

**[J-173-2000]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

KATHLEEN K. SHAULIS,	:	No. 44 MAP 2000
	:	
Appellee	:	
	:	
v.	:	Appeal from the Order of Commonwealth
	:	Court entered October 20, 1999 at No.
PENNSYLVANIA STATE ETHICS	:	991CD99, reversing the decision of the
COMMISSION,	:	State Ethics Commission
	:	
Appellant	:	
	:	
THE COMMONWEALTH BAR	:	
ASSOCIATION, INTERVENOR	:	SUBMITTED: October 10, 2000

**CONCURRING AND DISSENTING OPINION**

**MR. JUSTICE EAKIN**

**Decided: October 1, 2003**

I agree that the opinion of the Ethics Commission is final, giving Ms. Shaulis standing to appeal, and join Section I of the majority opinion. However, I conclude § 1103(g) of the Ethics Act is constitutional as applied to her and respectfully dissent from Section II.

Pennsylvania's Constitution has vested this Court with the responsibility of supervising the practice of law. Article V gives this Court "the power to prescribe general rules governing practice, procedure and the conduct of all courts...." Pa. Const. art. V, § 10(c). While this Court has guarded this power from the encroachment of the General Assembly on numerous occasions, it has also rejected calls for unrealistic micromanagement over provisions of general applicability. See PJS v. State Ethics

Commission, 723 A.2d 174 (Pa. 1999); Maunus v. State Ethics Commission, 544 A.2d 1324 (Pa. 1988).

This sentiment was echoed in PJS, our most recent validation of the Ethics Act, in which this Court said, "[a]lthough members of the Bar of Pennsylvania are uniformly subject to the professional and ethical standards imposed and regulated by this [C]ourt, they are not, by virtue of that membership exempt from all other professional and ethical regulations." PJS, at 178. Additionally, this Court has upheld principled workplace regulations on persons who also happened to be attorneys in Maunus, stating:

However, notwithstanding our substantial authority in this area, it is ludicrous to suggest that employers be constitutionally precluded from imposing ethical and professional requirements on their employees, some or all of who may be attorneys. This is equally true where the employer is the Commonwealth or one of its subdivisions...a lawyer who contracts his or her services to an employer is like any other employee subject to the terms and rules of that employment, provided that they are in no way inimical to the ethical standards prescribed by this Court.

Maunus, at 1326.

Ms. Shaulis accepted employment with the Commonwealth with full knowledge of the Ethics Act,<sup>1</sup> and knew it would prohibit her from representing others before the Department for a year after she left employment. Her ignorance of this law cannot be presumed; she must have weighed the benefits and obligations before accepting her position. Given the interest of preserving the integrity and neutrality of that tribunal, this is a very reasonable ethical protection, to which she subscribed when she took employment.

The majority finds § 1103(g) was directed wholly at lawyers, and therefore fails under Wajert v. State Ethics Commission, 420 A.2d 439 (Pa. 1980); this is because the Act

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<sup>1</sup> The version of the Ethics Act in place when Ms. Shaulis was hired, 65 P.S. § 403(e), was identical to 65 Pa.C.S. § 1103(g), except the phrase "with or without compensation" was replaced by "with promised or actual compensation."

states "no former public official or public employee shall represent a person...." 65 Pa.C.S. §1103(g)(emphasis added).

The Act prohibits all former employees from representation, regardless of their profession, and defines "represent" as "to act on behalf of any other person in any activity which includes, but is not limited to, the following: personal appearances, negotiations, lobbying and submitting bid or contract proposals...." 65 Pa.C.S. § 1102. One hardly needs to be a lawyer to perform these functions. This is representation before a "governmental body," not a court; one has only to walk into the seat of government to see flocks of non-lawyers representing others before the government. The Board of Revenue and Finance allows one to "appear on his own behalf or be represented by a person possessing the requisite technical education, training or experience. There is no requirement that a petitioner be represented before the Board by an attorney or certified public accountant." 61 Pa. Code § 7.5(b)(2). Many other professionals represent clients before the various governmental boards and are subject to the Act's restrictions. I cannot find this is an Act directed at lawyers.

In an Act that does not mention lawyers, the majority effectively inserts "except lawyers" into the law; hence, all others, from accountants to engineers to lobbyists, must abide by this ethical restriction, but lawyers need not. It is ironic that by finding the Act targets lawyers, the majority's result is a statutory prohibition that binds everyone except lawyers. Accordingly, I must dissent.