



## Op-Ed: A Lawless Governor?

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By **Paul Tractenberg**, May 10 in **Opinion**

It's jarring when any lawyer publicly threatens to ignore constitutional requirements, statutory provisions and processes, and court decisions. Indeed, it may well violate a Rule of Professional Conduct (RPC) that governs lawyer behavior. RPC 8.4 expressly admonishes lawyers not to "engage in conduct that is prejudicial to the administration of justice."

When the lawyer in question is a former U.S. Attorney and the sitting governor of New Jersey, the concern deepens greatly. After all, the U.S. Attorney for New Jersey is the chief law enforcement officer for this federal district. And as to the governor, whether or not he or she is a lawyer, assuming the position adds another dimension. The Oath of Allegiance sworn to during the inauguration includes a commitment to uphold the state's constitution and laws

Yet Gov. Chris Christie has repeatedly engaged in behavior that raises questions under both the RPC and the Oath of Allegiance.

In at least three recent instances involving the state's public education system, Christie has threatened to act in a lawless manner.

First, when the subject of Mark Zuckerberg's \$100 million gift arose, Christie indicated he would delegate to Mayor Cory Booker authority over the Newark public schools, so that Booker could play a central role in the use of the Zuckerberg money. The fact that the governor lacked direct power over the Newark schools and that the mayor was, in any event, an inappropriate repository of educational authority would have made such a delegation legally improper. When this was pointed out, the governor retreated, but he seems to be trying to do indirectly what he could not do directly.

Second, in a matter that has gotten wide attention, Christie has threatened to ignore a New Jersey Supreme Court decision in *Abbott v. Burke* if it required the state to fully fund the legislature's 2008 statute. Since such a decision would be of constitutional dimension -- an interpretation of the "thorough and efficient" clause -- ignoring the decision would violate both the funding statute itself and the constitutional requirement the statute is designed to implement.

Third, and most recently, the governor has threatened to continue state operation of the Newark public schools for the foreseeable future, apparently without regard to the statutory procedures for reestablishment of local control under the state's Quality Single Accountability Continuum (QSAC) legislation. Christie's statements on the subject seem to reflect a belief that he can simply substitute his judgment for that of the legislature. In one instance, he said "I won't turn it back over until there is success and excellence."

Christie is unlikely to act on some of his threats, especially the one about ignoring a decision of the New Jersey Supreme Court. He has already backed away from his first lawless act --proposing to delegate authority he lacks to Mayor Booker.

But just making and repeating the threat to ignore a decision of the state's highest court may be "prejudicial to the administration of justice," and, therefore, a violation of an ethical rule for lawyers. By the way, another ethical rule, RPC 8.3, requires that any lawyer "who knows that another lawyer

has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority."

The threat that Christie is least likely to retreat from -- if left to his own devices -- is the most recent one involving continuing state operation of the Newark schools. After all, there's a \$200 million commitment riding on the governor and mayor having the power to implement educational reforms in Newark favored by the private donors.

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