

FILED

NOV - 6 2013

A. C. J. C.

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO. ACJC 2009-301

STIPULATIONS

IN THE MATTER OF

HAROLD P. COOK, III,
JUDGE OF THE MUNICIPAL COURT

Tracie H. Gelbstein, Disciplinary Counsel, Advisory Committee on Judicial Conduct ("Presenter"), and former Municipal Court Judge Harold P. Cook, III ("Respondent"), through counsel, Salvatore T. Alfano, Esq., hereby enter into the following stipulations:

BACKGROUND

1. Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1980.
2. At all times relevant to this matter, Respondent served as a part-time Municipal Court Judge in the following four municipalities:
 - North Haledon since 1988
 - Wanaque since 1991
 - Ringwood since 1993
 - Haledon since 2000

3. To date, Respondent has not been subject to judicial discipline.
4. Effective June 10, 2011, Respondent took a voluntary leave of absence without pay from each of his four judicial positions pending resolution of the subject judicial ethics matter.
5. Respondent was not reappointed as municipal court judge for Haledon or Ringwood.
6. Respondent resigned from his positions as municipal court judge for North Haledon and Wanaque effective October 22, 2013.
7. Until October 15, 2010, Respondent was also a named partner of the law firm "Perconti & Cook LLC" ("the Firm"), with offices located in two condo units at 886 Belmont Avenue, North Haledon, New Jersey ("886 Belmont Avenue property").
8. Joseph Perconti ("Perconti") was Respondent's sole partner in the Firm.
9. On October 15, 2010, Respondent and Perconti disbanded the partnership, at which time, Respondent began his own practice, Harold P. Cook, III, Esq. & Associates.
10. Respondent continued to operate his practice out of the same two office condo units at the 886 Belmont Avenue property.

11. At all times relevant to this matter, Respondent also owned with his wife a single family home at 210 Oakwood Avenue, North Haledon ("210 Oakwood Avenue property") and a beach house located at 323 Iroquois Avenue, Beach Haven, New Jersey ("Beach Haven property").

COUNT I
PERSONAL LITIGATION

12. Respondent has an interest in more than 50 limited liability companies (the "LLCs").

13. Most of the LLCs were in the business of purchasing, developing and/or selling real estate located in New Jersey and New York.

14. The LLCs financed their operations primarily through acquisition of loans from various banks and private investors.

15. Respondent personally guaranteed several of the loans provided to the LLCs.

16. Beginning in 2008, the LLCs defaulted on a number of the outstanding loans.

17. As a result, 43 lawsuits were filed in the Superior Court of New Jersey against the LLCs, Respondent in his capacity as personal guarantor of some of the loans, and others.

18. John Kleinert ("Kleinert") had a monetary claim against Respondent as guarantor of a certain note between Morris

Avenue Commons LLC and Kleinert in the amount of \$355,000.00 that would become due on March 31, 2010.

19. On November 18, 2009, Kleinert filed a Complaint for Fraudulent Transfer of Property in Passaic County (which was later transferred to Bergen County) alleging that Respondent transferred his interest in the 210 Oakwood Avenue property to his wife by deed dated August 16, 2008 for \$1.00 at the time Respondent was indebted to Kleinert in the amount of \$355,000.00 (the "Bergen County matter").
20. Kleinert later amended the Bergen County matter to add an allegation that Respondent also transferred his interest in the Beach Haven property to his wife by deed dated August 16, 2008 for \$1.00 and in the two office condos at the 886 Belmont Avenue property to two limited liability companies by deeds dated April 30, 2009 for \$1.00 at the time Respondent was indebted to Kleinert.
21. On April 30, 2010, Kleinert filed a lawsuit in Monmouth County against Respondent, as personal guarantor, after Morris Commons LLC defaulted under the terms of the \$355,000.00 note between Morris Commons LLC and Kleinert ("Monmouth County matter").

