

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2009-003

IN THE MATTER OF

PRESENTMENT

STEVEN P. PERSKIE, FORMER
JUDGE OF THE SUPERIOR COURT

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 Steven P. Perskie, Former Judge of the Superior Court ("Respondent"), have been proven by clear and convincing evidence. As the Respondent is now retired from service as a Judge of the Superior Court, the Committee recommends that Respondent be censured.

On September 9, 2009, the Committee issued a Formal Complaint in this matter, which accused Respondent of three separate ethical violations: (1) inappropriately failing to recuse himself from Kaye v. Rosefielde, Docket No. ATL-C-000017-05, in a timely manner despite a conflict of interest with a

witness in the case, in violation of Canons 1, 2A, and 3C(1) of the Code of Judicial Conduct and Rule 1:12-1(f) of the New Jersey Court Rules; (2) exhibiting a lack of candor when testifying before the New Jersey Senate Judiciary Committee about his conduct in the Kaye matter, in violation of Canons 1 and 2A of the Code; and (3) appearing twice in another judge's courtroom to witness the Kaye trial, after recusing himself from the case, in violation of Canons 1, 2A and 2B of the Code of Judicial Conduct. Respondent filed an Answer to the Complaint on September 24, 2009 in which he admitted certain of the factual allegations of the Formal Complaint and denied others.

The Committee conducted a formal hearing in this matter on July 19, 2010 and July 20, 2010. Respondent appeared with counsel and offered testimony in his defense. Witnesses were called to testify by both the Presenter and Respondent. The Presenter and Respondent jointly and separately offered exhibits, which were accepted into evidence. See J-1 through J-9 and Presenter's and Respondent's Exhibits. The Committee also accepted into evidence a set of Stipulations agreed to by the parties prior to the hearing. See Stipulations of Parties filed on July 15, 2010 ("Stipulations"). Both parties submitted post-hearing briefs, which were considered by the Committee.

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 1969. Stipulations at ¶1. At all times relevant to this matter, Respondent served as a Judge of the Superior Court of New Jersey, assigned both to the Civil and Chancery Divisions in the Atlantic Vicinage. Id. at ¶2. Respondent retired from his judicial office effective February 1, 2010. Id. at ¶3.

On July 23, 2008, the Grievant in this matter, Alan P. Rosefielde, filed a Complaint against Respondent with the ACJC based on Respondent's conduct in a case in which Mr. Rosefielde was the Defendant/Counterclaimant, Bruce Kaye, et al. v. Alan P. Rosefielde, et al., Docket No. ATL-C-000017-05, venued in the Chancery Division, Atlantic County (the "Kaye" case). P-1. Mr. Rosefielde's Complaint against Respondent was supplemented by a letter to the Committee from Steven J. Fram, Esq., one of Mr. Rosefielde's attorneys in the Kaye matter. P-11.

Mr. Rosefielde specifically alleged the following in the original complaint he filed with the ACJC: (1) that Respondent inappropriately failed to recuse himself from presiding over Kaye despite a conflict of interest with an individual named

Frank Siracusa, a witness in the case; and (2) that Respondent inappropriately appeared in the back of another judge's courtroom while Kaye was being tried despite being recused from the case at that point in time. P-1. In November 2008, Mr. Rosefielde supplemented his original grievance with another letter to the ACJC, advising that Respondent had testified in October 2008 before the Senate Judiciary Committee in connection with his reappointment as a Superior Court judge, and that Respondent deliberately misled that Committee about his conduct in the Kaye case. P-3.

Based on Mr. Rosefielde's and Mr. Fram's allegations, the ACJC undertook an extensive investigation, which examined not only Respondent's involvement and conduct in the Kaye case but also Respondent's subsequent appearance before the New Jersey Senate Judiciary Committee in connection with his reappointment.

1. Stipulated and Undisputed Facts

From February 2005 until October 2006, Respondent presided over the Kaye case. Stipulations at ¶4. The matter concerned various issues stemming from Mr. Rosefielde's employment with Flagship Resorts Development Corporation ("Flagship"), a time-share business based out of Atlantic City, New Jersey, and his eventual termination from that company in or around January 2005. Id. at ¶5. See also P-1. One issue in the case concerned the discontinuation of Flagship's business

relationship with a local Atlantic City insurance broker, Frank Siracusa, at Mr. Rosefielde's recommendation. Id. at ¶6. See also P-1, Attachment 3. Pertinent to this matter, Mr. Rosefielde specifically alleged, in part, that his termination was a result of his recommendation that Flagship procure its insurance from an entity other than Mr. Siracusa's insurance agency. P-1, Attachment 3 at ACJC 0403 to 0405. Both Plaintiffs and Mr. Rosefielde named Mr. Siracusa as a witness to the matter, but Mr. Siracusa was not named as a party. Id. at ¶7.

In October 2005, several months after Kaye was filed, Respondent first told the parties that he knew Mr. Siracusa. Because the ACJC Complaint against Respondent alleges, in part, that Respondent inappropriately failed to recuse himself from the case despite his relationship with Mr. Siracusa, the details of that relationship are critical.

(a) Respondent's Relationship with Frank Siracusa

The Committee learned about Respondent's relationship with Mr. Siracusa from Respondent himself and from its own investigation into this matter.

i. As Revealed During the Kaye Trial

While Respondent presided over the Kaye case, Mr. Siracusa was implicated in various discovery issues in the case and discussed by the parties and Respondent on the record.

First, on October 12, 2005, in the context of oral argument on discovery motions, Respondent advised the parties (1) that he knew Mr. Siracusa and another witness in the case, "Eddie Denick," (2) that he had purchased and continues to purchase his personal insurance from Mr. Siracusa, and (3) that Mr. Siracusa had been "associated with" him years earlier in some of his "endeavors in public office." Stipulations at ¶8. See also J-4 at T43-21 to T44-9. Respondent offered this additional commentary:

I'm telling you all that so that you'll all understand that the names are not unknown to me. I do not perceive that my historic relationships with either of them poses [sic] any problem for me in terms of my role in this case, but you need to make your own determinations on that issue. Nor do I have any idea other than by this conversation of the last two minutes about what either Mr. Denick or Mr. Siracusa has [sic] to do with the issues in this case, and I don't need to know the answer to that at this point. I'm simply indicating to you that I know them, that I have done business with one of them and continue to have some business relationship with Mr. Siracusa.

J-4 at T44-13 to 25; Stipulations at ¶8.

Second, on February 7, 2006, Respondent ordered the depositions of certain witnesses in the case, including the deposition of Mr. Siracusa. Stipulations at ¶10. See also P-11, Attachment A.

