

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

2016 FEB 29 P 1:23

RECEIVED AND FILED
COURT OF
JUDICIAL DISCIPLINE
OF PENNSYLVANIA

IN RE:

J. MICHAEL EAKIN
JUSTICE OF THE SUPREME
COURT OF PENNSYLVANIA

No. 13 JD of 2015

PROCEEDING:
Hearing

DATE:
February 25, 2016

FILED BY:
Noreen A. Re, CRR
Official Court Reporter

BEFORE:

Honorable Jack A. Panella
Honorable Carmella Mullen
Honorable David J. Barton

COUNSEL PRESENT:

For the Commonwealth:

Francis J. Puskas, II, Esq., and
Elizabeth A. Flaherty, Esq.

For Justice Eakin:

Costopoulos, Foster & Fields
by William Costopoulos, Esq., and
Heidi F. Eakin, Esq.

P R O C E E D I N G

1
2
3 JUDGE PANELLA: Good afternoon,
4 everyone. As you know, we're here in "In re:
5 J. Michael Eakin," No. 13 JD of 2015. And
6 good afternoon to the attorneys from the
7 Board. I understand one of your numbers is
8 possibly awaiting a very happy occasion.

9 MR. PUSKAS: Correct.

10 JUDGE PANELLA: Mr. Puskas and Attorney
11 Flaherty are present. Mr. Puskas, would you
12 mind for the record stating the actual
13 members of the Board that are here.

14 MR. PUSKAS: Uh-huh. Yes, I will.
15 Francis Puskas, Deputy Chief Counsel to the
16 Judicial Conduct Board. We also have Deputy
17 Counsel Elizabeth Flaherty. Also present in
18 court today are three of our Board members;
19 Gary Scheimer -- Lieutenant Gary Scheimer,
20 Attorney Bob DeI Greco, Judge Kevin Brobson
21 and Board Member Lisa Steindel.

22 JUDGE PANELLA: And good afternoon to
23 all of you, also. Good afternoon,
24 Mr. Costopoulos. It's always a pleasure to
25 see you. Good afternoon, Attorney Eakin.

1 And good afternoon, Justice.

2 Just a couple of things first. Of
3 course, we received a number of things from
4 the Board on Monday. We, of course, received
5 the certification from the Board that,
6 actually, the Attorney General's Office
7 certified that they have no further emails to
8 provide to you. Is that correct, Mr. Puskas?

9 MR. PUSKAS: Well, I think, as the
10 Court may see from the second status update
11 that we filed, we received two discs from the
12 Attorney General's Office that did not
13 contain any other emails beyond what they had
14 provided previously to the Board.

15 There was no letter accompanying these
16 CDs or certification of any kind. I know
17 that the Court's order only required that
18 they provide us with the emails or an
19 affidavit saying there were no others. I
20 believe the Attorney General has opted to
21 provide us simply with the emails.

22 JUDGE PANELLA: Rather than certify
23 that there's no further ones.

24 MR. PUSKAS: Correct. Our own personal
25 review has indicated that they are the same

1 emails that were previously provided.

2 JUDGE PANELLA: I believe the parties
3 understand why the Court did what it did in
4 ordering the Board to serve that subpoena,
5 because we wanted to have everything before
6 us in this proceeding.

7 We didn't want to have something
8 discovered or revealed six months from now.
9 Thank you, Mr. Puskas.

10 We also received the Board's brief,
11 pursuant to our directions at the end of the
12 initial pretrial conference. There will now
13 be a second pretrial conference. Of course,
14 with the exception of the items that we
15 disagree with, it was an excellent brief.

16 MR. PUSKAS: Thank you.

17 JUDGE PANELLA: And our compliments to
18 the Board. It was excellent, as we are sure
19 the respondent's brief will be excellent.
20 And speaking of that, just a little bit of a
21 housekeeping matter.

22 We held the initial pretrial conference
23 on January 21st in Harrisburg. We asked the
24 parties to brief some points we felt were
25 important to organize the trial. The Board

1 submitted their written response to our
2 requests on Monday, February 22nd, as I just
3 said.

