



Judicial Conduct Board
Commonwealth of Pennsylvania
Joseph A. Massa, Jr., Chief Counsel
717-234-7911

Press Release

June 24, 2011

TO: Media/Press

FROM: Judicial Conduct Board

SUBJECT: Michael T. Toole
Former Judge
Court of Common Pleas
Luzerne County
No. 5 JD 2011

Harrisburg – By Order and Opinion issued on June 24, 2011, the Pennsylvania Court of Judicial Discipline ‘found the Board has established by clear and convincing evidence that the Respondent was convicted of felonies which subject him to discipline under Article V, Section 18(d)(1) of the Pennsylvania Constitution’.

The Court ORDERED that, in the event objections are not filed, the Court will conduct a hearing on the issue of sanctions on July 26, 2011, at 1:00 p.m. in Commonwealth Courtroom 5001, Fifth Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania.

The Court will determine what sanctions to impose upon former Judge Toole for conduct which brought the judicial office into disrepute; thus subjecting himself to discipline under Article V, § 18(d)(1) of the Pennsylvania Constitution.

Counsel

Board: Joseph A. Massa, Jr., -- Chief Counsel

Respondent: Frank W. Nocito, Esquire

Contact: Joseph A. Massa, Jr., Chief Counsel

Court of Judicial Discipline Opinion and Order attached.

For more information about the Judicial Conduct Board, please visit our website at www.icbpa.org.

END

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

RECEIVED AND FILED
COURT OF
JUDICIAL DISCIPLINE
OF PENNSYLVANIA

2011 JUN 24 A 11:45

IN RE: :
Michael T. Toole :
Former Judge : No. 5 JD 11
Court of Common Pleas :
Luzerne County :

BEFORE: Honorable Patrick Judge, Sr., P.J.
Honorable Stewart L. Kurtz, P.J.E.
Honorable Joseph M. James
Honorable John W. Morris
Honorable Robert E. J. Curran
Honorable Bernard L. McGinley
Honorable Charles A. Clement, Jr.

ORDER

AND NOW, this 24th day of June, 2011, based upon the Conclusions of Law, it is hereby ORDERED:

That, pursuant to C.J.D.R.P. No. 503, the attached Opinion with Findings of Fact and Conclusions of Law be and it is hereby filed, and shall be served on the Judicial Conduct Board and upon the Respondent,

That, either party may file written objections to the Court's Conclusions of Law within ten (10) days of this Order. Said objections shall include the basis therefor and shall be served on the opposing party,

That, in the event that such objections are filed, the Court shall determine whether to entertain oral argument upon the objections, and issue an Order setting a date for such oral argument,

That, in the event objections are not filed, within the time set forth above, the Findings of Fact and Conclusions of Law shall become final, and this Court will conduct a hearing on the issue of sanctions on July 26, 2011 at 1 p.m. in Commonwealth Court Courtroom 5001, Fifth Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania.

That, the Judicial Conduct Board and the Respondent shall each file on or before July 19, 2011 a list of such witnesses as either party may intend to present for testimony at that hearing, and shall serve a copy of said list upon the other party.

PER CURIAM

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: :
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 Michael T. Toole :
 Former Judge : No. 5 JD 11
 Court of Common Pleas :
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BEFORE: Honorable Patrick Judge, Sr., P.J.
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 Honorable John W. Morris
 Honorable Robert E. J. Curran
 Honorable Bernard L. McGinley
 Honorable Charles A. Clement, Jr.

OPINION BY PRESIDENT JUDGE JUDGE

FILED: JUNE 24, 2011

I. INTRODUCTION

The Judicial Conduct Board (“the Board”) filed a Complaint with this Court on April 13, 2011 against Michael T. Toole, Judge of the Court of Common Pleas of Luzerne County (“Respondent”). The Complaint charges that Respondent has been convicted of two felonies which constitutes a violation of Article V, Section §18(d)(1) of the Pennsylvania Constitution and that, as a consequence, he is subject to discipline under Article V, §18(d)(1) of the Constitution.