Third, on May 26, 2006, Mr. Siracusa was again discussed during a motion hearing and case management conference. On this occasion, Mr. Fram brought up Mr. Siracusa, pointing out the potential existence of "credibility issues" surrounding Mr. Siracusa as related to one of Mr. Rosefielde's counterclaims. J-5 at T73-23 to T74-8. See also Stipulations at ¶11. In response, Respondent stated as follows:

I don't remember the conversation but, again, I certainly accept you at your word. I'm sure I indicated then, as I will now, that I have had a relationship with Mr. Siracusa for many years. That relationship has taken a variety of forms. At the present time and for the last 20 years, I guess - maybe more - the relationship is basically limited to the fact that he writes my personal insurance policy, or his agency does, automobile, homeowners, things of that nature. Prior to that time when I was in different careers, he and I were associated. At one point, we even had - 30 years ago even - we were two of many people who shared an interest in a restaurant, that cost me a lot of money.

J-5 at T74-10 to 24. Respondent asserted that, in his view, there was "nothing from any of that" that required him to recuse himself on his own motion: "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." Id. at T75-5 to 9. Respondent conceded that the parties needed to be assured of that notion as

well, however, and left it up to the parties to approach him on a later date with respect to final resolution of the issue. Id. at T75-10 to T76-22.

Mr. Fram then suggested that the aspect of the case involving Mr. Siracusa might be more appropriately tried to a jury. Id. at T75-14 to 20. Respondent responded that he would keep the issue open but that, "All I'm saying is that my relationship with [Mr. Siracusa] is not such, as it would be, for example, with some other people that I can mention, that I simply would not feel comfortable evaluating their credibility." Id. at T76-18 to 22. See also Stipulations at ¶11.

Approximately three months later on September 8, 2006, Mr. Siracusa's name again came up during another case management conference. Stipulations at ¶12. This time, Mr. Fram identified Mr. Siracusa as a "pretty important witness," advised Respondent that "there are allegations relating to some of [Mr. Siracusa's] business practices" in the case, and indicated that a motion to dismiss pending before Respondent, returnable on October 6, 2006, implicated Mr. Siracusa. J-6 at T23-9 to T24-19. Mr. Fram questioned Respondent's "comfort" in handling that motion. Id. at T24-19 to 23. See also Stipulations at ¶12. Respondent replied as follows:

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 it's still - 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.

J-6 at T24-4 to 15.

Respondent expanded that while he did not remember his previous discussions concerning Mr. Siracusa, he hoped he had "described that I've known him for a very long time, that at a time in the '70s and early '80s when I was involved in elective politics, he was very helpful and a very close associate and friend at that time. Since that time, my only real association with him is that I buy insurance through his office and I see him at lunch a couple of times a month." Id. at T25-9 to 15. See also Stipulations at ¶12. Mr. Fram reminded Respondent of his failed restaurant venture with Mr. Siracusa and indicated he would prefer to present the issue to Respondent "in the form of a motion." Id. at T25-16 to T26-15. Respondent agreed to Mr. Fram's request. Stipulations at ¶12.

In September 2006, Defendants filed a motion for Respondent's recusal from the Kaye case. See Exhibit P-1, Attachment 72. That motion specifically indicated that Mr. Siracusa was a central witness in the case and suggested that

Respondent's recusal was necessary due to Respondent's "personal and business relationship" with Mr. Siracusa "against whom specific allegations of improper conduct have been made." Id. at ACJC 1223.

On October 6, 2006, Respondent denied, on the record, the motion brought by Mr. Fram on behalf of Mr. Rosefielde for Respondent's recusal, finding as follows:

Even if [Mr. Siracusa] were to be called as a witness, my relationship with him in the past would not, in my view, preclude my making any necessary determinations with regard to his credibility. I have not been associated with him in any business enterprise since about 1980, and even that was a very short term interest in a restaurant in Atlantic City . . . or any political activity since 1982. I have not socialized with him in the intervening years other than to see him on occasion and say hello when we were eating lunch in the same restaurant, and until a few years ago at an occasional bridge game. I am a client of his insurance agency but my dealings with his office are sporadic and rarely involve him personally. So I do not believe that there is any subjective reason on my part to recuse. I feel perfectly comfortable retaining responsibility for the matter even if Mr. Siracusa were to testify.

J-7 at T8-8 to T9-2; Stipulations at ¶13.

Subsequent to denying this motion, however, Respondent immediately advised the parties that he was recusing himself on his own motion based on his "inappropriate reaction" to Mr. Fram at a previous hearing as well as "significant concerns" he had "with the manner in which the case has been handled in some

respects" J-7 at T9-15 to T10-16. The case was thereafter transferred to the Honorable William E. Nugent, J.S.C. Stipulations at ¶14.

ii. As Revealed In the ACJC Investigation

The ACJC's investigation into this matter revealed additional information regarding the relationship between Respondent and Mr. Siracusa:

- Respondent provided written comments to the Committee, dated October 22, 2008, in which he reacted to Mr. Rosefielde's July 2008 letter of complaint. P-8. In that letter, Respondent asserted that he had not "previously seen" or been aware of Mr. Rosefielde's letter. Id. at ACJC 0186. He took the opportunity to describe the extent of his relationship with Mr. Siracusa as follows:

1. In the 1970s and 1980s, before I became a judge (in 1982, for the first time), Frank Siracusa and I were colleagues in a business venture and in several political endeavors. At that time, I also began to use his office as an insurance agency for my personal coverages (home, automobile, etc.).
2. After 1982, my contacts with him were limited to the insurance business (which is, in any event, handled by his staff), an occasional 'sighting' at lunch, and, for 2-3 years in the late 1990's, at a bridge game that occurred about 8-10 times annually.
3. We have not visited in the other's home (except for the card game that, once in a while, was

at his house) or shared a meal for at least 25 years, nor been in any business relationship (other than the insurance agency) during that time. P-8 at pp. 2-3.

- Mr. Siracusa donated \$200 in 1975 to Respondent's campaign for a seat in the New Jersey Assembly and almost \$3000 in 1977 in connection with Respondent's campaign for a seat in the New Jersey Senate. Stipulations at ¶9. See also P-25 at ACJC 2733, ACJC 2777, ACJC 2787, ACJC 2663.
- Respondent designated Mr. Siracusa as "Treasurer" of his 1977 campaign for public office. Stipulations at ¶9. See also P-24 at ACJC 2719.
- Respondent and Mr. Siracusa worked closely together in the 1970s in connection with the effort to bring legalized gambling to Atlantic City. Stipulations at ¶9. See also P-21 at T11-24 to T12-8.

