

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2007-097

IN THE MATTER OF

ROBERTO RIVERA-SOTO
JUSTICE OF THE SUPREME COURT

PRESENTMENT

The Advisory Committee on Judicial Conduct, pursuant to Rule 2:15-15(a), presents to the Supreme Court its Findings that the charges set forth in a Formal Complaint against Roberto Rivera-Soto, Associate Justice of the New Jersey Supreme Court, have been proven by clear and convincing evidence and its Recommendation that the Respondent be censured.

On May 11, 2007, the Advisory Committee on Judicial Conduct issued a Formal Complaint against the Respondent, which alleged that the Respondent used or allowed the power and prestige of his office as an Associate Justice of the Supreme Court to influence or advance the private interests of his family and his son in violation of Canons 1, 2A and 2B of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. The Respondent filed an Answer on May 18, 2007 in which he admitted certain factual allegations of the Formal Complaint and denied others.

The Committee and the Respondent mutually agreed that the Committee would decide the matter on the record without a formal hearing. Stipulations ¶ 1. Respondent wrote a letter to the Committee dated May 31, 2007, in which he confirmed the waiver of a public hearing, apologized for his conduct, and indicated he had never intended to use his office to influence others. R-1. In deliberating on this matter, the Committee considered the exhibits, which, by

stipulation, constitute the record and include statements of witnesses, interviews, Respondent's May 31, 2007 letter, and other records and documents relating to the proceedings giving rise to the Complaint. After carefully reviewing 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. Facts

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1984. At all times relevant to these matters, Respondent served as an Associate Justice of the New Jersey Supreme Court.

Respondent's son, C.R., is a sophomore at Haddonfield Memorial High School (the "School") and a member of the varsity football team. In or around September 2006, the School investigated one or more incidents involving C.R. and another student at the School, C.L., in which C.R. alleged that C.L. harassed and/or struck him. C.L. is a senior at the School and one of the captains of the School's varsity football team. Following its investigation, the School gave C.L. a warning regarding his behavior toward C.R. but determined that further discipline was not warranted. The incidents between C.R. and C.L. prompted the Respondent to engage in telephone conversations with school officials, including the School Superintendent, the Vice Principal and the Varsity Football Coach, regarding the School's investigation and handling of the incidents.

On September 28, 2006, C.R. participated with C.L. in a weekly touch football game during football practice in which the players did not wear helmets or pads. During the practice game, C.R. and C.L.'s heads collided (the "head-butting incident"), which resulted in an injury to

C.R.'s mouth. Respondent and his son alleged that the head-butting incident was intentionally instigated by C.L. See R-1. After the incident, Respondent again engaged in several conversations with school officials. The School's Vice Principal conducted an investigation of the head-butting incident, which ultimately determined that the incident was an accident. P-34 at 10.

On the evening of September 28, 2006, Respondent called the Chief of the Haddonfield Police Department, Richard Tsonis, on the Chief's cell phone. According to Chief Tsonis, he had given the Respondent his cell phone number when he met the Respondent for coffee in Haddonfield, "a long time" prior to the head-butting incident. During that meeting, Respondent apprised the Chief of his judicial office and alerted him to his involvement with some controversial matters that raised concerns for his family's safety. P-35 at 2-3; P-39 at 7:11-16. Chief Tsonis stated that he told the Respondent that the police department would do "everything possible to protect you and your family...." P-35 at 3. He further testified that he gave the Respondent his cell phone number at that time, explaining to Respondent that "if you have any problems getting an Officer to respond or anything like that call me and I can facilitate it...." Id. Respondent indicated during his interview with the Committee that the Chief, upon giving him his cell phone number, told the Respondent that if he "ever had any concerns to please call him directly...." P-39 at 7:16-18.

Chief Tsonis stated that in their conversation on September 28, 2006, the Respondent informed him that "his son was assaulted at the High School and nobody was doing anything about it" and further expressed interest in pressing charges against C.L. P-35 at 2. Respondent testified that he called the Chief to ask "how do I handle this" in terms of proceeding forward with charges against C.L. P-39 at 8:3-4.

