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COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: : DOCKET NO. 2 JD 2021
: :
MICHAEL J. CABRY, III :
FORMER MAGISTERIAL :
DISTRICT JUDGE :
MAGISTERIAL DISTRICT COURT :
15-3-06 :
CHESTER COUNTY :

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE
RESPONDENT, MICHAEL J. CABRY, III, PURSUANT TO RULE 502(B) (3) OF
THE RULES OF PROCEDURE OF THE COURT OF JUDICIAL DISCIPLINE

The Respondent, Former Magisterial Judge, Michael J. Cabry, III, is here before this Honorable Court pursuant to the plea of guilt to the crime of theft (18 Pa. C.S.A. 3921[A]) that is a misdemeanor of the second degree. Mr. Cabry also pled guilty to an election code violation involving reporting by a candidate at 25 P.S. 3246(A) which is an ungraded misdemeanor with a maximum sentence of one year. He also pled guilty to another election code violation found at 25 P.S. 3246(B)(iv) that again involves failure to include information in the financial reports submitted by a candidate for judicial office. This was also an ungraded misdemeanor with a maximum sentence of one year. The final plea Mr. Cabry made was to unlawful election expenses pursuant to 25 P.S. 3254.1. This was also an ungraded misdemeanor.

Although a detailed grand jury presentment had been filed against Mr. Cabry, much of that was not accurate or correct.

There is a stipulation as to the amount of monies improperly withdrawn by Mr. Cabry in the amount of \$3,254.97, in sixteen separate transactions. In the presentment there were errors about financial reports not being filed which is incorrect. When Mr. Stretton became involved with this case, he immediately went over to Voter Services of Chester County and pulled the reports and they were all there. The Attorney General's Office never had checked to see that. The stipulations and testimony are the facts of the case, not the grand jury presentment.

Mr. Cabry has admitted the rule violations although obviously that is for this Court to find but Mr. Cabry has admitted to violating the Rules of Conduct for Magisterial District Judges, Rule 1.1, requiring a Judge to comply with the law. This admission was due to the improper handling of campaign funds by Mr. Cabry. Mr. Cabry has agreed to violating Article V, Section 17(B) of the Pennsylvania Constitution since that section is violated if there is a violation of the Judicial Rules for Magisterial District Judges since Mr. Cabry admitted violating Rule 1.1.

The dispute in this case has always been whether Mr. Cabry's conduct as pled to, violated Article V, Section 18(D)(1) of the Pennsylvania Constitution. That rule prohibits a Judge from bringing the Judicial Office into disrepute.

On August 10th, 2022, a hearing was held before the Honorable James J. Eisenhower, the presiding Judge, the Honorable Daniel D. McCaffery, and the Honorable Daniel E. Baranoski of the Court of Judicial Discipline. Attorney James Kleman, Deputy Counsel for the Judicial Conduct Board gave his opening statement, (8/10 N.T. 9, 10, 11). Mr. Kleman then presented the stipulations of the parties and the exhibits, (8/10 N.T. 11, 12). Present counsel, Samuel C. Stretton, Esquire, then provided his opening statement, (8/10 N.T. 27 - 37).

Mr. Stretton then presented as witnesses, attorney Dawson Muth, (8/10 N.T. 40), Former District Judge Charles Clement, Jr., (8/10 N.T. 71) and electrical contractor, Ronald Scott, (8/10 N.T. 83). Mr. Stretton's final witness was the Respondent, Mr. Cabry, (8/10 N.T. 89). At the conclusion of the testimony, Mr. Kleman made a closing statement, (8/10 N.T. 167). Mr. Stretton then made a closing statement, (8/10 N.T. 173). Judge Eisenhower then requested Findings of Fact and Conclusions of Law, (8/10 N.T. 181).

Mr. Cabry's request is that he not be found in violation of brining his judicial office into disrepute (Article V, Section 18(D) (1)).

PROPOSED FINDINGS OF FACT

1) Mr. Cabry stipulated to his guilty plea colloquy which is marked as Board's Exhibit "4". The guilty plea was before the Honorable Stephen B. Lieberman, (8/10 N.T. 14, 15, 16). The guilty plea colloquy was to the following:

A) Theft by unlawful taking, a misdemeanor of the second degree, (18 Pa. C.S.A. 3921[A]).

B) Reporting by candidate and political committee, 25 P.S. 3246(A), an ungraded misdemeanor.

C) Report must list each expenditure and person, 25 P.S. 3246(B)(4), an ungraded misdemeanor.

D) Unlawful election expenses, 25 P.S. 3254.1(A), an ungraded misdemeanor.

2) Mr. Cabry entered his plea to the above charges and was sentenced on September 22nd, 2021 by Judge Lieberman. See Board's Exhibit "6" (8/10 N.T. 15, 16).

3) The admission by Mr. Cabry of the relevant facts is set forth in the guilty plea colloquy (Board's Exhibit "4") and states as follows:

"On or about November 13th, 2016 through January 31st, 2018 the Defendant, while candidate for public office, failed to file appropriate and accurate campaign reports of expenditures and receipts; failed to provide full and accurate account of expenditures and withdrew funds from his campaign account for purposes unrelated to his campaign. Additionally the Defendant unlawfully took funds from the campaign account and used the funds for personal expenses unrelated to

political activity," (See Board's Exhibit "4", page 2).

4) Although the plea to theft was only to a misdemeanor of the second degree, and 18 Pa. C.S.A. 3903, defines the amount of the theft to be between \$50.00 and \$200.00, Mr. Cabry has stipulated that the actual amount taken was \$3,254.97 in sixteen separate transactions, (8/10 N.T. 11).

5) At the sentencing hearing on September 22nd, 2021, Mr. Cabry was sentenced by Judge Lieberman to one year probation to be concurrent on all four counts, (see Board's Exhibit "6", and 8/10 N.T. 9). No restitution was ordered.

6) The Assistant Attorney General at the sentencing, noted as follows:

"Your Honor in light of Mr. Cabry's actions as well - in addition to his decision to take accountability for these actions by pleading guilty and submitting his formal resignation yesterday and based upon the standard guideline range calling for restorative sanctions, the Commonwealth is requesting a period of supervision for probation," See Board's Exhibit "6", page 10.

7) Judge Lieberman, who sentenced Mr. Cabry, noted that he was not a danger to the community, there was no indication that Mr. Cabry would ever commit another offense, and he noted the devastation to Mr. Cabry's reputation, (see Board's Exhibit "6", N.T. 12, 13). Judge Lieberman then said the following:

"I am very sorry that you had these problems in your life. I am sorry that you know, that this is what it's come to. I'm sure you are more sorry than I am. And I know, you are still a relatively young man and you

will have a lot of time left and I am sure that you will use it well. I'm sure you will continue your community service and your volunteer services and I hope you will be able to find some satisfactory employment and that you will continue to be an asset to your family and to the community," see Board's Exhibit "6", the Sentencing Hearing of September 21st, 2021, N.T. 15.

8) Mr. Stretton, as part of the Exhibits, introduced "R-1", which was his Pre-Trial Memorandum with Exhibits, (8/10 N.T. 37, 38, 39).

