State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Thursday, June 5, 2014

No. 106 Matter of Doyle v State Commission on Judicial Conduct

Cathryn M. Doyle, a Surrogate's Court judge in Albany County since 2001, is challenging a determination of the State Commission on Judicial Conduct that she should be removed from office for misconduct that occurred between 2007 and 2010. The Commission found Doyle took judicial action in four estate matters without disclosing that the attorney for the petitioners, Thomas J. Spargo, was a close personal friend or disclosing that he was representing her in two lawsuits during one of the proceedings. It found she took judicial action in four other proceedings in which Matthew J. Kelly represented the petitioners, without disclosing that Kelly had a leadership role in Doyle's 2007 campaign for nomination as a Supreme Court justice and was manager of her 2010 campaign for re-election as surrogate. The Commission found she took judicial action in an estate proceeding without disclosing that the petitioner's attorney, William J. Cade, had represented her less than two years earlier in a disciplinary proceeding before the Commission, which resulted in a censure of Doyle in 2007.

The Commission voted 8 to 2 for removal, saying, "By presiding over multiple matters involving lawyers with whom she had close personal and professional ties, [Doyle] violated well-established ethical standards requiring disqualification in any proceeding in which a judge's 'impartiality might reasonably be questioned' (Rules, § 100.3[E][1]). Her failure to recuse in each of these matters, or even to disclose the relationships that cast doubt on her ability to be impartial, created an appearance of impropriety that undermines public confidence in the integrity of the judiciary as a whole (Rules § 100.2)." It said her misconduct was "exacerbated" by the fact it occurred "within months after her previous censure by the Commission, demonstrating 'an unacceptable degree of insensitivity to the demands of judicial ethics.'"

Two members dissented from the sanction and argued Doyle should be censured. "While she should not have handled these attorneys' cases, it is important to note that for the most part, these Surrogate's Court proceedings were not adversarial, contested matters. There is no allegation or finding that these attorneys or their clients received any special treatment or pecuniary benefit because of her relationships with the attorneys." They said it "is also significant" that the referee "found her to be 'a credible and candid witness' who 'told the truth.'"

Doyle argues the Commission erred in finding misconduct. "Any failure of Judge Doyle to recuse herself was the result of a good-faith misinterpretation of the existing rules, a misinterpretation that was not unreasonable due to the different procedures that applied to surrogate's courts. Additionally, as determined by the Referee, the ethical rules were not entirely clear on the issue of ministerial and/or quasi-ministerial acts, particularly where all interested persons have signed consents and/or otherwise joined in the relief, which was the basis for Judge Doyle to conclude that there was no possibility of partiality." She says removal is excessive even if the finding of misconduct is upheld. "This case, which is solely an 'appearance of impropriety' case and is devoid of those aggravating factors which this Court has relied upon in upholding the sanction of removal, does not rise to the 'truly egregious' level required for removal."

For petitioner Doyle: William J. Dreyer, Albany (518) 463-7784
For respondent Commission: Edward Lindner, Albany (518) 453-4613

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Thursday, June 5, 2014

No. 139 People v Marquan M. (*papers sealed)*

Marquan M., a 15-year-old student at Cohoes High School, was arrested in June 2011 for alleged violations of Albany County's recently-enacted "cyber-bullying" law, which makes "cyber-bullying against any minor or person in the County of Albany" a misdemeanor. Marquan had created a "Cohoes Flame Page" on Facebook and posted photos of 10 classmates, along with comments about them that were largely derogatory and sexual in nature.

The local law defines "cyber-bullying" as "any act of communicating or causing a communication to be sent by mechanical or electronic means, including posting statements on the internet or through a computer or email network, disseminating embarrassing or sexually explicit photographs; disseminating private, personal, false or sexual information, or sending hate mail, with no legitimate private, personal, or public purpose, with the intent to harass, annoy, threaten, abuse, taunt, intimidate, torment, humiliate, or otherwise inflict significant emotional harm on another person." Marquan challenged the validity of the law, arguing it criminalized protected speech and was unconstitutionally vague and overbroad. After Cohoes City Court rejected his constitutional claims and denied his motion to dismiss, Marquan pled guilty to one count of cyber-bullying and was sentenced as a youthful offender to three years of probation.

