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November 11, 2005

**VIA FACSIMILE TO 717-234-9307**  
**AND U.S. MAIL**

Joseph A. Massa, Jr., Esquire  
Chief Counsel  
Commonwealth of Pennsylvania  
Judicial Conduct Board  
Pennsylvania Place  
301 Chestnut Street  
Suite 403  
Harrisburg, Pennsylvania 17101

Re: Complaint Filed by Gene Stilp

Dear Mr. Massa:

I write on behalf of my client, The Honorable Ralph J. Cappy, Chief Justice of the Commonwealth of Pennsylvania. As you know, the media has reported that, on or about August 15, 2005, a self-styled "political activist," Gene Stilp, filed a complaint with the Judicial Conduct Board accusing Chief Justice Cappy of supposed misconduct. Although neither Chief Justice Cappy nor I have seen the actual complaint submitted by Mr. Stilp, my client would like to have this matter resolved as quickly as possible and therefore has authorized me to submit a response to those charges that were reported by the media.

As we understand it, Mr. Stilp's complaint focuses on efforts Chief Justice Cappy has made to secure adequate compensation for judicial officers serving the Commonwealth of Pennsylvania and on a public statement issued by Chief Justice Cappy supporting the enactment of a comprehensive plan for compensation of Pennsylvania's public officials. Any fair assessment of the Chief Justice's actions in this regard, we submit, would mandate the immediate dismissal of that complaint.

**Background**

Chief Justice Cappy is now serving his second ten-year term on the Supreme Court of Pennsylvania, having begun his service on January 1, 1990. He was installed as Chief Justice of Pennsylvania on January 3, 2003.

Chief Justice Cappy was graduated from the University of Pittsburgh with a Bachelor of Science in 1965 and with a Juris Doctor in 1968. After completing law school, he served as a law clerk to the President Judge of the Court of Common Pleas of Allegheny County and then engaged in the general practice of law. He became a Public Defender for Allegheny County, and ultimately served as Chief Public Defender from 1976 to 1978. In July 1979, Chief Justice Cappy was appointed to the Allegheny

County Court of Common Pleas, and served in the Family, Criminal and Civil Divisions of that Court. In 1986, he was appointed as Administrative Judge of the Civil Division, a position he held until he joined the Supreme Court in 1990.

Article V of the Constitution of the Commonwealth of Pennsylvania establishes our “unified judiciary” (section 1) and vests the Supreme Court of Pennsylvania with “supreme judicial power” (section 2). According to Article V, section 10, the Supreme Court is to exercise “general supervisory and administrative authority over all the courts and justices of the peace.”

As the leader of the Court vested with the supreme judicial power and with supervisory and administrative responsibility for the entire unified judicial system, Chief Justice Cappy has communicated frequently and necessarily with members of the other two branches of Pennsylvania’s government. The subjects of these communications have included the annual budget for the judicial system, continuing judicial and legal education, the proposed Unified Judicial Center in Harrisburg, the organization and management of the Administrative Office of Pennsylvania Courts, the Pennsylvania Commission of Judicial Independence, and the Gender, Racial, and Ethnic Fairness Commission, to name but a few. The communications and interactions have been of all types and levels of formality, from testimony before the Legislature, to one-on-one meetings with leaders of the other two branches of government, to written statements and proposals, to innumerable telephone conversations with innumerable officials of the Commonwealth. On some occasions, these interactions were requested or invited, on others they were initiated by the Chief Justice. In all cases, they have been directed at advancing the administration of justice in the Commonwealth of Pennsylvania.

### **The Judicial Compensation Proposal**

Chief Justice Cappy has for some time been concerned about the inadequate compensation available to the judges and other judicial officers upon whom the fair and efficient administration of justice depends. Over the past decade, judicial salaries in Pennsylvania have eroded significantly when compared with judicial salaries in other states, at the same time that compensation for lawyers in private practice has trended upward. As a result, many newly graduated law students can make as much in private practice as a seasoned trial judge on a Court of Common Pleas. Highly valued jurists have reluctantly departed the bench for opportunities in the private sector.