(b) Respondent's Appearances in the Back of Judge Nugent's Courtroom

The trial of Kaye v. Rosefielde commenced in April 2007 before Judge Nugent. On two separate occasions during that trial, Respondent appeared in the back of Judge Nugent's courtroom, sat in the gallery, and observed the trial. Stipulations at ¶¶15, 17-18. Those appearances took place after Respondent recused himself from the matter on his own motion.

Respondent's first appearance took place on May 16, 2007. Id. at ¶16. Although Respondent spoke to no one on that day, he remained in the courtroom for approximately one hour and observed the testimony of Plaintiff Bruce Kaye. Id. at ¶17. There is a factual dispute in the case as to whether the second day on which Respondent appeared in Judge Nugent's courtroom was May 21, 2007 or May 22, 2007. Stipulations at ¶¶18-20. Both parties agree, however, that Respondent did make a second appearance, and that, on that occasion, he again remained in the courtroom for approximately one hour during the morning session. Id. at ¶18. It is also undisputed that, during Respondent's second visit to the Kaye trial, Respondent spoke with at least one of Plaintiff's attorneys. Id.¹

(c) Respondent's Testimony Before the New Jersey Senate Judiciary Committee

On October 16, 2008, Respondent appeared before the New Jersey Senate Judiciary Committee in connection with his reappointment as a Superior Court Judge. Id. at ¶21. Respondent was placed under oath prior to the commencement of

¹ Respondent asserts that, during his second appearance, he approached Louis Barbone, Esq., one of Plaintiff's attorneys, and requested to see a copy of one of the exhibits in the Kaye case. July 20, 2010 Transcript at T177-13 to 21. Mr. Rosefielde and Mr. Fram testified differently, indicating that Respondent remained in the back of the courtroom and was approached by both of plaintiff's attorneys and plaintiff himself, and that the conversation that ensued was more extensive and jovial. July 19, 2010 Transcript at T95-23 to T96-20.

his hearing. J-1 at ACJC 1958. During his hearing, two members of the Senate Judiciary Committee questioned Respondent concerning the allegations now before this Committee, including Respondent's failure to recuse himself from the Kaye case and his two appearances in the back of Judge Nugent's courtroom during the Kaye trial. Id. at ¶22.

In response to a question posed to him by a New Jersey Senator regarding whether he inappropriately failed to recuse himself from Kaye despite a conflict of interest with Mr. Siracusa, Respondent testified as follows:

[W]hen the matter was first presented to me, it was suggested that there was an individual [Mr. 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.

J-1 at ACJC 1961-62. See also Stipulations at ¶23. When subsequently asked by the same Senator if he later concluded he did have a conflict of interest with Mr. Siracusa, Respondent answered:

I did not. . . . 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.

J-1 at ACJC 1962. See also Stipulations at ¶24.

Respondent next testified before the Senate Judiciary Committee about his appearances in the back of Judge Nugent's courtroom during the Kaye trial. With regard to his first visit on May 16, 2008, Respondent stated that he was "just finishing a jury trial" and was waiting for a verdict and, therefore, "had some time." J-1 at ACJC 1963. See also Stipulations at ¶25.² With regard to his second appearance in Judge Nugent's courtroom, Respondent testified that he appeared that day because he was interested in the proposed testimony of one of the parties' legal experts who was testifying. J-1 at ACJC 1963. See also Stipulations at ¶25.

2. Testimonial Evidence

Extensive testimony and evidence were presented during the ACJC investigation in this matter and the subsequent hearing.

² The parties now agree that Respondent's verdict actually came in the day before his first appearance, i.e. May 15, 2008, and that he had no court activity in his courtroom on May 16, 2008. Stipulations at ¶¶26-27.

The testimony of the majority of the hearing witnesses pertained to Respondent's second appearance in Judge Nugent's courtroom, including whether it took place on May 21, 2008 or May 22, 2008, who was testifying on that occasion, and what conversation took place between Respondent and the others present. Such testimony was often conflicting and contradictory.

Mr. Siracusa, Mr. Fram and Respondent, however, offered additional testimony that the Committee found pertinent.

(a) Testimony of Frank Siracusa

Mr. Siracusa was placed under oath and interviewed by staff to the Committee during the course of the ACJC investigation. In that interview, Mr. Siracusa testified that he and Respondent became friends in connection with their efforts to bring casino gambling to Atlantic City, and that they remain friends today. P-21 at T12-6 to 15; T29-18 to T30-3. With regard to his interaction with Respondent at bridge games, Mr. Siracusa testified as follows:

[In the] "80s, 90s and so forth, he was in one bridge group and I was in another both located in the city we lived in And . . . so if they needed an extra, I might fill in his group, he might fill in our group, so - and that was every week. I can't say that we played bridge together every week, but quite often we would find ourselves at the same bridge table I would say that over a five, or six or seven-year period we would sort of be meeting at the bridge table, occasionally. But, I would also guess

that that probably ended at about the year 2000."

Id. at T25-25 to T26-18. Mr. Siracusa estimated that, since 2000, he likely only played with Respondent "once or twice."

Id. at T26-19 to 21. Mr. Siracusa testified that he played bridge at Respondent's house, and that Respondent played bridge at his house. Id. at T27-2 to 13.

(b) Testimony of Steven Fram, Esq.

Mr. Fram testified at the ACJC hearing. He first spoke of the centrality of Mr. Siracusa as a witness in the Kaye case. In this regard, he testified that Mr. Siracusa was at the heart of Mr. Rosefielde's CEPA claim, that his name was specifically referenced in Mr. Rosefielde's pleadings, motion briefs and discovery requests, and that he was alluded to in Plaintiffs' First Amended Complaint. Transcript of July 19, 2010 ACJC Formal Hearing ("July 19, 2010 Transcript") at T27-5 to T38-3. Mr. Fram added that Mr. Siracusa's deposition was taken in April 2006 pursuant to Respondent's Order. Id. at T46-17 to 25. See also P-11, Attachment A.

Mr. Fram verified that although he later learned that Respondent failed to reveal the full details of his relationship with Mr. Siracusa, Defendants were simply unaware of Respondent's omissions while Respondent presided over Kaye: "So we were taking him at his word when he was indicating to us that

he didn't see a basis for recusal, and we were assuming that he was making a full disclosure." July 19, 2010 Transcript at T53-1 to 10. Mr. Fram specified that he and Mr. Rosefielde never, in fact, knew or understood, while Respondent presided over Kaye, that Mr. Siracusa: (1) had donated monies to Respondent's public office campaigns; (2) had served as Respondent's designated Campaign Treasurer during at least one of the campaigns; (3) had closely worked with Respondent in connection with the effort to bring legalized gambling to Atlantic City; and (4) had played bridge with Respondent for years, at times at Mr. Siracusa's house. Id. at T45-18 to T46-16.

