

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

IN RE: :  
 :  
 Ernest L. Marraccini :  
 Magisterial District Judge In and For : No. 2 JD 05  
 Magisterial District 05-2-26 :  
 Allegheny County :

BEFORE: Honorable Richard A. Sprague, P.J.  
 Honorable Joseph A. Halsey  
 Honorable Robert L. Capoferri  
 Honorable Paul P. Panepinto  
 Honorable Lawrence J. O'Toole  
 Honorable Marc Sandler  
 Honorable William H. Lamb

OPINION BY JUDGE SPRAGUE

FILED: July 20, 2006

**I. INTRODUCTION**

The Judicial Conduct Board (Board) filed a Complaint with this Court on February 16, 2005 against Magisterial District Judge Ernest L. Marraccini (Respondent) in which the Board charges Respondent with three violations of the Pennsylvania Constitution and three violations of the Rules Governing Standards of Conduct of Magisterial District Judges all of which are based on Respondent's conduct over a 20-30 minute period on the morning of May 25, 2004. The Board charges that Respondent's conduct was such that subjects him to discipline under the Pennsylvania Constitution, Article V, §18(d)(1) for six separate reasons:

1. The Respondent has violated Article V, §18(d)(1) of the Pennsylvania Constitution by committing misconduct in office. (Count 1).
2. The Respondent has violated Article V, §18(d)(1) of the Pennsylvania Constitution by failing to perform the duties of office. (Count 2).
3. The Respondent has violated Article V, §18(d)(1) of the Pennsylvania Constitution by engaging in conduct which brings the judicial office into disrepute. (Count 3).
4. The Respondent has violated Rule 3A. of the Rules Governing Standards of Conduct of Magisterial District Judges which provides in part:

A magisterial district judge shall devote the time necessary for the prompt and proper disposition of the business of his office.<sup>1</sup> (Count 4).

5. The Respondent has violated Rule 4C. of the Rules Governing Standards of Conduct of Magisterial District Judges which provides in part:

A magisterial district judge shall be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom he deals in his official capacity. (Count 5).

6. The Respondent has violated Rule 4D. of the Rules Governing Standards of Conduct of Magisterial District Judges which provides in part:

A magisterial district judge shall accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law. (Count 6).

The Board and the Respondent have submitted stipulations as to some of the facts pursuant to C.J.D.R.P. No. 502(D)(2). The Court accepted the pertinent stipulations and proceeded to trial on September 28, 2005. The Court now makes its Findings of Fact; those which have been stipulated are so designated.

---

<sup>1</sup> In the Complaint the Board inaccurately quotes the Rule as providing “. . . prompt and proper disposition of the business of court.”

## II. FINDINGS OF FACT

1. Pursuant to Article V, §18 of the Constitution of the Commonwealth of Pennsylvania and Judicial Conduct Board Rule of Procedure 31(A)(3), promulgated by the Pennsylvania Supreme Court on March 20, 1995 (amended 1996), 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 justice of the peace, for proscribed conduct and to present the case in support of such charges before the Court of Judicial Discipline. (Stipulation No. 1).

2. Since on or about December 28, 1992, the Respondent has served continuously to the present as magisterial district judge for Magisterial District 05-2-26 in Allegheny County, the Fifth Judicial District, Pennsylvania, encompassing the Townships of Elizabeth and Forward, and the Boroughs of Elizabeth and West Elizabeth, and with an office at Swiss Alpine Village, 250 Swiss Lane, Route 48, Elizabeth, Pennsylvania, 15037. (Stipulation No. 2).

3. On or about May 25, 2004, the Respondent presided over court for Magisterial District Judge Susan F. Evashavik, Magisterial District 05-2-08 in Allegheny County, at 2065 Ardmore Boulevard, Pittsburgh, Pennsylvania, 15221. (Stipulation No. 3).

4. Judge Evashavik's magisterial district includes Edgewood Borough.

5. Respondent substituted ("covered") for Judge Evashavik that day at her request. She made the request by telephone about a week earlier at which time it was agreed that Respondent would arrive at 9:30 a.m. (N.T. 184-85). He had covered for her

predecessor before but never for Judge Evashavik. (N.T. 186). Respondent had covered for other magisterial district judges 51 times in 2003 and 31 times in 2004. (N.T. 183).

