear supervisory role.

The Committee was also confronted with the uncontradicted testimony of A.K. that Respondent himself recognized he was A.K.'s supervisor. On September 26, 2008, in connection with the ACJC's investigation in this matter, A.K. testified under oath as follows: "… [Respondent] made it very clear from the beginning oh, you know, you're going to come into court and get me in trouble with Gallipoli [Respondent's superior]. This is a conflict…. But yet, he'd continued to let it go on." P-11

(A.K. Transcript) at T23-5 to 10. A.K. further testified that at the time that Respondent discovered that she had confided in some of her co-workers about her relationship with Respondent, Respondent threatened to have her "written up" and make her appear before Respondent's and A.K.'s superior. Id. at T10-2 to 5. At the hearing, Judge Rodriguez corroborated A.K.'s testimony that Respondent himself recognized the impropriety of the relationship due to his position as a municipal court judge. Hearing Tr. 32-18 to 25. See also P-5 at ACJC 017. Taken cumulatively, we conclude not only that Respondent was A.K.'s supervisor, but that he recognized himself to fulfill that role.

Under the above parameters, i.e. that Respondent had the intimate relationship with A.K. while he served as her supervisor and yet failed to advise his superiors of the relationship so that the pair could be separated, the Committee is compelled to conclude that Respondent's charged behavior was inappropriate and objectionable. As recognized above, there exists an inherent and significant problem presented by judges having intimate relationships with subordinate employees over whom they exercise authority. Such relationships necessarily convey, whether actual or apparent, a sense of impropriety. The fact that the relationship was consensual or might have been initiated by one over the other is immaterial under our analysis. As recognized in Hyland, it is the existence of the

romantic relationship itself that is problematic. Such a situation creates the unacceptable risk that others may become aware of the relationship and may be led to believe, whether fairly or not, that the subordinate employee holds special influence over the judge. These relationships are also suspect as the very real risk exists that the employee succumbed to the relationship given the Judge's superior professional position. Either possibility is unacceptable and violates Canon 2's proscription against the creation of either impropriety or the appearance of impropriety. We find not that judges and those they work with need to be immune from the development, where appropriate, of personal, romantic relationships, but merely that such relationships cannot persist while the supervisor-subordinate relationship still exists between the individuals.

Respondent's argument that the Judiciary's EEO Policy expressly allows consensual dating relationships is imprecise. While the Policy initially conveys that the Judiciary wishes to stay out of consensual dating relationships between Judiciary employees, it also expressly recognizes that the Judiciary cannot stay out of such relationships when they exist between a supervisor and subordinate employee. Such is the case here. The Judiciary's EEO Policy specifically cautions that a romantic relationship between a supervisor and subordinate employee creates the "appearance of, or actual, impropriety in the

workplace," and therefore requests notice of the relationship so that its reporting element can be changed.

We also reject Respondent's argument that A.K. must have asserted a claim of sexual harassment against him for him to be culpable of judicial misconduct. Claims of sexual harassment were asserted against the judges in both the Hyland and Brenner cases. While those claims were, in fact, dismissed by the ACJC and the Supreme Court, both judges were, nonetheless, found to have violated the Code of Judicial Conduct, and specifically, Canons 1 and 2A of the Code (the same Canons that we find Respondent violated). It defies both common sense and long-standing notions of judicial ethics and fairness to link a judge's culpability for engaging in an intimate relationship with a subordinate under the Canons of Judicial Conduct to an assertive claim of sexual harassment.

By violating Canon 2A and the Commentary to Canon 2 of the Code of Judicial Conduct as expressed above, Respondent's conduct likewise violated Canon 1 of the Code of Judicial Conduct, as well as Rule 2:15-8(a)(6) of the New Jersey Court Rules. Such conduct brings the Judiciary into disrepute and reduces public confidence in the Judiciary's overall integrity and independence.

II. RECOMMENDATION

The Committee recommends that Respondent be publicly reprimanded. As demonstrated, above, it matters not who initiated the relationship, how long it persisted, or why the relationship began. For our purposes, this matter, at its core, concerns an intimate relationship between a judicial officer and a subordinate employee over whom the judge exercised supervisory control that was not reported. Such conduct violated Canons 1 and 2A of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules as well as the Judiciary's own EEO Policy. We note our dismay at Respondent's continued failure to take responsibility for or recognize the impropriety of his actions. That said, as Judge Hyland was publicly reprimanded in his matter, we recommend the same discipline for Respondent.

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

February 25, 2010 By: Alan B. Handler /bmr
Alan B. Handler, Chair