

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1280 Disciplinary Docket No. 3
Petitioner :
v. : No. 158 DB 2005
: Attorney Registration No. 46044
MARYANN F. SWIFT, :
Respondent : (Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 30th day of November, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board dated July 9, 2007, the Petition for Review and response thereto, it is hereby

ORDERED that MaryAnn F. Swift is suspended from the Bar of this Commonwealth for a period of five years and she shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

Mr. Justice Fitzgerald did not participate in this matter.

A True Copy Patricia Nicola

As of: November 30, 2007

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 158 DB 2005
Petitioner	:	
v.	:	Attorney Registration No. 46044
MARYANN F. SWIFT	:	
Respondent	:	(Montgomery County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On October 19, 2005, Office of Disciplinary Counsel filed a Petition for Discipline against MaryAnn F. Swift, Respondent. The Petition charged Respondent with professional misconduct arising out of allegations that she made numerous false statements about judges and their court personnel. Respondent filed an Answer to Petition for Discipline on December 12, 2005.

A disciplinary hearing was held on March 7 and March 24, 2006, before a District II Hearing Committee comprised of Chair Lance J. Nelson, Esquire, and Members Raymond Peppelman, Jr., Esquire, and Anthony Morris, Esquire. Petitioner's case included the introduction of documentary evidence and the testimony of Judge Gregory E. Smith, Judge Arnold L. New, Judge Frederica A. Massiah-Jackson, Theresa McNeal, and Thomas Press. Respondent appeared pro se. She introduced documentary evidence and called as witnesses Judge Eugene E.J. Maier and Judge Christopher R. Wogan, and Dr. Robert Stanton. In addition, Respondent testified on her own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on September 8, 2006, finding that Respondent engaged in professional misconduct and recommending that she be suspended for a period of five years.

Respondent filed a Brief on Exceptions and request for oral argument on October 16, 2006.

Petitioner filed a Brief Opposing Exceptions on November 17, 2006.

Oral argument was scheduled to be heard by a three-member panel of the Disciplinary Board on March 12, 2007. However, by letter of March 9, 2007, Respondent informed the panel members that she was unable to be present. The Board found this letter to serve as a withdrawal of the request for oral argument.

This matter was adjudicated by the Disciplinary Board at the meeting on March 20, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent was born in 1948 and was admitted to practice law in the Commonwealth in 1986. She maintains her office at 1010 Fraser Road, Erdenheim PA 19038. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior history of discipline consisting of an informal admonition administered in 2004.

The Dickens and Contempt Proceedings

4. In 2002 and 2003, Respondent was the subject of two contempt proceedings before the Honorable Gregory E. Smith in the Philadelphia Court of Common Pleas. The first contempt petition related to her actions in the matter of Commonwealth v. Dickens. The second contempt petition arose from her conduct in the first contempt proceeding.

5. On April 10, 2002, a probation violation hearing in Dickens was held. At that hearing, Lenora Clayton, Esquire, appeared for defendant Mr. Dickens. Judge Smith found Respondent in contempt for refusing to desist from attempting to represent the defendant.

6. On May 22, 2002, Respondent filed a Notice of Appeal to the Superior Court of the judgment of sentence of the defendant in Dickens.

7. On September 9, 2002, Judge Smith held a hearing with regard to Respondent's conduct during the first contempt proceeding. Samuel C. Stretton, Esquire, appeared on behalf of Respondent.

8. After conclusion of said proceedings, Judge Smith sentenced Respondent to serve three to six months of incarceration; directed that Respondent be incarcerated for about 1 ½ to two hours; vacated his original sentence; continued the hearing; ordered Respondent to receive a mental health evaluation and to surrender her weapons to the Sheriff's Office; and found that Respondent committed additional acts of criminal contempt by her conduct at the hearing.

9. On October 2, 7, and 22, 2002, Judge Smith held hearings in both the April 10, 2002 and September 9, 2002 contempt proceedings.

10. On October 9, 2002 Respondent filed with the Superior Court in Dickens a Motion to compel the filing of an opinion by Judge Smith, which was granted by Order of November 18, 2002.

11. On November 12, 2002, Judge Smith held an additional hearing in both contempt proceedings. At the conclusion of this hearing, Judge Smith: vacated the first contempt finding and sentence; continued the second contempt matter for six months; and stated that if Respondent successfully underwent treatment, the second contempt would be vacated.

