

ORIGINAL

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

FEB 13 2024

RECEIVED AND FILED

IN RE:

Judge Marissa J. Brumbach :  
Municipal Court Judge : 2 JD 2022  
1st Judicial District :  
Philadelphia County :

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

**I. PROCEDURAL HISTORY:**

On December 14, 2022, Board Counsel filed the Board Complaint and a Petition for Relief for Interim Suspension With or Without Pay against Philadelphia Municipal Court Judge Marissa J. Brumbach (Respondent). Following briefing and argument, this Court denied the Board's Petition for Relief. Thereafter, on April 25, 2023, Respondent filed an answer to the Board Complaint. Respondent then filed an Omnibus Pre-Trial Motion on January 31, 2023. The Board responded to the Omnibus Motion on February 9, 2023. On April 3, 2023, this Court denied Respondent's Omnibus Motion without prejudice for the Omnibus Motion to be renewed at a later point in the proceedings.

Both the Board and Respondent litigated pre-trial discovery matters in anticipation of trial. Respondent filed a Motion to Compel Discovery and a Motion to Issue Subpoena Duces Tecum on April 21, 2023. The Board responded to these Motions on April 26, 2023. Ultimately, this Court dismissed the Motion to Compel as moot, but granted Respondent's remaining motion and a request for an extension of time regarding discovery. Thereafter, on October 24, 2023, Board Counsel and Respondent's Counsel conducted a joint trial deposition of Philadelphia Municipal

Court Judge Joffie Pittman. On October 31, 2023, Board Counsel and Respondent's Counsel conducted a joint trial deposition of Philadelphia Municipal Court President Judge Patrick Dugan.

Though the parties had already exchanged their respective pre-trial memoranda, Respondent filed a spate of prolix and repetitive pre-trial motions on November 3, 2023, which were as follows: (1) a Renewed Omnibus Pre-Trial Motion; (2) a Motion in Limine to Preclude Copies of Paper Citations; (3) a Motion in Limine to Preclude Evidence or Argument Regarding Respondent's Previous Requests for Personal Leave or Vacation Leave; and (4) an Omnibus Motion in Limine. Upon consideration of the Board's timely response, this Court denied all of Respondent's motions by order entered November 14, 2023.

This Court conducted trial on November 16, 2023. The Board presented numerous documentary exhibits and the testimony of the following staff members and judges of Philadelphia Municipal Court: (1) Richard Delario, tip staff officer; (2) Donna Sofronski, Chief of Courtroom Operations in Traffic Court; (3) Margaret Fenerty, Chief of Staff for the Traffic Division of the Philadelphia Municipal Court; (4) former President Judge Patrick Dugan; and (5) Administrative Judge Joffie Pittman, III. In defense, Respondent presented her own testimony and several documentary exhibits.

## **II. PROPOSED FINDINGS OF FACT:**

1. Respondent, Marissa Brumbach, began serving as a Philadelphia Municipal Court Judge, First Judicial District, Philadelphia County, on January 1, 2018. **See** Board Complaint ¶ 2; **see also** Respondent's Answer to Board Complaint ¶ 2.

2. The President Judge of Philadelphia Municipal Court, at all relevant times to the charges set forth in the Board Complaint, was Judge Patrick Dugan. **See** N.T., November 16, 2023, pg. 144.
  - a. President Judge Dugan supervises the judicial calendar for the various divisions of the Philadelphia Municipal Court, including the Traffic Court. **See** Board Exhibit 98, pg. 10; **see also** N.T., November 16, 2023, pg. 144.
3. Judge Joffie Pittman, III, is the Administrative Judge for Philadelphia Municipal Courts supervising Traffic Court, his term commenced in January of 2022, the week relevant to the charges set forth in the Board Complaint. **See** N.T., November 16, 2023, pg. 91.
  - a. Judge Pittman and Respondent are very close friends and have known each other since 1996. **See** Board Exhibit 99, pg. 14; **see also** N.T., November 16, 2023, pg. 241.
  - b. Richard Delario (Delario) is a tip staff officer in the Traffic Division and has been so for 21 years. **See** N.T., November 16, 2023, pg. 25.
  - c. Donna Sofronski (Sofronski) is the Chief of Courtroom Operations in the Traffic Division of the Philadelphia Municipal Court and has been in her role for 16 years. **See** N.T., November 16, 2023, pg. 35.
  - d. Margaret Fenerty (Fenerty) is the Chief of Staff for the Traffic Division of the Philadelphia Municipal Court and has been in her role for 35 years. **See** N.T., November 16, 2023, pg. 60.

4. The First Judicial District of Pennsylvania Judicial Leave Policy grants judges five weeks (25 workdays) of vacation per year and discourages single days of leave.

**See** Board Exhibit 114.

- a. Contrary to Respondent's testimony at her suspension hearing that there is no written leave policy, the First Judicial District's leave policy for judges is in writing. **See** Board Exhibit 97, pg. 140; **see also** Board Exhibit 114; **and** N.T., November 16, 2023, pgs. 273 - 274.
- b. Single-day leave requests by judges are considered personal days, and the process for requesting same is well-established in the First Judicial District. **See** N.T., November 16, 2023, pg. 174.
- c. A judge seeking a single day of leave for personal reasons, must provide President Judge Dugan an explanation of their absence. **See** N.T., November 16, 2023, pgs. 174. This is because there have been prior instances of abuse of personal leave by judges in the First Judicial District, including by Respondent. ("I'm sorry, but myself and previous President Judges always asking why because when we get another Judge they want to know why, and frankly you start to worry about the veracity of the request based off so many other things that has occurred with myself and Judge Brumbach.") **See** N.T., November 16, 2023, pg. 169, Ins. 17-22.
- d. For example, in 2020, Respondent sought an opinion from the Ethics Committee of the State Conference of Trial Judges regarding the leave policy and its application by President Judge Dugan, specifically citing his discouragement of single days of leave. **See** Board Exhibit 115.

