

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

MAY 28 2021

RECEIVED AND FILED

IN RE:

Judge Thomas A. Placey :
Court of Common Pleas : 2 JD 2020
9th Judicial District :
Cumberland County :

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

On June 9, 2020, the Judicial Conduct Board (Board) filed a Board Complaint against Judge Thomas A. Placey (Respondent). On July 8, 2020, Respondent filed an Answer to the Complaint. On October 27, 2020, the Board filed an Amended Complaint. A pre-trial conference was conducted on March 30, 2021. Thereafter, the parties filed Joint Stipulations of Fact in Lieu of Trial and Waiver of Trial Pursuant to C.J.D.R.P. No. 502(D)(1). The following is the Board's brief in support of its proposed findings of fact and conclusions of law.

I. Proposed Findings of Fact

Samento v. Samento

On October 5, 2017, while presiding over a hearing in the matter of *Samento v. Samento*, Respondent abruptly stopped the testimony of Tony Samento and ordered him out of the witness stand, yelling "Move it like you have a purpose." While still yelling, Respondent told Tony Samento's attorney, "You get your client under control or I am going to tear him up on the stand." (Joint Stipulations 4 - 9.) After yelling at the witness and his attorney, Respondent left the courtroom and did not permit Tony Samento to complete his testimony. (Joint Stipulation 12.) By order

dated November 6, 2017, without ever reconvening the hearing and giving Tony Samento an opportunity to complete his testimony, Respondent found in favor of Nanci Samento and against Tony Samento. (Joint Stipulation 17.) On December 5, 2017, Tony Samento appealed Respondent's November 6, 2017 order. (Joint Stipulation 18.) On December 28, 2017, Tony Samento filed a motion requesting that Respondent recuse himself from the case, asserting that he had exhibited animosity and hostility toward him. (Joint Stipulation 19.) By order dated March 7, 2018, Respondent denied the motion for his recusal. (Joint Stipulation 20.) On January 16, 2019, the Superior Court vacated Respondent's November 6, 2017 decision, and remanded the case "for a hearing before another trial judge." (Joint Stipulation 21.) In its opinion, the Superior Court described the transcript and audio recording of Respondent's conduct during the October 8, 2017 hearing as "disconcerting" and stated that the record confirmed Respondent's "hostility" toward Tony Samento. (Joint Stipulations 22 - 23.) The Superior Court found that Respondent had denied Tony Samento due process by abruptly terminating the hearing and found that Respondent had abused his discretion when he denied Tony Samento's motion for recusal. (Joint Stipulations 24 and 25.)

Commonwealth v. Moore

At approximately 9 a.m. on January 15, 2019, Respondent was presiding over the sentencing in the matter of Commonwealth v. Moore. (Joint Stipulation 26.) An assistant district attorney called the case and noted for the record that she had just provided restitution information to Respondent. (Joint Stipulation 30.) Thereafter, Respondent berated the assistant district attorney, yelling at her in open court. After ordering the assistant district attorney to leave the courtroom all while yelling at her

in open court, Respondent left the bench. (Joint Stipulations 32 and 35.) Moments later, Respondent returned to the courtroom and continued to yell at the assistant district attorney. Respondent also addressed a sheriff's deputy, to whom he yelled, "Haul her out" and "Move it, sheriff." (Joint Stipulation 34.) When the assistant district attorney apologized to the Respondent, he can be heard on the audio recording of the proceeding yelling at her and ordering her to "Move it. Quit talking. Lord have mercy. You show me enough disrespect all fucking day long. What is your problem? Get out of here." (Joint Exhibit 6 and Joint Stipulation 34.) A reporter, who was in Respondent's courtroom during the *Moore* sentencing described Respondent's conduct as an "explosion." When deposed by the Board, Respondent described his conduct as "shouting" and "apoplectic." (Joint Stipulations 38 and 39.)

Gnazzo v. Gnazzo

On August 8, 2018, Respondent was presiding over a custody proceeding in the matter of *Gnazzo v. Gnazzo*. (Joint Stipulation 40.) During the cross examination of one of the plaintiffs, the plaintiffs' attorney voiced an objection. (Joint Stipulation 42.) Rather than rule on the objection, Respondent yelled at the parties and their attorneys, announced, "We are taking a break" and left the bench. (Joint Stipulations 42 and 47.) While yelling at the parties and their attorneys, Respondent threw his glasses onto his desk. (Joint Stipulation 44.) When Respondent returned to the bench, the attorney who had been cross examining the witness when Respondent's angry outburst occurred declined to ask any further questions of the witness. (Joint Stipulation 48.)