12. On November 12, 2002, Respondent filed a Motion to Reconsider the sentence in the second contempt hearing, which Judge Smith denied without a hearing by Order dated November 18, 2002.

13. On December 17, 2002, Respondent filed a Notice of Appeal of the November 12, 2002 Order in the second contempt proceeding.

14. Judge Smith filed an Opinion in Dickens on January 17, 2003. On February 4, 2003 Respondent filed an Application for Remand for Corrected Opinion and Request for Stay of Briefing Schedule in the Superior Court, which was denied by Order of March 3, 2003. Judge Smith filed an Amended Opinion on February 5, 2003. On April 7, 2003, another hearing was held before Judge Smith in the Second Contempt Proceeding.

15. On August 12, 2004, Respondent filed in the Superior Court a Brief to appeal from the Judgment of Sentence in the Contempt Appeal. (Ex. P-14) Some of the excerpts of the brief are as follows:

a. This absurd and outrageous inquiry proved to be only the beginning of a protracted course of judicial lunacy and thuggery that continues to date and is discussed herein;

b. Jurist Smith, his hateful fervor and personal animus toward Appellant escalating, then began to engage in what had become a sickening pattern of not merely exaggeration but outright mendacity that is patently contradicted by the record;

c. Nevertheless, jurist Smith, who outside of this matter frequently intimidates witnesses and attorneys by his erratic and unpredictable conduct on the bench, allegedly fueled by what is recognized in the legal community as a penchant for alcohol and a persistent state of hung over irritability, was now on a roll as he engaged assistant public defender Clayton, previously recognized as being inexplicably assigned to his courtroom for the better part of a decade and thus, a loyal member of his staff, in a drama to exaggerate what was clearly stated on April 10, 2002 as a "threat" to report her (to her superiors for representing the undersigned's client...) Unfortunately this ghetto-mentality thug in a judicial robe was determined to make good on this [sic] September 4th threats to incarcerate and strip the undersigned of her property while characterizing same as "crazy" . He then gleefully asked to proceed to sentencing but not before escalating his lying characterization of the events of April 10th up another notch. After Stretton reminded him that 4 ½ hours in custody were an adequate sentence juror [sic] Smith indulged in more shameless fabrication;

d. Appellant, stunned that any Court would shamelessly lie and exaggerate the way jurist Smith had, particularly with such a disgusting and sinister spin;

e. Prior to leaving the courtroom with a new date of September 18, 2002, jurist Smith, in his vile, continuing quest to promote his unsubstantial violence agenda, said to the sheriff, "Charles, stand between her and Miss Clayton.";

f. Although the undersigned was aware that she did not have to surrender this property in an illegal manner, where jurist Smith's megalomania was escalating...;

g. Destroying Appellant's practice, another way of indulging the court's personal and racial animus toward Appellant, soon becomes a mantra;

h. Appellant is now about to lose her primary source of income for absolutely no reason other than the twisted mentality of jurist Smith whose sinister mind is working overtime as it seeks new ways to destroy the undersigned;

i. To the comment that being Irish doesn't mean being a drinker, jurist Smith immediately seized the opportunity to play the race card;

j. (The matter of a racial comment was NEVER addressed September 9, 2002 because it was never an issue. Jurist Smith was aware

of the meaning of the expression ["monkey on my back"] because he is only 6 years younger than Appellant. However, apparently he saw fit to spread this falsehood to fellow black members of the bench – and others in the legal community – as threatened – because for several weeks afterward the undersigned was constantly approached by blacks in the Criminal Justice Center and asked if she had called the court a "monkey." Appellant is an animal enthusiast with 8 pets. She knows monkeys are intelligent creatures. She would never liken jurist Smith to a monkey. Never.);

k. Jurist Smith, who is fixated on the term treatment, which he has NEVER defined, appears to be elsewhere mentally and because he is enamored with the work and appears not to care for (or probably understand) what it means other than it must be good;

l. The undersigned stood in shame as this twisted jurist trumpeted that she was mentally ill...;

m. A baffling, underlying question is that defense counsel did not act on threats trumpeted by jurist Smith in a burst of megalomania in open court...;

n. Nor has Pennsylvania case law yielded an attorney contempt case where the court engaged in an abuse of discretion and misconduct of such a magnitude that it actively involved pursuing in a predatory manner, by word and deed, the name, property and practice of an

