

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: : DOCKET NO. 3 JD 2019
: :
JUDGE SCOTT DiCLAUDIO :
COURT OF COMMON PLEAS :
FIRST JUDICIAL DISTRICT :
PHILADELPHIA COUNTY :

OBJECTIONS AND EXCEPTIONS OF THE RESPONDENT,
JUDGE SCOTT DICLAUDIO, TO THE FINDING OF DISREPUTE
BY THE COURT OF JUDICIAL DISCIPLINE
PURSUANT TO COURT OF JUDICIAL DISCIPLINE,
RULE OF PROCEDURE 503(B),
AND REQUEST FOR ORAL ARGUMENT

On December 1, 2020, this Honorable Court issued its Opinion and Findings of Rule Violations in the captioned case. Attached and marked as Exhibit "A" is the Opinion and Order of this Honorable Court, which found the Respondent, Judge Scott DiClaudio, in violation of Article V, Section 18(d)(1) of the Pennsylvania Constitution in that the Respondent brought the "judicial office into disrepute." It is from this finding that the main Objections and Exceptions are filed by the Respondent, Judge Scott DiClaudio, to the decision of the Judicial Conduct Board. The other rule violations are not being challenged. This is also a brief exception to the comments in footnote 1 on page 24 of Exhibit "A".

A.) Objections to the Finding of Disrepute

In support of the Exceptions, the Respondent has attached and marked as Exhibit "B" his Brief originally filed, which

outlines in great detail the pertinent cases for a finding of disrepute. The Respondent respectfully contends that the universality required for a finding of disrepute is not present here.

The Respondent contends that the factual basis for a finding of disrepute involved one civil case where the Respondent, unfortunately, ignored numerous court orders over a period of time. The Respondent finally appeared and settled the case for a much larger figure than originally sought. There were contempt findings and sanctions for his prior non-appearances. There was no deceitful or dishonest conduct.

The main basis for the Objections is this Honorable Court relied primarily on two cases for the finding of disrepute, which are clearly distinguishable from the conduct of Judge DiClaudio. First, this Honorable Court relied on the case of In re Harrington, 877 A.2d 570 (Pa. Ct. Jud. Disc., 2005). In that case, District Judge Harrington was found in disrepute since she, over a period of time, put parking tickets on her windshield to avoid having to put money in parking meters and to avoid being ticketed. As a result, her car was not ticketed. The Court of Judicial Discipline noted, "It is obvious the purpose was to enable her to park without paying the trifling amount required and to deceive the enforcing officers, thereby escaping the small fine imposed for overtime parking." Id 576. The Court

noted, "The Respondent's determination to defeat its application to her is so unbecoming a judicial officer." Id 576. The Court noted the reasonable expectation of the public would include the expectation that a judicial officer would obey a common ordinance and not devise a scheme to fool the enforcement officer in order to defeat the enforcement of the law." Id 575.

As noted by the Court of Judicial Discipline, District Judge Harrington was involved in deceitful and dishonest conduct. First, she was "intentionally disobeying the law," and then she invented a "devious strategy to avoid payment of the statutory fine." Id 576, 577.

It was Judge Harrington's the dishonest conduct that resulted in the Court of Judicial Discipline's finding of "disrepute." In Judge DiClaudio's misconduct, there was no dishonest conduct. There was just neglect and irresponsible conduct in not dealing with his pending lawsuit filed by a sports club for his daughter's membership fee. As said in the original brief, the Respondent, Judge DiClaudio, represented himself during that time and was the classic example of the old maxim that only a fool would represent themselves. A review of the agreed to and admitted Stipulations does not show dishonesty or deceit. Instead, there was only total avoidance, neglect and failure to appear at hearings.

The other case relied upon almost exclusively by this Honorable Court in the Opinion is the case of In re Nocella, 79 A.3d 766 (Pa. Ct. Jud. Disc., 2013). In the Nocella case, Judge Nocella was found in disrepute and ultimately removed from the bench. This case was the main case argued by the Judicial Conduct Board in their submitted brief. This Honorable Court in its Opinion (Exhibit "A") relied heavily on Nocella for the finding of disrepute.

But the facts in Nocella are not applicable to the facts of Judge DiClaudio's case. Present counsel represented then-Judge Nocella, and knows the case very well. The Nocella case did have findings of contempt when Judge Nocella delayed providing discovery and appearing, but the essence of Judge Nocella's case and the finding of disrepute was his deceit and lying. the disrepute was based on his lying and deceit. There are several aspects to the Nocella case. The first part involved his representation of a political PAC, which ultimately, he used to pay off a campaign debt for Democratic Party Chairman Brady. The problem was, that money was supposed to be used to pay the fines of the PAC to the Philadelphia Ethics Board. The misconduct was compounded by Judge Nocella then devising a scheme to further reduce the amount by taking out the remaining PAC money of \$2,500.00 to pay his legal fee. Originally, he had agreed to pro bono representation, but then apparently fabricated the legal

bill. Judge Nocella then misled the Philadelphia Ethics Board about these payments, and delayed providing discovery. His conduct involved deceit to avoid paying the fines of the Philadelphia Ethics Board and to pay debts incurred by Philadelphia Democratic Chairman Brady.

Judge Nocella then lied about his qualification to be a judge to the Philadelphia Bar Association's Judicial Evaluation Committee. That committee reviews judicial candidates and makes recommendations as to whether they are recommended or not recommended for judicial office. Judge Nocella did not list the numerous lawsuits against him, and particularly failed to list a lawsuit involving the sale of property owned by the American Legion. There, Judge Nocella had taken an excessive fee of \$60,000.00 fee and lied that he was the Secretary of the local American Legion Post at the time that occurred and had authority to do the same. None of this information was provided on a timely basis to the Philadelphia Bar Association's Judicial Committee. In fact, Judge Nocella misled and did not include the information on his 2011 questionnaire when he ran and won the judicial office. This became particularly pertinent in 2011 when he was appointed to be part of the judicial ticket after a judge retired early, Judge Nocella again did not provide this information to the panel, thus keeping his recommended status.

The Court of Judicial Discipline in Nocella, noted the massive deceit as follows:

"We believe it to be beyond dispute that a judge or one who would be a judge - who is willing to lie- and in official documents and repeatedly, as described in Part A of the Board's Complaint...is not one who can be expected to encourage, in deed to insist that truth be spoken in his Courtroom." Id 784.

The Court of Judicial Discipline then noted as follows:

"In this case, the Respondent's relationship with the truth and his regard for its importance in everyday professional life is gruelingly illustrated in the description of his conduct as counsel for the Appreciation Fund, a Political Action Committee..." Id 487.

The Court of Judicial Discipline noted that Judge Nocella "deliberately and systematically dissipated the assets in the Fund's bank account to avoid paying the fines." Id 785, 7876.

In making the recommendation of a finding of disrepute, the Court of Judicial Discipline then stated the following about Judge Nocella:

"While draining the Fund's assets, the Respondent engaged in a pattern of delay and deceit to prevent the Ethics Board from gaining information about the Fund's assets." Id 789.

The Court of Judicial Discipline then noted about Judge Nocella the following:

"In this case, both the truth and the authority of the court went unrecognized by Respondent, so blatantly that he was held to be in contempt of the authority of the court. We find that Respondent's conduct was so extreme that it brings the judicial office into disrepute, and also that the reasonable expectations of the public as to the

behavior of a judicial officer do not include the conduct of the Respondent described above." Id 791.

Mr. Stretton did not cite this case in his original Brief to this Honorable Court since the Nocella case was a disrepute finding because of dishonesty, deceit and a scheme of deceit. Yes, Judge Nocella did have findings of contempt, but it was all structured around his deceit to the Ethics Board and his deceit to the Philadelphia Bar Association's Judicial Committee and his deceit in the American Legion case and his delaying discovery to avoid the finding of his deceit. Judge Nocella misled the Committee as to this legal fee, his taking of the PAC funds and his background and qualifications for the bench.

Since both the Harrington case and the Nocella case were heavily relied on, Mr. Stretton is taking Exceptions to the disrepute finding since this Court erred as a matter of law since the Harrington case and the Nocella case involved patterns of deceit. Judge DiClaudio's case does not involve the lying or deceit found in the above. Obviously, Judge DiClaudio's conduct in not appearing for the District Court hearing, filing an appeal, not appearing at any hearings at the Court of Common Pleas until almost eighteen months later when ultimately the case was resolved, resulting in sanctions and contempt, are examples of misconduct. But Judge DiClaudio's facts do not involve the element of deceit and dishonesty found in the

aforementioned Harrington case and the Nocella case. This Honorable Court erred in the disrepute finding as a result.

As mentioned in Exhibit "B", the original Brief filed to this Honorable Court, Judge DiClaudio's case involved a judicial officer who just could not rationally deal with the debt owed to the sports club for his daughter's membership. Judge DiClaudio clearly was wrong and he violated several rules, which are not being challenged, by his failure to appear or timely resolve the civil lawsuit. But, as noted, he was representing himself and there were aspects of personal anger. Judge DiClaudio's case is much more similar to the case of In re: Maruszczak, 220 A.3d 742 (Pa. Ct. Jud. Discipline, 2019). Judge Maruszczak received a reprimand. He was not found in disrepute despite on three occasions going after and threatening former supporters and friends of his, in a rather mean and vindictive way, because they would not support him in his reelection. The Court noted as follows:

"Respondent Maruszczak's conduct arose out of his surprise and anger at finding former political supporters instead backing his political opponents. Such conduct, while clearly wrong, is more understandable when it occurs in the course of a hard-fought election rather than the normal courses of judicial proceedings. Such conduct warrants a sanction nevertheless." Id 744.

There was no finding of disrepute. Certainly, the anger and stubbornness shown by Judge DiClaudio in his civil lawsuit with the athletic club falls more in the Maruszczak language.

Clearly, in the case involving bad jokes, inappropriate photos, and ex parte contact, as seen in the case of In re Eakin, 150 A.3d 1042 (Pa. Ct. Jud. Disc., 2016), again there was no finding of disrepute.

Like Judge Maruszczak, Judge DiClaudio had apparently a very personal dispute and anger over this athletic club, and let that cloud and affect his judgment, resulting in his failure to appear for hearings in the pending litigation. In just ignoring everything for a period of time. He then ultimately resolved the matter after much delay and contempt citations. This was a personal matter and like Judge Maruszczak, a personal matter where his anger and frustration boiled over. This is not the situation of Harrington and Nocella where there was a pattern of deceit and lying.

The cases of universality of conduct involve often samples of deceit and misrepresentation and these cases were cited in Exhibit "B" of the original Brief.

