



Judicial Conduct Board
Commonwealth of Pennsylvania
Robert A. Graci, Chief Counsel
717-234-7911

Press Release

April 19, 2013

TO: Press

**FROM: Robert A. Graci
Chief Counsel**

**SUBJECT: Kelly S. Ballentine
No. 7 JD 13
Magisterial District Judge
District Court 02-2-01
Second Judicial District
Lancaster County**

Harrisburg. By Order and Opinion entered April 16, 2013, the Pennsylvania Court of Judicial Discipline determined that Lancaster County Magisterial District Judge Kelly S. Ballentine violated Article V, §§ 17(b) and 18(d)(1) of the Pennsylvania Constitution and Rules 2A and 13 of the Rules Governing Standards of Conduct of Magisterial District Judges by virtue of her improper conduct by personally dismissing three traffic citations that were issued to her in 2010. The Court determined that these violations bring the judicial office into disrepute and prejudice the proper administration of justice.

Both the Board and Judge Ballentine have 10 days from the date of the April 16, 2013 Order and Opinion in which to file objections to the Court's findings and conclusions prior to the Court's final sanction order. Counsel for the Board defers any further comments until after the time for the filing of the objections has expired.

Counsel

Board: Elizabeth A. Flaherty, Esquire

Respondent: Heidi F. Eakin, Esquire

Contact

Robert A. Graci, Esquire

Court of Judicial Discipline Opinion and Order attached.

For further information about the Pennsylvania Judicial Conduct Board, see the Board's Website at www.jcbpa.org.

###

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Kelly S. Ballentine :
Magisterial District Judge : No. 7 JD 13
District Court 02-2-01 :
Second Judicial District :
Lancaster County :

RECEIVED AND FILED
COURT OF
JUDICIAL DISCIPLINE
OF PENNSYLVANIA

2013 Apr 16 P 4: 11

ORDER

AND NOW, this 16th day of April, 2013, based upon the Opinion filed herewith,
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 upon the Judicial Conduct Board and upon the Respondent;

That, either party may elect to file written objections to the conclusions of the Court, stating therein the basis for those objections, provided that such objections shall be filed with the Court within ten (10) days of the date of the entry of this Order, and a copy thereof served upon the opposing party;

That, in the event 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 issue an Order setting a date, pursuant to C.J.D.R.P. No. 504, for a hearing on the issue of sanctions.

PER CURIAM

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: :
: :
Kelly S. Ballentine : :
Magisterial District Judge : No. 7 JD 13
District Court 02-2-01 : :
Second Judicial District : :
Lancaster County : :

BEFORE: Honorable Bernard L. McGinley, P.J.
Honorable Charles A. Clement, Jr.
Honorable John R. Cellucci
Honorable Timothy F. McCune
Honorable Robert J. Colville
Honorable Carmella Mullen

OPINION BY JUDGE CLEMENT FILED: APRIL 16, 2013

I. INTRODUCTION

The Judicial Conduct Board (“Board”) filed a Complaint with this Court on February 22, 2013 against Magisterial District Judge Kelly S. Ballentine (“Respondent”). The Complaint charges that Respondent dismissed three traffic citations (two parking tickets and one for out-of-date motor vehicle registration) which had been issued to her. These dismissals were entered by Respondent in the Magisterial District Judge Computer System on December 29, 2010 and on January 27, 2011. The Board charges that, on February 1, 2013, Respondent entered a plea of guilty to three counts of Tampering with Public Records or Information, a misdemeanor of the second degree under 18 Pa.C.S.A. §4911(a)(3).

In its Complaint the Board has charged that Respondent’s conduct set out in the Complaint not only constitutes misdemeanors but also subjects her to discipline under Article V, Section 18(d)(1) of the Pennsylvania Constitution for the following reasons:

1. the Respondent's conduct violated Rule 2A. of the Rules Governing Standards of Conduct of Magisterial District Judges (Count 1),
2. the Respondent's conduct violated Rule 13A.¹ of the Rules Governing Standards of Conduct of Magisterial District Judges (Count 2),
3. the Respondent's conduct violated Article V, §18(d)(1) of the Pennsylvania Constitution because the conduct is such that brings the judicial office into disrepute (Count 3),
4. the Respondent's conduct violated Article V, §18(d)(1) of the Pennsylvania Constitution because the conduct is such that prejudices the proper administration of justice (Count 4),
5. the Respondent has violated Article V, §17(b) because her conduct was a violation of Rules 2A. and 13A.² of the Rules Governing Standards of Conduct of Magisterial District Judges (Count 5).