attorney who did nothing more than wish to speak for a retarded client or walk from a court room in utter disgust from a ghetto mentality thug in a judicial robe...;

o. The record in the instant matter is such an atrocious example of judicial abuse and incompetence as to be for classification as fiction. Unfortunately, it is a sad but true excursion through the First Judicial District where a judicial thug like Gregory Smith can not only buy a seat on the bench but can also DYSfunction [sic] for years with perfect immunity from scrutiny or reprimand by court administration...; and

p. Appellant asks that this Court address the predatory and vindictive conduct of a jurist who, dressed in a judicial robe, constitutes the real danger to the legal community and whose incompetence and ghetto mentality hype are an unacceptable substitute for existing law, judicial temperament and courtroom decorum.

16. By decision dated March 29, 2005, the Superior Court upheld Respondent's contempt conviction and sentence and affirmed the Dickens conviction.

The Appointment List Proceeding

17. In December 2002, the Honorable Frederica A. Massiah-Jackson, President Judge of the Court of Common Pleas of Philadelphia County, commenced

proceedings to consider Respondent's competency to handle court appointments in criminal matters, following the contempt proceedings before Judge Smith.

18. Judge Massiah-Jackson held a hearing on December 23, 2002. Thereafter, the judge entered an Order dated February 5, 2003 that limited Respondent's court appointments to appellate matters.

19. On May 11, 2004, Judge Massiah-Jackson held another hearing as a result of which she increased the number of Respondent's court appointments to compensate for income lost due to elimination of trial court appointments.

The Letter to Judge Fitzgerald

20. Respondent sent a letter dated January 12, 2005 to Honorable James J. Fitzgerald, III, Administrative Judge, Philadelphia Court of Common Pleas (Ex. P-6), wherein she stated (punctuation and emphasis in the original):

a. Unfortunately, court administration, in toto, has never responded to my cries of chronic judicial abuse and illegal conduct on Smith's part and to that end the matter has effectively continued to date without resolution;

b. There is no precedent for the magnitude of judicial misconduct...in Pennsylvania case law.

c. In fact a letter to President Judge Massiah-Jackson on November 5, 2002 resulted in a Kangaroo Court session with her on

December 23, 2002 where I was inexplicably designated "incompetent" and had my work pulled.

d. As you will see by reading the narrative/argument of the brief, over a period of months that added up to a year, Smith hauled me into court on the pretext of having a contempt hearing that never took place because he was having too much sadistic fun holding me up to public scorn and ridicule each session...

e. They [sheriffs] did illegally and without cause come into Montgomery County and take this property that I gave up only because of Smith's escalating megalomania.

f. This property has never been returned and Smith has arrogantly and defiantly refused to sign an order regarding same...He continues to break the law because court administration in the First Judicial District does not monitor judicial misconduct. Apparently "Pay to Play" means "Pay to Stay" on the bench.

g. This is what is called ghetto mentality hype by Smith whose penchant for lying is documented elsewhere in the record.

h. (I must note that I am not surprised that the [weapons permit] hearing is still open since I am certain that Smith and Clayton, who felt comfortable engaging in their ghetto mentality hype in the First Judicial District, probably never envisioned having to come out of their warm and

protective cocoon into a hostile, rational environment such as Montgomery County and offer a hurriedly put together and rehearsed "threat" that has no record proof...)

i. They have never accepted the offers, again because ghetto mentality hype has no time for the truth. These two run from truth and justice as if it were Kryptonite.

j. (It is abundantly clear by now that President Judge Massiah-Jackson has a character assassin agenda that is so obvious as to invoke childhood memories of the transparency of the village idiot...)

k. The loss of my property has handicapped my practice and cost me several jobs I could not accept, worth several thousand dollars, because I could not go into neighborhoods where Smith could comfortably slip into a bar and stay until closing.

l. (Yes, this sick, predatory mongrel [referring to Judge Smith] had us wait until he disposed of over 45 cases!...)

m. It's time to restore me to my property and the person I was before April 10, 2002 when I appeared in court before a predatory ghetto mentally [sic] thug in a judicial robe.

n. The complaint against Smith will be "global" and will reach beyond this matter where I believe he is unfit morally, socially and intellectually to be on the bench. His ...documented taking of money during

the last election, his documented conduct during the first Lex Street Massacre trial where he made up the law because he frankly doesn't know it...) Imagine the Daily News tracking him down after hours in the (unnamed) bar that he hangs out in with his (unnamed) police officer drinking buddy! What a strange liaison [sic] but what a great story!...