6. Judge Evashavik's office had scheduled thirty-three traffic cases for 9 a.m. that morning. All thirty-three cases had been filed by the Edgewood Borough Police Department.

7. When Respondent arrived at Judge Evashavik's court shortly before 9:30 a.m. she was waiting at the rear entrance and they engaged in some conversation after which she told him that "the chief would be there as the reader because the officers weren't going to show." (N.T. 187, 219, 227).

8. On several occasions both before and after Respondent opened court, Chief Paul Wood of the Edgewood Borough Police Department told Respondent that under the rules he couldn't dismiss or "throw out" a case just because the officer doesn't show and that he would be reading the cases. (N.T. 42, 46, 49, 62-63, 66-67, 103, 187-89, 193). Respondent warned the Chief that he might just throw out all of the cases (N.T. 189) and told him that he knew the rules. (N.T. 193).

9. The rule to which Chief Wood was referring was Pennsylvania Rule of Criminal Procedure No. 454(B) which provides:

If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the issuing authority shall try the case in the same manner as trials in criminal cases are conducted in the courts of common pleas when jury trial has been waived; however, in all summary cases arising under the Vehicle Code or local traffic ordinances, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant.

10. Respondent obtained the citations from Judge Evashavik's office staff and brought them to the bench. The citations were stapled together in batches of five. Since the cases were to be called in the order in which the defendants had signed in, it was necessary for Respondent to unstaple the batches. Respondent was required to do this with his fingernails and in the course of this one of the batches fell to the floor. Officer Quinn retrieved it and put it back on the bench. (N.T. 191-92).

11. After disposing of a case filed by a state policeman (N.T. 194), Respondent called the first case of the thirty-three filed by officers of the Edgewood Borough Police Department. This case was a citation against Sterling Howard Murray charging that he had failed to stop at a stop sign; the citation had been issued by Officer Livingston of the Edgewood Borough Police Department. (N.T. 55, Board Exhibit A).

12. Respondent asked if the issuing officer was present and Chief Wood stated he was not but again told the Respondent that he was allowed to read the cases, that Judge Evashavik allowed "us" to read the cases (N.T. 62-63), that Judge Evashavik doesn't require the issuing officer to be present nor did the law require it. (N.T. 103).

13. Respondent found the defendant not guilty. (N.T. 45-47, 62, 103-04, 200). Before he left the courtroom the defendant asked Respondent if he would get his collateral back; Respondent replied that "if I don't spend it on my vacation, yes, you'll be getting your money back." (N.T. 45, 104, 200). This remark was made in a joking manner in an effort to lighten the atmosphere in the courtroom. (N.T. 200).

14. The second case of the Edgewood Borough cases called was a citation filed against Neil Salopek for driving with an expired license; the citation had been issued

by Officer Lewis of the Edgewood Borough Police Department. (N.T. 46, 105, 115-16, 197, Board Exhibit A).

15. Officer Lewis was not present and the Commonwealth did not produce any evidence that the defendant's license was expired at the time of the citation and, upon the direction of Respondent, Officer Quinn, who was present in court with Chief Wood, examined the defendant's license and reported that it appeared to be valid, whereupon Respondent found the defendant not guilty. (N.T. 46, 105, 115-16, 196-98).

16. Chief Wood testified that Officer Quinn had the certified copy of the PennDOT record which might have established that, at the time the citation was issued, Salopek's driver's license was expired: "So, Officer Quinn did have that sheet." (N.T. 46). Officer Quinn testified that "he wouldn't have had that but Chief Wood would have." (N.T. 115). Quinn testified that neither he nor Wood offered it. (N.T. 107). The Respondent testified that neither Wood nor Quinn had it or offered it. (N.T. 197-99). We find that neither had it nor offered it into evidence.

17. The third case of the Edgewood Borough cases called was a citation filed against Rachel Elizabeth Barron for failure to obey a traffic control device (§3111A of the Vehicle Code – a no-points violation); the citation had been issued by Officer Kusinsky of the Edgewood Borough Police Department. (N.T. 47-48, 106-07, 195, Board Exhibit A).

18. Although Officer Kusinsky was not present (N.T. 47), the defendant testified after which Respondent found the defendant guilty of the no-points violation (§3111A). (N.T. 47-48, 106-07, 195).

