

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

LYRIS F. YOUNGE	:	
Court of Common Pleas	:	
First Judicial District	:	2 JD 2019
Philadelphia County	:	

**BRIEF OF RESPONDENT, LYRIS F. YOUNGE, IN OPPOSITION
TO THE PETITION FOR INTERIM SUSPENSION WITH OR WITHOUT PAY**

Respondent, Lyris F. Younge, by and through her undersigned counsel, Charles Gibbs, Esquire, files this Brief in Opposition to the Petition for Interim Suspension With or Without Pay (the “Petition”) filed by the Judicial Conduct Board of the Commonwealth of Pennsylvania (the “Board”) on or about August 20, 2019.¹ Judge Younge respectfully requests that this Court deny the Petition in its entirety because the Board failed to meet its burden of demonstrating to this Court that the totality of the circumstances requires the entry of an interim order of suspension.

In the alternative, should the Court conclude the interim suspension is warranted, that said suspension be paid without any loss of health or other benefits.

I. Introduction

Upon first glance, one would be surprised and disturbed by the allegations in the Board’s Complaint. Indeed, the allegations in the Complaint, which are unverified, are provocative and an attempt to paint a picture of Judge Younge, but the facts, as testified to in the hearing before this Court, are much different. To paraphrase Mark Twain: facts are stubborn things, but allegations are pliable. In short, the undisputed facts presently by the Board fail to demonstrate

¹ On the same date, the Board filed a Complaint against Judge Younge alleging 10 counts of judicial misconduct (the “Complaint”).

that an interim suspension of Judge Younge is necessary because her continued performance of duties would undermine the public's confidence in the judiciary or impacts the proper administration of justice. For the reasons fully developed below, Respondent respectfully requests that the Petition be denied.

II. Factual Summary and Procedural History

Since January 4, 2016, Judge Younge has served as a judge of the Court of Common Pleas for the First Judicial District of the Commonwealth of Pennsylvania. From January 4, 2016 until July 1, 2018, Judge Younge was assigned to the Family Court Division.

Since July 1, 2018 to the present, Judge Younge has been assigned to the Statutory Appeals Section of the Civil Trial Division. There is no dispute that the Board presented no facts or evidence to this Court at the Hearing that any of the alleged misconduct occurred in the last eighteen (18) months, in the time period following May of 2018.

As noted above, on or about August 20, 2019, the Board commenced the instant proceedings by filing the Complaint and Petition. On September 4, 2019, this Court issued an order scheduling a hearing on the Petition for September 12, 2019 (the "Hearing"). At the Hearing, the Board elected to present four (4) witnesses – Judge Susan Gantman, Brian McLaughlin, Aaron Mixon and Brandi McLaughlin. The Board argued in its Opening Statement that the witnesses would, respectively, attest to the allegations in the Complaint relating to claims of inordinate delay, abuse of the contempt power, failure to provide due process and demeanor.

In pertinent part, each witness testified as follows:

1. Judge Susan Gantman

Judge Gantman testified regarding the allegations in the Complaint of inordinate delay

by Judge Younge in the filing of 1925(a)(2)(ii) opinions for fast track appeals. While she did not specifically attest to any averments in the Complaint,² Judge Gantman stated she was familiar with said averments because she had supervisory responsibility regarding fast track appeals. See Notes of Testimony (hereinafter referred to as “N.T.”) 14:9-12. Judge Gantman also prepared and testified regarding Exhibit B-1, a compilation of all records pertaining to Judge Younge from January 1, 2016 to December 8, 2017 which were overdue to the Superior Court. [N.T. 12:24-25.]

Judge Gantman explained that while the exhibit noted the number of records at issue, it could not be used to determine the actual number of overdue appeals because multiple cases involving several minor children are often heard simultaneously but docketed separately. [N.T. 25:14-16]. Lastly, Judge Gantman testified that she was not aware of any issue of delay relating to Judge Younge filing opinions in the last eighteen (18) months and that she would have known if such a delay had occurred. [N.T. 19:13-17].