The Board and the Respondent have submitted stipulations of fact in lieu of trial under C.J.D.R.P. No. 502(D)(1) and a waiver of trial. The Court has accepted these stipulations of fact in pertinent part and takes judicial notice of the fact that Respondent has filed no appeal from the judgment of sentence entered April 8, 2011 and that more than 30 days has expired since that date.

II. FINDINGS OF FACT

1. Pursuant to Article V, §18 of the Constitution of the Commonwealth of Pennsylvania, the Board is granted the authority to determine whether there is probable cause to file formal charges, and, when it concludes that probable cause exists to file formal charges against a justice, judge, or magisterial district judge for proscribed conduct, to present the case in support of such charges before the Court of Judicial Discipline.

2. Respondent commenced service as a judge of the Court of Common Pleas of Luzerne County on January 5, 2004.

3. At a Board meeting on April 4, 2011, the Judicial Conduct Board found there was probable cause to believe that Respondent's conduct was of a nature requiring the filing of formal charges.

4. On December 2, 2009, a two-count Information was filed against Respondent in the United States District Court for the Middle District of Pennsylvania. Count 1 of the Information charged the Respondent with honest services wire fraud in violation of 18 U.S.C. §§1343 and 1346, classified as a felony, and Count 2 of the Information charged the Respondent with willfully making and subscribing a false individual tax return in violation of 26 U.S.C. §7206(1), also classified as a felony. Respondent pled guilty to Count 2.

5. On October 7, 2010, the United States Attorney's Office for the Middle District of Pennsylvania filed a Superseding Information in the case of United States of America v. Michael T. Toole, Criminal No. 3:CR-09-385, which charged the Respondent with Corrupt Receipt of Reward for Official Action Concerning Programs Receiving Federal Funds in violation of 18 U.S.C. §666(a)(1)(B), classified as a felony. On November 2, 2010, Respondent pled guilty to the Superseding Information filed at 3:CR-09-385.

6. Upon Motion by the government, the Court dismissed Count 1 of the original Information, which charged honest services wire fraud.

7. On April 8, 2011, the Honorable Robert P. Conaboy, United States Senior District Court Judge, sentenced Respondent to 30 months in prison.

III. DISCUSSION

As set out in the Findings of Fact, Respondent has been convicted of the commission of two felonies, *viz.*, subscribing and filing a materially false individual tax return in violation of 26 U.S.C. §7206(1) and Corrupt Receipt of Reward for Official Action Concerning Programs Receiving Federal Funds in violation of 18 U.S.C. §666(a)(1)(B), and the judgment of sentence was entered on April 8, 2011 from which no appeal has been taken. The convictions, therefore, have achieved the requisite finality to warrant the imposition of discipline by this Court pursuant to Article V, §18(d)(1) of the Pennsylvania Constitution. *See, In re Larsen*, 746 A.2d 108, 110 (Pa.Ct.Jud.Disc. 1999), and *In re Jaffe*, 839 A.2d 487, 489 (Pa.Ct.Jud.Disc. 2003).

Respondent's convictions, of itself, provide the grounds for the imposition of discipline – the Pennsylvania Constitution provides:

A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for conviction of a felony

Pa. Const. Art. V, §18(d)(1) (emphasis added). *See, In re Sullivan*, 805 A.2d 71, 74 (Pa.Ct. Jud. Disc. 2002); *In re Melograne*, 759 A.2d 475, 477 (Pa.Ct Jud.Disc. 2000); *In re Larsen*, *supra* at 110.

We find that the Board has established by clear and convincing evidence that the Respondent was convicted of felonies which subject him to discipline under Article V, Section 18(d)(1) of the Pennsylvania Constitution.

IV. CONCLUSIONS OF LAW

1. Respondent was convicted of subscribing and filing a materially false individual tax return in violation of 26 U.S.C. §7206(1) and Corrupt Receipt of Reward for Official Action Concerning Programs Receiving Federal Funds in violation of 18 U.S.C. §666(a)(1)(B).
2. Both crimes are classified as felonies.
3. The judgment of sentence entered April 8, 2011 is final as the time for filing any direct appeal has elapsed.
4. The aforesaid convictions subject Respondent to discipline under Article V, §18(d)(1) of the Pennsylvania Constitution.