

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

OCT -5 2022

RECEIVED AND FILED

IN RE:

Michael J. Cabry, III
Former Magisterial District Judge
Magisterial District Court 15-3-06
Chester County

.....
..... 2 JD 2021
.....
.....

**JUDICIAL CONDUCT BOARD'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND
SUPPORTING BRIEF**

On December 9, 2021, the Judicial Conduct Board (Board) filed a three-count Board Complaint against former Magisterial District Judge Michael Cabry, III (Respondent). The charges in the Board Complaint came as a result of Respondent's September 22, 2021 conviction by guilty plea to the following crimes charged against him by the Pennsylvania Office of Attorney General (OAG): (1) theft by unlawful taking, 18 Pa.C.S.A. § 3921(a), a misdemeanor of the second degree; (2) reporting by candidate and political committees, 25 P.S. § 3246(a), an ungraded misdemeanor; (3) report must list each expenditure and person, 25 P.S. § 3246(B)(4), an ungraded misdemeanor; and (4) lawful election expenses, 25 P.S. § 3254.1, an ungraded misdemeanor.¹ These charges arose from Respondent's use

¹ Previously, at 5 JD 2020, the Board filed a petition seeking Respondent's interim suspension without pay on the grounds that, at the time, he remained in office and was charged with theft by unlawful taking, 18 Pa.C.S.A. § 3921(a), graded as a felony of the third degree. This Court granted the Board's petition and suspended Respondent without pay on October 9, 2020. Respondent remained suspended without pay until October 27, 2021, whereupon this Court lifted its prior suspension order. This Court found that its prior suspension order was moot for the following reasons: (1) Respondent stood convicted of misdemeanors, not felonies; (2) the Board had not yet filed a Board Complaint against Respondent; and (3) Respondent

of funds in his campaign account for his 2017 re-election campaign for the office of magisterial district judge for personal expenditures unrelated to campaign activity and from his filing of inaccurate and incomplete campaign finance reports in the 2017 election cycle.

On December 27, 2021, Respondent filed an Answer and New Matter to the Complaint, wherein he admitted the operative factual allegations contained in the Board Complaint. Additionally, Respondent conceded in his Answer and New Matter that he violated Canon 1, Rule 1.1 (violation of the law) of the Rules Governing Standards of Conduct of Magisterial District Judges (RGSCMDJs) (charged at Count 1 of the Board Complaint), as a result of his guilty plea and sentence to the aforementioned offenses and conceded that he violated Article V, § 17(b) of the Pennsylvania Constitution as an automatic, derivative violation of Canon 1, Rule 1.1 (charged at Count 2 of the Board Complaint). Respondent, however, disputed that he violated the Disrepute Clause of Article V, § 18(d)(1) of the Pennsylvania Constitution (charged at Count 3 of the Board Complaint), and he pleaded mitigating facts and presented legal argument that requested this Court find that his conduct charged in the Board Complaint did not bring the judiciary into disrepute.

By order entered March 1, 2022, this Court directed the parties to file pre-trial memoranda and to appear for a pre-trial conference on May 18, 2022. The parties filed their respective pre-trial memoranda and appeared at the scheduled pre-trial conference which was conducted by President Judge James J. Eisenhower, the assigned conference judge. At the pre-trial conference, the parties resolved several

resigned immediately prior to his conviction and was no longer capable of receiving pay from the Commonwealth.

evidentiary issues and discussed the presentation of their cases. Additionally, Respondent, through counsel, reiterated the admissions and concessions made in his Answer, but he noted that it was his intent to seek dismissal of the Disrepute Clause charge at Count 3 of the Board Complaint. This Court granted Respondent permission to file a motion for dismissal of Count 3 by way of a pre-trial brief and permitted the Board to respond to Respondent's pre-trial brief. The parties also agreed to stipulate to the amount of money stolen by Respondent that led to his theft conviction. This Court scheduled trial for this matter to be conducted on August 10, 2022, in the City of Philadelphia.

Thereafter, on June 6, 2022, the Board filed an amended pre-trial memorandum, which included at paragraph 18 the stipulation reached by the parties as to the amount of money stolen by Respondent from his campaign account that led to his theft conviction. **See** Board Amended Pre-trial Memorandum, at ¶ 18. Respondent filed a pre-trial brief requesting dismissal of Count 3 of the Board Complaint on June 15, 2022. The Board filed its response to Respondent's brief on June 17, 2022. The Board's June 17, 2022 response to Respondent's brief is attached hereto to these Proposed Findings of Fact and Conclusions of Law as Attachment A, made a part hereof, and is incorporated fully herein as set forth below. **See infra**, at 11.

