

LAWYER OF THE YEAR

Vanguard For Judicial Independence

Justin Walder's advocacy brings to the Supreme Court a case that could redefine the limits of political influence over the judicial branch

By David Gialanella

Asked whether he knows how many times he has argued before the New Jersey Supreme Court in his 50-year career representing criminal defendants, business clients and lawyers charged with ethics transgressions, Justin Walder says simply, "a lot."

But the next case he argues may be his most significant, for it could shape the judiciary for years to come. Walder represents Hudson County Superior Court Judge Paul DePascale in a fight against a statute that takes a far larger chunk out of judges' salaries to pay for their pensions and benefits.

Walder argued the law violates the state constitution's art. 6, § 6, ¶ 6, barring diminution of jurists' "salaries" while in office, and in October, he got Mercer County's assignment judge to agree. When the state appealed, he convinced the Court to hear it directly, bypassing the Appellate Division.

Though the Court did not express its reasons for taking the case, the contentiousness surrounding Judge Linda Feinberg's Oct. 17 ruling was palpable, as Gov. Chris Christie called it a "self-serving decision by a judge protecting her own pocketbook and those of her colleagues" who he said were drawing

fat pensions but refusing to pay their fair share. Clearly, any judge ruling in this case would be similarly castigated.

The implications for the judiciary and its relationship with the political branches are nothing short of momentous. By some accounts, judicial independence itself lies in the balance.

For his decision to take on this potential watershed case, and for his sterling advocacy throughout, Justin Walder is the *Law Journal's* Lawyer of the Year for 2011.

Walder, of Walder, Hayden & Brogan in Roseland, acknowledges public opinion might not be favorable to the judges, and less so in an economy where most New Jersey residents earn far less and in some cases are unable to find work.

"The public generally doesn't focus on, and maybe doesn't even really care much about, the concept of the independence of the judiciary," he says.

"But think about it this way ... If they had a case before [a] court, you can be certain, they would not want to be before a judge, or judges, or justices, who they thought would be subject to any outside influence."

"That's the basic core concept that's involved here," he says. "And it's not involved just as some theoretical



CASE OF A LIFETIME: The challenge to the pension reform law that Walder will argue early next year has momentous implications for the judiciary's relationship with the political branches of government.

concept. It's the bedrock of our constitution."

Walder declines to speculate about how the Court might decide, but he agrees about the magnitude of the issues. The case has inspired at least two proposed constitutional amendments to alter or remove the language at issue.

Briefs are due by Dec. 28 for the state and by Jan. 27 for the plaintiff. No date has been set for oral argument yet.

Walder is no stranger to high-stakes cases. The mainstay of his practice in recent years has been attorney ethics cases, some with the specter of disbarment hanging over the clients. In the past 18 months, he has handled three major discipline cases and succeeded in

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PHOTOS BY CARMEN NATALE

FRIEND OF THE COURT: Walder says his experience as a senior county and state prosecutor imbued in him the need for a professional rapport among lawyers and judges. 'Along with being a creative advocate, you've got some responsibility,' he says.

avoiding the ultimate penalty in two of them. The third is pending.

Walder helped veteran litigator David Gross, former managing partner at Budd Lerner in Short Hills, avoid disbarment in *Matter of David Gross*, D-61-09. Gross, charged with knowingly misappropriating funds, was accused of hiding a client's \$50,000 gift from his partners in 1998 despite a supposed policy mandating that all outside income be turned over to the firm unless permission was given to keep it.

Gross' secretary reported the gift to the firm in 2002 when their working relationship soured.

The Disciplinary Review Board recommended disbarment, but the Supreme Court, apparently agreeing with Walder's arguments, found in May 2010 a lack of clear and convinc-

ing evidence. Walder contended that "the public does not need to be protected from David Gross," adding that the firm's gift policy was in flux at the time.

The 4-2 majority did hand Gross a three-month suspension for dishonest, fraudulent or deceitful conduct, though two justices urged a censure.

Walder also represented Michael Etkin, who on Dec. 9 got a three-month suspension for allegedly keeping \$110,000 in fees owed to his former firm, Ravin, Sarasohn, Cook, Baumgarten, Fisch & Rosen in Roseland.

Ethics authorities butted heads over whether to cite Etkin with knowing misappropriation: The DRB insisted on the charge but eventually relented to the Office of Attorney Ethics' concerns that evidence of intentional conduct was lacking. A special investigator agreed with the OAE.

Walder maintained that no additional charges were appropriate.

Walder, along with Shalom Stone at his firm, is representing Red Bank solo Kevin Wigenton, husband of District Judge Susan Wigenton, who was accused of diverting \$42,000 in clients' funds to his personal and business accounts, then spending the money.

