

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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OF PENNSYLVANIA

MAR 17 2022

RECEIVED AND RECORDED

IN RE: :
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President Judge Farley Toothman : :
Court of Common Pleas : No. 1 JD 20
13th Judicial District : :
Greene County : :

BEFORE: Honorable James C. Schwartzman, P.J., Honorable James J. Eisenhower, J., Honorable Ronald S. Marsico, J., Honorable Daniel D. McCaffery, J., Honorable Daniel E. Baranoski, J., Honorable Jill Rangos, J., Honorable Thomas E. Flaherty, Honorable Sonya M. Tilghman, Jr.

PER CURIAM

FILED: March 17, 2022

OPINION AND ORDER

Judge Farley Toothman of the Court of Common Pleas of Greene County appears before this Court for sanctioning for violations described in the Opinion of July 19, 2021. In that Opinion this Court found that Judge Toothman:

1. Ordered that a salesperson at a convenience store be imprisoned for twenty-five days on a dubious probation violation charge after having offended his law clerk in a disagreement over whether the law clerk was misbehaving in the store. Judge Toothman investigated the identity of the salesperson, caused a probation violation case to be pursued against her and sent her to jail in anger that her actions on the job had displeased him.

2. Attempted to intimidate a courthouse employee into signing a confidentiality statement by improperly causing a private grievance the employee had filed to be posted on a public bulletin board in order to embarrass and intimidate the employee.

Factors Considered in Determining Sanction

In determining what sanction will be imposed for an ethical violation of this Court is guided by the jurisprudence of our Supreme Court, and, also by its prior decisions. Pennsylvania has adopted ten non-exclusive factors, sometimes called "Deming factors" from the original Washington State case where they were explicated. *In re Roca*, 151 A.3d 739, 741 (Pa.Ct.Jud.Disc. 2016), *aff'd*, 173 A.3d 1176 (Pa. 2017), citing *In re Toczydlowski*, 853 A.2d 20 (Pa.Ct.Jud.Disc. 2004); *In re Deming*, 736 P.2d 639 (Wa. 1987). The ten factors and their application to this case are as follows:

1. Whether the misconduct is an isolated instance or evidenced a pattern of conduct: The conduct at issue here involves two incidents of bullying another as part of a personal grudge or fit of pique.

2. The nature, extent, and frequency of occurrence of the acts of misconduct: The misconduct by Judge Toothman is serious and had a detrimental effect on those he targeted.

3. Whether the conduct occurred in or out of the courtroom: The conduct occurred both in and out of the courtroom.

4. Whether the misconduct occurred in the judge's official capacity: The misconduct at issue here was committed in Judge Toothman's capacity as a judge.

5. Whether the judge acknowledged or recognized that the acts occurred: Judge Toothman has acknowledged his improper conduct.

6. Whether the judge has evidenced an effort to change or modify his conduct: Judge Toothman has voiced contrition over his misconduct and has resigned from the bench.

7. The length of service on the bench: Judge Toothman served as a Judge for eleven years.

8. Whether there have been prior complaints about the judge: No prior complaints were brought to this Court.

9. The effect the misconduct has upon the integrity of and respect for the judiciary: Judge Toothman brought considerable disrepute upon the judiciary by his improper conduct. Bullying others for personal reasons greatly erodes respect for the judiciary.

10. The extent to which the judge exploited his or position to satisfy personal desires: Judge Toothman engaged in his acts of misconduct to satisfy his personal anger.

Discussion

Judge Toothman's improper conduct was discussed at length in the Opinion and Order of July 19, 2021. Judge Toothman's clearly improper conduct was blatant and inexcusable. No jurist should ever behave in such a manner.

In deciding on a sanction here the Court looks at the prior case law in this area for what guidance it can provide.

The case of *In re Younge*, No. 2 JD 19, presents some similarities to the present misconduct. Judge Younge ruled peremptorily in many cases and ignored litigants' rights. Judge Younge improperly imprisoned two persons who offended her in the course of court proceedings. Judge Younge was suspended without pay for six months, ordered to serve over five years' probation and ordered to apologize to those she victimized.

Unlike Judge Younge's actions which at least were related to court proceedings, Judge Toothman's misconduct is motivated by personal anger at two people who offended him. His dictatorial actions are reprehensible. Misuse

of the powers of the judiciary to satisfy one's personal animosities is among the worst offenses a judge can commit.

Accordingly, we sanction Judge Toothman as follows:

1. Judge Toothman is removed from the bench and barred from further judicial service; and,

2. Judge Toothman is to send a written apology to those he victimized as described in the Opinion and Order of July 19, 2021, if those persons indicate they want such a letter. The Judicial Conduct Board is to contact those victimized persons to see if they want to receive such a letter and to then inform the Court of Judicial Discipline of their reply.

CONCURRING OPINION BY JUDGE FLAHERTY

Although I agree Former Judge Toothman should be barred from future judicial service, I see no need to order his removal from the Court of Common Pleas of Greene County. Former Judge Toothman has resigned from his position as a judge and there is no need to order his removal from a position he has already left.

Additionally, I disagree with requiring Former Judge Toothman to write apology letters to those he victimized. Former Judge Toothman is no longer a judge and any action he takes is not that of a judge.

I agree with the remainder of the Opinion and Order in this case and especially with the condemnation of Judge Toothman's ethical lapses. I only disagree with removing him from a judgeship he no longer holds and requiring him to write apology letters.