Therefore, Judge DiClaudio takes Exception and Objects to this Honorable Court's finding of disrepute and suggests that such a finding was an error of law. He would respectfully request oral argument on this issue.

B.) Objections to the Statement in the Court's Opinion that the Respondent's Conduct in the Judicial Case was Similar to his Neglect in the Civil Case.

In the Opinion and Order filed by this Honorable Court, which is attached marked as Exhibit "A", there is a footnote (1) on page 24. The footnote notes as follows:

"We note a similar pattern in the instant case. The complaint against Judge DiClaudio was filed on December 19, 2019. The judge failed to respond and did not return numerous phone calls, letters and emails from the Court advising him of his duty to respond. The filing of the Complaint and many of the other entreaties to the judge were before the advent of the Covid crisis. Judge DiClaudio finally responded to this Court on June 5, 2020, nearly six months after the filing of the Complaint." [See footnote 1, page 24 of the Court of Judicial Discipline, Exhibit "A"].

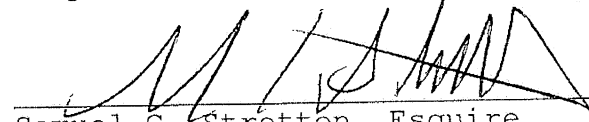
There was no stipulation about the judicial disciplinary case before this Honorable Court and the facts cited are incorrectly stated. First, it should be pointed out when the Complaint was served on Judge DiClaudio, the person from the Judicial Conduct Board did not have the Complaint. Judge DiClaudio and his secretary spent approximately two hours with him in chambers printing out the Complaint for him. Judge DiClaudio fully cooperated with the process server. Second, there was a suggestion that Judge DiClaudio failed to respond to the Complaint. The Rules of the Court of Judicial Discipline do not require a response to the Complaint [see Rule 412(d)]. If there is no response, everything is deemed at issue under that rule. Third, Judge DiClaudio engaged in a series of emails with both Joseph Metz, Esquire of the Court of Judicial Discipline and Melissa Norton, discussing various aspects of the case. The

first email was on December 17, 2019. This email was from Judge DiClaudio to Melissa Norton. The second email was on January 18, 2019 from Judge DiClaudio to Ms. Norton. There was a series of emails on March 10, 2020 from Judge DiClaudio to Joseph Metz, Esquire, on March 3, 2020 and March 13, 2020 email from Joseph Metz, Esquire to Judge DiClaudio, a March 10, 2020 email, and a March 19, 2020 email from Judge DiClaudio to Mr. Metz, memorializing conversations Ms. Norton, and then referencing his need to quarantine because of the virus. There was a June 5, 2020 email from Judge DiClaudio to Ms. Norton and June 4, 2020 email from Ms. Norton to Judge DiClaudio. There were apparently other emails, but these emails collectively show that Judge DiClaudio was not ignoring anything, but was in communication regularly with the Court and Ms. Norton. These emails are attached and marked as Exhibit "C" collectively.

It must be remembered that from the end of March until sometime in June or July, the Court systems essentially closed down, as did many law offices. Even the Court of Judicial Discipline and the Judicial Conduct Board offices were closed and people were working at home.

Therefore, Judge DiClaudio accepts and objects to the footnote suggesting his conduct with this Honorable Court was similar with his conduct in the lawsuit with the athletic club.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Stretton', is written over a horizontal line.

Samuel C. Stretton, Esquire
Attorney for the Respondent,
Judge Scott DiClaudio
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Attorney I.D. No. 18491

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

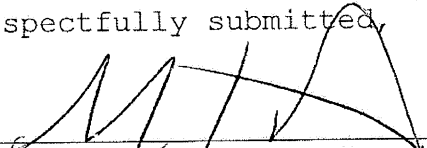
IN RE: : DOCKET NO. 3 JD 2019
:
JUDGE SCOTT DiCLAUDIO :
COURT OF COMMON PLEAS :
FIRST JUDICIAL DISTRICT :
PHILADELPHIA COUNTY :

CERTIFICATE OF COMPLIANCE

I, Samuel C. Stretton, Esquire, certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

12/8/20
Date



Samuel C. Stretton, Esquire
Attorney for the Respondent,
Honorable Scott DiClaudio
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P.O. Box 3231
West Chester, PA 19381-3231
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Attorney I.D. No. 18491

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: : DOCKET NO. 3 JD 2019
:
JUDGE SCOTT DiCLAUDIO :
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PHILADELPHIA COUNTY :

CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the foregoing Objections and Exceptions of the Respondent to the Finding of Disrepute by the Court of Judicial Discipline in the captioned matter upon the following persons in the manner indicated below.

Service by Federal Express, Overnight Delivery addressed as follows:

1. Cathy Kane, Court Administrator
Court of Judicial Discipline
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 5500
P.O. Box 62595
Harrisburg, PA 17106-2595
Cathy.Kane@pacourts.us

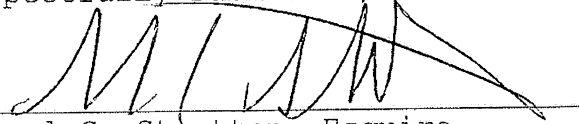
Service by email addressed as follows:

2. Joseph U. Metz, Esquire
Chief Counsel
Court of Judicial Discipline
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 550
P.O. Box 62595
Harrisburg, PA 17106-2595
Joseph.Metz@pacourts.us

3. Melissa L. Norton, Esquire
Deputy Counsel
Judicial Conduct Board
Pennsylvania Judicial Center
P.O. Box 52525
Harrisburg, PA 17106-2525
Melissa.norton@jcbpa.org

4. Honorable Scott DiClaudio
Criminal Justice Center
1301 Filbert Street
Suite 1415
Philadelphia, PA 19107
sdiclaudio13@gmail.com

Respectfully submitted,



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12/8/20

Date

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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OF PENNSYLVANIA

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RECEIVED AND FILED

IN RE:

Judge Scott DiClaudio :
Court of Common Pleas : No. 3 JD 19
First Judicial District :
Philadelphia County :

BEFORE: Honorable Jazelle M. Jones, P.J., Honorable John H. Foradora, J.,
Honorable James C. Schwartzman, J., Honorable James J. Eisenhower, J.,
Honorable Ronald S. Marsico, J., Honorable Daniel D. McCaffery, J., Honorable
Daniel E. Baranoski, J.

OPINION BY JUDGE EISENHOWER

FILED: December 1, 2020

OPINION AND ORDER

Judge Scott DiClaudio of the Court of Common Pleas of Philadelphia County is before the Court of Judicial Discipline charged with five counts of ethical misconduct arising out of (1) his failure to acknowledge large debts he owed on his Annual Statement of Financial Interest and (2) his failure to obey court orders relating to litigation concerning debts he owed.

The parties have agreed to Joint Stipulations of Fact which follow as our Findings of Fact.

I. Findings of Fact

1. Article V, § 18 of the Constitution of the Commonwealth of Pennsylvania grants to the Board the authority to determine whether there is probable cause to file formal charges against a judicial officer in this Court, and thereafter, to prosecute the case in support of such charges in this Court.

Exhibit "A"

2. From January 2016, until the present time, Judge DiClaudio has served as a Judge of the Court of Common Pleas of Philadelphia County.
3. As a judicial officer, Judge DiClaudio was subject to all the duties and responsibilities imposed on him by the Constitution of the Commonwealth of Pennsylvania and the Code of Judicial Conduct adopted by the Supreme Court of Pennsylvania.
4. Based on a Confidential Request for Investigation at JCB File No. 2019-096, the Board investigated the instant matter.
5. As a result of its investigation, and pursuant to Article V, § 18(a)(7) of the Constitution of the Commonwealth of Pennsylvania, the Board determined that there was probable cause to file formal charges against Judge DiClaudio in this Court.
6. All of the above listed exhibits, which have been provided to Judge DiClaudio pursuant to C.J.D.R.P. No. 401(D)(1) and (E) are admissible and authentic.
7. On March 7, 2019, the Board issued a Letter of Counsel to Judge DiClaudio in JCB File No. 2017-693.
8. On March 25, 2019, Judge DiClaudio signed a Statement of Consent agreeing that the above referenced Letter of Counsel and any supporting facts for the Letter of Counsel could be used against him during any future proceedings in the Court of Judicial Discipline.

9. On August 20, 2015, when Judge DiClaudio was a judicial candidate, the Cynwyd Club (the Club), a private fitness and social club, filed a civil complaint against him in magisterial district court 38-2-04.
10. The civil complaint, filed to MJ-38204-CV-117-2015, alleged that then-judicial candidate DiClaudio owed the Club several thousand dollars in unpaid membership dues, purchases and services.
11. A hearing on the civil complaint was scheduled for September 18, 2015, in magisterial district court 38-2-04.
12. Then-judicial candidate DiClaudio failed to appear on September 18, 2015, at the hearing on the civil complaint.
13. On September 21, 2015, then-judicial candidate DiClaudio contacted magisterial district court office 38-2-04 to notify it of his intent to defend against the civil complaint.
14. A hearing on the civil complaint was re-scheduled for October 15, 2015.
15. On October 15, 2015, when then-judicial candidate DiClaudio failed to appear in magisterial district court office 38-2-04, judgment was entered in favor of the Club and against then-candidate DiClaudio in the amount of \$2,659.38.
16. On November 13, 2015, then-judicial candidate DiClaudio filed a Notice of Appeal in the Court of Common Pleas of Montgomery County from the October 15, 2015 judgment.

17. On his Notice of Appeal, then-judicial candidate DiClaudio indicated that his address was 1500 J.F.K. Blvd, Suite 900, Philadelphia, PA, 19102.
18. On December 3, 2015, the Club filed a civil complaint, Cynwd Club v. Scott DiClaudio, Civil Action No. 2015-29887, in the Montgomery County Court of Common Pleas alleging the same facts as those alleged in the magisterial district court.
19. On December 4, 2015, a copy of the civil complaint was sent via United States mail to then-judicial candidate DiClaudio at 1500 John F. Kennedy Boulevard, Philadelphia, PA, 19102 by counsel for the Club.
20. On April 4, 2016, after Judge DiClaudio failed to file an answer to the civil complaint, a default judgment was entered against Judge DiClaudio and in favor of the Club in the amount of \$3,767.67.
21. On April 4, 2016, a copy of the default judgment was sent via United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1203, Philadelphia, PA, 19107 by counsel for the Club.
22. On January 31, 2018, a formal discovery request was sent by the Club to Judge DiClaudio seeking production of documents and answers to interrogatories to aid in collection of the judgment.