2. Brian McLaughlin

The Board then proffered Attorney Brian McLaughlin (“Mr. McLaughlin”) to support the allegations in the Complaint relating to alleged abuse of the contempt powers. Simply put, Mr. McLaughlin’s testimony did nothing to bolster the Board’s Petition and instead demonstrated the frailty of the Board’s allegations in the Complaint when tested under cross examination.

Mr. McLaughlin stated that he appeared before Judge Younge regularly between January, 2016 and May, 2018. [N.T. 40: 13-15]. On or about November 2017, Mr. McLaughlin was scheduled to appear in the matter of In the Interest of K.R. and B.T. for a termination of parental

² The Complaint specifically avers that Judge Younge failed to file timely 1925(a)(2)(ii) opinions in thirteen (13) matters over a period of months ending on or about July, 2018 (the same month she was reassigned to the Civil Division). [Complaint Paragraphs 7, 27-39]. The Board, however, cannot rely on the bald allegations of the Complaint as it proffered no witnesses to attest to these specific allegations.

rights hearing. [N.T. 40:19-25, 41:1-10]. It was the fifth listing of the matter and Judge Younger had attached each attorney meaning that all attorneys were required to appear and be prepared to litigate the matter. [N.T. 60:1-6].

Because of Mr. McLaughlin's absence the matter had to be continued, yet again, and Judge Younger ordered that a Rule to Show Cause be issued to show why Mr. McLaughlin should not be held in contempt for his failure to appear as ordered. [N.T. 45:1-3]. On that same day, Mr. McLaughlin attempted to speak with Judge Younger to apologize for his absence, but he was told by a member of her staff that she was unavailable that day. [N.T. 45:14-16]. The following week, Mr. McLaughlin attempted to speak with Judge Younger when he was before her on another matter. [N.T. 46: 10-25].

Judge Younger courteously told him that she would be happy to speak with him if he returned later in the day. When Mr. McLaughlin returned later that day, Judge Younger gave him an opportunity to speak with her. [N.T. 47: 1-6]. According to Mr. McLaughlin, Judge Younger told him that she understood the background, but that the issue would need to be fully explored at a contempt hearing. [N.T. 48:1-3].

Indeed, while the court clerks may have not handled their responsibilities, the reality is that Mr. McLaughlin received actual notice of the contempt hearing. [N.T. 48:18-20]. This is evident as he appeared with his counsel at the hearing. At said hearing, Judge Younger gave him an opportunity to call witnesses and Mr. McLaughlin elected not to do so. [N.T. 66:13-16] Lastly, McLaughlin denied the allegations contained in Paragraph 111 of the Complaint that Judge Younger was "rude, arrogant and dismissive" during the week of December 4, 2017. [N.T. 69:15-19; 74:4-5]. Instead, he contended that she was dismissive (in that she did not agree to withdraw the Rule to Show Cause), but not objectively rude and/or arrogant. [N.T. 74:16-25].

He further stated that he subjectively believed it was rude and arrogant for her to put his reputation at risk because she knew that he was in front of another judge when he failed to appear as ordered. Id. He admits that Judge Younge never raised her voice or spoke to him in an arrogant or dismissive tone. [N.T. 74:4-5].

3. Aaron Mixon

The Board proffered Attorney Aaron Mixon to support the allegations in the Complaint relating to alleged due process issues and improper demeanor. Again, the Board's efforts fall short. Indeed, this Honorable Court would recall that the essence of Mr. Mixon's testimony was that Judge Younge was rightfully angry about a child being injured that she was charged to protect.

Attorney Aaron Mixon testified that he appeared before Judge Younge "hundreds" of times between January, 2016 and May, 2018. [N.T. 82:5]. In response to a question about Judge Younge's temperament, he stated that "there would be times when the judge would get upset over either the handling or mishandling of a case by a social worker or even by an attorney or the lack of compliance by a parent and she would be visibly upset with the lack of compliance by a parent, or the dropping of the ball, so to speak, of any attorney or social worker." [N.T. 83:9-14].