o. („Let them know that “ghetto mentality hype” will not be accepted as a substitute for legal proof.)

p. ...I'm going to organize it into a long overdue book about the First Judicial District. Name? Monkeyshines: The Sad Plight of the Philadelphia Judiciary From Corruption in the 1980's to Contemporary Pay-to-Play Robes [sic] (obviously featuring Smith as the example of incompetence, immorality and unchecked reckless misconduct).

q. Perhaps if Court Administration had interceded from Day One and stopped what became a year of judicial misconduct I would not have the quality of life I have today. It is one thing for Court Administration to overlook a single act of misconduct but to allow and condone a year of harassment and illegal conduct on the part of a known, mentally unbalanced thug is disgraceful.

The Warren Matter

21. Beginning in November 2004, Respondent assisted Richard Johnson, Esquire, counsel of record, in representing the defendant in a case captioned Commonwealth v. Shaheed Warren. Warren was assigned to the Honorable Chris Wogan. Mr. Johnson filed a timely notice of appeal to the Superior Court on September 9, 2004.

22. On September 14, 2004, the court ordered defendant to file a Statement of Matters Complained of on Appeal, pursuant to Pa.R.A.P. 1925 (b), within 14 days.

23. On September 30, 2004, the court granted an Application to extend the time to file the 1925(b) Statement for 14 days, as the transcript was not yet available.

24. On November 1, 2004, a second Application to extend the time was filed, which was granted by Order dated November 9, 2004.

25. On November 10, 2004, Judge Wogan filed his Opinion.

26. Between November 2004 and April 2005, Respondent communicated with Judge Wogan and his law clerk by making telephone calls and facsimile transmissions, some of which were not copied to opposing counsel, addressing her inability to file a Statement pursuant to Pa.R.A.P. 1925(b) because the transcript had not been filed, and her claim that the court prematurely issued an opinion in the absence of a Statement.

27. Respondent sent to Judge Wogan an ex parte facsimile dated December 23, 2004 (Ex. 22) with an attached cartoon:

Hi!

Last chance to show that "Holiday Spirit" before this defendant's briefing date of December 28, 2004.

Filing an Amended Opinion to correct the grave judicial error of inviting a 1925(b) statement and then reneging on the invitation will avoid the filing of a "Petition To Stay Briefing Schedule and Remand Record To Lower Court For Filing Of Amended Opinion To Dispel Myth That Court Is Deliberately Torpedoing Direct Appeal Because Law Clerk Won't Own Up To Ignorance Of 1925(b) Practice.

Don't be a Grinch - make Shaheed's Christmas a merry one.

28. Judge Wogan filed an Amended Opinion on March 7, 2005, to which he attached some of Respondent communications. (Ex. P-24)

29. In an ex parte facsimile transmission to Judge Wogan dated April 19, 2005, Respondent acknowledged receipt of the Amended Opinion. Respondent also stated that:

One of the attached documents, an Order dated February 5, 2003, is one of two libelous Orders generated by Frederica Massiah-Jackson that will soon be the subject of a petition for a writ of mandamus for rescission in the Pennsylvania Supreme Court because said Orders were maliciously generated for the sole purpose of protecting a member of the bench who had overstepped the boundaries of judicial turpitude. That is, there was and had never been a basis in fact for the content. You have also apparently been treated to a great deal of misinformation that represents one side of a campaign of

judicial abuse that will soon be brought to the attention of the Pennsylvania Supreme Court and the Judicial Conduct Board.

I strongly suspect that you are being used by being given this dated factually inaccurate documentation...

31. In an ex parte letter to Judge Wogan dated April 22, 2005 (Ex. P-26), Respondent wrote:

a. This Order of [February 5, 2003] was generated by Massiah-Jackson to protect the interest of jurist Gregory Smith who had engaged not only in a protracted period of judicial harassment and misconduct in relation to a contempt citation but who had also engaged in illegal conduct that exceeded the jurisdiction of the First Judicial District;

b. In order to accomplish this twisted design, Massiah-Jackson, without any supporting antecedent conduct or substantive evidence whatsoever, decided to use the old "mental disorder" routine;

c. The reference to no firearms covers Smith's butt because in a fit of alcohol-induced paranoia, he sent Philadelphia sheriffs to my home in Montgomery County; and

d. Did Massiah-Jackson tell you any of this when she gave you the Order or filled your ears with nonsense?