23. On March 28, 2018, after Judge DiClaudio failed to respond to the Club's discovery request, the Club filed a Motion to Compel responses to its discovery request.
24. On March 29, 2018, a copy of the Motion to Compel was sent via United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by counsel for the Club.
25. On April 19, 2018, a Rule to Show Cause was issued by the Court of Common Pleas of Montgomery County requiring Judge DiClaudio to show cause on or before May 21, 2018, why the Club's Motion to Compel should not be granted.
26. On May 9, 2018, a copy of the Rule to Show Cause was sent via United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by counsel for the Club.
27. On May 22, 2018, after Judge DiClaudio failed to respond to the Rule to Show Cause, Senior Judge Arthur Tilson ordered Judge DiClaudio to respond to the Club's discovery request.
28. On June 4, 2018, a copy of the May 22, 2018 order of court was sent via the United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by counsel for the Club.

29. Judge DiClaudio personally received a copy of the May 22, 2018 order of court.
30. Judge DiClaudio did not comply with the May 22, 2018 order of court.
31. On July 26, 2018, after Judge DiClaudio failed to obey the May 22, 2018 order of court, the Club filed a Motion for Sanctions.
32. On July 26, 2018, a copy of the Motion for Sanctions was sent via United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by counsel for the Club.
33. Judge DiClaudio personally received a copy of the July 26, 2018 Motion for Sanctions.
34. A hearing on the Club's Motion for Sanctions was scheduled for September 27, 2018, in the Court of Common Pleas of Montgomery County.
35. On August 28, 2018, notice of the September 27, 2018 hearing was sent via the United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by counsel for the Club.
36. On September 27, 2018, Judge DiClaudio failed to appear in the Court of Common Pleas of Montgomery County.
37. On September 27, 2018, when Judge DiClaudio failed to appear in the Court of Common Pleas of Montgomery County, Senior Judge

Bernard Moore found Judge DiClaudio in contempt of the May 22, 2018 order, directed him to respond to the discovery request within ten days, and ordered him to pay the Club's attorney fees in the amount of \$1,000.

38. On October 15, 2018, a copy of the September 27, 2018 order of court was sent via United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by counsel for the Club.
39. On October 15, 2018, counsel for the Club filed a Praecipe to Amend Address, requesting that the Prothonotary of Montgomery County change the address of the defendant, Judge DiClaudio, to 1301 Filbert Street, Criminal Justice Center, Room 1415, Philadelphia, PA, 19107.
40. On November 7, 2018, after Judge DiClaudio failed to obey the September 27, 2018 order of court, the Club filed a second Motion for Sanctions.
41. On November 8, 2018, a copy of the Club's second Motion for Sanctions was sent via United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by counsel for the Club.
42. A hearing on the Club's second Motion for Sanctions was scheduled for February 7, 2019, in the Court of Common Pleas of Montgomery County.

43. On December 18, 2018, notice of the February 7, 2019 hearing was sent via the United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by the Prothonotary of Montgomery County.
44. On December 18, 2018, notice of the February 7, 2019 hearing was sent via the United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by counsel for the Club.
45. On February 7, 2019, Judge DiClaudio failed to appear in the Court of Common Pleas of Montgomery County.
46. On February 7, 2019, when Judge DiClaudio failed to appear in the Court of Common Pleas of Montgomery County, Senior Judge Emanuel Bertin found Judge DiClaudio in contempt of the September 27, 2018 order, directed him to respond to the discovery request within ten days, pay the Club's attorney fees in the amount of \$1,000 per the September 27, 2018 order and \$2,500 for the February 7, 2019 matter.
47. On February 7, 2019, a copy of the February 7, 2019 order of court was sent via the United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by the Prothonotary of Montgomery County.

48. On February 8, 2019, a copy of the February 7, 2019 order of court was sent via United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by counsel for the Club.
49. Judge DiClaudio failed to obey the February 7, 2019 order of court.
50. On February 26, 2019, after Judge DiClaudio failed to obey the February 7, 2019 order of court, the Club filed a third Motion for Sanctions.
51. A hearing on the Club's third Motion for Sanctions was scheduled for April 11, 2019, in the Court of Common Pleas of Montgomery County.
52. On March 21, 2019, notice of the April 11, 2019 hearing was sent via the United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by the Prothonotary of Montgomery County.
53. On March 29, 2019, notice of the April 11, 2019 hearing was sent via the United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by counsel for the Club.
54. On April 10, 2019, the hearing on the Club's third Motion for Sanctions was continued to a date to be determined.

55. On April 10, 2019, notice that the April 11, 2019 hearing on the Club's third Motion for Sanctions had been continued to a date to be determined was sent to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by the Prothonotary of Montgomery County.
56. On April 26, 2019, notice that the April 11, 2019 hearing on the Club's third Motion for Sanctions was rescheduled for May 30, 2019, was sent to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by the Prothonotary of Montgomery County.
57. On April 26, 2019, notice that the April 11, 2019 hearing on the Club's third Motion for Sanctions was rescheduled for May 30, 2019, was sent to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by counsel for the Club.
58. On May 30, 2019, Judge DiClaudio failed to appear for the hearing on the Club's third Motion for Sanctions.
59. On May 30, 2019, when Judge DiClaudio failed to appear in the Court of Common Pleas of Montgomery County, Senior Judge Emanuel Bertin found Judge DiClaudio in contempt of the September 27, 2018 and February 7, 2019 orders, directed him to respond to the discovery request within ten days, pay the Club's

attorney fees in the amount of \$1,000 per the September 27, 2018 order, \$2,500 per the February 7, 2019 order and \$1,780 for the May 30, 2019 matter.

60. On May 31, 2019, a copy of the May 30, 2019 order of court was sent via the United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by the Prothonotary of Montgomery County.
61. On June 3, 2019, a copy of the May 30, 2019 order of court was sent via United States mail to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room 1415, Philadelphia, PA, 19107 by counsel for the Club.
62. Judge DiClaudio personally received the May 30, 2019 order of court.
63. On August 20, 2019, after Judge DiClaudio failed to obey the May 30, 2019 order of court, the Club filed a fourth Motion for Sanctions.
64. A hearing on the Club's fourth Motion for Sanctions was scheduled for October 24, 2019, in the Court of Common Pleas of Montgomery County.
65. On September 13, 2019, notice of the October 24, 2019 hearing on the Club's fourth Motion for Sanctions was sent to Judge DiClaudio's judicial office, Criminal Justice Center, 1301 Filbert Street, Room

1415, Philadelphia, PA, 19107 by the Prothonotary of Montgomery County.

66. Judge DiClaudio personally received notice of the October 24, 2019 hearing.
67. On October 24, 2019, Judge DiClaudio and counsel for the Club appeared in the Court of Common Pleas of Montgomery County before Senior Judge Emanuel Bertin.
68. During the October 24, 2019 hearing, Judge DiClaudio agreed to pay the sum of \$9,500 to the Club in two payments.
69. Pursuant to the agreement of the parties, on October 24, 2019, Judge Bertin issued an order that the case against Judge DiClaudio be discontinued upon payment of the sum of \$9,500 by Judge DiClaudio, on or before December 5, 2019.
70. On March 4, 2011, the Pennsylvania Department of Revenue filed a lien against Scott DiClaudio in the amount of \$7,536.10 and the lien remains unsatisfied.
71. On June 12, 2014, the Pennsylvania Department of Revenue filed a lien against Scott DiClaudio in the amount of \$10,174.97 and the lien remains unsatisfied.
72. On March 11, 2017, the Pennsylvania Department of Revenue filed a lien against Judge DiClaudio in the amount of \$16,317.24 and the lien remains unsatisfied.

73. On July 28, 2017, the Internal Revenue Service filed a lien against Judge DiClaudio in the amount of \$287,500.11 and the lien remains unsatisfied.
74. By order of the Supreme Court of Pennsylvania dated February 6, 2015, all Pennsylvania judicial officers are required to file an annual Statement of Financial Interest (SOFI) no later than May 1 of each year.
75. Question eight on the SOFI form requires judicial officers to provide a list of all creditors.
76. The instructions which accompany the SOFI form pertaining to question eight direct judicial officers to "list the creditor, address and interest rate of those debts which at any time during the prior year were over \$6,500."
77. On April 29, 2016, Judge DiClaudio submitted his annual SOFI pertaining to his 2015 financial interests.
78. Judge DiClaudio's April 29, 2016 SOFI did not list the Pennsylvania Department of Revenue as a creditor.
79. On April 26, 2017, Judge DiClaudio submitted his annual SOFI pertaining to his 2016 financial interest.
80. Judge DiClaudio's April 26, 2017 SOFI did not list the Pennsylvania Department of Revenue as a creditor.
81. On May 1, 2018, Judge DiClaudio submitted his annual SOFI pertaining to his 2017 financial interests.

82. Judge DiClaudio's May 1, 2018 SOFI did not list the Pennsylvania Department of Revenue or the Internal Revenue Service as a creditor.
83. On April 29, 2019, Judge DiClaudio submitted his annual SOFI pertaining to his 2018 financial interests.
84. Judge DiClaudio's April 29, 2019 SOFI did not list the Pennsylvania Department of Revenue or the Internal Revenue Service as a creditor.
85. Judge DiClaudio was aware of the existence of the Pennsylvania Department of Revenue liens filed on March 4, 2011, June 12, 2014, and March 11, 2017, when he submitted his annual SOFIs on April 29, 2016, April 26, 2017, May 1, 2018, and April 29, 2019.
86. Judge DiClaudio was aware of the existence of the Internal Revenue Service lien filed on June 28, 2017, when he submitted his annual SOFI on April 29, 2019.
87. Judge DiClaudio was under the impression (wrongly so) that the Pennsylvania Department of Revenue liens and the Internal Revenue Service lien did not have to be reported, and he has corrected that situation.
88. Retired Judge Benjamin Lerner would state he has known Judge DiClaudio for many years both as a friend, a lawyer who appeared before him, and as a judge. He knows people in the community who know Judge DiClaudio. Among those people, his reputation as

a truthful and honest person, as a peaceful and law-abiding person and as a knowledgeable, fair and hard-working judge is excellent. He would also testify Judge DiClaudio, as a judge, works extremely hard and has handled a massive case load since his election to the bench in a fair and just manner without any back logs.