4 The respondent has 30 days, therefore,
5 from this past Monday to file his response.
6 Of course, the respondent is certainly
7 entitled to use all 30 of those days in
8 responding. But if you reply a little
9 sooner, then I think we will be able to issue
10 some rulings that affect the trial a little
11 earlier, so you'll have a better idea on
12 organizing your own trial strategy. But,
13 again, you may certainly use all of your
14 30 days, if you please.

15 I was only thinking that trial
16 attorneys often like to know the answers to
17 some of the pretrial rulings as early as they
18 can.

19 Well, we are in Pittsburgh today
20 because it's the judiciary's responsibility
21 to maintain transparency and to be open and
22 fair to both sides. We have made a point
23 from the very beginning of this case that
24 anything involving this case and this Court
25 had to be handled in open court and on the

1 record.

2 And we're here today on the joint
3 motion that was filed this past Monday, which
4 is a very limited and very narrow scope. We
5 are here because this is the only way we can
6 speak to the parties on issues which are
7 before the Court.

8 And this hearing was scheduled in
9 response to the joint motion. The joint
10 motion mentions that the parties may have
11 reached certain agreements to stipulations
12 that could resolve this case. It is
13 important to note that our responsibilities
14 go far beyond an expedited resolution of this
15 case.

16 To quote our Pennsylvania Supreme Court
17 in "In re: Melograne," "The Court of
18 Judicial Discipline is charged with
19 protecting the integrity of the judiciary and
20 upholding public confidence in the judicial
21 branch of government.

22 "In disciplining a judicial officer for
23 misconduct, the tribunal not only punishes
24 the wrongdoer, but also repairs the damaged
25 public trust and provides guidance to other

1 members of the judiciary regarding their
2 conduct."

3 It is with these principles in mind
4 that we begin today's session. At the
5 outset, we must respond to certain statements
6 in the joint motion and a mischaracterization
7 as to the role of this Court in the parties'
8 attempts to reach stipulations.

9 At no time did this Court initiate or
10 mandate settlement or resolution discussions
11 between the parties. Of course, under
12 Rule 502 of the Rules of Procedure of the
13 Court of Judicial Discipline, the parties
14 have an absolute right to submit an agreed
15 statement of all facts necessary in order for
16 the Court to make a decision in a respective
17 case.

18 Not long after this case was filed by
19 the Board, we were requested by the parties
20 to engage in resolution discussions with
21 them. That was unconditionally refused by
22 this Court. From the very beginning of this
23 case, we refused to engage in any off the
24 record, "behind closed doors" discussions
25 about this case.

1 I do not believe that any judge of this
2 Court has spoken to any attorney involved in
3 this case outside of the courtroom. We were
4 then informed that following the initial
5 pretrial conference, counsel for Justice
6 Eakin again wished to have a settlement or
7 resolution discussion.

8 Again, we refused to participate in
9 that. It was then brought to our attention
10 that counsel for Justice Eakin requested help
11 in this resolution endeavor. And all we did
12 was say we would be willing to ask -- and I
13 emphasize "ask," not mandate -- for someone
14 with judicial discipline experience to assist
15 the parties.

16 This was done as a professional
17 courtesy to the parties. There was no court
18 order. And, believe me, after 25 years as a
19 judge, I know how to issue a court order.
20 There was no court order ordering the parties
21 to participate in resolution discussions, nor
22 any court order appointing a mediator. The
23 phraseology used by the parties to somehow
24 imply that this was mandated by this Court is
25 wrong and inaccurate.

1 We wanted no part of these discussions,
2 and anything done by the parties was done at
3 their own request and initiative.

4 We now turn to the issues at hand,
5 which is the joint motion filed by the
6 parties. We previously informed the parties
7 that if they wished to file additional
8 stipulations, they had to follow a two-step
9 process.

10 The first was to ask the Court if it
11 would entertain additional stipulations.
12 And, secondly, if permission were granted,
13 only then may they submit the additional
14 stipulations in writing to the Court.