The parties have submitted stipulations of fact in lieu of trial under C.J.D.R.P. No. 502(D)(1). The Court has accepted the stipulations of fact in pertinent part, recited below, as the facts necessary for the disposition of this case.

II. FINDINGS OF FACT

1. Pursuant to Article V, §18 of the Constitution of the Commonwealth of Pennsylvania, the Board is granted 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 and to present the case in support of such charges before the Court of Judicial Discipline.

¹ There is no Rule 13A. There is a Rule 13 which is the Rule to which the Board refers in this charge.

² See, n. 1, supra.

2. On January 2, 2006, Judge Ballentine began her service as the duly-elected Magisterial District Judge for Magisterial District 02-2-01 of the Second Judicial District, Lancaster County, Pennsylvania, encompassing the City of Lancaster – Wards 3 and 7.

3. On February 13, 2012, by Police Criminal Complaint filed at Commonwealth v. Kelly S. Ballentine, CR-0000021-12, the Pennsylvania Office of Attorney General charged Judge Ballentine with the following offenses:

Conflict of Interest (F) (3 counts), 65 Pa.C.S.A. §1103.

Tampering with Public Records or Information (F3)
(3 counts), 18 Pa.C.S.A. 4911(a)(1).

Tampering with Public Records or Information (F3)
(3 counts), 18 Pa.C.S.A. §4911(a)(3).

Obstructing Administration of Law or Other Governmental Function (M2)
(3 counts), 18 Pa.C.S.A. §5101.

A copy of the Police Criminal Complaint is attached as Exhibit A to the Board Complaint.

4. On February 13, 2012, the Board filed a Petition for Relief requesting interim suspension with pay. By Per Curiam Order dated February 22, 2012, the Court of Judicial Discipline directed that Judge Ballentine be suspended with pay from all of her judicial duties as magisterial district judge at In re Ballentine, 1 JD 12. It further directed that Judge Ballentine's entitlement to any medical benefits would not be affected.

5. On June 1, 2012, the Pennsylvania Office of Attorney General filed a criminal Information and charged Judge Ballentine with the following offenses:

Conflict of Interest (Counts 1, 2 & 3)
65 Pa.C.S.A. §1103(a) (F-3) (amended to (F) October 10, 2012)

Tampering with Public Records or Information (Counts 4, 5 & 6)
18 Pa.C.S.A. §4911(a)(3) (F-3) (a combination of Counts 4, 5, 6, 7, 8 & 9
from the Police Criminal Complaint)

Obstructing Administration of Law or Other Governmental Function
(Counts, 7, 8 & 9)
18 Pa.C.S.A. §5101 (M-2)

A copy of the Information is attached as Exhibit B to the Board Complaint. Although only 18 Pa.C.S.A. §4911(a)(3) appears in the titles of Counts 4, 5 and 6 of the Information, the language in each count also encompasses §§4911(a)(1) & (2).

6. On February 1, 2013, pursuant to a plea agreement, Judge Ballentine appeared with counsel, Royce L. Morris, Esq., before the Honorable Charles B. Smith, Senior Judge of the Chester County Court of Common Pleas, and entered a plea of guilty to three counts of an amended charge of Tampering with Public Records or Information, 18 Pa.C.S.A. §4911(a)(1)-(3), misdemeanors of the second degree (Counts 4, 5 and 6 of the Criminal Complaint). As part of the plea agreement, the Commonwealth agreed to dismiss or nol pros the remaining charges (Counts 1, 2, 3, 7, 8 and 9) at the time of sentencing. On March 18, 2013, Respondent was sentenced to pay a fine of \$500.00 on each of the three counts – a total of \$1,500.00 in the Court of Common Pleas of Lancaster County.