89. Retired Judge Chris Wogan would state he has known Judge DiClaudio for many years both as a friend, a lawyer who appeared before him, and as a judge. He knows people in the community who know Judge DiClaudio. Among those people, his reputation as a truthful and honest person, as a peaceful and law-abiding person and as a knowledgeable, fair and hard-working judge is excellent. He would also testify Judge DiClaudio, as a judge, works extremely hard and has handled a massive load since his election to the bench in a fair and just manner without any back logs.

90. Attorney Brian McMonagle of the Philadelphia law firm of McMonagle, Perri, McHugh and Mischak would state he has known Judge DiClaudio for many years both as a lawyer and a judge. He would testify as to Judge DiClaudio's fairness and strong work ethic as a judge. He would note Judge DiClaudio's excellent knowledge in the law and his courtesy to litigants and attorneys. He would testify he knows people in the community who know Judge DiClaudio's and that among those people, Judge DiClaudio has an excellent reputation as a truthful and honest person, as a peaceful

and law-abiding person, and as a knowledgeable, fair and hardworking judge.

91. The custodian of records for the First Judicial District would present Exhibit 57, which is the Disposition Tracking Record for Judge Scott DiClaudio showing dispositions of 5,675 Common Pleas criminal cases from January 1, 2016 to August 24, 2020.
92. The parties stipulate to the authenticity and admissibility of all trial exhibits, attached to these Joint Stipulations of Fact in Lieu of Trial, as set forth below:

Trial Exhibits:

1. March 7, 2019 Letter of Counsel in JCB File No. 2017-693.
2. March 25, 2017 Statement of Consent in JCB File No. 2017-693.
3. Civil Complaint in the matter of Cynwyd Club v. Scott DiClaudio, filed to MJ-38204-CV-117-2015.
4. Civil Action Hearing Notice in the matter of Cynwyd Club v. Scott DiClaudio, filed to MJ-38204-CV-117-2015.
5. Civil: Intent to Defend notes of telephone call in the matter of Cynwyd Club v. Scott DiClaudio, filed to MJ-38204-CV-117-2015.
6. Rescheduling Notice in the matter of Cynwyd Club v. Scott DiClaudio, filed to MJ-38204-CV-117-2015.
7. Notice of Judgment/Transcript Civil in the matter of Cynwyd Club v. Scott DiClaudio, filed to MJ-38204-CV-117-2015.
8. Notice of Appeal and Civil Cover Sheet in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.

9. Civil Complaint in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
10. Affidavit of Service of Civil Complainant in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
11. Default Judgment in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
12. Affidavit of Service of Default Judgment in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
13. Motion to Compel in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
14. Certification of Service of Motion to Compel in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
15. Rule to Show Cause in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
16. Certification of Service of Rule to Show Cause in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
17. May 22, 2018 order of court in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
18. Certification of Service of May 22, 2018 order of court in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
19. Motion for Sanctions dated July 26, 2018 in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.

20. Certification of Service of Motion for Sanctions in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
21. Notice of September 27, 2018 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
22. Certification of Service of Notice of September 27, 2018 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
23. Transcript of the September 27, 2018 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
24. September 27, 2018 order of court in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
25. Certification of Service of September 27, 2018 order of court in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
26. Praecept to Amend Address in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
27. Second Motion for Sanctions in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
28. Certification of Service of Second Motion for Sanctions in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
29. Notice of February 7, 2019 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
30. Certification of Service of Notice of February 7, 2019 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.

31. Transcript of the February 7, 2019 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
32. February 7, 2019 order of court in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
33. Certification of Service of February 7, 2019 order of court in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
34. Third Motion for Sanctions in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
35. Notice of April 11, 2019 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
36. Certification of Service of Notice of April 11, 2019 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
37. Notice of Continuance of April 11, 2019 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
38. Notice of May 30, 2019 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
39. Certification of Service of Notice of May 30, 2019 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
40. Transcript of the May 30, 2019 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
41. May 30, 2019 order of court in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.

42. Certification of Service of May 30, 2019 order of court in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
43. Fourth Motion for Sanctions in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
44. Notice of October 24, 2019 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
45. Transcript of the October 24, 2019 hearing in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
46. October 24, 2019 order of court in the matter of Cynwyd Club v. Scott DiClaudio, filed to Montgomery County Docket Number 2015-29887.
47. March 4, 2011 Pennsylvania Department of Revenue Lien against Scott DiClaudio.
48. June 12, 2014 Pennsylvania Department of Revenue Lien against Scott DiClaudio.
49. March 11, 2017 Pennsylvania Department of Revenue Lien against Scott DiClaudio.
50. July 28, 2017 Internal Revenue Service Lien against Scott DiClaudio.
51. February 6, 2015 order of Supreme Court of Pennsylvania.
52. Statement of Financial Interest form.
53. April 29, 2016 SOFI of Judge Scott DiClaudio.
54. April 26, 2017 SOFI of Judge Scott DiClaudio.
55. May 1, 2018 SOFI of Judge Scott DiClaudio.
56. April 29, 2019 SOFI of Judge Scott DiClaudio.

57. The Disposition Tracking Record for Judge Scott DiClaudio from January 1, 2016 to August 24, 2020 showing disposition of 5,675 Common Pleas cases.
58. The August 13, 2019, Notice of Full Investigation in Judicial Conduct Board File No. 2019-096.

II. Discussion

Cynwyd Club v. DiClaudio

On August 20, 2015, the Cynwyd Club (the Club) filed a civil complaint in Montgomery County against Judge DiClaudio alleging that he owed the Club several thousand dollars in membership dues. Although Judge DiClaudio notified the magisterial district court that he intended to defend the suit, he failed to appear for the trial, resulting in a judgment being entered against him in the amount of \$2,659.38. Respondent filed a Notice of Appeal in the Montgomery County Court of Common Pleas and the Club responded by filing its civil complaint in the Montgomery County Court of Common Pleas. Judge DiClaudio failed to file an Answer to the Complaint, resulting in a default judgment being entered against him in the amount of \$3,767.67.

Judge DiClaudio repeatedly failed to comply with discovery requests and orders to appear or respond. Specifically he:

- Failed to comply with a Rule to Show Cause why he should not be compelled to respond to the Club's discovery request;

- Failed to comply with the Montgomery County Court of Common Pleas May 22, 2018 order that he respond to the Club's discovery request;
- Failed to appear at a sanctions hearing on September 27, 2018, in the Montgomery County Court of Common Pleas resulting in a finding of contempt against him and an order to respond to the discovery request and pay the Club's attorney fees;
- Failed to comply with the Montgomery County Court of Common Pleas September 27, 2018 order;
- Failed to appear at a second sanctions hearing on February 7, 2019, in the Montgomery County Court of Common Pleas resulting in a second finding of contempt against him and an order to respond to the discovery request and pay the Club's attorney fees;
- Failed to comply with the Montgomery County Court of Common Pleas February 7, 2019 order;
- Failed to appear at a third sanctions hearing on May 30, 2019, in the Montgomery County Court of Common Pleas resulting in a third finding of contempt against him and an order to respond to the discovery request and pay the Club's attorney fees; and
- Failed to comply with the Montgomery County Court of Common Pleas May 30, 2019 order.

The Club filed repeated Motions for Sanctions and a hearing was scheduled for October 24, 2019. Judge DiClaudio appeared at the hearing and agreed to pay the sum of \$9,500 to the Club.

By repeatedly failing to obey court orders, Judge DiClaudio violated the law within the meaning of Canon 1, Rule 1.1 of the Code of Judicial Conduct which provides, "A judge shall comply with the law, including the Code of Judicial Conduct." In spite of the clear language of the rule, Judge DiClaudio violated the law by ignoring five court orders, resulting in findings of contempt on three occasions.

By repeatedly failing to obey court orders and consequently being held in contempt as described above, Judge DiClaudio violated Canon 1, Rule 1.2 of the Code of Judicial Conduct which requires judges to "avoid impropriety" where impropriety is defined as an act that "includes conduct that violates the law, court rules, or provisions of [the Code of Judicial Conduct]." Judge DiClaudio's repeated failure to appear in court and obey court orders as well as his violation of Rule 1.1 of the Code of Judicial Conduct constitutes multiple violations of Rule 1.2 of the Code of Judicial Conduct. Additionally, Rule 1.2 of the Code of Judicial Conduct requires judges to avoid the "appearance of impropriety." The meaning of "appearance of impropriety" is addressed in Comment 5 to Rule 1.2 which states, in relevant part:

The test for appearance of impropriety is 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.

Judge DiClaudio's conduct of failing to comply with court orders, being held in contempt, and failing to appear in court, squarely meets the above definition of the appearance of impropriety and constitutes multiple violations of Rule 1.2.¹

A finding of a violation of the Code of Judicial Conduct constitutes an "automatic, derivative, violation" of [Article V], Section 17(b) of our Constitution." *In re Jennings*, 192 A.3d 372, 379 (Pa.Ct.Jud.Disc. 2018). By violating Rule 1.1 and 1.2 of the Code of Judicial Conduct as described above, Judge DiClaudio has violated Article V, §17(b) of the Constitution of the Commonwealth of Pennsylvania.

Most importantly, by his conduct in the matter of *Cynwyd Club v. DiClaudio*, as described above, Judge DiClaudio violated the Disrepute Clause found in Article V, §18(d)(1) of the Constitution of the Commonwealth of Pennsylvania which states that a judge may be disciplined for conduct which "brings the judicial office into disrepute."

Our Constitution notes that such conduct brings disrepute "whether or not the conduct occurred while acting in a judicial capacity or is prohibited

¹ We note a similar pattern in the instant case. The complaint against Judge DiClaudio was filed on December 19, 2019. The judge failed to respond and did not return numerous phone calls, letters and emails from this Court advising him of his duty to respond. The filing of the Complaint and many of the entreaties to the Judge were before the advent of the Covid crisis. Judge DiClaudio finally responded to this Court on June 5, 2020, nearly six months after the filing of the Complaint.

by law; or conduct in violation of a canon or rule prescribed by the Supreme Court.”

This Court has stated that the judge’s conduct must be found to be “extreme” in order to find that the conduct brings the judicial office into disrepute. *In re Smith*, 687 A.2d 1229, 1238 (Pa.Ct.Jud.Disc. 1996). Additionally, conduct that is outside the reasonable expectation of the public has been determined to violate the Disrepute Clause. *In re Harrington*, 877 A.2d 570 (Pa.Ct.Jud.Disc. 2005). Furthermore, determinations of whether particular conduct violates the Disrepute Clause are to be made as if ‘the public’ knows about it.” *In re Berry*, 979 A.2d 991, 999-1000.

