

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

OCT 15 2020

RECEIVED AND FILED

IN RE:

Judge Scott DiClaudio :  
Court of Common Pleas :  
First Judicial District : 3 JD 2019  
Philadelphia County :

**JUDICIAL CONDUCT BOARD'S BRIEF  
ON THE ISSUE OF RULE VIOLATIONS**

**I. Procedural History**

On December 20, 2019, the Judicial Conduct Board (the Board) filed a Complaint in the Court of Judicial Discipline against Judge Scott DiClaudio (Respondent). Following a Pre-Trial Conference on October 1, 2020, this Court ordered the parties to file joint stipulations and briefs concerning liability on or before October 16, 2020.

**II. Discussion**

**Cynwyd Club v. DiClaudio**

On August 20, 2015, the Cynwyd Club (the Club) filed a civil complaint in Montgomery County against Respondent alleging that he owed the Club several thousand dollars in membership dues. Although Respondent notified the magisterial district court that he intended to defend the suit, he failed to appear for the trial, resulting in a judgment being entered against him in the amount of \$2,659.38. Respondent filed a Notice of Appeal in the Montgomery County Court of Common Pleas and the Club responded by filing its civil complaint in the Montgomery County

Court of Common Pleas. Respondent failed to file an Answer to the Complaint, resulting in a default judgment being entered against him in the amount of \$3,767.67.

Thereafter, Respondent embarked on a pattern of disregard for the Club and its attorneys and more significantly, blatant disrespect for the Montgomery County Court of Common Pleas by:

- Failing to comply with a Rule to Show Cause why he should not be compelled to respond to the Club's discovery request;
- Failing to comply with the Montgomery County Court of Common Pleas May 22, 2018 order that he respond to the Club's discovery request;
- Failing to appear at a sanctions hearing on September 27, 2018, in the Montgomery County Court of Common Pleas resulting in a finding of contempt against him and an order to respond to the discovery request and pay the Club's attorney fees;
- Failing to comply with the Montgomery County Court of Common Pleas September 27, 2018 order;
- Failing to appear at a second sanctions hearing on February 7, 2019, in the Montgomery County Court of Common Pleas resulting in a second finding of contempt against him and an order to respond to the discovery request and pay the Club's attorney fees;
- Failing to comply with the Montgomery County Court of Common Pleas February 7, 2019 order;
- Failing to appear at a third sanctions hearing on May 30, 2019, in the Montgomery County Court of Common Pleas resulting in a third finding of

contempt against him and an order to respond to the discovery request and pay the Club's attorney fees; and

- Failing to comply with the Montgomery County Court of Common Pleas May 30, 2019 order.

Thereafter, the Club filed a fourth Motion for Sanctions and a hearing was scheduled for October 24, 2019. Respondent appeared at the hearing and agreed to pay the sum of \$9,500 to the Club.

By repeatedly failing to obey court orders as described above, Respondent violated the law within the meaning of Canon 1, Rule 1.1 of the Code of Judicial Conduct which provides, "A judge shall comply with the law, including the Code of Judicial Conduct." In spite of the clear language of the rule, Respondent violated the law by ignoring five court orders, resulting in findings of contempt on three occasions.

By repeatedly failing to obey court orders and consequently being held in contempt as described above, Respondent violated Canon 1, Rule 1.2 of the Code of Judicial Conduct which requires judges to "avoid impropriety" where impropriety is defined as an act that "includes conduct that violates the law, court rules, or provisions of [the Code of Judicial Conduct]." Respondent's repeated failure to appear in court and obey court orders as well as his violation of Rule 1.1 of the Code of Judicial Conduct constitutes multiple violations of Rule 1.2 of the Code of Judicial Conduct. Additionally, Rule 1.2 of the Code of Judicial Conduct requires judges to avoid the "appearance of impropriety." The meaning of "appearance of impropriety" is addressed in Comment 5 to Rule 1.2 which states, in relevant part:

The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Respondent's conduct of failing to comply with court orders, being held in contempt, and failing to appear in court, squarely meets the above definition of the appearance of impropriety and constitutes multiple violations of Rule 1.2.

A finding of a violation of the Code of Judicial Conduct constitutes an "automatic, derivative, violation" of [Article V], Section 17(b) of our Constitution." *In re Jennings*, 192 A.3d 372, 379 (Pa.Ct.Jud.Disc. 2018). By violating Rule 1.1 and 1.2 of the Code of Judicial Conduct as described above, Respondent has violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania.

By his conduct in the matter of *Cynwyd Club v. DiClaudio*, as described above, Respondent violated the Disrepute Clause found in Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania which states that a judge may be disciplined for conduct which "brings the judicial office into disrepute."

This Court has stated that the judge's conduct must be found to be "extreme" in order to find that the conduct brings the judicial office into disrepute. *In re Smith*, 687 A.2d 1229, 1238 (Pa.Ct.Jud.Disc. 1996). Additionally, conduct that is outside the reasonable expectation of the public has been determined to violate the Disrepute Clause. *In re Harrington*, 877 A.2d 570 (Pa.Ct.Jud.Disc. 2005). Furthermore, determinations of whether particular conduct violates the Disrepute Clause are to be made as if 'the public' knows about it." *In re Berry*, 979 A.2d 991, 999-1000.