9) In "R-1", there was the report that was stipulated to of Mr. Cabry's treating therapist. That was Exhibit "R-1" marked as Exhibit "A". This was the report of Mark Oleski, a licensed psychologist, dated April 22nd, 2022. Mr. Oleski met Mr. Cabry initially on October 13th, 2020 and noted his severely depressed mood. He noted the depression was caused, among other reasons, by Mr. Cabry's wife's six-year battle with cancer resulting in her death in March of 2020. He noted the house fire in September of 2017, and he noted the ongoing investigation involving campaign funds. He noted that Mr. Cabry followed up with him consistently and participated in treatment and has been doing very good. He noted that while Mr. Cabry has demonstrated progress, he still continues to experience episodes of emotional decompensation, including anxiety, panic and depression. He noted Mr. Cabry would continue to benefit from ongoing mental health services, (see Exhibit "A" to "R-1").

10) "R-1" also included statements from a number of other character witnesses, including Reverend Matthew Guckin, the Pastor of Our Lady of Mount Carmel Church, former Detective Lieutenant William Cahill, former Chester County Commissioner Terrance Farrell, Chief of Police Curt Martinez of West Caln Township Police Department, Erika Ferritti, a registered nurse, Albert Grundy, a character witness, Tara Lambert, a former employee of Michael Cabry, Ron and Toni Scott, character witnesses, Michael Cabry, IV, Mr. Cabry's son who is a Police Officer in Caln Township, attorney Dawson Muth, a character witness and the criminal attorney for Mr. Cabry, attorney James MacElree, Michael Matta, head football coach for Downingtown East, John Sly Chief of Westwood Fire and Ambulance Company, Stephanie Supplee, former office manager for Mr. Cabry when he was a Magisterial District Judge, Frank Lamarra a friend and character witness, Joyce MacIntosh a character witness. All of these letters were stipulated to be part of Exhibit "R-1" and the hearing record.

11) The parties agreed to the proposed stipulations that were prepared by Mr. Kleman on behalf of the Judicial Conduct Board. These stipulations read as follows:

A) The parties stipulate to the authenticity and admissibility of all exhibits set forth in Paragraphs B (1)-(6).

B) Article V, Section 18 of the Constitution of the Commonwealth of Pennsylvania grants to the Board the authority to determine whether probable cause exists to file formal charges against a judicial officer in this Court, and, when it determines that probable cause exists, to prosecute the case in support of such charges in this Court.

C) From approximately March 22, 2000, until his resignation on September 21st, 2021, Mr. Cabry served continuously as the duly elected Magisterial District Judge of Magisterial District Court 15-3-06, Chester County.

D) Pursuant to Article V, Section 18(a)(7) of the Constitution of the Commonwealth of Pennsylvania, the Board determined that probable cause exists to file formal charges against Mr. Cabry in this Court.

E) By criminal complaint filed October 6th, 2020, at Commonwealth v. Michael J. Cabry, III, MJ-15203-CR-181-2020, the Pennsylvania Office of Attorney General (OAG) filed criminal charges against Mr. Cabry stemming from Presentment No. 13 of the 45th Statewide Investigating Grand Jury.

F) The OAG charges Mr. Cabry with the following offenses: (1) theft by unlawful taking, 18 Pa. C.S.A. 3921(a), a felony of the third degree; (2) perjury, 25 P.S. 3249(b), a misdemeanor of the first degree; (3) reporting by candidate and political committee, 25 P.S. 3246(a), an ungraded misdemeanor;

(4) reporting by candidate and political committee, 25 P.S. 3246(b)(2), an ungraded misdemeanor; (5) reporting by candidate and political committee, 25 P.S. 3246(b)(4), an ungraded misdemeanor; and (6) lawful election contributions, 25 P.S. 3254(a), an ungraded misdemeanor.

G) Mr. Cabry waived his right to a preliminary hearing and the aforementioned charges were bound over for trial in the Court of Common Pleas.

H) On September 22nd, 2021, at Commonwealth v. Michael J. Cabry, III, CP-15-CR-3380-2020, Mr. Cabry pleaded guilty to the following offenses: (1) theft by unlawful taking, 18 Pa. C.S.A. 3921(a), a misdemeanor of the second degree; (2) reporting by candidate and political committee, 25 P.S. 3246(a), an ungraded misdemeanor; (3) report must list each expenditure and person, 25 P.S. 3246(B)(4), an ungraded misdemeanor; and (4) lawful election expenses, 25 P.S. 3254.1, an ungraded misdemeanor.

I) In his written guilty plea colloquy, executed September 22nd, 2021, Mr. Cabry admitted the following:

"On or about November 13th, 2016[,] through January 31st, 2018, the defendant, while a candidate for public office, failed to file appropriate and accurate campaign reports of expenditures and receipts; failed to provide full and accurate account of expenditures and withdrew funds from his campaign account for purposes unrelated to his campaign. Additionally, the defendant unlawfully took funds from the campaign

account and used the funds for personal expenses unrelated to political activity.”

J) As a result of Mr. Cabry's guilty plea, the Honorable Stephan B. Lieberman sentenced Mr. Cabry on September 22nd, 2021, to an aggregate sentence of one year of probation. The Judge did not order any fine or restitution.

K) Mr. Cabry has not appealed his judgement of sentence, and, consequently, it is final and factually binding for purposes of proceedings within this Honorable Court.

L) The parties stipulate and agree that Mr. Cabry withdrew \$3,254.97 in 16 separate transactions from the Citizens for Cabry campaign account in 2017 at various casinos in Pennsylvania, New Jersey, and Delaware, for personal expenditures unrelated to political activity.

See 8/10 N.T. 12, 13, 14, 15, 16.

12) Mr. Cabry testified. He noted he was 61 years of age at the time of the hearing and grew up in Norwood, Delaware County, (8/10 N.T. 90).

13) He testified that he was a financial planner prior to being elected District Judge and worked at Brandywine Financial Planners. He noted he was a Certified Financial Planner and had licenses and insurance and securities, (8/10 N.T. 90).

14) Mr. Cabry noted, prior to being elected Judge, he was very active in Republican politics in Chester County and lived

in West Brandywine Township. He was one of the area chairmen for the Republican Party prior to his election as District Judge, (8/10 N.T. 91).

15) Mr. Cabry was elected to Office of the District Judge in 1999 and took office in March of 2000. He was reelected thereafter three times, his last election occurring during the year of 2017. He served as District Judge from March of 2000 until his interim suspension, (8/10 N.T. 91, 92).

16) Mr. Cabry testified that he resigned his judicial position on September 21st, 2021 the day before he entered his plea and was sentenced by Judge Lieberman as noted above, (8/10 N.T. 92).

17) Mr. Cabry discussed his many community related matters, which included volunteering at his son's school, being a playground monitor, coaching youth football, chairman of the Brandywine Healthcare and Hospice and visiting nurses, West Brandywine Township Planning Commission, education chair of Chester County Development Corporation, coach for little league baseball and CYO football and CYO basketball (CYO is Catholic Youth Organization), (8/10 N.T. 92).

18) Mr. Cabry was also chairman of Caln Athletic Association and the little league. Mr. Cabry was and is an assistant coach of high school football at Downingtown East. His coaching activities are without charge. He noted that he had

played sports, including football and wrestling, when he was in high school, (8/10 N.T. 93).

19) Mr. Cabry noted he had served on the finance committee of his company's committee, (8/10 N.T. 93). He was also very active with his parish which is the St. Peter's Catholic Church, (8/10 N.T. 94).

20) Mr. Cabry was also a member of the Rotary Club for a number of years, (8/10 N.T. 94).

21) Mr. Cabry testified that he was never disciplined as a District Judge until the present misconduct, (8/10 N.T. 94).

22) Mr. Cabry testified that as a District Judge his case load was always current. He indicated there had been four audits by the Auditor General of his office and there were no problems noted and the audits found his office to be in good condition, (8/10 N.T. 94, 95).