Applying the above principles for assessing whether judicial conduct violates the Disrepute Clause, in *In re Nocella*, 79 A.3d 766, (Pa.Ct.Jud.Disc. 2013), this Court held that the judge’s conduct was so extreme and outside the reasonable expectations of the public, that it violated the Disrepute Clause. *Id.* at 791. Nocella was charged with a violation of the Disrepute Clause based on conduct which led to Nocella being found in contempt of court for failure to obey two court orders and his failure to provide accurate responses to questions posed by the Philadelphia Bar Association regarding his judicial candidacy. The facts before this Court in *Nocella* related to his conduct while he was a judicial candidate. During that time, Nocella provided legal representation for a political action committee, The Appreciation Fund (the Fund). When the

Fund failed to file a campaign finance report, the Board of Ethics filed a civil suit against it. The Philadelphia Court of Common Pleas found against the Fund and ordered it to pay a penalty for failing to file the required report. Thereafter, the Fund, through the actions of its treasurer and on the advice of Nocella, did not comply with the court order to pay the penalty and file the report. Nocella failed to respond to discovery requests, and assisted the Fund in dissipating its assets in order to avoid paying the penalty. Eventually, Nocella, along with the Fund's treasurer were held in contempt for failing to abide by two orders of court which required the fund to pay a penalty for its failure to file a campaign finance report. In determining that Nocella's conduct, while a judicial candidate, had violated the Disrepute Clause, this Court stated:

In this case, both the truth and the authority of the [Philadelphia Court of Common Pleas] went unrecognized by [Nocella], so blatantly that he was held to be in contempt of the authority of that court.

We find that [Nocella's] conduct was so extreme that it brings the judicial office itself into disrepute, and also that the reasonable expectations of the public as to the behavior of judicial officers do not include the conduct of this Respondent described above.

In the case now before this Court, while a judicial candidate and sitting judge, Respondent ignored the authority of the Montgomery County Court of Common Pleas. Judge DiClaudio was repeatedly ordered to appear before the Montgomery County Court of Common Pleas, which he ignored. Judge DiClaudio was ordered to answer the Club's discovery

requests and pay its attorney fees, orders which he also ignored. Only after receiving a Notice of Full Investigation from the Board in August of 2019, which alerted Judge DiClaudio that the Board was reviewing his conduct in *Cynwyd Club v. DiClaudio*, did Judge DiClaudio actually appear before the Montgomery County Court of Common Pleas. Judge DiClaudio's disrespect for the Montgomery Court of Common Pleas was so extreme that, when he finally appeared in court on October 24, 2019, Judge Bertin took time to review the entire text of his February 7, 2019 order on the record and specifically explain his reason for paragraph number five of that order.²

Judge Bertin: Five. The Court anticipates there will be strict compliance with this order from defendant, because I'm hoping, as a fellow colleague and a member of the bench, that the defendant would give the Court, not me as an individual, the Court, the respect that it is entitled to, the same respect that I would assume defendant expects other litigants to give him.

(Exhibit 45, page 14-15)

Later in the hearing, Judge Bertin pointedly told Judge DiClaudio, "I want to know why you didn't give this Court the respect when you knew that hearings were here to appear or to file an answer to any of these things."

In *In re Harrington*, this Court determined that conduct was outside the reasonable expectations of the public and therefore violated the

² Paragraph 5 of the February 7, 2019 order (Exhibit 32) stated, "The Court anticipates there will be strict compliance with the order from the defendant."

Disrepute Clause where the jurist failed to obey a parking ordinance and devised a scheme to avoid enforcement of the ordinance. This Court characterized Harrington's refusal to obey the parking ordinance as "exactly the type of conduct which causes an ordinary citizen to believe that judges-i.e., all judges-consider themselves to be 'above the law' - a privileged class." *Id.*, 877 A.2d at 577.

In the case now before this Court, Judge DiClaudio conducted himself in a manner that suggested he felt he was above the law. In fact he defied legally issued orders issued by a Court identical in power to his own. In this way his conduct struck at the very heart of the respect necessary for the rule of law. As the English legal theorist A.V.Dicey wrote, society conforms itself to the rule of law when "... (E)very man, whatever his rank or condition, is subject to the ordinary law ... and amenable to the jurisdiction of the ordinary courts." Dicey, A.V. *Introduction to the Study of The Law of The Constitution*, MacMillian and C. Ltd, (1885) (9th ed), (1945), at 188. Rather than conduct himself in the same way he would expect from litigants in his courtroom - obey court orders or suffer the consequences - Judge DiClaudio ignored the court orders with no apparent fear of consequences. Just as in the *Harrington* case, "[i]t is exactly this type of conduct which gives judges a 'bad name' and which brings the judicial office itself into disrepute." *Id.*

Judge DiClaudio's failure to obey court orders resulting in multiple findings of contempt was conduct which falls far below the reasonable

expectations of the public for judicial conduct and was so extreme that it brings the judicial office itself into disrepute and constitutes a violation of the Disrepute Clause of the Constitution of the Commonwealth of Pennsylvania.

Statements of Financial Interest

By order of the Supreme Court of Pennsylvania judges are required to file an annual Statement of Financial Interest (SOFI). Judges are required to list all creditors to whom they owe more than \$6,500 on their SOFIs. On March 4, 2011, June 12, 2014, and March 11, 2017, the Pennsylvania Department of Revenue filed tax liens in excess of \$6,500 against Judge DiClaudio. On July 28, 2017, the Internal Revenue Service filed a tax lien in excess of \$6,500 against Respondent. Judge DiClaudio failed to list the Pennsylvania Department of Revenue as a creditor on any of his annual SOFIs and failed to list the Internal Revenue Service as a creditor on his SOFIs for the years following the filing of its lien. On October 22, 2019, Judge DiClaudio filed amended SOFIs in order to add the Pennsylvania Department of Revenue and the Internal Revenue Service as creditors.

Judge DiClaudio's failure to list these creditors on four consecutive SOFIs constitutes a violation of Canon 1, Rule 1.1 of the Code of Judicial Conduct which requires judges to comply with the law and defines "law" as including "Supreme Court Rules and directives."

This Court determined that under certain circumstances, failure to accurately complete a SOFI "could constitute a violation of a rule prescribed by the Supreme Court." *In re Horgos*, 682 A.2d 447, 453 (Pa.Ct.Jud.Disc. 1996). In *Horgos*, the judge filed two incomplete SOFIs by failing to report income he received as the executor of an estate and by failing to report a bequest he received from the estate. This Court determined that Horgos had not violated the Code of Judicial Conduct or the Constitution by providing inaccurate information on his SOFIs noting that the record in this case reveals no evidence that would suggest that Judge Horgos, by receiving the commission and bequest and not reporting them, has adversely impacted the public trust. In reaching its determination, this Court adopted the following principles applicable to evaluating the ramifications of inaccurate SOFI information:

(1) a judicial officer who does not provide a complete and accurate response to a question on the Statement of Financial Interest form may be afforded an opportunity to revise the response, and (2) the facts surrounding a specific unreported gift and the degree to which the lack of completeness impacts the public trust should be considered in determining whether the questioned response constitutes misconduct by the jurist.

Id.

Applying the principles set forth in *Horgos* to the case now before this Court, Judge DiClaudio was afforded the opportunity to revise his SOFIs, although it took him two months from the time he was notified of the Board's investigation to take advantage of that opportunity. As to the second principle announced in the *Horgos* opinion, the facts

surrounding the inaccuracy reflect, at best, a careless attitude toward complying with a Supreme Court order. Moreover, by failing to pay his taxes and then failing to report the filing of liens against him due to this failure, Judge DiClaudio again displayed a troubling pattern of “snubbing his nose” at the system and placing himself above the law.

The facts of this case point to a finding that by failing to accurately complete his SOFIs filed in 2016 through 2019, Judge DiClaudio did not comply with the law within the meaning to the Code of Judicial Conduct and therefore, violated Rule 1.1 of the Code.

Insofar as Judge DiClaudio’s filing of inaccurate SOFIs constituted a violation of Rule 1.1 of the Code of Judicial Conduct, the conduct constitutes an “automatic, derivative, violation” of [Article V], Section 17(b) of our Constitution.” *In re Jennings*, 192 A.3d 379. By violating Rule 1.1 of the Code of Judicial Conduct as described above, Respondent has violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania.

III. Conclusions of Law

1. The conduct described herein violated Rule 1.1 of the Code of Judicial Conduct.

2. The conduct described herein violated Rule 1.2 of the Code of Judicial Conduct.

3. The conduct described herein violated Article V, § 17(b) of the Constitution of Pennsylvania.

4. The conduct described herein violated Article V, § 18(d)(1) of the Constitution of Pennsylvania.

The parties may file objections within ten days. A date for a Sanction Hearing will then be set.

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: : DOCKET NO. 3 JD 2019
:
JUDGE SCOTT DiCLAUDIO :
COURT OF COMMON PLEAS :
FIRST JUDICIAL DISTRICT :
PHILADELPHIA COUNTY :

BRIEF OF THE RESPONDENT, JUDGE SCOTT DiCLAUDIO,
ON THE ISSUE OF RULE VIOLATIONS

I. Brief Procedural History

Judge Scott DiClaudio, who is a duly elected judge sitting on the Court of Common Pleas of Philadelphia County, was charged in a judicial complaint before the Court of Judicial Discipline on December 20, 2019. The complaint, in essence, consisted of two sets of factual allegations. The first set involved a civil suit against Judge Scot DiClaudio by a fitness club called Cynwyd for a bill for his daughter's use of the club. His then thirteen-year-old daughter injured her back and was no longer able to use the club. The initial amount due was approximately \$2,000.00.

Unfortunately, Judge DiClaudio ignored the complaint, which was originally filed in a Magisterial District Court. A default judgment was entered against him. Judge DiClaudio then filed an appeal to the Montgomery County Court of Common Pleas. He then ignored a number of hearings that were set in the Court of Common Pleas. The original Magisterial District Court Complaint

Exhibit B¹

was filed on August 20, 2015. 2018 was the time for most of the failures to appear in the Court of Common Pleas. There were several sanctions hearings and a contempt hearing. Ultimately, on October 24, 2019, Judge DiClaudio appeared, resolved the issues and paid \$9,500.00 to settle the case with the fitness club. These factual matters are found in paragraphs 3 through 51 of the Complaint for Discipline and have been stipulated to by Judge DiClaudio. In the Joint Stipulations.