Trial commenced as scheduled on August 10, 2022, with President Judge Eisenhower, Judge Daniel D. McCaffery, and Judge Daniel E. Baranoski presiding. In its case in chief, the Board presented six exhibits. Respondent stipulated to the admissibility of the Board's exhibits. **See** N.T., Trial, 8/10/2022, at 11-12. These exhibits were as follows: (1) Board Exhibit 1 – a true and correct copy of the criminal

complaint filed against Respondent at ***Commonwealth v. Michael J. Cabry, III***, MJ-15203-CR-181-2020; (2) Board Exhibit 2- a true and correct copy, as redacted, of Presentment No. 13 of the 45th Statewide Investigating Grand Jury, CP-22-MD-607-2019, dated September 25, 2020, recommending criminal charges be filed against Respondent; (3) Board Exhibit 3 - a true and correct copy, as redacted, of the secure docket of ***Commonwealth v. Michael Cabry, III***, CP-15-CR-3380-2020; (4) Board Exhibit 4 - a true and correct copy of written guilty plea colloquy executed by Respondent on September 22, 2021, at ***Commonwealth v. Michael Cabry, III***, CP-15-CR-3380-2020; (5) Board Exhibit 5- a true and correct copy of the sentencing sheet executed by the trial court on September 22, 2021, at ***Commonwealth v. Michael Cabry, III***, CP-15-CR-3380-2020; and (6) Board Exhibit 6 - a true and correct copy of the September 22, 2021 transcript of the guilty plea colloquy and sentencing of Respondent at ***Commonwealth v. Michael Cabry, III***, CP-15-CR-3380-2020. These exhibits were admitted without objection. **See** N.T., Trial, 8/10/2022, at 15-16. In his case in chief, Respondent presented the testimony of Dawson Muth, Esquire, his attorney in his criminal case, former Magisterial District Judge Charles Clement, and Ronald Scott, a personal friend of Judge Cabry. Respondent also presented his own testimony. Respondent presented one exhibit. At the conclusion of trial, this Court directed the parties to file proposed findings of fact and conclusion of law. The following is the Board's proposed findings of fact and conclusions of law and argument in support thereof.

I. PROPOSED FINDINGS OF FACT

Respondent served Magisterial District Court 15-3-06 as its duly elected magisterial district judge from March 22, 2000, until his resignation on September

21, 2021. **See** Board Complaint at ¶ 2; admitted at Respondent's Answer and New Matter, ¶ 2. By criminal complaint filed October 6, 2020, at **Commonwealth v. Michael J. Cabry, III**, MJ-15203-CR-181-2020, the OAG filed criminal charges against Respondent stemming from Presentment No. 13 of the 45th Statewide Investigating Grand Jury. **See** Board Complaint at ¶ 4; admitted at Respondent's Answer and New Matter, ¶ 4. Generally, the Grand Jury Presentment contended that Respondent withdrew money from his 2017 re-election campaign fund to pay for personal expenses that had no connection to his re-election campaign or political activity, particularly for gambling at casinos in Pennsylvania, New Jersey, and Delaware, and that he failed to accurately and completely report his campaign's financial expenditures. **See** Board Exhibit 2. Based on Presentment No. 13, the OAG charged Respondent with the following criminal offenses: (1) theft by unlawful taking, 18 Pa.C.S.A. § 3921(a), a felony of the third degree; (2) perjury, 25 P.S. § 3249(b), a misdemeanor of the first degree; (3) reporting by candidate and political committee, 25 P.S. § 3246(a), an ungraded misdemeanor; (4) reporting by candidate and political committee, 25 P.S. § 3246(b)(2), an ungraded misdemeanor; (5) reporting by candidate and political committee, 25 P.S. § 3246(b)(4), an ungraded misdemeanor; and (6) lawful election contributions, 25 P.S. § 3254(a), an ungraded misdemeanor. **See** Board Exhibit 2.

Respondent waived his right to a preliminary hearing, and the aforementioned charges were bound over for trial. **See** Board Complaint at ¶ 6; admitted at Respondent's Answer and New Matter, ¶ 6; **see also** Board Exhibit 3. Thereafter, on September 22, 2021, at **Commonwealth v. Michael Cabry, III**, CP-15-CR-3380-2020, Respondent pleaded guilty to the following offenses at an amended criminal

information: (1) theft by unlawful taking, 18 Pa.C.S.A. § 3921(a), a misdemeanor of the second degree; (2) reporting by candidate and political committees, 25 P.S. § 3246(a), an ungraded misdemeanor; (3) report must list each expenditure and person, 25 P.S. 3246(B)(4), an ungraded misdemeanor; and (4) lawful election expenses, 25 P.S. § 3254.1, an ungraded misdemeanor. **See** Board Complaint at ¶ 7; admitted at Respondent's Answer and New Matter, ¶ 7; **see also** Board Exhibits 3, 4, 5, and 6. In his written guilty plea colloquy, Respondent admitted the following acts:

On or about November 13, 2016[,] through January 31, 2018, [Respondent], while a candidate for public office, failed to file appropriate and accurate campaign reports of expenditures and receipts; failed to provide full and accurate account of expenditures and withdrew funds from his campaign account for purposes unrelated to his campaign. Additionally, [Respondent] unlawfully took funds from the campaign account and used the funds for personal expenses unrelated to political activity.

See Board Complaint at ¶ 8; admitted at Respondent's Answer and New Matter, ¶ 8; **see also** Board Exhibit 4. At trial in the present matter, Respondent stipulated that he withdrew \$3,254.97 in 16 separate transactions from his campaign account in 2017 at various casinos in Pennsylvania, New Jersey, and Delaware, for personal expenditures unrelated to political activity. **See** Board Pre-trial Memorandum at ¶ 18; **see also** N.T., Trial, 8/10/2022, at 11, 102 (noting stipulation). As a result of Respondent's guilty plea to the aforementioned offenses, the trial court sentenced Respondent on September 22, 2021, to an aggregate sentence of one year of probation. **See** Board Complaint at ¶ 9; admitted at Respondent's Answer and New Matter, ¶ 9; **see also** Board Exhibits 3, 5, and 6. Respondent did not appeal his

judgment of sentence. **See** Board Complaint at ¶ 10; admitted at Respondent's Answer and New Matter, ¶ 10; **see also** Board Exhibit 3.

