

[J-251-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: RICHARD D. CICCHETTI,	:	No. 92 M.D. Appeal Dkt. 1997
FORMER JUDGE AND PRESIDENT	:	No. 93 M.D. Appeal Dkt. 1997
JUDGE, COURT OF COMMON PLEAS,	:	
FOURTEENTH JUDICIAL DISTRICT,	:	Appeal from the Order of the Court of
FAYETTE COUNTY.	:	Judicial Discipline entered July 8, 1997, at
	:	No. 2 JD 96.
APPEAL OF: JUDICIAL CONDUCT	:	
BOARD (at 92MDA97)	:	
	:	
APPEAL OF: RICHARD D. CICCHETTI	:	ARGUED: November 18, 1998
(at 93MDA97)	:	

CONCURRING AND DISSENTING OPINION

MR. JUSTICE CASTILLE

DECIDED: January 13, 2000

I respectfully dissent from the conclusion of the majority in several respects. First, I believe that appellee did, in fact, violate Canons 1 and 2 of the Code of Judicial Conduct (“Code”) through his conduct towards Ms. Brueggman as well as through his involvement in the illicit check cashing and money laundering activities outlined in Part B of the Complaint. Second, I believe that participation in a retention election campaign constitutes partisan political activity, and accordingly, I would conclude that appellee’s solicitation of court-appointed employees to assist him in his retention election campaign violated the Guidelines and Canons 1, 2, and 3(B)(2) of the Code. I concur with the remainder of the Majority Opinion.

First, Canons 1 and 2 of the Code provide as follows:

CANON 1. A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2. A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or knowingly permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Here, the majority overlooks the fact that appellee's conduct towards Ms.

Brueggman clearly undermined the integrity of the judiciary, and therefore ran afoul of both Canons 1 and 2 of the Code. After graduating from Penn State University, Ms. Brueggman began employment with the Fayette County Adult Probation Office, which assigned her to appellee's court. Appellee repeatedly called Ms. Brueggman into his robing room to engage her in conversation about personal matters such as whom she dated, whether it was true that "blondes had more fun," and whether the two of them could ever "get together." At one point, appellee called Ms. Brueggman at home and importuned her to "get together" with him, giving her a weekend to think it over. When she declined, appellee asked if she knew how powerful he was and whether she knew that he could get anybody in the county to do anything that he wanted. On another occasion, appellee invited Ms. Brueggman to his chambers for lunch, commented on

her physique, and told her that he could help her if she wanted either to go to law school or to become a magistrate.

When Ms. Brueggman continued to rebuff appellee's attempts to initiate a sexual relationship with her, appellee told Ms. Brueggman that he could have her father fired from his job with the Pennsylvania Department of Transportation, intimated that he would do so unless she agreed to "get together," and generally began to make it more difficult for Ms. Brueggman to perform her job duties. On a subsequent morning, appellee put his arm around Ms. Brueggman in court and advised her that her job could be easy and that she could even be appointed a district justice position. As a result of appellee's unwarranted advances and outright threats, Ms. Brueggman resigned from her position. Throughout the period in question, Ms. Brueggman discussed appellee's harassment with a number of her colleagues and supervisors in the Probation Office, as well as employees of the Corrections Department.

In determining that the above-referenced conduct did not violate Canons 1 and 2, the majority concludes that this conduct, while patently inappropriate, did not implicate the "independence" or "integrity" of the judiciary because it did not in any way relate to the judicial decision-making process. The majority cites no authority in support of its conclusion that inappropriate conduct by a judge must implicate only the judicial decision-making process in order to violate the Canons at issue. I do not believe that this Court should provide such a narrow interpretation to the requirement embodied in these Canons that a judge uphold the integrity of the judiciary. Judges in this Commonwealth -- particularly President Judges such as appellee -- are vested not only with the responsibility of deciding cases, but also with exercising administrative duties.

By making it difficult for Ms. Brueggman to focus on her job as a probation officer and by undermining her efforts to concentrate on her duties in the workplace, appellee demonstrated a wanton disregard for his administrative responsibilities and thereby undermined the integrity of his office.

Additionally, appellee abused the power of his office by using it alternatively as a bludgeon and then as a temptation, first threatening to bring his power to bear on Ms. Brueggman's father, and then assuring Ms. Brueggman that his power could be beneficially exercised to secure her a position as a magistrate or a district justice. Using one's position as a judge in an attempt to trade sexual favors for the career advancement of probation office employees can hardly be said to inspire confidence in the "integrity"¹ of the judiciary, regardless of whether the rights of litigants are affected. I believe that the conduct of appellee in this matter towards Ms. Brueggman was reprehensible, that such conduct plainly undermined the integrity of the judiciary in violation of Canons 1 and 2, and that the majority of this Court errs by concluding otherwise.²

¹ Webster's defines "integrity" as "the quality or state of being of sound moral principle" Webster's New World Dict., 2d College Ed. (1997). Stating the obvious, the above-referenced conduct of appellee exhibited an appalling disregard for "sound moral principles."

