

IN RE: APPEAL OF ROLF : Before the Special Tribunal
LARSEN, Appellant : of the Commonwealth of
: Pennsylvania
:
: Special Tribunal Docket
: No. 2000-1

Appeal from the Order dated February 4, 2000,
At Nos. 3 & 4 Court of Judicial Discipline 1994.

BEFORE: HUDOCK, FORD ELLIOTT, FRIEDMAN, STEVENS,
TODD, KLEIN and BOWES, JJ.

CONCURRING OPINION BY: JUDGE FRIEDMAN

Decided October 24, 2002

I concur in the result reached by the thoughtful and well-reasoned opinion of the majority. I disagree only with respect to the majority's suggestion that the Court of Judicial Discipline continued to have jurisdiction in this case once Rolf Larsen became a *former justice* of the Pennsylvania Supreme Court.¹

The question of jurisdiction is a question of law involving a determination as to a court's right to proceed with litigation. 20 Am. Jur. 2d *Courts* §54 (1995).

¹ In setting forth the procedural history of this case, the majority indicates that: (1) on June 13, 1994, the Court of Common Pleas of Allegheny County removed Larsen from office under Article II, Section 7 of the Pennsylvania Constitution; and, (2) on July 5, 1994, Larsen asserted before the Court of Judicial Discipline that, because Larsen was no longer a judicial officer, the Court of Judicial Discipline lacked jurisdiction to proceed under Article V, Section 18 of the Pennsylvania Constitution. (Majority op. at 5.)

There are three separate elements to the jurisdiction of a court: (1) jurisdiction over the person, (2) jurisdiction over the subject matter, and (3) jurisdiction to render the particular judgment sought, or, as is sometimes said, jurisdiction of the particular case.^[2]

Id. (footnotes omitted).

With respect to the duration of a court's jurisdiction, the general rule is as follows:

[O]nce a court has acquired jurisdiction of a case, its jurisdiction continues until the court has done all that it can do to exercise that jurisdiction, to determine, subject to appellate review, all the issues involved, and to grant such complete relief as is within its jurisdictional power to grant. This does not mean, however, that a court which has acquired jurisdiction over a case cannot lose it in the course of the proceedings.

20 Am. Jur. 2d *Courts* §110 (emphasis added) (footnotes omitted). “[A] court [exercising continuing jurisdiction over a case] will be found to be acting in excess of jurisdiction when an order, although within the general power of the judge, is not authorized with respect to the particular case since conditions which authorized the exercise of the general power are absent.” 21 C.J.S. *Courts* §64 (1990).

² “A court can have subject matter jurisdiction over a class of cases and not have jurisdiction over a particular case due to the facts of that case.” 20 Am. Jur. 2d *Courts* §54.

There are courts of general jurisdiction and courts of limited jurisdiction. 20 Am. Jur. 2d *Courts* §68. Courts of limited jurisdiction are those which are clothed with special powers for the performance of specified duties, beyond which they have no authority of any kind. 21 C.J.S. *Courts* §3. The Court of Judicial Discipline is a court of limited jurisdiction established under Article V, Section 18 of the Pennsylvania Constitution. As such, it is clothed only with the special jurisdictional power set forth in that constitutional provision.

Article V, Section 18(b)(5) of the Pennsylvania Constitution confers jurisdiction on the Court of Judicial Discipline “to determine whether a sanction should be imposed against a justice ... pursuant to the provisions of this section [Section 18].” Pa. Const., Art. V, §18(b)(5) (emphasis added). In that regard, Article V, Section 18(d)(1) of the Pennsylvania Constitution states, “A justice ... may be suspended [from office³], removed from office or otherwise disciplined [while retaining office] for conviction of a felony [or for other specified types of misconduct]...” Pa. Const., Art. V, §18(d)(1) (emphasis added).

Thus, the jurisdiction of the Court of Judicial Discipline is limited to determining the proper discipline [the judgment sought] to impose against a sitting justice [the person] for certain types of misconduct [the

³ I agree with the majority that the Court of Judicial Discipline had jurisdiction to suspend Larsen on June 3, 1994, before his removal from office. (Majority op. at 15-16.)

subject matter].⁴ This limited jurisdiction continues until the Court of Judicial Discipline has done all that it can do to exercise its jurisdictional power. If the Court of Judicial Discipline proceeds against a *former justice* and imposes discipline that is authorized only for a sitting justice, the Court of Judicial Discipline acts in excess of its jurisdictional power. This is because the conditions which would have authorized the exercise of the jurisdictional power are absent.

Specifically, once Larsen was removed from office, the Court of Judicial Discipline could no longer exercise its jurisdictional power to sanction a sitting justice. By continuing to exercise power over Larsen, a *former justice*, the Court of Judicial Discipline exceeded its jurisdictional power over the person. Even if I were to agree that the Court of Judicial Discipline's jurisdictional power over the subject matter and the person continued after Larsen was removed from office, the Court of Judicial Discipline still lacked jurisdiction to render the judgment sought because none of the sanctions authorized by Article V, Section 18(d)(1) of the Pennsylvania Constitution apply to a *former justice*. In other words, the Court of Judicial Discipline erred in removing Larsen from judicial office, not because the sanction was moot, but because the Court of Judicial Discipline lacked jurisdictional power to do so. (See majority op. at 18-19, 26)

⁴ When words are clear and free from all ambiguity, the letter is not to be disregarded under the pretext of pursuing its spirit. Section 1921(b) of the Statutory Construction Act of 1972, 1 Pa. C.S. §1921(b).

Given the limited jurisdiction of the Court of Judicial Discipline to determine a proper sanction to impose upon a sitting justice, I would hold that the Court of Judicial Discipline lost its jurisdiction over this particular case once Larsen became a *former justice*.

ROCHELLE S. FRIEDMAN, Judge