Sometime in the late summer or early fall of 2004, the Chief Justice asked the leaders of the legislature and the Governor to confront this growing problem with a proposal to increase compensation for the judiciary. In a series of meetings and conversations, he laid out a number of different approaches to accomplish this goal, including but not limited to a compensation package that tied salaries to those of the federal judiciary. In those discussions, he made it very clear that he was asking for a raise for the judiciary, whether it be in the form of a traditional, lump sum increase or in a more innovative form. He did point out that linking salaries to those of the federal judiciary would help to insure independence of the judiciary by ensuring that future compensation increases for the judiciary would no longer be in the hands of the Pennsylvania sister branches, but instead in the hands of Congress and the President of the United States. Because of his desire to guarantee judicial independence, the Chief Justice preferred the approach of removing the pay raise issue from the political forum in the future. He felt even more strongly, however, that, after ten years of minimal increases, the judges of Pennsylvania needed and deserved a significant increase in compensation, regardless of the form it might take.

As Chief Justice Cappy discussed his proposal with representatives of the sister branches of government, it became clear to him that its best chance of success would be as part of a broader reform of compensation for all three branches. He therefore developed and began to discuss scenarios that would tie pay in those branches to counterparts in the federal system.

By the spring of 2005, the Chief Justice was informed that the respective legislative caucuses were considering the comprehensive approach, with the Legislature devising its own package and the Executive Branch doing the same. A consensus seemed to be emerging at that time that a comprehensive compensation package was the most desirable way in which to proceed and that the Chief Justice's suggestions as to the judicial piece of the package would be acceptable. All involved acknowledged that tying all salaries to federal counterparts was meritorious because it would remove future issues over compensation from the political arena.

Sometime during the budget session of the Legislature in June of 2005, one of the chambers of the Legislature drafted a Comprehensive Compensation Bill that included the Judiciary and tied the salaries of Pennsylvania justices and judges to their federal counterparts. Further, consistent with the Chief Justice's suggestions, the salaries of magisterial district judges were set at 50% of the salary of a Common Pleas Court Judge. It should be noted that because the proposal for the Pennsylvania Judiciary set salaries for justices and judges at one step below the federal counterpart, there were no comparable federal officials with whom to compare the salaries of magisterial district judges. Thus, the salaries of the magistrates were set at 50% of the salary of a common pleas court judge.

Neither the Chief Justice nor any of his colleagues were present in the Capitol during the final days of the 2005 budget debate or during the final vote on either the 2005/2006 budget or the comprehensive compensation package.

During his first press conference after he signed the legislation, Governor Rendell publicly thanked "Chief Justice Cappy for having come up with the idea of linking state salaries to their federal counterparts." This "thank you" was unsolicited and undoubtedly well intended, but sparked a torrent of commentary over the Chief Justice's role in what had become a political controversy of major proportions. Over the next several weeks, the Chief Justice watched as his effort to address a burgeoning crisis in the judiciary was transformed in the media into a last minute, late hour "fast one" pulled by the legislature. Additionally, because of the Governor's above noted comments, the Chief Justice's role in the matter was being described in a wholly misleading manner.

The Chief Justice believed – and still believes – that the public was being badly informed about what had occurred, and that the Governor and Legislature were being unfairly criticized for what he believed to be an important and progressive step for state government. He therefore wrote and distributed an op ed piece (copy enclosed) to set the record straight regarding the need for a judicial pay increase and regarding the time and effort that went into this thoughtful and progressive plan. He also participated in a few interviews on this subject with representatives of the media.

### **Analysis**

Article V, section 18 of the Constitution of the Commonwealth of Pennsylvania sets forth the circumstances under which a justice, judge, or justice of the peace may be sanctioned by the Court of Judicial Discipline. Without even seeing the complaint sent to the JCB by Mr. Stilp, we are confident that none of the conduct described above – nor any of the Chief Justice's actions in pursuit of fair compensation for Pennsylvania's judicial officers – fall within any of the proscriptions of section 18. On the contrary, as head of the judiciary in this Commonwealth, Chief Justice Cappy is legally and ethically obliged to pursue initiatives aimed at improving the administration of justice. He, and he alone, is in a position to represent and speak out on behalf of the unified judicial system established by Article V.