He stated that she would raise her voice at attorneys, clients and/or social workers when they failed to follow court orders. [N.T. 83:17-18]. To illustrate Mr. Mixon's contention, the Board played two audio clips from a hearing on April 27, 2016 which Mr. Mixon authenticated. [N.T. 88: 9-12]. In the case at issue, the dependent girl had been physically attacked (also known as "jumped") by a number of other girls at a group home. [N.T. 89:20-25].

Judge Younge had previously ordered that the child be removed from that same group home two weeks earlier, on April 13, 2016. At the time of the hearing on April 27, 2016, DHS

had failed to comply with the Court's Order of April 13, 2016. [N.T. 97:16-25]. Mr. Mixon stated Judge Younger was upset because the child remained in danger despite her order. [N.T. 98:1-3].

4. Brandi McLaughlin

The Board proffered Attorney Brandi McLaughlin to support the "multiple issues of misconduct" in the Complaint. Again, as with every witness, Ms. McLaughlin's testimony fails to establish the Board's case.

Ms. McLaughlin testified that she appeared before Judge Younger in three (3) cases between January, 2016 and May, 2018. [N.T. 101:18-19]. Ms. McLaughlin testified that she represented a parent in a case captioned In the Interest of N.M. N.T. 101: 20-21. In short, the case involved an eight (8) week old infant who was removed from her parents care because she had several broken ribs. [N.T. 103:1-5]. Contrary to the allegations in the Complaint, the parents claimed that their two-year-old toddler had injured the infant. [N.T. 117:23-25]. A doctor from the Children's Hospital of Philadelphia testified that the parents' explanation was incredulous and that the injuries sustained to the infant were non-accidental. [N.T. 118:6-10]. As a result, the Department of Human Services ("DHS") requested that the child be placed in foster care (rather than in kinship care³) and eventually moved to terminate the parental rights of the parents. [N.T. 123:1-2]. Ms. McLaughlin's clients sought to have the infant placed back with the parents or with a relative. [N.T. 105:3-6]. Judge Younger made clear to all parties that she wanted an explanation of how the infant was injured. [N.T. 107:1-9].

³ Ms. McLaughlin testified that Judge Younger stated they she denied the parent's request for kinship care because she was concerned that the parents would have unfettered access to the infant. When questioned by this Court, Ms. McLaughlin conceded that it was not unusual for a judge to deny kinship care where the judge had such a concern and no explanation for the injuries to child had been provided to the judge.

She stated that either the parents needed to explain the injuries (i.e., “cop” to the injuries) or provide medical evidence to explain the injuries. *Id.* Eventually, Judge Younge granted DHS’ request to terminate the parental rights over the strenuous objection of the parents. [N.T. 113:16].

Ms. McLaughlin testified that there were many days with Judge Younge where she was courteous and respectful. [N .T. 126:23-25]. In fact, when questioned by this Court, she admitted that she only found Judge Younge’s conduct out of line with judicial norms in the hotly contested case of In the Interest of N.M. [N.T. 131:4-6]. In the other two cases in which Ms. McLaughlin appeared before Judge Younge, she always found her to be courteous and respectful. *Id.*

III. Standard of Review

It is well-established that it is the Board's burden to establish that the “totality of the circumstances” require suspension. In Re: Larsen, 655 A.2d 239 (Pa.Ct.Jud.Disc.1994). In determining whether the Board has met its burden, this Court should consider the following factors: (1) nature of the allegations in the complaint; (2) its relation, or lack thereof, to the duties of the responding judicial officer; (3) the impact on the administration of justice in this Commonwealth; (4) the harm caused to the public confidence in the judiciary; and 5) any other circumstances relevant to the conduct in question. *Id.* Here, the Board has failed to meet its burden.

IV. Argument

Contrary to the Board’s assertions in the Petition and at the Hearing, interim suspension of Judge Younge is not necessary during the pendency of this matter as the Board has not met its burden of proof. The simple reality is that the Board maintained that its witnesses would attest to

would attest to the facts asserted in the following enumerated allegations of the Complaint: inordinate delay of fast track appeals; due process issues; improper demeanor and abuse of contempt powers. With the exception of testimony regarding overdue opinions, the facts to which the witnesses testified do not comport with the pliable allegations of the Complaint and are insufficient on their face to allege judicial misconduct. As fully developed *infra*, the consideration of the annunciated factors leads decisively to the conclusion that the totality of the circumstances in this case calls for the denial of the Petition in its entirety.

