

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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OF PENNSYLVANIA

2016 SEP 14 P 1:42

IN RE: :
: :
David W. Tidd :
Former Magisterial District: 3 JD 2016 :
Judge :
Third Judicial District :
Northampton County :
:

NOTICE OF HEARING

AND NOW, this day of , 2016,
upon consideration of the Respondent's Omnibus Motion, a hearing
is scheduled for the day of , 2016 at
AM/PM.

BY THE COURT:

J.

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: :
 :
 David W. Tidd :
 Former Magisterial District: 3 JD 2016 :
 Judge :
 Third Judicial District :
 Northampton County :
 :

ORDER

AND NOW, this day of , 2016,
upon consideration of the Omnibus Motion of the Respondent,
David W. Tidd, it is hereby ORDERED and DECREED as follows:

BY THE COURT:

J.

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: :
: :
David W. Tidd : :
Former Magisterial District: 3 JD 2016 : :
Judge : :
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2016 SEP 14 P 1:43

OMNIBUS MOTION OF THE RESPONDENT, DAVID W. TIDD

The Respondent, David W. Tidd, by his counsel, Samuel C. Stretton, Esquire, hereby raises the following omnibus motions:

I. Request for a Recusal of the Conference Judge

1. A conference judge has been assigned to this case, but Judge Tidd states that he, during pertinent times, has sought ethics advice and opinions from this conference judge on issues involved in this case.

2. Based on those telephone calls and inquiries, David Tidd is requesting that the conference judge recuse himself, particularly since the conference judge may well be a witness on his behalf.

WHEREFORE, the Respondent, David W. Tidd, requests a recusal of the conference judge.

II. Motion to Dismiss all Charges Based on Violations of
Pennsylvania Wire Tap Statutes

3. The Judicial Conduct Board has advised Mr. Stretton they have tapes of activities in Judge Tidd's office for several

years. Mr. Stretton, in his Motion for Discovery, has asked for all the tapes and the transcripts.

4. Mr. Stretton has also asked as to how and under what circumstances the Judicial Conduct obtained these tapes. He wants to know if they were done by court order or subpoenas or by requests.

5. Mr. Stretton contends that any and all evidence related to these matters from these tapes should be stricken and he contends they are in violation of the Pennsylvania Wire Tap Act. David Tidd never gave any consent to anyone listening to these tapes. He was not asked to provide permission to give these tapes to anyone. The tapes would potentially violate the Pennsylvania Wire Tap Statute. David Tidd contends that these tapes should not be allowed to be used for that reason and also since they were not properly obtained.

6. In the alternative, if this Court rules that these tapes are valid, then Mr. Tidd would want the complete set of all the tapes and the transcriptions of all the tapes so he can adequately prepare his defense.

WHEREFORE, the Respondent, David W. Tidd, respectfully requests that any and all tapes and information from these tapes be precluded and/or in the alternative, if the tapes are allowed, that he be given a complete copy of every tape made

during the least six or seven years with the transcription of the tapes.

III. Dismissal Based on Statute of Limitations and Laches

7. From a review of the complaint for discipline, many of the complained of conduct is alleged to have happened many years ago.

8. In the Board's complaint, in paragraph 4, they referenced complaints made in 2014 and 2015.

9. The first complaint was charged under subsection (a) "retaliation" references conduct in August of 2011 and then conduct in 2015 and 2016.

10. The complaint then references in paragraphs 28 and 29 conduct in 2011, 2012, 2014, etc.

11. In subsection (c) "ex-parte communications", the complaint references conduct starting in 2011. Most of the conduct referenced was 2011, 2012 and 2014.

12. Under "special consideration", conduct in 2007 and 2015 is referenced.

13. In paragraph 97 of the complaint, conduct in 2010-2014 is referenced.

14. In "failure to recuse" on page 29, similar conduct in 2011 and 2013 is referenced.

15. In paragraph (f) "failure to accord right to be heard" misconduct from 2011 until 2016 is referenced. There are

specific cases listed and activity in 2011 on pages 33 and 34. Conduct in 2012 is referenced on pages 35 and 36. Conduct in 2014 is referenced on pages 37 and 38.