At trial, consistent with his prior guilty plea, Respondent admitted that he withdrew funds from his re-election campaign account with the bank-issued ATM card and that he utilized some of those funds to gamble. **See** N.T., Trial, 8/10/2022, at 129, 133-134. Respondent acknowledged that the gambling did not have anything to do with politicking with voters in his district and that his use of his campaign funds to gamble was for himself, *i.e.*, not for legitimate political activity. **Id.**, at 134. Respondent admitted that he was required to report his use of the campaign funds on campaign finance reporting forms and attest under notarial seal that the information contained in the campaign finance reporting forms did not violate Campaign Finance Reporting Law. **Id.**, at 130. Nevertheless, knowing that his campaign finance reports contained inaccuracies and omissions at the time he filed them in 2017 and 2018, Respondent attested on the campaign finance reports that he had *not* violated the Campaign Finance Reporting Law at the time he filed the campaign finance reports. **Id.**, at 134, 136. In fact, at the time Respondent filed his final campaign finance report in 2018, a Chester County employee told him that his report was incorrect and that he could file an amended campaign finance report to correct the deficiency. **Id.**, at 136. However, Respondent did not, at any point, file an amended campaign finance report or reports in 2018, 2019, or prior to his arrest in 2020. **Id.**, at 138. Further, Respondent did not attempt prior to his arrest to repay the funds he had taken from his campaign fund or otherwise attempt to ameliorate his conduct by making a donation to a charity. **Id.**, at 66-67, 69, 117.

Respondent claimed that the crimes to which he pleaded guilty sprang from a myriad of causes. Specifically, as to his theft of campaign funds, Respondent initially believed that the money he withdrew from his campaign account for personal expenditures (including gambling) was, in some way, owed to him by his campaign as a reimbursement, but, as time passed, he did not know why he kept taking money from his campaign funds. **See** N.T., Trial, 8/10/2022, 102, 135, 153. Thus, Respondent acknowledged that he stole money from his campaign account. **Id.**, at 154.

As to the Campaign Finance Reporting Law crimes, Respondent claimed that he did not rectify the inaccurate and false campaign finance reports that he initially filed in 2017 and 2018 due to (i) the loss of his campaign financial records in a fire at his home in 2017, **id.**, at 103-104; (ii) his despondency from his wife's terminal cancer diagnosis until her passing, **id.**, at 109-110, 115, 138; and (iii) legal advice from his attorneys that suggested that, if he attempted to amend the initially-filed campaign finance reports that were inaccurate and false after learning in 2020 of the criminal investigation against him or take other action to ameliorate the harm, such as make a donation to a fire company, such an act would "[look] like garbage," and they advised him to "hold off and see what happens," and he followed their advice. **Id.**, at 116-117. Respondent asserted the inaccuracies on the campaign finance forms to which he pleaded were omissions, not outright fabrications, but he admitted that he nonetheless falsely attested to the contents of the campaign finance report forms as being accurate, despite knowing that he made omissions from the reports when he initially filed the reports. **Id.**, at 159-160.

DISCUSSION

Canon 1, Rule 1.1 Compliance with the Law.

A magisterial district judge shall comply with the law, including the Rules Governing Standards of Conduct of Magisterial District Judges.

Respondent's failure to comply with the Pennsylvania Crimes Code, 18 Pa. C.S.A § 101, *et seq.*, and the Campaign Finance Reporting Law, 25 P.S. § 3241, *et seq.*, as reflected by his guilty plea to the aforementioned offenses, violated Rule 1.1 of the Rules Governing Standards of Conduct of Magisterial District Judges (RGSCMDJ).

It is clear that a guilty plea constitutes a judicial admission to criminal conduct, and the conviction that ensues from that guilty plea, if undisturbed by appeal, constitutes *res judicata* for purposes of this civil administrative proceeding. **See, e.g., Commonwealth v. Culbreath**, 264 A.2d 643, 645 (Pa. 1970) ("A plea of guilty, knowingly made, constitutes an admission of guilt and is a waiver of all nonjurisdictional defects and defenses."); **see also Folino v. Young**, 568 A.2d 171, 172-73 (Pa. 1990) (operative facts necessary for non-summary criminal convictions to be admitted as conclusive facts in civil actions arising from same event); **see also Shaffer v. Smith**, 673 A.2d 872, 874-875 (Pa. 1996) (criminal conviction constitutes final judgment for *res judicata* purposes in subsequent civil matters unless and until judgment is disturbed on appeal). Presently, it is clear that Respondent pleaded guilty to misdemeanor theft and ungraded misdemeanor offenses set forth in the Campaign Finance Reporting Law, that he was sentenced pursuant to this guilty plea, and that he has not appealed his judgment of sentence. Respondent also supplemented the facts established by these convictions by admitting the operative facts charged in the Board Complaint in his Answer and New Matter, in his testimony

