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SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

FILED

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IN THE MATTER OF :
:
:
PHILIP N. BOGGIA, :
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 Philip N. Boggia, Judge of the Municipal Court ("Respondent"), have been proven by clear and convincing evidence. The Committee recommends that the Respondent be publicly admonished.

On January 5, 2009, the Committee issued a Formal Complaint against the Respondent, which alleged that Respondent violated Canon 7A(4) of the New Jersey Code of Judicial Conduct, Rule 2:15-8(a)(5), and Rule 2:15-8(a)(6) of the New Jersey Court Rules when his law firm, at which Respondent is a named partner, made monetary contributions to certain political organizations

during Respondent's tenure as a part-time municipal court judge. The Respondent filed an Answer to the Complaint on January 26, 2009, in which he admitted certain factual allegations of the Formal Complaint and denied others.

The Committee convened a formal hearing on March 26, 2009. Respondent appeared with counsel and offered testimony in his defense. Exhibits were offered by the Presenter, which were accepted into evidence, as was a set of joint Stipulations agreed to by both parties. See Stipulations of Parties dated March 19, 2009 ("Stipulations"). Both parties also submitted pre-hearing 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

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1978. Since January 30, 2004, Respondent has served as a part-time judge in the Municipal Court of the Borough of Moonachie, Bergen County, a position he continues to hold. Stipulations at ¶3; Transcript of March 26, 2009 ACJC Hearing ("T") at T11-1 to 3.

At all times relevant to this matter, Respondent was a named partner of the firm of "Durkin & Boggia" (the "Firm"), in

Ridgefield Park, New Jersey, which operates as a general partnership. Id. at ¶4. Martin T. Durkin, Esquire was and still is Respondent's sole partner in the Firm. Id.; T11-22 to 25. On May 27, 2004 and again on September 29, 2004, the Firm, under the signature of Martin T. Durkin, made political campaign contributions of \$500 to the Edgewater Democratic Campaign Fund. Id. at ¶5. On January 12, 2005, the Firm, under the signature of Martin T. Durkin, made a political campaign contribution of \$600 to the Bergen County Democratic Organization. Id. at ¶6; P-4. On May 18, 2005, the Firm again made another contribution of \$600 to the "Edgewater Democratic Campaign Fund 2005." See P-6 at ACJC 031.

During the hearing, Respondent testified that he had no advance knowledge of the foregoing political contributions nor did he authorize them. T17-10 to 13; T18-4 to 9. He testified that when he became a part-time municipal court judge in 2004, he gave strict instructions to his law partner and office staff to cease making political donations from the Firm's joint business account. T13-24 to T14-12. According to the Respondent, he first became aware of the donations in question in this matter when he received the ACJC's Formal Complaint against him. T17-14 to 17. Respondent indicated that since learning of this matter, he has discussed the issue with his

partner, and any future political contributions will not be made from the Firm's joint business account. Tr18-20 to 24.

The Committee finds, by clear and convincing evidence, that Respondent violated Canon 7A(4) of the Code of Judicial Conduct and Rule 2:15-8(a)(5) and Rule 2:15-8(a)(6) of the New Jersey Court Rules as a result of his law firm's monetary contributions to various political organizations, drawn from the Firm's joint business account. Canon 7A(4) provides that, "A judge shall not solicit funds for or pay an assessment or make a contribution to a political organization or candidate, or purchase tickets for political party dinners, or other functions." Rule 2:15-8(a)(5) of the New Jersey Court Rules prohibits a judge from "engaging in partisan politics." Rule 2:15-8(a)(6) prohibits judicial conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

It is uncontested in this matter that the four political contributions in question were attributed to the law firm of "Durkin & Boggia." See Stipulations at ¶¶5-6. It is similarly uncontested that the monies donated were drawn from the Firm's joint business account. Id. The actual issued checks reflect "Durkin & Boggia" as the payor. See P-3 and P-4. Respondent is one of only two partners in the Firm, and his last name is featured in the Firm's name. Under these facts, Respondent cannot avoid responsibility for the contributions at issue by

simply indicating that he was not aware of them. Even if Respondent did not possess actual knowledge of the various political donations made, we find that the appearance was created that he, with his law partner, were responsible for the political contributions. That appearance is strictly prohibited under the Code of Judicial Conduct as well as binding case law.

We initially note that the information regarding the Firm's political contributions in 2004 and 2005 is public in nature and readily obtainable in hard copy or on-line from records maintained by the New Jersey Election Law Enforcement Commission ("ELEC"), the State Commission charged with monitoring campaign and other political contributions in New Jersey. See P-6. Such information was not confidential or unavailable. In this regard, the Committee points to the grievant in this matter, who premised her complaint against Respondent on her assumption that Respondent was responsible for contributions made from the law firm of "Durkin & Boggia."

Further, the Committee is governed by the Supreme Court's unyielding message in its cases regarding a judge's potential involvement in political activity:

There is no principle governing the judiciary in this state more firmly established or more important than the total separation of judges from politics. See Clark v. DeFino, 80 N.J. 539, 547 (1979); In re Gaulkin, 69 N.J. 185, 191 (1976); In re Hayden, 41 N.J. 443 (1964); In re Pagliughi, 39 N.J. 517 (1963). The

principle is an essential ingredient of judicial independence; it is probably the most important requirement for maintaining public confidence in the judiciary. The rule is so clear, the tradition in this state so strong, that it is rarely violated. In New Jersey, judges and politics do not mix - not at all, **either in fact or appearance.** (Emphasis added.)