22. On October 1, 2010, Kleinert was granted summary judgment against Respondent in the Monmouth County matter, and awarded \$355,000.00 plus interest, fees and costs.
23. On October 4, 2010, upon the parties' amicable resolution of the matter, the Bergen County Court entered an order that the Respondent's interest in the two condo units at the 886 Belmont Avenue property, the 210 Oakwood Avenue property, and the Beach Haven property were all attachable by Kleinert, subject to judgment levy and execution, to the extent Kleinert obtained a judgment against Respondent in the Monmouth County matter. The Court made no findings of fact.
24. On January 7, 2011, Kleinert filed a second Complaint for Fraudulent Transfer of Property in Ocean County ("Ocean County matter"), alleging that Respondent and his wife transferred the Beach Haven property for a second time from his wife to his wife and daughter by deed dated April 8, 2010 for \$1.00 with the intent to hinder, delay or defraud Kleinert as a creditor of Respondent, and prevent Kleinert from collection of monies due him from Respondent.
25. On April 15, 2011, the Ocean County Court found that Respondent, his wife and his daughter fraudulently transferred the Beach Haven property in violation of New Jersey's Fraudulent Transfer Act, and voided the April 8,

2010 deed of transfer for the Beach Haven property as to Kleinert.

26. Respondent filed an appeal of the Monmouth and Ocean County judgments which he later withdrew after reaching a monetary settlement with Kleinert.
27. After obtaining a judgment in the Monmouth County matter, Kleinert served Respondent with an information subpoena to collect on his monetary judgment, but Respondent never responded.
28. On November 12, 2010, the Monmouth County Court held that Respondent violated Kleinert's rights as a litigant in failing to respond to the information subpoena, and ordered Respondent to supply the information within a certain time period.
29. Respondent did not provide the information within the time period specified in the November 12, 2010 order.
30. On January 7, 2011, the Monmouth County Court found that Respondent violated plaintiff's rights for a second time and permitted Kleinert to levy upon Respondent's real property interests in the two office condos at the 886 Belmont Avenue property, the 210 Oakwood Avenue property and the Beach Haven property.

31. The Monmouth County Court also ordered a garnishment on judicial wages Respondent received from each of the four municipalities in which he served as municipal court judge to satisfy Kleinert's judgment.
32. Perconti & Cook, LLC and later Harold P. Cook, III, Esq. & Associates represented Respondent in each of the lawsuits filed by Kleinert.
33. In addition to the various LLCs, Respondent was also part owner of Jefferson Loan Company ("Jefferson Loan") having a 60% ownership interest in the company and serving as corporate officer and director.
34. Sean Caposella ("Caposella"), owned the remaining 40% interest in Jefferson Loan and was also a corporate officer and director.
35. Jefferson Loan financed its operations through a line of credit with Valley National Bank and debentures issued to private investors.
36. In 2006, Jefferson Loan decided to cease operations and voluntarily liquidate its assets to pay down its debt owed to Valley National Bank and its debenture holders.
37. Charles and Carol Sachs ("Sachs") were holders of debentures issued by Jefferson Loan that totaled in the principal amount of \$71,000.00.

38. Between July 1, 2002 and September 26, 2006, the Sachs renewed their debentures on five separate occasions.
39. Upon receipt of a December 2006 letter from Jefferson Loan that it was ceasing operations, the Sachs unsuccessfully demanded payment of its Jefferson Loan debentures.
40. On April 15, 2008, the Sachs filed a complaint in Hudson County against Jefferson Loan, Respondent and Caposella for breach of contract and breach of fiduciary duty.
41. Between January 3 and 5, 2011, there was a bench trial in the Sachs matter.
42. On January 24, 2011, the Hudson County Court found that Respondent and Caposella breached the fiduciary duty they owed to the Sachs by failing to disclose the poor financial condition of Jefferson Loan to the Sachs in a timely manner.
43. On February 4, 2011, the Hudson County Court awarded the Sachs \$71,000.00 plus interest and ordered the garnishment of Respondent's wages earned as a municipal court judge in his four municipalities to satisfy the Sachs's monetary award.
44. The Sachs thereupon served Respondent with a subpoena for information in order to collect on their monetary judgment.

45. On April 29, 2011, the Hudson County court adjudicated Respondent in violation of litigant's rights by failing to respond to the Sachs's subpoena, and ordered Respondent to respond within a certain time period and pay attorney's fees.
46. Respondent did not comply with the April 29, 2011 Hudson County order.
47. On June 24, 2011, the Hudson County court entered a second order adjudicating Respondent in violation of litigants' rights; found Respondent to be in violation of the April 29, 2011 court order; and issued a warrant for Respondent's arrest.
48. Respondent obtained a stay of the arrest warrant, at which time he complied with the subpoena, and the arrest warrant was vacated by order dated September 1, 2011.
49. Respondent also appealed Sachs's judgment, which he later withdrew after reaching a monetary settlement with the Sachs.
50. The New Jersey Supreme Court's Administrative Directive #4-81, dated July 12, 1982, requires judges to report to the Administrative Director of the Court their "personal involvement . . . in any type of litigation" in which the judge is either personally named or is a party in interest.