32. On April 27, 2005, Respondent filed in the Superior Court, over Mr. Johnson's signature, a Petition for Stay of Briefing Schedule and Remand to Lower Court,

in which she objected to the inclusion of documents which she had sent to Judge Wogan as attachments to the court's opinion.

33. By Memorandum Opinion dated November 17, 2005, the Superior Court noted that Respondent had improperly combined defendant's challenges to the weight and sufficiency of the evidence into one claim, found no merit to the appellate claim that trial counsel had properly preserved in closing arguments the claim relating to weight, and affirmed the conviction.

The Flyer

34. In or about June 2005, Respondent circulated in Philadelphia City Hall a photocopied color flyer. (Ex. P-28). The Flyer contained two photographs with commentary.

35. The first photo was of a large African-American woman with exposed buttocks sitting on the back of a moving motorcycle, next to which is stated "Summer fun as President Judge Frederica Massiah-Jackson Vacations in Camden, New Jersey".

36. The second photo was of Judge James J. Fitzgerald, III, being handed a plaque, next to which is stated that the plaque is being given "for his successful efforts at saving the city money by sitting on attorneys' fee petitions or drastically cutting same without explanation."

37. Theresa McNeal, who is a Philadelphia Court of Common Pleas employee, gave credible testimony as to her observations of Respondent as the person who delivered the flyer to Judge Fitzgerald's chambers.

38. The text of the flyer is false. Specifically, the photograph identified as that of Judge Massiah-Jackson is not the Judge, as testified to by Judge Massiah-Jackson. The second photograph actually depicts Judge Fitzgerald handing a plaque to Thomas Press of the First Judicial Warrant Unit in memory of a member of that Unit who was killed in the performance of his duties.

39. Respondent did not offer credible evidence to refute the evidence that she distributed the Flyer.

40. Judge Smith has served on the Philadelphia Court of Common Pleas since 1991. Judge Smith credibly testified that he:

a. does not have a reputation for intimidating witnesses and attorneys and/or for erratic and unpredictable behavior on the bench;

b. does not have a reputation for having a penchant for alcohol while on the bench;

c. does not appear on the bench in a persistent state of hung over irritability, nor does he have a reputation for such in the legal community;

d. has never used alcohol prior to appearing on the bench and has not appeared on the bench under the influence of alcohol or hung over;

e. does not frequent any particular bar after work and may go to a bar, where he sees judges and former clients, about once a month;

f. is competent and properly executes his duties as a judge and has a good reputation in the legal and judicial community for integrity and competence;

g. has no personal agenda or animus with respect to Respondent;

h. was duly appointed and subsequently elected to the bench;

i. did not and was not found to accept illegal campaign contributions;

j. does not have a "police officer drinking buddy";

k. does not and never has suffered from a mental illness;

l. was not found to have committed errors in the Lex Street Massacre trial;

m. did not request the assignment of Ms. Clayton to his courtroom; such assignment was made by the Defenders' Association.

41. Judge Arnold L. New has served on the Philadelphia Court of Common Pleas since 1990 and knows Judge Smith in that capacity. He gave credible testimony that Judge Smith has an excellent reputation for integrity, diligence and competence. Judge New has never seen or heard of any of the reputed misconduct as alleged by Respondent.

42. Judge Massiah-Jackson was elected to the Philadelphia Court of Common Pleas in November 1983. She served as President Judge from 2001 through January 2006.

43. Judge Massiah-Jackson is familiar with Judge Smith and his reputation and performance as a judge by serving with him and supervising him on the court.

44. Judge Massiah-Jackson has no personal animus against Respondent.

45. Judge Massiah-Jackson did not remove Respondent from the court appointment trial list to protect Judge Smith from consequences of his dealings with Respondent.

46. Judge Massiah-Jackson removed Respondent because it had come to her attention that Respondent was not able to control herself in the courtroom. It was her responsibility as President Judge to "be sure that [her] judges could handle their courtroom in a fair and expeditious way without disruptive behavior created by a member of the Bar." (N.T. 118)

47. Respondent offered a newspaper article (R-20) to prove her contention that Judge Smith took illegal campaign contributions.

48. Judge Smith explained the genesis of the article and credibly testified that he did not engage in any misconduct.

49. Respondent offered no other evidence but for her own testimony concerning the truth of her statements against Judge Smith and Judge Massiah-Jackson, and other court personnel.