The second matter involved Judge DiClaudio's Statements of Financial Interest. Judge DiClaudio had several tax liens from the Department of Revenue, and the I.R.S. filed against him, most due to a prior business he had involving his former ticket agency when he was an attorney. Judge DiClaudio failed to list these tax liens on his Statement of Financial Interest after he was elected as a judicial officer. The failures occurred for the April of 2016 report, the April of 2017 report, the April of 2018 report and April of 2019 report. Judge DiClaudio has now corrected that error and currently has listed the liens.

Judge DiClaudio and the Judicial Conduct Board have now reached a series of stipulations. Judge DiClaudio did not file an answer to the Complaint and none is required since under Rule 413 of the Rules of Procedure of the Court of Judicial Discipline, "the failure to file an answer shall be deemed a

denial of all factual allegations contained in the Board Complaint."

Judge DiClaudio recently hired present counsel, Samuel C. Stretton, Esquire. Before that, Judge DiClaudio was unfortunately representing himself.

Mr. Stretton filed a Pre-Trial Memorandum with the Court of Judicial Discipline, in essence admitting the Factual Proposed Stipulations. Mr. Stretton also in the Pre-Trial Memorandum (although clearly recognizing that the final decision on any rule violation is that solely of the Court of Judicial Discipline) admitted the following Rule violations:

A.) Count One - Rule 1.1, a judge shall comply with the law. The violation occurred when Judge DiClaudio failed to comply with the Montgomery County Court of Common Pleas Orders to produce and appear.

B.) Count Two - Rule 1.1 The violation occurred when Judge DiClaudio failed to accurately submit his Statement of Financial Interest from 2016 through 2019 when he failed to list the liens of the Pennsylvania Department of Revenue and Internal Revenue Service.

C.) Count Three - Rule 1.2, a judge should avoid impropriety and the appearance of impropriety. That violation occurred when Judge DiClaudio failed to comply with the Orders

of the Court of Common Pleas of Montgomery County in his civil litigation with the athletic club.

D.) Count Four - A constitutional violation of Article V, Section 17(b) of the Pennsylvania Constitution, which states in essence that a judge shall not engage in any activity prohibited by law and should not violate any Canons of Legal or Judicial Ethics prescribed by the Supreme Court. Judge DiClaudio, through Mr. Stretton, has admitted violating Rules 1.1 and 1.2. Mr. Stretton, on Mr. DiClaudio's behalf, now has admitted the constitutional violation in Count Four because of his above admitted Code of Judicial Conduct violations.

Mr. Stretton, on behalf of Judge DiClaudio, will not make any argument on these four rule violations, which Judge DiClaudio is suggesting to this Honorable Court have been violated. This Honorable Court has the sole responsibility to make the determination of violations of the Code of Judicial Conduct and the related constitutional provisions.

Mr. Stretton does not admit, on behalf of Judge DiClaudio, a violation of Count Five, which alleges a violation of Article V, Section 18(d)(1) of the Pennsylvania Constitution. That count is found at paragraphs 89 through 92 of the Complaint. In paragraph 89, it states the disrepute violations are for the facts alleged in paragraphs 3 through 51, i.e., the athletic club civil dispute, and it is alleged that Judge DiClaudio

brought the judicial office into disrepute, as set forth in the Pennsylvania Constitution under Article V, Section 18(d)(1). Paragraph 92 then seems to broaden the allegations since it now cites paragraphs 3 through 63, which would also include the failure to list the Pennsylvania revenue and I.R.S. liens in the annual Statement of Financial Interest required by judicial officers. The issue of whether there is a violation of Count Five, bringing the judiciary into disrepute, is the subject of this brief.

Submitted under separate cover is a Joint Stipulation where Mr. Stretton and the Judicial Conduct Board have reached stipulations on all the factual allegations as set forth in the Complaint.

By his stipulations and current cooperation, Judge DiClaudio accepts full and complete responsibility for his misconduct in this private civil suit he had with the athletic club, and his failure to comply with court appearances and orders. Judge DiClaudio further accepts responsibility for not properly listing the tax liens on his Statements of Financial Interest. Those tax lien issues have been corrected now.

II. Argument

A.) Despite his admitted misconduct involving the failure to properly proceed on the athletic club litigation and not listing the I.R.S. and Pennsylvania revenue liens on his

Statements of Financial interest, Judge DiClaudio respectfully contends he did not violate Article V, Section 18(d)(1) of the Pennsylvania Constitution, and argues his conduct did not bring the judicial office into disrepute.

Mr. Stretton, on behalf of Judge DiClaudio, has argued in this Brief that Judge DiClaudio's conduct, although wrong, did not violate the disrepute prohibition in Article V, Section 18(d)(1) of the Pennsylvania Constitution. During the sanction hearing, Mr. Stretton intends to present strong evidence as to Judge DiClaudio's excellent conduct as a judicial officer in handling thousands of cases on a timely basis during his five years on the bench in the Court of Common Pleas of Philadelphia County, and the high respect and regard in which he is held by members of the bench and bar in Philadelphia. In other words, despite his bad conduct here, Judge DiClaudio is a very respected and competent judicial officer in Philadelphia County. Mr. Stretton has known Judge DiClaudio since Judge DiClaudio was a young Assistant District Attorney and later when he and Judge DiClaudio represented co-defendants in a capital murder trial in 1996 in Bucks County. Mr. Stretton has also appeared many times before Judge DiClaudio over the last five years. It is important for this Honorable Court to know when evaluating the disrepute issue, that Judge DiClaudio is a very competent judge despite his disappointing failures to act properly in this private civil

suit he had with the athletic club over membership fees owed. As to the Internal Revenue and Pennsylvania Revenue lien issues, they have been corrected now.

The charge of bringing the judicial office into disrepute is probably the most serious charge that can be brought against a judicial officer. The charge is found in Article V, Section 18 (d) (1) of the Pennsylvania Constitution and reads as follows:

"A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for ...neglect or failure to perform the duties of office or 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 or as prohibited by law;..." [Article V, Section 18(d) (1) of the Pennsylvania Constitution].

The provision at issue is "brings the judicial office into disrepute." Judge DiClaudio was not charged with "prejudices the proper administration of justice." The issue of "disrepute" is the issue before this Honorable Court.

The finding of disrepute can have very serious consequences for a judicial officer since under the Pennsylvania Constitution, under Article V, Section 16(b), such a finding could require a loss of salary or pension or benefits for conduct which "brings the judicial office into disrepute." [Article V, Section 16(b) of the Pennsylvania Constitution]. The Judicial Conduct Board must prove the constitutional disrepute violation by clear and convincing evidence.

The seminal case on disrepute is In re Smith, 687 A.2d 1229 (Pa. Ct. Judicial Discipline, 1996). In that case, Judge Smith from Bradford County was disciplined for lengthy delays in deciding 61 cases. Some of the cases were not decided for over a three-year time period. He received a reprimand, but the Court made no finding of disrepute, although it was requested by the Judicial Conduct Board. The Court of Judicial Discipline in the Smith case noted as follows:

“Even if a judicial officer’s actions could reasonably result in a lessening of respect for the judge, it cannot be assumed that the same actions would necessarily bring the judicial office into disrepute. In other words, one might say Judge Smith has failed to decide his cases, and therefore has lost our respect. Such a finding would not sustain the Board’s burden, for the Board must show the disrepute arising from Judge Smith’s actions extends to all judges. In other words, that the wrongful actions of a judicial officer are capable of bringing the judicial office into disrepute is only the first step of the inquiry. The second step is that in fact universal disrepute resulted.” Id 1239.

There was no evidence of universal disrepute presented in the Smith case by the Judicial Conduct Board.

The same could be said here. Clearly, Judge DiClaudio brought disrespect upon himself by not showing up at court hearings or complying with court orders in his private civil litigation with the athletic club. But this action in a private civil matter would not appear to extend to all other judges. This is a private matter where he was either angry or upset and should not have been representing himself. He settled the civil

suit finally for \$9,500.00, which was about three to four times what he would have paid if he had resolved it early on, or defended it if he had a defense. This kind of bad judgment does not seem to translate into the universal disrespect and it is really a classic example of violating the old maxim that only a fool represents himself.

A similar case is In re Daghr, 657 A.2d 1032 (Pa. Ct. Judicial Discipline, 1995). In that case Judge Daghr delayed resolving five cases for an extended period of time, but even more importantly, accepted a gift from a divorce litigant of Penn State football tickets on the 50th yard line. Because of this misconduct, he received a seven-day suspension. But there was no finding of disrepute since it did not have the universal aspect, and in fact, disrepute was not even charged.

Many times, criminal conduct by a judicial officer will have a finding of disrepute. In this case, there is no criminal conduct by Judge DiClaudio, but just disrespectful conduct in his self-representation in the athletic club matter and mistaken conduct by not including the liens from the taxing authorities on his Statements of Financial Interest.

An example of private conduct that resulted in a finding of disrepute is the case of In re Hamilton, 932 A.2d 1030 (Pa. Ct. Judicial Discipline, 2007). The misconduct occurred when a District Judge who was at a golf outing and party at a golf

course became highly intoxicated and assaulted the local Police Chief. The judge got extremely drunk at the public golf function and attacked the Chief of Police for no good reason. The judge was found to be in disrepute and was suspended for five months. He was also convicted of assault in criminal court [In re Hamilton, 932 A.2d 1030 (Pa. Ct. Judicial Discipline, 2007)].

The Hamilton case clearly fits within the concern for universal disrepute. A judicial officer getting highly drunk at a public function and then beating up the Police Chief, which received a lot of publicity, would clearly bring disrepute not only to himself, but to the judiciary. This contrasts to Judge DiClaudio's behavior in the private civil suit when he just ignored the private civil proceeding. The Court of Judicial Conduct in Hamilton noted the following:

"We believe that the reasonable expectations of the public would include the expectation that a member of the judiciary, elected, as he is, to enforce the laws would not violate them and do so on a public stage. We believe that the reasonable expectations of the public would include the expectation that a judicial officer will not act lawlessly by provoking a fist fight in the midst of a party being held at a local golf club, and then commit assault and battery on a member of the local community." Id 1034.

The Court noted that the judge, physically assaulting the off-duty Chief of Police, also verbally abused the officer's wife and failed to exercise even a modicum of the sensitivity or self-control so vital to the demands of his judicial position. Id 1034.

The Court then indicated under these facts, they had no difficulty finding the conduct was:

"...so extreme as to qualify as conduct prescribed by the Constitution as that which brings the judicial office into disrespect...the reasonable expectations of the public certainly include the expectation that its judges will act with good judgment, with a modicum of dignity and with respect for all." Id 1034.

