

**IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

IN RE: MR. JUSTICE SEAMUS P. MCCAFFERY: No. 430
OF THE SUPREME COURT OF :
PENNSYLVANIA : Judicial Administration Docket

CONCURRING STATEMENT

MR. CHIEF JUSTICE CASTILLE

I join in the immediate suspension of Justice Seamus P. McCaffery and the appointment of special counsel for the Court. However, I respectfully would not refer this matter to the Judicial Conduct Board. In our recent case of In Re: Bruno, --- A.3d -- -, 2014 WL 4915942 (Pa. 2014), this Court agreed that prosaic complaints about judicial misconduct would go to the Judicial Conduct Board for initial review and that this Court would only step in and assume jurisdiction in extraordinary circumstances. In my opinion, the conduct of Justice Seamus P. McCaffery is such a circumstance. The most recent misconduct of Justice McCaffery -- forwarding sexually explicit pornographic emails to employees of the Attorney General's Office (and, in one instance, an email depicting a naked 100 year-old woman as the target of a sexually explicit joke and a video of a woman in sexual congress with a snake, which is clearly obscene and may violate the Crimes Code Section on Obscenity) has caused the Supreme Court to be held up to public ridicule. This conduct deserves the immediate action as implemented by this Court today. It would be impossible for this Court to function effectively while Justice McCaffery sits on this Court. His so-called "lapse in judgment" lasted, at least,

for many years as an adult. It is more than a lapse in judgment – it has caused unmitigated turmoil in the justice system and has indirectly cost several state prosecutors and high ranking state officials their public careers. At least several of those individuals have had the decency to resign, whereas the instigator of the pornographic emails still draws a taxpayer's salary.

Justice McCaffery by his comments fails to acknowledge the significance of his “lapse” and blames others for this “lapse of judgment.” He blames the U.S. Marine Corps for coarse language and crude jokes. He blames the U.S. Air Force for the same conduct, even though a Reserve Colonel in the Air Force would have been court martialed for similar conduct. He blames the Philadelphia Police Department for the same, although the Police Department would never condone this type of misogynistic behavior. Finally, Justice McCaffery blames me for what he deems a “cooked up controversy” when, in fact, he was the originator of the emails sent to a government agency, and the emails were then made public by the Attorney General's Office. This Court and I had no idea whatsoever that Justice McCaffery was using court equipment to forward this material – we do not monitor a Justice's email. This alleged “cooked up controversy” has cost the careers of others and perhaps even several marriages. As importantly, Justice McCaffery's conduct has brought this Court into enormous disrepute.

Justice McCaffery blames me for a series of egregious acts of misconduct on his part. However, it was not I who caused his wife to be cited for driving the wrong way on Market Street. It was not I who caused Justice McCaffery to meet with the main Philadelphia Traffic Court ticket fixer, an admitted felon, to “discuss” his wife's ticket

which was then dismissed by a Traffic Court judge who later pled guilty to federal crimes arising from ticket fixing. It was not I who subpoenaed his wife's traffic ticket file, which was then officially brought to my attention as part of the review of Philadelphia Traffic Court – that was the work of the FBI. It was not I who gave his wife, a Supreme Court employee, permission to run a law practice out of a Supreme Court chambers, earning millions of dollars. It was not I who referred that matter to the U.S. Attorney's Office. It was not I, but it was Justice McCaffery, who hired Chadwick Associates to assist in reforming Philadelphia's criminal courts, which was lawfully compensated for its services to the Philadelphia Court system for its professional work. Justice McCaffery claims that I targeted him because of his assertions that I mishandled the Luzerne County juvenile court disaster. But, no such opposition was ever voiced by Justice McCaffery until years after the fact; and, in fact, Justice McCaffery joined the Court's unanimous orders respecting Luzerne County. Justice McCaffery never voiced any concern over the planning and construction of the just-opened Family Court Building at 15th and Arch Streets, unless he did so anonymously in the press and by his denigrations of my reputation to others. In fact, Justice McCaffery doubted the building would ever be built. He was wrong.

Justice McCaffery is correct in one of his allegations against me. I have been attempting to remove Justice McCaffery from this Court. In my two decades of experience on this Court, no other Justice, including Justice Joan Orié Melvin, has done as much to bring the Supreme Court into disrepute. No other Justice has so failed to live up to the high ethical demands required of a Justice of this Court, or has been the constant focus of ethical lapses to the degree of Justice McCaffery.