19. After the defendant left the courtroom, Chief Wood again told Respondent that neither Judge Evashavik nor the law required the issuing officer to be present in traffic cases (N.T. 49, 107, 201-02) and demanded that Respondent allow him to read the tickets and not require the testimony of the issuing officer or any other witness. (N.T. 201). At this point Respondent became very upset and told Chief Wood that he didn't need him to lecture him on the law and under the procedure the chief was demanding the Respondent stated "we'll just find everybody not guilty." (N.T. 50, 107).

20. Respondent left the courtroom and entered the secretaries' area, which was separated from the waiting room by a glass partition with a window, and announced to the remaining twenty-some defendants that all those with Edgewood Borough traffic tickets were not guilty and should leave (N.T. 24, 50, 108, 138, 147, 155, 203) because "there is no proof ... there's no evidence." (N.T. 155 (Shumaker)).

21. With that announcement, some confusion ensued amongst some of the defendants in the waiting room: some asked if they really were discharged; some asked if Respondent really was the judge; some asked if they would get their collateral back; some asked if they would get something in writing to prove they were not guilty. (N.T. 50, 108-09, 138, 147, 205).

22. Respondent answered the questions in a condescending, belittling and sarcastic manner. (N.T. 26, 51-52, 139, 147, 156, 232). He asked the defendants in the waiting room if they were all morons and didn't they understand the English language. (N.T. 51, 110-11, 129, 138, 147, 156).

23. All of the defendants eventually did leave after being assured that their collateral would be refunded by mail (N.T. 131, 134, 140, 158, 205-06) and after

Respondent assured one defendant that he would send her a letter affirming that she had been in court and had been found not guilty. (N.T. 158-59, 207).

24. The only members of the Edgewood Police Department present in court that morning were Chief Wood and Officer Timothy Quinn. (N.T. 34, 92).

25. Of the thirty-three cases listed in Judge Evashavik's court for 9 a.m. that morning, the officers writing the citations were not present in twenty-nine. Officer Quinn was the issuing officer in four cases. (N.T. 93-94). Chief Wood had signed seven citations for alleged parking violations, all of which were alleged to have occurred between 3 a.m. and 5 a.m. on various dates, but Chief Wood had not observed or reported the violations and was not in a position to testify about them. (N.T. 73-74, 78, 80-81, 88-90).

26. In the thirteen years Respondent has served as a magisterial district judge, he acquired a reputation among the police, the District Attorney's Office and the defense bar for fully and industriously executing the duties of his judicial office, for doing so in a fair, impartial and professional manner; for conducting himself in an exemplary manner both on and off the bench, and for treating litigants and attorneys who appear before him in a patient, dignified and courteous fashion. (N.T. 164-178, 241-44).

### **III. DISCUSSION**

The amendment to the Constitution of Pennsylvania of 1993 established the Judicial Conduct Board and this Court, and provided certain specific instructions for the conduct of proceedings before this Court:

All hearings conducted by the court shall be public proceedings conducted pursuant to the rules adopted by the court and in accordance with the principles of due process and the law of evidence. Parties appearing before the court shall have a right to

discovery pursuant to the rules adopted by the court and shall have the right to subpoena witnesses and to compel the production of documents, books, accounts and other records as relevant. The subject of the charges shall be presumed innocent in any proceeding before the court, and the board shall have the burden of proving the charges by clear and convincing evidence.

Pa. Const., Article V, §18(b)(5).

The Pennsylvania Supreme Court has defined clear and convincing evidence as follows:

The witnesses must be found to be credible, that the facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order, and that their testimony is so clear, direct, weighty, and convincing as to enable the [trier of fact] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue . . . . It is not necessary that the evidence be uncontradicted . . . provided it “carries a clear conviction to the mind” or “carries a clear conviction of its truth.”

In re Adoption of J.J., 511 Pa. 590, 515 A.2d 883, 886 (1986). See, also, La Rocca Trust, 411 Pa. 633, 640, 192 A.2d 409, 413 (1963), and In re Cicchetti, 697 A.2d 297, 306 (Pa.Ct.Jud.Disc. 1997).

Acting under the provisions of C.J.D.R.P. No. 501, the President Judge appointed a Panel to conduct the trial of this case. The Panel, consisting of Conference Judge Sandler, Judge Halesey and Judge Panepinto, conducted the trial September 28, 2005. Findings of Fact were initially made by the Panel.