The Court very carefully noted that it was not deciding on disrepute because of the level of, or lack of level, of media coverage. Id 1035. The Court said it would not "bestow upon the media a role in determining what is a violation of the Constitution." Id 1035, 136. The Court ended by indicating that it was up to the members of the Court "to determine these cases for conduct that is so extreme as to bring the judicial office itself into disrepute." Id 1036.

The question is, was Judge DiClaudio's conduct so extreme that it brings the office into disrepute because of its universal aspect in affecting all judges? Mr. Stretton argues to this Court that it did not since this was a private matter where Judge DiClaudio was using poor judgment in representing himself in a civil litigation and violated the classic maxim set forth by Abraham Lincoln that only a fool represents himself or herself in litigation. Judge DiClaudio's conduct certainly doesn't rise to the level of Judge Hamilton engaging in criminal

conduct with the Chief of Police during a drunken brawl at the golf club function.

Similarly, another example of extreme personal misconduct is that of In re Singletary, 61 A.3d 402 (Pa. Ct. Judicial Discipline, 2012). In that case, Judge Singletary was found in disrepute and removed from office for showing photographs of his private part to an employee responsible for collecting impound fees on cars when he was a Judge in Philadelphia Traffic Court. This is another example of extreme misconduct, which is of a criminal nature where disrepute was clearly warranted.

The Court in Singletary, noted as follows:

"In deciding these disrepute cases, we have frequently considered the reasonable expectations of the public as these expectations related to various conduct of various judicial officers...We think that the public - even those members of the public who register the lowest scores on the sensitivity index - do not expect their judges to be conducting photo sessions featuring the judicial penis and then to be sending the photos over the electronic airwaves to another person - thereby placing that person in a position to further publish the photos to anyone he or she may deem deserving." Id 412.

The Court pointed out for disrepute, there must be an element of mens rea and not conduct that was purely accidental. Id 412. The Court rightly concluded that this conduct was so extreme as it brought the office into disrepute. Id 412.

Hamilton and Singletary are classic examples of extreme misconduct that borders on or is criminal and creates the universal aspect needed for the finding of disrepute.

Another example of disrepute is In re Kelly, 757 A.2d 456 (Pa. Ct. Judicial Discipline, 2000) where a judge called another judge asking for favorable treatment for a friend on traffic tickets. That was extreme misconduct, which resulted in the finding of disrepute and a reprimand.

Similarly, in In re Harrington, 877 A.2d 570 (Pa. Ct. Judicial Discipline, 2000), the judge was found to have brought the judicial office into disrepute by putting fake parking tickets on his car to avoid having to put money in the parking meter. Again, this was criminal conduct and resulted in a finding of disrepute.

Without in any way minimizing Judge DiClaudio's bad conduct in his civil litigation, the misconduct does not rise to the level of these extreme criminal acts noted above, particularly since it involved private civil litigation.

In case where there was no disrepute, In re Brown, 907 A.2d 684 (Pa. Ct. Judicial Discipline, 2006), Judge Brown admitted misconduct of sexual harassment and making improper comments to his female employees and also other improper statements about litigants. He was found in violation of several rules and allowed to retire, but there was no finding that his conduct brought the office into disrepute. That charge was withdrawn.

Another example is in the case of In re DeLeon, 967 A.2d 466 (Pa. Ct. Judicial Discipline, 2009). This was an interesting

case where the judge acted very badly. He had met a social acquaintance at a bar or restaurant, who told him a story of problems with a neighbor. Judge DeLeon went back and signed an ex parte stay away Order to help the social acquaintance. There was nothing before his Court. Judge DeLeon was disciplined and suspended for approximately three months. Initially, the Court of Judicial Discipline found him to have brought disrepute on the Court, and then the Court of Judicial Discipline reversed that finding of disrepute but without any real explanation. But that is a case where bad conduct by a judicial officer was not enough to warrant a disrepute finding, and that is consistent with the above cases.

In the case of In re Berkheimer, 930 A.2d 1255 (Pa., 2007), Judge Berkheimer was found in disrepute. His misconduct involved ten instances over several years of offensive and unwarranted statements to female employees. The Pennsylvania Supreme Court noted as follows about the extreme sexual remarks and comments:

“Appellants unwanted and offensive statements during an interview reflected poorly on the judiciary as a whole. The event was disrespectful to the judiciary and the public; combined with his offensive behavior, it brought disrepute on the entire judiciary.” Id 1259.

In the case of In re Berry, 979 A.2d 991 (Pa. Ct. Judicial Discipline, 2009), Judge Berry, while a Judge of the Court of Common Pleas of Philadelphia County, had also operated his rental real estate business out of his judicial office and had

his judicial secretary manage it, accept rental payments, prepare eviction notices, etc. Judge Berry was suspended for four months and was found in disrepute. The Court in Berry noted past court decisions for findings of disrepute such as sexual harassment, failure to deposit office receipts at the end of each day, use of the "f" word in the Courtroom, public drunkenness, bogus parking tickets, calling defendants in waiting rooms morons, fighting at golf outings, repeated lateness in Court, bizarre behavior in chambers, etc. Id 996, 997. The Court noted as follows:

"The judicial officer must have engaged in conduct that is so extreme that it brings the judicial office into disrepute." Id 997.

The Court noted that the determination is made on a case by case basis. Id 997. The Court then noted as follows in Berry:

"It is thus clear, that our determinations of whether particular conduct is such that brings the judicial office into disrepute, are to be made as if the public knows about it. Indeed, how can it be otherwise?" Id 999, 1000.

The Court then held that Judge Berry's conduct with running the real estate business in his judicial office did bring his office into disrepute. Id 1001. The reasons were, first that Judge Berry operated his real estate business for twelve years out of his chambers until he got caught. Second was the manner in which he ran his business. The properties were in poor condition, there were a number of citations issued against him by the City.

The third reason found by the Court was the reality that he ran the business out of his judicial office with absolutely no overhead. Id 1001. The Court noted as follows:

"We find that the Respondent's active operation of a real estate business out of his judicial office, at the very least, trivializes the fundamental concept we find that Respondent's conduct in this business and the use of his judicial secretary to manage the day to day operation of the business demonstrated a flagrant, open, disregard for the dignity of the judicial office. It also demonstrated a total disregard for citizens of the Commonwealth, including those who elected him..." Id. 1001, 1002.

The Court noted misappropriating the funds for paying business expenses. Id 1002, 1003. The Court found Judge Berry's conduct was extreme, and therefore found disrepute.

Judge Berry's case was different from the present case. It involved a business for personal gain, operating out of the actual judicial office and for many years.

In this case, Judge DiClaudio was involved in a personal civil suit where he apparently was angry and not using good judgment. As a result, he ignored the law suit repeatedly, allowing sanctions and fines to accumulate until he finally came in and resolved the matter, paying three or four more times than he would have had to if he had resolved the case earlier on. He was unrepresented, which as noted above, was a major mistake.

In the case of In re Merlo, 58 A.3d 1 (Pa., 2012), Judge Merlo, who had numerous violations, including not showing up on

time, taking 60 to 70 days off and yelling at litigants, was found in disrepute. The Court gave some advice on what to look for:

"It is fair to say that difficulty in deciding these cases has not been in determining whether the conduct is bad or reprehensible or whether it makes a particular judge look bad, the difficulty has been in determining whether the conduct of the particular judge makes everyone look bad, whether it makes judges collectively look bad, whether the conduct gives all judges a bad name... whether it is such that brings the office into disrepute." Id 17 and 18.

In Merlo, the Court was particularly upset with Judge Merlo's calling off and missing many days, and often times calling out the day of the hearing after people were sitting and waiting. The Court found that conduct beyond egregious. Id 18, 19. The Pennsylvania Supreme Court in Merlo actually found if a judge always appears late, that would be a violation of the disrepute constitutional requirement. Id 19. The Pennsylvania Supreme Court noted a finding that a judge has engaged in offense, confrontational or discourteous conduct on the bench may support a finding of disrepute. Id 20.

A recent case where there was no finding of disrepute despite bad conduct by a judge when he was not on the bench is the case of In re Maruszczak, 220 A.3d 742 (Pa. Ct. Judicial Discipline, 2019). Judge Maruszczak received a reprimand. There were conditions for a psychological assessment. His misconduct occurred after he discovered three of his former friends and

political supporters were now supporting his election opponent.

The Court noted as follows:

“Respondent Maruszczak’s conduct arose out of his surprise and anger at finding former political supporters instead backing his political opponents. Such conduct while clearly wrong, is more understandable when it occurs in the course of a hard-fought election rather than the normal courses of judicial proceedings. Such conduct warrants a sanction nevertheless.” Id 744.

Judge Maruszczak’s conduct did consist of screaming at former friends now supporting his election opponent in public and leaving threatening notes in a mailbox or on voicemail. The Court noted as follows:

“The effect the misconduct has upon the integrity and respect for the judiciary - although Respondent Maruszczak’s conduct was clearly wrong, it was not found to amount to a violation of the disrepute clause.” Id 744, 745.

Finally, in evaluating disrepute, the case of In re Eakin, 150 A.3d 1042 (Pa. Ct. Judicial Discipline, 2016) must be reviewed. In that case, Justice Eakin was involved in sending emails that contained nudity, inappropriate references to race, sex and ethnicity, among other things. Judge Eakins used his government supplied computer for some of these emails. There was no finding of disrepute in that particular case, and perhaps the disrepute had been withdrawn. It is unclear from the Opinion. [In re Eakin, 150 A.3d 1042 (Pa. Ct. Judicial Discipline, 2016)].

The recitation of the above cases demonstrates the fact that each case is decided on its facts. But there are several aspects to the disrepute. The disrepute must be extreme. Disrepute must be more than just disrepute for the individual judge. It must translate into disrepute brought on to the entire judicial office. There are cases where there is bad conduct, but no disrepute. Judge Maruszczak is an example. Judge Smith in Bradford County is an example, although there was a finding that he was not delaying decisions intentionally. Judge Daghr was not charged with disrepute, but clearly delayed decisions and took 50-yard line Penn State football tickets. In Judge Brown, the Judicial Conduct Board withdrew the disrepute. Clearly, there was disrepute for criminal misconduct, such as Judge Hamilton in the drunken assault on the Police Chief. There are often findings of disrepute for misconduct on the bench, such as in the Merlo case or misconduct in the judicial office, such as Berkhimer. Although at times, the misconduct is bad, such as in DeLeon, in terms of issuing an Order without anything before him, there was no finding of disrepute because it did not rise to the level of bringing the entire bench into disrepute universally.

