

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

Press Release

April 30, 2007

TO: Media/Press

FROM: Judicial Conduct Board/Joseph A. Massa, Jr., Chief Counsel

SUBJECT: Filing of Formal Charges
Donald L. Whittaker
Magisterial District Judge In and For
Magisterial District 11-3-02
Luzerne County

On April 30, 2007, the Judicial Conduct Board instituted formal proceedings against Magisterial District Judge Donald L. Whittaker, Magisterial District 11-3-02, Luzerne County, Pennsylvania. A Board Complaint was filed today with the Court of Judicial Discipline in Harrisburg.

In accordance with rules that govern proceedings before the Court of Judicial Discipline, Magisterial District Judge Whittaker has an opportunity to respond to the charges and a right to a public hearing at which the parties will have an opportunity to introduce evidence and examine and cross-examine witnesses.

Following completion of the hearing, the Court will determine if the charges have been proven by clear and convincing evidence. If so, a Sanctions Hearing will be scheduled, at which time the Court determines what sanctions to impose.

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

Respondent's Albert J. Flora, Jr., Esquire
Basil Russin, Esquire

Contact: Joseph A. Massa, Jr., Chief Counsel
Judicial Conduct Board

Note: Board Complaint attached.

(This information may also be found on www.jcbpa.org)

END

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

RECEIVED AND FILED
COURT OF
JUDICIAL DISCIPLINE
OF PENNSYLVANIA

2007 APR 30 P 1:33

In re:

Donald L. Whittaker; :
Magisterial District Judge In and For; :
Magisterial District 11-3-02; :
Luzerne County : 1 JD 2007
:

NOTICE OF FORMAL CHARGES

TO: MAGISTERIAL DISTRICT JUDGE DONALD L. WHITTAKER:

The Pennsylvania Judicial Conduct Board has determined that there is probable cause to file formal charges against you for conduct proscribed by Article V, § § 17 and 18 of the Constitution of the Commonwealth of Pennsylvania. The Board's counsel will present the case in support of the charges before the Pennsylvania Court of Judicial Discipline.

You have an absolute right to be represented by a lawyer in all proceedings before the Court of Judicial Discipline. Your attorney should file an entry of appearance with the Court of Judicial Discipline within fifteen (15) days of service of this Board Complaint in accordance with C.J.D.R.P. No. 302(B).

You are hereby notified, pursuant to C.J.D.R.P. No. 302(E), that should you elect to file an omnibus motion, that motion should be filed no later than thirty (30) days after the service of this complaint in accordance with C.J.D.R.P. No. 411.

FORMAL COMPLAINT

AND NOW, this 30th day of April, 2007, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (hereinafter "Board") and files this Board Complaint against Magisterial District Judge Donald L. Whittaker (hereinafter "Respondent"), of Magisterial District 11-3-02, Luzerne County, Pennsylvania, alleging that the Respondent has violated the Rules Governing Standards of Conduct of Magisterial District Judges, and Article V, § § 17(b) and 18(d)(1) as more specifically delineated herein.

1. This action is taken pursuant to the authority of the Board under Article V, § 18 of the Constitution of the Commonwealth of Pennsylvania which granted authority to the Board 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 judicial officer for proscribed conduct and to present the case in support of such charges before the Court of Judicial Discipline.

2. Since on or about January 3, 1994, and at all times relevant hereto, the Respondent has served as a District Justice and, as renamed, a Magisterial District Judge of Magisterial District 11-3-02, Luzerne County, Pennsylvania, encompassing the City of Nanticoke; Townships of Newport and Plymouth; and the Borough of Plymouth, with an office located at 15 East Ridge Street, Nanticoke, Pennsylvania 18634. The Respondent is charged with violating his judicial duties as set forth in the following paragraphs.

INAPPROPRIATE AND OFFENSIVE LANGUAGE AND CONDUCT

3. Mary Ann Kearney, an adult female, is employed by the Wyoming Valley Sanitary Authority as an office manager with her office located in the Nanticoke Municipal Building, the same building housing the Respondent's office and court.

4. On or about January 24, 2005, Mary Ann Kearney approached her work area after using the Ladies Room. Several members of the public were waiting at the counter near her desk for service.

5. The Respondent asked Mary Ann Kearney, in front of all, "*Did you have a hard time getting it out?*" and "*Did you need a pencil to work it out?*" These comments embarrassed Mary Ann Kearney.

6. On or about January 26, 2005, at approximately 11:45 a.m. Patricia Zendarski, who was employed as a Refuse Clerk/Switchboard Operator in the Nanticoke Municipal Building, was seated at her desk located in the vestibule area of the Office of the Mayor talking with Mary Ann Kearney.

7. Mary Ann Kearney had undergone rotator cuff surgery the previous October 7, 2004, and had been off work for several weeks followed by several months of rehabilitation for her surgery.

8. The Respondent entered into Patricia Zendarski's work area and began conversing with Zendarski and Mary Ann Kearney.

9. Mary Ann Kearney began to blow her nose, at which time the Respondent asked her, "*Did you get it all out?*" The Respondent then placed both hands around Mary Ann Kearney's neck and twisted it. Mary Ann Kearney told the Respondent, "*Don, stop, I don't want to go to anymore therapy. Don, don't – it hurts.*" The Respondent replied, "*How do you give Bill (her husband) a blow job?*" Mary Ann Kearney replied, "*I don't.*" She started to cry from the pain inflicted by the Respondent's actions.