Mr. Fram testified that, despite lacking full knowledge of Respondent's and Mr. Siracusa's relationship, the Defendants were, nevertheless, uncomfortable with what they did know of that relationship, which initially prompted them to file a motion requesting a jury trial on some of the claims: "We were communicating to him that we were not comfortable and we didn't think that he would be comfortable making credibility determinations with respect to Siracusa, but, perhaps, it didn't rise to the level of recusal." Id. at T52-14 to 18. According to Mr. Fram, they also filed the transfer motion because they did not "want to offend [Respondent]." Id. at T54-19.

Mr. Fram revealed it was Respondent's denial of the motion to transfer the case to the Law Division that prompted him to

advise Respondent, during the September 2006 case management conference, of Defendants' intention to file a motion for Respondent's disqualification. Id. at T60-22 to T61-8; T67-20 to 23. Mr. Fram testified he was disturbed to learn of additional details of Respondent's relationship with Mr. Siracusa during the September 2006 case management conference:

When [Respondent] said [on September 8, 2006], of Siracusa, quote, 'He was very helpful and a very close associate and friend of mine at the time,' when he was in elective politics, that was a surprise to us, because he only made very vague references before to the historic relationship with Siracusa. Now, we're finding out that the fellow was a very close associate and friend, and, then, he also mentioned for the first time that he sees the fellow at lunch a couple times a month. What he'd indicated when the issue first came back [sic] in October, he had said something to the effect, my current relationship with him is limited to I buy insurance from his office and I rarely see him. Well, now, we're finding out for the first time that he does see him and that they were close friends way back, so that was a problem for us.

Id. at T68-11 to T69-2.

Mr. Fram confirmed that he and his co-counsel, Jack Slimm, Esq., subsequently filed a motion for Respondent's recusal, returnable on October 6, 2006. Id. at T71-6 to 15. See also P-1, Attachment 72. Mr. Fram stated the motion was premised on the "personal relationship that [Respondent] had with Siracusa; the fact that they had been close business associates and

friends, and in light of the fact that the case was being tried non-jury, and that [Respondent] would have to make credibility determinations, that was grounds for recusal, and, of course, the CEPA claim went beyond credibility issues, it raised some serious questions about the business practices of Mr. Siracusa" July 19, 2010 Transcript at T73-23 to T74-6. Mr. Fram declared he was "shocked" when Respondent denied the motion and "offended" that Respondent subsequently recused himself on his own motion. Id. at T74-10 to 22.³ Mr. Fram confirmed that, prior to the return date of the recusal motion, he was not aware that Respondent and Mr. Siracusa had played bridge together. Id. at T83-5 to 8.

(c) Testimony of Respondent

Respondent testified at length at the ACJC hearing regarding his relationship with Mr. Siracusa, his two appearances in the back of Judge Nugent's courtroom during the Kaye trial, and his testimony before the Senate Judiciary Committee.

Respondent described his relationship with Mr. Siracusa, at the time of the Kaye matter, as "historic." July 20, 2010

³ Mr. Slimm, Mr. Fram's co-counsel in the Kaye case, similarly testified that he was "surprised" when Respondent denied the motion for judicial disqualification because he thought there was "a clear reason for recusal," which he defined as the need for Respondent to judge "the credibility of a witness when a judge knows the witness." July 19, 2010 Transcript at T129-7 to 15.

Transcript of ACJC Hearing ("July 20, 2010 Transcript") at T48-4 to 7. He admitted working with Mr. Siracusa with regard to the "Committee to Rebuild Atlantic City," and that Mr. Siracusa helped him with his various campaigns for public office, including by raising monies and by serving as a Campaign Treasurer. Id. at T49-2 to T50-9. Respondent stated he was "sure" that Mr. Siracusa had personally donated monies to Respondent's campaigns. Id. at T50-10 to 12.

Respondent clarified that from approximately the mid-1970s to the present, he obtained and still obtains his personal insurance policies from Mr. Siracusa's insurance agency, although he specified he typically does not deal with Mr. Siracusa personally with regard to the maintenance of those policies. Id. at T50-15 to T51-9. He further confirmed that, also in the mid-1970s, he invested money in a business venture to open a restaurant/night club in Atlantic City in which Mr. Siracusa also invested. Id. at 53-4 to 21.

According to Respondent, once he assumed the bench in 1982, it was "rare" for him to see Mr. Siracusa with two exceptions: (1) he would see Mr. Siracusa (after 2002 when he began sitting in Atlantic City) "from time to time" at lunch at Atlantic City restaurants, although they did not dine together; and (2) for a "three, four, five year" period, beginning in the mid-1990s, he would play bridge with Mr. Siracusa at Mr. Siracusa's regular

game when Respondent was called in to substitute for an absent player. Id. at T55-6 to 20. Respondent approximated that he would substitute in at Mr. Siracusa's regular card game approximately "[f]our, five, six, eight," times a year, and that the games ended "in the late '90s, '96, '98, somewhere in that area." Id. at T55-21 to 23; T59-10 to 22. Respondent disputed Mr. Siracusa's claims that Mr. Siracusa played in Respondent's bridge group, that Mr. Siracusa played bridge at Respondent's house, and that the two played bridge together at least until 2000. Id. at T202-23 to T204-20.

With regard to Mr. Siracusa's role in the Kaye case, Respondent testified as follows. First, he claimed that although he never revealed the full extent of his relationship with Mr. Siracusa to the parties, this failure was deliberate and a result of his standard procedure to "stay out of the way" of any substantive issues in a case until discovery was completed. Id. at T60-11 to T61-3; T62-2 to 21. According to Respondent, he accorded himself with that policy in Kaye with the exception of ruling on an early partial summary judgment and related cross motion. Id. at T63-21 to T64-21. Second, Respondent testified that he was not troubled by Mr. Fram's repeated indications that Mr. Siracusa might be called as a witness presenting credibility issues because, early in the case, he just "didn't yet have the information I would

eventually need to make a more substantive or a more objective kind of analysis . . .” and, later on in the case, because he “knew something that Mr. Fram did not at that point. I knew that I was going to grant the application for a jury trial. There was never any doubt in my mind about that. Still isn’t.”