The Code of Judicial Conduct, far from prohibiting the activities at issue here, specifically authorizes them. Canon 4 provides, "A judge may engage in activities to improve the law, the legal system, and the administration of justice." Canon 4(A) permits a judge to "speak, write, lecture, teach,

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and participate in other activities concerning the law, the legal system, and the administration of justice[,]" while Canon 4(B) states that a judge may "consult with an executive or legislative body or official . . . on matters concerning the administration of justice." All of Chief Justice Cappy's activities in support of enhanced compensation for Pennsylvania's judicial officers has fallen comfortably within these rules.

Several news articles about Mr. Stilp's complaint suggested that he had alleged that Chief Justice Cappy's actions were improper because the legality of the legislation raising compensation might come before the Pennsylvania Supreme Court for decision. But, as the Chief Justice repeatedly indicated to those who were considering his proposals, he would and will recuse himself from any case presenting that issue. He also had instructed his colleagues on the Supreme Court that they were not to become involved with his proposals, so that they could adjudicate any such matter.

For all these reasons, the complaint submitted by Mr. Stilp should be dismissed without further involvement or investigation by the Judicial Conduct Board. Should that step in fact be taken, I would request that the Board notify me of this disposition.

Please feel free to contact me if you or the Board need any further information.

Very truly yours,

W. Thomas McGough, Jr.  
Pa. I.D. No. 28328

WTMcG,Jr:cag

cc: Honorable Ralph J. Cappy

PR Newswire

March 15, 1991, Friday - 11:31 Eastern Time

**FORMER DISTRICT ATTORNEY RONALD CASTILLE JOINS REED SMITH  
SHAW & MCCLAY**

**SECTION:** State and Regional News

**LENGTH:** 412 words

**DATELINE:** PHILADELPHIA, March 15

David C. Auten, managing partner of the Philadelphia office of Reed Smith Shaw & McClay, announced today that former Philadelphia District Attorney Ronald Castille had become counsel to the firm.

Reed Smith Shaw & McClay is a firm of approximately 350 lawyers with offices in Philadelphia, Pittsburgh, Washington, Harrisburg, Pa., and McLean, Va. With its Philadelphia office founded in 1842, Reed Smith is a full-service firm.

Reed Smith's association with Castille began when Castille first ran for the position of Philadelphia district attorney in 1985. At that time, Reed Smith asked him to join the firm, and that interest has continued through his two terms as district attorney. When Castille was elected as district attorney, Auten and others at Reed Smith asked Castille to contact them if he was interested in a position with the firm at any time in the future.

Auten said he expects Castille to be a significant contributor to the firm's litigation team. He has personally handled 180 jury trials, almost all of them with successful outcomes. He has successfully supervised the work of more than 200 attorneys and a staff of 475 employees while district attorney.

Reed Smith's Philadelphia Litigation Group has been one of the fastest growing groups in the firm. In the past 10 years, that group has grown from one lawyer to nearly 30. Within litigation, one of the most rapidly growing areas is white-collar crime.

Reed Smith also has long had an extensive practice in representing various branches of government, including the City of Philadelphia. The firm first served the City as counsel on a bond issue at the beginning of this century, and has performed legal work for the City in virtually every administration, Democratic and Republican, in the past 90 years.

Castille will not be the first Reed Smith attorney to seek public office while at the firm. Philander Knox, a founder of the firm, served as U.S. attorney general and secretary of State and as a U.S. senator. David Reed, another member of the firm also served as a U.S. senator.

Reed Smith has been actively seeking senior litigators to help in its dramatic growth, and the firm said it is delighted to add as prominent a practicing attorney as Castille to its ranks. Auten said Castille will begin work as soon as the furniture can be moved into his new office.

CONTACT: Richard H. Glanton of Reed Smith Shaw & McClay, 215-851-8120.

