

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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OF PENNSYLVANIA

JUL - 6 2021

RECEIVED AND FILED

IN RE: :
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 Judge Scott DiClaudio :
 Court of Common Pleas : No. 3 JD 19
 First Judicial District :
 Philadelphia County :

BEFORE: Honorable Jazelle M. Jones, P.J., Honorable John H. Foradora, J., Honorable James C. Schwartzman, J., Honorable James J. Eisenhower, J., Honorable Ronald S. Marsico, J., Honorable Daniel D. McCaffery, J., Honorable Daniel E. Baranoski, J., Honorable Jill E. Rangos, J.

OPINION BY JAMES J. EISENHOWER, J.

FILED: July 6, 2021

OPINION AND ORDER

Judge Scott DiClaudio of the Court of Common Pleas of Philadelphia County is before this Court for the determination of the appropriate sanction for his violations found in our Opinion and Order of December 1, 2020. In that Opinion and Order this Court found violations in Judge DiClaudio's conduct in:

- a) Failing to acknowledge large debts he owed on his Annual Statement of Financial Interest, and;
- b) Failing to obey court orders concerning litigation he was involved in resulting in repeated contempt citations against him.

Judge DiClaudio's behavior was egregious enough for this Court to find that he brought disrepute upon the judiciary.

Factors Considered in Determining Sanction

In determining what sanction will be imposed for an ethical violation this Court is guided by the jurisprudence of our Supreme Court.

Pennsylvania has adopted ten non-exclusive factors, sometimes called "Deming factors" from the original Washington State case where they were explicated. *In re Roca*, 151 A.3d 739, 741 (Pa.Ct.Jud.Disc. 2016), *aff'd*, 173 A.3d 1176 (Pa. 2017), citing *In re Toczydlowski*, 853 A.2d 20 (Pa.Ct.Jud.Disc 2004); *In re Deming*, 736 P.2d 639 (Wa. 1987). The ten factors and their application to this case are as follows:

1. Whether the misconduct is an isolated instance or evidenced a pattern of conduct: The conduct at issue here does involve multiple incidents over several years.

2. The nature, extent and frequency of occurrence of the acts of misconduct: The misconduct by Judge DiClaudio did occur with some frequency.

3. Whether the conduct occurred in or out of the courtroom: Some of the misconduct occurred inside a courtroom. The contempt was committed through Judge DiClaudio's deliberate absence from the courtroom of another judge hearing a case against him.

4. Whether the misconduct occurred in the judge's official capacity: The misconduct regarding the misstatements in his statement of financial interest was committed in Judge DiClaudio's capacity as a judge. His acts and omissions regarding the contempt findings in the lawsuit were done as a private person but brought disrepute on the judiciary because of his position as a judge.

5. Whether the judge acknowledged or recognized that the acts occurred: Judge DiClaudio has acknowledged his improper conduct.

6. Whether the judge has evidenced an effort to change or modify his conduct: Judge DiClaudio has voiced contrition over his misconduct and no new incidents have been charged while this case was pending.

7. The length of service on the bench: Judge DiClaudio has served as a judge for five years.

8. Whether there have been prior complaints about the judge: There have been complaints about Judge DiClaudio previously including the issuance of a letter of counsel from the Judicial Conduct Board for his actions towards his staff. This letter of counsel was revealed by Judge DiClaudio at his hearing before this Court. A letter of counsel is not a disciplinary finding but is, effectively, a warning from the Judicial Conduct Board. The testimony at the sanction hearing also revealed other incidents where Judge DiClaudio had been disciplined as a lawyer including a public censure by the Supreme Court of Pennsylvania in 2015.¹

9. The effect the misconduct has upon the integrity of and respect for the judiciary: Judge DiClaudio brought disrepute upon the judiciary by his improper conduct.

10. The extent to which the judge exploited his or her position to satisfy personal desires: Judge DiClaudio did commit the violations involving the delay of the litigation for personal gain.

¹ See also the Dissenting Statement of Chief Justice Baer in an attorney disciplinary case against then Attorney DiClaudio where he presciently recommended a longer suspension because of DiClaudio's "longitudinal history of similar disciplinary infractions . . . with little concern for his continuing transgressions." *Office of Disciplinary Counsel v. Scott DiClaudio*, No. 156 DB 2009.