Id. at T120-13 to 25; T74-5 to 18. Respondent continued:

In my view, for a variety of reasons, if you’d like to hear them. . . I thought Mr. Fram was correct that at least several, if not all of the claims, should be submitted to a jury. So that from my point of view, even though I never shared this with the parties at that time, I was never going to be in a position of, even if Siracusa were [sic] called as a witness, I was never going to be in a position of evaluating his credibility. That would be for the jury to do.

Id. at T74-19 to T75-3 (emphasis added). Respondent asserted his decision to omit informing the parties of his intention to grant the jury trial request was again in keeping with his policy to defer substantive decisions. Id. at T75-4 to 9.

Respondent admitted to the Committee that he denied Defendants’ motion to transfer the case to the Law Division, pointing out he did so without prejudice. With regard to his concurrent decisions approximately one month later to deny Defendants’ motion for his disqualification but to grant his own motion for his immediate recusal, Respondent testified that he made the decision to recuse himself after he had “blown up” at Mr. Fram during the September 2006 case management conference,

thereafter concluding he did so because he was "annoyed" and "displeased" with the way "the defense was handling the case." Id. at T133-23 to T134-3; T136-13 to 16. Respondent asserted, in hindsight, he handled the Defendants' motion to recuse "incorrectly" and should have just "dismissed Mr. Fram's motion as moot" instead of denying it. Id. at T140-6 to 15.

In light of his testimony that he privately knew "all along" that he was going to grant a jury trial, in part to avoid his need to judge Mr. Siracusa's credibility, Respondent was asked to explain the representations he made on the October 6, 2006 record that, "Even if [Mr. Siracusa] were to be called as a witness, my relationship with him in the past would not, in my view, preclude my making any necessary determinations with regard to his credibility," and "I feel perfectly comfortably retaining responsibility for the matter even if Mr. Siracusa were to testify." Respondent responded as follows:

In the first place, [those] statements were just simply wrong. As I've already told you, it was my view that there was going to be a jury trial in any event and those statements don't make any sense because I didn't expect to be sitting in a non-jury situation evaluating the credibility of witnesses.

Id. at T141-23 to T142-17. Respondent elaborated further:

My decision to decide the motion for recusal was wrong. And then when I decided it, I said things about it that were not accurate The sense that I have that I would be willing to hear testimony if [Mr. Siracusa]

were, in fact, a party to the case or had interests in the case [was not accurate]. I never would have agreed to that. That's what I said. I didn't fully appreciate what I was saying at the time. I was overreacting and it was wrong.

Id. at T185-8 to 19.

Respondent explained that whether Kaye was tried by a jury or by him as fact-finder was crucial to his interpretation of the issue: "I would have felt no discomfort in sitting there while [Mr. Siracusa's] credibility was examined by a jury and notwithstanding the one time I said otherwise, I would not have felt that comfortable or with the appearance of that comfort if he were testifying before me as a fact finder." Id. at T187-4 to 16.

With regard to his testimony before the Senate Judiciary Committee, Respondent told the ACJC that he again just "got it wrong." Id. at T162-16 to 18. Respondent acknowledged he was incorrect in informing the Senate Judiciary Committee that he would have recused himself from Kaye if Mr. Siracusa had either been a party or a witness. Respondent admitted that such testimony was, in fact, inconsistent with what he told the parties about his ability to judge Mr. Siracusa's credibility. Id. at T172-12 to 15. Respondent professed his mistake was a product of his faulty memory and his private decision to grant a jury trial: "It was two years later. I was testifying from

memory And I just simply said it wrong. . . . I knew as I have said earlier, I knew from the jump that I was never going to be in a position of evaluating Siracusa's credibility whether he was a witness or not because as far as I was concerned, if the case was going to be tried in front of me, it was going to be tried to a jury." Id. at T162-21 to T163-19. Respondent conceded he testified incorrectly despite having received and reviewed a copy of Mr. Rosefielde's letter of complaint prior to his appearance before the Judiciary Committee. Id. at T164 - 7 to 16.

On cross-examination, Respondent admitted that he had an obligation to disclose the full details of his relationship with Mr. Siracusa to Mr. Fram and the Defendants, and failed to do so, but he offered, "That was exactly what was going to happen in October [2006] if what happened in September [2006] hadn't happened." Id. at T191-25 to 192-7.

B. Analysis

The Formal Complaint in this matter charged Respondent with violating Canons 1, 2A, 2B and 3C(1) of the Code of Judicial Conduct and Rule 1:12-1(f) of the New Jersey Court Rules as a result of his conduct as averred in Counts I, II and III.⁴ We

⁴ Each of the three counts of the ACJC Complaint also charged Respondent with violating Rule 2:15-8(a)(6) of the New Jersey Court Rules. In accordance with the Supreme Court's recent instruction in In re Boggia, 203 N.J. 1, 10, n.1 (2010), that

find that each Count has been proven by clear and convincing evidence, and, consequently, that Respondent's conduct violated the cited Canons as well as Rule 1:12-1(f).

1. Count I

Count I of the Formal Complaint against Respondent accuses him of inappropriately failing to disqualify himself from presiding over the Kaye case despite possessing a conflict of interest with Mr. Siracusa, a witness in the case, in violation of Canons 1, 2A and 3C(1) of the Code of Judicial Conduct and Rule 1:12-1(f) of the Court Rules.

The subject of judicial disqualification has been a topic of recent discussion by the New Jersey Supreme Court, and the Committee is guided by those recent decisions, other well-established jurisprudence governing this issue, and the pertinent Canons of Judicial Conduct and Court Rules. Our analysis begins with Canon 1 of the Code of Judicial Conduct, which calls for judges to observe "high standards of conduct so that the integrity and independence of the judiciary may be 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

Rule 2:15-8 "not be used as a basis for a substantive ethical violation" in future ACJC matters, the Committee will not consider Rule 2:15-8 as a basis for an ethical violation in this matter.

Code of Judicial Conduct further explains that judges "must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny." The Court in DeNike v. Cupo, 196 N.J. 502, 514-15 (2008), expanded on this point:

[A]s this Court recognized nearly a half century ago, 'justice must satisfy the appearance of justice.' [Citations omitted.] That standard requires judges to 'refrain . . . from sitting in any causes where their objectivity and impartiality may fairly be brought into question.' . . . In other words, judges must avoid acting in a biased way or in a manner that may be *perceived* as partial. To demand any less would invite questions about the impartiality of the justice system and thereby 'threaten [] the integrity of our judicial process.' [Citations omitted.]

Canon 3C(1) of the Code of Judicial Conduct specifically discusses the topic of judicial disqualification, providing that a "judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Rule 1:12-1(f) echoes this sentiment, requiring judges to disqualify themselves on their own motion "when there is . . . any reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so."