Wingard v. Wingard

On October 3, 2018, while Respondent was presiding over a custody proceeding in the matter of *Wingard v. Wingard*, a testifying witness exhibited confusion when her attorney asked her a question. (Joint Stipulations 49 and 50.) When the witness's attorney attempted clear up the confusion, Respondent interrupted saying, "No, no, no. No, no, no, no, no, no. You folks really don't understand me. You don't get this. No. You're not going to do this are you?" When the attorney responded to Respondent's question, he screamed, "So you guys show her something already, for crying out loud. Get your witness prepared. Get off my witness stand. Call me when you're ready. I got other things to do." (Joint Stipulation 50 and 55.) Respondent left the bench only to return four minutes later at which time he made the following statement to the parties and their attorneys:

Relax. Have a seat. Ma'am, get back up here. Parents, if you can't tell I'm going to be hostile with you right now. Let me explain something, parents, all right. I haven't seen you folks before, but I give you an order to do something and it doesn't get done, you see my temperament. If you can't be nice to each other, don't even bother taking the witness stand. And if you're not ready to go when we start, you're going to get chewed up and spat out by me. Let's go counselor.

(Joint Stipulation 57.)

The attorney who had been questioning the witness when Respondent's angry outburst occurred described his tone as "blanket screaming" and said that it was a "12" on a scale of "1-10." (Joint Stipulation 53.) Opposing counsel, who was present during Respondent's screaming described his tone as "screaming" "beyond anything [she] had ever seen by a judge." Opposing counsel reported that Respondent's conduct left her "too frightened to move." (Joint Stipulations 55 and 56.)

Interaction with Attorney

On August 2, 2019, Attorney Corey Fahnestock was in the Cumberland County Courthouse waiting to meet with a client when Respondent's law clerk approached him and told him that Respondent wanted an attorney to appear on behalf of a defendant in a criminal proceeding at that very moment. (Joint Stipulations 58 through 60.) Being unfamiliar with the criminal case, Fahnestock declined the request. (Joint Stipulation 61.) Moments later, Respondent found Fahnestock and told him to follow him to a small conference room. (Joint Stipulation 64.) When Respondent, his law clerk and Fahnestock entered the conference room, Respondent ordered everyone else in the room to leave except Magisterial District Judge Michael Martin who had been presiding over another matter in the room. (Joint Stipulations 66 and 67.) After closing the door, Respondent told Fahnestock that when he tells an attorney to go somewhere, the attorney is required to do so. (Joint Stipulation 68.) While speaking to Fahnestock in the small conference room, Respondent used an excessively loud voice which could be heard by witnesses outside of the room. The witnesses who could hear Respondent from outside of the room described his volume as "yelling" and found his conduct "upsetting." (Joint Stipulations 72 and 73.) Judge Martin explained that Respondent "went off" on Fahnestock. Later that same day, referring to his treatment of Fahnestock, Respondent asked Judge Martin, "How'd I do?" Judge Martin replied, "Glad I wasn't him." (Joint Stipulations 70 and 71.)

Kimmet v. Kimmet (Amended Complaint)

On June 6, 2019, Respondent was presiding over a hearing on a Protection from Abuse petition in the matter of *Kimmet v. Kimmet*. (Joint Stipulation 74.)

While the defendant, Thomas Kimmett, was testifying on direct examination, his attorney, Lawrence Rosen, attempted to approach the witness to show him a document. (Joint Stipulation 75.) As the attorney approached the witness stand, Respondent told him not to approach the witness and added, "You will be out of the courtroom in a heartbeat." (Joint Stipulation 76.) When Rosen, who is hearing impaired, questioned what Respondent was saying, Respondent quickly stood up and while yelling at the attorney, asked him, "Can you hear me now?" (Joint Stipulations 79 – 81.) Respondent continued to yell at the attorney, asking him if he had been paying attention to how opposing counsel had provided documents to witnesses. (Joint Stipulation 80.) After the hearing concluded, Rosen went to Respondent's chambers and apologized for approaching the witness stand in the manner that caused Respondent's angry outburst. (Joint Stipulation 89.)

II. Discussion

Violations of the Code of Judicial Conduct:

Samento v. Samento

Respondent's conduct during the October 5, 2017 hearing in the *Samento v. Samento* matter violated Rules 2.6, 2.8 and 2.11 of the Code of Judicial Conduct.