23) Mr. Cabry was married on May 19th, 1986 and had one child from the marriage, his son Michael Cabry, IV, who was present at the hearing and is an active police officer in Caln Township, (8/10 N.T. 95).

24) Mr. Cabry testified that he and his wife were extremely close and did everything together. He said that in October of 2014 he received a call at his judicial office from his wife and was told that she had triple negative breast cancer in stage four. Mr. Cabry testified that he personally took care

of his wife for the next six years and really took care of her at the end of her life when she was under hospice care and he was the care giver, (8/10 N.T. 96, 97.) He testified that his sisters and aunt also helped him and they had visiting nurses visiting the home, (8/10 N.T. 97).

25) Mr. Cabry testified that he felt he was on a roller coaster those six years of taking care of his wife. At times she would seem to get better and then she would seem to get worse. He said his wife was unable to work and unable to drive so he had to take care of her, (8/10 N.T. 97, 98).

26) Mr. Cabry pointed out that originally in October of 2014 she was given six months to live and the doctors again, each year, would say only six months but she lived until 2020. (8/10 N.T. 98, 99). Mr. Cabry testified in 2017 he ran for reelection. He noted that in his first campaigns he had about 200 people working for him and had a campaign committee and real treasurers, (8/10 N.T. 99).

27) Mr. Cabry said that for the 2017 campaign, he had a campaign chairman, attorney Eric Brown, but essentially Mr. Cabry ran the campaign. He had his niece, Kristin Wiggins, as his treasurer but he did all of the work. He said he had Allan Novak and Pat Gillespie as his honorary campaign chairman, (8/10 N.T. 100).

28) When Mr. Cabry was asked why he did not use the same people he had for prior campaigns, he said he did not have a good answer to that. He ran the campaign while he was taking care of his wife, (8/10 N.T. 99, 100, 101).

29) Mr. Cabry indicated that after his wife diagnoses, he began to go gambling with some regularity on Friday nights or Saturday nights and generally would go to Delaware Park and would play in the Texas Holdem tournament, (8/10 N.T. 101).

30) Mr. Cabry stated he would go when his wife was asleep and said he went because he just had to get away once a week for an hour or two. He said his wife encouraged him to do it once a week to relax, (8/10 N.T. 101).

31) Mr. Cabry testified he began to use his campaign funds the first time when he was at the Honeybrook Fire Company and did not have his money with him but had his ATM card for the campaign. He took money out to buy a chicken dinner at the Honeybrook Fire Company, (8/10 N.T. 102).

32) Mr. Cabry agreed to the stipulation that he had misused \$3,254.97 in withdraws. He testified that he knew the campaign at times owed him money, he would take money out and gamble with the money sometimes. He indicated the campaign owed him money because at times he would be campaigning and take people to lunch and paid for it and not timely submit bills to the campaign, (8/10 N.T. 102, 103). In terms of filling out the

campaign reports, he agreed that he did fill them out. He indicated he believed there were nine campaign reports. He said the first three or four had no problems. He said after that when he took it over, he did not keep receipts or could not find them so he filled the reports out to the best of his knowledge. He said that he was aware there were expenses missing, (8/10 N.T. 103).

33) Mr. Cabry testified that during that time in 2017, he maintained his campaign records either in his house or in his car but there was a fire in September of 2017 at his house and with resulting smoke damage and he and his wife moving out for 10 weeks and live in a hotel, (8/10 N.T. 103, 104).

34) Mr. Cabry testified that many of the campaign receipts were either misplaced or lost as a result of the fire or the cleanup, (8/10 N.T. 104).

35) Mr. Cabry testified that he won the election in 2017 but had no good answer as to why he did not seek more help. He noted that in hindsight he should have and further indicated he should have started to see a therapist back then, (8/10 N.T. 105).

36) Mr. Cabry pointed out that he served as president of the statewide District Judge Association from 2018 to 2019. He testified he was considering not serving in that position because of his wife's condition but she wanted him to and she

told him he had to swear to her he would do the job, (8/10 N.T. 105, 106, 107).

37) Mr. Cabry said that sometime in July of 2020 he heard from his constables that there was an investigation before a grand jury, (8/10 N.T. 107). He testified that he became aware he was the subject of criminal charges in August of 2020, (8/10 N.T. 108).

38) He said he had handed in his final campaign reports in January of 2018 for the 2017 campaign. When he handed them in, the clerk told him the monies did not add up. The clerk told him to file an amended report but also said that no one ever looks at these reports, (8/10 N.T. 108, 109).

39) Mr. Cabry said he never filed the amended report. His wife had just gotten sicker and sicker during the last of 2018 and 2019 as the cancer spread throughout her body, (8/10 N.T. 109, 110). Mr. Cabry testified that at that point, with his wife's condition, he just really did not care about anything and just spent time with his wife, (8/10 N.T. 110).

40) Mr. Cabry said he kept up his public persona and did his duties as the chairman of the state District Judges Association and handled his courtroom cases properly during that time. He said he compartmentalized his conduct, (8/10 N.T. 110, 111).

41) Mr. Cabry testified that after his wife passed away in March of 2020, he then finally went to see a therapist. She died on March 16th, 2020, (8/10 N.T. 110, 111, 112).

42) Mr. Cabry testified that his wife died as covid hit and he was alone in his house for months because the Courts were closed this became a very difficult time for him, (8/10 N.T. 112). Mr. Cabry testified that he contacted Judges Concerned for Judges and was referred to his current therapist. He also went to see attorney Charles Mirarchi who was known as CP, who is also a therapist and an expert on gambling. Unfortunately, Mr. Mirarchi died recently of pancreatic cancer, (8/10 N.T. 113, 114). Mr. Cabry testified that during the years at issue with his campaign reports, he suffered from a great deal of depression, (8/10 N.T. 115).

43) Mr. Cabry said that he had started to talk to his friend and attorney Dawson Muth and they started to collect his papers, with the intention to file amended reports. He said he had papers piled all over his dining room table, (8/10 N.T. 115, 116). He said he then found out he was under investigation so he held off, (8/10 N.T. 117).

44) Mr. Cabry testified that currently he was not working but was living on his judicial pension and with help of several friends, (8/10 N.T. 119). He stated that he was currently

getting a part of his pension and his medical insurance paid, (8/10 N.T. 119).

45) Mr. Cabry testified that his probation would end on September 21st, 2022. He testified that he would then be allowed to return as an assistant coach to Downingtown East Football team. He said he is now titled as Chief of Staff for the football team, (8/10 N.T. 119). Further, Mr. Cabry said that he is still involved with community service, particularly with his church. He has given speeches to young people recently, telling them about his misconduct and how to avoid that, (8/10 N.T. 119, 120). Mr. Cabry talked about how he has helped former football players and talked one out of suicide. He indicated that after he has worked recently with a student and now that young man graduated from college and has his master's degree and wants to help others similarly, (8/10 N.T. 120, 121).

46) Mr. Cabry testified how parents of students would come up with him and thanked him for talking to their sons recently and given their sons incentive to do things in life, (8/10 N.T. 121).

47) Mr. Cabry stated that it is his intention to continue to work with young people, (8/10 N.T. 121). Mr. Cabry indicated that he has no other assets or income if he lost his judicial pension, (8/10 N.T. 121).

48) Mr. Cabry testified that he lost his house since he was unable to pay the mortgage so he sold the house and is living in a rental apartment, (8/10 N.T. 122).

49) Mr. Cabry accepted full responsibility. He agreed that what he did was wrong and accepted responsibility for his misconduct. He said he has never denied his misconduct, (8/10 N.T. 122).