at trial, and by stipulating that he withdrew \$3,254.97 from his campaign account in 16 separate transactions at casinos in Pennsylvania, Delaware, and New Jersey, for personal expenditures unrelated to campaign activity. **See generally**, Board Complaint and Respondent's Answer and New Matter; **see also** Board Pre-trial Memorandum at ¶ 18; **see also** N.T., Trial, 8/10/2022, at 11, 102 (noting stipulation), 130, 134, 136, 153-154. Respondent's admissions in his Answer and New Matter, at trial, and his stipulation also constitute judicial admissions and are conclusive as to the facts encapsulated within the judicial admissions. **See Coleman v. Wyeth Pharmaceuticals, Inc.**, 6 A.3d 502, 524 (Pa. Super. 2010) (statements of fact by one party in pleadings, stipulations, testimony, and the like, made for that party's benefit, are termed judicial admissions and are binding on the party). Accordingly, the evidence presented by the Board establishing these facts, inclusive of Respondent's admissions, is conclusive for purposes of this proceeding. **Culbreath**, 264 A.2d at 645; **Folino**, 568 A.2d at 172-73; **Shaffer**, 673 A.2d at 874-875; **Coleman**, 6 A.3d at 524. Therefore, it is clear that Respondent violated Canon 1, Rule 1.1 as charged by the Board in the Board Complaint. **See, e.g., In re Joy**, 148 A.3d 162, 166 (Pa.Ct.Jud.Disc. 2016).

Article V, §17(b), Pa. Const.

Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court.

Respondent's violation of Canon 1, Rule 1.1 as discussed above constitutes an automatic, derivative violation of Article V, §17(b) of the Constitution of the Commonwealth of Pennsylvania, which prohibits judges from violating any canon of judicial ethics prescribed by the Supreme Court. Therefore, Respondent's violation

of Canon 1, Rule 1.1 of the RGSCMDJs, as discussed above, constitutes an automatic derivative violation of Article V, §17(b) of the Constitution of the Commonwealth of Pennsylvania. **See, e.g., *In re Jennings***, 192 A.3d 372, 379 (Pa.Ct.Jud.Disc. 2018) (Board's demonstration of violation of Old Rules 2 and 12 (violation of the law) establishes violation of Article V, § 17(b)).

Article V, §18(d)(1), Pa. Const.

A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for . . . conduct which brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity.

The Board adopts its June 17, 2022 response to Respondent's June 15, 2022 brief requesting dismissal of the violation of the Disrepute Clause of Article V, § 18(d)(1) as its analysis regarding Respondent's violation of the Disrepute Clause. The Board's June 17, 2022 response is attached hereto as Attachment A, made a part hereof, and is incorporated fully herein as though set forth in full. **See** Attachment A.

In addition to its June 17, 2022 response, the Board recognizes that the testimony presented by Respondent's character witnesses at trial indicates that they, and others in their community, view Respondent as a person of integrity, despite his criminal convictions. Previously, this Court relied upon character testimony and evidence as a basis to conclude that a charged event did *not* occur because the respondent judge presented evidence of his character such that it raised significant doubt in the collective mind of this Court that the charged event occurred. **See, e.g., *In re Manning***, 711 A.2d 1113, 1122-1123 (Pa.Ct.Jud.Disc. 1998) (respondent judge presented compelling array of character witnesses to demonstrate reputation for evenhandedness in racial matters to demonstrate that alleged use of racial slur

by judge did not occur) (emphasis added). Here, however, there is no doubt that Respondent committed the acts to which he now stands convicted; indeed, he has admitted these acts (and the conviction) again before this Court. Thus, however his personal popularity or good name may remain in his community, it is also without doubt that the evidence of his good character "does not undo [Respondent's] offensive behavior. Disciplinary sanctions focus beyond the one who is charged, to the message sent to the public and the effect on the expectation of standards of behavior." **See In re Berkhimer**, 930 A.2d 1255, 1259-1260 (Pa. 2007); **see also Matter of Larsen**, 616 A.2d 529, 533 (Pa. 1992) ("When there is slender evidence to sustain a charge or when the evidence is ambiguous, character evidence may dispel suspicions of impropriety a jaundiced eye might otherwise perceive; on the other hand, when proofs are credible, multiple, and incontrovertible, character evidence will be of little avail except in mitigation of the penalty."). Presently, Respondent was only able to commit the crimes to which he now stands convicted because he was running to retain the office of judge, which he dishonored by his conduct, and he took no steps over a course of years to ameliorate the conduct. Regardless of Respondent's remaining personal popularity in his community, this conduct, corrupt by any definition, clearly falls below all accepted standards of judicial behavior, and, as such, violates the Disrepute Clause of Article V, § 18(d)(1) of the Pennsylvania Constitution. **Berkhimer**, at 1259-1260; **Larsen**, 616 A.2d at 533; **see also In re Segal**, 151 A.3d 734, 738-739 (Pa.Ct.Jud.Disc. 2016).

II. PROPOSED CONCLUSIONS OF LAW

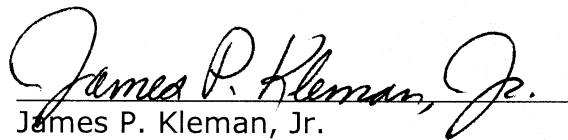
1. At Count 1, the Board has established by clear and convincing evidence that Respondent violated Rule 1.1 of the RGSCMDJs by his criminal conduct and his conviction for the aforementioned offenses.
2. At Count 2, the Board has established by clear and convincing evidence that Respondent violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania as a result of his violations of Canon 1, Rule 1.1, RGSCMDJs.
3. At Count 3, the Board has established by clear and convincing evidence that Respondent violated Article V, § 18(d)(1) in that his criminal conduct and convictions were so extreme that it brought the judicial office itself into disrepute.