16. Under "conflict of interest" the complaint lists conduct occurring in 2006 and then conduct in 2010 (see page 40) and in 2011 (see pages 40-42).

17. The complaint also references conduct in 2011 and 2012 on pages 44 and 45, and 2013 on page 46, and conduct in 2012 on page 47.

18. The complaint continues to reference conduct in 2011, 2012, 2013 and 2014 on pages 48-51.

19. Under "failure to wear judicial robe", the complaint alleges conduct occurring in 2011-2016. On page 53 of the complaint, conduct in 2011 and 2012 is referenced.

20. Under "disregard of the dignity of the judicial robe" on page 54 of the complaint, conduct in 2012 and 2015 is alleged.

21. The Doctrine of Laches is a recognized doctrine and the fact this Honorable Court has dismissed a case on the basis of laches due to delay [In re DeLeon, 902 A.2d 1027 (Pa. Ct. Jud. Disc., 2006)].

22. There was no reason for the delay in making these complaints. Many of the complaints were known by the Judicial Conduct Board in 2014. It appears they might have been known

even before that due to the conduct of the President Judges in the County. Yet no complaints were brought or filed until 2016. This long delay has greatly prejudiced David Tidd.

23. David Tidd's prejudice is he has resigned from the bench and no longer has access to his files. Because of the large passage of time he does not recall many of the cases and many witnesses would not be available.

24. David Tidd is further prejudiced by the delay because of the filing of numerous complaints at once against him when many of the complaints are from 3, 4, 5, 6, and 7 years ago. There is just no excuse for this delay. This delay and the large numbers make it difficult, if not impossible, to adequately defend.

25. The Respondent, David Tidd, has been prejudiced because if complaints were brought timely, he could have resolved all issues and/or timely changed his conduct. Instead, by delaying five to eight years, he had no opportunity to change or reform his conduct or to be in a position to adequately defend the charges.

26. To prevail on laches, the Respondent has to establish a delay arising from the Judicial Conduct Board's failure to exercise due diligence and prejudice to him resulting from the delay. The question of laches is factual and is determined by

examining each case. Sprague v. Casey, 550 A.2d 184, 187 (Pa., 1988).

27. The delay in this case is extreme and extraordinary.

28. The Respondent, Mr. Tidd, has been prejudiced in that timely raising issues could have allowed him to resolve or change his conduct if it needed to be changed. It would have allowed him to timely deal with issues when he could remember the same, and have access to files. Witnesses might no longer be available or able to be found and recollections will be dim.

29. In addition to laches, there is a statute of limitations issue. Under Rules of the Judicial Conduct Board, Rules of Procedure 15, a judge should not consider complaints arising from acts occurring more than four years prior to the date of the complaint. There is exception if there is reoccurring conduct. There is no indication that good cause was ever sought from the Board. There was a four year statute of limitations and it appears this has been violated in addition to the laches.

WHEREFORE, the Respondent, David Tidd, respectfully requests that these complaints be dismissed based on the Doctrine of Laches and/or statute of limitations.

IV. Dismissal Based on Setting Up All Persons Who Worked for

David Tidd Against Him

30. It appears that the employees who worked in David Tidd's office as District Judge had been under orders to disregard what he says and report only to the President Judge and apparently at some point to the Judicial Conduct Board and their investigators. These employees were essentially made to be spies and wrote everything down and took photographs, etc., about David Tidd and reported back to the Judicial Conduct Board and to the President Judge or judges of Northampton County or the Court Administrator. When they did that is unknown.

31. Employees would not respond to David Tidd and when David Tidd would complain, he was told that the employees did not work for him, but worked for the court system and the AOPC.

32. Since he has been elected, David Tidd was faced with the situation where 2 to 4 employees have had no loyalty to him, but were secretly drafted, either by the President Judge, Court Administrator and/or by the Judicial Conduct Board or by all, to write down everything he has done wrong and keep book on him and collect all of these complaints and then report them at some point later.

33. This is an impossible situation for any judge or any lawyer. In effect, the judge's employees were secretly told to spy on him. It is unconscionable and unfair to have these people report directly to the Judicial Conduct Board and to the

Court Administrator and President Judge and work against David Tidd when he was a judge.

