

**INTERNAL OPERATING PROCEDURES OF THE JUDICIAL CONDUCT  
BOARD OF PENNSYLVANIA**

**Effective Date January 1, 2010**

Adopted by the Judicial Conduct Board  
by Special Meeting held on January 8, 2010

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## INTERNAL OPERATING PROCEDURES

### I. INTRODUCTION

These Internal Operating Procedures ("IOPs") are a compendium of the policies, practices and procedures in effect at the Pennsylvania Judicial Conduct Board ("JCB" or "Board"). Because the IOPs by definition are *internal* matters, they may be modified from time to time by the Board.

Failure to adhere to a particular policy, practice or procedure will not alter the rights afforded to any person involved in Board investigations or proceedings and shall not affect the validity of any investigation or other activity carried out by the Board or its staff.

Moreover, these IOPs do not constitute legal advice, do not have the force of law and do not confer any substantive or procedural due process rights upon any person or entity including the Board or its staff, complainants, respondent judicial officers or anyone else dealing directly or indirectly, formally or informally, with the JCB. These IOPs are meant to describe the *internal* practices and procedures of the JCB. The Constitution of the Commonwealth of Pennsylvania, the Code of Judicial Conduct, the Rules Governing Standards of Conduct of Magisterial District Judges, Judicial Conduct Board Rules of Procedure, Judicial Conduct Board Member's Conduct Rules, and the relevant statutory and decisional law remain the authoritative, controlling law ("the Authority").

#### IOP 1.01. APPLICABILITY OF ROBERT'S RULES OF ORDER

The rules contained in the current edition of Robert's Rules of Order, newly revised, shall govern the Board in all of its meetings, except and unless these IOPs specifically provide to the contrary or the Board as a committee of the whole elects to proceed otherwise.

#### IOP 1.02. AUTHORITY OF THE JUDICIAL CONDUCT BOARD

The Authority empowering the Judicial Conduct Board shall be exercised exclusively by the Board operating as a Committee of the whole, except that specified matters of a purely supervisory or ministerial nature may be delegated by the Board by resolution to the Chair, Vice-Chair, Chief Counsel or to a Committee of the Board. Absent any such specific delegation, the responsibility shall reside exclusively with the Board.

### II. JCB ADMINISTRATION

#### IOP 2.01. BOARD MEETINGS

Unless otherwise set, the Board shall meet six times per year, on the first Monday of every other month, beginning in the month of February. The meetings shall take place in the JCB offices in Harrisburg unless otherwise directed. The time of the meeting shall be set by the Chair. The Board shall meet in executive session at the outset of each meeting. Optionally, in the spring and fall of each year, the Board may meet in executive session during the afternoon or

evening of the day preceding a scheduled meeting. For example, by changing the meeting from Monday to Friday, Board Members could meet in executive session on Thursday afternoon or evening, to be followed on Friday with the regular business agenda of the Board. Between regularly scheduled meetings, the Board may meet by tele-conference to address its customary business agenda and this practice is especially encouraged to address Dismissal After Preliminary Investigation ("DAPI") matters. In the absence of objections, electronic communications shall be available to the Chair or Chief Counsel to conduct non-substantive, administrative or ministerial business of the Board, or when specifically authorized in these IOPs.

#### **IOP 2.02. QUORUM**

A quorum is a majority of the Members of the Board.

#### **IOP 2.03. ORGANIZATIONAL MEETING**

At its August meeting each year, the Board shall organize itself for the conduct of business for the upcoming year and shall elect members to serve as Chair, Vice-Chair and Secretary. In advance of the August meeting the outgoing Chair shall appoint a nominating committee consisting of at least three (3) Board members whose responsibility shall be to consider the credentials of those best qualified and willing to serve in those positions and to present one or more candidates for each position for consideration by the Board.

#### **IOP 2.04. OFFICERS**

Board Chair. The prerogatives and duties of the Chair shall be those (a) set forth in the Authority, (b) referenced in these IOPs, (c) specifically delegated by the Board or (d) contained in Roberts Rules of Order.

Board Vice Chair. Whenever the Chair is absent or unable to act, those prerogatives and duties shall be assumed by the Vice Chair.

Board Secretary. The prerogatives and duties of the Secretary shall be to supervise the taking of the minutes of meetings of the Board and, after being approved by the Board, certifying that such minutes are accurate and complete.

#### **IOP 2.05. COMMITTEES**

The Chair shall recommend for approval by the Board such committees, standing or special, as shall be appropriate to facilitate the business of the Board. The initial Standing Committees shall consist of the Personnel Committee ("Personnel Committee"), the Legal Review Committee ("LR Committee"), and the Record Retention Committee ("RR Committee"). The Chair shall designate the Chair of each committee and also shall serve as an ex officio member of each such committee.

**IOP 2.05.1. PERSONNEL COMMITTEE**

The Personnel Committee shall serve as the liaison between the JCB and its staff to supervise the implementation of the "Personnel Policies of the Judicial Conduct Board" adopted March, 2004. The Committee shall report to the Board at least annually concerning the status of matters involving or affecting the JCB staff.

**IOP 2.05.2. LEGAL REVIEW COMMITTEE**

Chief Counsel shall provide to the LR Committee in advance of filing proposed complaints, motions, briefs, discovery requests and responses, deposition notices, and the like for review and comment. Electronic communications and timely feed back are necessary.

**IOP 2.05.3. RECORD RETENTION COMMITTEE**

The RR Committee shall carry out the Record Retention policies under IOP 8.02 D2 specified herein.

**IOP 2.06. INTAKE AND STATUS LOG**

Chief Counsel shall establish and maintain an Intake and Status Log ("Log") that docket the receipt of each and every new complaint, anonymous complaint or any other form of potential complaint. The Log shall indicate: (a) the date and time of receipt, (b) the name and particulars relevant to the complainant and the respondent judicial officer, (c) the respondent judicial officer's disciplinary history, (d) the level of priority assigned and (e) the identify of the staff member to whom the matter is assigned. If feasible, the Log shall be maintained in an electronic format and be full text searchable. It shall be updated as appropriate on an ongoing basis. It also shall be shared with the Board as a regular business agenda item, in conjunction with each of its meetings, to foster review and discussion of pending matters. Urgent priority shall be assigned to matters that involve the potential for extreme prejudice to the administration of justice, as well as to matters having an immediacy factor such as complaints involving political campaign issues.

**IOP 2.07. STANDARD ORDER OF BUSINESS**

The Chair, in consultation with Chief Counsel, shall prepare the agenda for each meeting of the Board. Board members may offer suggestions to the Chair of matters to be included on the agenda.