Applying the above principles for assessing whether judicial conduct violates the Disrepute Clause, in *In re Nocella*, 79 A.3d 766, (Pa.Ct.Jud.Disc. 2013), this Court held that the judge's conduct was so extreme and outside the reasonable expectations of the public, that it violated the Disrepute Clause. *Id.* at 791. *Nocella* was charged with a violation of the Disrepute Clause based on conduct which led to

Nocella being found in contempt of court for failure to obey two court orders and his failure to provide accurate responses to questions posed by the Philadelphia Bar Association regarding his judicial candidacy. The facts before this Court in Nocella related to his conduct while he was a judicial candidate. During that time, Nocella provided legal representation for a political action committee, The Appreciation Fund (the Fund). When the Fund failed to file a campaign finance report, the Board of Ethics filed a civil suit against it. The Philadelphia Court of Common Pleas found against the Fund and ordered it to pay a penalty for failing to file the required report. Thereafter, the Fund, through the actions of its treasurer and on the advice of Nocella, did not comply with the court order to pay the penalty and file the report. Nocella failed to respond to discovery requests, and assisted the Fund in dissipating its assets in order to avoid paying the penalty. Eventually, Nocella, along with the Fund's treasurer were held in contempt for failing to abide by two orders of court which required the fund to pay a penalty for its failure to file a campaign finance report. In determining that Nocella's conduct, while a judicial candidate, had violated the Disrepute Clause, this Court stated:

In this case, both the truth and the authority of the [Philadelphia Court of Common Pleas] went unrecognized by [Nocella], so blatantly that he was held to be in contempt of the authority of that court.

We find that [Nocella's] conduct was so extreme that it brings the judicial office itself into disrepute, and also that the reasonable expectations of the public as to the behavior of judicial officers do not include the conduct of this Respondent described above.

In the case now before this Court, while a judicial candidate and sitting judge, Respondent completely ignored the authority of the Montgomery County Court of Common Pleas. Multiple times Respondent was ordered to appear before the Montgomery County Court of Common Pleas, orders which he ignored. Multiple

times, Respondent was ordered to answer the Club's discovery requests and pay its attorney fees, orders which he ignored. Only after receiving a Notice of Full Investigation from the Board in August of 2019, which alerted Respondent that the Board was reviewing his conduct in *Cynwyd Club v. DiClaudio*, did Respondent actually appear before the Montgomery County Court of Common Pleas. Respondent's disrespect for the Montgomery Court of Common Pleas was so extreme that, when he finally appeared in court on October 24, 2019, Judge Bertin took time to review the entire text of his February 7, 2019 order on the record and specifically explain his reason for paragraph number five of that order.<sup>1</sup>

Judge Bertin: Five. The Court anticipates there will be strict compliance with this order from defendant, because I'm hoping, as a fellow colleague and a member of the bench, that the defendant would give the Court, not me as an individual, the Court, the respect that it is entitled to, the same respect that I would assume defendant expects other litigants to give him.

(Exhibit 45, page 14-15)

Later in the hearing, Judge Bertin pointedly told Respondent, "I want to know why you didn't give this Court the respect when you knew that hearings were here to appear or to file an answer to any of these things." Incredibly, Respondent did not offer an apology to Judge Bertin. Had Judge Bertin asked Respondent why, after so many episodes of disrespecting his court, Respondent finally appeared in court, perhaps the answer would have been because Respondent was concerned that the Judicial Conduct Board was aware of his conduct, not because he had new-found respect for the Montgomery County Court of Common Pleas.

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<sup>1</sup> Paragraph 5 of the February 7, 2019 order (Exhibit 32) stated, "The Court anticipates there will be strict compliance with the order from the defendant."

In *In re Harrington*, this Court determined that conduct was outside the reasonable expectations of the public and therefore violated the Disrepute Clause where the jurist failed to obey a parking ordinance and devised a scheme to avoid enforcement of the ordinance. This Court characterized Harrington's refusal to obey the parking ordinance as "exactly the type of conduct which causes an ordinary citizen to believe that judges-i.e., all judges-consider themselves to be 'above the law' – a privileged class." *Id.*, 877 A.2d at 577.

In the case now before this Court, Respondent conducted himself in a manner that suggested he felt he was above the law. Rather than conduct himself in the same way he would expect from litigants in his courtroom – obey court orders or suffer the consequences – Respondent ignored the court orders with no apparent fear of consequences. Just as in the *Harrington* case, "[i]t is exactly this type of conduct which gives judges a 'bad name' and which brings the judicial office itself into disrepute." *Id.*

Respondent's failure to obey court orders resulting in multiple findings of contempt was conduct which falls far below the reasonable expectations of the public for judicial conduct and was so extreme that it brings the judicial office itself into disrepute and constitutes a violation of the Disrepute Clause of the Constitution of the Commonwealth of Pennsylvania.