Respectfully submitted,

FRANCIS J. PUSKAS II
Chief Counsel

DATE: October 5, 2022

By:


James P. Kleman, Jr.
Senior Deputy Counsel
Pa. Supreme Court ID No. 87637

Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
Harrisburg, PA 17106
(717) 234-7911



COMMONWEALTH OF PENNSYLVANIA
JUDICIAL CONDUCT BOARD

PENNSYLVANIA JUDICIAL CENTER
601 COMMONWEALTH AVENUE, SUITE 3500
P.O. Box 62525
HARRISBURG, PA 17106-2525
WWW.JCBPA.ORG

FRANCIS J. PUSKAS II
CHIEF COUNSEL

717-234-7911

June 17, 2022

The Honorable James J. Eisenhower
Conference Judge
Court of Judicial Discipline
601 Commonwealth Avenue, Ste. 5500
Harrisburg, PA 17106-2595

RECEIVED AND FILED
JUN 17 2022
COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

Re: ***In re Michael J. Cabry, III***, 2 JD 2021

Dear Judge Eisenhower:

Thank you for the opportunity for the Board to set forth its position regarding the appropriateness of the allegation that former Magisterial District Judge Michael J. Cabry, III, placed the judiciary into disrepute by his conduct alleged in the Judicial Conduct Board's December 9, 2021 complaint.

The relevant procedural history of this case is not in dispute. By criminal complaint filed October 6, 2020, at ***Commonwealth v. Michael J. Cabry, III***, MJ-15203-CR-181-2020, the Pennsylvania Office of Attorney General (OAG) filed criminal charges against former MDJ Cabry stemming from Presentment No. 13 of the 45th Statewide Investigating Grand Jury. The OAG charged former MDJ Cabry with theft by unlawful taking, 18 Pa.C.S.A. § 3921(a), graded as a third degree felony, perjury, 25 Pa.C.S.A. § 3249(b), graded as a first degree misdemeanor, as well as four additional violations of Pennsylvania's Campaign Finance Reporting Law, Title 25 P.S. § 3241 *et seq.*, all ungraded misdemeanors. These charges stemmed from former MDJ Cabry's use of campaign funds in his 2017 re-election campaign account for personal expenditures unrelated to campaigning, including gambling at casinos and from his failure to make appropriate and accurate Campaign Finance Reports regarding his 2017 re-election campaign's expenditures and receipts.

After the OAG filed charges against former MDJ Cabry, the Board filed a petition seeking former MDJ Cabry's suspension without pay on the grounds that he

Attachment A

was charged with a felony. This petition was docketed to 5 JD 2020. This Court granted the Board's petition and suspended former MDJ Cabry without pay on October 9, 2020, effective immediately.

Thereafter, former MDJ Cabry waived his right to a preliminary hearing, and the aforementioned criminal charges were bound over for trial in the Court of Common Pleas. Former MDJ Cabry then resigned his office on September 21, 2021. The following day, on September 22, 2021, pursuant to a plea agreement with the OAG, former MDJ Cabry tendered guilty pleas to the following offenses: (1) theft by unlawful taking, 18 Pa.C.S.A. § 3921(a), a misdemeanor of the second degree; (2) reporting by candidate and political committee, 25 P.S. § 3246(a), an ungraded misdemeanor; (3) report must list each expenditure and person, 25 P.S. § 3246(b)(4), an ungraded misdemeanor; and (4) lawful election expenses, 25 P.S. § 3254.1, an ungraded misdemeanor.

Within his written guilty plea colloquy, former MDJ Cabry admitted that, on or about November 13, 2016, through January 31, 2018, while a candidate for public office, he committed the following acts: (1) failed to file appropriate and accurate campaign reports of expenditures and receipts; (2) failed to provide full and accurate accounts of expenditures and withdrew funds from his campaign account for purposes unrelated to his campaign; and (3) unlawfully took funds from the campaign account and used the funds for personal expenses unrelated to campaign activity. Though the OAG amended the theft charge to which former MDJ Cabry pleaded guilty to a lower grading, former MDJ Cabry tendered an "open plea," insofar as there was no sentence recommended to the trial judge. Immediately following entry of his guilty plea, the trial judge sentenced former MDJ Cabry to an aggregate sentence of one year of unsupervised probation. Former MDJ Cabry did not appeal his judgment of sentence.

Thereafter, on December 9, 2021, the Board filed a Board complaint against former MDJ Cabry in this Court, alleging that former MDJ Cabry was subject to discipline by virtue of his guilty-plea convictions to the aforementioned crimes, in violation of Canon 1, Rule 1.1 of the Rules Governing Standards of Conduct of Magisterial District Judges. The Board also alleged that former MDJ Cabry was subject to discipline by this Court due to his violation of Article V, § 17(b) of the Pennsylvania Constitution, as an automatic derivative violation of Canon 1, Rule 1.1, and for violating Article V, § 18(d)(1) by bringing the judiciary into disrepute due to his admitted criminal conduct.

