

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

RECEIVED AND FILED
COURT OF
JUDICIAL DISCIPLINE
OF PENNSYLVANIA

2018 MAR 15 P 12:36

IN RE: :
: :
David W. Tidd :
Former Magisterial District: 3 JD 2016
Judge :
Third Judicial District :
Northampton County :

SANCTION MEMORANDUM OF THE RESPONDENT, DAVID W. TIDD

The Respondent, former Judge David W. Tidd, by his counsel, Samuel C. Stretton, Esquire, is presenting a brief Memorandum on the nature of his sanction. Mr. Tidd, after a lengthy trial before the Court of Judicial Discipline, was successful in having every charge dismissed but one. In the decision by this Honorable Court of In re: David W. Tidd, 175 A.3d 1151 (Pa. Ct. of Judicial Discipline, 2017), this Honorable Court found David Tidd violated the Magisterial District Judges Rules of Conduct, Rule 2.16(b). That Rule prohibits a Magisterial District Judge from retaliating directly or indirectly against a person known or suspected to have assisted or cooperated with an investigation of the judge.

This Court noted that what constituted retaliation was a matter of first impression. Id 1158. The Court then made the following finding:

"In construing the Canons and the MDJ Rules, to affect their purpose we can easily conceive the situations where an offending judge could take actions that would deter judicial staff from cooperating with a Board investigation.

Judge Tidd's jarring and angry confrontations of his staff concerning the complaints to the Board about his treatment of staff crossed that line and we find they would deter a reasonable employee from maintaining or cooperating with a judicial discipline investigation." Id 1159.

Having said that, the Court then noted that no threats were expressed or implied by former Judge Tidd. The Court also noted, "We are unconvinced that they Board's witnesses had any genuine concern that Judge Tidd would take adverse employment action against them." Id 1159, 1160.

The Court also noted that one of former Judge Tidd's main staff persons had been secretly communicating with former Judge Tidd's political opponent in the weeks leading up to his contested primary election. The Court found that witness to be very biased and found that her bias had pervasively tainted all the other allegations made by former Judge Tidd's staff. Id 1159, 1160.

But the Court noted since it was using an objective standard to determine conduct or retaliation, intent was not required. Id 1160.

The Court then noted as follows:

"Because Judge Tidd's angry confrontation of his judicial staff was inappropriate conduct for any judge in Pennsylvania and would deter a reasonable employee from cooperating with the Board, it constitutes a violation of Rule 2.16." Id 1160.

The Court also found that the requests to transfer staff members in this case were not done for retaliation. Id 1160.

Therefore, former Judge Tidd was found in violation of retaliation because he confronted the staff when he found out they had complained about him. It should be noted from his testimony during that trial that former Judge Tidd thought he had a good relationship with his staff and was hurt and dismayed because he felt betrayed by people who he had worked with.

The rest of the numerous paragraphs and numerous charges in the Complaint were dismissed by this Honorable Court, as the evidence was inadequate and insufficient.

In weighing the sanction here, this Court should recall from David Tidd's testimony that he resigned his judicial position in July of 2016. This Honorable Court will recall the mental distress he has gone through and the fact he had been hospitalized because of suicidal thoughts at one point. David Tidd is a practicing lawyer presently and is not a member of the judiciary any longer, nor is he seeking any other judicial office.

David Tidd presented numerous character witnesses during his trial. He will not bring his witnesses again to the sanction hearing, but will incorporate by reference their testimony. At the sanction hearing, former Judge Tidd will again address the Court and will accept responsibility for his comments to his staff and will apologize, as he did previously.

Having said that, what is the nature of discipline? David Tidd has no prior discipline as an attorney. He had no prior discipline as a judge. It would appear that a reprimand would be the appropriate resolution of this matter or a letter of concern.

In the case of In re Toczydlowski, 853 A.2d 24 (Pa. Ct. of Judicial Discipline, 2004), this Court referenced a multi-prong test in evaluating the nature of discipline. The first prong is whether the misconduct is an isolated instance or evidence of a pattern of conduct. Based on the findings by the Court of Judicial Discipline, this was an isolated instance. There were other times when former Judge Tidd raised his voice, but the Court did not find any violation. The other major time was on primary election day his staff member, who was working against him and lied about it, scheduled hearings. David Tidd has a good reputation, as seen from the excellent character testimony presented at trial. There is no finding of any other misconduct.