Since the Constitution requires that “all actions of the court . . . shall require approval by a majority vote of the members of the court” the Panel’s Findings of Fact have been reviewed and this Decision is rendered by the full Court. As we noted in In re Nakoski, 742 A.2d 260, 263 (Pa.Ct.Jud.Disc. 1999) and In re Manning, 711 A.2d 1113, 1117 (Pa.Ct.Jud.Disc. 1998), this Court is constrained to accord special deference to the

findings of a Panel for, as the judges who hear the witnesses testify and observe their demeanor, it is they who are best positioned to assess credibility.

The Supreme Court of Pennsylvania has addressed this subject as follows:

As long as sufficient evidence exists in the record which is adequate to support the finding found by the trial court, as factfinder, we are precluded from overturning that finding and must affirm, thereby paying the proper deference due to the factfinder who heard the witnesses testify and was in the sole position to observe the demeanor of the witnesses and assess their credibility. This rule of law is well established in our jurisprudence and is rooted in concepts of fairness, common sense and judicial economy (citations omitted).

Commonwealth Dept. of Transportation v. O'Connell, 521 Pa. 242, 248, 555 A.2d 873, 875 (1989). See, also, the observations of the United States Supreme Court in Patton v. Yount, 467 U.S. 1025, 1038, 104 S.Ct. 2885, 2892, 81 L.Ed.2d 847, 858 (1984), “the determination is essentially one of credibility, and therefore largely one of demeanor. As we have said on numerous occasions, the trial court’s resolution of such questions is entitled ... to ‘special deference,’” and in Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 500, 104 S.Ct. 1949, 1959, 80 L.Ed.2d 502, 516 (1984). “The requirement that special deference be given to a trial judge’s credibility determinations is itself a recognition of the broader proposition that the presumption of correctness that attaches to factual findings is stronger in some cases than in others.”

In this case, particularly respecting what took place in the courtroom, credibility of those who testified is pivotal, not only respecting what actually occurred, but also with respect to the overall environment in the courtroom, and the behavior of Chief Wood and Respondent, protagonists here. What took place outside the courtroom is largely undisputed.

We view this case as consisting of two separate (though related) episodes:

- (1) Respondent's exercise of his judicial duties, i.e., his findings of not guilty in thirty-two of the thirty-three cases listed before him on the day in question,<sup>2</sup> and
- (2) Respondent's conduct in dealing with the defendants in those cases in the waiting room outside the courtroom.

We will approach this case in that sequence and deal first with Respondent's disposition of the cases on the court's list that day.

The root of the controversy in this case is Pennsylvania Rule of Criminal Procedure 454(B) and the way it has been interpreted and implemented by Magisterial District Judge Evashavik and Chief Wood of the Edgewood Borough Police Department.

The portion of Rule 454(B) pertinent here provides:

If the defendant pleads not guilty, the issuing authority shall try the case in the same manner as trials in criminal cases are conducted in the courts of common pleas when jury trial has been waived; however, in all summary cases arising under the Vehicle Code or local traffic ordinances, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant (emphasis added).

According to the testimony of Chief Wood, Officer Quinn and Respondent, Judge Evashavik had interpreted this rule to permit – even require – a finding of guilty in the absence of any admissible evidence of guilt and, by way of implementing this interpretation, had established a protocol whereunder “the law enforcement officer

---

<sup>2</sup> It is not clear whether any, some, or all of the charges filed by the Board are meant to apply to Respondent's findings of not guilty in the cases of John Sterling Murray and Neil Salopek, although it is certainly clear that Chief Wood and Officer Quinn were not happy about those findings.

observing the defendant’s alleged offense,” commonly did not attend the hearings and the testimony which he or she would [supposedly] give was given, as if by proxy, by the Chief who appeared as “reader.”<sup>3</sup>

The Respondent, a judge of thirteen years experience, did not subscribe to the legitimacy of this interpretation of the rule, would not permit its implementation, and clashed with Chief Wood who repeatedly demanded that he do so.<sup>4</sup>

The dominant consideration here is that it was Respondent’s prerogative and his responsibility – and his alone – to determine the admissibility of evidence in his courtroom and we find that his determination that Chief Wood’s reading of the citations was not admissible was an entirely reasonable determination. We find that it was reasonable for Respondent to determine that Rule 454(B) of the Criminal Rules of Procedure did not require him to receive the testimony offered by a “reader.”

We turn then to consider the charges filed by the Board in this case.

