

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: :
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 Thomas A. Placey :
 Court of Common Pleas : No. 2 JD 20
 9th Judicial District :
 Cumberland County :

BEFORE: Honorable Jazelle M. Jones, P.J., Honorable John H. Foradora, J., Honorable James C. Schwartzman, J., Honorable James J. Eisenhower, J., Honorable Ronald S. Marsico, J., Honorable Daniel D. McCaffery, J., Honorable Daniel E. Baranoski, J., Honorable Jill E. Rangos, J.

OPINION BY JUDGE MARSICO

FILED: September 8, 2021

OPINION

Judge Thomas A. Placey of the Court of Common Pleas of Cumberland County is before the Court of Judicial Discipline for alleged violations of:

1. Canon 2, Rule 2.6 - Ensuring the Right to be Heard;
2. Canon 2, Rule 2.8 - Decorum, Demeanor and Communication;
3. Canon 2, Rule 2.11 - Disqualification, and;
4. Article 17, (b) of the Constitution of Pennsylvania - Derivative Violations.

Judge Placey resigned from the bench on June 1, 2021.

The parties have stipulated to the factual background of this case as follows:

1. Article V, § 18 of the Constitution of the Commonwealth of Pennsylvania grants to the Board the authority to determine whether there is probable cause to file formal charges against a judicial officer in this

Court, and thereafter, to prosecute the case in support of such charges in this Court.

2. From January 2, 2012, to June 1, 2021, Judge Placey has served continuously as a Judge of the Court of Common Pleas of Cumberland County.
3. As a judicial officer, Judge Placey is subject to all the duties and responsibilities imposed on him by the Constitution of the Commonwealth of Pennsylvania and the Code of Judicial Conduct adopted by the Supreme Court of Pennsylvania.

Samento v. Samento

4. On October 5, 2017, Judge Placey was presiding over a hearing in a civil action in the matter of *Tony Samento v. Nanci Samento*, Cumberland County Docket No. 2009-08051 in which Nanci Samento asserted a breach of the marriage settlement agreement.
5. After Nanci Samento testified and presented a witness, Tony Samento took the witness stand to testify.
6. During Tony Samento's testimony, counsel for Nanci Samento voiced a hearsay objection whereupon the following exchange took place:

Judge: Well, I don't know what he is saying so I don't know.

Attorney: He was indicating what he learned from the State Police.

Judge: And I don't –

Tony Samento: I'm sure there's a record of this.

Judge: Sir.

Tony Samento: I'm sorry.

Judge: Sit down now. Down. Out of that seat.

Tony Samento: I'm sorry.

Judge: Move it like you have a purpose.

Tony Samento: I'm sorry, Your Honor.

7. At this point, the judge stood and Tony Samento, who was seated in the witness stand, abruptly slid his chair back, colliding with the wall behind him.

8. As the judge stood to leave, the following exchange took place:

Judge: I'll tell you when I'm coming back. It's not going to be today. You get your client under control or I am going to tear him up on the stand. Do you understand me?

Attorney: I'm not sure, Your Honor, but I'll try to.

Judge: He talks over me one more time, I am going to rule summarily against him. Do you understand that?

Attorney: Yes, Your Honor.

9. An audio recording produced with the use of microphones during this proceeding established that at times during the exchanges described above, the volume of the judge's voice was excessively loud, to the point of yelling.

10. The exchanges described above can be heard beginning at approximately 1:43:30 on the audio recording of the proceeding. (Exhibit 1.)