**AFFIDAVIT OF OLIVER B. HALL IN SUPPORT  
OF MOTION FOR RELIEF FROM JUDGMENT**

1. I am a member of the Bar of the District of Columbia, and counsel for Defendant Ralph Nader. I submit this affidavit in support of Defendant's Motion for Relief from Judgment.

2. On August 9, 2004, Plaintiffs Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti, Terry Trinclisti, Bernie Cohen-Scott, Donald G. Brown and Julia A. O'Connell filed a petition in the Commonwealth Court of Pennsylvania, which challenged the validity of the nomination papers that Defendant Ralph Nader and his running mate Peter Miguel Camejo submitted as candidates for President and Vice President in the 2004 General Election. *See In re Nomination Papers of Ralph Nader and Peter Miguel Camejo*, 905 A.2d 450, 453 (Pa. 2006). Pennsylvania's election code required the candidates to submit a petition with signatures equal in number to two percent of the number of the highest vote in the last statewide election. *See* 25 P.S. § 2911. In 2004, therefore, Mr. Nader and Mr. Camejo were required to submit 25,697 signatures. They submitted 51,273 signatures.

3. On October 13, 2004, the Commonwealth Court issued an opinion setting aside Mr. Nader's and Mr. Camejo's nomination papers. *See In re Nomination Papers of Nader*, 865 A.2d 8 (Pa. Commw. Ct. 2004). The Commonwealth Court invalidated approximately 30,500 signatures on technical grounds – for example, because qualified electors were not registered on the day they signed the petition (9,000 signatures invalidated); because omitted data like dates or incomplete addresses was filled in after electors signed the petition (8,000 signatures invalidated); because the elector's current address did not match the elector's registered address (6,000 signatures invalidated);

because information was incomplete (2,000 signatures invalidated); because of “affidavit problems” (2,000 signatures invalidated); and because of unspecified “other” defects (3,500 signatures invalidated). *Id.* The Commonwealth Court thus found only 18,818 signatures valid, and concluded that the nomination papers fell short of the 25,697 signatures required by state law. *Id.*

4. On October 14, 2004, the Commonwealth Court issued an order directing Mr. Nader and Mr. Camejo to pay all costs arising from Plaintiffs’ lawsuit challenging their nomination papers.

5. On October 19, 2004, the Supreme Court of Pennsylvania issued a *per curiam* order affirming the Commonwealth Court’s disposition of the nomination papers without opinion. *See In re Nader*, 905 A.2d at 455. Only Justice Thomas Saylor, who dissented, issued a written opinion. *See In re Nomination of Nader*, 580 Pa. 134 (Pa. 2004) (Saylor, J. dissenting). Justice Saylor objected, *inter alia*, to the Commonwealth Court’s invalidation of approximately 9,000 signatures from qualified electors, noting that Pennsylvania law does not require qualified electors to register to vote before signing a nomination petition. *See id.* For this reason alone, Justice Saylor argued, the nomination petition exceeded state law requirements, and Mr. Nader and Mr. Camejo qualified for Pennsylvania’s 2004 general election ballot. *See id.*

6. On December 3, 2004, Plaintiffs’ counsel, Reed Smith (joined by Gregory Harvey of Montgomery, McCracken, Walker and Rhoads and Brian A. Gordon, a solo practitioner) submitted a bill of costs to the Commonwealth Court in the amount of \$81,102.19. On January 14, 2005, the Commonwealth Court issued an order approving the bill without opinion. Mr. Nader and Mr. Camejo appealed this order to the Supreme

Court of Pennsylvania, which assumed jurisdiction on October 13, 2005, and heard oral argument on March 1, 2006. On August 22, 2006, a divided Supreme Court of Pennsylvania affirmed. *See In re Nader*, 905 A.2d at 460. Justice Saylor and Justice Eakin dissented on the ground that Pennsylvania's Election Code does not authorize the state to tax costs against candidates who defend their nomination papers, but only against petitioners who challenge them. *See id.* (Saylor, J. dissenting and Eakin, J. concurring and dissenting). Justice Eakin concurred in part, on the ground that the court's Internal Operating Procedures may have provided authority for approximately half the costs assessed. *See id.* (Eakin, J. concurring and dissenting).