7. In Pennsylvania, all magisterial district judges and their staffs utilize the Magisterial District Judge Computer System which is the case management and accounting system that generates all forms necessary to processing civil, criminal and traffic cases.

8. During the guilty plea hearing, Judge Ballentine admitted committing three misdemeanor offenses of Tampering with Public Records or Information through her conduct as follows: 1. On December 29, 2010, she entered the Magisterial District Judge Computer System and dismissed two traffic citations issued to her on November 1, 2010. Judge Ballentine wrote the date, the word “dismissed” and her initials on each citation (Counts 4 and 5 of the Criminal Complaint); 2. On January 27, 2011, Judge Ballentine entered the Magisterial District Judge System and dismissed a third traffic citation issued to her on November 8, 2010 (Count 6 of the Criminal Complaint). Judge Ballentine admitted to engaging in this intentional conduct of entering the Magisterial District Judge Computer System and dismissing traffic citations issued to her and claimed that she had no intent to defraud. The lack of an intent to defraud distinguishes misdemeanor counts of Tampering with Public Records or Information from felony counts of Tampering with Public Records or Information under 18 Pa.C.S.A. §4911(b).

9. The statutory language utilized during the guilty plea hearing mirrors that of 18 Pa.C.S.A. §4911(a)(1).

MR. FORRAY: The charge of, again, tampering with public records or information indicates that, with the intent to defraud, you did knowingly make false entry or false alteration of any record, document, or thing belonging to or received by or kept by the government for information or record.

(Guilty plea Hr’g Tr. 9:9–14, Feb. 1, 2013.)

Following input from defense counsel, Attorney Anthony Forray acknowledged that he erred when he included the phrase “with the intent to defraud” within the colloquy and corrected his mistake for the record. (*Id.* at 9:24–10:8.)

With the modification in language, the guilty plea concluded.

MR. FORRAY: So based on what I have indicated, striking the intent to defraud, how do you plead to those charges?

THE DEFENDANT: Guilty.

(Id. at 10:18–21). A copy of the Guilty Plea transcript is attached as Exhibit C to the Board Complaint.

III. DISCUSSION

We will address the Board’s charges in the order in which they are set out in the Complaint as well as in the Introduction to this opinion.

Count 1.

Count 1 charges Respondent with violation of Rule 2A. of the Rules Governing Standards of Conduct of Magisterial District Judges. The Rule provides:

RULE 2. IMPROPRIETY AND APPEARANCE OF IMPROPRIETY TO BE AVOIDED.

A. Magisterial district judges shall respect and comply with the law and shall conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Magisterial district judges shall not allow their family, social or other relationships to influence their judicial conduct or judgment. They shall not lend the prestige of their office to advance the private interest of others, nor shall they convey or permit others to convey the impression that they are in a special position to influence the judge.

Even the most incurious glance at the rule will quickly reveal that its language is vague and imprecise – conspicuously so: words and phrases such as “impropriety,” “appearance of impropriety,” “confidence in the integrity” unmistakably invite – nay, require – subjective interpretation. This is undesirable because subjective interpretations invariably vary one from another, and this is at variance with the mission of this Court – or, at least, with the aspiration of this Court – which is to provide the judges of this Commonwealth with consistent holdings so they will know what conduct does – and

what conduct does not – constitute a violation of any of the rules of conduct, including Rule 2A.

This Court first encountered this difficulty with Canon 2 (and Rule 2A.)³ in the case of In re Cicchetti, 697 A.2d 297 (Pa.Ct.Jud.Disc. 1997) where the Board averred that a judicial officer had sexually harassed a courthouse employee and charged that such conduct was a violation of Canon 2. In that case this Court observed that Canon 2:

[is] directed at conduct which would impugn or detract from the . . . “integrity and impartiality” of the judiciary.

