

RECEIVED AND FILED

AUG 20 2020

COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

IN RE: :  
: :  
President Judge Farley Toothman : :  
Court of Common Pleas : No. 1 JD 20  
13<sup>th</sup> Judicial District : :  
Greene County :

BEFORE: Honorable Jeffrey P. Minehart, P.J., Honorable Michael J. Barrasse, J., Honorable Jazelle M. Jones, J., Honorable John H. Foradora, J., Honorable James C. Schwartzman, J., Honorable James J. Eisenhower, J., Honorable Andrea E. Puppio, J., Honorable Ronald S. Marsico, J.

PER CURIAM

FILED: August 20, 2020

**OPINION AND ORDER CONCERNING OMNIBUS  
PRETRIAL MOTION**

Respondent President Judge Toothman has filed an Omnibus Pretrial Motion and supporting briefs requesting judicial diversion under the Interim Policy Statement of the Court.

Judicial diversion is, in essence, a pretrial program for first time, relatively less serious, offenders.

The Judicial Conduct Board filed a brief in opposition to Judge Toothman's judicial diversion request arguing that the allegations against him are too serious to merit diversion.

Under Article V, §18(b)(5) of the Constitution of Pennsylvania the Court of Judicial Discipline has the duty of holding a hearing on formal charges brought by the Judicial Conduct Board against a judge. Both the Board and the Respondent Judge have a right to such a hearing unless they waive it.

In our prior cases where judicial diversion has been granted both the Judicial Conduct Board and the Respondent Judge consented to such a

disposition and waived a hearing. See ***In re Domitrovich*, 150 A.3d 592 (Pa.Ct.Jud.Disc. 2016)** and ***In re Wilson*, 1 JD 17 (2017)**.

Both the Respondent Judge and the Judicial Conduct Board have a right to a hearing. The Court will not order judicial diversion unless both parties waive their right to a hearing as guaranteed to them by Article V, §18(b)(5).

Although we generally think of the right to a hearing as being one of the defendant's rights, under the Article V, §18(b)(5) both parties to a proceeding before the Court of Judicial Discipline have the right to such a hearing unless they waive it. The brief of the Judicial Conduct Board makes clear that the Board is not waiving its right to a hearing or in any way agreeing to judicial diversion for President Judge Toothman. Absent the consent of both parties judicial diversion is DENIED. President Judge Toothman is GRANTED thirty (30) days to file an Answer.