

[J-16-2010]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

IN RE: INTERBRANCH COMMISSION : No. 53 WM 2009
ON JUVENILE JUSTICE :
: Application for Relief
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:
:
:
:
APPLICATION OF: JUDICIAL CONDUCT :
BOARD OF PENNSYLVANIA : SUBMITTED: December 30, 2009

CONCURRING AND DISSENTING OPINION

MADAME JUSTICE TODD

DECIDED: January 29, 2010

Mindful of the substantial and competing constitutional, statutory, and public policy considerations, and, in these unique circumstances, I would overrule the Board's objections as presented. Thus, I join Sections I and II of the Majority Opinion only.

I observe that the Board's objections to the Commission's subpoena are grounded solely on Article V, Section 18(a)(8) of the Pennsylvania Constitution. Thus, respectfully, I would not address whether the disclosures fall within Rule 18 of the Judicial Conduct Board's Rules of Procedures, or are objectionable under the deliberative-process or other privilege.¹ On the constitutional question, I would overrule the Board's objections.

In my view, the Board has wholly failed to explain to this Court how turning over the requested information, under seal, to the Commission violates the constitutional mandate

¹ In particular, my evaluation of the Board's position might yield an entirely different response were it, in fact, asserting a privilege designed for the benefit of its own internal processes.

that complaints, testimony, documents, records, or other information “shall not be public information” or that proceedings of the Board “shall be confidential.” Pa. Const. art. V, § 18(a)(8). The Board is “an independent board within the Judicial Branch.” Pa. Const. art. V, § 18(a)(8). The Commission has been established as a tripartite investigative body of the Legislative, Judicial, and Executive Branches to inquire into the Luzerne County juvenile justice system, 71 P.S. § 1190.35b, and has been charged, inter alia, “[t]o review procedures used in responding to judicial and attorney conduct and to make recommendations as necessary with respect to both disciplinary systems,” *id.* § 1190.35e. Under these circumstances, and failing a sufficient argument by the Board to the contrary, I do not find disclosure of the subpoenaed information, under seal, by the Board to the Commission to be violative of the confidentiality provisions of Article V, Section 18(a)(8).² Furthermore, the Commission’s pedigree and agreement to keep the requested information under seal distinguishes this case from In re Subpoena on Judicial Inquiry and Review Board, 517 A.2d 949 (Pa. 1986) (quashing subpoena by Pennsylvania Crime Commission to former Judicial Inquiry and Review Board based on constitutional mandate of confidentiality of Inquiry Board’s paper and proceedings).

Mr. Justice Saylor joins this Concurring and Dissenting Opinion.

² My conclusions are based on my understanding that the Commission has agreed to keep all the subpoenaed information disclosed by the Board — both documentary and testimonial — under seal. See Response of the Interbranch Commission on Juvenile Justice to the Judicial Conduct Board’s Application for Relief Under King’s Bench Jurisdiction at 6.