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

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

By abruptly terminating the October 5, 2017 proceeding in the *Samento v. Samento* case, Respondent denied Tony Samento the opportunity to complete his testimony. This very issue was addressed by the Superior Court in its January 16, 2019 Opinion pertaining to the *Samento v. Samento* appeal. The Superior Court

cited *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) for the proposition that “[t]he fundamental requisite of due process of law is the opportunity to be heard . . . [.]” (Joint Exhibit 5, at page 10.) The Superior Court also relied upon Pennsylvania cases in which our courts have held that due process entitles a party to be heard. (Joint Exhibit 5, at page 10 – 11.) After determining that Tony Samento was not afforded a full opportunity to be heard due to Respondent’s abrupt termination of his testimony, the Superior Court stated that it was “compelled to conclude [Tony Samento’s] due process rights were violated, and he is entitled to a new hearing . . . [.]” Joint Exhibit 5, at page 15.)

Based upon the transcript and audio recording of the October 5, 2017 proceeding and upon the January 16, 2019 opinion of the Superior Court in the *Samento v. Samento* matter, it is evident that Respondent failed to accord Tony Samento the right to be heard according to the law and thereby violated Rule 2.6 of the Code of Judicial Conduct.

Canon 2, Rule 2.8. Decorum, Demeanor, and Communication with Jurors.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity . . . [.]

In its January 16, 2019 opinion, the Superior Court noted that it had listened to the audio recording of Respondent’s conduct during the October 5, 2017 proceeding in *Samento v. Samento*. The Superior Court called Respondent’s actions during the October 5, 2017 proceeding “intemperate” and “disconcerting.” (Joint Exhibit 5, at page 17 and 19.)

This Court could determine that Respondent violated Rule 2.8(B) during the *Samento v. Samento* hearing based on the Superior Court’s description of his conduct and a review of the transcript of the proceeding in which Respondent rudely ordered

Tony Samento to leave the witness stand and threatened him and his attorney saying, "You get your client under control or I am going to tear him up on the stand." However, this Court only needs to listen to the recording of the October 5, 2017 proceeding itself in order to determine that the Superior Court's description of Respondent's demeanor is accurate, if not an understatement, and that Respondent's conduct as heard in Joint Exhibit 1 constitutes a clear violation of Rule 2.8(B) of the Code of Judicial Conduct.

Canon 2, Rule 2.11. Disqualification.

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer . . . [.]

Respondent failed to disqualify himself from the *Samento v. Samento* matter in violation of Rule 2.11(A) of the Code of Judicial Conduct. In its January 16, 2019 opinion, the Superior Court considered Respondent's hostile treatment of Tony Samento during the October 5, 2017 hearing and his written opinion in support of his November 6, 2017 decision when it found an "appearance of bias" and determined that Respondent had abused his discretion when he refused to recuse from the *Samento* case. (Joint Exhibit 5, at pages 15 – 19.)

Accordingly, despite the trial court's assurance that it harbored no animus toward [Tony Samento] we conclude upon review of the record before us that the court's comments regarding [Tony Samento] and his counsel, as well as its actions during the hearing, were intemperate, and raise an appearance of bias. Therefore, we conclude the court abused its discretion when it denied [Tony Samento's] motion for recusal, vacate the judgment entered in favor of Wife, and remand this case for a new hearing before a different trial judge.

(Joint Exhibit 5, at page 19.)

The Board is in agreement with the assessment of the Superior Court, and asserts that Respondent violated Rule 2.11(A) when he failed to disqualify himself

from the *Samento v. Samento* case where his conduct clearly established that he had a personal bias or prejudice concerning Tony Samento.

Commonwealth v. Moore

Respondent's conduct during the January 15, 2019 sentencing hearing in the matter of *Commonwealth v. Moore* violated Rule 2.8 of the Code of Judicial Conduct.

Canon 2, Rule 2.8. Decorum, Demeanor, and Communication with Jurors.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity . . . [.]

The evidence before this Court of Respondent's conduct during the *Moore* sentencing consists of Respondent's own description of his demeanor: "shouting" and "apoplectic" as well as the description by a witness: "an explosion." Additionally, this Court possesses the best evidence of Respondent's demeanor, an audio recording.¹ Each piece of evidence, taken alone, provides this Court with clear and convincing evidence that Respondent violated Rule 2.8 of the Code of Judicial Conduct during the January 15, 2019 sentencing proceeding; taken together, the evidence of the alleged violation is overwhelming.

