

# THE COURTS

## Title 252—ALLEGHENY COUNTY RULES

### ALLEGHENY COUNTY

**Certification of District Attorney of Allegheny County Pursuant to Pa.R.Crim.P. 507; Criminal Division AD-14-#262-CR**

#### Order of Court

*And Now*, to wit, this 9th day of October, 2014, it is hereby *Ordered, Adjudged and Decreed* that the following Allegheny County Rule of Criminal Procedure, adopted by the Board of Judges on the 9th day of October, 2014, shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

**Rule 507.4. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth in Felony 1 Robbery and Robbery of Motor Vehicle Cases.**

The District Attorney of Allegheny County, Stephen A. Zappala, Jr., having filed a certification pursuant to Pa.R.Crim.P. 507, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging Robbery (18 Pa.C.S. § 3701(a)(1)(i), (ii), or (iii)) and Robbery of Motor Vehicle (18 Pa.C.S. § 3702(a)) shall not hereafter be accepted by any judicial officer unless the criminal complaint and arrest warrant affidavit have the approval of an attorney for the Commonwealth prior to filing.

*By the Court*

JEFFREY A. MANNING,  
*President Judge*

[Pa.B. Doc. No. 14-2303. Filed for public inspection November 7, 2014, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### COLUMBIA AND MONTOUR COUNTIES

**Business of the Courts; Case No. 2014-MV-1**

#### Order

*And Now*, this 23rd day of October, 2014, it is hereby *Ordered and Decreed* that this Court's Order dated September 30th, 2014, adopting revisions to the 26th Judicial District's Local Rules effective thirty (30) days after publication in the *Pennsylvania Bulletin*, is *Hereby Rescinded*.

*By the Court*

HONORABLE THOMAS A. JAMES, Jr.,  
*President Judge*

[Pa.B. Doc. No. 14-2304. Filed for public inspection November 7, 2014, 9:00 a.m.]

## SUPREME COURT

**Mr. Justice Seamus P. McCaffery of the Supreme Court of Pennsylvania; No. 430 Judicial Administration Doc.**

#### Order

*Per Curiam*

*And Now*, this 20th day of October, 2014, pursuant to this Court's King's Bench power and in view of the compelling and immediate need to protect and preserve the integrity of the Unified Judicial System and the administration of justice for the citizens of this Commonwealth, Mr. Justice McCaffery is hereby relieved on an interim basis of any and all judicial and administrative responsibilities as a Justice and is not to take any further judicial or administrative action whatsoever in any case or proceeding now or hereinafter pending in this Court until further Order of this Court.

This Order is in light of the following circumstances, which have been the subject of intense media attention and, individually and cumulatively, impact greatly upon the integrity of the judicial system:

The media has published reports containing allegations that: Justice McCaffery may have improperly contacted a Philadelphia traffic-court official in connection with a traffic citation issued to his wife; Justice McCaffery may have acted in his official capacity to authorize his wife to accept hundreds of thousands of dollars in referral fees from plaintiffs' firms while she served as Justice McCaffery's administrative assistant; and Justice McCaffery may have attempted to exert influence over a judicial assignment on the Philadelphia common pleas bench outside the scope of his official duties.

More recently, Justice McCaffery has publicly accepted responsibility for exchanging hundreds of sexually explicit emails with a member or members of the Office of Attorney General, which surfaced in the course of the Attorney General's review of the handling of the Gerald Sandusky investigation. It also appears that emails sent and received by Justice McCaffery were circulated amongst others within the Office of Attorney General. According to the Chief Justice of Pennsylvania's review of some of the emails in question and attachments to them, the material is extremely disturbing. In this regard, the Chief Justice has indicated that some pictures and videos in the emails and attachments depict explicit sexual acts and these and/or others contain highly demeaning portrayals of members of various segments of the population, including women, elderly persons, and uniformed school girls.