11. The audio recording of the proceeding is the best evidence of the volume of the judge's voice and his demeanor.

12. At the conclusion of the above exchange, the judge left the courtroom and did not return to the bench that day relative to the *Samento v. Samento* matter.
13. Tony Samento was not afforded an opportunity to finish his testimony or to present further witnesses regarding the issue before the judge on October 5, 2017.
14. Immediately after concluding the hearing, counsel for the parties met with the judge in chambers.
15. During this meeting Tony Samento's counsel confirmed her in-court statement to possessing the previously sought video recording at issue.
16. Tony Samento's counsel was then directed by the judge to turn over the tape to opposing counsel within two weeks, which was not done and opposing counsel thereafter filed a motion to compel.
17. By order dated November 6, 2017, the Judge found partially in favor of Nanci Samento.
18. On December 5, 2017, Tony Samento filed an appeal in the Superior Court of Pennsylvania of the judge's November 6, 2017 order.
19. On December 28, 2017, Tony Samento filed a motion requesting that the judge recuse himself from the case, asserting that the judge had exhibited animosity and hostility toward him.
20. The judge denied the motion to recuse by order dated March 7, 2018.
21. On January 16, 2019, the Superior Court vacated the judge's November 6, 2017 decision and remanded the case "for a hearing before another trial judge."

22. In its January 16, 2019 opinion, the Superior Court called the transcript of the October 5, 2017 hearing “disconcerting.”
23. In its January 16, 2019 opinion, the Superior Court stated that the audio recording confirmed the “hostility” of the trial court toward Tony Samento.
24. In its January 16, 2019 opinion, the Superior Court found that the judge had denied Tony Samento’s due process rights by abruptly terminating the hearing.
25. In its opinion, the Superior Court found that the judge had abused his discretion when he denied Tony Samento’s motion for recusal.

Commonwealth v. Moore

26. At approximately 9 a.m. on January 15, 2019, Judge Placey was presiding over sentencing in the matter of *Commonwealth v. D’Andre Moore*, CP-21-CR-2521-2018.
27. The guilty plea was scheduled for January 9, 2019. Sentencing guidelines, victim impact statements and restitution information are required in advance of the guilty plea.
28. At the time of the sentencing proceeding referenced above, the courtroom was open to the public.
29. At the time of the sentencing proceeding referenced above, members of the public, the media, the victim and a victim advocate were present in the courtroom.
30. Michelle Sibert, an Assistant District Attorney representing the Commonwealth, called the case and noted on the record that the judge had just been provided a written restitution request.

31. The judge indicated that the request was "different from the one that was in the file."

32. Thereafter, the transcript of the proceeding indicates that the following exchange took place:

Sibert: I don't think there was anything in the file.

Judge: Oh, there was. I read the file. See, I come in on the weekends and read these files.

Sibert: Right. There was no restitution in the file. That's not restitution. It is saying there's no restitution.

Judge: Yes.

Sibert: At the time of the plea I informed - -

Judge: Yes. I'm saying it is different than what is in the file I read over - -

Sibert: I informed the Court - -

Judge: Why do you talk over me? Step out of here. Get out. Take him back down to the cell. I will deal with him when I am ready. You, out.

Sibert: Your Honor - -

Judge: Out. Now. Do you not listen? What is the problem with your hearing today? You, out. Out. Hand that file to somebody else.

33. At this point, the judge left the courtroom for a brief period of time.

34. When the judge reentered the courtroom, the transcript of the proceeding reflects that the following exchange took place:

Judge: Haul her out. She is the first one out of this courtroom. I walk back in here and she is still here. Get her out. Move it, sheriff.

Seibert: I'm sorry, Your Honor.

Judge: Move it. Quit talking. Lord have mercy. You show me enough disrespect all freaking day long. What is your problem? Get out of here. She does not walk back into this courtroom, sheriff.

35. An audio recording produced with the use of microphones during this proceeding established that at times during the exchanges described above, the volume of the judge's voice was excessively loud, to the point of yelling.
36. The exchanges described above can be heard beginning at approximately 0:44 seconds on the audio recording of the proceeding. (Exhibit 6.)
37. The audio recording of the proceeding is the best evidence of the volume of the judge's voice, demeanor and verbiage.
38. When deposed by Board counsel on February 5, 2020, the judge described his demeanor and tone and volume of his voice during the January 15, 2019 proceeding as "shouting" and "apoplectic".
39. The judge's conduct during the sentencing proceeding on January 15, 2019, was the subject of a published newspaper article by Matt Miller. The reporter, who was present in the courtroom during the January 15, 2019 proceeding, described the judge's conduct as an "explosion."

