

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

CONCURRING AND DISSENTING OPINION
BY JUDGE PANEPINTO

FILED: July 20, 2006

Initially, I must note that I do not concur with the conclusion concerning Pennsylvania Rule of Criminal Procedure 454(B). Suffice to say, I do not agree with the rationale concerning the interpretation and implementation of the rule. Pennsylvania Rule of Criminal Procedure 454(B) has been in place for some time now and has been used to permit an official, such as Chief Wood herein, to read into the record the summary traffic citation that is at issue. However, I do not believe that the constitutionality of Rule 454(B), or the manner in which it is construed, has any bearing on our decision in this case. Respondent must make decisions based upon the application of various rules that are before him such as the applicability of Rule of Criminal Procedure 454(B). It was Respondent's determination that Rule 454(B) did not permit

the reading into the record of the various citations by the police official in the courtroom. Respondent had the responsibility to make this determination and I do not believe we have any authority to second guess his legal determination. I also do not believe the charges brought before our court should concern the issue of validity or the constitutionality of Rule 454(B).

However, it is the manner in which the Respondent conducted himself which causes me to question his conduct. In reviewing the testimony, it appears that Respondent made a determination that (1) none of the police officers who wrote the various citations were going to appear in Court that day (from an outside the courtroom source – Judge Evashavik) and (2) no other evidence was going to be put forth by the Commonwealth with respect to these citations. Based upon the above, Respondent determined that all of the citations would have to be dismissed for lack of evidence. While it appears that Chief Wood seemed to pressure the Court to read the citations, Respondent believed he should not and would not follow this procedure. I believe Respondent has a right to make the final call on this ruling in his courtroom. However, I believe Respondent had an absolute obligation to call each of the cases scheduled that day and make a case by case determination as to whether or not any evidence would be presented by the Commonwealth. Respondent, despite the information he was provided by Judge Evashavik, had an absolute obligation to determine for himself whether or not any of the police officers who had written the citations were in the courtroom that day. He failed to do this. This caused defendants who were expecting a hearing to be confused and upset at the events which occurred that day. They were even confused who the Judge was and if they were brought into Court one by one, the problems for this

Respondent would probably not exist. Whether he decided to dismiss the case or not would not be an issue before us now. Unfortunately, Officer Quinn was in the courtroom and had written several of the citations that were being heard that day. However, Respondent did not address this point with Officer Quinn or any Commonwealth representative that day and, therefore, several citations were dismissed which otherwise may have been heard and ruled upon on the day he presided in Court. It is for this reason that I must differ with the majority Opinion and find that Respondent's conduct on the morning of May 25, 2004, while in the courtroom, constituted conduct which brings the judicial office into disrepute, which is a violation of Pa. Const., Article V, §18(d)(1) (Count 3). The majority Opinion acknowledges the violation in Count 3 but only considers it a violation which brings the judicial office into disrepute for conduct occurring outside the courtroom. I think the violation based on the evidence occurs in and outside the courtroom for his failure to consider each case on its own merits. This failure to give attention to each case is what the litigants were upset about, and actual witness testimony about the Judge's behavior and manner of dismissal combines to bring the office of Judge into disrepute. This type of behavior and en masse dismissal of cases without a hearing is exactly what hurt this Respondent and caused him and the office of Judge to be held in disrepute.

The determination that Respondent's conduct on the morning of May 25, 2004 in the waiting area, on its face and by credible actual witness testimony, constituted a failure to be patient, dignified and courteous to litigants, witnesses and others with whom he deals in his official capacity. This is also a violation of Rule 4C. of the Rules Governing Standards of Conduct of Magisterial District Judges (Count 5).

In conclusion, I concur in part and dissent in part to the majority Opinion for all of the above reasons.

Respondent is subject to discipline for Count 3 and Count 5 under Article V, §18(d)(1) of the Pennsylvania Constitution.