

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: : DOCKET NO. 2 JD 2021
: :
MICHAEL J. CABRY, III :
FORMERMAGISTERIAL DISTRICT :
JUDGE :
MAGISTERIAL DISTRICT COURT :
15-3-06 :
CHESTER COUNTY :

ANSWER AND NEW MATTER OF THE RESPONDENT, MICHAEL J. CABRY, III

The Respondent, Michael J. Cabry, III, by his counsel, Samuel C. Stretton, Esquire, hereby answers the complaint and respectfully requests a hearing for the reasons set forth below:

FACTUAL ALLEGATIONS

- 1) Admitted that the Judicial Conduct Board has the authority to file formal charges against former judicial officers in Pennsylvania.
- 2) Admitted that the Respondent, Michael J. Cabry, III, was an elected District Judge from March 22nd, 2000 until his resignation and retirement on September 21st, 2021. He served as the elected District Judge in Magisterial District Court 15-3-06.
- 3) Admitted that the Judicial Conduct Board apparently took a vote and decided there was probable cause. Neither Mr. Stretton nor Mr. Cabry were allowed to be present at that time.
- 4) Admitted that criminal charges were filed against former Judge Cabry as a result of an investigation by a state-

wide grand jury. Many of these charges were factually incorrect. For instance, the original presentments stated former Judge Cabry did not file certain campaign reports. That was just completely false. The day former Judge Cabry came to attorney Stretton, Mr. Stretton went over to Voter Services and pulled the reports that had been properly and timely filed when the Attorney General's Office said they hadn't been.

5) Admitted that the charges listed were filed against former Judge Cabry. Former Judge Cabry denied many of those charges and many of them, including all felonies, were withdrawn.

6) Admitted former Judge Cabry waived his preliminary hearing. Former Judge Cabry and his criminal attorney cooperated with the Attorney General's Office.

7) Admitted that on September 22nd, 2021, former Judge Cabry entered pleas to four misdemeanors as set forth.

8) Admitted that former Judge Cabry, as part of the written plea agreement, provided the statements set forth.

9) Admitted that on the same day as the guilty plea, Judge Liberman, a visiting Senior Judge from Berks Counts, sentenced Mr. Cabry to a total sentence of one year of probation. No fine or restitution was added.

10) Former Judge Cabry has not appealed the judgement of sentence. Further, whether it is factually binding for the

purposes of proceedings with the Court of Judicial Discipline is a legal issue to which no answer is required, but it is denied.

CHARGES

COUNT ONE - VIOLATION OF RULE 1.1

11) Former Judge Cabry agrees to violating Rule 1.1 based on the charges to which he pled guilty to, all of which were misdemeanors.

12) Admitted that Rule 1.1 has been quoted properly by the Judicial Conduct Board.

13) Admitted the definition section has been quoted properly by the Judicial Conduct Board.

14) Admitted that former Judge Cabry admitted to improperly handling some campaign funds. During this time, former Judge Cabry's wife was dying of cancer. He was running his campaign and doing the work his Treasurer should have been doing. Many of his campaign records were missing after a fire in his kitchen, which resulted in the house having to have extensive repair and many campaign documents were missing as a result or documents being removed, etc. Thus, he was not able to provide the supporting documentation. During this time period, he was gambling about once a week, this was the only time he left his house except for his judicial duties, and as an assistant coach on the football team for Downingtown East. The gambling was a release because of the stress of taking care of

his wife who was severely ill and ultimately died of cancer. Former Judge Cabry allowed his fiend, Frank, to use his casino card. Most of the time seen on casino logs was Frank's use. During the football season former Judge Cabry was at the games every Friday night and not at the casino.

COUNT TWO - VIOLATION OF ARTICLE V, SECTION 17(b)

15) Admitted that because former Judge Cabry violated Rule 1.1 of the Code of District Judges, he would have violated Article V Section 17(b).