In re Cicchetti, *supra* at 313. We then held that:

“Integrity” must be read in pari materia with . . . “impartiality” in Canon 2. Both of those words . . . exhort judges to carefully preserve all appearance of even-handedness, of not favoring or appearing to favor either side in a case, of being and appearing free from influence. Consistently with this notion, “integrity” is defined as follows:

- 1: An unimpaired condition: SOUNDNESS
- 2: firm adherence to a code of esp. moral or artistic values: INCORRUPTIBILITY
- 3: the quality or state of being complete or undivided: COMPLETENESS
syn, see HONESTY

Webster’s New Collegiate Dictionary, 1993.

Id. We then repeated what we had emphasized in In re Smith, 687 A.2d 1229, 1240 (Pa.Ct.Jud.Disc. 1996):

Canon 2 in general is directed towards conduct which could potentially cause the public or litigants to believe that a judge is not acting impartially.⁴

³ Canon 2 of the Code of Judicial Conduct and Rule 2A. of the Rules Governing Standards of Conduct of Magisterial District Judges are identical.

⁴ The instructions contained in Subsection B. of Canon 2 (and later in Rule 2A.): that “a judge should not allow his family, social or other relationships to influence his judicial conduct or judgment” and that he should not “convey or knowingly permit others to convey the impression that they are in a special position to influence him,” provide further support for this interpretation of Canon 2.

In re Cicchetti, *supra*, at 313. We then held that the conduct proscribed by Canon 2 did not include the Respondent's harassment of the female court employee.

On appeal the Supreme Court affirmed this holding and stated:

Canon 2 similarly addresses the judicial decision-making process and seeks to avoid the appearance of influence over judicial activities. Appellee is not subject to censure for a violation of Canon 2 based on his conduct toward Ms. Brueggman because it was independent of his decision-making duties.

In re Cicchetti, 560 Pa. 183, 201, 743 A.2d 431, 441 (2000).

In a later case, In re Harrington, 877 A.2d 570 (Pa.Ct.Jud.Disc. 2005), Harrington had placed phony parking tickets on the windshield of her car to avoid being ticketed for illegal parking; in doing so she failed to "comply with the law." This Court held this was a violation of Rule 2A. We did so even though Harrington's conduct was in no way connected to the "decision-making process." We did so because the Rule's requirement that judges "comply with the law" is susceptible of objective interpretation – it is easy to know what it means and it means the same to all. On the other hand, the requirement that judges "conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" is vague and imprecise – it is not easy to know what it means and, as pointed out *supra*, it requires subjective interpretation and leads inevitably to inconsistent holdings – something to be avoided in jurisprudence. This, then, was the occasion for this Court's and the Supreme Court's limiting the application of the vague language of 2A. to the "decision-making process," a phrase coined by the Supreme Court in Cicchetti. Such limitation, we believe, nicely cures the difficulties thrown up by the imprecision of that language.

However, such limitation, we believe, is not necessary with respect to the requirement that judges “comply with the law” and, we believe that fastening that limitation to that requirement is likely at variance with the intention of the justices who drafted the Rule. Nevertheless, in the Supreme Court’s Order affirming our decision in Harrington⁵ it is stated that, even though Harrington’s conduct did not “comply with the law,” the Court “disapproved” our holding that Harrington had violated Rule 2A. because her conduct did not occur in the “decision-making process.”⁶

In this case, however, the Respondent’s conduct did occur in the decision-making process: the conduct in question – the dismissing of the citations – was the actual making of the decision. Thus, we hold that Respondent violated Rule 2A. of the Rules Governing Standards of Conduct of Magisterial District Judges.

Count 2.

Count 2 charges Respondent with a violation of Rule 13A.⁷ of the Rules Governing Standards of Conduct of Magisterial District Judges. That Rule provides in pertinent part:

Magisterial district judges . . . and all employees assigned to or appointed by magisterial district judges shall not engage, directly or indirectly, in any activity or act incompatible with the expeditious, proper and impartial discharge of their duties, including, but not limited to, (1) in any activity prohibited by law”

⁵ The Supreme Court affirmed our finding that Harrington’s conduct was such that brings the judicial office into disrepute in violation of Article V, §18(d)(1) of the Pennsylvania Constitution, and supported our imposition of sanctions.