As stated earlier the Board has charged that Respondent’s conduct on the morning of May 25, 2004 constituted:

1. misconduct in office (violation of Pa. Const., Article V, §18(d)(1)) (Count 1),
2. failure to perform the duties of office (violation of Pa. Const., Article V, §18(d)(1)) (Count 2),

---

<sup>3</sup> At one point in his testimony the Respondent said: “. . . the chief one more time demands that he be allowed – demanded that I should say that he be allowed to read the ticket. And I frankly don’t understand what the purpose of a reader is. But anyway . . . what is the point of reading it because I can read it.” (N.T. 201).

<sup>4</sup> We would be remiss if we did not note here that we consider Judge Evashavik’s instructions to Respondent as to how to conduct the trials (trials which he had sworn to conduct according to law – not according to her) as an explicit and improper attempt to influence the outcome of those cases. See, In the Matter of Larsen, 532 Pa. 326, 327, 616 A.2d 529, Appendix I at 384, 616 A.2d at 558 (1992). We, likewise, consider the repeated remonstrations of Chief Wood to be improper. Chief Wood, as the representative of the Commonwealth, was a party to these proceedings, and his instructions to Respondent as to how to conduct the trials, as to what evidence to admit, were ex parte communications made for the sole purpose of influencing the cases to the detriment of the other parties.

3. conduct which brings the judicial office into disrepute (violation of Pa. Const., Article V, §18(d)(1)) (Count 3),
4. failure to devote the time necessary for the prompt and proper disposition of the business of his office (violation of Rule 3A. of the Rules Governing Standards of Conduct of Magisterial District Judges) (Count 4),
5. failure to be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom he deals in his official capacity (violation of Rule 4C. of the Rules Governing Standards of Conduct of Magisterial District Judges) (Count 5),
6. failure to accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law (violation of Rule 4D. of the Rules Governing Standards of Conduct of Magisterial District Judges) (Count 6).

Counts 1, 2, 3, 4 and 6 relate to Respondent's disposition of the Edgewood Borough traffic cases listed before him on the morning of May 25, 2004. Count 5 relates to his conduct in dealing with the defendants in the waiting room outside the courtroom. Count 3 can reasonably be considered as relating to both; we will so consider it.

In light of our holding that Respondent's interpretation of Rule 454(B) as not requiring the admissibility of a "reader's" "readings" was reasonable, we find that his disposition of the Edgewood Borough cases did not constitute a violation of Article V, §18(d)(1) of the Pennsylvania Constitution for we find that such disposition:

1. was not misconduct in office,
2. did not constitute failure to perform the duties of office, and
3. was not such which brings the judicial office into disrepute.

We likewise find that Respondent's disposition of those cases did not constitute a violation of Rules 3A. or 4D. of the Rules Governing Standards of Conduct of Magisterial District Judges for we find that his dispositions:

4. did not constitute failure to devote the time necessary for the prompt and proper disposition of the business of his office, and
6. did not constitute failure to accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law.

On the other hand, we hold that the manner in which Respondent disposed of the cases outside the courtroom considered in combination with his undignified and discourteous treatment of the defendants in the waiting room constituted conduct which brings the judicial office into disrepute in violation of Article V, §18(d)(1) of the Pennsylvania Constitution.

We also hold that the Board has established that Respondent's conduct in dealing with the defendants in the waiting room was a violation of Rule 4C. of the Rules Governing Standards of Conduct of Magisterial District Judges which requires Respondent to be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom he deals in his official capacity.

We first address the alleged constitutional violations of misconduct in office (Count 1), failure to perform the duties of office (Count 2), and conduct which brings the judicial office into disrepute (Count 3), (Pa. Const., Article V, §18(d)(1)) and the alleged violation of Rule 3A., failure to devote the time necessary for the prompt and proper disposition of the business of his office (Count 4), and Rule 4D., failure to accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law (Count 6) all growing out of Respondent's findings of "not guilty" in the Edgewood Borough traffic cases.

