

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. Misc. 83-62083

In re Matter of Maine Bar Association's Selection
of Hon. Edward T. Gignoux as Recipient of its
Distinguished Service Award

ON PETITION FOR REVIEW

Before
Campbell, Chief Judge,
Aldrich, Coffin, Bownes, and Breyer,
Circuit Judges.

June 20, 1983

Phyllis Givertz, President, Maine State Bar Association, for petitioner.

Presentation of the Maine State Bar Association's
Annual Distinguished Service Award
to
The Honorable Edward T. Gignoux
by
Frank M. Coffin
United States Circuit Judge
United States Court of Appeals for the First Circuit

The Colony, Kennebunkport, Maine, June 20, 1983

I have had the honor of speaking for myself on Judge Gignoux's record of service on two recent occasions. The first was the presentation of his portrait by Claude Montgomery to the court, at which event I compiled a catalogue of groundbreaking Gignoux opinions from Antitrust to Zucchini. Then, when the University of Maine Law Review honored him, I decided to eschew the easy road and to face up to the negative aspects of the judge. Bracing myself, I announced that in my study of the Gignoux years, I had found notable deficiencies, if not complete absences, of mediocrity, churlishness, mendacity, pusillanimity, disingenuity, tergiversation, supererogation, periphrasis, and fatuity. The gasp of disbelief with which these revelations were greeted was simply inaudible.

Now I have the rare honor, not to speak for myself, but to represent the Maine Bar Association as its surrogate. Although President Givertz never said so in *haec verba*, I have assumed that she wanted me to do what any appellate judge can't help doing -- review the decision that has been made below for reversible error.

On behalf of my court, therefore, I render the following per curiam opinion.

Per Curiam. This matter involves a class action seeking to sustain the grant of a distinguished service award to the Honorable Edward T. Gignoux. The class is a rather motley one of all ages, both sexes, and a dismaying range of net income -- the Maine Bar Association. No motion having been made to decertify, we are spared the unpleasant duty of further scrutiny.

As for the threshold issue of jurisdiction, there is obviously state jurisdiction since all involved seem to be citizens of Maine. And there is obviously federal jurisdiction with the requisite diversity between the state association and the federal judge being honored.

There is next the issue of standing. On this point we have some doubt, since we take judicial notice that the Maine Bar Association at the moment is, with near unanimity, obviously sitting, not standing. Nevertheless, since in due course we anticipate that all who are able will endeavor to rise to their feet, we see no defect in a jurisdictional sense.

Before we frame the issues, we must resolve an awkward ambiguity. We note that Exhibit A, the Maine Bar Association program of the 1983 summer meeting, on page 10, recites:

"The Honorable Edward T. Gignoux, who, on June 1, stepped down as Judge of the United States District Court after twenty-five years of outstanding service to the Federal Bar and the people of Maine, is the recipient of the Association's 1983 Distinguished Service Award."

The difficult question we face is whether the award is for the twenty-five years of service, or for stepping down. Conceivably there would be a different issue before us if the latter were intended. However, the use of the words "extraordinarily distinguished" and "outstanding" in the following paragraph tilt the balance in favor of the former interpretation. We proceed on that assumption.

We now address the vexing problem of standard of review. Shall we defer to the action of the Association if we find its decision supported by merely substantial evidence on the record as a whole, even if we would have made a different decision? Or is its award a matter of law? These questions need not detain us. The action below, applying several standards to a set of facts, presents us with a mixed question of law and fact. As always, we review these de novo -- with a free hand and gay abandon.

Exhibit B is a listing of the Maine Bar's criteria for this award, submitted by Executive Director Bonney. The first requirement of eligibility is that one must be "A living person at the date of selection." There is nothing in the record that directly establishes this, but the court takes note of the fact that Judge Gignoux is living at the present date. We are willing to extrapolate backwards, being a somewhat liberal, even activist court.

The second requirement is that a recipient be "A resident of Maine or a native son or daughter." Judge Gignoux scores high in this category, winning two points out of three. That is, he is both a resident and a native son [although not, we have to say, a native daughter.]

The third criterion is that an award recipient "demonstrate qualities in keeping with the aims and purposes of the Maine State Bar Association." We find that Judge Gignoux amply fulfills this requirement.

Thus far we find that the putative recipient deserves credit for complying with two out of three criteria. But the fourth and final requirement contains the nub of this appeal. It states "That emphasis be placed upon the contributions of nonlawyers, but that selection would be unrestricted."

Superficial scrutiny would indicate that Judge Gignoux, not being a nonlawyer, would now be batting only .500. But, happily, this is one of those cases we subject to the most rigorous scrutiny. In this last standard is found the measure of the honor being conferred. All of the prior recipients, whether they have had a legal education or not, have made their mark in other fields. They are a notable group.

Beginning in 1976 there is Edith Hary, the beloved State Law Librarian and Mother Confessor of all lawyers and legislators. In 1977 there was Governor Jim Longley, who blazed a unique and unforgettable trail in his tragically foreshortened life. 1978 gave us Halsey Smith, the brilliant banker turned development research pioneer for the state. Then in 1979, Bob Strider, the widely respected President of Colby and at his retirement the dean of New England College Presidents. In 1980 the Association honored Margaret Chase Smith, the declarer of the nation's conscience who always came up smelling like a rose. In 1981 came Madeleine R. Freeman, a pioneer in and exemplar of the struggle for according to women a rightful place of leadership in public affairs. And finally, in 1982, Ed Muskie -- lawyer, legislator, Governor, Senator, Secretary of State, and, once again, lawyer.

To be chosen as the first full time, lifetime lawyer and judge in this group is an honor no one else shall ever have.

We are not sure, however, that the findings of fact set forth in the Maine Bar brochure fully meet this demanding standard. But, exercising our prerogative as an appellate court, we look for any alternative grounds that may support the decision below. We take note of the following:

-- Twenty-five years, now almost 26 years, of handling, settling, and deciding cases, characterized by consistent diligence, high competence, rare courage, insistence on disciplined performance, unfailing courtesy, and unshakeable fairness.

-- Supplying the Bar of Maine and Cumberland County with an impressive array of top-flight lawyers and citizens, his former law clerks.

-- Extraordinary duty in accepting and carrying out judgeship missions in other parts of the country of the utmost complexity and delicacy.

-- Leadership service to the legal profession in the American Law Institute and in the committees of the Judicial Conference of the United States.

-- Being a role model of superb, sustained public service, an inspiration and a justifiable source of pride for all of us.

The decision below is most emphatically affirmed and mandate shall issue immediately.
We are reliably informed that any petition for certiorari to the Supreme Court would be futile.