- e. Although the Ethics Committee encouraged Respondent to seek counsel if the leave policy was untenable, it did not explicitly give her permission to take single days of leave. Nonetheless, Respondent used this response as a letter of reliance when seeking two personal days of leave in October of 2021. **See** N.T. November 16, 2023, pg. 282.
  - f. President Judge Dugan testified that although he did not approve her leave, Respondent failed to appear to perform her duties on the two days Respondent requested leave for in October 2021. **See** N.T., November 16, 2023, pg. 170.
5. By email dated November 10, 2021, Respondent notified President Judge Dugan that she would be “attending an event in Florida on January 7, 2022, and unable to preside that day. Kindly let me know if I should make notifications or if you are going to handle it and provide coverage for the room (not yet assigned).” **See** Board Complaint ¶ 3; **see also** Respondent’s Answer to Board Complaint ¶ 3; **and** Board Exhibit 98, pg. 146; **and** Board Exhibit 103.
6. President Judge Dugan did not respond to Respondent’s email regarding her absence. **See** Board Exhibit 98, pg. 27.
7. During the week of January 3, 2022, President Judge Dugan scheduled Respondent to preside over Traffic Court; this assignment was to continue for six months. **See** Board Complaint ¶ 5; **see also** Respondent’s Answer to Board Complaint ¶ 5; **and** Board Exhibit 97, pgs. 84-85; **and** N.T., November 16, 2023, pg. 262.
- a. On January 7, 2022, 45 litigants, many of which had multiple traffic citations docketed, were scheduled for trial before Respondent. **See** Board

Complaint ¶ 6; **see also** Respondent's Answer to Board Complaint ¶ 6; **and** Board Exhibit 97, pg. 26.

b. On January 6, 2022, Respondent sent President Judge Dugan a follow up email to her November 10, 2021 leave request that stated "... I am aware you are experiencing coverage issues across the Municipal Court with other judges, I have prepared the files for tomorrow after the Assistant District Attorney reviewed them. As such, at least 95% of the files will have been completed by me without the necessity of coverage. If court remains open tomorrow with the impending snow forecast and anyone shows up, my staff and the court staff know what to do." Respondent closed the email with the statement "If you have an alternate plan, let me know, and I will set the proper expectation. Thank you." **See** Board Exhibit 103; **see also** N.T. November 16, 2023, pg. 236.

c. President Judge Dugan responded to Respondent's email and stated the following:

"The alternate plan is for you to show up and handle your list. Have you coordinated with court administration in Traffic on the 95%? So it is clear, I have not authorized you to be off on January 7th." **See** Board Exhibit 103.

8. Respondent then travelled to Florida for a birthday party, despite being scheduled to preside on January 7, 2022, and contrary to President Judge Dugan's response to her January 6, 2022 email. **See** N.T., November 16, 2023, pg. 242.

a. Respondent left for Florida on Thursday, January 6, 2022, after court. **See** Board Exhibit 96, pg. 8.

- b. As it had turned out, court was closed due to inclement weather (a snowstorm) on January 7, 2022. The decision to close court because of the pending snowstorm was made by the Governing Board of the First Judicial District between 6 p.m. and 7 p.m. on January 6, 2022. **See** Board Exhibit 97, pg. 77.
9. Respondent reviewed the case files for the hearings scheduled and, in her words, “completed” them in advance of their trial date to avoid the “necessity of coverage.” **See** Board Exhibit 103.
- a. The case files for Traffic Court in Philadelphia Municipal Courts are prepared by Central Records. **See** N.T., November 16, 2023, pg. 35.
- i. Central Records personnel stamp the date of the scheduled trial on the back of the traffic citation and place it in the file. **See** N.T., November 16, 2023, pg. 38.
- ii. As part of her duties, Sofronski obtains the case file folders a week before the scheduled court date, ensures all aspects of the files are present, and is responsible for keeping them until their trial date. **See** N.T., November 16, 2023, pg. 36.
- b. On the scheduled date, the presiding judge conducts a trial to determine the disposition of a case; typically, in addition to the judge, an assistant District Attorney is in attendance as well as the cited litigant. **See** N.T., November 16, 2023, pg. 263.
- c. If they appear, all parties have an opportunity to be heard by the presiding judge. **See** November 16, 2023, pg. 256.

10. Respondent asked Delario to get the case files for the hearings scheduled for January 7, 2022, and had the assigned Assistant District Attorney review the citations to determine if he was going to withdraw any of them. **See** N.T., November 16, 2023, pg. 235.
11. Respondent obtained the files after the ADA performed his review. Respondent then marked the remaining citations' Certificate of Disposition by circling the disposition codes for either guilty or not guilty *in absentia*. **See** Board Complaint ¶ 19; **see also** Respondent's Answer to Board Complaint ¶ 19; **and** Board Exhibits 1 - 58; **and** Board Exhibit 96, pg. 25.
12. Respondent selected disposition codes because she anticipated both that the litigants would not appear for trial and that there would not be coverage available for her courtroom. **See** N.T., November 16, 2023, pg. 260.
  - a. "I circled a disposition code, and I put the instructions of my initials on the back of the copies of the paper citations, so that the dispositioner would know what Judge's initial to enter into ETIMS[.]" **See** N.T., November 16, 2023, pg. 308, Ins. 3-7.
13. After circling her desired dispositions, Respondent initialed the bottom of the Certificate of Disposition in the location provided for the original signature of the judge of the Philadelphia Municipal Court Traffic Division. **See** Board Complaint ¶ 20; **see also** Respondent's Answer to Board Complaint ¶ 20; **and** Board Exhibits 1-58.
14. Respondent initialed the bottom of the Certificate of Disposition for the citations that the assigned assistant district attorney was willing to withdraw.



