

IN DEFENSE OF THE CONDUCT OF NEW JERSEY SUPREME COURT JUSTICE ROBERTO RIVERA-SOTO

By Evan Gutman CPA, JD (2013)

New Jersey State Supreme Court Justice Rivera-Soto was wrongfully disciplined. His case demonstrates how the disciplinary system for members of the legal profession has deteriorated to such an extent that injustice is cast upon some of the highest ranking members of the judiciary. On May 11, 2007 the Newark Star-Ledger reported that the New Jersey State Advisory Committee on Judicial Conduct filed a complaint against Justice Rivera-Soto. He became New Jersey's first Hispanic Supreme Court Justice in 2004. The Committee's complaint charged that he "used or allowed the power and prestige of his office . . . to influence or advance the private interests of his family and son." His attorney quite properly responded that:

"He thinks he behaved as any father would under the circumstances and believes he did nothing wrong."¹⁹⁴

Here's what happened. According to the Star-Ledger article, Justice Rivera-Soto's son was being harassed in high school by a football teammate. On September 28, 2006, the two kids butted heads causing an injury to Justice Rivera-Soto's son. Justice Rivera-Soto called the police and signed a criminal complaint against the kid who injured his son. A New York Times article published July 21, 2007 stated as follows (emphasis added):

"After a couple of incidents in which Mr. Rivera-Soto's son claimed he had been hit by the captain, the justice filed a juvenile delinquency complaint for assault against the teammate. . . ." ¹⁹⁵

On September 29, 2006 Justice Rivera-Soto called the superintendent of schools to discuss the incident. Apparently, at some point during this conversation he made reference to his judicial position. He then called the Camden County assignment Judge and the Camden County prosecutor and requested, "the matter be treated no differently than any other matter." He also asked the prosecutor to "make sure that his complaint received attention." This is a statement that any citizen might make if concerned about their child. Two

months later, a court hearing on the matter was postponed. Justice Rivera-Soto questioned a court clerk about the delay. He then asked the clerk, "if she knew who he was and handed her his business card." He also wrote a letter to the presiding Judge to complain about the postponement of the hearing. Ultimately, the two families involved reached an agreement to settle the matter in December, 2006.

Admittedly, some of the facts stated above arguably reflect adversely upon Justice Rivera-Soto. But, let's face it. What was he supposed to do? His kid is being physically harmed at school. He files a complaint about it. When any parent files any type of complaint to protect their child from being harmed at school, it is likely that the type of work the parent does will come up. If he had been a doctor, accountant, engineer or held any other type of position that wouldn't have been a problem. He also had a right as a parent to call the superintendent.

Similarly, like all citizens he had a right to call the trial Judge and prosecutor on the phone. Whether a Judge or prosecutor decides to talk to the citizen is their decision to make. But, citizens have a right to make phone calls to Judges and prosecutors. It's simple as that. You don't lose that right simply by "lowering" your societal status to the position of being a State Supreme Court Justice. This is particularly the case when the physical welfare of a family member is involved.

So all you're really left with is that when he questioned the court clerk, he asked if she knew who he was and then gave her a business card. He shouldn't have done that. But, considering the circumstances it wasn't a sufficiently egregious act to stain his professional career and impose judicial discipline. This is particularly the case considering that all he was doing was trying to protect his child. He didn't compromise the impartiality of his position for financial gain. In fact, the newspaper article indicates he expressly asked the prosecutor to treat the matter "no differently than any other matter."

It is my position that any parent (including the other Justices of the State Supreme Court) would have handled the matter precisely as he did. The bottom line is he was trying to protect his kid as a good father. He should be commended for that. To the extent handing out his business card or indicating he was a Supreme Court Justice may have technically violated rules, the circumstances indicate a proper exercise of discretion was to decline imposition of discipline. As indicated in the first part of this book, the New Jersey State Supreme Court bar in its Bar admission cases, grants wide discretion and forgiveness to rules violations committed by the Board of Bar Examiners. It was thus immoral for the Court to impose an unforgiving standard upon Justice Rivera-Soto for his minor infraction, caused by him trying to protect his son.

I will also tell you this. I've worked in New Jersey performing litigation support and business valuation services primarily in the matrimonial context as a CPA for many years. I know more New Jersey attorneys than in any other State, and while some are exceptionally competent, I'm not particularly impressed with most of them. There's a lot of Crap going on in New Jersey Courts that's a helluva lot worse than a Justice truthfully stating the nature of his professional position to physically protect his son.

Interestingly, the discipline of Justice Rivera-Soto occurred approximately six months after he "rocked the boat" so to speak in an Opinion he wrote, imposing judicial discipline upon New Jersey Superior Court Judge Wilbur H. Mathesius. The case is In the Matter of Wilbur H. Mathesius, 910 A.2d 594, 188 N.J. 496 (2006). Justice Rivera-Soto's opinion was an extraordinarily courageous opinion with one exception. The discipline of Mathesius, warrants mention herein due to its close proximity in time to the imposition of discipline upon Justice Rivera-Soto.