Gnazzo v. Gnazzo

40. On August 8, 2018, Judge Placey was presiding over a custody proceeding in the matter of *Gnazzo v. Gnazzo*, Cumberland County Docket No. 2017-07655.
41. The judge had advised the parties and litigants not to talk over each other.

42. During the cross examination testimony of one of the plaintiffs, Lucy M. Gnazzo, counsel for the plaintiffs, Melissa Greevy, voiced an objection prompting the judge to make the following statement:

Folks, are we going to fight? Or are we going to get this information. I am taking a break because you folks can't get to a landing. It is not a difficult case. Get me facts and I will get you a decision. Please, step down. We are taking a break.
43. An audio recording produced with the use of microphones during this proceeding established that at times during the statement described above, the volume of the judge's voice was excessively loud, to the point of yelling.
44. While making the above statement, the judge threw his glasses onto his desk.
45. The conduct described above can be heard beginning at approximately 1:15:50 on the audio recording of the proceeding. (Exhibit 9.)
46. The audio recording of the proceeding is the best evidence of the volume of the judge's voice and his demeanor.
47. After making the above statement, the judge left the bench.
48. When the judge returned to the bench, attorney Brett Shaffer, who had been cross examining Ms. Gnazzo before the break in the proceedings, declined to ask any further questions of her.

Wingard v. Wingard

49. On October 3, 2018, Judge Placey was presiding over a custody proceeding in the matter of *Kathryn Wingard v. Robert Wingard*, Cumberland County Docket No. 2015-05774.

50. During the direct examination of Kathryn Wingard, the witness exhibited some confusion leading to the following exchange between Kathryn Wingard, her attorney Joanne Clough, and the judge:

Clough: I'm going to stop you right now.

Kathryn Wingard: Sure.

Clough: Is this the November order or the May order are you - - do you want to take a minute and look at the November order first before I ask you these questions?

Kathryn Wingard: Sure.

Judge: No, no, no. No, no, no, no, no, no. You folks really don't understand me. You don't get this. No. You're not going to do this are you?

Clough: Yes, I am, Your Honor.

Judge: So you guys show her something already, for crying out loud. Get your witness prepared. Get off my witness stand. Call me when you're ready. I got other things to do.

51. Immediately after stating that he had "other things to do" the judge left the courtroom.

52. During the above exchange, the witnesses described the volume of the judge's voice as excessively loud.

53. Clough described the judge's tone during the above exchange as "blanket screaming" and said it was a "12" on a scale of "1-10."

54. Clough thought that the judge was going to hit the testifying witness during the above described exchange.

55. Leanne Miller, the attorney for one of the defendants, present in court when the above described exchange took place, described the judge's

tone of voice as "screaming" "beyond anything [she] had ever seen by a judge."

56. Miller recalled being intimidated by the judge during the above described exchange to the point that she was "too frightened to move."

57. The judge returned to the courtroom four minutes later and made the following statement to the attorneys and parties in the courtroom:

Relax. Have a seat. Ma'am, get back up here. Parents, if you can't tell, I'm going to be hostile with you right now. Let me explain something, parents, all right. I haven't seen you folks before, but I give you an order to do something and it doesn't get done, you see my temperament. If you can't be nice to each other, don't even bother taking the witness stand. And if you're not ready to go when we start, you're going to get chewed up and spat out by me. Let's go, counselor.

Interaction with Attorney

58. On August 2, 2019, Attorney Corey Fahnestock was in the Cumberland County Courthouse waiting to meet with a client.

59. Judge Placey's law clerk, Bryan Bartosik-Velez, approached Fahnestock and told him that the judge wanted an attorney to appear on behalf of a defendant in a criminal proceeding in his courtroom.

60. Bartosik-Velez asked Fahnestock to appear on behalf of a defendant in a criminal proceeding.

61. Fahnestock was unfamiliar with the criminal proceeding referenced by Bartosik-Velez.

62. Fahnestock declined the request.

63. Bartosik-Velez then asked Fahnestock for his name and indicated that he would inform the judge that Fahnestock had refused to comply with the judge's request.