10. The Respondent was aware of Mary Ann Kearney's rotator cuff surgery and subsequent therapy.

11. Mary Ann Kearney reported the incident to James Cheshinski, Chief of the Nanticoke Police Department, who happened to be on the same floor as the Mayor's Office.

12. Following up this discussion with Chief Cheshinski, Mary Ann Kearney went to the Nanticoke Police Department and reported the incident to Detective William Schultz.

13. On or about May 6, 2005, the Respondent entered the Nanticoke Municipal Building through the back door and walked into the lunch room which is located near the Nanticoke Tax Office. Present in the adjacent office area were females, including Mary Ann Kearney. A few of the females in the office noticed him and told him he looked nice. The Respondent replied, "*How are you cunts doing...?*" When told they did not like the word, the Respondent told them to "*make a list of other words I can use instead*" and he would "*return to discuss them.*"

CONFLICTING PUBLIC EMPLOYMENT

14. Since approximately 2000, and concurrently with his service as a Magisterial District Judge, the Respondent has been employed as a fire apparatus operator by Newport Township, located within his magisterial district (11-3-02, Luzerne County).

15. In this position, the Respondent is on call to receive fire dispatches from the county 911 emergency call center and he drives the truck for the volunteer fire company.

16. The Respondent works approximately two (2) days per week as a fire apparatus operator and is paid by Newport Township at a rate of \$10.39 per hour. His gross annual income from this position is approximately \$4,000.

By virtue of some, or all of the facts alleged in paragraphs one (1) through sixteen (16) of this Board Complaint, the Respondent is subject to discipline pursuant to Article V, § 18(d)(1) of the Pennsylvania Constitution for the following reasons:

COUNT 1: Respondent has violated Article V, § 18(d)(1) of the Pennsylvania Constitution by engaging in activity which brings the judicial office into disrepute.

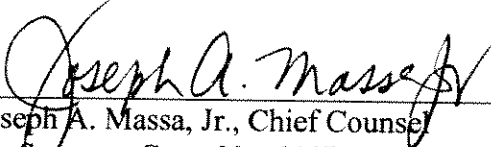
COUNT 2: Respondent has violated Rule 4C of the Rules Governing Standards of Conduct of Magisterial District Judges by failing to be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom they deal in their official capacity, and shall require similar conduct of lawyers, of their staff and others subject to their direction and control.

COUNT 3: Respondent has violated Rule 15A of the Rules Governing Standards of Conduct of Magisterial District Judges by holding another office or position of profit in the government of the United States, the Commonwealth or any political subdivision thereof, except in the armed services of the United States or the Commonwealth.

WHEREFORE, Donald L. Whittaker, the Magisterial District Judge named in these charges, is subject to disciplinary action pursuant to the Constitution of the Commonwealth of Pennsylvania, Article V, § 18(d)(1).

Respectfully submitted,

Date: April 30, 2007



Joseph A. Massa, Jr., Chief Counsel
Pa. Supreme Court No. 6467

Judicial Conduct Board
301 Chestnut Street, Suite 403
Harrisburg, PA 17101
(717) 234-7911
Fax: (717) 234-9307

COMMONWEALTH OF PENNSYLVANIA

COURT OF JUDICIAL DISCIPLINE

In re:

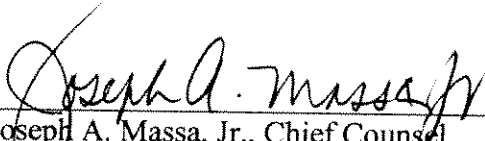
Donald L. Whittaker; :
Magisterial District Judge In and For; :
Magisterial District 11-3-02; :
Luzerne County : 1 JD 2007
:

VERIFICATION

I am the Chief Counsel for the Judicial Conduct Board and I am authorized to make this verification and file the foregoing *BOARD COMPLAINT*. I verify that the Judicial Conduct Board found probable cause to file the formal charges contained in the Board Complaint. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S Section 4904, relating to unsworn falsification to authorities.

Respectfully submitted,

Date: April 30, 2007



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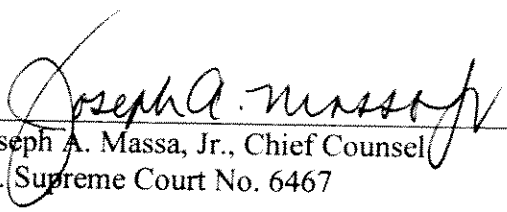
PROOF OF SERVICE

In compliance with Rule 122(D) of the Court of Judicial Discipline Rules of Procedure, on April 30, 2007, a copy of this *BOARD COMPLAINT* was sent by Certified Mail to counsel for the Respondent:

Albert J. Flora, Jr., Esquire
Basil Russin, Esquire
1575 Wyoming Avenue
Forty Fort, PA 18704
(570) 283-1200
Fax: (570) 283-1687
Certified Mail No. 7161 7145 5370 1111 3288
Return Receipt Requested

Respectfully submitted,

Date: April 30, 2007



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