

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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JUDICIAL DISCIPLINE

2015 DEC 22 P 4: 54

IN RE:

J. Michael Eakin
Justice of the Supreme Court
of Pennsylvania

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No. 13 JD 15

ORDER

AND NOW, this 22nd day of December, 2015, following a hearing held on December 21, 2015, it is Ordered and Directed as follows:

1. Pursuant to the authority of Article V, §18(d)(2) of the Pennsylvania Constitution, Justice J. Michael Eakin, Respondent herein, is **SUSPENDED** from his judicial and administrative duties from the date of this Order until further Order of this Court.

2. This suspension is with pay and the medical benefits of the Respondent shall not be suspended during the period this Interim Order is in effect.

3. **PRE-TRIAL CONFERENCE**

(a) The parties shall file pre-trial memoranda on or before January 11, 2016, and shall contemporaneously serve a copy on opposing counsel.

(b) The pre-trial memoranda shall contain the following:

a. The names and addresses of all witnesses expected to testify at trial, and the subject of the testimony of each.

- b. A list of all exhibits intended to be introduced at trial.
- c. A list of stipulations to which opposing counsel can reasonably be expected to agree, including stipulations as to the authenticity or admissibility of exhibits.
- d. A certification by each party that it has furnished the other with the materials required to be exchanged under C.J.D.R.P. No. 401(D)(1).
- e. A certification by the Board that it has provided the Respondent with any exculpatory evidence relevant to the charges contained in the Board Complaint in accordance with C.J.D.R.P. No. 401(E).

(c) The pre-trial conference will be conducted on Thursday, January 21st, 2016 at the Commonwealth Court Courtroom, Judicial Center, Harrisburg, at 1:30 PM.

Statement of Reasons

1. The Pennsylvania Constitution, Article V, §18(d)(2), provides, in pertinent part:

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

...

(2) Prior to a hearing, the court may issue an interim order directing the suspension, with or without pay, of

any justice, judge or justice of the peace against whom formal charges have been filed with the court by the board or against whom has been filed an indictment or information charging a felony. An interim order under this paragraph shall not be considered a final order from which an appeal may be taken.

2. Therefore, the Court of Judicial Discipline is constitutionally authorized to enter an interim order of suspension. It has been previously held that the Court may do so without a hearing, and “that, in fact, the Constitution contemplates that we do so where appropriate, and that such a procedure does not withhold or offend any due process rights to which Respondent might be entitled” ***In re: Orié Melvin***, 57 A.3d 226, 239 (Pa.Ct.Jud.Disc. 2013). Nevertheless, we ordered a hearing in this case to ensure that the due process rights of the Respondent were honored.

3. The rights set out in the Pennsylvania Constitution, Article V, §18(b)(5)¹ as available to judicial officers in proceedings leading to final orders of sanctions are not available in interim proceedings under Article V, §18(d)(2). ***In re: Orié Melvin***, 57 A.3d 226 (Pa.Ct.Jud.Disc. 2013).

4. Furthermore, there is no “presumption of innocence” in these interim proceedings, for in these interim proceedings we are not to engage in a determination of guilt versus innocence. Rather, the Court must engage in a determination of whether the *totality of the circumstances* requires that

¹ Section 18(b)(5) outlines the constitutional due process rights and procedural mandates when the Court of Judicial Discipline convenes for trials on adjudications of violations of the Pennsylvania Constitution or canons governing judicial officers.

a judicial officer be suspended with or without pay. *In re: Jaffe*, 814 A.2d 308, 317-318 (Pa.Ct.Jud.Disc. 2003).

5. In a matter involving the consideration of an interim order of suspension, this Court:

[N]eeds to be persuaded that “the totality of the circumstances requires suspension” – whether the [Judicial Conduct] Board is doing the persuading, or even the asking, is immaterial. Of course we would *prefer* that the Board participate in the process, but we believe **the Constitution places the responsibility on this Court of safeguarding the integrity of the judicial system and the public’s confidence therein** from the time charges are filed until their final disposition; that it has not made the discharge of that responsibility dependent or conditional upon anybody else doing anything.

In re: Orié Melvin, 57 A.3d 226, 238 n. 10 (Pa.Ct.Jud.Disc. 2013) (bold emphasis added).

6. At the hearing held on December 21, 2015, the Judicial Conduct Board moved into the record the emails of which the Respondent was a party. These emails included, as a recipient or sender, a member of the Attorney General’s office utilizing his government email account. Also, Justice Eakin used government equipment to exchange some or all of the emails.

7. The Board also moved into the record the actual emails that are in the Board’s possession. The e-mails demonstrate that Justice Eakin participated in a pattern of not only receiving e-mails which were insensitive and inappropriate toward matters involving gender, race, sexual orientation,

and ethnicity, but also sending and forwarding a number of such e-mails. In his testimony on December 21, 2015, Justice Eakin admitted sending, and receiving, the offending e-mails. These emails also included lewd references to judicial employees.

8. Even though these emails were not intended to be published to the general public, they have by now become infamous and the subject of numerous newspaper articles.

9. Of particular concern to the Court are two email exchanges between the Respondent and Deputy Attorney General Jeffrey Baxter in which they comment upon the physical attributes of female employees in the Respondent's office as well as sexually-suggestive observations. Clearly, these emails, which address judicial employees, are extremely inappropriate and offensive.

10. Because the Respondent utilized his government issued equipment to engage in these email exchanges, and participated in the email exchanges with other government employees who were using their government email addresses, he should have had a lower expectation of privacy.

11. Because of the aforesaid actions of the Respondent, the totality of the circumstances has tainted the Pennsylvania judiciary in the eyes of the public.

12. Until the trial on the merits, when the actions of the Respondent can be more closely reviewed, the integrity of the Pennsylvania judiciary has been and continues to be subject to disrespect.

13. The only means to ensure the public's confidence in the Pennsylvania judiciary is to suspend the Respondent pending the full trial on the merits of the Complaint.

14. With respect to concerns *beyond* protecting the judiciary from disrepute, the interim suspension, while legally supportable and wholly justified for that purpose alone, is necessary at this juncture as a precaution. There should be no doubt that this Court is deeply and profoundly troubled by even a remote possibility that the patently discriminatory and offensive views and attitudes expressed in the emails underlying this case may have impacted Justice Eakin's judicial work. Respondent introduced evidence at the hearing that his judicial opinions are free from improper bias. This suspension is not based upon a review of the 20 years of judicial opinions that were submitted as such evidence. No party has yet argued to this court that such improper bias exists, and evidence of such, if any, may be presented at the trial on the merits.

PER CURIAM