The Supreme Court's recent assessment of the case law, court rules, and Canons discussing judicial disqualification led it to establish the following legal standard, which now governs all

requests for a judge's recusal: "Would a reasonable, fully informed person have doubts about the judge's impartiality?" DeNike, 196 N.J. at 517. Clearly, if the answer to that question is "yes," the judge should recuse or should have recused himself or herself from the pertinent matter. In articulating this test, the Court recognized that it applies equally to findings of actual prejudice or appearances of impropriety or bias:

Our rules, therefore, are designed to address actual conflicts and bias as well as the appearance of impropriety. . . . '[I]t is not necessary to prove actual prejudice on the part of the court[;] . . . the mere appearance of bias may require disqualification. . . . [T]he belief that the proceedings were unfair must be objectively reasonable.'

State v. McCabe, 201 N.J. 34, 43 (2010) (citing State v. Marshall, 148 N.J. 89, 270, 690 A.2d 1 [citing R. 1:12-1(f)], cert. denied, 522 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997)).

Finally, with regard to motions made for a judge's recusal, we are well aware that such motions are made directly to the judge of concern, and that they are left to the judge's discretion. McCabe, 201 N.J. at 45.

In applying the DeNike test and the above jurisprudence to the facts of this matter, we have no choice but to conclude that Respondent inappropriately failed to recuse himself from Kaye.

We believe objective, reasonable and fully informed observers would have sincere doubts about Respondent's impartiality based on Mr. Siracusa's role in the case and the nature and extent of Respondent's relationship with Mr. Siracusa.

We start with the undisputed evidence that Mr. Siracusa was a central witness to Mr. Rosefielde's counterclaim in Kaye, and that his testimony would present credibility issues for Respondent. Both of Mr. Rosefielde's attorneys corroborated Mr. Siracusa's centrality, and Respondent contested neither Mr. Siracusa's centrality nor the fact that, at some point during the proceedings, he realized he may have to judge Mr. Siracusa's credibility. Further, the record from the underlying case shows that Mr. Fram brought up Mr. Siracusa on numerous occasions and, at one time, specifically described him as a "pretty important witness." That record also indicates that some of Mr. Siracusa's business practices and their legitimacy, in the context of the legality of Mr. Rosefielde's termination from Flagship, were at issue in the case. We find it irrefutable, therefore, that Mr. Siracusa was to play a key role in Kaye, and that evidence of that centrality was appropriately raised to and known by Respondent.

We next address the issue of Respondent's relationship with Mr. Siracusa to determine if it could cause a reasonable and fully informed observer to question Respondent's ability to

remain in the case and be impartial.⁵ Although Respondent's relationship with Mr. Siracusa is multi-faceted, we find most disquieting the longstanding and ongoing business relationship between them. Respondent testified that from the 1970s until the present, he has and continues to purchase insurance from Mr. Siracusa's insurance agency, including his automobile and homeowner's insurance. Mr. Siracusa's insurance agency is, of course, the very one at issue in the Kaye case and the exact agency with which Mr. Rosefielde suggested Flagship terminate its business relationship. Put succinctly, Respondent had, at the time, a thirty-five year old business relationship with the very agency whose cessation of business with Flagship was salient to the Kaye litigation. Such circumstances demanded Respondent's recusal. In our view, a reasonable, outside observer might think it impossible for such a relationship to not impact Respondent's official, judicial consideration of the Siracusa business. Such doubts are unacceptable and the exact sentiment the rules on judicial disqualification are designed to prevent. Cf. In re Sciuto, 2003 N.J. Lexis 1132 (2003) (adopting ACJC's Presentment in ACJC 2000-105) (censuring retired judge for presiding over two cases in which he had a

⁵ We note the irony of attempting to apply a standard of what a "fully informed" person might believe about the precise relationship between Respondent and Mr. Siracusa when Respondent never fully disclosed those details to the Kaye parties.

conflict of interest due to his ongoing involvement in financial dealings with a party and the party's attorney).

Notwithstanding the foregoing, the details of Respondent's relationship with Mr. Siracusa do not stop there. Mr. Siracusa supported Respondent's efforts to obtain public office in the 1970s and early 1980s, including donating personally to his campaigns, fundraising for him, and acting as his Campaign Treasurer. While we recognize this association is dated, it is, nevertheless, a political association. As the Supreme Court recently took note, the world of politics and the domain of the judiciary should remain fixedly separate. In re Boggia, 203 N.J. 1, 8 (2010) (recognizing the need for an absolute and complete separation of the judiciary from politics "to ensure that the judicial branch operates independently of political influence and, consequently, to maintain public confidence in the integrity and impartiality of our system of justice.") While there certainly has been no suggestion, nor do we suggest, that Respondent engaged in any inappropriate political activity during his tenure as a Superior Court judge, we believe that the fact that Respondent's historical interaction with Mr. Siracusa was political in nature cannot be overlooked or underplayed in a judicial disqualification analysis.

Respondent and Mr. Siracusa were associated in other noteworthy ways as well. Both individuals testified they worked

extensively with one another in connection with the effort to bring legalized gambling to Atlantic City. They were partners in a failed business venture in Atlantic City. More recently, they played bridge with one another on an often monthly, if not weekly, basis over a span of, at a minimum, three to five years.⁶ Respondent testified that the games ended in the late 1990s; Mr. Siracusa testified they continued until 2000. Both Respondent and Mr. Siracusa agree that the games occasionally took place at Mr. Siracusa's personal residence, and Mr. Siracusa claims that they also took place at Respondent's house. They would also regularly see one another at lunch, although not dine with one another. Accordingly, in addition to the continuing business connection between Respondent and Mr. Siracusa, their relationship had meaningful political and social aspects to it as well.

Finally, we cannot ignore the fact that Respondent himself now appears to concede a conflict with Mr. Siracusa. Respondent testified during the ACJC hearing that, despite what he indicated to the Kaye parties, not only was he "never" going to be in the "position of evaluating [Mr. Siracusa's] credibility," he further would not have felt "comfortable" evaluating Mr.

⁶ Respondent's and Mr. Siracusa's respective testimony about the length of time they played bridge together is inconsistent. While Respondent testified they played together for a three to five year period, Mr. Siracusa's testimony indicated the period of time was far greater.

Siracusa's credibility. He maintained that he remained in the case based on his internal decision to grant a jury trial. We neither delve into nor accept Respondent's professed theory that a jury might somehow absolve or protect him from his now admitted conflict of interest with Mr. Siracusa. Indeed, the fact that Respondent acknowledges any issue with judging Mr. Siracusa's credibility is, in our view, dispositive of the question of whether Respondent should have recused himself from Kaye earlier than he did. He should have.