Later in the evening on September 28, 2006, Detective Sergeant Gary Pearce of the Haddonfield Police Department arrived at Respondent's home. Upon the Detective Sergeant's arrival, Respondent identified himself to the Detective Sergeant by name and handed the Detective Sergeant his "business card," which noted his name and judicial office. Respondent testified that he made his own business cards on his computer. Id. at 14:23 to 15-5. During his conversation with the Detective Sergeant, Respondent told him that his son had been intentionally head-butted by C.L. at football practice, and that he wanted to sign a complaint against C.L. Respondent later went to the Haddonfield Police Station and signed a juvenile delinquency complaint for assault against C.L. P-31.

On September 29, 2006, Respondent telephoned Judge Francis J. Orlando, Jr., Assignment Judge of the Superior Court in Camden County, to advise him that he had signed a juvenile delinquency complaint venued in the Camden County Superior Court. In that call, he requested that the matter be treated no differently than any other matter. P-39 at 8:22 to 9:7; P-26 at 2. On September 29, 2006, Respondent also telephoned Camden County Acting Prosecutor James P. Lynch (the "Prosecutor") to apprise him of the filing of the complaint and to request that the matter be treated no differently than any other matter in the Prosecutor's Office. P-39 at 9:8-16; P-23. Respondent further inquired into the procedures employed by the Prosecutor's Office when handling complaints against juveniles. Id. at 9:17-21. According to Prosecutor Lynch, the Respondent asked the Prosecutor to make certain that his complaint received attention. P-23.

On November 27, 2006, Respondent and C.R. appeared at the Camden County Courthouse to attend a hearing that had been scheduled regarding Respondent's complaint against C.L. Respondent had not received notice from the Court that the hearing had been

postponed on the previous Wednesday at the request of the L. Family. After waiting a period of time, Respondent spoke with Elizabeth Ruiz, a court employee, to inquire about the delay in his case being called. Ms. Ruiz informed the Respondent that the hearing had been postponed at the request of C.L.'s father and that notice of the postponement had been mailed to the parties. Respondent never received that notice prior to the return date. According to Ms. Ruiz, the Respondent asked her if she knew who he was and handed her his business card. P-25 at 13-14. Although the Respondent admits that he handed Ms. Ruiz his business card, he contends that he did as a convenient method by which he could later be reached. Answer, ¶ 16.

Subsequent to his interaction with Ms. Ruiz, Respondent called the Assignment Judge at his chambers to express his "agitation" about the lack of notice regarding the postponement of the hearing. P-26 at 3; P-39 at 11:6-8. Later that day, Respondent again called the Assignment Judge to advise him that C.L. had attended school despite the L. Family's professed unavailability to attend the hearing. P-26 at 4. The Assignment Judge told Respondent that if he still had concerns about the postponement, he should direct a letter to the Presiding Judge of the Superior Court, Family Division in Camden County. P-26 at 4.

Respondent wrote a letter to Judge Charles Rand, Presiding Family Court Judge in Camden County, to complain about the hearing's postponement and his failure to receive notice of the postponement. P-13. In Respondent's letter to Judge Rand, he accuses the L. Family of fabricating their excuse for the postponement and making a "patently false request" that intentionally misled the court. Respondent further states as follows in the letter: "I trust that, at a minimum, this matter is re-scheduled promptly and that, at the re-scheduled hearing, both C.L. and his father are called to task in respect of the bona fides of their request for a postponement. I

am certain that, in the exercise of your obligations, both of these matters will be addressed in a satisfactory manner.” Id.