50) Mr. Cabry admitted to violating Magisterial Rules of Conduct Rule 1.1 for violating the law, (8/10 N.T. 122).

51) Mr. Cabry said he admitted to violating Article V, Section 17(B) of the Pennsylvania Constitution, (8/10 N.T. 122).

52) Mr. Cabry denied violating the constitutional provision against disrepute. He noted the support he has from the community and from law enforcement, (8/10 N.T. 123). Mr. Cabry testified that he was asking the Court of Judicial Discipline not to find him in violation of disrepute but to find him in violation of the other charges, (8/10 N.T. 122).

53) During cross examination, Mr. Cabry admitted that the campaign reports were not accurate and he used money for himself. He agreed that he knew when he signed the reports, they were not accurate, (8/10 N.T. 134, 135). He agreed that he was dishonest in filing the reports, (8/10 N.T. 135).

54) During cross examination, when asked why he did not correct everything, he said it was his intention to do so but

when he filed the reports the cancer had spread throughout his wife's body and she only had a short time to live, and he let everything slide, (8/10 N.T. 137, 138).

55) Mr. Cabry stated that he did not think he currently has a gambling problem or addiction problem though he testified he did therapy with Mr. Mirarchi (CP), (8/10 N.T. 161, 162).

56) In addition to the stipulated letters, attorney Dawson Muth testified, (8/10 N.T. 40).

57) Mr. Muth had served as ten years as an elected District Justice in West Chester and then went to law school and now practices law as a partner at the law firm of Lamb McErlane, (8/10 N.T. 41).]

58) Mr. Muth served as a member of the Court of Judicial Discipline after it was originally formed in 1994, (8/10 N.T. 41).

59) Mr. Muth said that he got to know Mr. Cabry when Mr. Cabry ran initially for Judge in 1999 and he developed an excellent friendship with him over the years and got to know Mr. Cabry and his wife very well, (8/10 N.T. 41, 42).

60) Mr. Muth represented Mr. Cabry on the criminal charges. He was present when the plea was negotiated, (8/10 N.T. 42).

61) Mr. Muth had appeared before Mr. Cabry over the years and described him as an excellent Judge. Mr. Cabry treated

everyone with respect in his courtroom. His court staff admired him. He was fair to everyone. He did not lose his temper and treated everyone with respect, (8/10 N.T. 42, 43).

62) Mr. Muth confirmed that Mr. Cabry was always current on his caseload. He confirmed that Mr. Cabry served as chairman of the Chester County District Judges Association and then was elected to be president of the Statewide District Judge Association in 2018, (8/10 N.T. 43).

63) Mr. Muth testified how close Mr. Cabry was to his wife and he described how sad it was watching her deteriorate from a vibrant life loving joyous person to the point where she became emaciated and lost all of her hair. He said it terribly effected Mr. Cabry, (8/10 N.T. 43, 44). He confirmed that Mr. Cabry was the primary care taker and Mr. Cabry's sisters helped. He said that Mr. Cabry was with her 24/7 except when the student nurse came, (8/10 N.T. 45).

64) Mr. Muth confirmed that he and Mr. Cabry were in the process of collecting material to file the amended returns and correct the reports when the criminal investigation began, (8/10 N.T. 46).

65) Mr. Muth confirmed that Mr. Cabry cooperated 100% with the Attorney General's investigation. Mr. Cabry gave all of the documents to the Attorney General's Office. He also offered to

cooperate with their investigation in Berks County, (8/10 N.T. 46, 47).

66) Mr. Muth confirmed that Mr. Cabry waived his preliminary hearing and then entered a plea of guilt, (8/10 N.T. 48).

67) Mr. Muth confirmed they were originally felony charges and they were reduced to misdemeanors. Mr. Muth confirmed how devastating these events have been to Mr. Cabry. He said that except for this, Mr. Cabry did an excellent job as a Judge and helped a lot of people, (8/10 N.T. 54).

68) Mr. Muth confirmed that Mr. Cabry's current reputation in the community as a peaceful and law-abiding person and as a truthful and honest person is excellent, (8/10 N.T. 56).

69) Mr. Muth confirmed that all contributions were properly listed in the financial reports for the campaign, (8/10 N.T. 58).

70) Mr. Muth, pursuant to questions by Judge McCaffery, confirmed no restitution was ordered at the criminal hearing Mr. Muth also stated he asked Chester County Voter Services to reopen the campaign committee but they said that could not be done, (8/10 N.T. 66, 67).

71) The next witness was Charles Clement, (8/10 N.T. 70). Mr. Clement was a Former District Judge of Cumberland County and he is now retired, (8/10 N.T. 71).

72) Former Judge Clement indicated that he met Mr. Cabry in 2000. Former Judge Clement over the years became friends with Mr. Cabry. Former Judge Clement indicated that he had also served on the Court of Judicial Discipline and was President Judge of that Court, (8/10 N.T. 72).

73) Former Judge Clement confirmed that Mr. Cabry served very well as President of the District Judge Association, (8/10 N.T. 73, 74).

74) Former Judge Clement testified that Mr. Cabry was not the same during the years his wife was ill. He described the times Mr. Cabry would get very emotional, (8/10 N.T. 74).

75) Former Judge Clement testified that Mr. Cabry wanted to step down as the head of the judge's association but his wife would not let him, (8/10 N.T. 75).

76) Former Judge Clement confirmed that Mr. Cabry accepted full and complete responsibility for his misconduct and has been extremely remorseful, (8/10 N.T. 75).

77) Former Judge Clement confirmed Mr. Cabry has an excellent reputation as a peaceful and law-abiding person and as a truthful and honest person currently, (8/10 N.T. 77).

78) The final witness called was Ronald Scott, a friend of Mr. Cabry and an electrical contractor, (8/10 N.T. 83).

79) Mr. Scott testified that he has known Mr. Cabry for over thirty years since they first met at the Rotary Club and they became involved in community service, (8/10 N.T. 83, 84).

80) He confirmed the various community service activities that Mr. Cabry was involved with, including visiting nurse association, various boards and committees, coaching sports, (8/10 N.T. 84).

81) Mr. Scott was close to Mr. Cabry and his wife and was aware of Mr. Cabry's wife's illness. He confirmed that Mr. Cabry was taking care of his wife. He described how Mr. Cabry continued to work as a Judge and in his community service and was taking care of his wife and how sad and depressed he was becoming but he still continued to do everything, (8/10 N.T. 85).

82) Mr. Scott confirmed that Mr. Cabry had great remorse for his misconduct and has accepted full and complete responsibility, (8/10 N.T. 86).

CONCLUSIONS OF LAW

83) Mr. Cabry violated Rule 1.1 under Magisterial District Judges Standards of Conduct, since his misconduct and criminal convictions violated the criminal law.

84) Mr. Cabry violated the Pennsylvania Constitution under Article V, Section 17(B) since his violation of the

Standard of Conduct, Rule 1.1, violated the constitutional provision of 17(B) since it violates a cannon.

85) Mr. Cabry did not violate Article V, Section 18(D)(1) of the Pennsylvania Constitution since Mr. Cabry did not bring the Judicial Office into disrepute, since there was no universal disrepute as a result of his criminal conviction and sentence to misdemeanors and probationary sentence.

86) Mr. Cabry's misconduct occurred during a very difficult time in his life when he was caring for his very ill wife as the primary care taker, which resulted in his depression and mitigation. Mr. Cabry had an otherwise excellent record as a Judge, there was no prior judicial misconduct, he has been extremely active in the community and he was most remorseful for his misconduct and accepted responsibility.