7. The Supreme Court of the United States denied Mr. Nader's and Mr. Camejo's petition for a writ of certiorari on January 8, 2007. *See In re Nomination Paper of Ralph Nader*, 127 S. Ct. 995 (Jan. 8, 2007). On April 23, 2007, the Pennsylvania Commonwealth Court entered its order of January 14, 2005 as a final judgment. Plaintiffs entered this foreign judgment in the Superior Court of the District of Columbia on May 16, 2007.

8. On September 12, 2007, or shortly thereafter, Defendant Ralph Nader discovered for the first time that Supreme Court of Pennsylvania Justice Ronald Castille formerly served as of counsel at Plaintiffs' law firm Reed Smith, LLP, for three years immediately prior to joining that Court. Because Reed Smith concealed this fact, Mr. Nader and Mr. Camejo did not discover it until it was published in an article about Chief Justice Ralph Cappy's retirement. *See Gina Passarella, Pa. Supreme Court Chief Justice to Step Down from Bench*, THE LEGAL INTELLIGENCER, Sep. 12, 2007. Mr. Camejo had

already paid Reed Smith \$20,000 in settlement, unaware that the firm's judgment was tainted with an appearance of impropriety.

9. Discovery of Reed Smith's association with Justice Castille put Mr. Nader on notice that Reed Smith might have further undisclosed ties with Justices of the Pennsylvania Supreme Court. Upon investigation, Mr. Nader discovered that further undisclosed ties do in fact exist.

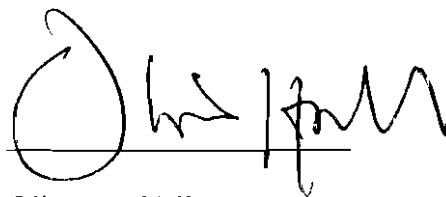
10. Specifically, on September 12, 2007, or shortly thereafter, Mr. Nader discovered that Reed Smith was representing (now former) Pennsylvania Supreme Court Chief Justice Ralph Cappy in a state ethics investigation, which was ongoing while this case was before the Pennsylvania Supreme Court. That Court assumed jurisdiction over this case on October 13, 2005. On November 11, 2005, Reed Smith partner W. Thomas McGough, Jr. sent a letter to the Commonwealth of Pennsylvania Judicial Conduct Board setting forth Chief Justice Cappy's response to charges against him.

11. On September 12, 2007, or shortly thereafter, Mr. Nader also discovered that Reed Smith and Plaintiffs' second law firm, Montgomery, McCracken, Walker and Rhoads, LLP, gave \$10,000 in campaign contributions (\$5,000 from each firm) to Justice Sandra Schultz Newman while this case was before the Pennsylvania Supreme Court. Reed Smith gave \$5,000 on November 4, 2005, and Montgomery, McCracken, Walker and Rhoads gave \$5,000 on November 7, 2005.


12. On October 30, 2007, Mr. Nader filed suit in this Court charging Reed Smith, *inter alia*, with conspiracy, abuse of process and malicious prosecution. The case is now pending. *See Nader v. Democratic National Committee*, 2007 CA 007245 B (D.C. Super. Oct. 30, 2007).

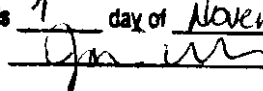
I declare under penalty of perjury of the laws of the United States of America that  
the foregoing is true and correct to the best of my knowledge.

Executed this 7<sup>th</sup> day of November, 2007



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1835 16<sup>th</sup> Street NW  
Washington, D.C. 20009  
(617) 953-0161  
*Counsel for Ralph Nader*



District of Columbia : SS  
The foregoing instrument was acknowledged before me  
this 7 day of November, 2007  
by   
\_\_\_\_\_  
Jacqueline Williams, Notary Public, D.C.  
My commission expires August 14, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion for Relief from Judgment and proposed Order was served upon the following persons on November 8, 2007 by First Class mail:

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