34. This unfairness of using paid employees to develop cases against him, violates fundamental due process pursuant to the Fourteenth Amendment of the United States Constitution. The Judicial Conduct Board and the Court Administrator and the President Judge destroyed the normal relationship between a judge and his employees and the sense of privacy and confidentiality. Having directed employees apparently to keep book on David Tidd, and at the same time, directed them to set him up for additional problems. No one made any effort to allow Mr. Tidd to correct these problems by meetings or early complaints.

35. This conduct is so unfair and so contrary to United States jurisprudence and fundamental due process, that all charges should be dismissed.

36. Further, Mr. Tidd, at some point, had counsel, Craig Simpson in 2015 and Mr. Stretton in 2016. Yet the Judicial Conduct Board, the President Judge and the Court Administrator continued to work with the employees of David Tidd, reporting back his conversations, etc., knowing full well he was represented by counsel. The employees became their agents when they knew David Tidd was represented by counsel.

37. There cannot be any interference with the right to counsel or contact directly or indirectly with a person who is represented by counsel. That is clearly set forth in rule 4.2 of the Rules of Professional Conduct.

38. Thus, working with these employees and constant contact undermined the attorney/client relationship of David Tidd and resulted in employees being agents of the Judicial Conduct and the Court Administrator's Office working against Judge Tidd and undermining the attorney/client relationship.

WHEREFORE, the Respondent, David W. Tidd, respectfully requests a dismissal of all charges.

V. Failure to State Cause of Action

39. Paragraphs 84-108 of the complaint are allegations of special consideration. It involves the fact that an attorney in town who had an unfortunate habit of running up parking tickets and not paying them would be called when a warrant was about to be issued so he could come in and pay it if he wanted or else the warrant would be issued. This does not state a cause of action of any rule violation and is not special consideration. It is called old fashioned courtesy.

40. If a judge cannot tell a lawyer who appears before him or her regularly that the lawyer should come in and take care of parking fines or else a warrant would be issued, it would be a sad day. Further, the allegation of failure to recuse in

paragraphs 109 to 119 suggests that the Respondent should have recused himself on matters involving Attorney Burke. If that was the case, most District Judges would be unable to hear cases with local attorneys. All such charges should be dismissed since there is no cause of action.

41. Paragraphs 249-251 of the complaint allege a disregard for dignity of the robe. According to the allegations, one time Mr. Tidd in his private office was sleeping on the floor wearing his judicial robe. These allegations do not state any cause of action.

42. Paragraph 251 of the complaint alleges that the clerk observed the Respondent using the robe as a pillow. Again, that does not state a cause of action.

43. This conduct was in the judge's private office. The door was closed. Mr. Tidd apparently was tired and didn't feel well and took a nap. Such conduct does not arise to the level of disregard for dignity of a judicial robe and should be dismissed.

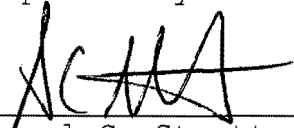
44. In paragraph 73 of the complaint, there is a reference to Matthew Potts arriving for a hearing. He is an attorney. The allegation is that he met with David Tidd privately and then told the police officer there was a deal. Although Mr. Tidd emphatically denies this, this allegation was never presented previously. It was not set forth in the original letter. It

was not discussed in a deposition. All allegations have to be contained in the original letter. This allegation should be dismissed as not timely presented.

45. The Respondent, David W. Tidd, reserves the right to raise other issues once all discovery is provided and completed.

WHEREFORE, the Respondent, David W. Tidd, by his counsel, Samuel C. Stretton, Esquire, respectfully requests this Omnibus Motion be granted and the case be dismissed and/or certain charges be dismissed.

Respectfully submitted,



Samuel C. Stretton, Esquire
Attorney for Respondent,
David W. Tidd
301 S. High St., P.O. Box 3231
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Attorney I.D. No. 18491

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CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the foregoing Omnibus Motion in the captioned matter upon the following persons in the manner indicated below.

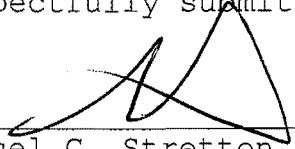
Service by First Class Mail addressed as follows:

1. Elizabeth A. Flaherty, Esquire
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3. David W. Tidd
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Respectfully submitted,

9/13/16
Date



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