

SEP 14 2020

IN THE COURT OF JUDICIAL DISCIPLINE
OF THE COMMONWEALTH OF PENNSYLVANIA

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

IN RE:

Judge Mark V. Tranquilli
Court of Common Pleas
5th Judicial District
Allegheny County

No. 4JD 2020

**RESPONDENT'S REPLY BRIEF IN SUPPORT OF PETITION FOR RELIEF
REGARDING AUGUST 26, 2020 PER CURIAM ORDER OF COURT**

AND NOW comes the above-captioned Respondent, through his undersigned counsel of record, pursuant to the Court of Judicial Discipline Rules of Procedure, to respectfully submit this reply brief in support of Respondent's Verified Petition for Relief regarding this Honorable Court's Per Curiam Order of August 26, 2020, whereof the following is a statement:

I. INTRODUCTION

Respondent respectfully suggests that the Judicial Conduct Board's ("JCB" or "Board") Verified Answer and supporting brief, filed on Friday, September 11, 2020, fails to squarely address the fact that the interim suspension without pay ordered by this Honorable Court on August 26, 2020 was imposed in the absence of record evidence, in derogation of this Court's past practices and without the minimal due process requirements required for such an adjudication.

While the Board concedes that when it "[p]resents a petition to suspend a judicial officer, it bears the burden of showing that, based upon the totality of the circumstances, reasonable grounds exist that support an order of suspension," it fails to demonstrate how

the record evidence before this Court supports the entry of an interim suspension order without pay. *See* Board Verified Answer & Brief dated Sept. 11, 2020 at p.7; *citing In re Orié Melvin*, 57 A.3d 226, 234 (Pa. Ct. Jud. Disc. 2012).

Respondent respectfully asserts that this Court should grant the relief sought in his subject petition for relief by restoring the *status quo* that existed prior to August 26, 2020, during which Respondent was not presiding over any cases, and order an evidentiary hearing and/or argument on the Board's interim suspension hearing as this Court had previously done with respect to similarly situated judicial officers. Importantly, with respect to the grant of an interim suspension without pay, Respondent asserts that not only does this Court's prior procedures merit the instant relief sought, but the minimal due process protections afforded to all citizens, including judicial officers, mandate the requested relief.

II. THE CURRENT INTERIM SUSPENSION WITHOUT PAY WAS IMPOSED IN THE ABSENCE OF RECORD EVIDENCE AND IN CONTRAVENTION OF THIS COURT'S PAST PRACTICES WITH RESPECT TO SIMILARLY SITUATED JUDICIAL OFFICERS

This Court has correctly and consistently required the Board to prove, through record evidence introduced through a hearing and/or an argument, "with each case being decided on its own **facts**," that the totality of the circumstances supports an order of suspension prior to entry of the same. *In re Larsen*, 655 A.2d 239, 242 (Pa. Ct. Jud. Disc. 1994) (emphasis added); *quoted by In re Lowry*, 78 A.3d 1276, 1287-88 (Pa. Ct. Jud. Disc. 2013).

Indeed, this Court correctly observed **during the hearing** on the most recent petition for interim suspension heard in the matter of Common Pleas Court Judge Lyris F. Younge, that the Board and Judge Younge's factual argument would be confined to those

facts presented at the hearing on the interim suspension petition.¹ See *In re Younge*, 2 JD 2019 (Trans. of Suspension Hearing, p. 131:21-24, Sept. 12, 2019). This most recent observation is completely consistent with this Court's prior procedures and consistent with this Court's prior consistent holdings regarding interim suspension procedures. See e.g., *In re Smith*, 712 A.2d 849, 851-52 (Pa. Ct. Jud. Disc. 1998).

In its brief, the Board fails to address the fact that this Honorable Court has no facts (established through record evidence following a hearing or argument, through a verified petition,² or otherwise) before it through which the Court could determine that the totality of the present circumstances warrants imposition of an interim suspension without pay.