The Board adopts the following as its Standard Order of Business, provided that the order of business may be altered by the Chair at his/her discretion, or at the request of a majority of the members present, in order to more efficiently carry out the Board's business:

**A. Executive Session**

**B. Business Agenda**

1. Call to Order
2. Roll Call
3. Revisions or Additions to the Agenda
4. Approval of Minutes of Previous Meeting
5. Reports of Committees
6. Chief Counsel's Administrative Report
7. Review of Intake and Status Log
8. Review of Dismissals after Preliminary Inquiry
9. Review of Authorizations to Conduct Full Investigation
10. Review of Dispositions Following Full Investigation
11. Review of Post-NOFI List
12. Review of Referrals, Stays and Tabled Matters List
13. Litigation Update
14. Status Reports
15. Informational Items
16. Adjournment

**IOP 2.08. STANDARD MEETING MATERIALS**

Chief Counsel shall prepare written summaries and recommendations respecting all matters to be considered by the Board and these materials shall be included in the Board's pre-meeting packets.

The written summaries prepared by Chief Counsel shall include:

- (a) the identities of the Complainant if known and the respondent judicial officer including relevant background information (and as respects the subject judicial officer, the judge's history of discipline, if any, and length of service on the bench);
- (b) a fair and accurate statement of the allegations of the complaint;
- (c) the objective, scope and results of the investigation;
- (d) the Code or Rules sections implicated along with the relevant factual and legal analysis; and
- (e) the recommended disposition or range of possible dispositions and the underlying rationales together with any other contributing or mitigating factors.

The Board shall be provided two (2) separate meeting packets: one for Dismissal after Preliminary Investigation ("DAPI") matters, and a second for all other matters.

The Board's pre-meeting packets shall be distributed to the Board a minimum of two (2) weeks in advance of the scheduled meeting. Chief Counsel's Administrative Report also shall be delivered to the Board in advance of each meeting.



In the ordinary course, at each meeting of the Board, the Chair or Chief Counsel shall introduce each matter for discussion and potential disposition by the Board. Other staff counsel need not attend the meetings of the Board unless requested by the Board to supplement the presentation by the Chair or Chief Counsel.

#### **IOP 2.09. VOTING**

The affirmative vote of a majority of the members of the Board eligible to vote shall be required for the dismissal of a complaint or the filing of formal charges with the Court of Judicial Discipline; otherwise, all other actions and business of the Board shall be approved by the affirmative vote of a majority of the Board members present at the meeting when the vote is taken.

#### **IOP 2.10. MINUTES OF MEETINGS**

All meetings of the Board shall be electronically recorded, and such recordings shall be used by staff, under the supervision of the Board Secretary, to aid in the preparation of written minutes. The draft minutes of the preceding meeting shall be presented for approval at the next scheduled meeting of the Board. Following approval, the Board Secretary shall certify to the accuracy and completeness of the minutes. The electronic tapes shall be retained for a period of six months and then shall be destroyed. Minutes of the meetings of the Committees shall be maintained at the option of the Committee Chair.

#### **IOP 2.11. NOTICE OF PUBLIC ACTION**

Chief Counsel shall provide a minimum of three (3) business days advance notice to the Board of any public actions such as the filing of Formal Complaints before the Court of Judicial Discipline, pleadings and processes therein, and dispositions.

#### **IOP 2.12. PRESS RELEASES AND MEDIA CONTACTS**

Routine press releases (such as those reporting on new Board appointments and public information respecting cases pending before the Court of Judicial Discipline) shall be prepared by staff and issued with the approval of the Chair. All other press releases shall be shared a minimum of three (3) business days in advance with the Board and approved by tele-conference or electronic mail prior to release. Ordinarily, all contacts with the media shall be through the Chair or Vice-Chair.

#### **IOP 2.13. APPEARANCE AT HEARINGS, SEMINARS OR PROFESSIONAL MEETINGS**

The Board shall be informed immediately of any proposed appearance of any member of the Board, Chief Counsel, or staff at any hearings, seminars or professional meetings. Except for customary scheduled appearances by Chief Counsel or staff involving matters pending in the Court of Judicial Discipline, all other appearances shall be approved in advance by the Board.

The Board shall be notified immediately of the service of a subpoena on the Board, Chief Counsel or staff. The Board, with the advice of outside counsel (if the Board deems necessary), shall determine the appropriate response to any subpoena.

#### **IOP 2.14. BOARD MEMBER MEETING WITH RESPONDENT**

When the Board directs a board member(s) to meet with a respondent judicial officer as part of a final disposition, such member(s) must generate a document/report memorializing and confirming such meeting for placement in the respondent judicial officer's closed-out file.

#### **IOP 2.15. RECUSAL OR DISQUALIFICATION**

M.C. R. 8, of the Judicial Conduct Board Member's Conduct Rules, specifies the events and circumstances requiring recusal or disqualification.

Members of the Board must police themselves against actual and potential conflicts in the discharge of their proscribed duties. In circumstances involving an actual conflict of interest, the member must immediately discontinue any involvement in the matter including discussions of it with other members or staff.

The import of recusal or disqualification

(a) A Board member who has recused or disqualified himself or herself shall not have access to the investigative file, shall not receive any of the staff reports and must leave the meeting room before the Board discusses the matter in which that member has recused and may not participate in its consideration.

- (b) Recusal requires that a Board member not
- participate in deliberations
  - make recommendations
  - give advice
  - participate in any manner
  - or in any way assume responsibility for any aspect of the investigation or deliberative process.

### **III. CHIEF COUNSEL**

#### **IOP 3.01. AUTHORITY OF CHIEF COUNSEL**

The Board shall appoint a Chief Counsel, whose general duties shall include managing and supervising the administrative activities of the Board's office, its staff attorneys, investigators and support staff, but he or she shall not be empowered to exercise any of the responsibilities specifically assigned to the Board under the Authority.

Chief Counsel's specific responsibilities shall include:

- (a) Reviewing and processing complaints and allegations concerning judicial misconduct;
- (b) Undertaking a preliminary inquiry;
- (c) Establishing priorities and assigning staff to such matters;
- (d) Maintaining and updating the Intake and Status Log on a current basis (IOP 2.06);
- (e) Maintaining and preserving the Board's records including all complaints and files relating thereto;
- (f) Developing statistics concerning the activities of the Board and sharing such information with the Board;
- (g) Preparing the proposed annual budget for approval by the Board;
- (h) Administering the funds of the Board in coordination with the Chair;
- (i) Preparing an annual report for approval by the Board; and
- (j) Keeping the Board informed concerning any and all developments potentially affecting the work of the Board.

#### **IV. COMPLAINTS, PRELIMINARY INQUIRIES AND INVESTIGATIONS**

##### **IOP 4.01 EXPEDITIOUS RESOLUTION OF COMPLAINTS**

It is the policy of the Board that each and every matter shall be brought to a prompt, efficient and fair conclusion commensurate with the available resources of the Board and its staff. Urgent priority shall be assigned to matters that involve the potential for extreme prejudice to the administration of justice, as well as to matters having an immediacy factor such as complaints involving political campaign issues.