When all of the foregoing is considered cumulatively and in the context of the DeNike test, as well as the standards enunciated in Canon 3C(1) and Rule 1:12-1(f), we find that Count I of the Formal Complaint against Respondent has been proven by clear and convincing evidence. We believe a reasonable, objective person, fully informed about the longstanding and continuing business relationship between Respondent and Mr. Siracusa's insurance agency, as well as the political, social and personal connections between the two individuals, would have significant doubts as to Respondent's ability to be impartial, minimally, with respect to Mr. Siracusa's involvement in the case.⁷

⁷ We note that Defendants did, in fact, repeatedly question Respondent's impartiality, and that was based on a fraction of what we now know to be true of Respondent's relationship with Mr. Siracusa.

We would be remiss if we failed to note that additional, legitimate questions about Respondent's ability to be impartial in Kaye are raised by what we now know about Respondent's handling of the Siracusa issue, i.e. that Respondent never revealed the details of that relationship in full and, what he did reveal, was done in snippets. This failure adds to the appearance of his partiality in Kaye. Though Respondent suggests he deliberately avoided advising the Kaye parties as to his complete connections with Mr. Siracusa in accordance with his philosophy to "stay out of the way" of substantive issues, we cannot accept that judges can avoid potential motions for recusal by deliberately failing to be fully forthcoming and candid.

For all of these reasons, coupled with Respondent's own belated concession of a conflict, we conclude that Respondent violated Canons 1, 2A, and 3C(1) of the Code of Judicial Conduct and Rule 1:12-1(f) of the New Jersey Court Rules. Respondent failed to disqualify himself from Kaye in accordance with pertinent strictures, and by this conduct, failed to uphold the integrity and independence of the Judiciary and failed to promote public confidence therein.

2. Count II

Count II of the Formal Complaint charges that Respondent demonstrated a lack of candor when he testified before the New Jersey Senate Judiciary Committee about his conduct in Kaye.

At the outset, we note that Respondent's testimony before the Senate Judiciary Committee, the basis of the lack of candor charge, was under oath and is contained in a transcript prepared by the New Jersey Office of Legislative Services. See J-1. Similarly, Respondent's dialogues with the parties in Kaye about Mr. Siracusa are also contained in certified judicial transcripts prepared by official transcribers. See J-4, J-5, J-6 and J-7.

A comparison of such representations is instructive. The transcripts from the Kaye v. Rosefelde proceedings reveal the following statements made by Respondent about Mr. Siracusa and his "comfort" with the potential for Mr. Siracusa to testify before him:

- (1) In October 2005, Respondent stated that he did "not perceive that my historic relationships with [Mr. Siracusa and another individual] poses [sic] any problem for me in terms of my role in this case.";
- (2) In May 2006, Respondent stated that he did not "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.";

- (3) In May 2006, Respondent also stated that, "All I'm saying is that my relationship with [Mr. Siracusa] is not such, as it would be, for example, with some other people that I can mention, that I simply would not feel comfortable evaluating their credibility.";
- (4) In September 2006, Respondent stated, "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. . . .; and
- (5) In October 2006 on the return date of the motion to recuse, Respondent stated, "Even if [Mr. Siracusa] were to be called as a witness my relationship with him in the past would not, in my view, preclude my making any necessary determinations with regard to his credibility. . . . So I do not believe that there is any subjective reason on my part to recuse. I feel perfectly comfortable retaining responsibility for the matter even if Mr. Siracusa were to testify."

In contrast, Respondent told the Senate Judiciary Committee, in response to direct questions about his failure to recuse himself from Kaye despite his association with Mr. Siracusa, that he was informed by the parties that Mr. Siracusa was neither going to be a party nor a witness and, on that basis, declined to recuse himself from the matter. Respondent further testified: "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." Respondent similarly testified later on in the

proceedings that he did not believe he had a conflict of interest with Mr. Siracusa because "the individual in question was never going to be a witness 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."

Respondent's statements on the record to the parties in Kaye and his testimony before the Senate Judiciary Committee stand in sharp and precise contrast to one another. On the one hand, Respondent informed the parties in Kaye, on at least four separate occasions, that he failed to perceive anything in his relationship with Mr. Siracusa that would make him uncomfortable in continuing with the case and judging Mr. Siracusa's credibility. On the other hand, Respondent advised the Senate Judiciary Committee that he only remained in the case because Mr. Siracusa was neither going to be a party nor a witness, and admitted that had Mr. Siracusa been a party or a witness, Respondent "should not be in the case." Stated differently, while Respondent repeatedly denied the need to disqualify himself based on his relationship with Mr. Siracusa to the Kaye parties, he told the Senate Judiciary Committee that there was, in fact, a need for his recusal due to Mr. Siracusa, but that he had not reacted to that need because Mr. Siracusa was "never going to be a witness."

Respondent acknowledged the inconsistency of his remarks at the ACJC hearing but insisted that he simply "got it wrong" and suffered from a poor memory when he testified before the Judiciary Committee. Respondent's claim strains credulity. We frankly do not understand how Respondent could have gotten it as wrong as he did. It would be one thing if Respondent's stories deviated slightly, or even moderately so, but it is quite another to state to the Senate Judiciary Committee, under oath, the exact opposite of what he told the parties in Kaye on repeated occasions.

Our incredulity is augmented by the fact that the transcript of Respondent's appearance before the Senate Judiciary Committee reveals that he had a copy of Mr. Rosefielde's letter of complaint to that Committee prior to his appearance and was mindful of its contents. Respondent commented to that Committee that it would not "be appropriate for me to go line by line through that eight- or 10-page letter," bespeaking his familiarity with it. J-1 at ACJC 1961. At the ACJC hearing, he admitted that he had received Mr. Rosefielde's letter prior to his appearance and knew he was going to be questioned about its allegations.⁸ Under such circumstances, we simply cannot accept

⁸ We note that, in his October 22, 2008 letter to the ACJC written in response to the ACJC's October 17, 2008 letter to him, Respondent claimed that "he had not previously seen" Mr. Rosefielde's grievance to the ACJC and was not aware of it. P-

that Respondent would have prepared himself for testimony under oath before the Senate Judiciary Committee so inadequately, especially when one considers, as Respondent reminded us, that he once served as that Committee's Chair.