¹ Notably, on October 2, 2019 this Honorable Court denied the Board's interim suspension petition following an evidentiary hearing but held that said petition "may be renewed if any new misconduct is alleged." *In re Younge*, No. 2 JD 19 (Order of Court, Oct. 2, 2019). As this case developed, Judge Younge filed an amended answer on February 18, 2020 fully admitting all allegations contained in the Board's amended complaint filed the same day. See *id.* (Amended Board Complaint & Amended Answer, Feb. 18, 2020). The Board never filed a renewed petition for interim suspension. Respondent asserts that while this Honorable Court has well-defined standards for deciding whether to grant an interim suspension petition, there are no such standards contained in the Board's rules or internal operating procedures as to under what circumstances the Board should seek an interim suspension in the first instance – in light of the Board's past practices in deciding to request or not to request interim suspension the Board's decision-making process in this regard may be viewed as arbitrary and capricious and such process is not beyond judicial review. See *In re Hasay*, 686 A.2d 809, 816 (Pa. 1996).

² The Board attempts to make light of the fact that its subject, interim suspension petition was unverified despite logical mandate of Rule 706 of the Court of Judicial Discipline Rules of Procedure. See Board's Verified Answer & Brief at p. 15. The fact that the subject complaint was verified is inapposite as such allegations are deemed denied in the absence of a verified answer by a judicial officer. See Pa. Ct. Jud. Disc. R. 413 (Answer) ("[f]ailure to file an answer shall be deemed a denial of all factual allegations contained in the Board Complaint"). The Board's answer to the instant petition for relief is verified and Respondent again asserts that the only record facts currently before this Court are those developed in the present petition and answer practice.

Given this record as presently situated, Respondent asserts that this Honorable Court should grant the relief requested in his instant petition for relief.

III. THE MINIMAL DUE PROCESS REQUIRED PRIOR TO ENTRY OF INTERIM ORDER OF SUSPENSION WITHOUT PAY COMPELS THE GRANTING OF RESPONDENT'S REQUESTED RELIEF

The Board fails to rebut Respondent's sound contention that he be afforded the minimal due process required by the United States and Pennsylvania Constitutions prior to the entry of an interim order of suspension *without pay*. Respondent concedes that had this Honorable Court entered an order of interim suspension *with pay*, while that may have deviated from this Court's past practices it would not have deviated from what is required by way of minimal due process.

In granting the interim suspension order *without pay* in the present circumstances, without affording Respondent an opportunity to be heard, prior to the consummation of service of process and without the benefit of record evidence, Respondent respectfully suggests that minimal due process considerations require this Court to grant the relief presently sought by Respondent.

Our Supreme Court has yet to pass on what amounts to adequate, minimal due process with respect to an interim suspension petition *without pay*. See *In re Merlo*, 17 A.3d 869, 872-73 (Pa. 2011). In analogous situations, other courts have found that minimal due process requires some process more than that which was presently afforded. See *e.g.*, *Gershenfeld v. Justices of the Supreme Court of Pennsylvania*, 641 F. Supp. 1419 (E.D. Pa. 1986); citing *Mathew v. Eldridge*, 424 U.S. 319, 335 (1976).

Unlike interim suspension orders without pay imposed on magisterial district judges, such orders when imposed on common pleas or appellate judicial officers completely negates

their ability to earn income. While magisterial district judges may practice law or engage in other income producing activities during a period of interim suspension without pay, common pleas and appellate judicial officers may not. *See e.g.*, Pa. Const. art. V. §17 (Prohibited Activities).

Respondent respectfully asserts, therefore, that at least considerations of minimal due process require granting his requested relief in light of the present interim order of suspension being imposed without pay and without provision for benefits.³

IV. RESPONDENT ASSERTS THAT THE BOARD WILL BE UNABLE TO PROVE THE TOTALITY OF THE CIRCUMSTANCES REQUIRE AN INTERIM SUSPENSION WITHOUT PAY

The Board's brief focuses on what it asserts to be the merits of its sought interim suspension (ironically without providing this Honorable Court with the factual evidence to support its contentions as discussed herein and in Respondent's instant petition for relief) but it fails to adequately rebut the important process (due process and fundamental fairness) considerations raised by Respondent.