Former MDJ Cabry did not, and does not presently, dispute that he was convicted of, and sentenced for, the aforementioned crimes due to his guilty plea. These convictions and the facts subsumed in their reduction to final judgment in former MDJ Cabry's judgment of sentence, with former MDJ Cabry's stipulation to

the amount of money he stole, constitute the entirety of the operative facts alleged by the Board in this case. Pennsylvania jurisprudence is clear that former MDJ Cabry is now estopped from denying or contesting those convictions and the facts that underlie them. **See, e.g., Shaffer v. Smith**, 673 A.2d 872, 874 (Pa. 1996) (a criminal conviction collaterally estops a defendant from denying his acts in a subsequent civil trial). Instead, former MDJ Cabry presently asserts that he cannot be found to have brought the judiciary into disrepute as a result of the conduct proven by way of his convictions for the aforementioned crimes. In other words, former MDJ Cabry's asserts that he is entitled to the entry of summary judgment as a matter of law in his favor on the charge of bringing the judiciary into disrepute. **See, e.g., In re Stoltzfus**, 29 A.3d 151, 152 (Pa.Ct.Jud.Disc. 2011) (where facts undisputed and stipulated, request to dismiss Board complaint by respondent judge treated by CJD as motion for summary judgment).

When a party requests summary judgment, courts apply the following standard to adjudicate the request:

When a party seeks summary judgment, a court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. A motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Finally, the court may grant summary judgment only when the right to such a judgment is clear and free from doubt.

Gallagher v. GEICO Indem. Co., 201 A.3d 136-137 (Pa. 2019) (citations omitted).

In order to prove that a respondent judge brought the judiciary into disrepute, the Board must demonstrate the following: (1) that the judicial officer has engaged in conduct in a judicial or non-judicial capacity that is so extreme that (2) it has resulted in bringing the judicial office into disrepute. **See In re Cicchetti**, 697 A.2d 297, 312 (Pa.Ct.Jud.Disc. 1997), *affirmed* 743 A.2d 431 (Pa. 2000), *overruled in part on other grounds by In re Carney*, 79 A.3d 490 (Pa. 2013). For this purpose, the term "disrepute," of necessity, incorporates some standard regarding the reasonable expectations of a judicial officer's conduct. **Cicchetti**, 697 A.2d at 312. Thus, even if a judicial officer's conduct could result in the lessening of the public's respect for that particular judge, this Court cannot assume that the same actions *ipso facto* result in the diminishment of the

judiciary's reputation as a whole. *Id.*, 697 A.2d at 312. When considering whether a judicial officer's act dishonors the judiciary as a whole, particular consideration must be given by this Court to the conduct's persistence and its extremity. *Id.*, 697 A.2d at 312. Additionally, in *In re Ballentine*, 121 A.3d 611, 619 (Pa.Ct.Jud.Disc. 2015), *affirmed* 132 A.3d 454 (Pa. 2016), this Court noted that the hypocrisy of a respondent judge in judging others for the same criminal conduct that the respondent judge committed at the same time contributes to a finding that the respondent judge caused disrepute upon the judiciary.

Clearly, a cursory look at this Court's recent jurisprudential history demonstrates that the conduct that underlies either a felony or a misdemeanor criminal conviction considered with the conviction itself provides sufficient justification for a finding that a judge brought the judiciary into disrepute. *See, e.g., In re Mulgrew*, 220 A.3d 739 (Pa.Ct.Jud.Disc. 2019) (conviction for felony and conduct underlying conviction demonstrates disrepute); *In re Jennings*, 192 A.3d 372 (Pa.Ct.Jud.Disc. 2018) (two misdemeanor convictions and conduct underlying conviction demonstrates disrepute); *In re Tynes*, 149 A.3d 452 (Pa.Ct.Jud.Disc. 2016), *affirmed*, 177 A.3d 211 (Pa. 2018) (semble); *In re Joy*, 148 A.3d 162 (Pa.Ct.Jud.Disc. 2016) (semble); *In re Shaner*, 142 A.3d 1051 (Pa.Ct.Jud.Disc. 2016) (respondent judge who was convicted of second-degree misdemeanor hindering apprehension or prosecution and who lied about conduct under oath found in disrepute). Accordingly, then, viewing the matter in the light most favorable to the Board as the non-moving party, because former MDJ Cabry was convicted of misdemeanor theft by his admission to stealing from his campaign account to fund his personal expenses, which included gambling at casinos, and for various misdemeanor violations of the Campaign Finance Reporting Law by his admission to knowingly filing inaccurate and incomplete Campaign Finance Reports, the evidence is sufficient as a matter of law for this Court to conclude that former MDJ Cabry brought the judiciary into disrepute. *See Mulgrew*, at 741; *Jennings*, at 379; *Tynes*, at 457; *Joy*, at 167; *Shaner*, at 1055. As such, former MDJ Cabry's arguments to the contrary are without merit and this Court should, as a matter of law, dismiss his motion for summary judgment.