¹ It should be noted that the transcript of the proceeding (Joint Exhibit 7) and the audio recording of the proceeding (Joint Exhibit 6) differ in one respect. The transcript reports that Respondent accused the assistant district attorney of showing him disrespect "all freaking day long." (Joint Exhibit 7 at page 3:14.) In contrast, the audio recording of the proceeding establishes that Respondent used profanity in place of the word "freaking." (Joint Exhibit 6 at minute 0:44.)

Gnazzo v. Gnazzo

Respondent's conduct during the August 8, 2018 custody proceeding in the matter of *Gnazzo v. Gnazzo* violated Rule 2.8 of the Code of Judicial Conduct.

Canon 2, Rule 2.8. Decorum, Demeanor, and Communication with Jurors.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity . . . [.]

The evidence before this Court of Respondent's conduct during the *Gnazzo v. Gnazzo* matter includes the reaction of the attorney who was examining the witness when Respondent yelled at the witness, threw his glasses onto his desk and left the bench: Attorney Shaffer declined to ask any further questions of the witness when court resumed following Respondent's angry outburst. Additionally, this Court possesses the best evidence of Respondent's demeanor, an audio recording. Taken alone, the audio recording of Respondent's conduct during the August 8, 2018 proceeding provides this Court with clear and convincing evidence that Respondent violated Rule 2.8 of the Code of Judicial Conduct during the August 8, 2018 proceeding. Shaffer's decision to conclude his questioning immediately following Respondent's angry outburst provides this Court with further evidence of the violation.

Wingard v. Wingard

Respondent's conduct during the October 3, 2018 custody proceeding in the matter of *Wingard v. Wingard* violated Rule 2.8 of the Code of Judicial Conduct.

Canon 2, Rule 2.8. Decorum, Demeanor, and Communication with Jurors.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity . . . [.]

This Court has relied upon witness descriptions to determine that a judge has violated the Code of Judicial Conduct regarding improper demeanor. (See *In re Lokuta*, 964 A.2d 988, 1031 (Pa.Ct.Jud.Disc. 2008) wherein witnesses described the judge's demeanor using words such as "hostile," "very loud," "out of control," and other similar terms.) While there is no audio recording of Respondent's angry outburst during the *Wingard v. Wingard* proceeding, this Court has clear and convincing evidence from witnesses that establishes the alleged violation. Both attorneys present in the courtroom on October 3, 2018, described Respondent as "screaming" during his outburst. One of the attorneys indicated she had never before seen a judge conduct himself in such a manner and the other was left frightened by the experience.

In addition to the statements of the attorneys who witnessed Respondent's conduct, this Court has evidence of Respondent's own assessment of his conduct. When he returned to the bench four minutes after screaming at the parties and their attorneys, Respondent warned them about his demeanor telling them he is going to be "hostile" and saying, "I haven't seen you folks before, but I give you an order to do something and it doesn't get done, *you see my temperament.*" (Emphasis added.) Apparently believing he had not said and done enough to demonstrate his temperament, Respondent threatened the parties saying, "If you can't be nice to each other, don't even bother taking the witness stand. And if you're not ready to go when we start, *you're going to get chewed up and spat out by me.*" (Emphasis added.)

The statements of the attorneys who witnessed Respondent's conduct as well as Respondent's own assessment of his conduct and threats to continue to treat the

parties and their attorneys improperly provides this court with clear and convincing evidence that Respondent violated Rule 2.8 of the Code of Judicial Conduct during the October 3, 2018 proceeding.

Interaction with Attorney

Respondent's conduct during his interaction with Attorney Corey Fahnestock on August 2, 2019 violated Rule 2.8 of the Code of Judicial Conduct.

Canon 2, Rule 2.8. Decorum, Demeanor, and Communication with Jurors.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity . . . [.]

While there is no audio recording of Respondent's August 2, 2019 interaction with Fahnestock, this Court has credible witness descriptions of the incident which establish that Respondent failed to treat Fahnestock properly. Judge Michael Martin's statement that Respondent "went off" on Fahnestock combined with his statement that he was glad he was not Fahnestock provide this court with credible evidence that Respondent's conduct was improper. Additionally, not one, but two court employees who were situated outside of the conference room during the incident, with a closed door between themselves and Respondent, described his volume as "yelling." Finally, witness reports that Respondent told Fahnestock that when he tells an attorney to go somewhere, the attorney is required to do so, is strikingly similar to his statement in the *Wingard v. Wingard* matter, in which he told the parties, "I give you an order to do something and it doesn't get done, you see my temperament." The similarity of the two statements lends credibility to witness reports that Respondent made the statements. Taken as a whole, the descriptions of Respondent's conduct provided by witnesses to the incident provide this Court with clear and convincing evidence that

Respondent violated Rule 2.8 of the Code of Judicial Conduct during his interaction with Fahnestock on August 2, 2019.