##### **IOP 4.02. REQUESTS FOR INVESTIGATION MUST BE IN WRITING**

Except when acting at its own initiative or at the written request of the Supreme Court of Pennsylvania, or the State Court Administrator, the Board shall not initiate any preliminary inquiry or investigation without having first received a written complaint, verified under oath or affirmation by the complainant, on a proper form proscribed by the Board.

##### **IOP 4.03. ANONYMOUS COMPLAINTS**

Anonymous complaints in whatever form shall be entered into the Log. All such anonymous complaints must be presented to the Board for review and approval in advance of either opening a file or initiating a preliminary inquiry or investigation. If the source of the anonymous complaint is known, such information shall be recorded by Chief Counsel for purposes of any ensuing preliminary inquiry or investigation as well as for advising the complainant of the ultimate disposition of the Board.

#### **IOP 4.04. SCOPE OF PRELIMINARY INQUIRY BY STAFF**

Upon receipt of a proper or approved complaint, Chief Counsel and staff shall immediately initiate a preliminary inquiry including a legal analysis and fact-finding intended to aid the Board in determining whether or not to authorize a full investigation.

In carrying out a preliminary inquiry, Chief Counsel and staff may clarify complaints by interviewing complainants and their attorneys, interviewing the complainant's adversary and other lawyers in the matter, interviewing witnesses, and obtaining public records, including the ordering of transcripts. Chief Counsel may issue a Chief Counsel's Letter of Inquiry when appropriate without obtaining prior approval of the Board. Chief Counsel's Letter of Inquiry shall indicate that it is issued under the general authority of the JCB but that the subject complaint has yet to be brought to the Board for final disposition.

Chief Counsel, in order to facilitate the investigation, also may request a formal JCB Letter of Inquiry if approved by the Board. Additionally, a preliminary inquiry may include a deposition when authorized by the Board.

Chief Counsel shall routinely inform and update the Board concerning the scope and extent of all preliminary inquiries. In this regard, the Log shall be kept current and routinely shared with the Board.

#### **IOP 4.05. PRELIMINARY BOARD REVIEW AND ACTION**

After reviewing the complaint, Chief Counsel's recommendation, and the results of any preliminary inquiry, the Board shall take one or more of the following actions:

- (a) dismiss the complaint;
- (b) request Chief Counsel to conduct a supplemental preliminary investigation (Letter of Inquiry);
- (c) direct Chief Counsel to proceed with a full investigation (NOFI);
- (d) defer further action during the pendency of a criminal matter, if appropriate; or
- (e) refer the matter to another appropriate agency.

The Board's decision shall be recorded in the minutes of the meeting.

#### **IOP 4.06. INVESTIGATIVE SUBPOENAS**

Pursuant to Article V, Section 18(a)(7) of the Pennsylvania Constitution, the Board may authorize Chief Counsel to issue subpoenas to compel testimony under oath of witnesses, including the respondent judicial officer who is the subject of the investigation, and to compel the production of documents, books, accounts and all other records (in whatever form, paper, electronic or otherwise) relevant to the Board's investigation.

#### **IOP 4.07. REFERRAL OF COMPLAINTS TO LAW ENFORCEMENT AGENCIES**

Any complaint filed with the Board that alleges criminal activity by a respondent judicial officer shall be brought to the Board's immediate attention but no later than thirty (30) days of receipt at the Board's office. Chief Counsel shall request the Chair to call a special meeting to be conducted by tele-conference unless a regular meeting is scheduled to be held in close proximity, and then in that event the matter shall be placed immediately on the agenda of that meeting. The Board shall review the particulars of the complaint and may, by majority vote, refer the matter to the appropriate law enforcement agency. The Board also shall determine whether it will actively investigate any part of the complaint that addresses potential ethical violations that are severable from the alleged criminal conduct. In its consideration of whether or not to retain jurisdiction in whole or in part, the Board shall consider whether its investigation may be prejudicial to the process of a pending grand jury investigation or other law enforcement investigation. The Board also may consider whether a duplicative, potentially over-lapping investigation would represent the best use of its limited resources. In the case of a referral, the Board may continue to monitor the status of the external investigation to the extent practicable, and shall hold in abeyance its prosecutorial authority awaiting the outcome of the disposition by the law enforcement agency.

#### **IOP 4.08. GENERAL STANDARDS FOR EVALUATING JUDICIAL CONDUCT BOARD CASES**

In evaluating the nature and extent of alleged judicial misconduct, the Board may consider one or more of the following non-exclusive factors:

##### **The Nature of the Misconduct**

- Whether the misconduct occurred in the judge's official capacity or in the judge's private life;
- Whether the misconduct occurred in the courtroom or in the judge's administrative role;
- Whether the judge exploited the judicial position to satisfy personal desires;
- Whether the misconduct constituted a crime, particularly one of a type over which the judge's court has jurisdiction;
- Whether the misconduct involved dishonest acts or moral turpitude;
- Whether the judge acted in bad faith, good faith, or negligently;
- Whether the judge's act was spontaneous, premeditated or deliberate;
- Whether the judge was motivated by compassion for others or for person profit, vindictiveness, ill-will or other dishonest and selfish motives;
- Whether the conduct involved the appearance of impropriety or an actual impropriety;
- Whether the misconduct affected or appeared to affect the administration of justice;
- Whether the misconduct undermined the ability of the justice system to discover the truth or to reach the most just result or merely delayed the result;

- Whether the judge's conduct was contrary to a public policy to which the state has made a commitment;
- Whether the misconduct involved the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion; and
- Whether the misconduct evidenced lack of independence or impartiality.

#### **The Extent of the Misconduct**

- Whether the misconduct was an isolated instance or part of a pattern or course of conduct;
- The actual or potential for harm to the court system, to litigants, and to the public's perception of the fairness of the judicial system:
  - The number of victims;
  - The vulnerability of the victims; and
  - Whether there was indirect economic detriment to the public.

#### **The Judge's Culpability**

- Whether the judge was suffering from personal or emotional problems;
- Whether the judge was suffering from physical or mental disability;
- Whether the judge was impaired by alcoholism or drug abuse;
- Whether the judge's problems were due to stress;
- Whether there was judicial precedent that the judge's conduct was unethical;
- Whether other judges have been disciplined for similar misconduct;
- Whether the judge asked for and complied with a judicial ethics advisory opinion; and
- Whether the judge ignored others' efforts to persuade the judge to change his or her behavior.

