

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Michael J. Sullivan : No. 2 JD 13
Judge : No. 5 JD 14
Philadelphia Traffic Court : No. 9 JD 15
Philadelphia County :

RECEIVED AND FILED
COURT OF
JUDICIAL DISCIPLINE
OF PENNSYLVANIA

2016 MAY 13 P 2:55

BEFORE: Honorable Robert J. Colville, P.J., Honorable Carmella Mullen, J.,¹
Honorable Jack A. Panella, J., Honorable John J. Soroko, J., Honorable David J.
Shrager, J., Honorable David J. Barton, J., Honorable Cathy Ann Hardaway, J.*

OPINION BY JUDGE BARTON

FILED: May 13, 2016

AMENDED OPINION AND ORDER

On January 14, 2016, we filed an opinion² in this case which found that
Respondent, former Judge Michael J. Sullivan's conduct constituted:

- A. A violation of Rule 2A of the Rules Governing Standards of Conduct of Magisterial District Judges;
- B. A violation of Rule 4D of the Rules Governing Standards of Conduct of Magisterial District Judges;
- C. A violation of Rule 8A of the Rules Governing Standards of Conduct of Magisterial District Judges;
- D. A violation of Article V, §18(d)(1) of the Pennsylvania Constitution, for engaging in conduct that brings the judicial office in disrepute;
- E. A violation of Article V, §18(d)(1) of the Pennsylvania Constitution, for engaging in conduct that prejudices the proper administration of justice; and
- F. The derivative violations of Article V, §17(b) of the Pennsylvania Constitution, for violating Rules 2A, 4D, and 8A.

¹ Judge Mullen's term on the Court has expired during the pendency of this case. As the matter was in progress at the end of her term she continues to participate pursuant to Article V, §18(b)(2) of the Pennsylvania Constitution.

² *In re Sullivan*, ___ A.3d ___ 16 WL 2337995 (Pa.Ct.Jud.Disc. Jan. 14, 2016).

Respondent filed exceptions and objections to the January 14, 2016 opinion and order, which were dismissed by order of February 19, 2016. A sanction hearing pursuant to C.J.D.R.P. No. 504 was held before the Court *en banc* on April 1, 2016.

Any finding by this Court of a violation of the applicable disciplinary rules or canons may result in a full range of penalties up to and including removal from office. ***In re Eagen***, 814 A.2d 304, 306-307 (Pa.Ct.Jud.Disc. 2002). We find the sanction of removal from office appropriate here because former Judge Sullivan's misconduct goes to the sanctity of the judicial process – it involved deciding cases for reasons other than the evidence presented, and the conduct involved a *pattern* of manipulating cases. We recounted former Judge Sullivan's actions in willfully participating in a system where certain litigants received better outcomes without regard to the evidence and the law after judges involved had received *ex parte* requests for "consideration," or "special consideration," in our January 14, 2016 opinion. That opinion began with the statement that "There is no place for corruption in the Pennsylvania judiciary. No type of corruption is acceptable in Pennsylvania." (Slip Op. at 1). We firmly hold this proposition to remain true, and based on the evidence presented at trial any sanction short of removal would minimize the damage done by former Judge Sullivan to our Commonwealth's judicial system.

We acknowledge Judge Mullen's dissent which notes that former Judge Sullivan had no formal legal education and concludes that, because of his criminal acquittal, former Judge Sullivan should receive his back-pay. The dissent analogizes former Judge Sullivan's case to that of Judge Bruno. See ***In re Bruno***,

69 A.3d 780 (Pa.Ct.Jud.Disc. 2013). The dissent correctly observes that both Judges Sullivan and Bruno were acquitted of their federal criminal charges, and that Judge Bruno was ultimately awarded his back-pay. The dissent concludes that we should, similarly, award former Judge Sullivan his back-pay for the period of his original suspension because of his criminal acquittal. The dissent reasons that because former Judge Sullivan's original suspension without pay was premised upon the indictment and he was later acquitted, no basis remains under which we should properly withhold this back-pay.

We view the *Bruno* case as having more differences than similarities with the instant facts. The *Bruno* Court used the totality of the circumstances test to look beyond allegations of crimes and evaluate whether the underlying conduct violated the Pennsylvania Constitution or Canons in reaching a decision on the petition for suspension of Judge Bruno.

In *Bruno*, this Court looked beyond the fact that the judge had been indicted and reviewed the factual basis for the indictment. There, an evaluation of the totality of the circumstances revealed that the indictment lacked substance, and although the Court concluded that suspension was appropriate, the suspension was *with pay*. *Id.* at 782 (applying totality of circumstances test formulated in *In re Larsen*, 655 A.2d 239 (Pa.Ct.Jud.Disc. 1994)).

