

[J-12A & B-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

IN RE: NOMINATION PAPER OF RALPH : No. 198 MAP 2004
NADER AND PETER MIGUEL CAMEJO :
AS CANDIDATES OF AN INDEPENDENT : Appeal from the Order of the
POLITICAL BODY FOR PRESIDENT : Commonwealth Court entered October 14,
AND VICE PRESIDENT IN THE : 2004 at No. 568 MD 2004.
GENERAL ELECTION OF NOVEMBER 2, :
2004. :

LINDA S. SERODY, RODERICK J. : ARGUED: March 1, 2006
SWEETS, RONALD BERGMAN, :
RICHARD TRINCLISTI, TERRY :
TRINCLISTI, BERNIE COHEN-SCOTT, :
DONALD G. BROWN AND JULIA A. :
O'CONNELL :

APPEAL OF: RALPH NADER AND :
PETER MIGUEL CAMEJO, AND THEIR :
INDEPENDENT ELECTORS :

IN RE: NOMINATION PAPER OF RALPH : No. 17 MAP 2005
NADER AND PETER MIGUEL CAMEJO :
AS CANDIDATES OF AN INDEPENDENT : Appeal from the Order of the
POLITICAL BODY FOR PRESIDENT : Commonwealth Court entered January 14,
AND VICE PRESIDENT IN THE : 2005 at No. 568 MD 2004.
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CONCURRING AND DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: August 22, 2006

I agree with Mr. Justice Saylor’s analysis of 25 P.S. § 2937; however, I write separately to note certain costs the Commonwealth Court ordered appellants to pay may have been awarded under separate authority.

The Commonwealth Court’s October 14, 2004 order required appellants to pay transcription and stenography costs, but did not cite any authority for that charge. The court did not write an opinion explaining its rationale. The Commonwealth Court’s January 14, 2005 order directed appellants to pay \$81,102.19 in total costs and likewise omitted any citation to authority or opinion explaining its rationale. As the majority notes, a bill of costs submitted to the Commonwealth Court identified \$42,835.19 of the total amount as costs of court reporter appearances, transcription of proceedings, and transcripts. Majority Slip Op., at 7 (citing Appellees’ Reproduced Record, 17 MAP 2005, Petitioners’ Bill of Costs, II. “Itemized Listing of Costs.”). The costs imposed for handwriting expert witnesses totaled \$38,267.00. Id.

While § 2937 cannot provide the basis for the January 14, 2005 order, the court could have levied the \$42,835.19 in costs under § 322 of its Internal Operating Procedures.¹ However, there is no alternate provision authorizing the imposition of

¹ Section 322 provides in relevant part, “In any proceeding where a stenographer is present, the presiding judge or duty judge shall, incident to the disposition of the proceeding, provide by order for the allocation of the costs for the stenographer. Such costs normally include the appearance fee and the cost for the transcription of the notes of testimony” 42 Pa.C.S. § 322.

expert witness fees in this instance;² thus, the Commonwealth Court lacked authority to charge appellants for the \$38,267.00 in expert witness costs. Accordingly, I would affirm the January 14, 2005 order to the extent it awarded \$42,835.19 in costs, and I would reverse it to the extent it awarded an additional \$38,267.00 in costs.

² The rules of civil procedure are not applicable to a challenge to a nomination petition or paper. In re Nomination Petition of Johnson, 502 A.2d 142, 145 (Pa. 1985).