Discussion

Judge DiClaudio's improper conduct was discussed at length in the Opinion and Order of December 1, 2020. Judge DiClaudio's repeated improper conduct was clearly unethical. No one, let alone a jurist, should ever behave in such a manner.

Judge DiClaudio was found in contempt by the Montgomery County Court of Common Pleas by two different judges on three separate occasions over a period of eight months while he sat on the Court of Common Pleas of a neighboring county.

No prior cases decided by this Court are directly on point with the situation presented here but we do consider two involving somewhat similar conduct.

In *In re Horgos*, 682 A.2d 447 (Pa.Ct.Jud.Disc. 1996) this Court considered a case where a judge did not list income on his statement of financial interest from an executor's fee and bequest from the estate of a close friend. Judge Horgos corrected his statement of financial interest and no sanction was issued against him.

In re Nocella, 79 A.3d 766 (Pa.Ct.Jud.Disc. 2013) involved a judge who was twice found in contempt for deliberately falsifying his mandatory candidate financial disclosure answers. Judge Nocella deliberately omitted dozens of cases from the listing of cases in which he had a personal pecuniary interest. Judge Nocella also did not list his IRS liens and active bankruptcy on the candidate financial disclosure form. Additionally, Judge Nocella embezzled from a political action committee for which he had worked. Judge Nocella was removed from office.

The misconduct of Judge DiClaudio is clearly worse than that of Judge Horgos but not as bad as that of Judge Nocella. Judge DiClaudio was repeatedly found in contempt for his deliberate inaction in a lawsuit brought against him but did not purloin the property of others.

Judge DiClaudio, with some prior experience in the judicial discipline system, nonetheless stalled a relatively small lawsuit for unpaid racquet club fees for years, acquiring repeated contempt findings against himself in the process. Additionally Judge DiClaudio carelessly filled out his statement of financial interest forms omitting the substantial debts he owed.

The Court notes Judge DiClaudio's strong work ethic and charitable work. The character evidence introduced on his behalf is impressive. Nonetheless, Judge DiClaudio brought disrepute upon the judiciary.

Judge DiClaudio's ethical violations are serious matters and warrant a sanction as follows:

1. Judge DiClaudio will be suspended without pay for two weeks commencing on August 15, 2021, at 12:00 a.m. through August 29, 2021, at 11:59 p.m.;
2. Judge DiClaudio will serve a probationary term from July 6, 2021, until the end of his current judicial term in January of 2026. Any ethical breach of any kind during this period may result in a revocation of probation and re-sanctioning in this case, and;
3. After input from both parties, a mentor chosen by this Court will be appointed to consult with Judge DiClaudio on a schedule to be determined by the Court. Judge DiClaudio is to cooperate fully with the mentor. Failure to cooperate with the mentor will be a violation of probation.

This Court carefully considered all possible sanctions in this case. The term of probation ordered is lengthy in order to make clear that no further misconduct will be tolerated. The chosen mentor will be reporting to this Court and is to make any recommendations necessary to ensure ethical compliance during the probationary term.

*Judge Schwartzman files a Dissenting Statement in which Judge McCaffery joins.

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DISSENTING STATEMENT BY JUDGE SCHWARTZMAN

I dissent from several aspects of the Majority Opinion. First, concerning the Deming factors, I disagree that Judge DiClaudio exploited his position for personal gain or committed any misconduct in a courtroom. I saw no evidence that Judge DiClaudio used his position as a judge in the litigation against him. It appears he simply didn't reply to the lawsuit against him because of financial problems. At no time did he attempt to trade on his judicial position for an advantage in the litigation. His dispute over fees with the racquet club is completely separate from his judgeship and courtroom.

Second, I would not suspend Judge DiClaudio for two weeks without pay. His ethical lapses have nothing to do with his duties as a judge. The evidence at the sanction hearing was that Judge DiClaudio does an excellent job in court. The testimony and letters established that his courtroom is run fairly, competently and efficiently.

There is no reason to remove him from the bench for two weeks.

In no way should this Dissenting Statement be taken as toleration of Judge DiClaudio's misconduct. He has habitually disobeyed the ethical canons. Judge DiClaudio will be on probation for the next five years. Any further misconduct of any type will have severe consequences for him.

Judge DiClaudio has committed ethical offenses but a sanction of a lengthy probationary period and a mentorship are sufficient for those infractions.

*Judge McCaffery joins in this Dissenting Statement.