50. Respondent's testimony was a series of unsupported conclusions, opinions and suppositions.

Evidence on Discipline

The Weapons License Revocation Proceedings

51. On January 9, 2004, the Sheriff of Montgomery County served Respondent notice that her permit to carry a concealed weapon had been revoked.

52. By letter dated January 16, 2004, the Sheriff advised Respondent that he had found that good cause existed for the revocation of her license to carry weapons.

53. On February 2, 2004, Respondent filed an appeal of that determination to the Montgomery County Court of Common Pleas.

54. On February 5, 2004, Thomas J. Speers, Esquire, Montgomery County counsel, filed an Answer and New Matter, which Respondent did not answer.

55. On August 11, 2005, the Honorable Lawrence A. Brown held a hearing on this matter. During this hearing, Respondent:

- a. referred to "...President Judge, Massiah-Jackson, whose own background is really disturbing";
- b. testified that Judge [Gregory] Smith "lies a lot";
- c. repeated her characterization of Judge Smith as a "ghetto-mentality thug" and referred to him as "trash";

d. implied that Judge Smith and Ms. Clayton had a sexual relationship.

56. By Order dated August 24, 2005, Respondent's appeal was denied.

57. Respondent filed an appeal to the Commonwealth Court on September 21, 2005, which was still pending at the time of the disciplinary hearing.

Respondent's Health Issues

58. Beginning in the spring of 2003 and through approximately the summer of 2004, Respondent was suffering from and receiving treatment for jaw cancer.

59. A portion of Respondent's treatment involved the wearing of morphine patch among other pain relief medication.

60. Respondent testified credibly that as a result of her treatment, she suffered from significant weight loss and memory impairment.

Lack of Remorse

61. Respondent did not express any recognition of the impropriety of the accusations and characterizations she made about judges and others as set forth in the Petition for Discipline.

62. Respondent reaffirmed those statements during the disciplinary hearing.

III. CONCLUSIONS OF LAW

By her conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. RPC 1.7(a)(2) which stated in relevant part, as to conduct prior to 2005 – A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the personal interests of the lawyer.

3. RPC 1.7(b) which stated in relevant part, as to conduct prior to 2005 – A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's own interests, unless the lawyer reasonably believes the representation will not be adversely affected; and the client consents after full disclosure and consultation.

4. RPC 3.3(a)(1) which stated in relevant part, as to conduct prior to 2005 – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal; and which states, as to conduct after December 31, 2004 – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

5. RPC 3.5(b) which stated as to conduct prior to 2005 – A lawyer shall not communicate ex parte with [a judge] except as permitted by law; and which states, as to conduct after December 31, 2004 – A lawyer shall not communicate ex parte with such a person during the proceedings unless authorized to do so by law or court order.

6. RPC 8.2(b) which stated in relevant part, as to conduct prior to 2005 – A lawyer shall not knowingly make false accusations against a judge; and which states, as to conduct after 2004: A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications and integrity of a judge.

7. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

8. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the Petition for Discipline filed against Respondent charging her with professional misconduct. The Petition alleged by way of background that Respondent was found in contempt on two occasions by Judge Gregory E. Smith in the Philadelphia Court of Common Pleas and subsequently subjected to disciplinary proceedings relating to her court appointments before Judge Frederica A. Massiah-Jackson, President Judge of that Court. The Petition

goes on to charge that, thereafter, in a brief filed with the Superior Court, in correspondence and in a flyer circulated in the city hall, Respondent made false, derogatory and racist statements concerning the character, qualifications and competence of Judges Smith and Massiah-Jackson, as well as offensive comments about Judge James J. Fitzgerald, III, and Lenora Clayton, Esquire, and about the integrity of the Philadelphia Court of Common Pleas in general.

Additionally, the Petition alleged that in participating in the representation of a criminal defendant before Judge Chris Wogan, Respondent sent faxes and letters in which she made similar statements and interjected her personal issues, to the detriment of her client, thus demonstrating a lack of competence and a conflict of interest.

