

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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OF PENNSYLVANIA

OCT 24 2022

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IN RE: :
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 Michael J. Cabry, III :
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 Magisterial District Judge : No. 2 JD 21
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 Magisterial District Court 15-3-06 :
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 Chester County :

BEFORE: Honorable James J. Eisenhower, P.J., Honorable Ronald S. Marsico, J., Honorable Daniel D. McCaffery, J., Honorable Daniel E. Baranoski, J., Honorable Jill E. Rangos, J., Honorable Thomas E. Flaherty, J., Honorable Sonya M. Tilghman, J.

James J. Eisenhower, President Judge

FILED: October 24, 2022

OPINION AND ORDER

Michael J. Cabry, III, a former magisterial district judge in Chester County appears before the Court of Judicial Discipline charged with ethical violations resulting from his improper withdraw of funds from his campaign account.

The parties have entered into factual stipulations including the following:

1. Article V, §18 of the Constitution of the Commonwealth of Pennsylvania grants to the Board the authority to determine whether probable cause exists to file formal charges against a judicial officer in this Court, and, when it determines that probable cause exists, to prosecute the case in support of such charges in this Court.

2. From approximately March 22, 2000, until his resignation on September 21, 2021, former MDJ Cabry served continuously as the elected magisterial district judge of magisterial district court 15-3-06, Chester County.

3. Pursuant to Article V, §18(a)(7) of the Constitution of the Commonwealth of Pennsylvania, the Board determined that probable cause exists to file formal charges against former MDJ Cabry in this Court.

4. By criminal complaint filed October 6, 2020, at *Commonwealth v. Michael J. Cabry, III*, MJ-15203-CR-181-2020, the Pennsylvania Office of Attorney General (OAG) filed criminal charges against former MDJ Cabry stemming from Presentment No. 13 of the 45th Statewide Investigating Grand Jury.

5. The OAG charged former MDJ Cabry with the following offenses: (1) theft by unlawful taking, 18 Pa.C.S.A. §3921(a), a felony of the third degree; (2) perjury, 25 P.S. §3249(b), a misdemeanor of the first degree; (3) reporting by candidate and political committee, 25 P.S. §3246(a), an ungraded misdemeanor; (4) reporting by candidate and political committee, 25 P.S. §3246(b)(2), an ungraded misdemeanor; (5) reporting by candidate and political committee, 25 P.S. §3246(b)(4), an ungraded misdemeanor; and (6) lawful election contributions, 25 P.S. §3254(a), an ungraded misdemeanor.

6. Former MDJ Cabry waived his right to a preliminary hearing and the aforementioned charges were bound over for trial in the Court of Common Pleas.

7. On September 22, 2021, at *Commonwealth v. Michael J. Cabry, III*, CP-15-CR-3380-2020, former MDJ Cabry pleaded guilty to the following offenses: (1) theft by unlawful taking, 18 Pa.C.S.A. §3921(a), a misdemeanor of the second degree; (2) reporting by candidate and political committee, 25 P.S. §3246(a), an ungraded misdemeanor; (3) report must list each

expenditure and person, 25 P.S. §3246(B)(4), an ungraded misdemeanor; and (4) lawful election expenses, 25 P.S. §3254.1, an ungraded misdemeanor.

8. In his written plea colloquy, executed September 22, 2021, former MDJ Cabry admitted the following:

On or about November 13, 2016[,] through January 13, 2018, the defendant, while a candidate for public office, failed to file appropriate and accurate campaign reports of expenditures and receipts; failed to provide full and accurate account of expenditures and withdrew funds from his campaign account for purposes unrelated to his campaign. Additionally, the defendant unlawfully took funds from the campaign account and used the funds for personal expenses unrelated to political activity.

9. As a result of former MDJ Cabry's guilty plea, the Honorable Stephen B. Lieberman sentenced former MDJ Cabry on September 22, 2021, to an aggregate sentence of one year of probation.

10. Former MDJ Cabry has not appealed his judgment of sentence, and, consequently, it is final and factually binding for purposes of proceedings within this Honorable Court.

The parties also agreed to the authenticity of five exhibits including the criminal complaint, the grand jury presentment, the criminal docket of his case, his guilty plea colloquy and the sentencing sheet executed by the presiding judge.

A trial in this matter was held on August 10, 2022, which, in essence, established that during 2017, former MDJ Cabry, while a candidate for magisterial district judge, failed to file accurate financial campaign reports and applied funds originating from his campaign to personal expenses. Evidence was also presented concerning the death of MDJ Cabry's wife and a fire at his

home. MDJ Cabry has resigned from the bench and promised not to seek further judicial office.