#### **The Judge's Conduct in Response to the Board's Inquiry**

- Whether the judge acknowledged the misconduct, took responsibility, or showed remorse;
- Whether the judge made an effort to change his or her conduct;
- Whether the judge attempted to blame his or her conduct on others;
- Whether the judge failed to respond to the Board's inquiry;
- Whether the judge advanced an unlikely defense;
- Whether the judge attempted to interfere with witnesses;
- Whether the judge was candid or less than forthcoming with Board counsel or Board Investigator;
- Whether the judge presented false evidence or gave false testimony to Board counsel;
- Whether the judge gave evasive testimony; and
- Whether the judge showed a contemptuous attitude toward Board proceedings.

### **The Judge's Record**

- The length of time the judge has served:
  - Whether the judge was experienced and should have been familiar with the high standards of judicial behavior.
- Inexperience in the practice of law;
- Whether the judge had previous NOFI's or Letters of Counsel:
  - The remoteness of any previous Board's action;
  - The similarity between the previous conduct and the current conduct; and
  - Whether the judge complied with prior Board recommendations.
- The judge's reputation:
  - Positive contributions made by the judge to the court and community;
  - The judge's commitment to fairness and innovated procedural reform; and
  - The judge's ability to fairly, effectively, and efficiently run a court with a heavy caseload.

### **IOP 4.09. LETTERS OF CAUTION AND LETTERS OF COUNSEL**

In advance of Chief Counsel's request for authorization to issue a Letter of Counsel as a final disposition, the respondent judicial officer shall have received information concerning the pendency of an investigation by means of a Notice of Full Investigation (NOFI) with a corresponding opportunity for the subject judicial officer to respond.

Also, before a dismissal with a Letter of Caution may occur, the respondent judicial officer shall have been given notice of the pendency of the complaint and afforded an opportunity to respond.

### **IOP 4.10. STANDARDS FOR ISSUING A LETTER OF INQUIRY VS. A NOTIFICATION OF FULL INVESTIGATION**

The Board typically considers a Letter of Inquiry to be a less serious mode of inquiry than a Notice of Full Investigation into a matter which would unlikely result in a Court of Judicial Discipline case. The scope of Letters of Inquiry can be broad, although their most common use is with allegations of judicial delay. Ordinarily, a Letter of Inquiry should only contain requests for information and not reference possible Constitutional and/or canonical violations. As such, it represents a moderately formal means of seeking information from the respondent judicial officer concerning the alleged events or circumstances.

An important consideration is that with a Letter of Inquiry, the respondent judicial officer is not apprised of any right to counsel as with a Notice of Full Investigation.

After a Letter of Inquiry is issued, staff counsel may determine that subsequent interviews are required either to corroborate or contradict the respondent judicial officer's written response. Information obtained through a Letter of Inquiry ultimately could lead to the issuance of Notice of Full Investigation.

The immediate issuance of a Notice of Full Investigation (i.e. without a formal Letter of Inquiry of the Board or Letter of Inquiry of Chief Counsel) could be based upon substantiated media reports of criminal misconduct, federal or state indictment or information of a similar nature from a reliable source.

#### **IOP 4.11. STANDARDS AND IMPORT FOR BOARD ACTIONS**

Dismissal after Preliminary Investigation (DAPI). Typically, the allegations are not within the JCB's jurisdiction, involve legal error, are time barred by the four (4) year statute of limitations, or cannot be corroborated.

Dismissal with Letter of Caution. Alleged misconduct could be more in the nature of an over-sight or represent an aberrational event or circumstance. The underlying purpose of a Letter of Caution is that it serve as a constructive "wake-up" call.

Dismissal with Letter of Counsel. The Letter of Counsel is to serve as an informal disciplinary measure that, if the Respondent judicial officer were not to agree to the receipt of this informal action, the misconduct would merit the filing of formal charges in the Court of Judicial Discipline. The standards should encompass more egregious misconduct. Misconduct, although a significant violation, may constitute a first-time infraction. Evidence of genuine remorse on the part of the respondent judicial officer is a significant mitigating factor.

Notice of Full Investigation (NOFI). Misconduct that, at the preliminary investigative stage, the Board determines warrants a potential finding of probable cause for the filing of formal charges before the Court of Judicial Discipline (CJD). It is a more formal letter outlining specific allegations and possible Constitutional and canonical violations. The respondent judicial officer is provided with the names of ethics' attorneys to contact for consultation. As stated in JCB Rule of Procedure 30 (2)(c), the respondent judicial officer has the right to respond to the Notice of Full Investigation (NOFI).

Formal Charges. The misconduct is so egregious that probable cause exists to file formal charges, including, without limitation, conduct that resulted in a prior criminal conviction, a pattern of serious misconduct or the failure of the respondent judicial officer to complete a rehabilitative diversion program. The Board must employ the "clear and convincing" evidentiary standard in determining whether there is "probable cause" for the filing of formal charges.

#### **IOP 4.12. RELIEF AVAILABLE WHEN IMPAIRMENT IS SUSPECTED**

J.C.B.R.P. Chapter 10, Rules 32-35 and Chapter 11, Rules 36-38. Each Chapter provides the Board's policy to assist an impaired judicial officer and also protect the integrity of the judiciary.



**IOP 4.13. EMERGENCY REMOVAL WHEN ADMINISTRATION OF JUSTICE IS SIGNIFICANTLY IMPACTED**

C.J.D.R.P. Chapter 7, Rules 701-706 and Chapter 8, Rule 801 address how the Board proceeds to address matters of immediate importance before the Court of Judicial Discipline, other than the filing of Formal Charges. Rule 701 states that relief other than by the filing of formal charges pursuant to Article V, §18(b) (5), shall be initiated by a Petition for Relief. Rule 801 allows the Court to issue an interim order granting suspension prior to notice or a hearing by acting on the basis of the averments of the pleadings and such other evidence as the Court may require.

**V. CONFIDENTIALITY OF COMPLAINTS, PROCESSES, DELIBERATIONS AND RECORDS**

**IOP 5.01 CONFIDENTIALITY OF JCB PROCEEDINGS IN GENERAL**

All complaints, processes, deliberations and records of the JCB shall be treated as strictly confidential, and shall not be divulged in any context or in any forum except when otherwise authorized by the Authority or in response to a court order. The respondent judicial officer may waive confidentiality with respect to the complaint, but the Board shall reserve judgment, in its discretion, whether or not to make the complaint public. A public response, if any is made by the JCB, should be limited to: (a) a Complaint (attached) was filed against the named respondent judicial officer; (b) the respondent judicial officer has the right to an attorney, (c) the JCB has the sole burden of proof which is by clear and convincing evidence; and, (d) it is presumed that the respondent judicial officer has not committed any violation of the Code of Judicial Conduct. Of course, the complaint along with supporting evidence may be submitted to the Court of Judicial Discipline in connection with a JCB case. In support of the broad privilege of confidentiality concerning the Board's work, see Pa. Const. art. V., § 18(a)(8); *In Re Hasay*, 546 Pa. 481, 495 (1996); *Larsen v. Phila. Newspapers, Inc.*, 375 Pa. Super 66, 73, n5 (1988); *First Amendment Coalition v. Judicial Inquiry and Review Board*, 784 F.2d 467, 475 (3d Cir. 1986); *In Re: Subpoena on Judicial Conduct and Review Board*, 542 Pa. 496, 504 (1986); *Ario v. Deloitte & Touche, LLP*, 934 A.2d 1290, 1293 (Pa. Commw. 2007); *Leber v. Stretton*, 928 A.2d 262, 270 n. 12 (Pa. Super 2007); and *Commonwealth v. Vartan*, 557 Pa. 390, 400.