Finally, in a report submitted by Justice Eakin to the Judicial Conduct Board, Justice Eakin has asserted that Justice McCaffery importuned him to urge the Chief Justice to retract a statement of his review of the material received from the Attorney General's Office, or, alternatively, materials embarrassing to Justice Eakin would be released to the media.

Within thirty days, the Judicial Conduct Board shall make a determination, on an emergency basis, whether there is or is not probable cause to file formal misconduct

charges against Justice McCaffery concerning any of the above allegations or any other matters which may be pending before the Board in which Justice McCaffery is the subject of complaint or inquiry, or the Board shall issue a public report detailing why it is unable to perform its constitutionally prescribed duties in a timely fashion. If the determination is that probable cause is lacking, the Board shall issue a report to this Court indicating its reasons in support of such determination. The Board is directed to obtain copies of the materials provided by the Office of Attorney General from the Chief Justice of Pennsylvania as soon as possible and to obtain copies of the attachments thereto, as well as any other emails and attachments pertinent hereto not provided to the Chief Justice, from the Office of Attorney General.

This Order shall not affect Mr. Justice McCaffery's judicial compensation and is without prejudice to his entitlement to seek relief in this Court for the purpose of vacating or modifying this Order. This Order is also without prejudice to the ability of the Court of Judicial Discipline to modify the terms of suspension relative to judicial compensation, should formal charges be filed.

The Honorable Robert L. Byer is hereby appointed as special counsel to the Court in this matter.

Mr. Chief Justice Castille files a concurring statement, and Madame Justice Todd files a dissenting statement.

Messrs. Justice Eakin and McCaffery did not participate in this matter.

#### Concurring Statement

*Mr. Chief Justice Castille*

I join in the immediate suspension of Justice Seamus P. McCaffery and the appointment of special counsel for the Court. However, I respectfully would not refer this matter to the Judicial Conduct Board. In our recent case of *In Re: Bruno*, \_\_\_ A.3d \_\_\_, 2014 WL 4915942 (Pa. 2014), this Court agreed that prosaic complaints about judicial misconduct would go to the Judicial Conduct Board for initial review and that this Court would only step in and assume jurisdiction in extraordinary circumstances. In my opinion, the conduct of Justice Seamus P. McCaffery is such a circumstance. The most recent misconduct of Justice McCaffery—forwarding sexually explicit pornographic emails to employees of the Attorney General's Office (and, in one instance, an email depicting a naked 100 year-old woman as the target of a sexually explicit joke and a video of a woman in sexual congress with a snake that is clearly obscene and may violate the Crimes Code Section on Obscenity) has caused the Supreme Court to be held up to public ridicule. This conduct deserves the immediate action as implemented by this Court today. It would be impossible for this Court to function effectively while Justice McCaffery sits on this Court. His so-called "lapse in judgment" lasted, at least, for many years as an adult. It is more than a lapse in judgment—it has caused unmitigated turmoil in the justice system and has indirectly cost several state prosecutors and high ranking state officials their public careers. At least several of those individuals have had the decency to resign, whereas the instigator of the pornographic emails still draws a taxpayer's salary.

Justice McCaffery by his comments fails to acknowledge the significance of his "lapse" and blames others for this "lapse of judgment." He blames the US Marine Corps for coarse language and crude jokes. He blames the US Air Force for the same conduct, even though a Reserve Colonel in the Air Force would have been court martialed for similar conduct. He blames the Philadelphia Police

Department for the same, although the Police Department would never condone this type of misogynistic behavior. Finally, Justice McCaffery blames me for what he deems a "cooked up controversy" when, in fact, he was the originator of the emails sent to a government agency, and the emails were then made public by the Attorney General's Office. This Court and I had no idea whatsoever that Justice McCaffery was using court equipment to forward this material—we do not monitor a Justice's email. This alleged "cooked up controversy" has cost the careers of others and perhaps even several marriages. As importantly, Justice McCaffery's conduct has brought this Court into enormous disrepute.