Underscoring the aforementioned conclusion are three additional relevant points. First, without even considering his theft conviction (and the underlying facts proven by the conviction) as either its own basis for disrepute or in conjunction with his Campaign Finance Law convictions, former MDJ Cabry's misconduct in making knowing misstatements and inaccuracies in his Campaign Finance Reports tracks very closely to the ambit of this Court's prior decision in *In re Murphy*, 10 A.3d 932, 936 (Pa.Ct.Jud.Disc. 2010), and provides its own independent basis for a finding of disrepute. In *Murphy*, 10 A.3d at 936, this Court found former MDJ David Murphy brought the judiciary into disrepute after he forged 64 signatures on nomination petitions and falsely represented in affidavits that the

forged signatures were authentic. Much like the case in **Murphy**, the inaccurate and untrue attestations presented by former MDJ Cabry in the Campaign Finance Reports were made under both penalty of perjury, 25 P.S. § 3249(b), a crime for which former MDJ Cabry was originally charged but was later dismissed, and under penalty of the other Campaign Finance Reporting Law offenses to which he now stands convicted by his guilty plea. This Court analyzed former MDJ Murphy's conduct as follows:

We believe it to be beyond dispute that a judge—or one who would be a judge—who is willing to lie—and under oath—and in an official document is not one who can be expected to encourage, indeed to insist, that truth be spoken in his courtroom. Historian and philosopher, John Lukacs, holds that:

the sense of truth exists deeper than the sense of justice
(and also that untruth is more poisonous than injustice).

While one may want to take some time to think about the Professor's submission, it is easy—even intuitive—to know that without truth there can be no justice; and that if a judge has been untruthful, and, as in this case, under oath and in a quite public way, then poison indeed sits upon the bench.

We mention that lying isn't always a crime. In this case it was. We mention that in this case the lying was made in derogation of the laws enacted to protect the integrity of the electoral process—laws which Respondent had himself sworn to protect. We mention that in this case the lying peremptorily appropriated the franchise of those electors whose signatures he forged on his Nomination Petitions—electors who may well have been opposed to his candidacy.

Murphy, at 936 (footnote omitted).

Here, former MDJ Cabry provided repeated and knowing misstatements and inaccuracies in his publicly filed Campaign Finance Reports, despite his duty to tell the truth on the forms and despite his duty to the truth in his own courtroom. Former MDJ Cabry's falsehoods regarding his Campaign Finance Reports are established conclusively by former MDJ Cabry's judicial admission to these facts in his guilty plea and his subsequent conviction. **Shaffer**, 673 A.2d at 874. These funds in the campaign account were given to former MDJ Cabry's campaign by his supporters with the obvious expectation that the funds were to be used to further his re-election campaign and not for any other purpose. Indeed, the apparent import of the Campaign Finance Reporting Law is to impose upon candidates and

their campaign organizations, which hold sometimes large sums of political donations with little day-to-day oversight, a burden to demonstrate that they lawfully expended donations that they received for legitimate campaign purposes. This burden can only be satisfied if the candidate and their campaign truthfully reports their campaign's fiscal activity. Here, former MDJ Cabry fell far short of the expectations of the Campaign Finance Law by lying about his campaign's fiscal activity on the relevant forms, and he fell far short of the public's expectations of the judiciary because he propagated those lies as an obvious cover for his theft of campaign funds for gambling adventures and other personal matters. Thus, **Murphy** is clear that former MDJ Cabry's admitted Campaign Finance Law misconduct, of itself, constitutes disrepute. *Id.*, at 936. When one considers former MDJ Cabry's Campaign Finance Law misconduct in conjunction with his theft misconduct, the conclusion that former MDJ Cabry engaged in conduct that would justify a finding of disrepute becomes inescapable. *See, e.g., Mulgrew*, 220 A.2d at 741; *Jennings*, 192 A.3d at 379; *Tynes*, 149 A.3d at 457; *Joy*, at 148 A.3d at 167; *Shaner*, 142 A.2d at 1055.

Further, **Murphy's** application to this case dovetails with this Court's holding in **Ballentine**, where this Court held that the hypocrisy inherent in a particular form of judicial misconduct may support a finding of disrepute. *Ballentine*, 121 A.3d at 619. Clearly, as a magisterial district judge, former MDJ Cabry adjudicated theft cases within his court's jurisdictional constraints throughout the time that he was aware of his undiscovered theft of campaign funds and his undiscovered falsities in his Campaign Finance Reports. In so doing, former MDJ Cabry obviously expected the truth be told to him openly and directly when he presided in cases in his court, but he was content to let his own act of theft remain unknown and, indeed, hidden by the falsity of his Campaign Finance Reports. The hypocrisy inherent in this set of facts is palpable, and it obviously supports a finding that former MDJ Cabry's conduct constitutes disrepute. *Id.*

Lastly, the crime of theft by unlawful taking, of which former MDJ Cabry stands convicted, constitutes *crimen falsi*. *See, e.g., Commonwealth v. Baxter*, 640 A.3d 1271, 1274 (Pa. 1994) (theft by unlawful taking constitutes *crimen falsi*). A *crimen falsi* offense constitutes an "infamous crime." *See, e.g., Commonwealth ex rel. Baldwin v. Fisher*, 809 A.2d 348, 349 (Pa. 2002) (affirming *quo warranto* removal of individual who served as jury commissioner on the basis that he was convicted of an "infamous crime"). The seriousness of this category of conviction is highlighted by the fact that the Pennsylvania Constitution bars any person so convicted from holding any office of trust or profit in the Commonwealth of Pennsylvania. *See* Pa. Const., Art. II, §7. The Supreme Court of Pennsylvania has defined the term "infamous crime," as referenced in Article II, §7, as including a felony or *crimen falsi* offense:

[W]e reaffirm that a crime is infamous for purposes of Article II, Section 7, if its underlying facts establish a felony, a crimen falsi offense, or a like offense involving the charge of falsehood that affects the public administration of justice.

