

D-37-12
(071827)

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO.: ACJC 2010-200

IN THE MATTER OF

RICHARD OBUCH,
JUDGE OF THE MUNICIPAL COURT

PRESENTMENT

The Advisory Committee on Judicial Conduct (the "Committee") 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 Richard Obuch, part-time Judge of the Municipal Court of the City of Elizabeth ("Respondent"), have been proven by clear and convincing evidence. The Committee recommends that Respondent be publicly reprimanded.

On May 20, 2011, the Committee issued a Formal Complaint in this matter, which accused Respondent of acting as counsel for Oscar Ocasio in several personal legal matters while Mr. Ocasio served as the Director of Planning and Community Development (a.k.a. Department of Policy and Planning) for the City of Elizabeth, in violation of Rule 1:15-1(b) of the New Jersey

Rules of Court and Canons 1 and 2A of the Code of Judicial Conduct. Respondent filed an Answer to the Complaint on July 13, 2011 in which he admitted all of the factual allegations of the Formal Complaint, but denied that his conduct was "intentionally violative" of the Code of Judicial Conduct and asserted that the language of the Rule is vague.

Respondent waived his right to a formal hearing. Exhibits were offered by both parties and accepted into evidence, as was a set of Stipulations. See Stipulations, filed on October 1, 2012; see also P-1 through P-8; R-1 through R-3. In addition, both the Presenter and Respondent offered legal memoranda in support of their respective positions, 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 1992. Stipulations at ¶1. At all times relevant to this matter, Respondent served as a part-time judge in the City of Elizabeth Municipal Court, a position he continues to hold. Id. at ¶2.

Oscar Ocasio was appointed as Elizabeth's Director of Planning and Community Development (the "Department") by Elizabeth's City Council on September 23, 1997, pursuant to Chapter 2.48 of the Elizabeth City Code. Stipulations at ¶6. He resigned from that position on March 3, 2010. Id. at ¶5; see also P-3 at ACJC 002. As Director, Mr. Ocasio was responsible for supervising six bureaus within the Department all of which were involved, to varying degrees, with matters pertinent to the development of the City of Elizabeth. R-1. Mr. Ocasio's compensation as Director was determined by Elizabeth's City Counsel. Id.

Between February 2008 and March 2010, Respondent represented Mr. Ocasio in three personal legal matters: (1) Homebuilders Group, LLC v. Ocasio, American Arbitration Association Case No. 18-473-00-26708; (2) Oscar Ocasio Valle, et al. v. Antonio Rivera Colon, et al., United States District Court, District of New Jersey, Civil Action No. 08-4697; and (3) Oscar Ocasio v. Antonio Rivera, et al., Docket No. PAS-L-3361-08 (the "Ocasio matters"). Id. at ¶¶7 through 9.

On February 22, 2010, Antonio Rivera, the defendant in two of the three Ocasio matters, filed a grievance with the Committee against Respondent in which he complained about Respondent's representation of Mr. Ocasio whom he described as Respondent's "municipal colleague." P-1 at ACJC 047.

On March 23, 2010, Respondent learned of an ongoing criminal investigation involving Mr. Ocasio and the subject matter of the Ocasio matters. Stipulations at ¶10. Respondent consulted with Chief Municipal Court Judge Roman Montes and the Vicinage Presiding Municipal Court Judge Joan Robinson Gross concerning the potential ethical implications to his judicial office of his continued representation of Mr. Ocasio in matters involving possible criminal conduct. Id. at ¶11; see also P-3 at ACJC031, "Certification of Richard Obuch." Shortly thereafter, on March 25, 2010, Respondent informed Mr. Ocasio of his need to withdraw as Mr. Ocasio's attorney due to the pending criminal investigation involving Mr. Ocasio. Stipulations at ¶12.

On March 29, 2010, Respondent filed a motion to be relieved as counsel for Mr. Ocasio in the Passaic County matter (Ocasio v. Rivera, PAS-L-3361-08), which was denied on April 16, 2010. Id. at ¶13. On April 26, 2010, Respondent filed an Order of Consent in the Passaic County matter withdrawing as Mr. Ocasio's attorney. Id. at ¶14. The other two Ocasio matters had previously been dismissed. Ibid.

Respondent was initially questioned by the Committee about the propriety of his representation of Mr. Ocasio under Rule 1:15-1(b) by letter dated April 13, 2010. In his letter of response, dated May 28, 2010, Respondent admitted to representing Mr. Ocasio in several personal legal matters while

Mr. Ocasio served as the City of Elizabeth's Director of Planning and Community Development, but denied that such conduct violated Rule 1:15-1(b). P-3. Respondent contended that the Rule prohibited municipal court judges from representing municipal officers in their official capacities only and did not preclude Respondent from representing Mr. Ocasio in private legal matters. Id.