When the totality of the circumstances involving former Judge Sullivan's conduct is evaluated, it demonstrates that he was a willing participant in a scheme to manipulate the results of cases for improper reasons. The testimony at trial revealed that through judicial employees he sent and received note cards requesting what was later termed by the FBI as "special consideration." (N.T. 36-

53). Judge Sullivan did not only receive such requests, but initiated such requests that were made to other jurists as well. (N.T. 51-53). As we look beyond the indictment into the underlying facts, it is these underlying facts which provided the basis for the finding of misconduct in our January 14, 2016 decision.

Admittedly, the petition seeking former Judge Sullivan's original suspension was premised upon his federal criminal indictment. The indictment, of course, was premised upon former Judge Sullivan's conduct. Had this initial suspension been predicated more directly upon the conduct, and not the indictment, we think there could be no question whether he should now receive his back-pay.

It also should not pass without comment that this Court did evaluate the totality of the circumstances in 2013 in making the determination that then-Judge Sullivan should be suspended without pay. See *In re Sullivan*, 74 A.3d 1187 (Pa.Ct.Jud.Disc. 2013). There, having considered the Judicial Conduct Board's (Board) petition for suspension, Respondent's answer, and a petition by Respondent and the Board's answer thereto, the Court found, as do we, that the similarities between the two cases were far fewer than the differences. In so concluding, the Court quoted with approval a statement in the Board's Memorandum in Support of its Petition for Suspension Without Pay that:

. . . when one compares the facts alleged against Judge Bruno in the criminal indictment to the facts alleged against Judge Sullivan, it is clear that Judge Sullivan's participation in the 'ticket fixing' scheme was of far greater depth and duration than Judge Bruno's alleged participation.

Id. at 1190.

Former Judge Sullivan was able to have this issue reviewed by this Court a second time by filing his "Motion to Clarify Prior Orders So Judge Sullivan Can

Receive His Back Pay”³ which was denied by Judge Panella, the Conference Judge in the case, without prejudice to be raised at the conclusion of the trial. Following another review of the totality of the circumstances a majority of this court concluded the motion should be denied for the reasons in the Opinion and Order of August 27, 2015.

We see no error in the reasoning of this Court in its 2013 determination to suspend without pay based on the differences between Bruno and Sullivan, or when reviewed again in 2015. We continue to see no entitlement to back-pay in a case where, as here, the conduct giving rise to the original suspension forms the basis of ethical violations that result in removal. In this case, we cannot in good conscience direct the Commonwealth to pay back-pay for a period of time that Judge Sullivan did not work and was suspended for the very acts that later gave rise to a finding of serious judicial misconduct.

We respectfully disagree with the view expressed by our colleague Judge Mullen in her dissent. In our estimation it is impossible to equate Judge Bruno’s case with Judge Sullivan’s. Judge Bruno is a magisterial district judge elected in Chester County who volunteered one week per year to staff Philadelphia Traffic Court (“PTC”) when its judges were attending their required annual continuing education. In his case, after a review of the indictment and other items of proof, this Court concluded that there was no evidence against Judge Bruno implicating

³ Judge Sullivan also attempted to have this issue addressed in the Supreme Court independently of this action. The Supreme Court had initially suspended Judge Bruno without pay on February 1, 2013, and after Judge Sullivan’s acquittal vacated its suspension order on November 18, 2014. ***In re Sullivan***, 104 A.3d 323 (Pa. 2014). The Supreme Court expressly recognized that vacatur did not affect our Order of Suspension.

him in what was otherwise pleaded as a substantial conspiracy.⁴ See **Bruno**, 69 A.3d at 785-786 (the evidence against Judge Bruno “falls decidedly short of establishing . . . [Judge Bruno’s] participation in the pervasive, expansive, truly impressive conspiracy described in the Indictment”).

In contrast, former Judge Sullivan was a commissioned PTC judge, who was later promoted to be its administrative judge, and worked in PTC on a day-to-day basis. Although not formally law trained, he had completed the required certification course, as well as annual continuing education requirements, both of which are designed for non-lawyers. Significantly, those classes provided instruction in judicial ethics annually. To the extent that former Judge Sullivan maintains he was told it was acceptable to engage in the practice of sending and receiving requests for “special consideration” so long as he didn’t receive anything of value in return for his actions, that position is belied by the evidence at trial. We find that proposition incredible, especially when viewed alongside the other credible testimony of the practices in PTC.