All of these alleged violations are based upon the Board's assumption – upon the premise – that Pennsylvania Rule of Criminal Procedure No. 454(B) required

Respondent to admit and consider as evidence of guilt whatever was written on the citations as read to the court by Chief Wood, the designated “reader” for the day. Inasmuch as Respondent refused to do that and summarily found the defendants not guilty, the Judicial Conduct Board concludes that these dispositions were improper and that the asserted violations are established. Since we have held that Respondent made a reasonable determination that Rule 454(B) did not require the admission of Chief Wood’s “readings” and that Respondent was justified in doing so in the exercise of his judicial duties, the Board was proceeding under a false premise and its conclusion that Respondent’s findings of not guilty were improper is likewise false. Under Respondent’s interpretation of the law, which we have found to be a reasonable interpretation, “not guilty” was the only possible disposition of these cases for there was no evidence of guilt. Under Respondent’s interpretation of the law the only possible admissible evidence of guilt was the testimony of the issuing officers who “weren’t going to show.”

Therefore, Respondent’s findings of “not guilty” in these cases was not “misconduct in office”; was not “fail[ure] to perform the duties of his office”; and it was not “conduct which brings the judicial office into disrepute.”

Nor were Respondent’s findings of “not guilty” in these cases a “failure to devote the time necessary for the prompt and proper disposition of the business of his office” – on the contrary Respondent’s dispositions of these cases were prompt and in these circumstances were the only proper dispositions possible. Thus, no violation of Rule 3A. of the Rules Governing Standards of Conduct of Magisterial District Judges has been established.

Nor did Respondent's disposition of these cases constitute a "failure to accord every person who is legally interested in a proceeding . . . full right to be heard according to law." The Board maintains that by refusing to permit Chief Wood to read the citations into evidence Respondent denied the Commonwealth the "full right to be heard according to law." We have held that, according to law, as interpreted by Respondent, the Commonwealth had no right to have Chief Wood read the citations into evidence, and, therefore, no violation of Rule 4D. of the Rules Governing Standards of Conduct of Magisterial District Judges has been established.<sup>5</sup>

An additional consideration which we believe to be important in assessing the applicability of Rule 4D. here, is the consideration of what the rule is designed to accomplish. We believe the rule was designed to protect litigants, and not to prescribe procedural rules of one kind or another. If the right of litigants "to a full hearing according to law" has not been violated, the rule has not been violated. The bottom line here is that the rights of the litigants in this case to a full hearing were not violated by Respondent's disposition of these cases: not the right of the Commonwealth because, under Respondent's reasonable interpretation of the law, it had no evidence to present – in fact announced it had no evidence to present; and not the defendants' rights – from beginning to end Respondent was acting to protect their rights.

---

<sup>5</sup> We are aware that the Board presented the testimony of Michele Prior, one of the thirty-two defendants who were found not guilty, that she was disappointed, even annoyed, that she didn't have the opportunity "to say what I thought happened when I coasted through a stop sign. I expected to plead my case about a stop sign." (N.T. 30). Presumably, the Board offered this testimony to show that, by finding the witness "not guilty," Respondent denied her "full right to be heard according to law" – a violation of Rule 4D. We do not know of any law which requires a judge to take testimony from a defendant in a criminal case who, for lack of any evidence, has been found not guilty.

We are cognizant that the Board introduced evidence at the trial that Chief Wood who was present in court, was the issuing officer, i.e., he had signed the affidavit on the citation, in seven of the cases listed before Respondent and that Officer Quinn, who was also present in court, was the issuing officer on four of the cases.<sup>6</sup>

However, all of Chief Wood's cases were citations for parking violations all alleged to have been earned between 3 a.m. and 5 a.m. on various dates; but Chief Wood had not observed or reported the violations but merely signed the citations which were issued when the "No Parking" tickets were not paid within the prescribed time (see Finding of Fact No. 24). Consequently, Chief Wood was not in a position to testify about the parking violations – unless he was allowed to "read" the citations, which we have held it was reasonable for Respondent to forbid.

With respect to Officer Quinn's cases, while it is true that he would have been in a position to testify regarding the citations he had issued, Respondent did not know that Quinn was the issuing officer on any of the cases, and, having been told by Judge Evashavik that none of the officers were going to show (see Finding of Fact No. 7), was justified in acting on that instruction.

The Board has made part of this record a computer print-out of the day's docket and it is by examination of that print-out that it is discovered that Quinn was the charging officer in four cases. However, Respondent did not have that print-out, and would have had no reason or occasion to consult it if he had, thus the only information that could have been in his mind on the question of which charging officers would be in court was what Judge Evashavik had told him, i.e., "None"; and this is exactly what happened in

---

<sup>6</sup> These four cases involved three defendants – one of the defendants was the recipient of two of Quinn's citations.

the three cases he did call, thereby further justifying his reliance on what Judge Evashavik had told him. It is upon that which he knew that he should be judged.