Justice McCaffery blames me for a series of egregious acts of misconduct on his part. However, it was not I who caused his wife to be cited for driving the wrong way on Market Street. It was not I who caused Justice McCaffery to meet with the main Philadelphia Traffic Court ticket fixer, an admitted felon, to "discuss" his wife's ticket which was then dismissed by a Traffic Court judge who later pled guilty to federal crimes arising from ticket fixing. It was not I who subpoenaed his wife's traffic ticket file which was then officially brought to my attention as part of the review of Philadelphia Traffic Court—that was the work of the FBI. It was not I who gave his wife, a Supreme Court employee, permission to run a law practice out of a Supreme Court chambers, earning millions of dollars. It was not I who referred that matter to the US Attorney's Office. It was not I, but it was Justice McCaffery, who hired Chadwick Associates to assist in reforming Philadelphia's criminal courts and who was lawfully compensated for his services to the Philadelphia Court system for his professional work. Justice McCaffery claims that I targeted him because of his assertions that I mishandled the Luzerne County juvenile court disaster. As a fact, no such opposition was ever voiced by Justice McCaffery until years after the fact; and, in fact, Justice McCaffery joined the Court's unanimous orders respecting Luzerne County. Justice McCaffery never voiced any concern over the planning and construction of the just-opened Family Court Building at 15th and Arch Streets, unless he did so anonymously in the press and by his denigrations of my reputation to others. In fact, Justice McCaffery doubted the building would ever be built. He was wrong.

Justice McCaffery is correct in one of his allegations against me. I have been attempting to remove Justice McCaffery from this Court. In my two decades of experience on this Court, no other Justice, including Justice Joan Orié Melvin, has done as much to bring the Supreme Court into disrepute. No other Justice has failed to live up to the high ethical demands required of a Justice of this Court or has been the constant focus of ethical lapses to the degree of Justice McCaffery.

Lastly, there is the recent report that Justice J. Michael Eakin was being "asked" by Justice McCaffery to have my public report to the citizens concerning the general content of the pornographic emails Justice McCaffery sent to the Attorney General's Office be withdrawn from the public realm, or else Justice McCaffery would see to the release of other emails allegedly implicating Justice Eakin in similar conduct (although as yet not identified). In my opinion, that sort of threat borders on criminal conduct. I can see little reason why Justice Eakin would implicate Justice McCaffery in these threats after Justice Eakin self-reported the email account to the Conduct Board, unless the charged conduct by Justice McCaffery actually occurred. It would seem that this report of possible misconduct by Justice Eakin to the Judicial

Conduct Board now raises an ethical conflict on the Board's part, thereby calling for an independent review of Justice McCaffery's conduct.

Notably, Justice Eakin has stepped forward and has voluntarily asked for a review of the materials released through Justice McCaffery who clearly had knowledge of the content and the provenance of the emails. This is in contrast to the conduct of Justice McCaffery, who continues to blame others for the ethical lapses arising from his own volition and deliberate conduct.

This Court has a scheduled argument session in the week of November 17, 2014. My question will be: How would it be possible for a court of seven members to sit in judgment of matters as the Commonwealth's court of last resort when one Justice has brought this level of public contempt by his own actions and has threatened another Justice to intervene illegally on Justice McCaffery's behalf to change or alter fact-finding in relation to Justice McCaffery's pornographic emails? Of even more import, how can any party or litigant believe their matter will be heard and decided impartially while these scurrilous charges and accusations remain unresolved?