**IOP 5.02. BOARD MEMBER ACCESS TO JCB FILES AND RECORDS**

Any inquiry made to staff by a member of the Board concerning a pending complaint must be made by and through the Chair to Chief Counsel. Chief Counsel will memorialize for the benefit of all other Board members the nature of the inquiry and Chief Counsel's response. However, no information whatsoever shall be made available to any Board Member who has recused or been disqualified, or who has been designated by Chief Counsel as a potential witness.

**VI. NOTIFICATION LETTERS TO JUDGES REGARDING  
DISMISSAL AFTER PRELIMINARY INVESTIGATION (DAPI):  
COMPLAINANTS.**

**IOP 6.01 NOTIFICATION OF LETTERS**

Dismissal letters following preliminary investigation (DAPI) shall be issued to all respondent judicial officers. As a matter of course, all complainants shall be given notice of all final dispositions.

**VII. TRAVEL POLICY/GUIDELINES**

**IOP 7.01 TRAVEL POLICIES AND GUIDELINES**

SEE BOARD-RELATED BUSINESS EXPENSES - POLICY & PROCEDURES  
ATTACHMENT A.

**VIII. RECORDS OF THE BOARD AND STAFF**

**IOP 8.01. RECORD RETENTION POLICY**

A. Digital Images/CD

1. All complaint files shall be saved as digital images capable of being electronically reproduced as soon as practical. This transfer may take place over a period of years, if deemed advisable, and then annually after the initial backlog is finally transferred.

2. All Formal Charges filed in the Court of Judicial Discipline, transcripts, decisions and recommendations and all other materials associated with the Formal Complaints shall be transferred to digital images/CD capable of being electronically reproduced as soon as practical. This transfer may take place over a period of years, if deemed advisable, and then annually after the initial backlog is finally transferred.

3. All Minutes shall be transferred to digital images/CD storage capable of being electronically reproduced as soon as practical as soon as practical. This transfer may take place over a period of years, if deemed advisable, and then annually after the initial backlog is finally transferred.

4. One copy of each Annual Report shall be transferred to digital images/CD storage as soon as practical. This transfer may take place over a period of years, if deemed advisable, and then annually after the initial backlog is finally transferred.

B. Retention of Files and Other Materials

1. All Formal Complaints, transcripts, decisions and recommendations and all other materials associated with the Formal Complaints shall be maintained on the Board's premises. Any consent discipline also shall be maintained on the Board's premises.

2. All Minutes and electronic tapes shall be maintained on the Board's premises.

3. All other materials shall be retained except as set forth in Section III.

C. Disposal of Materials

Unless required for an active, ongoing investigation, the following document destruction policies shall be employed:

1. Deceased judges

After being saved as a digital image capable of being electronically reproduced the complaint file(s) (but not the Formal Complaints) against any deceased judge shall be destroyed.

2. Dismissals

If the complaint is dismissed, the file shall be destroyed six years after the date of the dismissal letter, or after being saved as a digital image capable of being electronically reproduced, whichever is later.

3. Correspondence and miscellaneous material to/from potential Complainants

All correspondence and miscellaneous material to or from potential Complainants who elected not to proceed by filing a proper Request for Investigation shall be destroyed after three years after being saved as a digital image capable of being reproduced.

4. Other correspondence

All correspondence to or from the Board, including to or from Board members, and including the "chrono" file, shall be destroyed after six years after being saved as a digital image capable of being reproduced.

5. Bills and Invoices

All bills and invoices shall be destroyed after seven years.

6. Personnel files

Personnel files may be transferred to digital images/CD capable of being reproduced electronically. The paper files shall be destroyed after the elapse of any statute of limitations

applicable to the initiation by the employee of a civil action against the Board or the Commonwealth.

D. **Procedure for Destroying Materials**

1. Designation by the Chief Counsel

The Chief Counsel, as deemed necessary, but at least once per year, shall review all materials that may be disposed of in accordance with this policy. The Chief Counsel shall then segregate those materials and designate them in a letter to all Board members as being available for disposal.

2. The Record Retention Committee

The RR Committee (IOP 2.05.3) shall meet as deemed necessary by the RR Committee members, or at the direction of the Board, but at least once per year. At that meeting, in addition to whatever other business the RR Committee may have, it shall review the materials identified for disposal pursuant to Section IV(A). The RR Committee shall recommend to the Board what action is proposed to be taken with respect to those materials.

3. Board approval

The Board shall as it deems necessary, but at least once per year, review the recommendations of the RR Committee with respect to the disposal of materials and order destruction or retention.

E. **Disposal of Materials**

The Chief Counsel shall arrange for the secure and confidential disposal of all materials so designated by the Board as soon thereafter as would be practicable.

VIII. **MISCELLANEOUS**

**IOP 9.01. CHIEF COUNSEL AND STAFF EVALUATIONS**

The JCB shall oversee a formal evaluation program for Chief Counsel and staff, in accordance with Section 7 Performance Evaluations, of the "Personnel Policies of the Judicial Conduct Board" adopted March 2004, attached hereto as Appendix "B." Standard forms shall be utilized to solicit input from all employees as to their goals and level of performance (including input concerning planned targets and objectives for the upcoming year). With input from the Board, Chief Counsel shall meet with each employee to discuss the particulars of the formal evaluations. Using a similar process, the Board Chair and Vice-Chair shall meet with Chief Counsel to discuss his or her performance and evaluation. Under no circumstances shall the evaluation process alter the "at will" status of the employees of the JCB.

**IOP 9.02. TIME RECORDS**

Chief Counsel, Staff Counsel and Board Investigators shall maintain daily time records that accurately reflect by case number or administrative task the work performed by each of them. These records will serve to assist the Board in understanding how its staff is expending and allocating JCB resources.

**IOP 9.03. EXPENDITURES OF THE JUDICIAL CONDUCT BOARD**

The Chair has authority to authorize expenses up to \$1000. Expenditures more than \$1000 shall require advance Board approval.

**IOP 9.04. POLICY DECLARATIONS**

Any proposed amendment, modification or rescission of an Internal Operating Policy shall require the approval of the Board, and shall be submitted to each Board member at least ten (10) days preceding the meeting at which action is to be taken thereon.