Careful consideration of the testimony of all three individuals who were present in Judge Evashavik's courtroom that morning – Chief Wood, Officer Quinn and Respondent – shows that all are in agreement that Chief Wood repeatedly and insistently told Respondent that the law required that Respondent allow him to “read” the citations, that Respondent resented this and let it be known that he resented the Chief of Police instructing him on the law, and that serious tension developed in the courtroom between Respondent and Chief Wood – the Respondent striving to resist doing something he justifiably regarded as improper and the Chief persisting in telling him that he was required to do it. In these circumstances we are not disposed to second-guess Respondent's handling of the situation and we believe he acted reasonably in accepting Judge Evashavik's briefing, given to him before he opened court that morning, that “the officers weren't going to show.” Consequently, we hold that Respondent's disposition of all of the Edgewood Borough cases was proper.

As stated earlier, however, we find that Respondent's conduct after he left the courtroom, which included his announcement to the defendants in the waiting room that they were all “not guilty,” in combination with his discourteous treatment of those defendants constituted conduct which brings the judicial office into disrepute, a violation of Article V, §18(d)(1) of the Pennsylvania Constitution.

In In re Smith, 687 A.2d 1229 (Pa.Ct.Jud.Disc. 1996), this Court noted that the conduct of a judge which results in a decline in the public esteem for that judge, may not support the conclusion that the conduct has brought the judiciary as a whole into

disrepute, absent a persuasive showing by the Board that the conduct is so extreme as to have brought the judicial office itself into disrepute. In In re Cicchetti, 697 A.2d 297, 310 (Pa.Ct.Jud.Disc. 1997), this Court reiterated that notion as it concluded that a judge's conduct in persisting in making sexual advances towards a subordinate employee who repeatedly rejected the advances constituted conduct of such an extreme nature that the judicial officer had brought the judicial office itself into disrepute.

In Cicchetti, 697 A.2d at 312, this Court noted that:

The determination of whether particular conduct has brought the judicial office into disrepute, of necessity, is a determination which must be made on a case by case basis as the particular conduct in each case is scrutinized and weighed.

In Smith, we said that:

“Disrepute” necessarily incorporates some standard with regard to the reasonable expectations of the public of a judicial officer's conduct.

Smith, supra, at 1239.

In this case, although the findings of not guilty in the twenty-some cases which were not called may have been justified, the method by which Respondent announced that finding was not, and, when considered together with his behavior in the waiting room, i.e., his interaction with the defendants there, was beyond what the public may reasonably expect from a judge.

The reaction to Respondent's announcement in the waiting room to the defendants assembled there was variously described as follows:

- A. They were all yelling through the window wanting to know if the judge was a real judge. They wanted to know if it was a joke. They wanted to know if they were really dismissed. (Dodge N.T. 127).

A. I remember the judge going to the window and asking everyone in the courtroom who was there for traffic hearings and pretty much everyone in the waiting room raised their hands.

Q. And how many people were in that waiting room?

A. I would say maybe 20, 25, I would say around there. And then everyone raised their hands and the judge had told them that it was all dismissed, they can leave.

Q. And how did he do that, if you could describe the way he did it?

A. He was waving his hands and he told everyone to go, that they were done, they could leave, it was dismissed.

Q. And what happened after he said this?

A. After he said it, a lot of people came to the window and wanted to find out when they were getting their money back, if he was really a judge, so a lot of Pandemonium broke out in the courtroom that day.

Q. And what was Judge Marraccini doing?

A. He was at the window and he was telling them that at one point he had called them a bunch of morons, that they should just leave now before he finds them all guilty. (Granny N.T. 138).

A. Afterwards, afterwards after the judge had left the phones would not stop ringing. There were a lot of agitated people that were questioning if they were getting their collateral money back, asking if he was really the judge. They didn't believe that he was the judge. So, that went on probably for the next couple of days. (Granny N.T. 140-41).

A. I just remember being in my desk and then just a bunch of commotion starting. Everybody like basically at the window because the judge had come out and said that the cases were dismissed, anybody that was there can go.

And then people weren't sure if he was a judge or not. They didn't know who he was. And, you know, people were asking what about their money, are they going to get their money back. And like sarcastically he said, no, I'm going to spend it on vacations. But I mean they didn't know that he was joking. And then people

didn't understand so he said, what are you, a bunch morons, you know, this isn't a circus. (McAllen N.T. 147).