As a prosecutor in the Philadelphia District Attorney's Office, I often had the occasion to review pre-sentence psychiatric reports, although I do not claim to be an expert in the field. One pathology that I do recall, and as confirmed in a review of a prominent medical journal, describes the pathology of an individual who has the personality traits of not caring about others, thinking he or she can do whatever is in that person's own self-interest and having little or no sympathy for others. The most telling pathology is that when that person is caught, or called out for his transgressions, that person does not accept blame but instead blames others for his or her own misconduct. Those pathological symptoms describe a sociopath. So far in the blame game, Justice McCaffery has blamed the US Marine Corps, the US Air Force, the Philadelphia Police Department, Chadwick Associates, the US Attorney and the FBI, Attorney General Kathleen Kane, now Justice Michael Eakin, and myself for the consequences arising from actions all initiated by him, but thought by him to be of little consequence: just a few "cooked up controversies" by his perceived tormentors.

I agree that this Court cannot continue to function while Seamus McCaffery sits as a Justice. There is no way that citizens could have confidence in the moral authority of the Pennsylvania Supreme Court. If we do not have the confidence of our citizenry, all we as a Court do is for nothing. That is why I support the immediate suspension of Justice McCaffery.

While I respect the work of those persons appointed to the Judicial Conduct Board, I am fully aware of the lack of resources and manpower to investigate charges of this unique significance. In the past, this Court has had to loan \$35,000 to the Conduct Board to meet payroll when the Legislature denied the Board's budgetary needs. The AOPC has even had to lend the expertise of our IT department to set up a case management computer program and system when the Board had not had the ability to do so because of a lack of adequate funding. To undertake an investigation of Justice McCaffery's ethical failures will be an enormous effort by the Judicial Conduct Board which I can only hope will be accomplished by the deadlines in this Court's order.

For these reasons, left to my own devices, I would immediately refer this matter to an outside neutral fact-finder for a report and recommendations.

### Dissenting Statement

*Madame Justice Todd*

I strenuously dissent.

It is obvious from recent events that our Court is embroiled in turmoil and needs to act immediately. My disagreement with the majority of the Court is with respect to what action we should take.

The crisis in which we find ourselves is marked by fact-laden accusations, alleged impropriety, and obvious acrimony. This is precisely the type of conflict—perhaps the prototypical conflict—for which the citizens of our Commonwealth, in response to a similar controversy over two decades ago, constitutionally created the independent Judicial Conduct Board and the Court of Judicial Discipline.

While the basis for my position is procedural and I express no view on the merits, there is no question in my mind that this matter, including the question of suspension, should be immediately referred to the Judicial Conduct Board for expedited treatment, and, if appropriate, for trial and resolution by the Court of Judicial Discipline.

Yet, today, based upon unvetted claims and allegations, a majority of our Court, one of whom is deeply involved in this controversy, has suspended a fellow Justice. No independent investigative body has made any findings regarding merits or credibility, and, unlike the suspension of Justice Joan Orié Melvin, no formal criminal proceedings have been instituted.

Every day, this Court is charged with according due process to litigants, and we faithfully carry out that constitutional obligation. Even a Justice is entitled to due process.

[Pa.B. Doc. No. 14-2305. Filed for public inspection November 7, 2014, 9:00 a.m.]

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### Mr. Justice Seamus P. McCaffery of the Supreme Court of Pennsylvania; No. 430 Judicial Administration Doc.

#### Order

*Per Curiam*

*And Now*, this 27th day of October, 2014, in light of the retirement of Justice Seamus P. McCaffery as a Justice of the Supreme Court of Pennsylvania, effective immediately, the Court's Order of October 20, 2014, is vacated as moot.

Mr. Justice Eakin did not participate in this matter.

Madame Justice Todd files a Concurring Statement.

#### Concurring Statement

*Madame Justice Todd*

As I expressed in my Dissenting Statement to the Court's October 20, 2014 Order, I believe this matter should have been handled in toto and in the first instance by the Judicial Conduct Board. Accordingly, as in my view that Order should not have been entered, I have no objection to the Court vacating that Order today.

[Pa.B. Doc. No. 14-2306. Filed for public inspection November 7, 2014, 9:00 a.m.]