Based on my reading of Justice Rivera-Soto's opinion, Judge Mathesius is the type of Judge who might often be referred to admirably by people as a "No Nonsense Judge." My opinion of these so-called "No Nonsense" Judges is not quite so admirable. The facts of the opinion indicate as follows. In the criminal case of State v McDaniels, Judge Mathesius believed the criminal defendant was guilty, notwithstanding his acquittal. After the jury verdict, Mathesius ordered the defendant to stand and then stated to him as follows:

"... The evidence was very strong that you were guilty of this offense. I don't know what they [jurors] were thinking, but they're thinking other than what I was thinking. You have a number of convictions and I'll tell you this: If you find yourself in trouble again, the resolution of the case [will be] other than the windfall you received today. . . Do you understand that?"¹⁹⁶

Mathesius' threat that if the defendant finds himself in trouble again, the resolution will be different is so egregious that it may not even be within the scope of judicial immunity. As I understand the statement, he's basically saying that if the defendant comes before him again, he's going to rig the case to insure a conviction instead of rendering a fair and impartial trial. I believe that is a fair and reasonable interpretation of the word he used in his immoral statement. Mathesius then stated:

"Now I want you to look and thank God, get on your hands and knees tonight and thank God that this jury didn't see the forest for the trees."¹⁹⁷

Mathesius then excused the jurors, but ordered them to remain in the jury room. He then entered the jury room and expressed his frustration to the jurors about the Not Guilty verdict. He asked them what the "Hell" they were thinking about. One juror explained she "did not expect to be spoken to in the manner in which she was spoken of."¹⁹⁸

In a different case State v Byrd, Mathesius entered the jury room off the record, while the jurors were deliberating. He was unaccompanied by any counsel or any court reporter, and he then discharged the jury for the day. When Mathesius returned to the courtroom the following exchange took place between him and Defense Counsel:

COUNSEL: . . . I was told you were going upstairs to inquire of the jurors whether they wished to stay or go home. And this was done by you off the record, and you came out and told me that they want to go home. I object to that. . . .

THE COURT: All right. You object to that.

COUNSEL: I also think the jurors should be brought out and dismissed in the presence of the Court and on the record, and in front of the defendants.

THE COURT: Thank you. You can do that when you're a Judge. I'll do it the way I do it when I'm a Judge.¹⁹⁹

The next day, Mathesius gave a lengthy explanation on the record of his reasons for excusing the jury. When he concluded, defense counsel requested leave to respond. Mathesius responded as follows:

"No, I don't care to hear your response. Respond on the appeal if it's necessary."²⁰⁰

Based on these and other matters, Justice Rivera-Soto wrote an opinion imposing judicial discipline upon Judge Mathesius. Clearly, Mathesius at a minimum needed an appropriate "attitude adjustment" for trouncing the constitutional rights of helpless defendants. Stated simply, he preyed upon those who were less powerful than he was and that is inexcusable.

However, Justice Rivera-Soto's opinion also imposed discipline upon Mathesius for a reason I believe to be totally unwarranted. Specifically, Mathesius' outspoken nature extended to criticism of New Jersey Court of Appeals Justices when they Reversed him in a case. There's nothing wrong

with that. In fact on this limited issue, I admire Mathesius, notwithstanding my assessment of his contemptuousness nature toward helpless defendants.

A Judge does not check his First Amendment rights at the bench when he becomes a Judge. He has the right to criticize opinions of other Judges in concluded cases just like anybody else. Additionally, Court of Appeal Justices have more, not less power than him. From a moral perspective, it is as equally admirable for Mathesius to have stated his truthful opinion regarding the Court of Appeals, as it was contemptuous for him to chastise those weaker than him.

The facts surrounding his criticism of the Court of Appeal Justices are as follows. In State v Fletcher, 380 N.J. Super. 80 (App. Div. 2005) the Court of Appeals reversed him. Following the reversal, on September 14, 2005, while attending a dinner held by the Mercer County Bar Association, Mathesius, approached a law clerk of the Appellate Division Justice who wrote the opinion reversing him. He told the law clerk to deliver a message to her Judge that the Judge was "inexperienced and not competent." I actually kind of like that. On September 26, 2005 he then wrote the Appellate Division Judge asserting that the Judge was "uninformed and impractical." Nothing wrong with that either. He then accused the Appellate Division Judge of engaging in a "folly" that:

"breeds a sense of Dickensian disrespect of the law not only to its practitioners, but to the general public at large, and concluded that the Appellate Division opinion in Fletcher "indulged in fictive and romantic imagination."²⁰¹

Nothing wrong with that either. I do not see the slightest reason to impose discipline upon Mathesius for appropriately criticizing Appellate Justices. He has a right to state his opinion regarding their opinions just like any other citizen does. Other interesting aspects of Justice Rivera-Soto's opinion about Mathesius indicate that he believes strongly in GOD, detests guns, and has no tolerance for violence. Frankly speaking, I'm on board with all three of these beliefs, along with supporting his constitutional right to sharply criticize Appellate Justices.

But, Mathesius did not have either the legal or moral right while performing his duties on the bench to engage in nasty, unconstitutional conduct when dealing with helpless Defendants in his courtroom. I use the term "helpless" to the extent that, while they may or may not have committed a violent act, they were "helpless" in his courtroom to ensure protection of their legal rights. That was the job of Mathesius. He abrogated that legal duty. The imposition of discipline upon Mathesius was correct, except to the extent it was based on his criticism of the Appellate Division. On that issue, he was totally

innocent. In fact, it's a very positive situation when there 's some healthy intellectual and passionate friction between Judges and Justices. This friction contributes to enhancement of the truth-finding process.

Whether Justice Rivera-Soto paid a high price himself for writing the decision imposing discipline on Judge Mathesius is unknown. I certainly fall short of asserting there was a direct connection between the two cases, notwithstanding their close time proximity with each other. In any event, the imposition of professional discipline imposed on Justice Rivera-Soto for fulfilling his moral duty as a father to protect his son was positively unjust.