LEGAL ARUGMENT

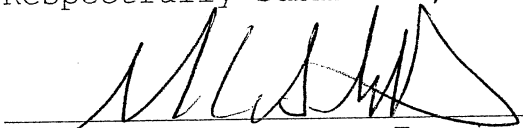
Mr. Stretton incorporates by reference, the Brief he filed on the issue of disrepute in his Pre-Trial Brief that has been previously submitted to this Honorable Court. That Brief on the issue of disrepute is attached and marked as Exhibit "A". Mr. Stretton is willing to appear for additional argument if needed.

CONCLUSION

In conclusion, Mr. Stretton, on behalf of the Respondent, Michael Cabry, III, respectfully requests this Honorable Court

not find him in violation of bringing the judiciary into
disrepute.

Respectfully submitted,



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COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: : DOCKET NO. 2 JD 2021
:
MICHAEL J. CABRY, III :
FORMER MAGISTERIAL :
DISTRICT JUDGE :
MAGISTERIAL DISTRICT COURT :
15-3-06 :
CHESTER COUNTY :

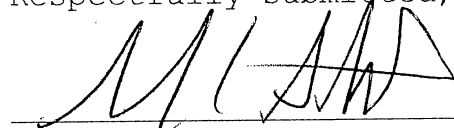
CERTIFICATE OF COMPLIANCE

I, Samuel C. Stretton, Esquire, certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

9/29/22

Date



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COMMONWEALTH OF PENNSYLVANIA
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IN RE: : DOCKET NO. 2 JD 2021
:
MICHAEL J. CABRY, III :
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15-3-06 :
CHESTER COUNTY :

PRETRIAL BRIEF OF MICHAEL J. CABRY, III REQUESTING THAT THE
CONSTITUTIONAL CHARGE OF BRINGING JUDICIARY IN DISREPUTE BE
DISMISSED

The Respondent, Michael J. Cabry, III, by his counsel, Samuel C. Stretton, Esquire, attended a pretrial conference before the Honorable James Eisenhower of the Court of Judicial Discipline. At the conclusion of the conference, Mr. Stretton asked permission to file a Brief on the issue of disrepute. Judge Eisenhower also requested the parties reach an agreement as to the amount of money at issue on the theft charges.

A) AMOUNT OF MONEY IN THE THEFT.

As to the theft charge, a review of the plea and sentencing notes of September 22, 2021, which are attached and marked as Exhibit "A", do not give any guidance or help as to the amount at issue. In review of those notes, they do not reflect the amount involving the theft. However, Former Judge Cabry plead guilty to theft under statute 18 Pa. C.S.A. 3921(a), that was graded as a misdemeanor of the second degree. Under Pennsylvania statute, 18 Pa. C.S.A. 3903, the grading for theft is set forth.

Exhibit ¹A

Under 18 Pa. C.S.A. 3903(b)(i) for a theft to be a misdemeanor in the second degree, the value at issue is between \$50.00 and \$200.00. The presentment, which was not the basis for the plea, noted Former Judge Cabry withdrew \$3,254.97 in sixteen separate transactions, (see page five of the presentment). The parties have agreed that \$3,254.97 is the appropriate figure on the issue of theft and this will be so stipulated.

B) THE EVIDENCE WILL NOT SUPPORT A DISREPUTE

FINDING UNDER THE CONSTITUTION

Former Judge Cabry pled to four misdemeanors. He pled to theft by unlawful taking, a misdemeanor of the second degree, 18 Pa. C.S.A. 3921(a).

"A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, moveable property of another with intent to deprive him thereof," 18 Pa. C.S.A. 3921(a).

Former Judge Cabry also pled guilty to an election code violation entitled reporting by candidates and political committees (25 P.S. 3246[a]). That requires candidates or campaigns that raise more than \$250.00 to file campaign reports listing expenditures. The guilty plea colloquy that was previously attached as Exhibit "J" to the Exhibit List of Former Judge Cabry stated the failure to file the appropriate and accurate reports when expenditures exceeded \$250.00. This crime is an ungraded misdemeanor with a maximum sentence of one year

and a maximum fine of \$1,000.00. Former Judge Cabry also pled guilty under the same statute that the report must list each expenditure and person under 25 P.S. 3246(b) (iv). That in essence reads:

"Each report shall include the following information each and every expenditure, the date made, the full name and address of the person to whom made and purpose for which such expenditure was made," 25 P.S. 3246(b) (iv).

This statute is also an ungraded misdemeanor with a maximum sentence of one year. The final plea was to unlawful election expenses under 25 P.S. 3254.1. That reads as follows:

"No candidate, chairman or treasurer of any political committee shall make or agree to make an expenditure to incur any liability except as provided in section 1621(d)," 25 P.S. 3254.1.

1621(d) referred to in the statute is found at 25 P.S. 3241(d) which is the definition section and defines what are to be included in expenditures for a campaign.

Under the guilty plea colloquy that was marked as Exhibit "J" as part of the Exhibits package, the following was agreed to by the Commonwealth and the defense:

"On or about November 13th, 2016 through January 31st, 2018, the Defendant while a candidate for public office, failed to file appropriate and accurate campaign reports, expenditures and receipts; failed to provide full and accurate count of expenditures and withdrew funds from his campaign account for purposes unrelated to his campaign. Additionally, the Defendant unlawfully took funds from the campaign account and used the funds for personal expenses unrelated to political activity," see Exhibit "J" page two.

Former Judge Cabry waived his preliminary hearing and entered the guilty plea to the above-mentioned misdemeanors on September 22nd, 2021. Former Judge Cabry was then sentenced on the same day by the Honorable Stephen Lieberman, the visiting Judge from Berks County, to one year of probation. There were no fines or restitution imposed.

In the Answer to the Petition for Discipline, Former Judge Cabry did not dispute violating the Code of District Justices Rule 1.1 due to his improper handling of campaign funds. That Rule indicates that a judge will comply with the law, including rules governing standard of conduct of District Judges. See Former Judge Cabry's Answer to paragraphs 11 through 14. Former Judge Cabry also agreed that he violated Article V Section 17(b) of the Pennsylvania Constitution since the finding of the code violation for Rule 1.1 for magisterial district judges states that district judges shall be governed by the Rules of Cannons, which shall be prescribed by the Supreme Court and a violation of these rules constitutes a derivative violation of Article V Section 17(b) of the Pennsylvania Constitution, (see Former Judge Cabry's answers to paragraphs 15 through 19, which is again attached and marked as Exhibit "N" to the Exhibit List).

What Former Judge Cabry did not agree to, and which is the subject of this Brief and what he disputes, is Article V Section

18(d)(i) of the Pennsylvania Constitution. That Rule prohibits a judge from bringing the judicial office into disrepute.

In Former Judge Cabry's Answer he has denied violating that rule, (see answer to count three paragraphs 20 through 22).

Former Judge Cabry, in his Answer in paragraph 22, notes he served with distinction as a Magistrate District Judge in Chester County for 20 years. He was former President of the Chester County District Judges' Association and former state wide President of the Special Court Judges' Association of Pennsylvania. At the time of the hearing, he will present evidence through attorneys and others who have appeared before him as to his excellent judicial abilities and demeanor and fairness as a judge and he will present witnesses as to his exceptional reputation for the appropriate character traits.