**See** Board Complaint ¶ 20; **see also** Respondent's Answer to Board Complaint ¶ 20; **and** Board Trial Exhibits 59-75.

15. Respondent's scheme was based on her own opinion and prognostication that "everyone is practically in absentia." **See** N.T. November 16, 2023, pg. 233, ln. 3.
  - a. Though it is correct that, a litigant may lose many of their due process rights by failing to appear and the hearing is then held *in absentia*, Respondent's plan was based on her assumption that all 45 litigants would fail to appear for their scheduled trial on the day of her planned vacation in Florida. **See** N.T. November 16, 2023, pg. 257. Respondent then justified her absence by applying the rules for hearings *in absentia* to those citations for which she circled her desired disposition and executed the Certificate of Disposition. ("Where are we at the end if this is completed where January 7<sup>th</sup> wasn't a snow day, and all of these things went to the dispositioner accordingly to what I've already testified to everyone. Where are we at that point? We know who didn't show up to court. We know who did show up to court got a court date. We know who didn't show up to court and had the same exact process which they're not due any process. We already know that because the rules say they are not due any process. The District Attorney doesn't offer any evidence... it is the Judge and that dummy file."). **See** N.T., November 16, 2023, pgs. 241 ln. 24 - 242, ln. 11.
  - b. Even Respondent acknowledged the wrongfulness of her plan in her own testimony that you "can't give the dispositioner a file to adjudicate a case

the day before when, of course, the people have an absolute right to show up for court." **See** N.T., November 16, 2023, pg. 259, Ins. 8-10.

16. Respondent further attempted to downplay the gravity of her actions by testifying that the files she marked were "dummy files" of no consequence, as they simply contained copies of the paper citation. **See** N.T. November 16, 2023, pg. 225; **see also** N.T., November 16, 2023, pg. 238.

a. Respondent qualified her signature and circle of adjudication as a "notation;" however, she admitted that the process she employed in circling and signing the 95 citations on January 6, 2022 was no different than what she would have done when resolving citations called for trial wherein the defendant failed to appear. **See** N.T., November 16, 2023, pg. 225; **see also** N.T., November 16, 2023, pg. 235.

b. Contrary to Respondent, Judge Pittman testified that, although he is familiar with the term "dummy file," the files handed to the judge are the official court records, as prepared by Central Records. **See** N.T., November 16, 2023, pg. 120.

17. After Respondent "completed" the citations, the files were returned to Sofronski who checked the files and confirmed everything was there. **See** N.T., November 16, 2023, pg. 41.

18. Respondent's plan to address the scheduled hearings while away was to call Sofronski for an update after the hearings were scheduled, and, if a litigant did not appear, Respondent planned to instruct staff to hand her "dummy files" to

the dispositioner for entry into the official record. **See** N.T., November 16, 2023, pg. 237.

- a. Respondent told Sofronski that she was only a phone call away if she needed her on Friday, January 7, 2022. **See** N.T., November 16, 2023, pg. 44.
  - b. Sofronski does not remember a discussion with Respondent concerning the plans for January 7th when the judge would be in Florida. **See** N.T., November 16, 2023, pg. 45.
  - c. Delario does not remember any details of his conversation with Respondent regarding any plans on how to handle the cases on January 7th if there was no judge there to preside, nor what would happen when the defendants did not show up for court on January 7th. **See** N.T., November 16, 2023, pg. 32.
19. After responding to Respondent's January 6<sup>th</sup> email, President Judge Dugan instructed Judge Pittman and Fenerty "to try to find out what was going on." **See** N.T., November 16, 2023, pg. 153, ln. 23.
- a. Fenerty looked at some of the files and noted the disposition codes were circled and the certificates were initialed by Respondent. **See** Board Exhibit 97, pg. 85; **see also** N.T., November 16, 2023, pg. 63.
  - b. Judge Pittman testified that when he approached Respondent, she stated that "she hadn't done anything, that the file would be prepped and ready for the next day or whatever Judge was going to cover the courtroom should it be covered." **See** N.T., November 16, 2023, pg. 95, lns. 9-15.

- c. Judge Pittman testified there are three ways to accommodate an absent judge: (1) another Judge could cover the courtroom; (2) the list of cases could be combined to one courtroom; or (3) to continue each case and give each litigant a new trial date. **See** N.T., November 16, 2023, pg. 102.
- d. Respondent informed Judge Pittman that she didn't think coverage was needed as she had a solution for the problem. **See** Board Exhibit 97, pg. 123; **see also** Board Exhibit 99, pg. 83 – pg. 84; **and** N.T., November 16, 2023, pg. 98.
- e. Following the conversation between Judge Pittman and Respondent, Fenerty, at the direction of President Judge Dugan, examined the case files in Sofronski's office more closely, specifically, the Certificate of Disposition printed on the back of each citation. **See** Board Exhibit 97, pg. 89.; **see also** N.T., November 16, 2023, pg. 65.
- f. After looking at the traffic citations a second time, Fenerty returned to her office without the files and told Judge Pittman that she was correct and that the tickets had been signed and the dispositions circled. **See** N.T., November 16, 2023, pg. 65.
  - i. When Fenerty saw Judge Pittman, she told him that the traffic citations had been "answered." **See** Board Exhibit 99, pg. 44.
  - ii. According to Judge Pittman, when a traffic citation has been "answered," the traffic citation has a disposition circled and signed by a judge. **See** Board Exhibit 99, pg. 44.