64. A few moments later, the judge approached Fahnestock and told him to follow him into a small conference-type room in the courthouse.
65. Fahnestock complied with the judge's direction.
66. When the judge entered the small conference-type room, it was being used by the Honorable Michael Martin, Cumberland County Magisterial District Judge as a courtroom.
67. The judge directed everyone except Fahnestock, Bartosik-Velez and Judge Martin to leave the room.
68. After the door was closed, Judge Placey told Fahnestock that when he tells an attorney to go somewhere, the attorney is required to do so.
69. While addressing Fahnestock in the small conference-type room, the volume of Judge Placey's voice was excessively loud.
70. Judge Martin, who was present in the room when Judge Placey addressed Fahnestock said Judge Placey "went off" on Fahnestock.
71. Subsequent to observing Judge Placey's conduct with Fahnestock, Judge Martin encountered him, at which time Judge Placey asked Judge Martin, "How'd I do?" Judge Martin replied, "Glad I wasn't him."
72. Dawn Lippert, an employee from Judge Martin's office was waiting outside of the room while Judge Placey met with Fahnestock and could hear Judge Placey "yelling."
73. Pam Martz, a court employee waiting outside of the room while Judge Placey met with Fahnestock could hear Judge Placey "yelling" and found the conduct to be "upsetting."

Kimmet v. Kimmet

74. On June 6, 2019, Judge Placey presided over a hearing on a Petition for Protection from Abuse (PFA) in the matter of *Brenda Kimmet v. Thomas Kimmet*, Cumberland County Docket No. 2019-04775.
75. During the proceeding, as Thomas Kimmet was testifying on direct examination, his attorney, Lawrence J. Rosen, attempted to approach the witness stand in order to show Thomas Kimmet a document.
76. As Rosen approached the witness stand, the judge addressed him, saying "Don't walk towards this witness. You will be out of the courtroom in a heartbeat."
77. Rosen, who is hearing impaired, replied, "I'm sorry, Your Honor?"
78. At no time did Rosen disclose he is hearing impaired and at no other point during the hearing did he notify the judge that he had difficulty hearing any part of the proceeding.
79. Before responding to Rosen's question, the judge quickly stood up.
80. While the judge remained standing, the following exchange between the judge and Rosen took place:
- Judge: Do not walk towards the witness.
- Rosen: Oh, I'm sorry.
- Judge: You will be out of this courtroom in a heartbeat.
Can you hear me now?
- Rosen: I can.
- Judge: Did you see Mr. Edger approach the witness?
- Rosen: No.
- Judge: Why do you think he doesn't do it?

Rosen: I want to give him an exhibit, Your Honor.

Judge: You can't.

Rosen: I cannot?

Judge: How did Mr. Edger do it?

Rosen: I don't recall.

Judge: Were you not here? Were you not paying attention?

Rosen: I was here Your Honor. I didn't mean to offend you.

Judge: You have.

81. An audio recording of the proceeding produced with the use of microphones established that at times during the exchange described above, the volume of the judge's voice was excessively loud, to the point of yelling.
82. The exchange described above can be heard beginning at approximately 1:15:44 on the audio recording of the proceeding. (Exhibit 13.)
83. The audio recording of the proceeding is the best evidence of the volume of the judge's voice and his demeanor.
84. Immediately after the exchange, the judge left the courtroom.
85. Approximately four minutes later, the judge returned to the courtroom and the hearing proceeded.
86. Prior to the exchange described above, Rosen was unaware of any protocol or rule preventing him from approaching the witness as he had attempted to do during the proceeding.
87. Earlier in the proceeding opposing counsel, Paul Edger, had utilized protocol for approaching a witness on the stand.

88. After the hearing concluded, Rosen went to the judge's chambers and apologized for approaching the witness in the manner that the judge objected to.
89. After hearing Rosen's apology and accepting it, the judge told Rosen that the reason for his insistence on not approaching a witness was due to a bad experience he had had in which an attorney was injured.