15 In consideration of the first question,
16 our review of the record indicates that this
17 case is of significant importance to the
18 judiciary, the legal profession and, most
19 importantly, to the general public.

20 Prior to entering the suspension order,
21 we reviewed the exhibits admitted into
22 evidence by the Board, which included
23 numerous news reports of this case, as well
24 as concerns expressed by leaders of the
25 judicial, legal and governmental communities.

1 Now, of course, our Canons mandate that
2 judges must not be swayed by public clamor or
3 fear of criticism; and that is not what
4 prompts me to review the enormous public
5 attention given to this case.

6 After considering the significance of
7 this case, and some developments which we
8 will address, if necessary, we will grant
9 permission to the parties to file additional
10 stipulations as long as there is strict
11 compliance with Rule 502(D) of the Rules of
12 Procedure of the Court of Judicial
13 Discipline.

14 Rule 502 was adopted a long time ago
15 and has been in effect for long before the
16 three of us were appointed to this Court.
17 Furthermore, Rule 502(D) has been followed
18 and utilized by the Board and respondent
19 judges in many other cases.

20 We see no reason why in this case we
21 should deviate from established practice and
22 procedure. This case should be treated as
23 any other case that has come before this
24 Court. Rule 502(D) permits the parties to
25 submit to the Court stipulations as to "all

1 facts necessary to a decision of the issue in
2 the case" in Subsection (1); and in
3 Subsection (2), as to some issues but not all
4 of the relevant issues in the case.

5 Under both situations it is up to the
6 Court to accept or reject the stipulations as
7 to facts. If the stipulations pertain to
8 only some of the factual issues, the Court
9 and the parties will proceed to trial on the
10 remaining factual issues.

11 The entire Court, not just this panel,
12 must vote on whether to accept the
13 stipulations of fact in lieu of trial
14 pursuant to Rule 502(D). And, for example,
15 for the parties, if you want to see our
16 writing about that, review "In re:
17 Sullivan," 805 A.2d 71, a 2002 decision from
18 this Court.

19 It is then up to this Court to arrive
20 at conclusions of law derived from the facts,
21 whether they are stipulated to or determined
22 after a hearing.

23 And it is up to this Court to make the
24 decision as to whether the conduct in issue
25 violates the Constitution or the Canons or

1 both. This is in accord with our rules and
2 settled case law from our Supreme Court.
3 And, again, I refer counsel to "In re:
4 Berkheimer," a 2007 decision from the
5 Pennsylvania Supreme Court at 930 A.2d 1255,
6 in which our Supreme Court says, "Whether
7 particular conduct brings the judicial office
8 into disrepute is determined on a case-by-case
9 basis." That decision must be made by this
10 Court and this Court alone.

11 Therefore, pursuant to Rule 502, you
12 may not submit stipulations -- I should say
13 binding stipulations -- as to whether there
14 has been a violation or as to what the
15 sanctions should be. Rule 502 is limited to
16 factual stipulations in lieu of trial.

17 As clearly stated in the rule,
18 suggested conclusions of law may, of course,
19 be submitted by both parties pursuant to
20 Rule 502(E). Again, we believe in always
21 looking at past practice and what has been
22 established procedure.

23 All the way back in 1998 in "In re:
24 Strock," which is located at 727 A.2d 653,
25 this Court stated "We believe that this

1 Court's obligation to make an independent
2 examination of the facts to determine if they
3 support the charges which a respondent
4 concedes they support is no less than the
5 obligation of a trial court receiving a
6 guilty plea in a criminal case to satisfy
7 itself that there is a factual basis for the
8 plea of guilty."

9 And "to determine whether the facts
10 acknowledged by the respondent constitute the
11 prohibited offense."

12 We reiterate what we previously said in
13 1995 in "In re: Timbers." "Furthermore,
14 part of this Court's necessary function is to
15 develop a body of law that will provide
16 judicial officers with some guidance as to
17 the conduct which may form the basis for the
18 imposition of sanctions.