51. Respondent did not report to the Administrative Office of the Courts his involvement in any of the 43 lawsuits filed against him personally or against any of the LLCs in which he had an interest.

COUNT II
POLITICAL ACTIVITY

52. Respondent signed checks dated October 14, 2003 and April 22, 2004 drawn from the attorney business account of the law firm "Perconti & Cook, LLC" in the amount of \$1,000.00 and \$500.00, respectively, and were made payable to the "Election Fund of Senator Hank McNamara."

53. Respondent's partner, Joseph Perconti, signed a check dated May 5, 2004 drawn from the attorney business account of the law firm "Perconti & Cook, LLC" in the amount of \$160.00, and was made payable to the "the Election Fund of Senator Hank McNamara."

54. Each of the checks that were issued from Respondent's law firm to the "Election Fund of Senator Hank McNamara" contains the Firm name "Perconti & Cook" as the payor.

55. The New Jersey Election Law Enforcement Commission ("ELEC") records attribute political contributions made on behalf of the election of "Henry McNamara" received on October 17, 2003, April 24, 2004 and May 8, 2004 to "Harold Cook" of the law firm "Perconti & Cook."

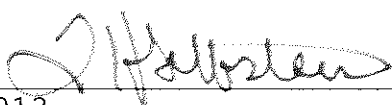
56. The "Friends of Senator Hank McNamara" filed mandatory reports of contributions with ELEC that attributes political contributions received on October 17, 2003, April 24, 2004 and May 8, 2004 in the amount of \$1000.00, \$500.00, and \$160.00, respectively, to "Harold Cook" of "Perconti & Cook."
57. Respondent's partner, Joseph Perconti, signed a check dated October 19, 2004 in the amount of \$500.00 drawn from the attorney business account of "Perconti & Cook, LLC" and was made payable to the "Passaic County Regular Republican Club."
58. The "Passaic County Regular Republican Organization, Inc." filed a mandatory receipts and expenditures quarterly report to ELEC that attributes political contributions received on October 22, 2004 in the amount of \$500.00 to "attorneys" at "Perconti & Cook, Esqs."
59. Respondent had a 1/3 membership interest in Puddingstone Funding, LLC.
60. Respondent owned a majority interest, or 60% of the shares, of Jefferson Loan Company.
61. Sometime in 2006, Puddingstone Funding, LLC made a \$1000.00 political contribution to Senator John A. Girgenti.
62. On February 1, 2006, Puddingstone Funding, LLC made a \$1000.00 donation to Senator Paul A. Sarlo.

63. On February 13, 2008, Puddingstone Funding, LLC made a \$500.00 donation to Friends of Mayor Patrick Botbyl.
64. On May 2, 2009, Puddingstone Funding, LLC made a \$500.00 political contribution to Senator John A. Girgenti.
65. On April 12, 2000, Jefferson Loan Company, Inc. made a \$500.00 political contribution to William Gervens, Passaic County Freeholder.

COUNT III
LIMITATION ON PRACTICE OF LAW


66. Perconti and Cook, LLC hired an associate, James Frega ("Frega").
67. Between 2008 and 2010, the law firm of Perconti and Cook provided legal services to the City of Paterson ("City Counsel") related to the representation of Paterson police officers in criminal and civil matters.
68. On multiple occasions between 2008 and 2010, Frega appeared in Paterson Municipal Court on behalf of Paterson police officers in probable cause hearings arising from citizen complaints of criminal assault that occurred during the performance of official duties.
69. The City of Paterson directed all authorizations for the representation and the payment for work completed by James Frega to the law firm of "Perconti & Cook."

70. The City of Paterson is located in Passaic County, which is the same county in which Respondent sat as municipal court judge until June 10, 2011 at which time he took a voluntary leave of absence.



2013
TRACIE H. GELBSTEIN, ESQ.
Presenter

DATED: November 6,



SALVATORE T. ALFANO, ESQ.
Counsel for Respondent

DATED: November 4, 2013