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Six-year disciplinary investigation of former Centre County District Attorney Stacy Parks Miller concludes with one-year law license suspension

By Katherine Watt

On Feb. 22, 2017, following a multi-year investigation, the Office of Disciplinary Counsel of the Pennsylvania Supreme Court filed a “Petition for Discipline” asking the Supreme Court justices to use their supervisory authority to discipline Centre County District Attorney Stacy Parks Miller for ethical infractions committed during her tenure as a public official.

The Petition for Discipline was summarized in the April 20, 2018 *Bailiwick News*, published just before a public ODC panel hearing held on April 23, 2018.

This series of installments updates and contextualizes that report, up to the Feb. 8, 2019 Supreme Court order sanctioning Parks Miller by suspending her law license for one year plus one day, ordering her to pay the costs of the investigation, and requiring her to apply to the Supreme Court for permission to regain her law license at the end of the year-long suspension.

There is only one way for citizens – as disciplinarians of first and last resort – to directly hold Pennsylvania elected officials at the county and state level accountable for their actions and remove them from office: watch them in action, share information about their actions, and if they violate community ethical standards, vote them out at the next regularly scheduled election.

Centre County citizens used this method during the 2017 District Attorney race, voting Parks Miller out of office after eight years, and electing Bernie Cantorna to replace her.

Pennsylvanians must wait for regular elections regardless of when they become aware of problems, because we don’t have a statewide recall process. Some municipalities have recall provisions in their home rule charters, allowing voters to mount campaigns between regular elections to remove local officials from office.

There are a few indirect methods. If citizens can collect evidence of criminal acts, public officials can be investigated by police and potentially charged with crimes.

If the official is a judge, his or her acts can be reported to the Judicial Conduct Board of the Pennsylvania Supreme Court for investigation and

potential disciplinary measures – not for crimes, but for violations of ethical rules binding judicial officers.

If the person is an attorney, whether in private practice or serving in a public capacity as a county district attorney or prosecutor for the state Office of Attorney General, his or her acts can be reported to the Disciplinary Board of the Pa. Supreme Court for investigation and potential disciplinary measures – again, not for crimes, but for violations of the Rules of Professional Conduct that govern attorney ethics.

If the case is not dismissed, sanctions can range from “informal admonition” through “private reprimand,” “public reprimand,” probation, and “public censure,” up to and including suspension of the respondent’s law license or disbarment

The process is extremely time-consuming.

Pennsylvania attorneys are required to adhere to Rules of Professional Conduct promulgated by the state Supreme Court, which is comprised of seven justices, elected through statewide partisan elections for 10-year terms followed by “retention” elections for additional terms.

Disciplinary investigations generally begin with complaints filed in one of four district Offices of Disciplinary Counsel (ODC), located in Philadelphia, Trooper, Harrisburg and Pittsburgh, under the authority of the Disciplinary Board.

The Disciplinary Board is comprised of 13 members: 11 attorneys and two non-attorneys, all appointed by the Supreme Court to serve for three-year terms.

The Office of Disciplinary Counsel district branches are staffed by attorney-investigators supervised by a “Chief Disciplinary Counsel.”

After complaints are received by the ODC district office, an attorney-investigator is assigned to the case.

Complaints and all records of the disciplinary investigation are secret throughout the investigation, until the attorney under investigation – the “respondent” – formally answers a Petition for Discipline submitted by the investigator to the Disciplinary Board. When the answer is filed, usually within 30 to 50 days of the petition filing, both documents become public.

This secrecy is purportedly to protect the reputations of attorneys against whom unfounded complaints have been filed. If the complaints are deemed unfounded or if the ODC reaches a private settlement with an attorney for admitted ethical violations, the case is dismissed, disciplinary investigators don’t get to the point of filing a Petition for

Discipline at all and the allegations and investigative records are never made public.

Following the publication of the ODC petition and the respondent's answer, a public hearing is scheduled, so that the parties can present their arguments to a three-member hearing panel comprised of attorneys appointed by the Disciplinary Board.

After the panel hearing, the hearing transcript and exhibits entered into the record during the public hearing become public documents.

After the hearing, the parties can also file briefs to make further arguments.

The three-member panel then provides a written report and recommendation to the 13-member Disciplinary Board.

The full Disciplinary Board reviews the record and then makes its own recommendation to the Chief Justice of the state Supreme Court. The Disciplinary Board can accept, reject, increase, or decrease the penalties recommended by the three-member hearing panel.

The Chief Justice then forwards the Disciplinary Board's recommendations to the full, seven-member Supreme Court, which again, can accept, reject, increase, or decrease the penalties recommended by the Disciplinary Board.

Parks Miller's Case - Overview

Parks Miller was first elected District Attorney in 2009, and re-elected in 2013 when no challengers stepped up to run against her.

In Centre County's case, some of the earliest complaints about Parks Miller's ethically-questionable actions were filed formally with the ODC in 2013.

Most of the complaints revolved around allegations that Parks Miller and Centre County judges were fixing criminal cases, by communicating via text messages and emails without the knowledge or participation of defense counsel.

Parks Miller has often characterized her actions as aggressive prosecution of bad guys.

Defense counsel have usually characterized her actions and the actions of complicit judges as violations of defendants' Constitutional rights.

For six years, through multiple state and federal courts and the ODC, Parks Miller fought like hell to block criminal, civil and ODC investigator access to and use of text and email evidence that would confirm or refute the allegations made against her.