James Morgan, Esquire, provided instruction to PTC judges at their certifying course and annual continuing education sessions conducted by the Minor Judiciary Education Board. He testified telephonically at trial regarding the content of the instruction that he provided during the certification and annual continuing legal education classes attended by former Judge Sullivan. His testimony was similar to some statements recalled by former Judge Sullivan, but fundamentally different as to key contentions here. Attorney Morgan testified credibly that while he believed

⁴ In fact, this Court noted that the indictment reflected that “. . . the regular Traffic Court judges were chary of Judge Bruno and the other magisterial district judges and found it difficult, challenging and risky to get illegal things done during the week Bruno and the other magisterial district judges were in Traffic Court.” **In re Sullivan**, 74. A.3d at 1189 (quoting **In re Bruno**, 69 A.3d at 783).

the PTC practice of using a “reader”⁵ rather than the officer who witnessed the violation to prosecute cases was unconstitutional, he never told judges it was ethical or appropriate to send and receive *ex parte* requests with other judges seeking preferential outcomes. That the illicit nature of the practice was evident is further supported by the testimony of Judge Sullivan’s judicial staff member Danielle Czerniakowski (his “personal” judicial staff employee), who testified that the requests were written on notecards delivered to and from judges or their personals, and later discarded after the trial “because they weren’t part of the official record,” and that the practice was kept hidden from the public view. (N.T. 47-48).

It cannot be reasonably disputed that Judge Sullivan entered into a system marred by corruption. However, rather than refuse to participate in this system, he simply fell into line, willfully engaging in the same corrupt practices as other PTC judges. It was his conscious decision to participate that resulted in his indictment, the public criminal trial, and the revelation of additional facts about his role in sending and receiving *ex parte* requests to obtain more favorable outcomes for those persons personally or politically connected to PTC judges. A more lengthy formal legal education would not likely have changed the result or provided what was needed – the willingness to stand up for what was right and buck a corrupt tide. His oath of office required no less.

⁵ In this context, a “reader” is a law enforcement officer who lacks any first-hand knowledge of the violation, and typically is the only witness in court to testify for the Commonwealth. Pa.R.Crim.P. 454(B) provides:

[T]he issuing authority shall try the case in the same manner as trials in criminal cases are conducted in the court of common pleas when jury trial has been waived In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant.

Accordingly, we enter the following order.

Judge Mullen files a dissenting opinion in which Judge Shrager joins.

*Judge Hardaway did not participate in the consideration of this case.

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ORDER OF COURT

AND NOW, this 12th day of May, 2016, after a hearing in which the Court received arguments from counsel and testimony from Respondent, and having considered the Findings of Fact and Conclusions of Law in the Court's January 14, 2016 Opinion and Order;

It is ORDERED and DIRECTED that Respondent, Michael J. Sullivan is REMOVED FROM OFFICE and shall be ineligible to hold judicial office in the future.

PER CURIAM

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DISSENTING OPINION BY JUDGE MULLEN

FILED: May 13, 2016

We dissent from the sanction imposed on Judge Sullivan. Judge Sullivan has no formal legal education and, naturally, does not have the appreciation for all of the finer points of ethical standards one might expect of someone with such a background. Judge Sullivan inherited a regrettable situation that already existed within the Philadelphia Traffic Court, and simply went along with what was a well-established, court-wide and systemic approach to adjudicating cases. He did not invent the "special consideration" system; he just went along with it, which is where he gravely erred. However, he was far from alone in what he did and how he handled matters. His conduct was no different from that of Judge Bruno and all the other Philadelphia Traffic Court Judges.

This is disparate treatment. Judge Sullivan and Judge Bruno were federally indicted on the same charges arising from the Philadelphia Traffic Court investigation. Both Judges were ACQUITTED on ALL charges. Judge Bruno received all of his back pay and since returned to the bench in Chester County. Judge Sullivan has not received any monies that were taken from him during his

suspension and he is no longer permitted to sit as a jurist. We strongly believe that he should be given back pay for all the time he was suspended in connection with those federal criminal charges, which suspension lasted until December 2014, the point at which he was suspended by this Court on the charges considered here. Judge Bruno received all of his back pay for that same period of time.

We also believe Judge Sullivan should receive his full pension. He has resigned from Traffic Court and I believe his sanction should be a reprimand by this Court. Notably, Judge Bruno was never even formally charged by the Judicial Conduct Board in connection with his conduct in Traffic Court, much less sanctioned by this Court in any manner.

The focus of the dissent is directed to one single issue which stems from the federal criminal indictment (No. 5 JD 14).

The Court of Judicial Discipline in prior similar situations has ruled in favor of suspended jurists to allow them to receive back pay from the date of their suspension to when new charges were filed.

The majority relies on a "totality of circumstances" to support their position, this, in our opinion, fails to grasp the essence of our dissent. Judge Sullivan's suspension without pay was directly connected to his indictment for the above criminal matter. It is our position that once Judge Sullivan was found not guilty in the above matter, he should receive all monies owed to him for the period between his suspension and his exoneration.

Judge Shrager joins in this dissenting opinion.