Petitioner bears the burden of proving by a preponderance of the evidence that is clear and satisfactory that Respondent engaged in professional misconduct. Specifically, to establish a prima facie case of making false statements or accusations as set forth in Rules 3.3(a)(1) and 8.2(b), Petitioner bears the initial burden of establishing that an attorney, based upon his or her own knowledge, made false allegations in a court pleading. This can be accomplished by presenting documentary evidence or testimony of the victims of the allegations stating that the allegations are false. The burden then shifts to Respondent to establish that the allegations are true or that he or she had an objectively reasonable belief that the allegations were true based upon a reasonably diligent inquiry. Office of Disciplinary Counsel v. Price. 732 A.2d 599 (Pa. 1999). When the alleged misconduct is misrepresentation in violation of Rule 8.4(c), a prima facie case is made

where the record establishes that the misrepresentation was knowingly made, or made with reckless ignorance of the truth or falsity of the representation. Office of Disciplinary Counsel v. Anonymous Attorney A, 714 A.2d 402 (Pa. 1998).

The evidence of record is overwhelming that Respondent made numerous statements concerning Judges Smith and Massiah-Jackson, as well as a misrepresentation with respect to Judge Fitzgerald. She accused Judge Smith, inter alia, of being an alcoholic, drunk or hung-over on the bench, incompetent, ignorant of the law, dishonest and mentally ill, drinking after hours at bars, having a personal agenda to persecute Respondent, receiving illegal campaign contributions, and engaging in judicial harassment and misconduct. Respondent suggested there was impropriety in the fact that Assistant Public Defender Lenora Clayton had been assigned to Judge Smith's courtroom for an extended period of time.

Respondent accused Judge Massiah-Jackson of engaging in judicial misconduct by instituting an inquiry as to Respondent's capacity to handle court appointments in order to protect Judge Smith. Respondent disseminated a flyer falsely identifying Judge Massiah-Jackson as a person depicted in a degrading photograph with an insulting caption. Respondent circulated an actual photograph of Judge Fitzgerald with a caption inaccurately describing a photograph of him giving an award as one showing him receiving an award for reducing fees to court-appointed attorneys.

Petitioner's witnesses established the falsity of the statements made by Respondent. Judge Smith flatly denied Respondent's accusations. Judge New, who has

known Judge Smith for 14 years and was his supervisor for one year, testified that Judge Smith has an excellent reputation for integrity, diligence and competence. Judge New had never seen or heard of any of the reputed misconduct alleged by Respondent. Judge Massiah-Jackson rebutted the allegations regarding her motivation in the court appointment proceeding against Respondent, and she refuted the contents of the flyer referring to her.

Two witnesses established Respondent's delivery of the flyer and its inherent inaccuracy. Theresa McNeal, a court employee, testified credibly that she was familiar with Respondent and observed her delivering the flyer to Judge Fitzgerald's chambers. Thomas Press is also a court employee, and identified the newsletter in which the actual photograph of Judge Fitzgerald and himself was published and described what it depicted.

Respondent did not deny having made these statements in the pleadings and correspondence. She asserted that she had no problem with the things she wrote and took full credit. Respondent attempted to deny the circulation of the flyer, but the evidence supports the finding that she in fact circulated the flyer at City Hall.

Since Petitioner established that Respondent made the statements at issue and that the statements were false, the burden shifts to Respondent. Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000). Respondent has the burden to establish by competent evidence that, "following a reasonable diligent inquiry", she had an "objective reasonable belief" that the statements and allegations she made were true. Respondent offered one piece of documentary evidence on the truthfulness of her statements. She

attempted to prove that Judge Smith took illegal campaign contributions by introducing a newspaper article concerning Judge Smith and campaign contributions. (Ex. R-20). Respondent cross-examined Judge Smith extensively. He explained the article dealt with the propriety of donations from two women who sit on a charitable board with him. Judge Smith credibly testified that he was not found to have violated any prohibition against accepting these donations.

Respondent cross-examined other witnesses and called her own witnesses in an attempt to prove the truthfulness of her statements. None of the answers provided by any of the witnesses supported Respondent's contentions that the statements were true.

As to the allegations of Judge Smith's alcoholism, Respondent's evidence was her own testimony that she knows from personal experience what alcohol smells like, can tell when someone looks hung over, and concluded that Judge Smith was a "drunk." She did not identify any witnesses to corroborate this conclusion. In conclusion, Respondent did not present a scintilla of proof to establish the truthfulness of her statements, nor did the evidence establish that Respondent made a reasonable diligent inquiry that the allegations were true.