## APPENDIX "A"

# JUDICIAL CONDUCT BOARD

## Board-Related Business Expenses - Policy and Procedures Adopted - February 5, 2007

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### AUTHORIZING AUTHORITY:

As defined for the purposes of this policy, the authorizing authority shall be the Judicial Conduct Board of Pennsylvania, in conformity with the Administrative Office of Pennsylvania Courts Policy Memorandum to All Jurists of the Appellate Courts dated June 30, 2006, effective July 1, 2006.

### BOARD-RELATED BUSINESS EXPENSES:

Board members do not have expense accounts or allowances; instead they are reimbursed for actual and necessary board-related costs incurred in the performance of their board duties.

Board members expenses may be paid by the vendor directly billing the Board or by the Board member paying the expense directly by personal check, credit card or cash, and requesting reimbursement through an expense voucher. Items to consider:

- ▶ *When requesting reimbursement through an expense voucher, it must first be determined whether the expense should be charged to the respective expense appropriation.*
- ▶ *The expense appropriation should be charged for most of the travel and travel-related charges specific to the Board member's job duties. But there are exceptions as outlined in this policy.*
- ▶ *When uncertain how to charge a specific item, please contact the Chief Counsel.*

When expenses are being reimbursed and charged to the expense appropriation, the business expense voucher form should be used (see **TAB 1**). Only expenses incurred by Board Members shall be appropriate for reimbursement.

### BOARD-RELATED EXPENSE REIMBURSEMENT POLICY:

The expense must be actual and necessary and within the limitations set forth on the following pages. All expenses are subject to review by the Board Chair or Chief Counsel; any expense item disapproved shall not be reimbursed. A board-related expense claim may not be paid unless rendered upon an "expense voucher" form within sixty (60) days after the expense was incurred. All expenses shall be properly itemized and accompanied by the original copy of the required receipts.

## **ALLOWABLE EXPENSES:**

### **I. Transportation**

A. General Rules - All modes of transportation are authorized consistent with the requirements of the assignment and with the efficient and economic conduct of official business. Travel must be by the most direct route unless an indirect route is more economical. When a round-trip ticket is less expensive than two one-way tickets, and when practicable, the round-trip ticket must be purchased.

B. When traveling by airplane or railroad, receipts must be submitted. First-class accommodations should be used only when required because other classes are fully booked or unless other circumstances warrant, e.g. medical.

C. When traveling by automobile, reimbursement will be on a mileage reimbursement basis.

D. The use of taxicabs and airport limousines is allowed; receipts are required if the amount exceeds \$35.00. Cash paid for fares for local buses, streetcars, subways and the like, is reimbursable and no receipts will be required.

E. Parking charges, either lot or meter, in reasonable amounts depending on the geographical location, as well as toll road, toll bridge, and ferry charges, are reimbursable. In the interest of personal security and security of confidential documents, valet parking charges are also reimbursable. Receipts are required for amounts in excess of \$35.00 per use.

### **II. Lodging:**

A. General Rules - All appropriately reimbursable charges should be submitted on the expense voucher with receipts when the expense is in excess of \$35.00.

### **III. Subsistence and Business-related Meals:**

A. General Rules - Board members in overnight travel status or participating in or hosting business-related meals are entitled to reimbursement for actual meal expenditures. A receipt is required if the cost of the meal exceeds \$35.00, not including gratuity.

### **IV. Registration Fees:**

A. General Rules - Registration fees at professional or association programs or meetings are reimbursable.

### **V. Other Expenses:**



A. General Rules - Other actual Board-related expenses, such as telephone emergency equipment or supply purchases and all other charges necessary to the completion of Board-related business may be reimbursed with appropriate receipts where available.

**VI. Gratuities:**

A. General Rules - Reasonable gratuities for meals are allowable. Gratuities may not exceed 20% of the total meal charge.

B. Reasonable gratuities for miscellaneous services rendered by doormen, baggage handlers, and the like, are reimbursable.

**RECEIPTS**

**Receipts need not be submitted with the expense voucher for:**

- A. Taxicab or airport limousine fares of less than \$35.00.
- B. Local bus, streetcar, or subway fare.
- C. Personal automobile mileage or gasoline.
- D. Meals costing less than \$35.00 (not including gratuity).
- E. Parking (if less than \$35.00), tolls, facsimile, registered or certified mail and money order charges.
- F. Reasonable tips to service personnel.

**NOTE:**

Please note no expenses will be reimbursed if a required receipt is missing, unless it was impossible to secure such a receipt and the reason is fully explained.

**ITEMS NOT ELIGIBLE FOR REIMBURSEMENT:**

- A. Fees for short term rental cars for days prior to the day of arrival or after the day of departure from meeting or assignment.
- B. Meals taken while a seminar or meeting is in progress and a meal is being served as part of the meeting activities unless medically required.
- C. Rooms taken more than fifteen hours prior to start of meeting.
- D. Rooms used and expenses incurred more than twelve hours beyond termination date of seminar or assignment.
- E. Additional room charges for multiple occupants.
- F. Alcoholic beverages.
- G. Valet service (Except as stated in section I-E of this policy.)
- H. Charges for personal telephone calls.
- I. In-room movies.
- J. Car washes and detailing.
- K. Miscellaneous snacks, drinks from a mini-bar when purchased in addition to chargeable meals; but allowable if consumed during a business meeting in a hotel room.

- L. Overweight luggage surcharge.
- M. Late check-out fees assessed by a hotel.
- N. Airline baggage insurance.
- O. Tipping in excess of 20% (twenty percent).

**EXCEPTIONS:**

The Judicial Conduct Board may permit variance from the foregoing standards upon the application in writing to the Chairperson the reasons established therefore in such written request. Said documentation should be attached to the expense voucher.

**IN PREPARING EXPENSE VOUCHER FORMS, THE FOLLOWING GUIDELINES MAY BE HELPFUL:**

A. General Rules - The original and three copies are to be submitted directly to PAULA R. CARUSO. Data should be printed legibly and in ink or typed and signed by the member. The following steps summarize completion of a business expense claim:

1. Enter name, title, and complete address.
2. Enter dates for the period covered.
3. Complete the purpose of the travel as appropriate (e.g., "board business").
4. Complete lodging information as follows:
  - a. Enter name of hotel or motel that provided the accommodations and the hotel order number, if appropriate. If a hotel order is not used, enter the name of the hotel and attach the bill.
  - b. Enter amount(s) expended for meals.
5. Complete transportation information for each travel location as follows:
  - a. Indicate the type of transportation and the number of miles if a personal auto was involved.
  - b. Enter the name of the carrier and the amount paid if commercial transportation was obtained.
  - c. Identify miscellaneous expenses and the amount(s) incurred; for example, tolls, parking, etc.
6. Enter the total expenditures and the grand total for the reimbursement claimed.
7. Attach all receipts.
8. Retain one copy of all materials (including receipts) before forwarding the original and three copies to the appropriate office.