Thereafter, the matter proceeded before the Superior Court of New Jersey – Family Part in Camden County. The parties were summoned to appear for “Trial/Non-Mandatory Counsel” before Hearing Officer Rick Alston on December 15, 2006. Respondent, his son, C.L. and his parents appeared. John A. Miller, Esq. was present as the attorney of record for C.L. In addition, numerous school personnel and students were in attendance in response to subpoenas that had been issued by the Court. Hearing Officer Alston initially directed the parties to engage in an extended conference without his involvement, which at times was contentious. Ultimately, the parties reached agreement on a resolution of the matter, which was placed on the record. See P-19. Specifically, the parties requested, and Hearing Officer Alston agreed, that the matter be carried as a “live item” until June 19, 2007, the date of the School’s graduation ceremony. At that time, the Court could thereafter dismiss the matter with prejudice upon the appropriate application. The resolution further specified, however, that if C.R. and C.L. had any additional conflicts between the date of the hearing and the School’s graduation ceremony, the matter would be “revived” and continue as if there was no interruption. Id.

B. Findings

Over the course of events, several incidents occurred that, in particular, raise issues that implicate inappropriate judicial conduct.

1. Call to Chief Tsonis

The Chief and the Respondent both testified that the Chief conveyed his cell phone number to Respondent during an introductory meeting in which the Respondent explained his judicial office to Chief Tsonis, as well as the potential safety risks associated with that position

for Respondent and his family. The meeting elicited the Chief's assurance that the Police Department would help protect Respondent and his family. The cell phone number was furnished for that purpose.

Respondent's first course of action in initiating a juvenile delinquency complaint against C.L. was to call the Chief of Police on his cell phone. During their resulting conversation, Respondent expressed interest in pursuing a complaint against a minor as a result of an injury received by his son at football practice. That interest was personal and familial. It was not related to Respondent's official position or any safety concern or perceived threat to Respondent and his family arising from Respondent's office or attributable to his judicial responsibilities. Rather, Respondent's need for police advice, guidance and intercession was purely private in nature.

Respondent recounts that Chief Tsonis had assured him that the Respondent could call him on his cell phone if he "ever had any concerns." That broad invitation to use the cell phone, however, did not justify Respondent's call for a purpose intended to advance only a private, familial interest, not otherwise arising from or related to Respondent's judicial office or actions. Respondent should have known that because of his official position -- the reason he had been given the cell phone number -- his call to Chief Tsonis would be interpreted as one of importance, perhaps some urgency, and deserving of special attention. As Respondent's interest in filing a complaint on behalf of his son was purely private and personal, he should have proceeded in a manner that could and would be followed by any other parent with a similar interest, i.e. by calling the general number for the police or by going to the police station. See In re Yaccarino, 101 N.J. 342, 389-90 (1985) ("respondent had no right to engage in any conduct that would be unavailable to a parent who did not hold judicial office.").

The Committee finds that the Respondent's call to Chief Tsonis on the evening of September 28, 2006 created the significant and unacceptable risk that the Respondent's judicial office could be an influential factor in the handling of a private matter relating to Respondent and his family. That conduct was a misuse of the power and prestige of his judicial office and engendered an appearance of impropriety. The Committee concludes that the Respondent violated Canons 1, 2A and 2B and engaged in conduct prejudicial to the administration of justice in violation of Rule 2:15-8(a)(6).

2. Distribution of Business Cards

Respondent's business card refers to Respondent as an "Associate Justice - Supreme Court of New Jersey," as well as Respondent's business address, office telephone number, and work e-mail address. Respondent acknowledges distributing his business card to (1) Detective Sergeant Pearce upon the Detective's arrival at the Respondent's home on the evening of September 28, 2006, subsequent to Respondent's conversation with Chief Tsonis; and (2) Elizabeth Ruiz, a court employee in Camden County, when she informed him that the hearing's initial date had been postponed. Respondent states that his motive in distributing his business card was only for convenience and not to influence anyone in the performance of their duties.