- g. After Fenerty informed Judge Pittman that the traffic citations had been marked and adjudicated, he informed President Judge Dugan about what he had learned from Fenerty. **See** N.T., November 16, 2023, pg. 105.
- i. At the direction of President Judge Dugan, Fenerty collected the case file folders and brought them back to her office. **See** Board Exhibit 97, pg. 91; **see also** N.T., November 16, 2023, pg. 66.
  - ii. President Judge Dugan, through his secretary, asked Fenerty to make copies of each case file folder and each traffic citation. **See** Board Exhibit 97, pg. 91; **see also** N.T., November 16, 2023, pg. 66.
  - iii. Fenerty, with staff assistance, copied the traffic citations and finished doing so on Monday, January 10, 2022. **See** N.T., November 16, 2023, pg. 67.
- h. Fenerty then provided the copies of the traffic citations to President Judge Dugan on Tuesday, January 11, 2022. **See** Board Complaint ¶ 22; **see also** Respondent's Answer to Board Complaint ¶ 22; **and** Board Trial Exhibit 97, pg. 91; **and** N.T., November 16, 2023, pg. 67.
20. Upon review of the traffic citations that had been adjudicated by Respondent, President Judge Dugan was "appalled" stating "It goes to the core of what Judges are supposed to do. And to me we were denying 45 Citizens of their day in court. They were not guilty in absentia or guilty in absentia. How can we find somebody guilty when there's no hearing?" **See** N.T., November 16, 2023, pg. 157, ln. 20 – pg. 158, ln. 2.

- a. President Judge Dugan has never encountered a judge marking citations in the way Respondent did, prior to a hearing date. **See** N.T., November 16, 2023, pg. 158.
  - b. Judge Pittman has never circled disposition codes or signed citations prior to their trial date, and he has never seen another judge do so. **See** N.T., November 16, 2023, pg. 116.
  - c. Respondent admitted there are other ways to address one's court list, besides circling disposition codes on the back of citations, as she had done. **See** N.T., November 16, 2023, pg. 301.
21. Based on what he had learned about Respondent's conduct from Judge Pittman and Fenerty, President Judge Dugan precluded Respondent from presiding over traffic court on Monday, January 10, 2022, as she had been previously assigned. **See** Board Exhibit 97, pg. 76.
- a. President Judge Dugan informed Respondent via email on January 9, 2022, that she was "not assigned to a Traffic Courtroom on Monday January 10<sup>th</sup>." **See** Board Complaint ¶ 28; **see also** Respondent's Answer to Board Complaint ¶ 28; Board Trial Exhibit 98, Exhibit A.
  - b. President Judge Dugan also sent Respondent a text message stating, "You are off tomorrow January 10<sup>th</sup>. You are not assigned to work." **See** Board Exhibit 106.
  - c. President Judge Dugan relieved Respondent of her duties on January 10<sup>th</sup> because he understood that she "actually conducted the hearings that were scheduled for January 7<sup>th</sup> on January 6<sup>th</sup> by herself, and I wanted to go over and see." **See** Board Exhibit 98, pg. 72.

22. Despite President Judge Dugan's directive not to appear, Respondent came to Fenerty's office Monday morning, very upset, and requested the case files be returned to her. **See** Board Complaint ¶ 29; Respondent's Answer to Board Complaint ¶ 29; **see also** N.T., November 16, 2023, pg. 71.
- a. Respondent sought an explanation as to why President Judge Dugan would tell her not to appear for court, as she had a "permanent" assignment in Traffic Court. **See** N.T., November 16, 2023, pg. 243.
  - b. Fenerty informed Respondent that she had the case file folders at the direction of President Judge Dugan and that Respondent was unable to have them. **See** N.T., November 16, 2023, pg. 71; **see also** Board Complaint ¶ 30; **and** Respondent's Answer to Board Complaint ¶ 30.
  - c. President Judge Dugan sent Respondent a text message telling her to "go home" and informing her that she was "assigned to chambers the rest of the week." **See** Board Exhibit 98, Exhibit A.
  - d. Respondent stayed in the building and questioned Sofronski as to why she didn't have a judicial assignment from President Judge Dugan. **See** N.T., November 16, 2023, pg. 244.
23. After becoming aware of Respondent's actions of circling disposition codes for verdicts *in absentia* prior to the scheduled trial date, President Judge Dugan consulted with State Court Administrator Geoffrey Moulton for guidance on how to handle the situation. **See** N.T., November 16, 2023, pg. 158.
24. Based on his consultation, President Judge Dugan sent Respondent an email "assigning her to perform administrative duties only" and restricted her from

"presiding over any cases during this assignment." She remains on that assignment today. **See** Board Trial Exhibit 110.

- a. "I removed Judge Brumbach from performing additional duties. I didn't have the confidence to have her sit in a courtroom, but I was seeking guidance from above." **See** N.T., November 16, 2023, pg. 164, Ins. 5-8.

25. Ultimately, President Judge Dugan reported Respondent to the Board, which, following a discursive investigation, concluded that there was probable cause to find that Respondent violated the Code of Judicial Conduct by her acts of facially adjudicating the 95 citations. The Board then charged Respondent by Board Complaint in this Court. **See generally** Board Complaint.