Former Judge Cabry also raised his that Answer to paragraph 22, the fact that at the time of his misconduct, his wife was dying of cancer and he was her main care taker. He also noted his campaign treasurer did not do their duties and therefore he took over that job. He noted there was a fire in his kitchen in September of his election year and many documents were lost either because of the fire or because of the repairs necessary. Due to the fire, he and his wife were unable to live in their home for a number of weeks. He agreed he did not maintain proper campaign records. But he also noted the great personal stress he

was under with his wife dying slowly of cancer. He also raised the issue in his Answer and New Matter concerning the stress he was under due to his wife's illness that ultimately caused her death, (see New Matter paragraphs 24 through 30).

Former Judge Cabry noted in his Answer that he has been seeing a therapist and dealing with the stress he has been under due to the death of his wife. In his Answer he noted that his misconduct which resulted in pleas to the four misdemeanors, three of which were ungraded misdemeanors and the fourth, a theft which was a misdemeanor of the second degree, occurred during a difficult time in his life due to his wife dying of cancer, the fire, his treasurer not helping and his records not being in proper order. In the pretrial Exhibits, Former Judge Cabry has previously introduced the letter of his therapist Mark Oleski. He was the therapist Former Judge Cabry was referred to by Judges Concerned for Judges and he has been seeing him regularly. As noted in the therapist's report, Former Judge Cabry during the time, suffered from severe depression, poor concentration and social isolation as he took care of his wife during her six-year battle with cancer. The therapist's report noted Former Judge Cabry is now showing improvement but still require ongoing mental health treatment.

Former Judge Cabry resigned his judicial position the day before his guilty pleas and sentencing. He had fully retired as

a District Judge. He is no longer serving as a judge and has agreed never to hold judicial office again.

A review of the guilty plea and sentencing transcript, will show a number of character witnesses were referenced or their letters were introduced. Some of the character letters were attached and marked as Exhibits in the pretrial submission. These letters are found in the previously submitted Exhibits and marked as, Exhibits "B", a letter from Reverend Matthew Guckin, "C" a letter from retired Lieutenant Detective, William Cahill, "D" a letter from former Chester County Commissioner, Terrence Farrell, "E" a letter from Chief of Police of West Caln Township Police Department, Curt Martinez, "F" a letter from Erika Ferretti, a registered nurse and friend of Former Judge Cabry, "G" a letter from Albert Grundy who works with juveniles in Delaware County, "H" a letter from Tara Lambert a criminal clerk who had worked for him, and "I" Ron and Toni Scott, who had known Former Judge Cabry for years and are part of the Rotary Club. All of them spoke very highly of him. A supplemental pretrial report listed Judge Charles Clement, Jr., who will also testify as a character witness.

At the guilty plea hearing, attorney Richard Muth, the criminal attorney for Former Judge Cabry, noted on page nine of Exhibit "A" the excellent record of Former Judge Cabry, his numerous volunteer services in the community, his 21 years of

unblemished record as a District Judge of Chester County, the devastating time when Former Judge Cabry's wife was slowly dying of cancer and subsequently passed away, (see Exhibit "A" page nine). Attorney Muth also noted the great sorrow and remorse and acceptance of responsibility. He also noted Former Judge Cabry resigned from his judicial position, (see Exhibit "A" page nine). The Assistant Attorney General then noted as follows:

"Your Honor in light of Mr. Cabry's actions as well --
- in addition to his decision to take accountability for those actions by pleading guilty and submitting his formal resignation yesterday, and based upon the standard guideline range calling for restorative sanctions, the Commonwealth is requesting a period of supervision to --- for probation," see Exhibit "A" page 10.

Former Judge Cabry then spoke to the Court explaining his wife's illness, the problems and mistakes he made with the election finance reports and the fire. He noted the support of his friends. He accepted full responsibility, (see Exhibit "A", page 11).

Judge Lieberman then sentenced Former Judge Cabry to one year of probation. He noted Former Judge Cabry's family situation at the time and the fact that Former Judge Cabry accepted full responsibility from the beginning of the case, (see Exhibit "A" page 12). Further, Judge Lieberman noted Former Judge Cabry was of no danger to the community and there was no indication that Former Judge Cabry would ever commit another

offense, (see Exhibit "A" page 13). He noted the devastation to Former Judge Cabry's reputation, (see Exhibit "A" page 13). Judge Lieberman sentenced him to one year probation to be concurrent on all four counts, (see Exhibit "A" pages 13 and 14). Judge Lieberman then said the following at the end"

"I'm very sorry that you had these problems in your life. I am sorry that, you know, this is what it's come to. I am sure you are more sorry that I am. And you know, you are still a relatively young man, and you have a lot of time left and I am sure that you will use it well. I am sure you will continue your community service and your volunteer services, and I hope you will be able to find some satisfactory employment and that you will continue to be an asset to your family and to the community," see Exhibit "A" page 15.

Former Judge Cabry's criminal convictions were for misconduct during a very difficult time in his life. His wife's slow death over six years by cancer, the failure of his Treasurer to handle his campaign reports requiring him to do so, his failure to keep good records, the fire in his house which caused loss of records and receipts and his severe general depression during that time period. Former Judge Cabry is extremely sorrowful and regretful for his misconduct and accepts full responsibility. But the record will also show he was an excellent District Judge. He was involved in numerous community related activities. He served without pay as an Assistant Coach to the Downingtown football team for almost 16 or 17 years. He has worked with many young people in the community. Many

lawyers, including this writer, who have appeared before Former Judge Cabry over the years have respected his judicial abilities and his fairness.

The contested question is, should he be found in disrepute. This is such an important issue because if he is found in disrepute, and if he is then removed from the bench, he will lose his 21 years of judicial pension. Although this Court has no say over his pension forfeiture, the forfeiture is a direct consequence of the finding of disrepute and the finding of removal from the bench. Under the Pennsylvania Constitution Article V Section 16(b) retirement benefits do not be paid to any District Judge or brings the judicial office into disrepute. The question is, should Former Judge Cabry be found in disrepute? A review of the case law is now necessary.

The charge of bringing the judicial office into disrepute is probably the most serious charge that can be brought against a judicial officer. The charge is found in Article V, Section 18 (d) (1) of the Pennsylvania Constitution and reads as follows:

"A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for ...neglect or failure to perform the duties of office or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity or is prohibited by law;..." [Article V, Section 18(d) (1) of the Pennsylvania Constitution].

The provision at issue is "brings the judicial office into disrepute." Former Judge Cabry was not charged with "prejudices the proper administration of justice." The issue of "disrepute" is the issue before this Honorable Court. This is the issue Former Judge Cabry is contesting.

The finding of disrepute, as noted above, can have very serious consequences for a judicial officer since under the Pennsylvania Constitution, under Article V, Section 16(b), such a finding could require a loss of salary or pension or benefits for conduct which "brings the judicial office into disrepute." [Article V, Section 16(b) of the Pennsylvania Constitution]. The Judicial Conduct Board must prove the constitutional disrepute violation by clear and convincing evidence.

The seminal case on disrepute is In re Smith, 687 A.2d 1229 (Pa. Ct. Judicial Discipline, 1996). In that case, Judge Smith from Bradford County was disciplined for lengthy delays in deciding 61 cases. Some of the cases were not decided for over a three-year time period. He received a reprimand, but the Court of Judicial Conduct made no finding of disrepute, although such a finding was requested by the Judicial Conduct Board. The Court of Judicial Discipline in the Smith case noted as follows:

"Even if a judicial officer's actions could reasonably result in a lessening of respect for the judge, it cannot be assumed that the same actions would necessarily bring the judicial office into disrepute. In other words, one might say Judge Smith has failed

to decide his cases, and therefore has lost our respect. Such a finding would not sustain the Board's burden, for the Board must show the disrepute arising from Judge Smith's actions extends to all judges. In other words, that the wrongful actions of a judicial officer are capable of bringing the judicial office into disrepute is only the first step of the inquiry. The second step is that in fact universal disrepute resulted." Id 1239.