⁶ This Court has, of course, heeded that disapproval (even though it is dicta) and, in all cases after Harrington, has required that the Board establish that the conduct in question took place in the “decision-making process” in all cases charging a violation of Canon 2 or Rule 2A for failing to “comply with the law,” and will continue to do so unless the Supreme Court itself decides not to as so in the case In re Carney, 28 A.3d 253 (Pa.Ct.Jud.Disc. 2011), presently pending on appeal in the Supreme Court.

⁷See, n.1, supra.

Respondent has been charged with, pleaded guilty to, and stipulated that she engaged in activity prohibited by law, see, Findings of Fact Nos. 5-9, thus violation of Rule 13 has been established.

Count 3. and Count 4.

These Counts charge Respondent with violation of Article V, §18(d)(1) of the Pennsylvania Constitution for engaging in conduct which brings the judicial office into disrepute (Count 3) and which prejudices the proper administration of justice (Count 4). Here Respondent dismissed criminal charges filed against her. We cannot think of a purer example of conduct which prejudices the proper administration of justice; nor is there any doubt that this conduct, involving, as it does, the very heart of the judicial function, is so extreme as to be such that brings the judicial office itself into disrepute. See, e.g., In re Cicchetti, 697 A.2d 297 (Pa.Ct.Jud.Disc. 1997). We so find.

Count 5.

The Board has also charged that Respondent has, by virtue of her violation of Rules 2A. and 13A.⁸ of the Rules Governing Standards of Conduct of Magisterial District Judges, violated Article V, §17(b) of the Pennsylvania Constitution.

Section 17(b) of Article V of the Pennsylvania Constitution provides in pertinent part:

Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court. Justices of the peace shall be governed by rules or canons which shall be prescribed by the Supreme Court.

⁸ See, n.1, *supra*.

We say and hold here, as we first said and held in In re Joyce and Terrick, 712

A.2d 834 (Pa.Ct.Jud.Disc. 1998):

In the section [17(b)], justices of the peace (now known as District Justices) are treated separately from justices and judges, for a reason no more complicated than that justices of the peace are governed by a separate and different Code of Conduct than the Code of Judicial Conduct which applies to justices and judges.

We make two conclusions regarding the application of Article V, §17(b) of the Constitution:

1. Violation of a canon of legal or judicial ethics by a justice or judge is a violation of §17(b) of the Constitution. Section 17(b) by its terms makes a violation of a canon a violation of §17(b). Violation of the latter is thus derivative and automatic.

2. Though the sentence referring to justices of the peace says they “shall be governed by [The Rules Governing Standards of Conduct for District Justices]” but does not specifically say “shall not violate [those Rules],” in the context of §17(b) the phrases mean the same, and the inclusion of the second sentence was intended to make a violation of the District Justices’ Code a violation of the Constitution just as a violation of the Judicial Code is made a violation of the Constitution by the first sentence. Otherwise, there was no purpose in including the second sentence and its injunction would have no meaning or application – a violation of elementary principles of statutory interpretation. See, 1 Pa.C.S. §1921, Habecker v. Nationwide Ins. Co., 299 Pa. Super. 463, 445 A.2d 1222 (1982) and cases cited therein. Thus, a violation of the Rules Governing Standards of Conduct for District Justices is an automatic, derivative violation of §17(b) of the Constitution.

Id. at 845-46.

IV. CONCLUSIONS OF LAW

1. Respondent's conduct set out in Findings of Fact Nos. 1-9 is:
 - (a) a violation of Rule 2A. of the Rules Governing Standards of Conduct of Magisterial District Judges,
 - (b) a violation of Rule 13 of the Rules Governing Standards of Conduct of Magisterial District Judges,
 - (c) such that brings the judicial office into disrepute, a violation of Article V, §18(d)(1) of the Pennsylvania Constitution,
 - (d) such that prejudices the proper administration of justice, a violation of Article V, §18(d)(1) of the Pennsylvania Constitution, and
 - (e) inasmuch as it has been found that Respondent's conduct constitutes a violation of Rules 2A. and 13 of the Rules Governing Standards of Conduct of Magisterial District Judges, it is an automatic, derivative violation of Article V, §17(b) of the Pennsylvania Constitution.