16) Admitted that Article V Section 17(b) of the Pennsylvania Constitution is quoted correctly.

17) Admitted that a violation of the Code of Conduct for District Judges would be a derivative of violation of Article V Section 17(b).

18) Admitted that by violating some portions of Rule 1.1, former Judge Cabry violated Pennsylvania Constitution Article V Section 17(b).

19) Admitted that by violating some portions of Rule 1.1, former Judge Cabry violated Pennsylvania Constitution Article V Section 17(b).

COUNT THREE -VIOLATION OF ARTICLE V, SECTION 18(d) (1) -

DISREPUTE

20) Denied. It is emphatically denied that former Judge Cabry is in disrepute and violated this provision of the Pennsylvania Constitution.

21) Admitted that Article V Section 18(d)(1) is properly quoted.

22) Denied that former Judge Cabry involved or engaged in conduct so extreme that it brought the Judicial Office in disrepute. Denied this conduct violated the disrepute provision of the Pennsylvania Constitution Article V Section 18(d)(1). On the contrary, the misconduct to which he pled guilty to had nothing to do with his judicial duties. He served with distinction as a judge for 20 some years in Chester County. He was a former President of the Chester County District Justice Association and former President of the Special Court Judges Association of Pennsylvania. All who appeared before former Judge Cabry have high praise of him for his good judgement, excellent demeanor, and timely resolution of matters. He ran his courtroom with fairness and decorum for everyone who had the opportunity to properly present their case. His misconduct occurred during a very difficult time in his life. He and his wife were extremely close and she got a terminal diagnosis for cancer. She slowly died before his eyes during the time of his campaign. Further, his campaign treasurer did not fulfill the

campaign responsibilities, therefore it was Mr. Cabry's responsibility to do all the campaign work.

Further, many of his campaign receipts were lost as noted above, after a fire in his kitchen in September of the year of his election. The documents were lost during the home repair. In this time period, former Judge Cabry, usually went out for an hour or two to gamble once every week or two weeks. That was his way to relieve stress. Sometimes he would make mistakes of withdrawing funds, pay for meals or other matters that were related to campaign expenses while he was at the gambling establishments using their ATM machines. He did not maintain proper records as he should have. Many of the expenditures were legitimate and some were not. His plea was to misdemeanors and he was not required to make any restitution and was not fined. His criminal conviction was the result of sloppy campaign reports during a time of great personal stress. The Respondent had retained attorney Dawson Muth to assist on filing amended returns after his wife's death since he was trying to get his life back together. Unfortunately, he was charged before the changes.

WHEREFORE, the Respondent, Michael J. Cabry, III, by his counsel, Samuel C. Stretton, Esquire, respectfully requests this Honorable Court have a hearing on the issue of disrepute and also have a hearing on the nature of the appropriate sanction.

Former Judge Cabry has retired from his judicial position as of September 21st, 2021.

NEW MATTER

The Respondent, Michael J. Cabry, III, hereby raises the following as new matter in the captioned matter.

23) Answers to 1 through 22 are incorporated by reference into this new matter.

24) During all pertinent times former Judge Cabry raises the mitigation that he was operating under extreme mental and emotional distress since he was the primary caretaker of his wife of many years and she was dying before his very eyes of cancer, finally passing away on March 16th, 2020. Her cancer began in 2014 and continued during the time of the judicial campaign which was December 2016 to January 2018. The Respondent and his wife, due to the fire, lived in a hotel for 10 weeks from mid-September of 2017 until mid-December of 2017.

25) Former Judge Cabry during that time suffered from severe emotional and mental stress and will present testimony on that. He was greatly suffering because of the illness of his wife and the closeness in their relationship. Also, by way of mitigation, he was handling the treasurer's job for his campaign committee for reelection himself. That was a foolish thing by him and he did not necessarily keep all records. Many of the records that were kept were lost after the fire in his kitchen

and during the removal of the documents. The fire occurred in September of 2017.