## APPENDIX "B"

## **Section 7**

### **Performance Evaluations**

#### **A. Objectives of Evaluating Job Performance**

It is the policy of the Unified Judicial System to regularly evaluate the work performance of its employees: (1) to allow managers to properly assess each employee's performance and development, and (2) to allow employees the opportunity to receive information from their supervisors regarding the adequacy of their job performance.

A performance evaluation will not necessarily result in a change in pay or job duties.

#### **B. Types of Performance Evaluations**

The Chief Counsel may choose to evaluate employees of the Judicial Conduct Board at any time; however, performance evaluations will be mandatory as indicated below:

- Probationary Evaluations. Employees on Probationary Employment Status will have their job performance evaluated at six month intervals during the period that they are on probationary status beginning with the first six-month anniversary of the date of their being assigned to probationary status.
- Anniversary Date Evaluations. Employees on Regular Employment Status will be evaluated once a year on their Payroll Anniversary Date.
- Special Evaluations. All requests for Merit Pay Increases, Promotions, and Demotions must be accompanied by a timely performance evaluation.

#### **C. Timeliness of Performance Evaluations**

The Chief Counsel is strongly encouraged to provide employees of the Judicial Conduct Board with performance evaluations on a timely basis. Whenever possible, Chief Counsel should make every effort to complete such evaluations no later than the anniversary date which has necessitated the evaluation.

#### **D. Evaluating Authorities**

All employees of the Judicial Conduct Board, with the exception of the Chief Counsel, will have their performance rated by the Chief Counsel. The Chief Counsel will have his or her performance rated by the Chair of the Board who shall consult with the members of the Board.

#### **E. Defining Measures of Performance**

The Chief Counsel will be expected to provide employees with fair, thoughtful, and objective evaluations of the employees' job performance, comparable to that which the Chief Counsel would hope to receive from the Board.

The following uniform definitions are provided for use in connection with performance evaluations:

- *Exceptional* is performance which is notably and consistently superior to acceptable standards and reasonable expectations;
- *Very Good* is performance which often exceeds acceptable standards and reasonable expectations;
- *Good* is performance which normally meets acceptable standards and reasonable expectations;
- *Marginal* is performance which often does not meet acceptable standards or reasonable expectations;
- *Unsatisfactory* is performance which does not meet acceptable -standards or reasonable expectations.

When rating employees as "Unsatisfactory," the Chief Counsel must provide written comments to support these evaluations.

#### **F. Option to Discuss and Respond to Performance Evaluations**

Employees will, in every case, have the option to discuss their performance evaluation with the Chief Counsel.

If an employee of the Judicial Conduct Board feels that their performance has not been fairly and accurately rated by their evaluator, they may, within 30 days of receiving their evaluation, prepare a written Statement of Exception which states their exceptions to the performance evaluation which they received. Such

statements, which may not exceed two typewritten pages, will be attached to the employee's evaluation and will become a part of their permanent employment record; maintained by Chief Counsel in a secure area within his/her office.

**G. Routing of Performance Evaluations**

Performance evaluations will be prepared by the Chief Counsel. An employee's performance evaluation will be given to the employee, and the employee will be given a reasonable time to review their evaluation before meeting with the Chief Counsel to discuss their job performance.

# The Legal Intelligencer

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## JCB Tabled Conahan Investigation in 2006

Leo Strupczewski and Hank Grezlak

12-10-2009

The Judicial Conduct Board voted in 2006 to table an investigation into a detailed complaint filed against former Luzerne County Judge Michael T. Conahan after its chief counsel notified the board of the complaint's existence, according to the current board chairman.

The 12-member board did so, however, without seeing the complaint or being advised as to the nature of its allegations, JCB Chairman John R. Cellucci said Wednesday. Instead, Cellucci said, the board's chief counsel, Joseph A. Massa Jr., told board members that an anonymous letter containing allegations against Conahan had been received by the board and that "there was a criminal investigation going on."

It is unclear whether any of the board members asked any questions regarding the complaint.

"He put it up to the board [for a vote] and we just followed the procedure of the boards before us and before us and before us," Cellucci said. "[We decided] to keep it under seal until the investigation was completed."

The procedure of the board, Cellucci said, historically has been to table its investigations when a law enforcement agency is conducting a criminal investigation. Both Massa and board member Edwin L. Klett have told the Interbranch Commission on Juvenile Justice that the board operates in that manner to save resources. The board operates on a limited budget and has a small staff, Massa has said.

Cellucci's statement is a revelation as to how the board handled the Sept. 28, 2006, complaint filed against Conahan — a process the Interbranch Commission has been attempting to pin down since it first held a hearing in October — and further corroborates previous testimony before the commission that Massa was a "gatekeeper" for the judicial disciplinary system.

The complaint, as previously reported by *The Legal*, contains detailed allegations of case-fixing, mob ties and the improper placement of juveniles in a privately owned juvenile detention facility.

Cellucci's story also comes a day after the commission's chairman accused the board of stonewalling any attempt to evaluate the JCB's handling of the Conahan complaint.

The commission, charged with examining issues surrounding the state's juvenile justice system and the effectiveness of the judicial disciplinary system, was created after Conahan and fellow former Luzerne

Cellucci #2

County Judge Mark A. Ciavarella Jr. were charged by federal investigators with allegedly taking \$2.8 million in payments from the builder and former co-owner of the private juvenile detention center, PA Child Care. Federal investigators have alleged that money motivated the former judges to sentence juveniles there, even when unwarranted. The judges reject the allegations.

"In our efforts to gather information from the JCB we have asked for it formally, informally, on the record and off the record," said John M. Cleland, chairman of the Interbranch Commission. "Our requests for meaningful information have been met with an unyielding refusal to provide the information based on an assertion of constitutional confidentiality."

Cleland's statement preceded testimony from Klett, who told the commission he never saw a copy of the 2006 complaint filed against Conahan until he requested it this summer.

Klett also told the commission he did not learn of the complaint until August 2008, when Massa told the board he met with the U.S. Attorney's Office for the Middle District of Pennsylvania in "June or July of '08."

Cellucci said Wednesday that the August 2008 meeting was the second time Massa told the board of the complaint against Conahan, and Klett acknowledged in an interview Wednesday that he misspoke in his testimony on Tuesday.

"I did not mean to imply I never had knowledge of a Conahan issue," Klett said.

Ever since the revelation in September that the JCB received the complaint against Conahan, the board's responses to inquiries have raised a host of troubling questions.

How many complaints were filed against Conahan? What did the board do with those complaints? When did the board speak with federal authorities? What, if anything, did the JCB tell federal investigators regarding the complaints? What did the board do with the complaints between the time they were filed and the filing of federal charges? Why wasn't the board made aware of the allegations in the 2006 complaint?