19 "In order to develop such a body of
20 law, the Court of Judicial Discipline, rather
21 than the parties through binding stipulated
22 agreements, must determine whether the facts
23 support proposed conclusions."

24 Therefore, the Board and the
25 respondent, if they wish, may submit to this

1 Court stipulations of fact in accordance with
2 Rule 502(D), with the understanding, again
3 pursuant to that rule, that the suggested
4 stipulations address issues of fact only and
5 with the knowledge that this Court will
6 review the stipulations and make the decision
7 whether to accept or reject them.

8 In all honesty, in light of the
9 enactment of Rule 502, we have no discretion
10 to deny the parties this opportunity. If in
11 reaching the submitted stipulations the Board
12 wishes to withdraw any of the counts in the
13 complaint, then the Board must follow the
14 procedures set forth in Rule 502(F) and file
15 a motion to do so supported by good cause.

16 It is the duty and constitutional
17 function of this Court to decide if a certain
18 series of facts constitute a violation of the
19 Canons or the Constitution and to decide an
20 appropriate sanction for a violation or
21 violations, if found.

22 As we have said many times before, the
23 interests in a case such as this include much
24 more than sanctioning the individual jurist.
25 They also include protecting the integrity of

1 the judiciary and upholding public confidence
2 in the judicial branch of government.

3 Our rules and the established procedure
4 provide assurances that that will be done.
5 You see, we must provide guidance to
6 Pennsylvania's nearly 1,000 other judges and
7 justices so they can know the boundaries of
8 what is and what is not considered a
9 violation of the Canons or the Constitution.

10 Our job is to insure that the
11 violations arising from any set of facts
12 fairly address the significance of the
13 conduct. And then we must arrive at a
14 sanction which addresses the violation in
15 order to uphold the public's confidence in
16 the judiciary and our judicial system.

17 It is obvious, of course, that we
18 recognize that this case is a serious case,
19 or else we would not have taken the step of
20 imposing an interim suspension. We also
21 recognize that this case is a difficult case
22 from the perspective of the litigants,
23 because it involves circumstances that,
24 frankly, judicial disciplinary courts have
25 had very limited dealings, if they have had

1 any at all.

2 But we have an obligation to deal with
3 it; and we will do so using the established
4 principles of law, much as the other courts
5 in our Commonwealth do every day of the week.

6 Therefore, if the parties have, in
7 writing, suggested stipulations of fact in
8 lieu of trial, you may supply them to the
9 Court Cryer or to the Court within one week
10 of today. The entire Court will then review
11 them and decide whether to accept or reject
12 them.

13 Of course, the submission must be
14 accompanied by the signed waiver, which is
15 required under Rule 502(D)(1). In light of
16 the filings by the Board of its complaint,
17 pretrial memorandum and the comprehensive
18 letter brief of February 22, 2016, we will be
19 able to make this determination.

20 We will need, however, if this
21 submission is made to the Court, for the
22 Board to make part of the record the
23 documents specified in the Board's letter
24 brief as follows.

25 First, the self-report letter of

1 October 17, 2014, which is referred to on
2 page 7 of your submission; the reports of the
3 interview prepared by Investigator Harlacker,
4 which is referred to on page 8 of your
5 submission; Justice Eakin's written answer to
6 questions from the notice of full investigation,
7 which is referred to on pages 8 to 9 of your
8 submission; and Justice Eakin's deposition of
9 October 20, 2015, which is referred to on
10 page 11 of your submission.

11 The four items I just mentioned, does
12 the Board have them with them today?

13 MR. PUSKAS: No. We do not have all
14 those items here today.

15 JUDGE PANELLA: If you intend to submit
16 written binding stipulations in lieu of trial
17 for the Court's consideration under
18 Rule 502(D), we then must put Justice Eakin
19 under oath, which is why we requested that he
20 be here today, so he can confirm that he
21 understands that the Court has the discretion
22 to reject the suggested stipulations, in
23 which case the parties will follow the
24 dictates of Rule 502(D)(3), because that is
25 addressed in the rule.