## **II. DISCUSSION**

### **Canon 2, Rule 2.6. Ensuring the Right to Be Heard.**

- (A) A judge shall accord to every person or entity who has a legal interest in a proceeding, or that person or entity's lawyer, the right to be heard according to law.**

### **Canon 1, Rule 1.2. Promoting Confidence in the Judiciary.**

**A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.**

There is no genuine dispute about the nucleus of operative facts regarding these charges. Respondent reviewed 95 traffic citations scheduled to be tried for Municipal Court courtroom B on January 6, 2022, one day prior to January 7, 2022, their scheduled trial date. **See** Proposed Finding of Fact, 16(a). This exercise was to facilitate Respondent's impending trip to Florida on January 7, 2022, which she had not obtained leave to attend from President Judge Dugan but planned to follow



through on - regardless of her pending court assignment for that day and regardless of her lack of permitted leave. **See, e.g.,** Proposed Findings of Fact, 7(c), and 8. As she would have for any case legitimately called before her, Respondent circled what she considered to be the appropriate adjudication (guilty *in absentia* or not guilty *in absentia*) on the back of the citation and executed the Certificate of Disposition by initialing it for each of them not previously withdrawn by the Commonwealth; the salient difference in this instance, however, was that when she circled the dispositions, Respondent had no basis to know who would, in fact, be present and who would not be present. **Id.** at 11, 12, 12(a). In so doing, Respondent presumed that each defendant would fail to appear in court on January 7<sup>th</sup>. **See** Proposed Finding of Fact, 15. Had the defendants defied her expectations and appeared for court, Respondent's "plan" to cover her courtroom was to call the court staff from her vacation in Florida at the end of each listing to determine which defendants did or did not appear for court as scheduled. **See** Proposed Findings of Fact, 11, 15(a), 18. For those who appeared for trial, Respondent would have directed staff to relist, *i.e.*, continue, the trial, and, for those who did not appear, Respondent would have directed staff to provide the file to the dispositioner to enter Respondent's circled disposition as a final judgment. **Id.**, at 15(a), 18. Ultimately, though, fortunately, Respondent's scheme never fully came to fruition due to both the timely intercession of President Judge Dugan, **see** Proposed Finding of Fact, 19, and due to the fact that the entire First Judicial District was closed on January 7, 2022 due to a snowstorm. **Id.**, at 8(b).

Respondent's conduct, while lamentable, is not without precedent in this Commonwealth. This Court considered the propriety, or lack thereof, of a similar

adjudicative “plan” in ***In re Merlo***, 34 A.3d 932, 962 (Pa.Ct.Jud.Disc. 2011), *aff’d* 619 A.3d Pa. 1 (Pa. 2012). In ***Merlo***, the respondent judge contrived a plan to have her staff “handle” scheduled landlord-tenant hearings while the respondent judge was intentionally absent from court. ***Id.***, 34 A.3d at 962-963. The instructions given by the respondent judge in ***Merlo*** covered three situations: (1) cases where the landlord was present, and the tenant was not; (2) cases where both the landlord and tenant were present and agreed to the landlord’s position on the case; and (3) cases where both the landlord and tenant were present but disagreed as to the landlord’s position on the case. ***Id.*** If the landlord appeared in court and the tenant did not, or if both parties appeared and agreed to the relief requested by the landlord, the staff was instructed to enter judgment. ***Id.*** If both parties appeared but could not reach an agreement, the staff was to reschedule the case. ***Id.*** This Court found that the respondent judge in ***Merlo*** violated Rule 4A of the then-extant Rules Governing the Standards of Conduct of Magisterial District Judges which required her to “be faithful to the law and maintain competence in it” because she failed to conduct hearings as required by law. ***Id.***, at 963-964.

Effectively, there is no distinction between Respondent’s conduct and that outlined in ***Merlo***, save for the fact that the litigants who would have appeared for trial on January 7, 2022, were spared the indignity of being subject to a final judgment in which they did not participate by the intercession of other forces, *i.e.*, President Judge Dugan and the snowstorm that closed court. ***See, e.g., Merlo***, 34 A.3d at 962-964. Yet, these fortunate events do not alter *Respondent’s* conduct, which is the proper subject of determination of this Court. As with the respondent judge in ***Merlo*** and her “standing instruction” to her staff regarding landlord-tenant

cases, it is clear that Respondent's judicial work and thought process ended at the point at which she executed the dispositions on the back of the citations by circling them and by initialing the citation. **Id.** It was at that point precisely that Respondent made her decision regarding the case and "checked out;" her own *post hoc* justification reveals this fact:

Where are we at the end if this is completed where January 7th wasn't a snow day, and all of these things went to the dispositioner accordingly to what I've already testified to everyone. Where are we at that point? We know who didn't show up to court. We know who did show up to court got a court date. We know who didn't show up to court and had the same exact process which they're not due any process. We already know that because the rules say they are not due any process. The District Attorney doesn't offer any evidence... it is the Judge and that dummy file.

**See** Proposed Finding of Fact 15(a); **see** also N.T., November 16, 2023, pg. 242, Ins. 4-11).

To paraphrase Respondent, "What does it matter anyway? I would have made the same decision anyhow if the cases were called for court in the normal course, and, in any event, nobody's rights were violated." The nature of the issue which Respondent fails to see is threefold: (1) regardless of the nature of a case, where parties are bidden to court by a judge under pain of contempt, the reasonable expectation of the public is that the judge who summons them will also be present to hear their case, **Merlo**, 34 A.3d. at 957; (2) both sides of the litigation in a traffic case, *i.e.*, the Commonwealth and the defendant, have a right to have their matter resolved by a neutral judge in a formal court hearing, if that is their choice, **see, e.g.**, Proposed Finding of Fact, 9(b), 9(c); and (3) both sides hold the reasonable *expectation* that their respective positions about the case will receive the consideration that the Code of Judicial Conduct demands from the presiding judge in that case. **See** Canon 2, Rule 2.6, Code of Judicial Conduct. A judge, like Respondent

and the respondent judge in **Merlo**, who merely leaves standing instructions for staff to resolve what the judge perceives to be routine, run-of-the-mill cases, while that judge voluntarily absents themselves from court for personal reasons, fails utterly to “accord to every person or entity ... the right to be heard according to law” because their canned decision (ultimately carried out by non-judges) cuts short any potential for argumentation by the parties and is designed to benefit the respondent judge, not the law or the litigants they serve. **Cf., Merlo**, 34 A.3d at 962-964 (judge who left standing instructions for staff to resolve landlord-tenant cases while voluntarily absent was not faithful to the law, which required the matter to be resolved by hearing). Clearly, then, Respondent’s conduct violated Canon 2, Rule 2.6. The matter does not end here, however.