Lastly, there is the recent report that Justice J. Michael Eakin was “asked” by Justice McCaffery to have my public report to the citizens concerning the general content of the pornographic emails Justice McCaffery sent to the Attorney General’s Office be withdrawn from the public realm, or else Justice McCaffery would see to the release of other emails allegedly implicating Justice Eakin in similar conduct (although as yet not identified). In my opinion, that sort of threat borders on criminal conduct. I can see little reason why Justice Eakin would implicate Justice McCaffery in these threats after Justice Eakin self-reported the email account to the Judicial Conduct Board, unless the charged conduct by Justice McCaffery actually occurred. It would seem that this report of possible misconduct by Justice Eakin to the Judicial Conduct Board now raises an ethical conflict on the Board’s part, thereby calling for an independent review of Justice McCaffery’s conduct.

Notably, Justice Eakin has stepped forward and has voluntarily asked for a review of the materials released through Justice McCaffery who clearly had knowledge of the content and the provenance of the emails. This is in contrast to the conduct of Justice McCaffery, who continues to blame others for the ethical lapses arising from his own volition and deliberate conduct.

This Court has a scheduled argument session in the week of November 17, 2014. My question will be: How would it be possible for a court of seven members to sit in judgment of matters as the Commonwealth’s Court of last resort when one Justice has brought this level of public contempt by his own actions and has threatened another Justice to intervene illegally on Justice McCaffery’s behalf to change or alter fact-finding in relation to Justice McCaffery’s pornographic emails? Of even more import, how can

any party or litigant believe their matter will be heard and decided impartially while these scurrilous charges and accusations remain unresolved?

As a prosecutor in the Philadelphia District Attorney's Office, I often had the occasion to review pre-sentence psychiatric reports, although I do not claim to be an expert in the field. One pathology that I do recall, and as confirmed in a review of a prominent medical journal, describes the pathology of an individual who has the personality traits of not caring about others, thinking he or she can do whatever is in that person's own self-interest, and having little or no sympathy for others. The most telling pathology is that when that person is caught, or called out for his transgressions, that person does not accept blame but instead blames others for his or her own misconduct. Those pathological symptoms describe a sociopath. So far in the blame game, Justice McCaffery has blamed the U.S. Marine Corps, the U.S. Air Force, the Philadelphia Police Department, Chadwick Associates, the U.S. Attorney, the F.B.I., Attorney General Kathleen Kane, now Justice Michael Eakin, and myself for the consequences arising from actions all initiated by him, but thought by him to be of little consequence: just a few "cooked up controversies" by his perceived tormentors.

I agree that this Court cannot continue to function while Seamus McCaffery sits as a Justice. There is no way that citizens could have confidence in the moral authority of the Pennsylvania Supreme Court. If we do not have the confidence of our citizenry, all we as a Court do is for nothing. That is why I support the immediate suspension of Justice McCaffery.

While I respect the work of those persons appointed to the Judicial Conduct Board, I am fully aware of that body's lack of resources and manpower to investigate

charges of this unique significance. In the past, this Court has had to loan \$35,000 to the Conduct Board to meet payroll when the Legislature denied the Board's budgetary needs. The Administrative Office of Pennsylvania Courts has even had to lend the expertise of our Information Technology department to set up a case management computer program and system when the Board had not had the ability to do so because of a lack of adequate funding. To undertake an investigation of Justice McCaffery's ethical failures will require an enormous effort by the Judicial Conduct Board, which I can only hope will be accomplished by the deadlines in this Court's order.

For these reasons, left to my own devices, I would immediately refer this matter to an outside neutral fact-finder for a report and recommendations.¹

¹ In her dissenting expression, Madame Justice Todd suggests that "one" member of the Court is "deeply involved in this controversy" – without identifying who that is. The entire Court is -- or should be -- deeply involved in this "controversy." The fact that the author of the dissenting expression -- unlike some other members of the Court -- was not herself personally the subject of Justice McCaffery's scurrilous responsive attack after the revelations of his own conduct does not alter the Court's institutional responsibility. And, that responsibility includes what was recognized by a majority of the Court in Bruno -- that we may be required to act in exceptional circumstances, such as these.