1 Also, Justice Eakin will have to
2 acknowledge that he understands that if
3 written proposed stipulations of fact are
4 presented to this Court and we reject them,
5 he is waiving his right to seek disqualification
6 or recusal of this Court, because we sit in a
7 nonjury capacity, because of that submission.

8 That is the only question I want to
9 hear answered from you, Mr. Puskas, and you,
10 Mr. Costopoulos.

11 Do you wish us to put Justice Eakin
12 under oath and proceed? Mr. Puskas?

13 MR. PUSKAS: Can we have a moment, Your
14 Honor, so I can talk to Mr. Costopoulos?

15 JUDGE PANELLA: Certainly.

16 MR. PUSKAS: I appreciate that.

17 JUDGE PANELLA: Actually, why don't you
18 talk; and we're going to take a brief
19 five-minute recess.

20 (Short recess taken.)

21 JUDGE PANELLA: I guess, Mr. Puskas, we
22 left off with you.

23 MR. PUSKAS: Thank you, Your Honor.
24 May I approach?

25 JUDGE PANELLA: You mean up to the

1 podium?

2 MR. PUSKAS: Yes.

3 JUDGE PANELLA: Certainly.

4 MR. PUSKAS: Thank you. My remarks are
5 brief, Your Honor.

6 JUDGE PANELLA: I don't know what you
7 mean by "remarks." The question is, do you
8 want to submit proposed stipulations of fact
9 in lieu of a trial to the Court?

10 MR. PUSKAS: We have none to submit
11 today. And I would like to put on the record
12 the reason why.

13 JUDGE PANELLA: That's okay. We don't
14 need that. That's not our purpose for today.
15 And you didn't know what we were just going
16 to say until you just heard it, because we
17 haven't had any communication with you.

18 MR. PUSKAS: Okay.

19 JUDGE PANELLA: All we need to know is,
20 do you want to make use of the week that we
21 gave you?

22 MR. PUSKAS: We would like to.

23 JUDGE PANELLA: That's fine. That's
24 all we need from you to know. I said today
25 is a very narrow matter. This is technically

1 a 502 hearing. And you have satisfied what
2 we wanted to know.

3 MR. PUSKAS: Okay.

4 JUDGE PANELLA: You may take a seat.

5 MR. PUSKAS: All right.

6 JUDGE PANELLA: Have a seat,
7 Mr. Costopoulos. I haven't called you on.
8 Have a seat. All of you, just so that you
9 know that I'm just not sitting up here
10 wasting time, I have an enormous amount of
11 respect for Mr. Puskas and for Mr. Costopoulos.

12 And when Mr. Puskas says he wants to
13 say something to me, it makes me pause and
14 think about whether I should grant that. So
15 I'm thinking about that.

16 (Pause.)

17 JUDGE PANELLA: Mr. Puskas, retake the
18 podium. The only issue before us today is
19 whether or not the parties want to make use
20 of 502(D). So I'm going to ask you to
21 restrict your comments to that. Don't go
22 beyond that. But when you say you want to
23 say something to us, we'll let you do that.

24 MR. PUSKAS: I appreciate that very
25 much, Your Honor. Upon further

1 consideration, I have no further remarks to
2 make to the Court. I do appreciate having
3 the time that we may consider filing
4 stipulations within that week.

5 JUDGE PANELLA: Thank you very much.

6 MR. PUSKAS: Thank you.

7 JUDGE PANELLA: We're in adjournment.

8 Thank you.

9 MR. COSTOPOULOS: Wait a minute, Your
10 Honor. Your Honor, Your Honor.

11 JUDGE PANELLA: Mr. Costopoulos, we are
12 in adjournment. You may have a seat.

13 COURT CRYER: This hearing is now
14 adjourned.

15 (Short pause taken.)

16 JUDGE PANELLA: All we're doing is
17 making all you good people stand up and sit
18 down, stand up and sit down.

19 Mr. Costopoulos, you can come up to
20 the podium. I gather that's what you wanted
21 to do.

22 Now, in all honesty, see, I happen to
23 think you're one of the best lawyers in this
24 great state. However, you and I weren't on
25 the same wavelength many times at the initial

1 pretrial conference; and I thought you were
2 going way beyond matters of inquiry that we
3 were directing at you.