Both before and during trial, Respondent attempted to utilize her preferred definition of the term “adjudication” as some sort of a shield to the Board’s prosecution. **See, e.g.**, Respondent’s Renewed Omnibus Pre-Trial Motion; **see also** N.T., November 16, 2023, 312-313. Respondent’s logic is that, because intervening forces stopped her “plan,” none of the citations in question were adjudicated, *i.e.*, reduced to final, appealable judgment, and, thus, she could not have violated the Code by her “plan.” This contention is merely a solipsism.

As explained above, this cabined understanding of an “adjudication” misses the point of Canon 2, Rule 2.6. Obviously, whether a decision that is the product of judicial misconduct is reduced to final, appealable judgment by routine administrative process, or not, has nothing whatsoever to do with whether that judge engaged in judicial misconduct in reaching the decision that is called into question by the judge’s conduct. **See, e.g., In re Sullivan**, 135 A.3d 1164, 1175-1176 (Pa.Ct.Jud.Disc.

2016) (former traffic court judge's receipt of *ex parte* information regarding cases; failure to recuse after receiving such information; dismissing tickets based on *ex parte* information; and general participation in a ticket-fixing scheme constituted sanctionable judicial misconduct). Otherwise, a judge could never be found to have engaged in judicial misconduct where an appealable judgment was not rendered, such as when a case is *dismissed*. ***Id.*** (emphasis added). More importantly, Respondent's assertion also flies in the face of Canon 1, Rule 1.2, which directs a judge to avoid both actual impropriety (conduct that violates the law and Code itself) and the *appearance* of impropriety. **See** Canon 1, Rule 1.2 (a judge shall act **at all times** in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid **impropriety and the appearance of impropriety**), *and* Comment, 5 (emphasis added). The "appearance of impropriety" is defined by the Code as "whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." **See** Code of Judicial Conduct, terminology.

Board counsel note that if Respondent's "plan" and its attendant facts up to the point of its fortuitous undoing were explained to the average litigant in the First Judicial District, it is highly unlikely that the litigant would accept Respondent's claim of "no harm, no foul" because a final, appealable judgment had not been rendered due to intervening forces beyond Respondent's control. Rather, Board counsel submit that the litigant would readily conclude that the citations that Respondent marked up the day prior to her trip to Florida *appeared* to be valid "adjudications," which she made without having both parties present and which she intended to be final

according to her “plan,” as was the case in **Merlo**, 34 A.3d at 962-964. As the Code indicates, the appearance of a violation *is* a violation, **See** Canon 1, Rule 1.2, especially where, as here, (and, at best for Respondent) forces outside of and independent from the respondent judge cut short the actual violation of the Code. Consequently, whatever intellectual cachet this Court would give to Respondent’s technical defense, it is still the case that she violated Canon 1, Rule 1.2, because her conduct, at the very least, appeared to be a violation of Canon 2, Rule 2.6.

**Canon 2, Rule 2.1. Giving Precedence to the Duties of Judicial Office.**

**The duties of judicial office, as prescribed by law, shall ordinarily take precedence over a judge’s personal and extrajudicial activities.**

**Canon 2, Rule 2.5. Competence, Diligence and Cooperation.**

**(A) A judge shall perform judicial and administrative duties competently and diligently.**

**(B) A judge shall cooperate with other judges and court officials in the administration of court business.**

Again, as to whether Respondent committed a violation of Canon 2, Rules 2.1 and 2.5, this Court’s prior holding in **Merlo** is instructive. Among the many reasons the respondent judge in **Merlo** willfully absented herself from scheduled court proceedings was her belief that she was entitled to campaign for the office that she was neglecting by her absences during “daylight hours,” meaning, during times that she was scheduled to be in court presiding over court business. **Id.**, 34 A.3d at 959. This Court concluded that “[then-extant] Rule 3A [of the Rules Governing Standards of Conduct of MDJs] does not permit campaigning – *or anything else* – if it is allowed to take priority over the ‘prompt and proper disposition of the business of [their] office,’ which Respondent’s campaigning certainly did.” **Id.** (emphasis added). Former Rule 3A, requiring the prompt and proper disposition of the business of a

judge's office, is obviously a forerunner of present day-Canon 2, Rule 2.1, and, as such, **Merlo's** logic applies to this case, as well. **Compare** Canon 2, Rule 2.1 and former Rule 3A, RGSCMDJs.

Leaving aside the intervention of the January 7, 2022 snowstorm which cancelled court for everyone in the First Judicial District, it is obvious that, like the campaigning respondent judge in **Merlo**, Respondent's desire to attend a birthday party in Florida on January 7, 2022, overrode her responsibility to fulfill her judicial duties to appear in court as scheduled on January 7, 2022, and overrode her administrative responsibility to seek proper leave before absenting herself from court. **See** Proposed Findings of Fact, 4, 5, 6, 7, 7(b), 7(c). This is because, Respondent's act of contriving a "plan" and setting it in motion, as described above, to facilitate her travel to Florida in derogation of both the law and the First Judicial District leave policy shows clearly the matter for which Respondent chose to give precedence, and it was not fulfilment of her judicial or administrative responsibilities. Stated simply, Respondent acted to manipulate her assigned cases to ensure that she could go to Florida (an extrajudicial activity), heedless of the leave policy and the consequences to scheduled court matters and regardless of subsequent intervening events. This, the Board submits, provides clear and convincing evidence of Respondent's violation of Canon 2, Rule 2.1. **See Merlo**, 34 A.3d at 959.