#### Statements of Financial Interest

By order of the Supreme Court of Pennsylvania judges are required to file an annual Statement of Financial Interest (SOFI). Judges are required to list all creditors to whom they owe more than \$6,500 on their SOFIs. On March 4, 2011, June 12,

2014, and March 11, 2017, the Pennsylvania Department of Revenue filed tax liens in excess of \$6,500 against Respondent. On July 28, 2017, the Internal Revenue Service filed a tax lien in excess of \$6,500 against Respondent. Respondent failed to list the Pennsylvania Department of Revenue as a creditor on any of his annual SOFIs and failed to list the Internal Revenue Service as a creditor on his SOFIs for the years following the filing of its lien. On October 22, 2019, Respondent filed amended SOFIs in order to add the Pennsylvania Department of Revenue and the Internal Revenue Service as creditors.

Respondent's failure to list these creditors on four consecutive SOFIs constitutes a violation of Canon 1, Rule 1.1 of the Code of Judicial Conduct which requires judges to comply with the law and defines "law" as including "Supreme Court Rules and directives."

This Court determined that under certain circumstances, failure to accurately complete a SOFI "could constitute a violation of a rule prescribed by the Supreme Court." *In re Horgos*, 682 A.2d 447, 453 (Pa.Ct.Jud.Disc. 1996). In *Horgos*, the judge filed two incomplete SOFIs by failing to report income he received as the executor of an estate and by failing to report a bequest he received from the estate. This Court determined that Horgos had not violated the Code of Judicial Conduct or the Constitution by providing inaccurate information on his SOFIs noting that "the record in this case reveals no evidence that would suggest that the Respondent, by receiving the commission and bequest and not reporting them, has adversely impacted the public trust." In reaching its determination, this Court adopted the following principles applicable to evaluating the ramifications of inaccurate SOFI information:



(1) a judicial officer who does not provide a complete and accurate response to a question on the Statement of Financial Interest form may be afforded an opportunity to revise the response, and (2) the facts surrounding a specific unreported gift and the degree to which the lack of completeness impacts the public trust should be considered in determining whether the questioned response constitutes misconduct by the jurist.

Id.

Applying the principles set forth in *Horgos* to the case now before this Court, Respondent was afforded the opportunity to revise his SOFIs, although it took him two months from the time he was notified of the Board's investigation to take advantage of that opportunity. As to the second principle announced in the *Horgos* opinion, the facts surrounding the inaccuracy reflect, at best, a careless attitude toward complying with a Supreme Court order. At worst, the facts reflect a judge who has no more respect for the orders of the Supreme Court than he does for orders of the Montgomery County Court of Common Pleas. Furthermore, the facts surrounding Respondent's inaccurate SOFIs have a significant impact on the public's trust for two reasons. First, the public cannot trust Respondent to carefully consider the cases put before him when he exhibits such carelessness in his own affairs. Second, the public cannot trust Respondent to correctly interpret the law in matters placed before him when he cannot correctly interpret a Supreme Court order requiring him list his creditors on a SOFI.

The facts specific to the case now before this Court distinguish it from the facts in *Horgos*. The facts of this case point to a finding that by failing to accurately complete his SOFIs filed in 2016 through 2019, Judge DiClaudio failed to comply with the law within the meaning to the Code of Judicial Conduct and therefore, violated Rule 1.1 of the Code.

Insofar as Respondent's filing of inaccurate SOFIs constituted a violation of Rule 1.1 of the Code of Judicial Conduct, the conduct constitutes an "automatic, derivative, violation" of [Article V], Section 17(b) of our Constitution." *In re Jennings*, 192 A.3d 379. By violating Rule 1.1 of the Code of Judicial Conduct as described above, Respondent has violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania.

### **III. CONCLUSION**

For the reasons stated above, the Board respectfully requests that this Court find that Respondent's conduct in the matter of *Cynwyd Club v. DiClaudio* as described above and as contained in the Joint Stipulations of Fact, violated Rule 1.1 and 1.2 of the Code of Judicial Conduct and Article V, § 17(b) and Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania.

Additionally, the Board respectfully requests that this Court find that Respondent's conduct regarding inaccuracies in SOFIs he filed in 2016, 2017, 2018,

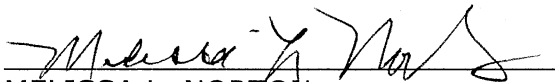
and 2019, as described above and as contained in the Joint Stipulations of Fact, violated Rule 1.1 of the Code of Judicial Conduct and Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania.

Respectfully submitted,

RICHARD W. LONG  
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October 15, 2020

By:



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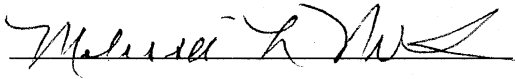
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**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Judicial Conduct Board of Pennsylvania  
Signature:   
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**PROOF OF SERVICE**

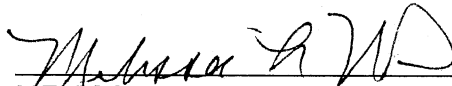
In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, the date below, a copy of the Judicial Conduct Board's Brief on the Issue of Rule Violations was sent by UPS Overnight Mail to counsel for Judge Scott DiClaudio, at the following address:

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Respectfully submitted,

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