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IN RE: :
: :
David W. Tidd : No. 3 JD 16
Former Magisterial District Judge :
Third Judicial District :
Northampton County :

**SINGLE JUDGE DECISION AND
STATEMENT OF REASONS**

I file this Decision and Statement of Reasons to dispose of Respondent, Former Magisterial District Judge David W. Tidd's motion, made as a part of his omnibus motion, seeking my recusal.

RESPONDENT'S MOTION

The case against Former Magisterial District Judge David W. Tidd ("Respondent") was filed by the Judicial Conduct Board ("Board") on August 26, 2016. The undersigned was appointed conference judge by an order of court dated August 29, 2016. Respondent filed an omnibus motion seeking my recusal and raising four different reasons why the charges should be dismissed. The basis for Respondent's motion that I recuse myself (Motion) is because of alleged contact between Respondent and me during which Respondent sought ethics advice.¹

UNDERLYING FACTS

At a status conference held on October 7, 2016, Respondent was sworn and testified regarding the alleged basis for my recusal. He related that on an unknown date he sought advice from me in my capacity as a member of the Ethics &

¹ At the conclusion of the status conference, after consultation with his client, Respondent's counsel stated there was no basis for my recusal. Notwithstanding that his comment is tantamount to withdrawal of the Motion, I file this Single Judge Decision and Statement of Reasons so that the record in this case clearly reflects a disposition of the motion and the basis therefor.

Professionalism Committee of the Special Court Judges Association of Pennsylvania (Ethics Committee). This advice was reflected in a letter written by Respondent to the Deputy Court Administrator of Northampton County on September 3, 2014, concerning Respondent's legal authority to vacate a summary traffic trial because Respondent learned after the fact that the Defendant in the traffic case was a client of Respondent's law practice in the prior year.² Respondent learned this after the trial, vacated the verdict within 30 days pursuant to 42 Pa.C.S. §5505, and recused himself from the case. The Court Administrator informed the President Judge of Northampton County of these facts and the President Judge then directed that another magisterial district judge be assigned to adjudicate the case.

At the status conference, counsel for the Board confirmed that the events concerning this traffic case were not the substance of any of the charges in the Board Complaint.

Prior to my appointment as a judge of this Court, I served as a member of the Ethics Committee from July, 2013, through May 29, 2015. The Ethics Committee is designated as an approved body to render advisory opinions regarding ethical concerns involving magisterial district judges. Our Supreme Court has provided for a rule of reliance: the actions of a judge taken in reliance on such an opinion, although not *per se* binding upon the Board and Court of Judicial Discipline, are taken into account in determining whether discipline should be recommended or imposed as a result of that conduct. **See Preamble, Rules Governing Standards of Conduct of Magisterial District Judges, at ¶8, 42 Pa.C.S.A.**

² This letter and a related memorandum from the Deputy Court Administrator to President Judge Baratta dated September 4, 2014, were produced at the status conference by the Board, marked as an exhibit, and will be part of the transcript that will be filed of record.

In this capacity, I received occasional telephone calls seeking ethics advice. During this 22 month period I would estimate that I received between six and ten such calls. In each case, I would provide an informal opinion during the course of the conversation upon the facts provided, and emphasize to the inquiring judge that the "rule of reliance" only applies where they have submitted a written inquiry and received a written response from the Ethics Committee. In my view, my goal was to make sure that the inquiring judge was aware of and had reviewed all of the applicable Rules of Conduct pertaining to any analysis of their inquiry, and emphasize that the protection afforded by the rule of reliance only arose after seeking a written opinion. I made no notes or logs of any such calls.

I have no reason to doubt the veracity of Respondent's testimony concerning his having made one or two telephone calls to me concerning the ethics advice and application of §5505 to that case. I note that the substance of that telephone call would have been as much about the legal effect of 42 Pa.C.S. §5505, as it was about the ethics issue of promptly correcting a verdict given the appearance of impropriety which arose from Respondent's after the fact discovery that the Defendant was a former client of his law practice. I also have no independent recollection of ever having met or spoken to Respondent at any time prior to the status conference.

In the interest of completeness, following the testimony at the status conference, counsel for both parties agreed that there was no basis for recusal or disqualification. Lastly, I do not believe that this brief conversation on an unrelated matter, and of which I have no recollection, will impact my ability to be fair and impartial on the instant disciplinary matter.

ANALYSIS

“The party who asserts that a trial judge must be disqualified must produce evidence establishing bias, prejudice, or unfairness which raises a substantial doubt as to the jurist’s ability to preside impartially.” ***Lomas v. Kravitz*, 130 A.3d 107, 122 (Pa. Super. 2015) (internal citations and quotation marks omitted); Com. v. Watkins, 108 A.3d 692 (Pa. 2014); Com. v. Kearney, 92 A.3d 51 (Pa. Super. 2014).** “There is a presumption that the judges in this Commonwealth are ‘honorable, fair and competent.’ ” ***Id.*, quoting *In re Lokuta*, 11 A.3d 427, 453 (Pa. 2011).**

If a judge makes the decision that he or she can be impartial, the judge must, nonetheless, “decide whether his or her continued involvement in the case creates an appearance of impropriety and/or would tend to undermine public confidence in the judiciary. This is a personal and unreviewable decision that only the jurist can make.” ***Lomas*, at 122.**

Our Supreme Court has also elucidated that a judge’s acquaintance with a party to the litigation, in and of itself, does not require recusal. In so doing, they have stated that it:

would be an unworkable rule which demanded that a trial judge recuse whenever an acquaintance was a party to or had an interest in the controversy. Such a rule ignores that judges throughout the Commonwealth know and are known by many people, ... and assumes that no judge can remain impartial when presiding in such a case.

***Id.*, quoting *Commonwealth v. Perry*, 364 A.2d 312, 318 (Pa. 1976).**

In ***Commonwealth ex rel. Armor v. Armor*, 398 A.2d 173 (Pa. Super. 1978) (en banc) (plurality)**, the Honorable Donald Wieand, in his dissent expressing the consensus of half of the judges deciding the case, stated:

In my judgment, public confidence in the judiciary will be strengthened, not weakened, by respecting and upholding the trial judge's determination that he could hear and decide the instant case impartially. Public confidence is not weakened because judges are called upon to hear and decide difficult and controversial cases. The public does expect, however, that judges will rise above any influence which is inherent in the high or low estate of litigants who come before them. Courage and integrity are the hallmarks of an independent judiciary. More often than we like to contemplate, it is recusals too readily tendered in complex and controversial cases which weaken public respect for the judiciary.

Id. at 178 (internal citation omitted).

Because the contact by Respondent concerned a matter that is unrelated to the facts or law concerned with the Board Complaint, and Respondent's action in apparent reliance on this informal opinion was further ratified by the President Judge of Northampton County, I am unable to see any appearance of impropriety that would arise by my continuing to serve as conference judge in this matter.

Thus, in conclusion, there is no basis for my disqualification in this matter. An appropriate order will follow.