Commonwealth ex rel. Baldwin v. Richard Baldwin, 751 A.2d 647, 653 (Pa. 2000) (emphasis added).

The reasonable expectations of the public would necessarily include the expectation that a judge, the central figure in the judicial system, would not actively subvert, and thereby destroy confidence in, the very system in which that judge serves. As has oft been referenced, a judge must be like Caesar's wife and above all suspicion. In order to safeguard the public's trust and confidence in the judicial system, a judge must be a person of unimpeachable character and integrity, particularly with regard to their personal reputation for truthfulness.

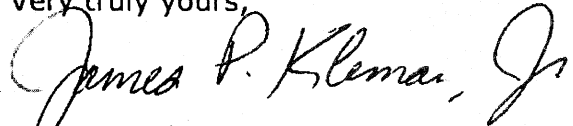
A judge who steals and who provides materially false statements in official documents, like Campaign Finance Reports - who lies - both sabotages and corrupts the central truth-seeking function of the courts by their hypocritical conduct. Thus, former MDJ Cabry's acts constitute extreme conduct with the most damaging consequences to the system of justice. With pinpoint accuracy, it destroys public confidence, for how can the public have confidence in a court system where even judges disregard the oath to tell the truth? It is conduct that goes directly to the "sanctity of the judicial process" and, as this Court has previously opined, results in bringing the judicial office, and not just the errant judge, into disrepute. **In re Miller**, 171 A.3d 367, 372 (Pa.Ct.Jud.Disc. 2016) (misconduct that subverts the sanctity of the judicial process brings the judicial office into disrepute); **In re Nocella**, 79 A.3d 766 (Pa.Ct.Jud.Disc. 2014) (Disrepute found where judicial candidate repeatedly lied about his qualifications for judicial office). As this Court noted in **Nocella**, "We believe it to be beyond dispute that a judge—or one who would be a judge—who is willing to lie—and in official documents—and repeatedly. . . is not one who can be expected to encourage, indeed to insist that truth be spoken in his courtroom." **Id.**, at 784.

Former MDJ Cabry's subjective assertions about his character, the nature of his remorse, and the other mitigating factors are, in essence, irrelevant at the present guilt-phase of these proceedings. Indeed, it is well-settled that good character does not undo a jurist's offensive behavior, **see In re Merlo**, 58 A.3d 1, 23 (Pa. 2012), and this is especially true where, as here, a jurist trades their office for the spoils of crime. **Tynes**, 149 A.3d at 457. Moreover, former MDJ Cabry's claims about the potential loss of his pension are off point and unpersuasive. First, this case has not yet reached a stage where his pension could be affected. Thus, former MDJ Cabry's contentions regarding this matter are speculative, at best.

Further, neither this Court nor the Board have any jurisdiction to address judicial pension forfeiture, and neither have any legal responsibility or interest at stake regarding pensions and other retirement benefits in the course of a judicial disciplinary case. Rather, the judicial pension forfeiture provision of Article V, § 16(b) is a collateral, albeit, serious, consequence of the sanction phase of the judicial disciplinary process (or a criminal conviction), and this forfeiture is enforced by the Pennsylvania State Employees Retirement Board through its processes. **See *Berkhimer v. State Employees' Retirement Bd.***, 60 A.3d 873, 879-80 (Pa. Cmwlth. 2013). As such, the consideration of the potential loss of former MDJ Cabry's judicial pension resulting from any sanction order and the financial effects of that loss is both premature and irrelevant to the questions of whether he can be found in disrepute by his criminal conduct.

Therefore, based on the aforementioned, the Board respectfully requests that this Court deny former MDJ Cabry's request for summary judgment as a matter of law on the charge of disrepute, in violation of Article V, § 18(d)(1) of the Pennsylvania Constitution.

Very truly yours,



James P. Kleman, Jr.
Senior Deputy Counsel

CC: Samuel C. Stretton, Esquire, *counsel for Respondent*

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Michael J. Cabry, III
Former Magisterial District Judge
Magisterial District Court 15-3-06
Chester County

⋮
⋮
⋮
⋮
⋮

2 JD 2021

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Judicial Conduct Board of Pennsylvania

Signature:



Name:

JAMES P. KLEMAN, JR.
Senior Deputy Counsel

Attorney No.:

87637

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Michael J. Cabry, III
Magisterial District Judge
Magisterial District Court 15-3-06
Chester County

:
:
: 2 JD 2021
:
:
:

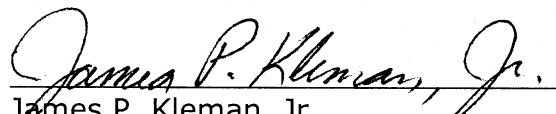
PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on October 5, 2022, a copy of the Board's Proposed Findings of Fact and Conclusions of Law was sent by first class mail and email to Mr. Samuel C. Stretton, Esquire, counsel for former MDJ Michael J. Cabry, III, at the following address and email:

Samuel C. Stretton, Esquire
301 South High Street
P.O. Box 3231
West Chester, PA 19381
strettonlaw.samstretton@gmail.com

Respectfully submitted,

DATE: October 5, 2022


James P. Kleman, Jr.
Senior Deputy Counsel
Pa. Supreme Court ID No. 87637
Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
Harrisburg, PA 17106
(717) 234-7911