References to a judge's office in a private context, in conjunction with advancing or expediting a matter that is wholly private in nature and unrelated to the judge's official duties, are improper and violate the strictures governing judicial conduct. See In re Sonstein, 175 N.J. 498 (2003) (censuring municipal court judge for writing letter on judicial letterhead to another municipal court judge about his parking matter pending before that judge); In re Samay, 166 N.J. 25, 32-33 (2001) (ruling that municipal judge's use of the initials "J.M.C." in a private letter was an intentional misuse of his judicial office for personal gain and necessarily diminished public

confidence in the judiciary); In re Murray, 92 N.J. 567 (1983) (determining that municipal judge improperly used the power and prestige of his office by sending letter, which identified his office, on behalf of a client to another municipal judge); In re Anastasi, 76 N.J. 510 (1978) (finding that municipal judge inappropriately sent letter on behalf of former client to the New Jersey Racing Commission on official letterhead in an attempt to use the power and prestige of his office for private purposes).

The Committee finds that the Respondent's distribution of his business card on two separate occasions in the context of pursuing his parental and familial interest in pressing charges against C.L. was inappropriate and improper. The use of his business card, which identified his judicial office, raised the possibility and created the unacceptable risk that his judicial office would be a factor that could influence Detective Sergeant Pearce and Ms. Ruiz as they performed their normal job responsibilities. The Committee finds that the Respondent's conduct in distributing his business cards was a misuse of his judicial office and engendered an appearance of impropriety. The Committee concludes that the Respondent violated Canons 1, 2A and 2B and engaged in conduct prejudicial to the administration of justice in violation of Rule 2:15-8(a)(6).

3. Call to Prosecutor Lynch

Respondent called the Camden County Acting Prosecutor in this matter to inform him that he had filed a juvenile delinquency complaint and to inquire as to typical "procedures" the Prosecutor's Office might follow regarding the processing of such complaints. Prosecutor Lynch related that the Respondent expressed his wish to make certain that the "complaint received attention."

The Committee finds that the Respondent's discussions with the Prosecutor, at Respondent's initiation, were improper. It cannot be disputed that Respondent's identity and his judicial position were known to the Prosecutor. The Respondent should have realized that his call was highly unusual as most parents would not have access to the County Prosecutor, even to ask an informational or procedural question. His communication with the Prosecutor had the potential for influencing how his complaint would be considered. While the Committee does not find that any influence was actually exerted, it does find that Respondent's conduct created the significant and unacceptable risk that the power and prestige of Respondent's office would come to bear on decisions relating to the complaint he filed.

The Committee consequently finds that Respondent's telephone conversations with the Prosecutor were a misuse of his judicial office and engendered an appearance of impropriety. The Committee concludes that the Respondent violated Canons 1, 2A and 2B and engaged in conduct prejudicial to the administration of justice in violation of Rule 2:15-8(a)(6).

4. Communications with Judge Orlando and Judge Rand

Respondent called Judge Orlando, first to apprise him that he had signed a juvenile delinquency complaint in the Superior Court, Camden County and later to complain about the postponement of the original hearing date.

Judge Orlando, as the Camden County Assignment Judge, most assuredly knew the Respondent. As Assignment Judge, it was appropriate that he be informed of the filing of the complaint. Indeed, the Assignment Judge would have the authority to transfer the complaint to a different vicinage or to provide for its assignment to another judge. Nevertheless, the Respondent should have arranged for such a disposition through the Administrative Office of the Courts and should not have called the Assignment Judge either for advice or to intercede in the

proceeding. In expressing his “agitation” over the hearing’s postponement to Judge Orlando, instead of the judge responsible for or presiding over the case, Respondent escalated the risk that his judicial position could become a factor in the handling of his private juvenile delinquency complaint.