Petitioner established that Respondent violated RPC 3.3(a)(1) by knowingly making a false statement of material fact to a tribunal; RPC 8.2(b), by making false accusations against judges; RPC 8.4(c), by engaging in conduct involving dishonesty and misrepresentation; and RPC 8.4(d) by engaging in conduct which is prejudicial to the administration of justice.

In addition, Respondent repeatedly used derogatory and racist terms to describe and refer to Judges Smith and Massiah-Jackson, who are African-American. Her correspondence and pleadings were littered with references to "ghetto mentality thug" when describing Judge Smith. She also described him as a "sick, predatory mongrel." Respondent analogized Judge Massiah-Jackson to a "village idiot." These disgusting and degrading references are too numerous to list; Respondent used other equally vile terms in her correspondence and pleadings. Respondent's defense to the derogatory meanings of the terms she used was that the terms were not racist, but simply derogatory. Respondent's actions violate RPC 8.4(d), as they prejudiced the administration of justice by bringing the legal system into disrepute.

The Warren matter involved Respondent's actions as court-appointed counsel for Mr. Warren with regard to certain post-trial proceedings. Respondent did raise legitimate issues on behalf of her client. However, she had communications with Judge Wogan and his chambers on more than one occasion without copying opposing counsel. These communications contained inappropriate jokes, cartoons and characterizations of the Judge's staff. Finally, Respondent interjected irrelevant discussion of her own conflicts with Judges Smith and Massiah-Jackson in filings in the Warren matter. Respondent displayed a lack of competence in violation of RPC 1.1, engaged in ex parte communication in violation of RPC 3.5(b), allowed personal issues to take precedence over a client's issues in violation of RPC 1.7(a)(2), and engaged in a conflict of interest in violation of RPC 1.7(b).

While Respondent committed multiple violations of the Rules of Professional Conduct, the crux of her misconduct is the making of false and derogatory statements about judges and other court personnel in various pleadings, open court, and communications with the court. In making a recommendation on the appropriate discipline, the Board reviewed prior cases involving attorneys who made false statements regarding judicial officials. A recent case reviewed by the Board is Office of Disciplinary Counsel v. Daniel C. Barrish, 130 DB 2004, 1103 Disciplinary Docket No. 3 (Pa. March 15, 2006). Mr. Barrish made false statements in an article published over the Internet and in pleadings filed in the Supreme Court of Pennsylvania. He accused a trial court judge of "fixing" several cases and implied that the judge was bribed. Mr. Barrish claimed that a Superior Court judge had "fixed" a case, violated the Canons of Ethics, and was of poor character. The Board found that Mr. Barrish violated RPC 8.2(b), 8.4(c), and 8.4(d). The Board recommended and the Supreme Court imposed a five year suspension.

In the matter of Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000), Mr. Surrick had leveled accusations of case fixing against two jurists in a pleading filed in the Superior Court of Pennsylvania in a case in which he was a party and co-counsel, including allegations that the judges were influenced by party politics and had made decisions based on outside influences. Mr. Surrick was suspended for five years.

In the matter of Office of Disciplinary Counsel v. Price, 732 A.2d 599 (Pa. 1999), Mr. Price falsely accused a district justice of official oppression and coercion over various law enforcement and political officials; case fixing; and prosecutorial bias. He

falsely asserted that an assistant district attorney embezzled a private client's judgment. Mr. Price was suspended for five years.

The sanctions imposed in the above cases support the conclusion that the Court has looked harshly upon attorneys who engage in leveling false accusations against judicial officials. Respondent's behavior is no less egregious than that of Messrs. Surrick, Price and Barrish. She engaged in repeated violations of the Rules of Professional Conduct by statements which are equally offensive.

Respondent did not produce any compelling mitigating circumstances sufficient to outweigh the gravity of her misconduct and her lack of remorse. She presented evidence of her battle with jaw cancer. The Board appreciates that Respondent suffered serious physical pain and that unquestioningly her illness had a serious impact upon her profession and her personal life. However, Respondent's illness cannot justify her unwarranted and vicious attacks on others. Any sympathy for Respondent due to her personal circumstances is outweighed by her failure to appreciate her actions. She remained unrepentant throughout these proceedings and continued to insist that she was entitled to malign and denigrate the judicial officials.

The Board recommends that Respondent be suspended for a period of five years.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Maryann Swift, be suspended from the practice of law for a period of five (5) years.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Robert C. Saidis, Board Member

Date: July 9, 2007