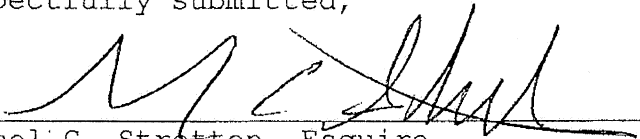
There is no question that Judge DiClaudio acted badly over an approximately three-year period by not appearing or properly defending the civil litigation against him over a fee owed to a

local athletic club. As noted above, this is a classic example as to what happens when one does not retain counsel in litigation that is very personal to them. The conduct had nothing to do with Judge DiClaudio's conduct on the bench. This was a personal matter where he got caught up in the matter and did not act appropriately by not showing up or complying with Court Orders. He finally did, to his credit, resolve the matter, although he had to pay three or four times more the amount because of his delays and ignoring of Court Orders. But the case is now resolved. As to the failure to file his tax liens, the stipulation noted that Judge DiClaudio did not realize he had to do so, and now has corrected that situation.

None of these matters, i.e., a judge being caught up in his personal litigation and failure to properly list everything on his Statement of Financial Interest, which as been corrected, do not seem to be the extreme disrepute that would go beyond the personal disrepute for a judge, but not reach the universal disrepute that would make all judges look bad. As in Maruszczak, sometimes a judge lets his emotions overcome him. Judge Maruszczak was upset with his friends, who betrayed him, and he acted badly. Judge DiClaudio was upset at the athletic club, and acted badly. But, like Maruszczak, Judge DiClaudio respectfully contends his conduct did not rise to the level of disrepute, as required for the constitutional violation.

In conclusion, Judge DiClaudio, by and through his counsel, Samuel C. Stretton, Esquire, respectfully requests this Honorable Court dismiss the disrepute charge since the Judicial Conduct Board has not proven by clear and convincing evidence that Judge DiClaudio has violated Article V, Section 18(d)(1) of the Pennsylvania Constitution.

Respectfully submitted,



Samuel C. Stretton, Esquire
Attorney for the Respondent,
Judge Scott DiClaudio
103 South High Street
P.O. Box 3231
West Chester, PA 19381-3231
(610) 696-4243
Attorney I.D. No. 18491

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: : DOCKET NO. 3 JD 2019
:
JUDGE SCOTT DiCLAUDIO :
COURT OF COMMON PLEAS :
FIRST JUDICIAL DISTRICT :
PHILADELPHIA COUNTY :

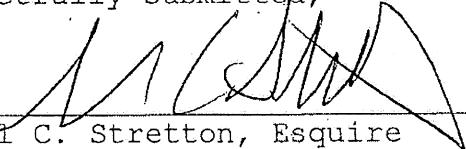
CERTIFICATE OF COMPLIANCE

I, Samuel C. Stretton, Esquire, certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

10/8/20

Date



Samuel C. Stretton, Esquire
Attorney for the Respondent,
Honorable Scott DiClaudio
103 South High Street
P.O. Box 3231
West Chester, PA 19381-3231
(610) 696-4243
Attorney I.D. No. 18491

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: : DOCKET NO. 3 JD 2019
:
JUDGE SCOTT DiCLAUDIO :
COURT OF COMMON PLEAS :
FIRST JUDICIAL DISTRICT :
PHILADELPHIA COUNTY :

CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the foregoing Brief of the Respondent on the Issue of Rule Violations in the captioned matter upon the following persons in the manner indicated below.

Service by Federal Express, Overnight Delivery addressed as follows:

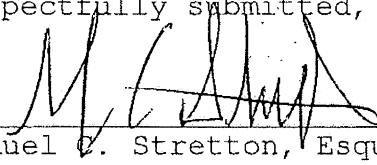
1. Cathy Kane, Court Administrator
Court of Judicial Discipline
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 5500
P.O. Box 62595
Harrisburg, PA 17106-2595
Cathy.Kane@pacourts.us
2. Honorable James J. Eisenhower
Conference Judge
Court of Judicial Discipline
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 5500
P.O. Box 62595
Harrisburg, PA 17106-2595

Service by email addressed as follows:

3. Melissa L. Norton, Esquire
Deputy Counsel
Judicial Conduct Board
Pennsylvania Judicial Center
P.O. Box 52525
Harrisburg, PA 17106-2525
Melissa.norton@jcbpa.org

4. Honorable Scott DiClaudio
Criminal Justice Center
1301 Filbert Street
Suite 1415
Philadelphia, PA 19107
sdiclaudio13@gmail.com

Respectfully submitted,



Samuel C. Stretton, Esquire
Attorney for the Respondent,
Judge Scott DiClaudio
103 South High Street
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(610) 696-4243
Attorney I.D. No. 18491

10/8/20

Date



Samuel Stretton <strettonlaw.samstretton@gmail.com>

FW: Court of Judicial Discipline complaint - service

1 message

DiClaudio, Scott <Scott.DiClaudio@courts.phila.gov>

Tue, Dec 8, 2020 at 8:43 AM

To: "strettonlaw.samstretton@gmail.com" <strettonlaw.samstretton@gmail.com>

From: DiClaudio, Scott <Scott.DiClaudio@courts.phila.gov>**Sent:** Tuesday, December 17, 2019 5:03 PM**To:** Norton, Melissa L. <Melissa.Norton@jcbpa.org>**Subject:** Re: Court of Judicial Discipline complaint - service

agreed

thank you

scott

Sent from my iPhone

On Dec 17, 2019, at 2:04 PM, Norton, Melissa L. <Melissa.Norton@jcbpa.org> wrote:

CAUTION: This email originated from outside the organization. Do not click on links or open any attachments unless you recognize the sender and confirmed the content is safe.

<image001.gif>

This email confirms our telephone conversation earlier this morning. I informed you that the Judicial Conduct Board will be filing a complaint against you in the Court of Judicial Discipline on Friday, December 20, 2019. In order for the Board to effectuate service, you agreed to be available to receive service of the complaint on that same date. You indicated that **you will be available to receive service of the complaint at approximately 10 a.m. in the Criminal Justice Center** at 1301 Filbert Street, Philadelphia, PA. At your request, I will instruct the individual serving the complaint to call your cell phone (484.431.4440) when he arrives at the Criminal Justice Center in order to determine where you are within that building.

If any of the above information is incorrect, please contact me immediately.

12/8/2020

Gmail - FW: Court of Judicial Discipline complaint - service

Melissa L. Norton, Deputy Counsel
Judicial Conduct Board of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue
P.O. Box 62525
Harrisburg, PA 17106
(717) 234-7911

This e-mail message and any files transmitted with it contain confidential information intended only for the person or persons to whom this e-mail message is addressed and may contain information subject to attorney-client, work product or other lawful privilege. If you have received this e-mail message in error, please notify the sender immediately by telephone or by return e-mail and destroy the original message without making a copy. Thank you.

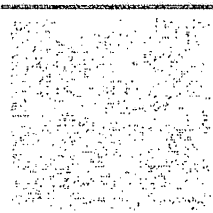


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Samuel Stretton <strettonlaw.samstretton@gmail.com>

FW: Conference call requested

2 messages

DiClaudio, Scott <Scott.DiClaudio@courts.phila.gov>

Tue, Dec 8, 2020 at 8:47 AM

To: "strettonlaw.samstretton@gmail.com" <strettonlaw.samstretton@gmail.com>

From: DiClaudio, Scott <Scott.DiClaudio@courts.phila.gov>**Sent:** Saturday, January 18, 2020 8:56 AM**To:** Norton, Melissa L. <Melissa.Norton@jcbpa.org>**Subject:** Re: Conference call requested

i'm just arriving from out of the country.

will definitely call you first thing Monday morning.

thank you

scott.

Sent from my iPhone

This e-mail message and any files transmitted with it contain confidential information intended only for the person or persons to whom this e-mail message is addressed and may contain information subject to attorney-client, work product or other lawful privilege. If you have received this e-mail message in error, please notify the sender immediately by telephone or by return e-mail and destroy the original message without making a copy. Thank you.

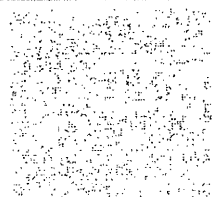


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DiClaudio, Scott <Scott.DiClaudio@courts.phila.gov>

Tue, Dec 8, 2020 at 8:47 AM

To: "strettonlaw.samstretton@gmail.com" <strettonlaw.samstretton@gmail.com>

12/8/2020

Gmail - FW: Conference call requested

From: DiClaudio, Scott <Scott.DiClaudio@courts.phila.gov>
Sent: Tuesday, January 21, 2020 8:37 AM
To: Norton, Melissa L. <Melissa.Norton@jcbpa.org>
Subject: Re: Conference call requested

Good morning,

I called yesterday (schedule a bit off)

I'll call my list at 9am and call you approximately 10:30am. Is that acceptable?

Thank you,

Scott.

Sent from my iPhone



image001.gif
3K



Samuel Stretton <strettonlaw.samstretton@gmail.com>

FW: In re DiClaudio, No. 3 JD 2019

3 messages

Silano, Raquel <Raquel.Silano@courts.phila.gov>
To: "strettonlaw.samstretton@gmail.com" <strettonlaw.samstretton@gmail.com>
Cc: "DiClaudio, Scott" <Scott.DiClaudio@courts.phila.gov>

Mon, Dec 7, 2020 at 9:10 AM

Hello Mr. Stretton,

This is the first of four emails that I will send on behalf of Judge DiClaudio.

Kind regards,

Raquel

From: DiClaudio, Scott <Scott.DiClaudio@courts.phila.gov>
Sent: Monday, December 7, 2020 8:49 AM
To: Silano, Raquel <Raquel.Silano@courts.phila.gov>
Subject: FW: In re DiClaudio, No. 3 JD 2019

From: DiClaudio, Scott <Scott.DiClaudio@courts.phila.gov>
Sent: Tuesday, March 10, 2020 8:32 AM
To: Metz, Joseph <Joseph.Metz@pacourts.us>
Subject: Re: In re DiClaudio, No. 3 JD 2019

All issues appear to be resolved.
I'm meeting with Mr. Summers at 3pm this afternoon to clear the last hurdle

I anticipate that he will reach out to you today

Your patience has been greatly appreciated

Be well,

Scott DiClaudio

From: Metz, Joseph <Joseph.Metz@pacourts.us>
Sent: Tuesday, March 3, 2020 10:32:57 AM
To: Norton, Melissa L. <Melissa.Norton@jcbpa.org>
Cc: DiClaudio, Scott <Scott.DiClaudio@courts.phila.gov>
Subject: RE: In re DiClaudio, No. 3 JD 2019