Respondent’s letter dated November 27, 2006 to Judge Rand expresses in strong terms his anger at the failure to receive timely notice of the hearing’s postponement. Respondent further expresses “skepticism” concerning the validity of the L. Family’s professed reason for the postponement request. The Respondent labels the reason as “patently false” and indicates that he “trusts” not only that the matter would be re-scheduled promptly, but that C.L. “and his father are called to task in respect of the bona fides of their request for a postponement.” He concludes by advising Judge Rand of his certainty that “in the exercise of your obligations, both of these matters will be addressed in a satisfactory manner.” See P-13.

The Committee finds the letter to be inappropriate. First, the tenor of the letter to Judge Rand is authoritarian; it reflects not only indignation but, by implication, Respondent’s superior judicial office. Respondent may not have intended that his communication to Judge Rand be construed in that manner. Nevertheless, it generated the distinct possibility that his accusations would affect the handling of the complaint against C.L. Even if not intended, the chosen language in Respondent’s letter, including “I trust” and “I am certain that,” could be misconstrued as attempting to exert authority or influence.

Further, Respondent’s accusations against the L. Family were improper. In making such comments, and by characterizing the reason for the postponement request as “patently false,” the Respondent not only questioned the veracity of the L. Family in the context of a pending court matter but impugned the L. Family’s credibility. These remarks made by Respondent, whose

judicial position and stature were known, had the potential to influence improperly the underlying case as it proceeded in the Family Division.

The Committee finds that the Respondent's communications with both Judge Orlando and Judge Rand were highly improper, were a misuse of his judicial office and engendered an appearance of impropriety. The Committee concludes that the Respondent violated Canons 1, 2A and 2B and engaged in conduct prejudicial to the administration of justice in violation of Rule 2:15-8(a)(6).

5. Respondent's Explanation

Respondent appeared before the Committee for an interview and submitted a letter of explanation. He acknowledges that, in the course of these events, his actions could be construed as creating the risk that his judicial office might be a factor in the proceedings. He strongly denies that such was his intent or purpose and maintains that he was sincerely and conscientiously fulfilling his duties as a parent in pursuing the interest of protecting his son from harm.

We acknowledge Respondent's sincerity in exercising his parental rights and responsibilities and acting in the welfare of his son and family. He believed that he had sufficiently and effectively neutralized or removed his office as a circumstance that could have an impact on the proceedings. He now appreciates, however, the untoward risk that his actions could have been misconstrued and seen as advancing his personal interests. We fully credit Respondent's recognition and regret that his conduct, though not done consciously, has created the appearance of impropriety.

C. Conclusions

The Committee finds by clear and convincing evidence that the Respondent engaged in acts constituting judicial misconduct in violation of Canon 1, Canons 2A and 2B of the Code of Judicial Conduct and New Jersey Court Rule 2:15-8(a)(6).

Canon 1 requires judges to maintain high standards of conduct. Canon 2A generally maintains that judges must avoid all impropriety and the appearance of impropriety and specifically requires judges to conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. Canon 2B prohibits judges from lending “the prestige of office to advance the private interests of others.” Rule 2:15-8(a)(6) prohibits conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

II. RECOMMENDATION

The Committee recommends that the Respondent be censured. The Committee determines that the number of separate incidents at issue in this matter demonstrates that Respondent engaged in a course of conduct that created the risk that the prestige and power of his judicial office might influence and advance a private matter. Such conduct further engendered an appearance of impropriety.

The Committee acknowledges that Respondent’s actions in this case were prompted by his sincere and understandable concern for the safety and well-being of his son. The Committee is equally mindful, however, of the Supreme Court’s decision in In re Yaccarino, 101 N.J. at 362, where the Court observed that although judges “are subject to the same human emotions as other parents and are entitled, as parents, to respond to a felt unjust abuse of their children....judges must always be conscious that they not blur the line between parent and judge.” See also In re Di Sabato, 76 N.J. 46 (1978).

Respondent's actions in this matter blurred the line between his role as a Justice and his role as a parent. The Committee recommends that Respondent be censured.

Respectfully submitted,

Advisory Committee on Judicial Conduct

Date: July 11, 2007

By: /s/ Alan B. Handler, Chair