A random audit uncovered the discrepancies, along with 63 overcharges of clients for title insurance. The OAE sought disbarment, but the DRB found in July that the conduct was inadvertent and recommended a censure.

The Court has yet to decide the case.

Walder declines to discuss any ethics matter specifically, but points out that disbarment cases jeopardize a lawyer's lifelong pursuit, not just his or her livelihood.

In those cases, "hopefully you have not only some empathy, but more

of a practical understanding of the circumstance that could have led to the issues that you're confronting in the case," Walder says.

He adds that substance abuse, health issues, the length of time since the infraction and whether a client was harmed should be taken into account by authorities, even in cases involving allegedly intentional conduct.

Walder's influence goes beyond individual cases: By letter, he urged Chief Justice Stuart Rabner to take steps to change the appointment process for special ethics masters hearing complex cases. The Administrative Office of the Courts proposed a change in September 2010 that would move the appointment authority from the OAE — where, critics say, the system is akin to allowing the prosecution to pick the judge — to the Supreme Court clerk.

Aside from ethics matters, Walder handles white-collar criminal defense and business litigation. Having success arguing cases has meant quickly developing an expertise on a variety of topics. "I'm a preparer just by nature and I'll never change," he says. "I kind of analogize it ... to cramming for an exam."

It certainly helps that Walder enjoys the work; he calls Supreme Court arguments "one of the highlights of the practice of law."

And it's not just his frequent appearances that allow him to develop a rapport with members of the bench; civility is "a lost factor in too many ways," he says.

"Along with being [a] creative advocate, you've got some responsibility" as an officer of the court, he says. "Your reputation with the court and with your colleagues is so important."

Walder credits his early experience as contributing to his success as a litigator. After graduating from

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Rutgers Law School-Newark in 1961, he spent two years in the state Attorney General's Office and then went to the Essex County Prosecutor's Office in 1963, where he headed the Economic Crimes Unit.

There he worked under Prosecutor Brendan Byrne — later a judge and two-term governor — and alongside future Attorney General and Chief Justice James Zazzali, and David Samson, who was state attorney general in 2002 and 2003 and is chairman of the Port Authority of New York and New Jersey.

The experience allowed Walder “to be in the guts of practicing law” and provided a foundation for subsequent years spent defending criminal and ethics cases, he says.

“Some people ... have difficulty in transitioning from a being a prosecutor to a defense attorney,” Walder says. “I never had that problem.”

“[T]o be an effective prosecutor, you have to understand the defense side of a case,” adds Walder.

He went to what became Newark's Schapira, Steiner & Walder in 1966, which grew into Walder Hayden.

Walder attributes his sustained success in five decades of practice to staying active, physically and mentally. Walder still plays singles tennis, exercises regularly and participates in the Greater Newark Fresh Air Fund's annual charity softball game.

But he's more known around the halls of Walder Hayden for keeping a note pad near his bed to record late-



FUNDAMENTAL PRINCIPLE: Walder says the independence of the judiciary is at the core of the case, and it's not involved just as some theoretical concept. It's the bedrock of our constitution.'

night thoughts.

“I drive the people in my office, as they will politely tell you, a little bit crazy,” he says. “I'm one of these guys that if I get a thought, so I don't forget it, [and if] it permits me to go back to sleep, I'll leave them a voicemail,” he says.

Aside from law practice and staying fit, Walder has busied himself with a variety of activities over the years.

Walder sits on the *Law Journal's* editorial board, and has served as president of the Association of Criminal Defense Lawyers of New Jersey,

co-chairman of the Fellows of the American Bar Foundation, and a member of the board of governors of the New Jersey chapter of the Association of Trial Lawyers of America, now the Association for Justice.

He has served on several Supreme Court and State Bar Association committees, including one Bar panel that advised the Court to adopt an “indefinite suspension” measure of discipline in 2002, allowing attorneys to reapply for licensure five years after committing what otherwise might be a disbarable offense.

Walder is involved in charities, including the Daniel Jordan Fiddle Foundation, run by his daughter, Linda Walder Fiddle, and named for his autistic grandson, who died unexpectedly in 2000 at age 9. The charity aims to help develop educational, vocational, recreational and other programs for those with autism.

Walder also is a trustee of Cerebral Palsy of North Jersey and has chaired the Fresh Air Fund.

Accolades, too, have been plentiful throughout his career, and 2011 was no different: Walder, along with law partner Joseph Hayden, received Rutgers Law School-Newark's Distinguished Alumnus Award in October.

As with any success story, says Walder, luck also played a part.

“My energy level, my fun at this ... is such that I truly love what I'm doing,” Walder says. “It's been a great run. I have no plans to do anything but keep on fighting and having fun.” ■

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