Moreover, Respondent's handling of the leave request shows that Respondent failed to adhere to her duty to cooperate with President Judge Dugan diligently in the administration of judicial business, a violation of Canon 2, Rule 2.5. This is because, instead of determining the status of her November 10, 2021 leave request in a professional manner, at a time where a reasonable accommodation could be made,

Respondent elected to wait until the day before her planned trip and, only then, sent President Judge Dugan a follow up email that set forth the basic details of her “plan” as a justification for her planned absence from court. **See** Proposed Finding of Fact 7(b). Then, even after hearing from President Judge Dugan that she was *not* granted leave for the following day, Respondent took the decision in her own hands and left for the Florida trip as she had already decided to do. **Id.**, at 7(c), 8.

At trial, as to this issue, Respondent attempted to foist responsibility for her conduct on President Judge Dugan for his initial decision not to respond to her November 10, 2021 leave request. **See, e.g.**, N.T., November 26, 2023, at 271-273. Contrary to Respondent’s contention, there is no question that, at the time, President Judge Dugan had the authority to supervise the Municipal Court’s judicial calendar and to grant or deny personal leave requests. **See** Proposed Findings of Fact, 2(a), 4(a)-(c). Due to prior difficulties with Respondent and personal day leave requests, President Judge Dugan evidently did not trust Respondent’s word when she made personal leave requests and required an explanation from her prior to granting such a request. **Id.**, at 4(c). This requirement was clearly within President Judge Dugan’s discretion. Notably, when Respondent questioned the same to the Ethics Committee by letter in 2020, the Ethics Committee advised her to present the matter to the Administrative Office of Pennsylvania Courts or through a lawyer if the president judge decided leave requests (called “vacation requests” in the letter) “oppressively, inequitably, or unfairly.” **Id.**, at 4(d); see also Board Exhibit 115, at 9. Respondent did not take this action with regard to her request for leave on January 7, 2022, even though she had approximately two months to do so, or seek other avenues of relief, after making the leave request and hearing nothing. Instead, as



noted above, Respondent contrived her “plan,” set it in motion, and left for the Florida trip. *Id.*, at 7(c), 8. Respondent’s conduct does not bespeak “cooperation” or “diligence,” rather, it demonstrates defiance, and, as such, constitutes a violation of Canon 2, Rules 2.5(A) and (B).

**Canon 1, Rule 1.1. Compliance with the Law.**

**A judge shall comply with the law, including the Code of Judicial Conduct.**

**Article V, §17(b), Pa. Const.**

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

Respondent’s violations of the Code as discussed above constitute automatic, derivative violations of Canon 1, Rule 1.1, which requires judges to comply with the Law, including the Code. Further, Respondent’s violations of the Code constitute automatic, derivative violations 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 violations of Rules 1.1, 1.2, 2.1, 2.5, and 2.6 of the Code, as discussed herein, constitute an automatic derivative violation of Article V, §17(b) of the Constitution of the Commonwealth of Pennsylvania.

**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 prejudices the proper administration of justice or brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity[.]**

In *In re Smith*, 687 A.2d 1229, 1237 (Pa.Ct.Jud.Disc. 1996), this Court held that a judge’s conduct that “departs from the standard expected of judges and

[obstructs or interferes] with the systematic operation or normal functions of the court” is conduct that prejudices the proper administration of justice. **Id.**, at 1237.

As to the “Disrepute Clause,” 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). 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. **Cicchetti**, 697 A.2d at 312. 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. “The analysis of the reasonable expectations of the public integrates the principle that a respondent judge represents the judicial office to members of the public and therefore, his or her misconduct reflects back on the entire judiciary.” **In re Younge**, 2 JD 2019, at 118 (Opinion and Order dated December 1, 2020) (*citing In re Berkheimer*, 930 A.2d 1255, 1258-59 (Pa. 2007)). As such, the question becomes whether a judge engaged in behavior that would invite the average citizen to conclude that a judge engaged in the charged conduct because the judge felt that they were “above the law.” **Cf. Carney**, 79 A.3d at 503 (holding that incident where judge brandished gun at motorists in a road rage incident invited the view that judges appear to believe that they are above the law and constituted disrepute.).

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. **Cicchetti**, 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 an act of judicial hypocrisy, for example, a respondent judge 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.

Viewing all of the facts and evidence presented at trial, the picture that emerges of Respondent is a judge who, in contravention of rules that are written, customary, and, in some measure, arise from her own abuse of the system, elected to take leave of court on her own initiative, regardless of her pending court schedule and, to facilitate her unauthorized leave, contrived and set in motion a "plan" that pre-judged traffic citations. **See** Proposed Findings of Fact, 4, 5, 6, 7, 7(b), 7(c), 10-15. In order to justify her actions after the fact, Respondent alternatively asserted that her conduct was blameless under the Code and the Constitution because no litigants' rights were affected, **see** Proposed Finding of Fact 15(a); **see** N.T., November 16, 2023, pg. 242, Ins. 4-11), and because the fault of the affair lied not with her, but with a truculent president judge who would not approve her leave requests. **See, e.g.**, N.T., November 26, 2023, at 271-273. Respondent's *non sequiturs* speak volumes and suffice little more than making the Board's point as to these violations.