There were two relevant data sets.

The first was a set of spreadsheets containing text and phone metadata, provided to then-private attorney Bernie Cantorna in November 2014, by then-Centre County Administrator Tim Boyde, in response to Cantorna's request under the 2008 Pennsylvania Right to Know Law.

A handful of other Centre County attorneys requested and obtained similar data sets for a few weeks thereafter.

The spreadsheets showed the date and time of hundreds of texts and phone calls among members of the District Attorney's office and members of the Centre County judiciary during criminal prosecutions, but not the contents of the communications.

The disclosures under the Right to Know Act stopped abruptly after Parks Miller and implicated judges filed for and received emergency injunctions, setting off years of appeals and cross-filings through the Pa. Office of Open Records, county courts, intermediate appellate courts and the state Supreme Court.

Parks Miller argued that the text and phone communications data were exempt from disclosure under the Right to Know Law, on the theory that the District Attorney is a member of the judicial branch of government, which is only subject to a narrow sub-set of the disclosure requirements imposed on other branches of government.

In a November 2017 decision, the Pa. Supreme Court rejected Parks Miller's argument, confirming that county District Attorneys are part of the executive branch of government, not part of the judiciary, and therefore broadly subject to the Right to Know Law. [A detailed account of the Right to Know litigation can be found in the April 19, 2018 *Bailiwick News*.]

The second data set was the actual contents of the text and email records, originally obtained by officers of the Bellefonte Police Department after serving a search warrant on Parks Miller's office on Jan. 24, 2015.

After seizing Parks Miller's work cellphone and computer, the Bellefonte police hired PATCtech – a forensic analysis firm – to extract the contents of texts from the phone and emails from the computer, to determine whether in fact Parks Miller had been texting and emailing judges to fix criminal cases.

Parks Miller again fought for many years through a secret state grand jury investigation of her actions, conducted by the Office of Attorney General (OAG) under then-AG Kathleen Kane and supervised by Cambria County President Judge Norman Krumenacker; through a federal civil defamation suit she brought against her accusers and took up to the Third Circuit Court of Appeals; and through the ODC disciplinary process, including multiple appeals to the Pa. Supreme Court.

She argued that the original search warrant served on Jan. 24, 2015 was invalid due to lack of probable cause, and that therefore all evidence derived from it was "fruit of the poisoned tree" and inadmissible in any criminal, civil or disciplinary context.

Parks Miller consistently claimed that eyewitness Michelle Shutt lied when she swore in a December 2014 affidavit to the Bellefonte police that, as a paralegal in

Parks Miller's office, Shutt personally witnessed two alleged crimes: Parks Miller's forging of a judge's signature on a "fake" bail order and Shutt's filing – at Parks Miller's direction – of the forged, fake order in the Prothonotary office, thus tampering with public records.

Parks Miller's basis for the "liar!" accusation was the July 31, 2015 grand jury report released by Judge Krumenacker after the OAG's secret investigation.

Shutt just as consistently stuck to her initial statement about what she saw and did, and added that she had no control over what various investigators, prosecutors and judges did or didn't do to corroborate her testimony or present it to the Krumenacker grand jury.

In any case, Parks Miller's characterization of Shutt as a liar formed the basis for her argument that none of the text and email contents obtained through the Jan. 24, 2015 search – based partly on Shutt's affidavit – could be used by any party to any civil, criminal or disciplinary action.

It also formed the basis for her demand – first made a few days after the search warrant was served – that the evidence and all copies of it be returned to her directly, or provided only to the OAG investigators and the secret grand jury under Krumenacker's supervision.

The custody path through which those two data sets made their way in and back out of Parks Miller's office, the Bellefonte Police Department, forensic technology firm PATCtech, various state and federal courts, the Office of Attorney General, the Krumenacker grand jury courtrooms, the Office of Disciplinary Counsel and the Office of Open Records, is tortuous.

It may never be fully traceable.

But in September 2016, US District Court Judge Matthew Brann ruled that the original, January 2015 search warrant was valid: the Bellefonte Police Department had probable cause to seize and search Parks Miller's work phone and computer.

In February 2017, the Office of Disciplinary Council formally filed a Petition for Discipline against Parks Miller, citing, as evidence of her multiple violations of the Rules of Professional Conduct,

excerpted and contextualized contents of texts and emails extracted from Parks Miller's work phone and computer, contrasted with her repeated under-oath denials of wrongdoing.

Over the next six months, Parks Miller engaged in a secret paper war with the ODC over the ODC's use of text excerpts in moving the Petition for Discipline forward, arguing that the texts were grand jury material and thus could not be used in the ODC context.

At the same time, she was fighting a secret battle in the Krumenacker grand jury, filing contempt proceedings against Attorney Sean McGraw, PATCtech forensic analyst Brian Sprinkle, and possibly other local attorneys, apparently seeking sanctions against them for their possible role in disseminating text and email contents in violation of grand jury secrecy rules.

And at the same time, she was running her own, secret Centre County investigating grand jury, and bringing charges against members of the Beta Theta Pi fraternity related to the death of pledge Timothy Piazza due to injuries sustained during "bid night" at Beta's fraternity house on Feb. 2, 2017.

Eventually by late July 2017, orders from Judge Krumenacker and the Supreme Court converged, finding that the text records were not protected grand jury material, and thus could be used in the ODC disciplinary context.

To be continued.

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