

FILED

DEC 23 2019

A.C.J.C.

**SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT**

DOCKET NO: ACJC 2019-189

IN THE MATTER OF

SURROGATE BERNICE TOLEDO

FORMAL COMPLAINT

Maureen G. Bauman, Disciplinary Counsel, Advisory Committee on Judicial Conduct (“Complainant”), complaining of Surrogate Bernice Toledo (“Respondent”), says:

Facts

1. Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 2004.
2. At all times relevant to this matter, Respondent served as the Surrogate of Passaic County, a position to which she was first elected in 2011, re-elected in 2016, and continues to hold.
3. The decedent in the matter of the Estate of Mark Halchak (“the Estate”) died intestate on January 28, 2017.
4. On March 23, 2017, an application for the rights of administration for the Estate was filed by Keith Stewart (“Mr. Stewart”), an individual unrelated to but who was familiar with the decedent by virtue of their prior employment working in different capacities for the Township of Wayne.
5. The decedent’s cousin, Estelle Halchak (“Ms. Halchak”), a New Hampshire resident, first learned of her cousin’s passing on March 24, 2017, when she and other relatives were notified by

a genealogy company offering to perform administration of the Estate in exchange for a percentage of its value.

6. Upon learning of her cousin's passing, Ms. Halchak traveled to New Jersey, secured the decedent's home, his remains, contacted the Surrogate Court and advised of her desire to administer the Estate, and retained counsel, Robert Altshuler, Esq. ("Mr. Altshuler").

7. On March 27, 2017, an employee of the Surrogate Court informed Ms. Halchak that Mr. Stewart, a non-relative, applied for administration rights to her cousin's Estate.

8. The Surrogate Court scheduled a hearing for Respondent to take testimony from Mr. Stewart and Ms. Halchak, since both applied to be named the administrator for the Estate.

9. Ms. Halchak contacted the decedent's other relatives who were also beneficiaries of the Estate and obtained signed renunciation letters from them, which reflected their desire for Ms. Halchak to serve as administrator. Ms. Halchak attained unanimous consent amongst these heirs for her to serve as administrator of the Estate.

10. On June 6, 2017, after multiple adjournments, a hearing was convened at the Surrogate Court. After placing them under oath, Respondent heard testimony from Ms. Halchak and Mr. Stewart. There was no recording made of this proceeding.

11. Mr. Altshuler did not attend the hearing before Respondent, as he believed it was unnecessary to charge Ms. Halchak legal fees to attend when he reasonably believed that she, as the only relative present, would be named the administrator.

12. Prior to the hearing, Respondent advised the applicants that she knew Ms. Halchak's attorney and that she knew Mr. Stewart.

13. Respondent did not disclose the full extent of her relationship with Mr. Stewart. Specifically, Respondent omitted the fact that she knew Mr. Stewart and his immediate family

members for more than three decades, as they grew up in the same neighborhood, that Respondent was Facebook friends with Mr. Stewart and multiple members of his immediate family including his mother and sister, that Mr. Stewart assisted with Respondent's election campaign efforts and attended fundraising events held for her, that Respondent and Mr. Stewart socialized at parties together, and that Respondent, in the six months preceding the June 6, 2017 hearing, made at least six telephone calls to Mr. Stewart from her personal cell phone and exchanged approximately 63 text messages with him.

14. After taking testimony from Ms. Halchak and Mr. Stewart, Respondent appointed Mr. Stewart to serve as the administrator of the Estate.

15. On or about August 30, 2017, Ms. Halchak filed an Order to Show Cause ("OTSC") application in the Superior Court, Chancery Division, appealing the Surrogate's administrator appointment.

16. On September 5, 2017, the Hon. Thomas J. LaConte, J.S.C. heard the OTSC application. During the hearing, it was disclosed that the value of the Estate exceeded \$600,000. Judge LaConte questioned how Mr. Stewart became administrator.

17. Judge LaConte cited Rule 4:82(5) and questioned why Respondent, when faced with a dispute concerning the appointment of an administrator for the Estate, nonetheless made an appointment.

18. On October 2, 2017, pursuant to a Consent Judgment, Judge LaConte ordered that Mr. Stewart be discharged as administrator and that Ms. Halchak be appointed as co-administrator, along with the decedent's lifelong friend.

19. When questioned about this matter by ACJC investigators, Respondent lacked candor and misrepresented the nature and extent of her relationship with Mr. Stewart.

20. Specifically, when asked about her relationship with Mr. Stewart, Respondent testified under oath, with her counsel present, that he was “*not somebody I’d call to talk on the phone.*”

21. Respondent was questioned whether she communicated with Mr. Stewart in any form between March 23, 2017, the date Mr. Stewart submitted his application for administration, and June 6, 2017. Aside from notifying Mr. Stewart that the hearing was adjourned, Respondent denied having any other communications with him during that period.

22. Respondent’s cell phone records reveal that Respondent telephoned Mr. Stewart on March 27, 2017 and spoke for approximately 23 minutes. During that same time period, Respondent exchanged 22 text messages with Mr. Stewart.

Count I

23. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

24. By presiding over a hearing in which Respondent’s impartiality or the appearance of her impartiality might reasonably be questioned by virtue of Respondent’s relationship with one of the administration applicants, Respondent violated Canon 3, Rule 3.17(B), of the Code of Judicial Conduct.

Count II

25. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

26. By her conduct in appointing Mr. Stewart, a friend, as administrator of the Estate, rather than a relative, Respondent inappropriately used her office to advance the private interests of another in violation of Canon 2, Rule 2.2 and Rule 2.3, of the Code of Judicial Conduct.

Count III

27. Complainant repeats the allegations contained in the foregoing paragraphs as if each were set forth fully and at length herein.

28. By misrepresenting to ACJC investigators the nature of her relationship with Mr. Stewart, Respondent lacked candor and violated Canon 1, Rule 1.1 and Canon 2, Rule 2.1 of the Code of Judicial Conduct.

WHEREFORE, Complainant charges that Respondent has violated the following Canons of the Code of Judicial Conduct:

Canon 1, Rule 1.1, which requires jurists to observe high standards of conduct so that the integrity and independence of the Judiciary may be preserved;

Canon 2, Rule 2.1, which requires jurists to avoid impropriety and the appearance of impropriety and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

Canon 2, Rule 2.2, which requires jurists to decide cases according to the law and facts and to not permit family, social, political, financial or other relationships or interests to influence their judicial conduct or judgment;

Canon 2, Rule 2.3(A), which prohibits jurists from lending the prestige of the judicial office to advance the personal or economic interests of the judge or others or to allow others to do so.

Canon 3, Rule 3.17 (B) (6), which requires jurists to disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonable be questioned; and

Rule 1:12-1 (g), which requires jurists to disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonable be questioned.

DATED: December 23, 2019

Maureen G. Bauman

Maureen G. Bauman, Disciplinary Counsel
ADVISORY COMMITTEE ON JUDICIAL CONDUCT
Richard J. Hughes Justice Complex
25 Market Street
4th Floor, North Wing
P.O. Box 037
Trenton, New Jersey 08625
(609) 815-2900 Ext. 51910