B. Analysis

The Formal Complaint in this matter charges Respondent with violating the proscription of Rule 1:15-1(b) that forbids a part-time municipal court judge from acting as counsel for any officer of the same municipality, i.e. Mr. Ocasio. The Complaint further alleges that by violating Rule 1:15-1(b), Respondent failed to observe the high standards of conduct expected of judges in violation of Canons 1 and 2A of the Code of Judicial Conduct. We find that the charges set forth in the Formal Complaint have been proven by clear and convincing evidence, and, consequently, that Respondent's conduct violated Rule 1:15-1(b) and Canons 1 and 2A of the Code of Judicial Conduct.

Rule 1:15-1(b) places limitations on the practice of law by attorneys serving as surrogates and part-time judges. The Rule provides, in part, that a judge of a municipal court shall not "act as attorney for the municipality or any of the

municipalities wherein he is serving or as attorney for any agency or officer thereof." This prohibition is absolute and prohibits all representation by municipal court judges of municipal officials in *both* their public and private capacities. In re Blackman, 124 N.J. 547, 554 (1991) (finding that Rule 1:15-1(b) "does not qualify or limit the terms of the prohibition", but rather prohibits *all* representation of a municipal officer by a judge, even representation involving private matters unrelated to an official's public duties). Indeed, rules governing judicial conduct are construed broadly to effectuate their purpose of maintaining the public's confidence in the judicial system. Ibid. (internal citation omitted).

Respondent admits to representing Mr. Ocasio in three private legal matters while Mr. Ocasio served as the Director of Planning and Community Development for the City of Elizabeth. Similarly, Respondent does not contest and the Committee finds that in his position as the Director of Planning and Community Development for the City of Elizabeth Mr. Ocasio was an "officer" of the municipality for purposes of Rule 1:15-1(b). Given Mr. Ocasio's position as a municipal officer, Respondent's legal representation of him, even in matters wholly unrelated to Mr. Ocasio's official position, constituted a clear violation of Rule 1:15-1(b).

In his defense, Respondent contends that the Rule's prohibition on the representation by municipal court judges of municipal officers in private matters is ambiguous. See Respondent's Letter Brief to the Committee dated October 1, 2012 at pp. 2-4. No such ambiguity, however, exists. The Court in Blackman stated, unequivocally, that the Rule's prohibition includes, without limitation, any representation of a municipal officer by a judge including "representation involving private transactions unrelated to [the officer's] official duties." In re Blackman, supra, 124 N.J. at 551, 556. The scope of the Rule's prohibition is absolute and longstanding. Id. at 556 (determining that the reach of the Rule's prohibition on the representation of municipal officers should be given prospective effect).

Respondent further argues that the Blackman Court's interpretation of Rule 1:15-1(b) was limited to a "conflicts evaluation"; i.e. a judge would only violate the Rule if the duties of the municipal officer for whom representation was undertaken included interaction with the municipal court thereby creating a conflict of interest between the officer and the judge. See Respondent's Letter Brief to the Committee dated October 1, 2012 at pp. 3-4. Neither the Rule nor the Court's interpretation of the Rule in Blackman, however, speaks in terms of a conflict of interest. Though the Court in Blackman

recognized the increased risk to the public's perceptions of the integrity and impartiality of the Judiciary when a judge acts as counsel for a municipal officer whose duties routinely require interaction with the municipal court, it did not limit the Rule's reach to those situations. In re Blackman, supra, 124 N.J. at 554-555.

By engaging in conduct in violation of Rule 1:15-1(b), Respondent also failed to observe the high standards of conduct expected of judges and engaged in improper conduct in violation of Canons 1 and 2A of the Code of Judicial Conduct. Canon 1 of the Code of Judicial Conduct requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary are preserved. Canon 2A directs that judges conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. The commentary to Canon 2 of the Code of Judicial Conduct provides that judges "must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny." Canon 2 "makes clear that judges have responsibilities with regard to their personal conduct that greatly exceed those of ordinary citizens. . . . When judges engage in private conduct that is irresponsible or improper, or can be perceived as involving poor judgment . . ., 'public confidence in the judiciary is eroded.'" In re Blackman, supra,

124 N.J. at 551 (quoting Code of Judicial Conduct, Commentary to Canon 2).

Respondent, in choosing to represent a municipal officer in that officer's private legal matters despite the prohibition against doing so contained in Rule 1:15-1(b), flouted his ethical obligations under the Rule, exercised poor judgment and created the very real risk that members of the public would question his integrity as a jurist, as did Antonio Rivera. Such questions inevitably weaken the public's confidence not only in the judge, but in the Judiciary generally.

II. RECOMMENDATION

The Committee recommends that Respondent be publicly reprimanded for the conduct at issue in this matter. This recommendation takes into account Respondent's total disregard for his ethical obligations under Rule 1:15-1(b) concerning the absolute prohibition against representing municipal officers of the same municipality as that served by the judge.

Our recommendation also recognizes the directive of the Court in Blackman that its interpretation of Rule 1:15-1(b) be given prospective effect. Respondent, by his conduct, violated the plain terms of Rule 1:15-1(b) and the Court's interpretation of that Rule in Blackman. Such blatant misconduct is deserving of public discipline.

Accordingly, for these reasons, the Committee respectfully recommends that Respondent be publicly reprimanded for the conduct at issue in this matter.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

November 15, 2012

By: 
Alan B. Handler, Chair