There was no evidence of universal disrepute presented in the Smith case by the Judicial Conduct Board.

The misconduct of Former Judge Cabry had nothing to do with his conduct on the bench. His conduct occurred in reporting his campaign receipts and expenditures and misusing campaign funds. He has accepted full responsibility. The misconduct occurred during a very difficult time in his life where he was watching his wife slowly die of cancer. His misconduct occurred when he was suffering from severe depression His problems were further compounded by the fire in his house and loss of campaign receipts and campaign records. There does not appear to be any evidence of the universal disrepute necessary for a finding of a violation of the constitutional provision not to bring the judiciary into disrepute.

Another similar case is In re Dagher, 657 A.2d 1032 (Pa. Ct. Judicial Discipline, 1995). In that case Judge Dagher delayed resolving five cases for an extended period of time, but even more importantly, accepted a gift from a divorce litigant of Penn State football tickets on the 50th yard line. Because of

this misconduct, he received a seven-day suspension. But there was no finding of disrepute since it did not have the universal aspect, and in fact, disrepute was not even charged.

An example of private conduct that resulted in a finding of disrepute is the case of In re Hamilton, 932 A.2d 1030 (Pa. Ct. Judicial Discipline, 2007). The misconduct occurred when a District Judge who was at a golf outing and party at a golf course became highly intoxicated and assaulted the local Police Chief. The judge got extremely drunk at the public golf function and attacked the Chief of Police for no good reason. The judge was found to be in disrepute and was suspended for five months. He was also convicted of assault in criminal court [In re Hamilton, 932 A.2d 1030 (Pa. Ct. Judicial Discipline, 2007)]. The Hamilton case clearly fits within the concern for universal disrepute. A judicial officer getting highly drunk at a public function and then beating up the Police Chief, which received a lot of publicity, would clearly bring disrepute not only to himself, but to the judiciary. The Court of Judicial Conduct in Hamilton noted the following:

"We believe that the reasonable expectations of the public would include the expectation that a member of the judiciary, elected, as he is, to enforce the laws would not violate them and do so on a public stage. We believe that the reasonable expectations of the public would include the expectation that a judicial officer will not act lawlessly by provoking a fist fight in the midst of a party being held at a local golf club,

and then commit assault and battery on a member of the local community." Id 1034.

The Court noted that the judge, physically assaulting the off-duty Chief of Police, also verbally abused the officer's wife and failed to exercise even a modicum of the sensitivity or self-control so vital to the demands of his judicial position. Id 1034.

The Court then indicated under these facts, they had no difficulty finding the conduct was:

"...so extreme as to qualify as conduct prescribed by the Constitution as that which brings the judicial office into disrespect...the reasonable expectations of the public certainly include the expectation that its judges will act with good judgment, with a modicum of dignity and with respect for all." Id 1034.

The Court very carefully noted that it was not deciding there was disrepute because of the level of, or lack of level, of media coverage. Id 1035. The Court said it would not "bestow upon the media a role in determining what is a violation of the Constitution." Id 1035, 1036. The Court ended by indicating that it was up to the members of the Court "to determine these cases for conduct that is so extreme as to bring the judicial office itself into disrepute." Id 1036.

The question is, was Former Judge Cabry's conduct so extreme that it brings the office into disrepute because it has a universal aspect and would affect all judges? The answer appears to be no. Not only did Former Judge Cabry have an

excellent reputation, his misconduct occurred during an extremely stressful time in his life with the slow death of his beloved wife and the resulting depression and stress he was under. Former Judge Cabry's conduct certainly doesn't rise to the level of the conduct which Judge Hamilton engaged in criminal conduct with the Chief of Police during a drunken brawl at a public golf club function.

Similarly, another example of extreme personal misconduct is that of In re Singletary, 61 A.3d 402 (Pa. Ct. Judicial Discipline, 2012). In that case, Judge Singletary was found in disrepute and removed from office for showing photographs of his private part to an employee responsible for collecting impound fees on cars when he was a Judge in Philadelphia Traffic Court. This is another example of extreme misconduct, which is of a criminal nature where disrepute was clearly warranted.

The Court in Singletary, noted as follows:

"In deciding these disrepute cases, we have frequently considered the reasonable expectations of the public as these expectations related to various conduct of various judicial officers...We think that the public - even those members of the public who register the lowest scores on the sensitivity index - do not expect their judges to be conducting photo sessions featuring the judicial penis and then to be sending the photos over the electronic airwaves to another person - thereby placing that person in a position to further publish the photos to anyone he or she may deem deserving." Id 412.

The Court pointed out for disrepute, there must be an element of mens rea and not conduct that was purely accidental. Id 412. The Court rightly concluded that this conduct was so extreme as it brought the office into disrepute. Id 412.

Hamilton and Singletary are classic examples of extreme misconduct that creates the universal aspect needed for the finding of disrepute. Former Judge Cabry's misconduct does not rise to this level.

Another example of disrepute is In re Kelly, 757 A.2d 456 (Pa. Ct. Judicial Discipline, 2000) where a judge called another judge asking for favorable treatment for a friend on traffic tickets. That was extreme misconduct, of essentially trying to fix a case which resulted in the finding of disrepute and a reprimand.

Similarly, in In re Harrington, 877 A.2d 570 (Pa. Ct. Judicial Discipline, 2000), the judge was found to have brought the judicial office into disrepute by putting fake parking tickets on his car to avoid having to put money in the parking meter. The shocking conduct of a judge to avoid paying a meter fee of putting fake parking tickets on his car undercut everything expected of a judge, particularly, one who regularly handled traffic cases.

In case where there was no disrepute, In re Brown, 907 A.2d 684 (Pa. Ct. Judicial Discipline, 2006), Judge Brown admitted

misconduct of sexual harassment and making improper comments to his female employees and also other improper statements about litigants. He was found in violation of several rules and allowed to retire, but there was no finding that his conduct brought the office into disrepute. That disrepute charge was withdrawn and he was allowed to keep his pension.

Another example is in the case of In re DeLeon, 967 A.2d 466 (Pa. Ct. Judicial Discipline, 2009). This was an interesting case where the judge acted very badly. He had met a social acquaintance at a bar or restaurant, who told him a story of problems with a neighbor. Judge DeLeon went back and signed an ex parte stay away Order to help the social acquaintance. There was nothing before his Court. Judge DeLeon was disciplined and suspended for approximately three months. Initially, the Court of Judicial Discipline found him to have brought disrepute on the Court, and then the Court of Judicial Discipline reversed that finding of disrepute but without any real explanation. But that is a case where bad conduct by a judicial officer was not enough to warrant a disrepute finding, and that is consistent with the above cases.

In the case of In re Berkhimer, 930 A.2d 1255 (Pa., 2007), Judge Berkhimer was found in disrepute. His misconduct involved ten instances over several years of offensive and unwarranted

statements to female employees. The Pennsylvania Supreme Court noted as follows about the extreme sexual remarks and comments:

"Appellants unwanted and offensive statements during an interview reflected poorly on the judiciary as a whole. The event was disrespectful to the judiciary and the public; combined with his offensive behavior, it brought disrepute on the entire judiciary." Id 1259.