Robert L. Byer, a former Commonwealth Court judge and former member of the Court of Judicial Discipline, said the JCB needs to be more forthcoming.

"This situation is so serious, there cannot be any sacred cows," said Byer, now an appellate lawyer with Duane Morris. "There needs to be full disclosure."

Byer said that two things "ought to happen" to address the questions surrounding the JCB's handling of the case and the judicial discipline system as a whole.

"The Supreme Court should give consideration of an independent investigation of the board," he said. "[And] I think the General Assembly should have a committee look at this and consider whether this situation calls for changes" to the state constitution regarding the JCB and the Court of Judicial Discipline.

Another option, Byer said, was that the Supreme Court could empower the commission to fully investigate the board. It is the commission's belief that it already has a mandate to examine the effectiveness of the JCB, according to Cleland.

"Maybe the court needs to expand their charter," Byer said.



Byer also said that if the board didn't ask questions when the vote to table the investigation came up, they should have.

Both Cellucci and Klett independently verified that the board's procedures have called for the JCB's chief counsel to review complaints and provide board members with a synopsis of those complaints along with a recommendation on what type of action the board should take.

The board can vote to dismiss a complaint, send a judge a letter of caution or counsel or open a formal investigation into the judge. It is only after a full investigation that disciplinary charges are filed.

Cellucci also said Wednesday that former board member Patrick Judge Sr. recused himself before the vote.

According to the *Citizens' Voice* newspaper, Judge and Conahan have shared in investments in Florida real estate and a Forty Fort, Pa., ambulance company. The newspaper made those ties through state financial disclosure forms.

"He walked out of the office, out of the meeting," Cellucci said of Judge, who is now a member of the Court of Judicial Discipline. "He said, 'I recuse.' I found out later he had some business dealing with Conahan."

Judge could not be reached for comment.

It is unclear what recommendation, if any, Massa provided the board.

Cellucci and Klett both said, however, that the board's members are seeking to change the process and re-instill the board with many of the chief counsel's responsibilities.

"We want to correct what we feel is a problem," Cellucci said. "And this board will do it."

In testimony to the commission, Klett said, "Way too much discretion has been placed with the staff."

Massa could not be reached for comment.

The chief counsel is not allowed to comment on the issues, said the JCB's attorney, Paul Titus of Schnader Harrison Segal & Lewis in Pittsburgh.

"The decision was made I ought to discuss it with the media," Titus said, but, noting that it would be inappropriate to do so, he decided to make no comment.

Cellucci said it was the board's decision, not Massa's, to retain Titus as counsel. Klett has been the board's liaison to counsel, Titus said Wednesday. •

1 Q Okay.

2 A If we receive an allegation -- a complaint alleging  
3 serious criminal conduct, the Board's protocol is to refer  
4 that matter to the appropriate public agency, either the  
5 local District Attorney, the Attorney General's Office, the  
6 US Attorney's Office, and to defer investigation -- further  
7 investigation until the criminal judge -- the criminal  
8 charges are completed.

9 Q Now, who makes that determination, you or the  
10 Board?

11 A The Board upon my recommendation.

12 Q Now, is that recommendation written? Do you  
13 prepare a written report as it relates to referring a matter  
14 to the US Attorney's Office or the District Attorney's  
15 Office?

16 A Virtually without -- without exception that would  
17 be a written recommendation.

18 Q Do you do that in --

19 A Yes, it would be a written recommendation.

20 Q Okay. Do you do that in consultation with any of  
21 your investigators?

22 A Oh, yes, sure.

23 Q Do you interview witnesses to -- how much of --  
24 what do you do as far as your investigation up to that point  
25 to determine that this matter should be referred to another

Cellucci 3.

1 agency?

2 A There's a preliminary investigation, gathering of  
3 information. There could be interviews. Ultimately, again,  
4 staff -- investigative staff reports to counsel. Counsel  
5 reports to the Board. Report is prepared for the Board's  
6 consideration with a recommendation, and then appropriate  
7 action is taken as deemed appropriate -- as deemed proper by  
8 the -- by the Board.

9 Q If the complaint contains criminal allegations and  
10 also ethical allegations, you refer the -- that portion of  
11 the complaint to US Attorney's Office or the District  
12 Attorney's Office, does the Board continue to investigate  
13 the ethical -- alleged ethical violations of the complaint?

14 A It may or may not depending upon the circumstances.

15 Q Who makes that determination?

16 A Chief counsel with the advice and consent of the  
17 Board.

18 Q What's your basis to defer or wait on the ethical  
19 violations, investigating the ethical violations?

20 A If I could give you an example. Again, I believe  
21 this is a fair example, and this has not occurred. So --  
22 but I believe it's an appropriate response to your -- your  
23 appropriate question.

24 If we were to receive a complaint that a judge has  
25 been discourteous, has yelled, ranted and raved in court,

1 has sexually harassed an employee, and by the way has been  
2 charged with the crime of rape, Felony I, crime of rape.

3 Is the fact that the complaint contains allegations  
4 of sexual harassment, profanity to the courtroom, et cetera,  
5 is that a violation of the Code of Judicial Conduct? Yes,  
6 it is.

7 Q Would you consider that fairly serious?

8 A I'm sorry?

9 Q Would you consider -- would the Board consider that  
10 serious allegations?

11 A You mean the non-criminal?

12 Q The non-criminal?

13 A Oh, sure.

14 Q Then why wouldn't they continue to investigate that  
15 as the criminal side is being investigated?

16 A Matter of resources, of time, judgement on a case  
17 by case basis.

18 Q Who makes that determination?

19 A Again, chief counsel and/or with the advice and  
20 consent of the Board.

21 Q How long would you wait -- if you did cease waiting  
22 to investigate any further the ethical violations of a  
23 complaint that has criminal -- alleged criminal violations,  
24 how long would you wait if you deferred the investigation?

25 A If the -- if the complaint were solely -- solely

1 involved criminal violations, we would defer them obviously  
2 until the appropriate agency completed it. If a complaint  
3 contained both criminal and non-criminal, criminal  
4 allegations and ethical violations of the Code of Judicial  
5 Conduct as well, that would be determined on a case by case  
6 basis.

7 I can't be any more specific on that at the moment.  
8 It would be a judgement call as to what were the nature of  
9 the ethical allegations, the allegations involving ethical  
10 misconduct, how serious were they. Are they provable or  
11 not, et cetera.

12 Q Why would you wait at all? Why would you wait at  
13 all?

14 A Again, it depends upon the circumstances of a  
15 particular case.

16 Q Would the --

17 A It may or may not be appropriate in a particular  
18 case.

19 Q Are you told by the referring agency to cease your  
20 investigation?

21 A Oh, no.

22 Q Is there --

23 A No.

24 Q Is there ongoing -- if you -- if you were, would  
25 you be bound by that directive?