

THE OBLIGATION TO REPORT TAX- RELATED MISCONDUCT

I. The Ethical Obligation and Legal Obligation to Report Tax Evasion

A. *Sheridan v. Sheridan*, 247 N.J. Super. 552 (Ch. Div. 1990).

1. Mr. and Mrs. Sheridan spent \$325,000 between 1983 and 1987 for real estate, personalty, and annual living expenses. These funds were made up of untaxed, undeclared cash obtained by way of a parental gift and illegal activities. The court deemed it impossible to trace or segregate the funding source of the marital property purchased by Mr. and Mrs. Sheridan from 1983 to 1987. Mrs. Sheridan filed for divorce on the grounds of extreme cruelty. The Court was left with a legal and ethical dilemma of how to handle marital property that was obtained with funds not reported to the Internal Revenue Service (“IRS”) or the New Jersey Division of Taxation and funds obtained through illicit activities.
2. The court analyzed two legal issues:
 - a. whether the Court has a duty to report non-compliance to taxation authorities; and
 - b. whether the Court can divide the proceeds of a crime.
3. Rule:
 - a. Canons of Judicial Conduct
 - i. Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary - “An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.” *Id.* at 564(quoting New Jersey Code of Judicial Conduct: Canon 1).
 - ii. Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities – “A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge should not allow family, social, or other relationships to influence his or her judicial conduct or judgment. A judge should not lend the prestige of office to advance the private interests of others; nor should a judge convey or permit to convey the impression that they are in a special position of influence. A judge should not testify as a

character witness.” *Id.* at 564 (quoting New Jersey Code of Judicial Conduct Canon 2).

- b. “A court of equity, as a court of conscience, can never permit itself to become party to the division of tainted assets nor can it grant the request of an admitted wrongdoer to arbitrate such a distribution...A court of equity can never allow itself to become an instrument of injustice...nor will equity allow any wrongdoer to enrich himself as a result of his own criminal acts . . . Thus, where the bad faith, fraud or unconscionable acts of a petitioner form the basis of his lawsuit, equity will deny him its remedies.” *Id.* at 556 (citations omitted).

4. The court held that:

- a. The Court cannot divide marital property primarily purchased with funds from illegal activities.
- b. The judge has a duty to report the parties’ wrongdoing to the appropriate authorities.

5. The court reasoned that:

- a. “It is every citizen's duty to uphold the law and as part of that duty to report any knowledge she or he may have of a crime committed or to be committed. In order to preserve public confidence in the integrity of the judicial system, a judge must be the ultimate exemplar of that good citizenship. *Id.* at 563.
- b. “[T]he Legislature did not intend its judges to be tellers or its courtrooms counting houses for the division of tainted assets purchased with dirty money. The policy of this state is unambiguous in that regard: We do not reward wrongdoers! That policy is administered with equal vigor in civil as well as criminal proceedings.” *Id.* at 561.

B. Limits of Sheridan: *State v. Brady*, 172 A.3d 550 (N.J. App. Div. 2017).

- 1. The defendant, who was a sitting judge in the county in which the crimes allegedly occurred, allowed her boyfriend to enter her home on two occasions and did not notify the police. The defendant was charged with second-degree official misconduct and two counts of third-degree hindering the apprehension of prosecution of a fugitive. The defendant argued that her actions did not amount to official misconduct because she was not acting in her official capacity as a judge when she was served the warrant for her boyfriend’s arrest.

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