This being said, however, Respondent respectfully suggests that the present question presented to this Court is not merely an academic exercise, in that should Respondent be granted his requested relief, Respondent asserts that the Board will be unable to meet its

³ The Board refers to notice received from the Administrative Office of Pennsylvania Courts regarding the status of Respondent's medical benefits considering this Court's subject Order of Interim Suspension Without Pay that remains silent with respect to Respondent's benefits. *See* Board's Verified Answer & Brief at p. 16, n. 1 (Sept. 11, 2020). Respondent asserts that the plain language of other orders of interim suspension without pay issued by this Court have specifically addressed the status of a judicial officer's benefits during periods of interim suspension (and final suspension) – the present Order of Interim Suspension Without Pay makes no such provision and in the absence of statutory, regulatory or other controlling legal authority, Respondent can only proceed with the understanding provided by the plain reading of the same.

burden to prove that the integrity of our Commonwealth's judiciary requires an interim suspension without pay. Should Respondent be afforded the opportunity to address the merits of the Board's requested interim suspension, he submits that a fully developed record established through a hearing or at least argument will result in the Board having failed to meet its required burden of proof.

Respondent respectfully asserts that the present circumstances are a result of the Board making the deliberate decision not to present the full, present factual circumstances in its interim suspension petition in the first instance. In light of the current record, based on the present petition and answer practice, Respondent suggests that this Honorable Court should grant the requested relief.

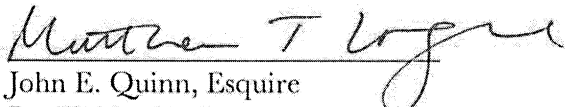
V. CONCLUSION

For the foregoing reasons and for the reasons set forth in Respondent's instant petition for relief along with his supporting brief, incorporated herein by reference, Respondent respectfully requests that this Honorable Court grant the relief requested in his instant petition and enter an Order of Court to said effect along with providing such other relief as the Court may deem just and proper.

Respectfully submitted,

QUINN LOGUE LLC

By:


John E. Quinn, Esquire

Pa. ID No. 23268

Matthew T. Logue, Esquire

Pa. ID No. 87416

200 First Avenue, Third Floor

Pittsburgh, PA 15222-1512

(412) 765-3800

Counsel for Respondent

Date: September 14, 2020

IN THE COURT OF JUDICIAL DISCIPLINE
OF THE COMMONWEALTH OF PENNSYLVANIA

IN RE:

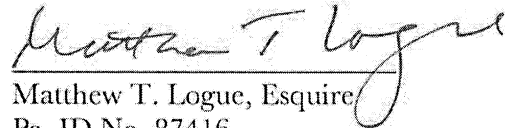
Judge Mark V. Tranquilli
Court of Common Pleas
5th Judicial District
Allegheny County

No. 4JD 2020

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:


Matthew T. Logue, Esquire
Pa. ID No. 87416

IN THE COURT OF JUDICIAL DISCIPLINE
OF THE COMMONWEALTH OF PENNSYLVANIA

IN RE:

Judge Mark V. Tranquilli
Court of Common Pleas
5th Judicial District
Allegheny County

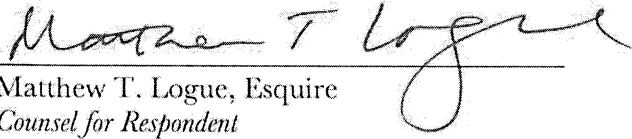
No. 4JD 2020

PROOF OF SERVICE

Pursuant to Rule 122 of the Court of Judicial Discipline Rules of Procedure, the undersigned certifies that on the below date a true and correct copy of the foregoing brief in the above-captioned matter was served upon the following attorneys of record to the parties in this proceeding by USPS First-Class Mail and electronic mail.

James P. Kleman, Jr., Esquire
Deputy Counsel
Judicial Conduct Board of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
Harrisburg, PA 17106
james.klemanjr@jcbpa.org

Date: September 14, 2020


Matthew T. Logue, Esquire
Counsel for Respondent