Discussion

It is clear from the stipulated facts that Judge Placey was not controlling his temper in court. The rude, loud outbursts towards counsel and witnesses are obvious violations of the demeanor required of a trial judge. Such conduct is violative of several of the Canons of Judicial Conduct but in particular Canon 2, Rule 2.8(B) which states that:

A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

Judge Placey's conduct violates Canon 2, Rule 2.8(B) which is the ethical standard most applicable here.

Judge Placey filed an Answer to the Complaint in which he stated that:

The allegations within the body of the complaint are generally admitted. The subjective characterization is an understandable inference when reviewing the cited portions of the transcripts audio recordings, and various witness statements.

By way of further clarification, Judge Placey recognized a change in his impulsive behavioral control beginning in late 2018 and early 2019, well before the Judicial Conduct Board's investigation began. In August 2017, Judge Placey received notices from the NCAA of the potential for chronic traumatic encephalopathy (CTE), believed to be linked to concussions he had suffered

during his academic career related to collegiate sports. He shared this information with his primary care physician and discussed his concern. Currently, he is an enrolled member of the NCAA Concussion Management Medical Monitoring Program that is being established as part of the NCAA settlement.

(See www.collegeathleteconcussionsettlement.com)

As a direct result of the perceived temperament change, Judge Placey sought professional assistance from "Judges Concerned for Judges" in April 2019. This continuous commitment to treatment and improvement aids him in reducing frustration and containing emotional reactions. This course of treatment has allowed him to develop the additional skills necessary to de-escalate internally, without litigants' knowledge, otherwise frustrating courtroom situations.

Answer at Item 7.

The Court notes there have been no new allegations of misconduct alleged to have occurred after the filing of the Complaint. Additionally, Judge Placey has resigned from judicial service.

Because it violated Rule 2.8(B), the same conduct was also an automatic, derivative violation of Article V, §17(b) of the Pennsylvania Constitution which provides in part that: "Justices and judges shall not engage in an activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court." See also *In re Miller*, 759 A.2d 455 (Pa.Ct.Jud.Disc. 2000.)

Having found that Judge Placey is subject to discipline for conduct which violates Rule 2.8(B) as well as a violation of Article V, §17(b) of the Pennsylvania Constitution, it is not strictly necessary to address the remaining Counts of the Complaint because they are based upon the same conduct as the violation of Rule 2.8(B). As we stated in *In re Eagen*, 814 A.2d 304, 306-07 (Pa.Ct.Jud.Disc. 2002):

Unlike a criminal case in which the range of penalties is determined by the number of charges and the statutory sentence mandated for each offense upon which there is a finding of guilt, the scope of sanction available to this Court is not so circumscribed. Any finding by this Court that a judicial officer has violated the Constitution of Pennsylvania or the Code of Judicial Conduct subjects that judge to the full range of appropriate discipline. Furthermore, in exercising our direction in imposing disciplinary sanction, we are guided not by the number of ways the Respondent's conduct has offended the Constitution or Code, but by the nature of the conduct itself and any mitigating or aggravating circumstances.

See also *In re Murphy*, 10 A.3d 932, 937 (Pa.Ct.Jud.Disc. 2010).

Accordingly we make the following Conclusions of Law:

1. Judge Placey's conduct set out in the Findings of Fact constitutes a violation of Rule 2.8(B) of the Code of Judicial Conduct,
2. Judge Placey's conduct set out in the Findings of Fact constitutes a derivative violation of Article V, §17(b) of the Pennsylvania Constitution; and,
3. Judge Placey is subject to discipline under Article V, §18(d)(1) of the Pennsylvania Constitution, which provides:

(d) A justice, judge or justice of the peace shall be subject to disciplinary action pursuant to this section as follows:

(1) A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for . . . violation of Section 17 of this article; . . . or conduct in violation of a canon or rule prescribed by the Supreme Court.

Having found the violations described above the parties may file exceptions and supporting briefs as permitted. A sanction hearing will then be scheduled.