DISCUSSION

Violations of Rule 1.1, Article V, Section 17(b)

Former MDJ Cabry admits he violated Rule 1.1 of the Rules Governing Standards of Conduct of Magisterial District Judges (requiring magisterial district judges to comply with the law) and Article V, §17(b) of the Constitution of Pennsylvania (violation of the law by a judge violated this section of the Constitution as well as the particular rule at issue.) At the hearing in this matter there was some testimony to the effect that MDJ Cabry may have been owed some money by his campaign which might have reduced the amount he illegally took. (Transcript at 103).

Nonetheless, MDJ Cabry entered a guilty plea to theft by unlawful taking among other offenses and that plea, and its factual predicate, are conclusive as to the existence of the theft. Furthermore, after inquiry from the Court the parties stipulated the amount of the theft to be \$3,254.97. (Pretrial Memo of MDJ Cabry at 2).

A guilty plea is conclusive concerning the facts underlying it and is conclusive in a subsequent civil action. *Shaffer v. Smith*, 673 A.2d 872, 874 (Pa. 1996). MDJ Cabry's guilty plea and stipulation are conclusive. Whatever doubts MDJ Cabry may voice as to the amount he stole is of no importance in the face of his sworn guilty plea and stipulation of the amount taken.

Accordingly, this Court finds former MDJ Cabry in violation of Counts 1 and 2.

Count 3 – Violation of Article V, §18(d)(1)
Of the Constitution of Pennsylvania

Article V, §18(d)(1) of the Constitution of the Commonwealth of Pennsylvania states the following:

A justice, judge or justice of the peace may be suspended, removed from office, or otherwise disciplined for . . . conduct which . . . brings the judicial office into disrepute, whether the conduct occurred while acting in a judicial capacity[.]

The issue presented here is whether MDJ Cabry’s misconduct was so extreme as to have brought disrepute upon the entire judiciary.

In determining whether the Judicial Conduct Board has met its burden of proof to show disrepute, this Court examines and weights the particular facts on a case-by-case basis. *In re Shaw*, 192 A.3d 350, 370-71 (Pa.Ct.Jud.Disc. 2018). The Pennsylvania Supreme Court has recognized the need for the individualized approach in deciding cases alleging disrepute. *In re Carney*, 79 A.3d 490, 501 (Pa. 2013).

The test for a violation of the Disrepute Clause requires clear and convincing evidence that the judicial officer engaged in misconduct, which was “so extreme” that it brings disrepute upon the entire judiciary. *In re Segal*, 3 JD 2015, slip op. at 40 (Pa.Ct.Jud.Disc. July 21, 2016) (citing *In re Cicchetti*, 743, A.2d at 443-44 (Pa. 2000). The Board must prove that the judge’s misconduct harmed the reputation of that particular judge and damaged the reputation of the judicial office itself. *In re Berkhimer*, 930 A.2d 1255, 1258 (Pa. 2007) (citing *In re Zupsic*, 893 A.2d 875, 888 (Pa.Ct.Jud.Disc. 2005)).

In some judicial disciplinary cases, it is challenging to determine if the misconduct of the individual judge has adversely impacted the reputation of all judges:

It is fair to say that the difficulty in deciding these cases has not been in the determining whether the conduct is “bad” or “reprehensible” or whether it makes the judge “look bad;” the difficulty has been in determining whether it makes judges collectively “look bad,” whether the conduct gives all judges a “bad name” – whether it is such that brings the office itself into disrepute.

In re Merlo, 58 A.3d 1, 10 (Pa. 2012) (emphasis in original).

In deciding whether a judge’s misconduct rises to the level of disrepute, this Court applies the standard of “. . . the reasonable expectations of the public of a judicial officer’s conduct.” *In re Carney*, 79 A.3d at 494. The analysis of the reasonable expectations of the public integrates the principle that a respondent judge represents the judicial office to members of the public and therefore his or her misconduct reflects back on the entire judiciary. *Berkhimer*, 930 A.2d at 1258-59. Therefore, this Court considers the evidence of misconduct “as if the public knows about it.” *In re Berry*, 979 A.2d at 999-1000. When considering whether a judicial officer’s act dishonors the judiciary as a whole, consideration must be given to the persistence and extremity of the conduct. *In re Cicchetti*, 743 A.2d at 444. Accord, *In re Merlo*, 58 A.3d 1 (Pa. 2012) (habitual rude conduct can constitute disrepute.)

MDJ Cabry’s confessed misconduct was unquestionably wrong, but we do not find the evidence presented here to amount to clear and convincing proof of him having caused disrepute to the judiciary.

CONCLUSIONS OF LAW

1. At Count 1, the Board has established by clear and convincing evidence that Respondent violated Rule 1.1 of the Rules Governing Standards of Conduct of Magisterial District Judges.

2. At Count 2, the Board has established by clear and convincing evidence that Respondent has violated Article V, §17(b) of the Constitution of Pennsylvania.

3. At Count 3, the Board has not established by clear and convincing evidence that Respondent violated Article V, §18(d)(1) of the Constitution of Pennsylvania.

A date for a Sanction Hearing will be set.