² This Court has not determined whether the attempt by a judge to use his position in an attempt to gain sexual favors from employees violates Canon 2, but I note that other states which have examined this issue under their own version of Canon 2 have concluded that such conduct does constitute a violation of the Canon. See, e.g., In re Seaman, 133 N.J. 67, 627 A.2d 106, 120 (1993); In re Miera, 426 N.W.2d 850 (Minn. 1988); In re Gelfand, 70 N.Y.2d 211, 512 N.E.2d 533, 518 N.Y.S.2d 950 (1987); Office of Disciplinary Counsel v. Campbell, 68 Ohio St.3d 7, 623 N.E.2d 24 (1993); In re Empson, 252 Neb. 433, 562 N.W.2d 817 (1997).

Similarly, I believe that the majority construes Canons 1 and 2 far too narrowly in concluding that the findings of fact pertaining to appellee's money laundering, based on Parts B and C of the Complaint, do not set forth a violation of these Canons. During his retention campaign, appellee formed a campaign committee called the "Committee To Retain President Judge Richard D. Cicchetti" ("the Committee"). At appellee's request, several court-appointed employees cashed checks which had been made out to them and drawn against the Committee's bank account, then turned the money over to appellee. For example, Roberta Meese, who was a court-appointed employee with no connection to the Committee, cashed three checks drawn on the Committee's bank account in the aggregate amount of \$1,500 and delivered the cash to appellee. Similarly, the Committee issued checks to Meese's mother and daughter, the proceeds of which were turned over to appellee after the checks were cashed. The Campaign Expense Report, which the Committee was required to file and appellee was required to endorse, falsely indicated that these checks had been written to reimburse Meese and her family for the purchase of "party supplies," when, in fact, no party supplies were purchased nor was any money ultimately retained by Meese or her family. Appellee laundered money in an identical fashion through other court-appointed employees and similarly falsified the corresponding expense reports.

In my view, when a judge intentionally falsifies legally required campaign expense reports or launders money that was ostensibly to be used for campaign purposes, that judge plainly undermines the integrity of the judiciary in the eyes of the public. Indeed, I believe that such conduct undermines not only the judiciary but the entire judicial process and, ultimately, the cause of justice. For example, witnesses who

are sworn to tell the truth are less likely to appreciate the sacrosanct nature of their oath if they are aware that some of the judges who administer these oaths exhibit a knowing disregard for the truth on disclosure forms which they are required by law³ to complete accurately. Illegal conduct by a judge which exhibits deceit and dishonesty, such as that exhibited by appellee, not only demonstrates the lack of integrity of that judge but also undermines the reputation of the entire judiciary in the eyes of the public. In sum, I believe that the findings of fact referenced in the Majority Opinion establish a violation of Canons 1 and 2 beyond cavil.

Finally, I also dissent from the conclusion of the majority that participation in a retention election campaign does not constitute partisan political activity. Because I believe that a retention election campaign is an inherently partisan and political activity, I would conclude that appellee violated Canons 1, 2 and 3(B)(2) of the Code as well as this Court's Order of June 29, 1987, 82 Admin. Dkt. No. 1, by recruiting court-appointed employees to assist him in his retention election campaign. Although a candidate in a retention election is not designated as a member of a political party on the ballot, this lack of party designation does not render the campaign process itself non-partisan. The reality in this Commonwealth, as recognized by Judges Sweeney and Magaro, is that judicial candidates are members of political parties. As was established at trial in this matter, the individuals who donated money to respondent's campaign were all members of the Democratic party, and funds donated to respondent's campaign were also used for other Democratic candidates running in that particular election. Thus, the simple

³ By intentionally falsifying the forms at issue, appellee violated Section 3249 of the Election Code. See 25 Pa.C.S. §§ 3249, 3502.

lack of party designation on the ballot does not overcome the fact that involvement in a retention election campaign plainly constitutes partisan political activity. In sum, I dissent to the majority's resolution of the issues presented in the appeal of the Judicial Conduct Board, and concur with the majority's resolution of the issues raised in appellee's cross-appeal.

Mr. Justice Nigro joins this concurring and dissenting opinion.