

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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OF PENNSYLVANIA

FEB 22 2023

RECEIVED AND FILED

IN RE: :
: :
Michael J. Cabry, III : :
Magisterial District Judge : No. 2 JD 21
Magisterial District Court 15-3-06 : :
Chester County :

BEFORE: Honorable Ronald S. Marsico, P.J., Honorable Daniel D. McCaffery, J., Honorable Daniel E. Baranoski, J., Honorable Jill E. Rangos, J., Honorable Thomas E. Flaherty, J., Honorable Sonya M. Tilghman, J., Charles Becker, J.

PER CURIAM

FILED: February 22, 2023

OPINION AND ORDER ON MOTION FOR RECONSIDERATION

The Judicial Conduct Board requests reconsideration of the Sanction imposed on this case. Former Magisterial District Judge Cabry entered guilty pleas to theft (graded as misdemeanor of the second degree) and three other ungraded misdemeanors relating to his misconduct in taking campaign money from his campaign fund and using it to pay personal expenses.

Former Magisterial District Judge Cabry has resigned from his judicial office and pledged in sworn testimony to the Court of Judicial Discipline that he will never seek judicial office again. The Judicial Conduct Board argues that this sworn pledge is not enough because:

1. Former Magisterial District Judge Cabry should be barred from seeking further judicial office by stronger language, and;
2. Former Magisterial District Judge Cabry committed an "infamous crime" which bars him from seeking office in Pennsylvania.

The Court of Judicial Discipline weighed the totality of the facts presented in this case and crafted the language of its sanction appropriately.

Former Magisterial District Judge Cabry was clearly broken when he appeared before the Court. His wife has died, his house was burnt, and his financial future is bleak.

The Court, weighing all the circumstances was willing to accept Former Magisterial District Judge Cabry's pledge to not seek further judicial office under the circumstances. Additionally, though, if Former Magisterial District Judge Cabry were to seek further judicial office it would make his sworn promise not to do so a falsehood and subject him to the criminal penalties that came from issuing such a falsehood in sworn testimony.

The Constitution of Pennsylvania states that the Court of Judicial Discipline is to impose sanctions (or decide not to impose sanctions) on errant jurists as "warranted by the record" before it.

The Supreme Court of Pennsylvania held that the Court of Judicial Discipline is to follow its constitutional assignment to impose discipline as warranted by the record in the case before it and has wide discretion to fashion the appropriate remedy in doing so. In re Roca, 173 A.3d 1176, 1188 (Pa. 2017). Here, the unanimous judges of the Court of Judicial Discipline believe the sanction issued to Former Magisterial District Judge Cabry is the proper one.

Concerning the argument by the Judicial Conduct Board that other provisions of law prohibit Former Magisterial District Judge Cabry from seeking office because he has been convicted of an infamous crime (PA Const, Article 2, §7) nothing in our Sanction Order either expands or contracts Former Magisterial District Judge Cabry's right and duties. The Court of Judicial Discipline is not involved in whether Former Magisterial District Judge Cabry

is prevented by other aspects of law beside the Sanction Order of this Court from holding office.

Contrary to the argument of the Judicial Conduct Board, the Court of Judicial Discipline believes it has met its institutional obligation, repaired the public trust and done justice based on the entire record of this case.

The Motion for Reconsideration of Sanction is DISMISSED.