

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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OF PENNSYLVANIA

FEB 19 2021

RECORDED AND FILED

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

ANSWER OF THE RESPONDENT, FORMER JUDGE MICHAEL J. CABRY, III, TO
THE MOTION FOR RECONSIDERATION OF SANCTIONS

The Respondent, former Judge Michael J. Cabry, III, by his counsel, Samuel C. Stretton, Esquire, hereby answers the Motion for Reconsideration of Sanctions as follows:

1) Admitted these were the charges. The theft as a misdemeanor of the second degree, would have a value of \$50.00 - \$200.00 as set forth in 18 Pa. C.S.A. 3903(b)(1).

2) Admitted.

3) Admitted.

4) Admitted.

5) Admitted.

6) Admitted.

7) Denied. The sanction was the result a number of factors including the mitigation of the extreme stress and depression that former Judge Cabry had suffered for several years as his wife slowly died from cancer, which affected his handling of the judicial campaign and also the fact that some

records of the expenditures of the campaign were lost in a fire. There was additional mitigation that former Judge Cabry had resigned his position and advised the Court he would never seek judicial office again. Finally, there was the mitigation of excellent character witnesses.

8) Denied. It is denied that there is jurisdiction for reconsideration. There is no rule allowing for reconsideration in the Rules of Procedure of the Court of Judicial Discipline. In fact, under Rule 505, in the Rules of Procedure of the Court of Judicial Discipline, the Court maintains jurisdiction to reconsider the sanction if the Court determines the Judicial Officers violated the terms of the probation. There has to be hearing to show that the Judicial Officer had failed to comply with conditions. Here, former Judge Cabry is not on probation and there is no violation. It would appear that the general Court Rule of 42 Pa. C.S.A. 5505, would not apply to the Court of Judicial Discipline.

9) Denied that the sanction of this Honorable Court was an abuse of discretion. On the contrary, the sanction was appropriate and there is no basis for reconsideration.

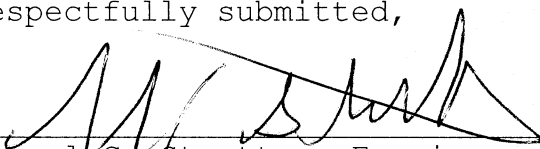
10) Denied that this constitutes an abuse of discretion. Denied this was an infamous crime. The Pennsylvania Constitution under Article II Section 7, is entirely separate from the Code of Judicial Conduct and Sanctions. It is unclear whether a

misdemeanor of the second degree would be considered an infamous crime on a violation of that particular section, and in fact, Mr. Stretton is litigating similar issues in the Commonwealth Court and potentially in the Supreme Court involving candidates for office and Article II, Section 7. That has nothing to do with judicial discipline and sanctions. Further, judicial sanctions cannot normally be reconsidered. Under the Pennsylvania Constitution, if there is an appeal on judicial sanctions, there is a very limited basis to change a sanction. The Pennsylvania Supreme Court on appeal would only have the right to change the sanction if the sanction was illegal. Clearly, this is not an illegal sanction. Under the Pennsylvania Constitution, under Article V, Section 18(C)(2), the right to appeal a sanction is only whether the sanction was unlawful, (see Article V Section 18(C)(2) of the Pennsylvania Constitution. In this case clearly, the reprimand by this Honorable Court was a lawful sanction.

WHEREFORE, former Judge Michael J. Cabry, III, by his counsel, Samuel C. Stretton, Esquire, opposes on principle the request for reconsideration for the reasons stated above. Former Judge Cabry particularly opposes the attempt to suggest a relationship between judicial sanctions and Article II Section 7 of the Pennsylvania Constitution for removal of infamous crimes. However, having said that, former Judge Cabry has no objection

to this Honorable Court amending its Order in this case to include his promise as part of the Order that he will not seek judicial office in the future because he has no intention to ever do so. This change would be by agreement and not by reconsideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Stretton', written over a horizontal line.

Samuel C. Stretton, Esquire
Attorney for the Respondent,
Michael J. Cabry, III
103 South High Street
P.O. Box 3231
West Chester, PA 19381-3231
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Attorney I.D. No. 18491

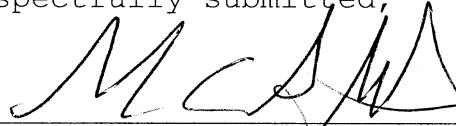
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CERTIFICATE OF COMPLIANCE

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,



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2/8/23

Date

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CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the foregoing Answer to Motion for Reconsideration of Sanctions the captioned matter upon the following persons in the manner indicated below.

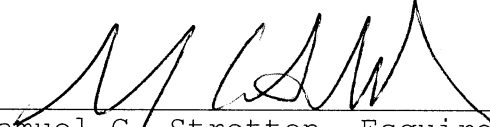
Service by Electronic Mail addressed as follows:

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Respectfully submitted,



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218/13

Date