Kimmett v. Kimmett

Respondent's conduct during the June 6, 2019 hearing in the matter of *Kimmett v. Kimmett* violated Rule 2.8 of the Code of Judicial Conduct.

Canon 2, Rule 2.8. Decorum, Demeanor, and Communication with Jurors.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity . . . [.]

The evidence before this Court of Respondent's conduct during the *Kimmett v. Kimmett* matter includes the best evidence of Respondent's demeanor, an audio recording. Taken alone, the audio recording of Respondent's conduct during the June 6, 2019 proceeding provides this Court with clear and convincing evidence that Respondent violated Rule 2.8 of the Code of Judicial Conduct. Additionally, this court should consider the fact that Respondent treated a hearing impaired person with disrespect by yelling at him, "Can you hear me now?" and berating him in open court as further evidence that Respondent violated Rule 2.8 of the Code of Judicial Conduct.

Violations of the Constitution:

Article V, §17(b), Pa. Const.

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

Respondent's violations of the Code of Judicial Conduct constitute automatic, derivative violations of Article V, §17(b) of the Constitution of the Commonwealth of Pennsylvania which prohibits judges from violating any canon of judicial ethics prescribed by the Supreme Court. Therefore, Respondent's violations of Rules 2.6, 2.8 and 2.11 of the Code of Judicial Conduct, as discussed herein, constitute

automatic derivative violations of Article V, §17(b) of the Constitution of the Commonwealth of Pennsylvania.

III. Proposed Conclusions of Law


1. At Count 1, the Board has established by clear and convincing evidence that Respondent violated Rule 2.6 of the Code of Judicial Conduct by his conduct regarding the matter of *Samento v. Samento* in that he failed to accord every person with a legal interest in the proceeding the right to be heard according to the law.
2. At Counts 2 through 6 and Count 19, the Board has established by clear and convincing evidence that Respondent violated Rule 2.8(B) of the Code of Judicial Conduct by his conduct, (1) in the matter of *Samento v. Samento*, (2) in the matter of *Commonwealth v. Moore*, (3) in the matter of *Gnazzo v. Gnazzo*, (4) in the matter of *Wingard v. Wingard*, (5) during his interaction with Fahnestock, and (6) in the matter of *Kimmatt v. Kimmatt* in that he failed to conduct himself in a patient, dignified, and courteous manner.
3. At Count 7, the Board has established by clear and convincing evidence that Respondent violated Rule 2.11(A) of the Code of Judicial Conduct by his conduct in the matter of *Samento v. Samento* in that he failed to disqualify himself when he had a duty to do so as a result of his personal bias against a party or the party's lawyer.

4. At Counts 8 through 14 and Count 20, the Board has established by clear and convincing evidence that Respondent violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania as a result of his violations of Rules 2.6, 2.8 and 2.11 of the Code of Judicial Conduct.

Respectfully submitted,

RICHARD W. LONG
Chief Counsel

DATE: May 25, 2021

By: 
MELISSA L. NORTON
Deputy Counsel
Pa. Supreme Court ID No. 46684

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**COMMONWEALTH OF PENNSYLVANIA
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IN RE:

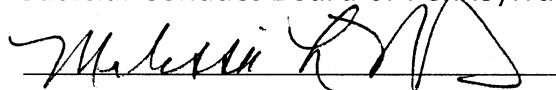
Judge Thomas A. Placey :
Court of Common Pleas : 2 JD 2020
9th Judicial District :
Cumberland County :

CERTIFICATE OF COMPLIANCE

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

Submitted by: Judicial Conduct Board of Pennsylvania

Signature:



Name:

MELISSA L. NORTON
Deputy Counsel

Attorney No.:

46684

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

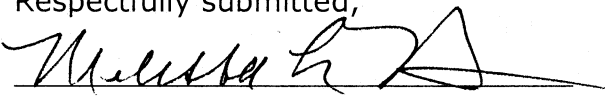
IN RE:

Judge Thomas A. Placey	:	
Court of Common Pleas	:	2 JD 2020
9 th Judicial District	:	
Cumberland County	:	

PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on the date below, a copy of the Judicial Conduct Board's Brief in Support Proposed Findings of Fact and Conclusions of Law was sent by first class mail and email to Heidi Eakin, Esquire, counsel to Judge Thomas A. Placey at the following address:

Heidi F. Eakin, Esquire
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DATE: May 28, 2021 By: 
Respectfully submitted,
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