Q. And while you were in the waiting room, do you remember something unusual happening? Did the judge finally appear?

A. Yes.

Q. Could you tell the Court about that?

A. He came out and he just said everyone with a traffic ticket get out of my courtroom. There's no proof or he said there's no evidence, something to that. I don't remember his exact words, but he wanted everyone to get out.

Q. And what was his manner when he came out and made this announcement? To the best of your recollection, what did he do? Did he just –

A. He was yelling. He was yelling at us to get out of his courtroom. He just wanted us out of there. He just wanted us to leave. (Shumaker N.T. 155-56).

Q. What was your personal perception of this experience in that court that day?

A. Just really surprised of what happened. Just couldn't believe how things went. It wasn't what I was expecting at all. I didn't know, I didn't know if I could really prove that that ticket didn't belong to me. It's hard to prove you don't own something, but I think that there was some sort of mistake. But that's the last thing I kind of expected to happen was what happened.

Q. And what was your perception of this judge's behavior?

A. Well, he just acted crazy.

Q. Was it a pleasant experience for you to be at court that day?

A. No.

Q. Is that what you expected the judge to behave like in front of people?

A. No, no, I did not expect anybody to behave like that. (Shumaker N.T. 159-60).

We believe that the expectations of these members of the public were reasonable and find that Respondent's announcement of his "not guilty" findings to the defendants en masse and his concomitant discourteous treatment of them to be so extreme as to bring the judicial office into disrepute.

We consider now Count 5 which charges Respondent with violating Rule 4C. of the Rules Governing Standards of Conduct of Magisterial District Judges which provides that:

A magisterial district judge shall be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom he deals in his official capacity, and shall require similar conduct of lawyers, of his staff and others subject to his direction and control.

In addition to Chief Wood and Officer Quinn, several of Judge Evashavik's court employees as well as two defendants who were in the waiting room testified that when some of the defendants questioned Respondent about the not guilty findings he became upset and impatient asking them if they were "morons" and "didn't they understand English." (N.T. 51 (Wood), 110 (Quinn), 129 (Dodge), 138 (Granny), 147 (McAllen), 156 (Shumaker)). These witnesses described Respondent's behavior as belittling, sarcastic and demeaning. We were particularly struck by the testimony of Tanya Shumaker who had come to court that morning in response to a parking ticket and who wasn't sure Respondent had meant to include her when he announced that those with "traffic" tickets should go home. She testified "he answered me, anybody – he moved his head from his ear to his shoulder – anybody with any kind of traffic ticket get out of my courtroom now. (Indicating) ... back and forth kind of making fun of me

(Indicating) ... everybody was standing there looking at me, I felt really stupid.” (N.T. 156). Respondent essentially did not dispute this testimony. (N.T. 229-34).

We find that this testimony describes Respondent as neither patient, dignified nor courteous to these litigants and that the Board has established by clear and convincing evidence that this conduct of Respondent constituted a violation of Rule 4C. of the Rules Governing Standards of Conduct of Magisterial District Judges.

#### **IV. CONCLUSIONS OF LAW**

A. The conduct of Respondent in disposing of the Edgewood Borough traffic cases:

1. does not constitute misconduct in office.
2. was not such that constitutes a failure to perform the duties of office.
3. was not such that brings the judicial office into disrepute.
4. was not such that constitutes failure to devote the time necessary for the prompt and proper disposition of the business of his office.
5. was not such that constitutes a failure to accord to every person who is legally interested in a proceeding, or their lawyer, full right to be heard according to law.

B. The conduct of Respondent in dealing with the litigants in the waiting room was such that constitutes a violation of Rule 4C. of the Rules Governing Standards of Conduct of Magisterial District Judges.

C. The conduct of Respondent in the waiting room which included the manner of his announcement of the “not guilty” findings to the defendants en masse and

his impatient, undignified and discourteous treatment of those defendants was such that brings the judicial office into disrepute, a violation of Article V, §18(d)(1) of the Pennsylvania Constitution.

D. Respondent is subject to discipline under Article V, §18(d)(1) of the Pennsylvania Constitution.

Sandler, J., files a concurring opinion.

Panepinto, J., files a concurring and dissenting opinion.

Musmanno, J., did not participate in the consideration or disposition of this case.