We are further aware of the tenuous and sensitive situation Respondent was in at the time of his testimony before the Senate Judiciary Committee. His appearance was tied to his attempt to gain tenure as a Superior Court judge. He answered the Senators' questions about his conduct in Kaye in a manner that was wholly inaccurate but which had the effect of defusing further questions on the subject. His answers, in fact, helped him secure a unanimous vote from the Senate Judiciary Committee in favor of his renomination.

We also find relevant the other numerous, inconsistent representations that Respondent made both during the Kaye case and afterwards. We struggle to comprehend Respondent's testimony that it was always his intention to grant a jury trial in Kaye when he admittedly never advised the parties of this fact and went on to deny the motion made for that exact relief. We similarly cannot credit Respondent's testimony during the ACJC hearing that he was going to wait until October 2006 to

8. This claim is contradicted by Respondent's October 16, 2008 sworn testimony to the Senate Judiciary Committee that he had seen Mr. Rosefielde's grievance filed with that Committee. Mr. Rosefielde's letter to the Senate Judiciary Committee both referenced and attached a copy of his ACJC grievance. P-2.

elucidate his connections with Mr. Siracusa when he was advised in September 2006 by Mr. Fram that a motion for his recusal would be filed. It defies logic for an officer of the court to wait until the return date of a motion for his disqualification to explain the full connections that should form the basis of that motion. Furthermore, whereas Respondent informed both the Senate Judiciary Committee and the ACJC that he would not have felt comfortable judging Mr. Siracusa's credibility, minimally in a non-jury setting, he not only told the parties the exact converse, but he denied the motions to transfer the case and for his recusal, both of which would have provided him with the ethical safeguards he now admits he needed.

Considering all of the above cumulatively, we conclude that Respondent was not forthcoming with the members of the Senate Judiciary Committee about his conduct in the Kaye case. The starkly divergent stories told by Respondent regarding his failure to recuse are impossible to understand or reconcile. We cannot accept that a "bad memory" caused such contradictions and find Respondent incredible in this regard. The record is, in fact, replete with numerous other contradictory statements made by Respondent, a factor that bears on our finding.

Respondent's conduct in failing to be forthcoming to the members of the Senate Judiciary Committee is offensive and antithetical to the longstanding principles of integrity and

independence on which the Judiciary was founded. Our offense is heightened by the fact that Respondent took an oath to be truthful before his testimony. We determine that his conduct undermined the integrity and impartiality of the Judiciary as well as the public's confidence in it in violation of Canons 1 and 2A of the Code of Judicial Conduct.

3. Count III

Count III of the Formal Complaint charges that Respondent made two appearances in the back of Judge Nugent's courtroom during the Kaye trial after Respondent had recused himself on his own motion from the case, and that those appearances were "inappropriate and demonstrated or created the appearance that Respondent had an interest in or supported the plaintiffs" case. Respondent admits making the appearances, remaining in Judge Nugent's courtroom for approximately one hour on each occasion, and speaking with one of Mr. Kaye's attorneys during his second appearance.

While there are factual disputes concerning the exact day of Respondent's second appearance, who he spoke with on that occasion, and what exactly was discussed, those disputes do not need to be resolved for the purposes of our disposition of Count III. For our purposes, it is sufficient that Respondent not only admits the two uninvited appearances, he also concedes, as pointed out by his attorney in his Post-Hearing Brief, that "he

should not have gone into Judge Nugent's courtroom, or spoken to plaintiff's counsel, after having recused himself from the [Kaye] case. In these circumstances, that conduct was ill-considered. . . ." Respondent's Post-Hearing Brief at p. 36.

We could not agree with Respondent more. As we indicated previously, recusal connotes and demands complete separation. By appearing and staying in the back of Judge Nugent's courtroom to watch the Kaye trial after he had recused himself from the case, Respondent deviated from that demand not once, but twice. In so doing, he created, at a minimum, the unacceptable appearance that he still had an interest in the case. In fact, both Mr. Rosefielde and Mr. Fram were impacted by Respondent's appearances and interpreted those appearances as a show of support for the plaintiffs. Given the history of Respondent's interface with Kaye, we find their interpretation reasonable and further believe that a reasonable, objective observer might have the same reaction or, at a minimum, question the motivation behind Respondent's visits. Either way, such questions demonstrate the impropriety of Respondent's conduct under the Code of Judicial Conduct. The mandate, expected of all judicial officers, to maintain and uphold the integrity and independence of the Judiciary is sacrosanct and without limit. See Canons 1 and 2 of the Code of Judicial Conduct. By personally appearing and observing the trial of a case from which he was recused on

two separate occasions, Respondent allowed that integrity and independence to be called into question and, consequently, flouted his judicial obligations and responsibilities. As a result of this finding, we further conclude that Respondent's conduct violated Canons 1, 2A and 2B of the Code of Judicial Conduct.

One final note: Respondent's purported "intellectual" interest in the testimony he observed and whether he intended his appearance to have the effect it did are of no moment and, quite frankly, irrelevant to our analysis. Due to his recusal, Respondent was obligated to remain completely disassociated from the case. We remind Respondent that the Commentary to Canon 2 warns that judges "must expect to be the subject of constant public scrutiny." Respondent's conduct invited that scrutiny and, accordingly, he cannot avoid its repercussions now.

II. RECOMMENDATION

The ACJC recommends that Respondent be censured for his conduct in this matter. This recommendation, and its accompanying findings, were not reached lightly or cavalierly. We recognize and commend Respondent for his lengthy and distinguished service to the State of New Jersey both as a judicial officer and a legislator.

Despite our admiration of Respondent's service to the State, we simply cannot ignore our unanimous conclusion that Respondent

has committed three separate and serious ethical infractions. Such infractions tarnish this Judiciary's fine reputation and constant endeavor to both achieve and display judicial integrity and independence.

We are disturbed by Respondent's failure to recuse himself from the Kaye case in the face of what we perceive to be a clear conflict of interest and are baffled by his accompanying failure to inform the Kaye parties of the full extent of his connections with Mr. Siracusa. We are even more disturbed at our unavoidable conclusion that Respondent failed to be forthcoming with the Senate Judiciary Committee, a grim infraction worsened by the fact that Respondent was under oath at the time. Respondent's failure to be candid, in light of the oath he took and his representation of the entire Judiciary at the time of his testimony, is inexcusable. Finally, Respondent's appearances in the back of Judge Nugent's courtroom, while Kaye was being tried and after Respondent was recused from the case, were highly inappropriate and had the undesirable but proven effect of creating the appearance that he was not impartial.

For all of these reasons, the Committee respectfully recommends that Respondent be censured for the conduct at issue in this matter.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

February 22, 2011

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