Like the case in **Merlo**, this Court has before it a judge who was totally unamenable to professional cooperation with her administrative superior or, at the

very least, diligent enough to challenge what she perceived as his heavy hand at the proper place and time. **Merlo**, 34 A.3d at 957-958. Would that it were the case that Respondent's defiance for the rules was limited to an argument about judicial administration, but this is not merely the case with Respondent's conduct – in order to work around what she perceived to be an administrative heavy hand, Respondent elected to effectively "phone in" her judicial decision making in the cases assigned to her for January 7, 2022, by contriving her "plan," putting it into play by adjudicating the cases as she saw fit, and leaving for Florida. This act not only decided the cases before they were called and, thereby, placed the litigants scheduled to appear before her at jeopardy of suffering an illegal judgment, but it also put the non-judge staff of Municipal Court in workplace peril, as they would have been unwitting participants in the scheme; fortunately, neither of these events took place due to the timely intervention of President Judge Dugan. **See** Proposed Findings of Fact, at 18(a), (b), (c), 19. Nevertheless, it is obvious that a non-judge court employee who engaged in similar conduct would undoubtedly face workplace discipline, a fact overlooked entirely by Respondent in her justification of her conduct. This leads one to the conclusion that that, at the time of the conduct, Respondent believed that that she, as a judge, was entitled to engage in this behavior. **Cf. Carney**, 79 A.3d at 503 (holding that incident where judge brandished gun at motorists in a road rage incident invited the view that judges appear to believe that they are above the law and constituted disrepute.).

Moreover, it states the obvious to contend that no member of the public expects a judge, as here, to place her personal interests above her judicial duties in such a way as to demonstrate her belief that it is appropriate to make judicial

decisions about a defendant's guilt or innocence prior to the date and time set for trial, without affording the parties an opportunity to be heard, while vacationing in Florida, while, at the same time, also expecting court staff, defendants, and Commonwealth attorneys to appear in court as scheduled. **See, e.g., Merlo**, 34 A.3d. at 957. In addition, no member of the public would expect a judge to take such extraordinarily misguided actions without fully communicating her plan to other court officials within the Philadelphia Municipal Court and to seek specific approval for same, so to ensure that the obligations of the judiciary are lawfully fulfilled, and the rights of litigants are fully upheld. Therefore, taking all of the aforementioned into account, in Respondent, this Court is left with a judge, like the respondent judge in **Merlo**, who is "at once callous and uncaring, oblivious and incurious of the consequences of her conduct." **Id.**, 34 A.3d at 957-958. As such, the Board submits that Respondent's conduct both prejudiced the proper administration of justice and brought the judiciary into disrepute.

#### **PROPOSED CONCLUSIONS OF LAW**

- 1.** At Counts 1 and 2, the Board has established by clear and convincing evidence that Respondent violated Rule 1.1 and Rule 1.2 of the Code.
- 2.** At Counts 3, 4, and 5, the Board has established by clear and convincing evidence that Respondent violated Rule 2.1, 2.5(A) and (B) of the Code.
- 3.** At Count 6, the Board has established by clear and convincing evidence that Respondent violated Rule 2.6 of the Code.
- 4.** At Counts 7, 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 her violations of Rules 1.1, 1.2, 2.5(A) and (B), and 2.6 of the Code.

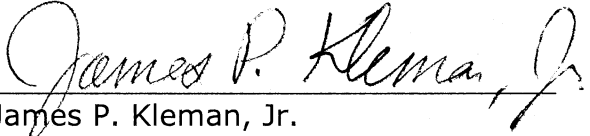
5. At Counts 8 and 9, the Board has established by clear and convincing evidence that Respondent prejudiced the proper administration of justice and brought the judiciary into disrepute in violation of Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania.

WHEREFORE, the Board respectfully requests this Court find the  
aforementioned facts and adopt the aforementioned conclusions of law and schedule  
a hearing to impose sanctions on Respondent.

Respectfully submitted,

MELISSA L. NORTON  
*Chief Counsel*

Date: February 12, 2024

By: 

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**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Marissa J. Brumbach,  
Municipal Court Judge  
1<sup>st</sup> Judicial District  
Philadelphia County

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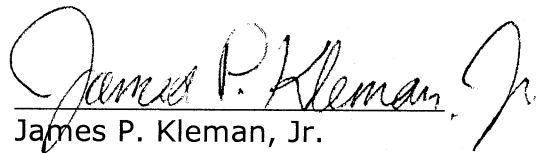
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**VERIFICATION**

I, James P. Kleman, Jr., Deputy Chief Counsel to the Judicial Conduct Board, verify that statements made in the Judicial Conduct Board's Brief in Support of Proposed Findings of Fact and Conclusions of Law are made subject to the penalties of 18 Pa. Cons. State. Ann. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,

Date: February 12, 2024



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**COMMONWEALTH OF PENNSYLVANIA  
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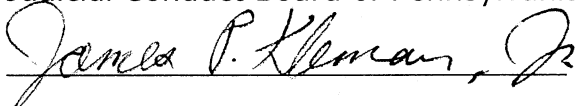
IN RE:

Marissa J. Brumbach,  
Municipal Court Judge  
1<sup>st</sup> Judicial District  
Philadelphia County

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**CERTIFICATE OF COMPLIANCE**

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

Submitted by:	Judicial Conduct Board of Pennsylvania
Signature:	
Name:	James P. Kleman, Jr. <i>Deputy Chief Counsel</i>
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**COMMONWEALTH OF PENNSYLVANIA  
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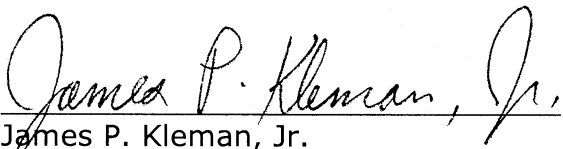
IN RE:

Judge Marissa J. Brumbach	:	
Municipal Court Judge	:	2 JD 2022
1st Judicial District	:	
Philadelphia County	:	

**PROOF OF SERVICE**

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on February 12, 2024, a copy of the Board's Proposed Findings of Fact and Conclusions of Law was sent by First Class Mail and Email to Matthew H. Haverstick, Esquire as follows:

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