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News

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High praise for special counsel to troubled Pa. high court

By Jeff Gammage
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Colleagues say Robert Byer practices law with the precision of a diamond-cutter:

Disciplined, dispassionate, and led by keen intelligence.

“Beyond brilliant,” said his college roommate, Philadelphia lawyer Jeffrey Pasek.

An appellate expert, Oxford scholar, former Commonwealth Court judge, and lawyer for Ford Motor Co., Columbia Pictures, and Travelers Insurance, he has now been appointed special counsel to the fractured and fractious Pennsylvania Supreme Court.

Byer, 62, is the court’s attorney, its legal representative and adviser at a chaotic moment when the justices have suspended one of their own, Seamus McCaffery, in an evolving scandal over e-mailed pornography. Four people have resigned over e-mail exchanges among current and former staffers in the Attorney General’s Office.

“I consider it to be a great responsibility,” said Byer, Pittsburgh head of the appellate practice at Duane Morris LLP. “I view my role as an officer of the court very seriously.”

Other questions about the job, including its duties and how it was offered, he declined to answer.

Some legal observers wonder whether his role might quickly expand.

“He’s a special prosecutor in waiting,” said Bruce Ledewitz, a law professor at Duquesne University in

Pittsburgh. “He doesn’t represent the court in proceedings - because there are no proceedings.”

Last week, a divided Supreme Court suspended McCaffery amid allegations that he sent sexually explicit e-mails and then threatened to entangle a fellow justice in the upheaval.

Four of the seven justices voted to oust McCaffery with pay, citing an immediate need to protect the integrity of Pennsylvania courts. The high court ordered the state Judicial Conduct Board to determine within 30 days whether there was probable cause to file formal misconduct charges against McCaffery.

One sentence near the end of the order appointed Byer as special counsel in the matter.

“This is a really even-handed guy who will give everybody a fair shake,” said David Fine, a Harrisburg partner in the international law firm K&L Gates who has known Byer for two decades. “Rob’s allegiance isn’t to any particular justice. It’s to the court.”

The order directs the conduct board to consider not only the sending of pornographic e-mails, for which McCaffery has apologized, but other allegations: that he may have fixed a ticket on behalf of his wife; that his wife collected referral fees from law firms that had cases before the court; and that he may have improperly complained about a judge who was hearing a case brought by a firm that had paid a referral fee to his wife and given him campaign donations.

A big question, court-watchers say, is what might happen - and how



Robert Byer is a former judge and corporate lawyer.

Byer’s role might change - if the board does not act within 30 days.

After the e-mail revelations this month, Chief Justice Ronald D. Castille unsuccessfully urged his colleagues to appoint a special prosecutor. On Monday, he advocated bypassing the Judicial Conduct Board and referring the matter to an outside fact-finder.

Byer grew up in McKeesport, near Pittsburgh, where until age 14 he wanted to be a doctor, an ambition blunted by a grim biology-class dissection. He began sitting in on courtroom trials for fun and teaching himself to do legal research in law libraries.

He graduated with honors from the University of Pittsburgh in 1973, studied at Oxford, then earned his

legal degree from Pitt while serving as an editor of the law review.

“He has a true judicial temperament, and that’s important for this very difficult and sensitive task,” said Pitt law professor Arthur Hellman, who taught Byer 40 years ago and remains friendly with him. “I’d expect him to proceed very carefully and cautiously, with full awareness of how much is hanging on this.”

What is at stake, observers say, is multifold: the reputation of a justice, the image of the state’s highest court, and the public’s ability to trust in the court’s objectivity.

Appellate lawyers are a particular breed, given less to the parry-and-riposte of daily trial wars than to the painstaking, post-trial examination of voluminous case files.

In August, Byer won a complicated appeal involving the sale of asbestos-tainted car parts by an overseas Ford subsidiary - and their alleged role in causing a man’s deadly cancer.

The suit, filed by Paul Rowland in 2011 and continued by his estate,

claimed his exposure to Ford of Britain and another firm’s parts contributed to his mesothelioma.

Rowland’s suit contended that the parts were marketed as Ford products and that the company controlled the subsidiary. Ford said the parts firm was independent - an assertion supported by a Common Pleas Court ruling.

On appeal, Byer successfully argued to the state Superior Court that Ford could not be held liable for parts made and distributed by a subsidiary in the United Kingdom.

Byer has argued or briefed scores of appeals in the U.S. Supreme Court, U.S. Court of Appeals, and courts in Pennsylvania, California, Maryland, and Washington, D.C.

“He has the ability to grasp an enormous amount of detail,” said Pasek. “His great skill is to be able to evaluate, prioritize, and focus on what’s really important.”

In college, Byer was brilliant, and today, “Not just brilliant but wise,” Pasek said.

“Diamonds are brilliant, but knowing where to cut, and when, takes wisdom,” he said.

For years on the court, Castille, a Republican, and McCaffery, a Democrat, have been at odds.

Byer was a Republican when he became a judge in 1990, but said he later left the GOP in disaffection, particularly over the Terri Schiavo life-support case in the 2000s. Today, his voting registration is unaffiliated, he said.

Friends describe him as apolitical. “He cares very deeply about the institution of the judiciary,” said Hellman, the Pitt professor, “and obviously the judiciary is not looking very good at this moment.”

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