

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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IN RE: : NO. 3 JD 16
: :
DAVID W. TIDD :
FORMER MAGISTERIAL DISTRICT :
JUDGE :
MAGISTERIAL DISTRICT 03-2-04 :
THIRD JUDICIAL DISTRICT :
NORTHAMPTON COUNTY :

BRIEF OF THE RESPONDENT, DAVID W. TIDD

The Respondent, David W. Tidd, by his counsel, Samuel C. Stretton, Esquire, respectfully briefs the issues raised by Judge Barton's Order dated October 7, 2016.

I. Issues

1. Whether the Board should be required to produce all witness statements and interview notes for all the interviews it conducted in its investigation of this matter?

2. Whether the Board should be required to produce one audio/video recording in its possession, which it maintains is not relevant to the charges in the judicial complaint?

II. Argument

Both issues involve the question as to whether or not the Board of Judicial Conduct can decide what evidence it has in its possession that will be turned over to Mr. Tidd, the Respondent. The starting point is the Court of Judicial Discipline's Rules. The discovery rule is found at Rule 401 of the Court of Judicial Discipline. Under Rule 401(d), the Board is to exchange all

non-privileged evidence relevant to the charges contained in the complaint, documents to be presented at trial and statements of witnesses who will be called to testify. Also, under subsection (d)(2), the Board is to give any other material under the Conference Judge's discretion upon cause shown.

Under Rule 401(e), the following is noted about additional disclosure.

"Upon filing of the Board Complaint, the Board shall provide the judicial officer with any exculpatory evidence relevant to the charges contained in the Complaint."

Apparently what is exculpatory is left to the discretion of the Board. It appears that the Judicial Conduct Board has been investigating the Respondent for several years. Numerous people have been interviewed. Many allegations were made.

It obviously would be of great benefit to the Respondent to show that the people who were complaining made many allegations that just were not correct. The only way to show that is to get all allegations and the witnesses who were interviewed.

There may be many witnesses interviewed who thought the judge did a good job. There may be witnesses who had no complaints. Without knowing who was interviewed and the subject matter, the Respondent is put at a great disadvantage. At the current time, he is limited to what the Board has chosen to give him. Discovery is usually a broad term and involves everything. Further, what is the harm? Why wouldn't the Judicial Conduct

Board provide the interviews and names of all witnesses? There certainly would be no prejudice to the Judicial Conduct Board. But, it could help the Respondent's case.

Requesting either all of the audio/video tapes in the Board's possession seems to be a very realistic request. According to the Board, they have four in their possession and are going to turn over three. The Respondent would like to see the fourth tape.

Further, the Respondent wants to see all of the tapes. The Board apparently had access to these tapes and chose to obtain four tapes. There may be many tapes that would be exonerating for the Respondent, but he is not in a position to be able to access the tapes. Certainly many of the allegation, particularly about pleas accepted at the counter, would be on the tapes.

There is nothing in the Rules of the Judicial Conduct Board on what is to be produced.

Further, in evaluating these matters, it should be recalled that attorney and judicial disciplinary cases have been called quasi-criminal in nature. See In re Ruffalo, 390 U.S. 544, 88 Sup. Ct. 1222 (1968). Because they are quasi-criminal in nature, there is a requirement for procedural due process, including fair notice of all charges.

It must be remembered that the Judicial Conduct Board has had several years to investigate and review this matter. The Respondent has been at a disadvantage. Further, the Respondent does not have the resources that the Judicial Conduct Board has. That Board has a team of lawyers and a team of investigators.

The case of In re Cicchetti, 697 A.2d 297 (Pa. Ct. Jud. Disc., 1997), the Court of Judicial Discipline noted the following concerning the rights of a Respondent.

"...Judges are afforded the full benefit of procedural due process protections of the Fourteenth Amendment, which, though a variable and elusive concept, in basic essence means a fair process...These protections include the right to discovery and the privilege against self-incrimination...are derived from the liberty and property interest judges are recognized to have in their offices...Fundamental fairness, therefore, is a concept that pervades the judicial disciplinary process." Id 308.

On appeal, the Pennsylvania Supreme Court limited discovery rights. In re Cicchetti, 743 A.2d 431 (Pa., 2000).

"Finally, appellee argues that the rules limiting pretrial discovery in prosecutions pursued by the Board deprived him of due process of the law because they impaired his ability to confront witnesses against him. The Board supplied the penalty with discovery materials, including the testimony and sworn statements of witnesses. Appellees' counsel further requested additional discovery, including the names of individuals from whom sworn testimony or statements were taken that were not included in the discovery materials...The Board refused the request and claimed they had provided all evidence that was not privileged and relevant to the charges in its complaint. Appellee filed an Omnibus Motion asserting that the requested material likely contained exculpatory material and it would reveal the source and motivation for the complaint. The Court denied appellee's request. The issue was without merit because appellee has failed to allege how

the requested information would have been relevant, if it existed." Id 444 and 445.

The aforementioned Cicchetti case was overruled years later on other issues, but not on that issue.

There does not appear to be any other case directly on point on this discovery issue since Cicchetti, at least from what present counsel could find in his review.

Although the language in Cicchetti is not the best, it is still different than the present case. Cicchetti was arguing that he wanted the material for cross-examination purposes. Although the Respondent, Mr. Tidd, also wants to have that information available to see if there were false complaints made, he is also very interested to see if there is any other exculpatory information. But, what he believes might be exculpatory and what the Judicial Conduct Board believes might be exculpatory might be very different.

Perhaps in resolving this, the question that should come up is, why should it not be given? What prejudice would the Court of Judicial Discipline have? Presumably, they have the other statements available. Therefore, there would not be a great deal of time to make copies and provide them. Presumably, the number of statements are less than twenty or thirty. There could be more, but at least the Judicial Conduct Board could raise the fact that it would be burdensome or there are too

many. But, assuming there are not too many, what would be the harm in giving it to the Respondent so he and his lawyer can review it to see if there is anything of value, either for impeachment or cross-examination or for exculpatory evidence?

In conclusion, the Respondent, Mr. Tidd, believes that fundamental due process in this quasi-criminal proceeding warrants the production of any and all names of witnesses interviewed and their statements, and any other evidence, including all tapes. There has been no showing by the Judicial Conduct Board that it would be burdensome or prejudicial to provide this information. The Respondent, David Tidd, respectfully requests this Honorable Court allow him to be given the names of all witnesses and the additional tape and any other tapes in the possession of the Judicial Conduct Board.

Respectfully submitted,



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 David W. Tidd :
 Former Magisterial District: 3 JD 2016 :
 Judge :
 Third Judicial District :
 Northampton County :
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CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the foregoing Brief in the captioned matter upon the following persons in the manner indicated below.

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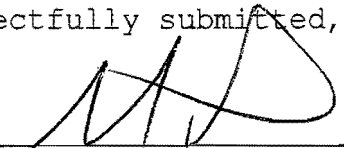
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