See January 29, 1990 Public Statement by Chief Justice Wilentz on Behalf of N.J. Supreme Court, 125 N.J.L.J. 243 (1990). Chief Justice Wilentz continued:

The question is whether the public might believe the judge is somehow involved in politics or might have some doubt about whether the judge is totally and completely independent of politics, politicians, and political influence. In practice our application of the prohibition is almost harsh. The issue is not whether a reasonable person would probably conclude the judge had become vulnerable to political influence, but whether there is a fair possibility that some portion of the public might become concerned on that score. **And, as in many other instances concerning the conduct of judges, the appearances count as much as the facts.** (Emphasis added.)

Id. See also In re Gaulkin, supra, 69 N.J. at 192, n.2 ("As stated by Chief Judge John J. Parker, 'The judge must not only be independent - absolutely free of all influence and control so that he can put into his judgments the honest, unfettered and unbiased judgment of his mind but he must be so freed of business, political and financial connections and obligations

that the public will recognize that he is independent.'" [citations omitted]).

The singular importance of avoiding the appearance of political activity was recently underscored by the Supreme Court in In re Rodriguez, ACJC 2008-001, 196 N.J. 450 (2008) (adopting Presentment of the Committee). There, the municipal court judge's presence at the mayor's house, even if for the innocent purpose of providing comfort to the mayor's wife, violated Canon 7C of the Code of Judicial Conduct: "Respondent's presence at Mayor Rivera's house with a city councilman and a campaign treasurer, as depicted in the photograph in The Record, created the likelihood that the public would believe either that Respondent is somehow involved in politics or that Respondent is not completely independent of politics, politicians, and political influence." That likelihood was deemed unacceptable, and the Supreme Court publicly admonished the judge.

We find that, under the facts of this matter, there exists more than a "fair possibility" that a portion of the public was concerned that Respondent was responsible, at least in part, for the political contributions in question. The issue here is not if Respondent knew of the existence of the contributions but how those contributions were perceived by the public. The grievant obviously attributed responsibility for the contributions to Respondent and had no knowledge of Respondent's professed

ignorance of them. The information in question was public and available to anyone who was interested. We believe that, to these individuals, the issuance of political contributions from the Firm's joint business account, on checks which feature Respondent's name, inevitably convey at least some responsibility to Respondent. Such attribution unavoidably engenders questions regarding Respondent's susceptibility to political influence, which is antithetical to the public's right to an independent judiciary and gives way to a violation of Canon 7A(4) of the Code of Judicial Conduct and Rule 2:15-8(a)(4) of the New Jersey Court Rules.

In applying these principles and rendering these Findings, the Committee is mindful of their special reach to part-time municipal court judges. Such judges are the only part-time judicial officers of the Judiciary and, hence, the only members of the Judiciary who may also practice law. They are also, consequently, the only judicial officers who could potentially be affiliated with a law partnership seeking to make or making political contributions. The fact remains, however, that part-time judges, like full-time judges, are absolutely proscribed from political involvement, either in appearance or reality. See Rule 2:15-8(a)(4); Canon 7A of the Code of Judicial Conduct. Strictures inhibiting the conduct of members of the judiciary

apply with full force and effect to part-time municipal court judges.

The Committee cannot accept Respondent's argument that he deserves complete exculpation from responsibility in this matter. Respondent initially argued that he could not be held liable for the contributions made from his Firm's account because to do so would render him "vicariously liable" for his partner's actions. Reliance on the legal theory of vicarious liability is misplaced. The Committee's findings are not premised on the law of vicarious liability nor, for that matter, on the fact that the law firm of "Durkin & Boggia" is a general partnership involving general partnership statutory law. E.g. N.J.S.A. 42:1A-18(a); Stipulations at ¶4. Rather, it is based on the undeniable appearance that Respondent shared responsibility for the contributions. Under pertinent case law, the appearance of political involvement is all that is required for a violation of Canon 7 of the Code of Judicial Conduct.

First Amendment rights are likewise not implicated in this matter. Respondent's law partner, Mr. Durkin, was completely free to make the contributions at issue, just not from the Firm's joint banking account. Judges in this State are held to higher standards and should "freely and willingly" accept restrictions on personal conduct that "might be viewed as burdensome by the ordinary citizen." See Commentary to Canon 2

of Code of Judicial Conduct. See also In re Blackman, 124 N.J. 547, 551 (1990). Although Respondent's law partner may view such restrictions as unfairly burdensome on him, that is a necessary consequence of a private law partnership with a part-time municipal court judge. See In re Gaulkin, supra, 69 N.J. at 199 (finding that in spousal partnerships, "certain amenities of life, and perhaps some legal rights, have to be sacrificed or curtailed for the larger purpose of avoiding the fact or appearance of participation by the judge in the political effort of a spouse.").

II. RECOMMENDATION

The Committee recommends that Respondent be publicly admonished. This recommendation recognizes Respondent's testimony that he was unaware of the political donations in question at the time they were made. It similarly accounts for Respondent's representation that he should not be held responsible for the contributions in light of the novel issue presented by these facts. See In re Newman, 189 N.J. 477 (2006).

Yet, the absolute proscription advanced by the Supreme Court against judicial interaction of any kind with politics, whether in fact or appearance, as well as the undeniable appearance that Respondent was involved in making political contributions while a judicial officer cannot be overlooked or ignored. For this

reason, the Committee respectfully recommends that Respondent be publicly admonished for the conduct at issue in this matter.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

May 14, 2009

By: Alan B. Handler /s/AMN
Alan B. Handler, Chair