4 So my request to you -- you know what
5 happens when a judge says a "request." It's
6 really a demand; right? It is the same as
7 with Mr. Puskas. The only inquiry we have
8 here today is whether the parties want to
9 submit stipulations of fact in lieu of trial
10 pursuant to Rule 502(D).

11 If you want to make comments to us
12 about that, we'll hear from you. If your
13 comments go beyond that, you're not permitted
14 to do that, Mr. Costopoulos.

15 So do you understand what I'm trying to
16 say? It's the same comment we made to
17 Mr. Puskas.

18 MR. COSTOPOULOS: May it please the
19 Court.

20 JUDGE PANELLA: No. Do you understand
21 that your remarks have to be restricted?
22 Answer my question first to whether or not
23 your client wishes to join with the Board and
24 submit stipulations in lieu of trial pursuant
25 to Rule 502(D). Do you want to comment on

1 that?

2 MR. COSTOPOULOS: I want to comment on
3 why we're here.

4 JUDGE PANELLA: No. Then you're going
5 beyond that.

6 MR. COSTOPOULOS: The issue --

7 JUDGE PANELLA: Listen, you're going to
8 have another opportunity. Today is not the
9 purpose for that. At the final pretrial
10 conference you'll be given all the
11 opportunity you want to address other issues.

12 The Court considers the joint motion to
13 be construed pursuant to established
14 procedure and practice under Rule 502(D), and
15 that's why we have kept this hearing very
16 narrow. So if your comments are going to go
17 beyond that, I would respectfully request --
18 now, when was the last time a judge said to
19 you "respectfully request" -- that you keep
20 your comments for the final pretrial
21 conference. Okay?

22 You're a good lawyer. I have the
23 utmost respect for you. But if it goes
24 beyond that, you just don't have the right to
25 do that today. Today's hearing is limited to

1 that.

2 Don't do it, Mr. Costopoulos. Save it
3 for the final pretrial conference, if you
4 want to say things other than addressing
5 Rule 502(D).

6 MR. COSTOPOULOS: The rule that you're
7 asking me to comment upon --

8 JUDGE PANELLA: Uh-huh.

9 MR. COSTOPOULOS: -- does not track the
10 history that has brought us here.

11 JUDGE PANELLA: I'm sorry. I didn't
12 hear that.

13 MR. COSTOPOULOS: Does not track or
14 explain. And we talk about transparency and
15 putting everything out there.

16 JUDGE PANELLA: Right.

17 MR. COSTOPOULOS: In the court of
18 public opinion, openly. The rule that you've
19 made reference to and the manner in which we
20 have been restricted going forward today does
21 not track why we are here today.

22 JUDGE PANELLA: Okay. Well, hold on.
23 We disagree with you. We are only here
24 regarding the submission of additional
25 stipulations, and this is done in every other

1 case in which the parties wish to do this.

2 So with that, since you clearly want to
3 go beyond that -- and all this hearing was
4 limited to was to give the parties the right
5 to file stipulations in lieu of trial.

6 I'm going to have to ask you, then, to
7 retake your seat, please, trying to be as
8 nice as I can about this, because that is all
9 this hearing was about today. Thank you,
10 Mr. Costopoulos.

11 MR. COSTOPOULOS: Can we read into the
12 record the joint motion that was filed?

13 JUDGE PANELLA: The motion is part of
14 the record.

15 MR. COSTOPOULOS: Can we put into the
16 record the basis for the motion, which you
17 have --

18 JUDGE PANELLA: No, you may not. No,
19 you may not.

20 MR. COSTOPOULOS: All right.

21 JUDGE PANELLA: There is a specific
22 procedure in the rules how to get this
23 accomplished, and we are following that. You
24 can retake your seat. Did you hear me?

25 MR. COSTOPOULOS: Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE PANELLA: We're in adjournment.
Thank you.

(Whereupon, the above-captioned matter
was adjourned.)