Albany County Court affirmed. Rejecting the free speech claim, it said, "The law's proscription is limited to conduct -- using mechanical or electronic forms of communication -- that lacks a legitimate purpose.... [T]he law does not circumscribe pure speech directed at an individual but it is directed at words communicated mechanically or in electronic form coupled with intent to harass, annoy, threaten, abuse, taunt, intimidate, torment, humiliate, or otherwise inflict significant emotional harm on another person, about which the County has a legitimate state interest to prohibit.... In any event, to the extent that pure speech is implicated, constitutional protections are not absolute -- especially where, as here, substantial privacy interests are being invaded in an intolerable manner...." The court said the law is overbroad in prohibiting bullying of any "person," since its history and purpose address only the protection of minors, but it said the offending term could be severed and enforcement limited to bullying of minors. It found the law is not void for vagueness.

Marquan argues the terms of the law "encompass countless emails, text messages, and postings on social networking and other websites, putting thousands of people in Albany County in jeopardy of criminal prosecution for expressing anger, criticism, intimacy, parody, gossip, and opinion. The Cyber-bullying Law is an unconstitutional regulation of speech because its terms reach far beyond the narrow categories of unprotected speech that the government may regulate -- namely, fighting words, incitement, obscenity, and true threats -- and its criminalization of speech based on content fails strict scrutiny." The law "is unconstitutionally vague because several of its terms -- such as 'annoy,' 'abuse,' 'taunt,' 'humiliate,' 'embarrassing,' 'sexually explicit,' 'hate mail' and 'no legitimate private, personal or public purpose' -- are undefined and susceptible of countless interpretations, creating a risk that protected speech will be chilled and that the law will be enforced in an arbitrary or discriminatory manner." While his speech on Facebook "may rightly be punished by parents and educators, it cannot be criminalized because it does not fall into any of the narrowly defined categories of speech unprotected by the First Amendment."

For appellant Marquan M.: Corey Stoughton, Manhattan (212) 607-3300
For intervenor-respondent Albany County: Thomas Marcelle, Albany (518) 447-7110

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Thursday, June 5, 2014

No. 140 Matter of Costello v New York State Board of Parole

Pablo Costello and Luis Torres, who had a gun, were robbing a Brooklyn auto parts store in 1978, when Police Officer David Guttenberg spotted a car double-parked in front and went to the store to ask the driver to move it. As the officer approached, Costello walked out, got into the car and drove away. Inside the store, Officer Guttenberg confronted Torres, who shot and killed him. In 1980, Costello was convicted of felony murder and sentenced to 25 years to life in prison. The presentence report contained a statement of the views of the officer's widow.

Costello became eligible for parole in 2003, but was turned down by the Parole Board, as he was in 2005 and again in 2007. The officer's widow and four children did not submit victim impact statements at those hearings or at Costello's fourth hearing in August 2009, when the Board granted him parole on a 2-1 vote. Before his release, the Board received an inquiry from a Daily News reporter asking why the officer's widow was not given an opportunity to make a victim impact statement, and the Police Benevolent Association publically criticized the Board's decision. The Board temporarily suspended Costello's release for "Records Completion," and it received oral and written statements from the officer's wife, children and other family members in October 2009. The Board unanimously rescinded Costello's parole after a rescission hearing in October 2010, finding the "compelling statements" from the officer's family constituted "new and substantial" information. It said releasing Costello "would so deprecate the serious nature of the instant offense as to undermine respect for the law." Costello filed this suit to challenge the decision.

The Appellate Division, Third Department confirmed the Board's determination in a 4-1 decision, finding it was justified by "substantial evidence of significant information not previously known by the Board." Victim statements "are one of the statutorily required considerations for parole release...," it said. "Thus, 'victim impact statements can constitute significant information which, when submitted to [the Board] even after its determination, may justify the temporary suspension or rescission of parole'.... Where victims have not previously submitted statements, the 'argument that these statements are not new information because [the Board] could anticipate the impact of the crimes on the victims is without merit, as their actual subjective experience is clearly significant information previously unknown to [the Board]'.... [T]his is not a situation of rehashing or simply embellishing previously provided victim statements. The victims' voices had been virtually unheard before October 2009."

The dissenter said, "[W]hile the recent statements of the ongoing grief of the officer's family are undeniably compelling, indeed heartbreaking, they are not the type of 'new' information that was 'unknown' to the Board at the time it granted parole, so as to justify either a temporary or a full rescission of parole.... Moreover..., while the Board may waive the requirement, victims ordinarily will be heard prior to -- not after -- a parole determination, and for good reasons.... Courts should be loathe to condone what could become a trend ... in which certain victim impact statements are held back until after a decision to grant parole is made, forcing the Board to confront unabashed media frenzy, public pressure and familial outrage, and to then entertain newly drafted but belated victim impact statements aimed at undoing considered Board decisions awarding parole."

For appellant Costello: Alfred O'Connor, Albany (518) 465-3524
For respondent Parole Board: Senior Assistant Solicitor General Nancy A. Spiegel (518) 474-3197