The second prong is the nature and frequency of the acts of misconduct. In this case, there was no frequency. This involved one time when was stunned to learn that his staff and people he trusted had turned against him, and he expressed his displeasure. He did not curse or threaten them. He just came in and expressed his displeasure. He had closed the front door,

but the back door was open and they could have walked out at any time. He locked the front door for privacy since that is the door the public would enter and he wanted to speak to his staff privately.

The third test is whether the misconduct occurred in or out of a Courtroom. Obviously, this occurred outside the Courtroom.

The fourth test is whether misconduct occurred in the judge's official capacity or in his or her private life. In this case, the misconduct occurred in his official capacity as a judge when he confronted his staff about them speaking with the Judicial Conduct Board without his knowledge, particularly since he considered the staff his friends.

The fifth test is whether the judge acknowledged or recognized the acts occurred. In this case, David Tidd, as seen from his trial testimony and as will be seen during the hearing on March 16, 2018, accepts full responsibility and agrees he was wrong when he let his anger overcome him when speaking with the staff.

The sixth test is whether the judge evidenced any effort to change or modify his conduct. David Tidd has accepted responsibility. He has indicated this would not occur again. There was no other discipline against him. He has a good reputation as an attorney and is building his law practice.

The seventh test is the length of service on the bench. Former Judge Tidd was in his sixth year at that time and was running for reelection. He was actually serving in his seventh year before his resignation.

The eighth test is whether there had been prior complaints. Obviously, as seen from the petition, there were prior complaints by the biased staff he had, as so found by the Court of Judicial Discipline. But none of those complaints had merit and all were dismissed and discharged.

The ninth test is what effect the misconduct had upon the integrity and respect of the judiciary. In this case, this was a private conversation between David Tidd and his staff. This conversation would appear not to affect the issues of the integrity of the judiciary. It must be remembered, David Tidd did not tell the staff not to cooperate. He was just upset with them for talking to the Board when he thought they were his friends and working with him.

The tenth prong was the extent to which the judge exploited his position to satisfy his personal desires. There does not appear to be any attempt by former Judge Tidd to exploit his judicial position.

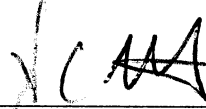
In weighing these factors, it becomes very clear that there should be no discipline more than a reprimand.

There are many cases in the past where serious misconduct has resulted in private discipline. There are also cases of serious misconduct in the past where resignation of a judge has resulted in minor discipline. An example of that is the case of In re: Wade Brown, 907 A.2d 684 (Pa. Ct. Judicial Discipline, 2006). In that case, Judge Brown engaged in numerous acts of improper sexual comments to secretarial staff and to litigants. This occurred over a long period of time. He had served as a judge for thirty years. He presented excellent character testimony. He retired and accepted responsibility. He received a reprimand.

The bottom line is David Tidd, despite going through this very difficult ordeal of many charges, most of which resulted in dismissal, accepted full responsibility for raising his voice at his staff. This was a limited and isolated circumstance. Judge Tidd has presented good character, he was resigned from the bench and is currently building his law practice. Therefore, it

is argued that the sanction should not in any way be suspension and should only be reprimand or a letter of counsel.

Respectfully submitted,



Samuel C. Stretton, Esquire
Attorney for Respondent,
David W. Tidd
103 S. High St., P.O. Box 3231
West Chester, PA 19381
(610) 696-4243
Attorney I.D. No. 18491

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: :
: :
David W. Tidd :
Former Magisterial District: 3 JD 2016 :
Judge :
Third Judicial District :
Northampton County :

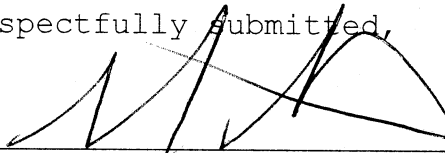
CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the foregoing Supplemental Pre-Trial Statement in the captioned matter upon the following persons in the manner indicated below.

Service by First Class Mail addressed as follows:

1. Elizabeth A. Flaherty, Esquire
Deputy Counsel
Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 3500
P.O. Box 62525
Harrisburg, PA 17106
(717) 234-7911
2. David W. Tidd
P.O. Box 6643
Wyomissing, PA 19610

Respectfully submitted,



Samuel C. Stretton, Esquire
Attorney for Respondent,
David W. Tidd
103 S. High St., P.O. Box 3231
West Chester, PA 19381
(610) 696-4243
Attorney I.D. No. 18491

3/14/18
Date