In the case of In re Berry, 979 A.2d 991 (Pa. Ct. Judicial Discipline, 2009), Judge Berry, while a Judge of the Court of Common Pleas of Philadelphia County, had also operated his rental real estate business out of his judicial office and had his judicial secretary manage it, accept rental payments, prepare eviction notices, etc. Judge Berry was suspended for four months and was found in disrepute. The Court in Berry noted past court decisions for findings of disrepute such as sexual harassment, failure to deposit office receipts at the end of each day, use of the "f" word in the Courtroom, public drunkenness, bogus parking tickets, calling defendants in waiting rooms morons, fighting at golf outings, repeated lateness in Court, bizarre behavior in chambers, etc. Id 996, 997. The Court noted as follows:

"The judicial officer must have engaged in conduct that is so extreme that it brings the judicial office into disrepute." Id 997.

The Court noted that the determination is made on a case by case basis. Id 997. The Court then noted as follows in Berry:

"It is thus clear, that our determinations of whether particular conduct is such that brings the judicial office into disrepute, are to be made as if the public knows about it. Indeed, how can it be otherwise?" Id 999, 1000.

The Court then held that Judge Berry's conduct with running the real estate business in his judicial office did bring his office into disrepute. Id 1001. The reasons were, first that Judge Berry operated his real estate business for twelve years out of his chambers until he got caught. Second was the manner in which he ran his business. The properties were in poor condition, there were a number of citations issued against him by the City. The third reason found by the Court was the reality that he ran the business out of his judicial office with absolutely no overhead. Id 1001. The Court noted as follows:

"We find that the Respondent's active operation of a real estate business out of his judicial office, at the very least, trivializes the fundamental concept we find that Respondent's conduct in this business and the use of his judicial secretary to manage the day to day operation of the business demonstrated a flagrant, open, disregard for the dignity of the judicial office. It also demonstrated a total disregard for citizens of the Commonwealth, including those who elected him..." Id. 1001, 1002.

The Court found Judge Berry's conduct was extreme, and therefore found disrepute.

Judge Berry's case was different from the present case. It involved a business for personal gain, operating out of the actual judicial office and for many years.

In the case of In re Merlo, 58 A.3d 1 (Pa., 2012), Judge Merlo, who had numerous violations, including not showing up on time, taking 60 to 70 days off and yelling at litigants, was found in disrepute. The Court gave some advice on what to look for:

"It is fair to say that difficulty in deciding these cases has not been in determining whether the conduct is bad or reprehensible or whether it makes a particular judge look bad, the difficulty has been in determining whether the conduct of the particular judge makes everyone look bad, whether it makes judges collectively look bad, whether the conduct gives all judges a bad name... whether it is such that brings the office into disrepute." Id 17 and 18.

In Merlo, the Court was particularly upset with Judge Merlo's calling off and missing many days, and often times calling out the day of the hearing after people were sitting and waiting. The Court found that conduct beyond egregious. Id 18, 19. The Pennsylvania Supreme Court in Merlo actually found if a judge always appears late, that would be a violation of the disrepute constitutional requirement. Id 19. The Pennsylvania Supreme Court noted a finding that a judge who has engaged in confrontational or discourteous conduct on the bench may support a finding of disrepute. Id 20.

A more recent case where there was no finding of disrepute despite bad conduct by a judge when he was not on the bench is the case of In re Maruszczak, 220 A.3d 742 (Pa. Ct. Judicial Discipline, 2019). Judge Maruszczak received a reprimand. There

were conditions for a psychological assessment. His misconduct occurred after he discovered three of his former friends and political supporters were now supporting his election opponent. The Court noted as follows:

"Respondent Maruszczak's conduct arose out of his surprise and anger at finding former political supporters instead backing his political opponents. Such conduct while clearly wrong, is more understandable when it occurs in the course of a hard-fought election rather than the normal courses of judicial proceedings. Such conduct warrants a sanction nevertheless." Id 744.

Judge Maruszczak's conduct did consist of screaming at former friends not supporting his election opponent in public and leaving threatening notes in a mailbox or on voicemail. The Court noted as follows:

"The effect the misconduct has upon the integrity and respect for the judiciary - although Respondent Maruszczak's conduct was clearly wrong, it was not found to amount to a violation of the disrepute clause." Id 744, 745.

In evaluating disrepute, the case of In re Eakin, 150 A.3d 1042 (Pa. Ct. Judicial Discipline, 2016) must be reviewed. In that case, Justice Eakin was involved in sending emails that contained nudity, inappropriate references to race, sex and ethnicity, among other things. Judge Eakins used his government supplied computer for some of these emails. There was no finding of disrepute in that particular case, and perhaps the disrepute

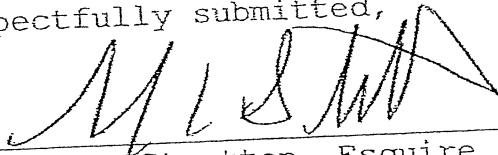
had been withdrawn. It is unclear from the Opinion. [In re Eakin, 150 A.3d 1042 (Pa. Ct. Judicial Discipline, 2016)].

In the recent case of In Re Judge Scott DiClaudio 3 DB 2019 (Pa. Ct. Judicial Discipline, 2020), there was a finding of disrepute. But Judge DiClaudio had acted very badly in a suit by an athletic club for a thousand-dollar bill for Judge DiClaudio's 13-year-old daughter. Judge DiClaudio refused to cooperate, refused to show up at hearings, was found in contempt several times, was sanctioned several times. He finally showed up and paid the bill, and fines which were almost \$10,000.00. This was fairly widely publicized. The Court found that that kind of conduct of a Judge being held in contempt by another Judge and not appearing brought the judiciary into disrepute. Judge DiClaudio was suspended for two weeks.

Former Judge Cabry's misconduct occurred during a time of great personal stress and severe depression. He did not properly complete the campaign financing forms and at times misused campaign funds. The misconduct was highly personal in nature. His misconduct did not involve his judicial duties. There was nothing in the facts of Former Judge Cabry's case that would trigger the universal dispute constitutional violation.

In conclusion, Former Judge Cabry respectfully requests this Honorable Court dismiss the charge of disrepute since there is not the universality required under the facts of this case.

Respectfully submitted,



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COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: : DOCKET NO. 2 JD 2021
:
MICHAEL J. CABRY, III :
FORMER MAGISTERIAL :
DISTRICT JUDGE :
MAGISTERIAL DISTRICT COURT :
15-3-06 :
CHESTER COUNTY :

CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the foregoing Proposed Findings of Fact and Conclusions of Law the captioned matter upon the following persons in the manner indicated below.

Service by First-Class Mail addressed as follows:

1. The Honorable James J. Eisenhower
President Judge
Court of Judicial Discipline
Pennsylvania Judicial Center
601 Commonwealth Avenue
Suite 550
P.O. Box 62595
Harrisburg, PA 17106-2595
2. The Honorable Daniel D. McCaffery
Court of Judicial Discipline
Pennsylvania Judicial Center
601 Commonwealth Avenue
Suite 550
P.O. Box 62595
Harrisburg, PA 17106-2595

3. The Honorable Daniel E. Baranoski
Court of Judicial Discipline
Pennsylvania Judicial Center
601 Commonwealth Avenue
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Harrisburg, PA 17106-2595

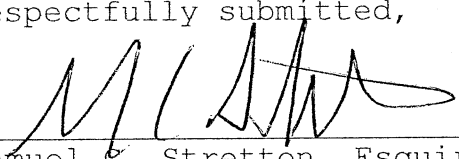
Service by Electronic Mail addressed as follows:

4. Joseph U. Metz, Esquire
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7. Michael Cabry, III
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Respectfully submitted,

9/29/22

Date



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