26) The misconduct occurred approximately in the year of 2017, over four years ago. There has been no misconduct since. In those years former Judge Cabry had performed his judicial duties in an excellent fashion without complaint until his interim suspension and retirement.

27) The violations of the campaign statute, much of the allegations involved sloppy campaign reporting and sloppy maintaining campaign records. Obviously, that is unacceptable but these allegations and charges have to be put into proper perspective.

28) Former Judge Cabry has been seeing a therapist through Judges Concerned for Judges. At the hearing, testimony will be presented on that issue. Further, a number of character witnesses will be presented on the issue of nature of discipline.

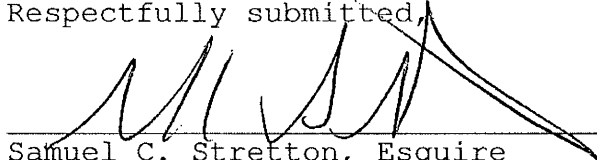
29) Former Judge Cabry raises mitigation that he resigned from his judicial office as of September 21st, 2021 and is now retired from any judicial duties. He has agreed never to serve again as a Magisterial District Judge.

30) Former Judge Cabry specifically raises the defense that he did not violate the constitutional section on disrepute. This was not a matter of universal disrepute. What happened here

involved a very personal matter, involving former Judge Cabry facing an extremely difficult time in his life when his wife was dying of cancer, and records were not properly maintained. That is hardly something that should be considered a basis for subject of judicial disrepute.

WHEREFORE, the Respondent, Michael J. Cabry, III, by his counsel, Samuel C. Stretton, Esquire, respectfully requests this Honorable Court provide a hearing on the issue of disrepute and then a hearing on the issue of nature of discipline.

Respectfully submitted,



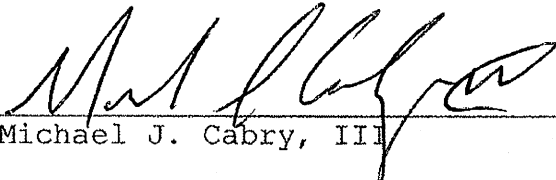
Samuel C. Stretton, Esquire
Attorney for the Respondent,
Michael J. Cabry, III
103 South High Street
P.O. Box 3231
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Attorney I.D. No. 18491

VERIFICATION

I, Michael J. Cabry, III, hereby verify that the facts set forth in the Respondent's Answer to New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date:

December 29, 2021



Michael J. Cabry, III

COMMONWEALTH OF PENNSYLVANIA
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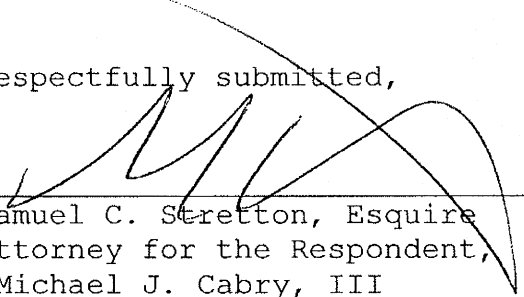
CERTIFICATE OF COMPLIANCE

I, Samuel C. Stretton, Esquire, certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

12/27/21

Date



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CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the foregoing Entry of Appearance in the captioned matter upon the following persons in the manner indicated below.

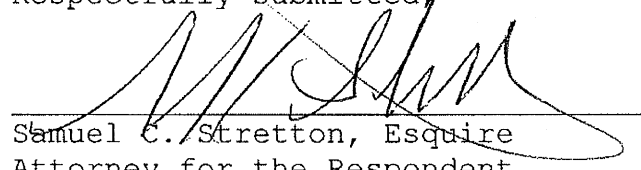
Service by electronic mail addressed as follows:

1. Joseph U. Metz, Esquire
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3. James P. Kleman, Jr., Esquire
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4. Michael Cabry, III
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Respectfully submitted,



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12/27/29
Date