A. **The Board Failed to Meet its Burden With Respect to the Allegations of Misconduct related to Improper Demeanor, Due Process and Abuse of Contempt Power.**

Facts are stubborn things. Indeed, a wise man once stated, that “everyone is entitled to their own opinion, but not their own facts.” Gratefully, this Court is bound not by the opinions of the Board, but by the facts presented to it during the Hearing.

The Complaint in this matter reads like a parade of horrors. It paints Judge Younge as tyrannical, rude and temperamental. Yet, the testimony elicited at the Hearing paints a completely different picture. The facts before this Court simply do not support any of the allegations in the Complaint relating to improper demeanor, due process issues and abuse of contempt powers. Accordingly, they should not be considered by this Court when weighing the totality of the circumstances factors used to determine whether interim suspension is required.

1. **The Board Failed to Support its Allegations of Improper Demeanor.**

None of the Board’s witnesses supported the Board’s allegations of improper demeanor. Significantly, Mr. McLaughlin wholly rejected those allegations and attested that Judge Younge was always professional when he appeared before her. He repeatedly declined to describe Judge Younge as rude or arrogant, in stark contrast to the allegations of the Complaint. Rather, he

admitted that he took her contempt ruling “personally” and that he thought it was rude and arrogant for her to issue the Order --- not that she ever used a rude or arrogant tone of voice with him. Further, he stated that she never raised her voice in his presence. While he did claim that she was dismissive in that she refused to withdraw the Contempt Order, he admitted that she did in fact give him an opportunity to speak with her. It was clear from Mr. McLaughlin’s testimony that Judge Younge was not objectively dismissive. She spoke to him and allowed him to provide her with his explanation. Her failure to agree with him (i.e., change her mind about the Contempt Order) does not equal dismissiveness, rudeness or arrogance.

Mr. Mixon’s testimony clearly establish one fact --- that Judge Younge is a human being with normal feelings and emotions. In the two audio clips played by the Board, Judge Younge was upset because a child in DHS custody was further endangered because a social worker had failed to comply with her Order. Her voice was elevated and her words were sharp, but in context she did not act inappropriately or injudiciously. A child’s life for whom she was responsible was endangered. The Board appears to take issue with her use of colloquialisms and vernacular language and not the content or meanings of her words. Nowhere in the Judicial Canons is a judge prohibited from expressing emotion or speaking in the commonly used idioms of their jurisdiction. In short, Judge Younge had every reason to be upset and did not inappropriately express her displeasure.

Ms. McLaughlin’s testimony regarding Judge Younge’s demeanor is hollow at best. Simply put, Ms. McLaughlin testimony is the result of sour grapes because she “lost”⁴ a hotly contested case. Not coincidentally, the only time she thought that Judge Younge demonstrated improper demeanor was during that “lost” case. In all of her other appearances before Judge

⁴N.T. 131:4-6.

Younge, Ms. McLaughlin found Judge Younge to be courteous and respectful. Lastly, Ms. McLaughlin failed to describe in any substantive way the basis for her testimony about Judge Younge's demeanor. As a result, her conclusory assertions regarding demeanor should be wholly disregarded.

2. The Board Failed to Support its Allegations of Violations of Due Process.

None of the Board's witnesses, including but not limited to Mr. Mixon, testified to any alleged misconduct relating to due process.⁵ As such, there was simply no evidence provided to this Court relating to the misconduct allegations related to due process.

3. The Board Failed to Support its Allegations of Abuse of the Contempt Powers.

Mr. McLaughlin's testimony did not support the Board's allegations of abuse of the contempt power. As noted above, Mr. McLaughlin had actual notice of his contempt hearing and testified that he was confused about whether he had "formal" notice of the hearing.⁶ He also stated that Judge Younge said that he could call witnesses. Frankly, the only issue in dispute at the hearing was whether Mr. McLaughlin's failure to appear before Judge Younge was willful. She found that it was willful because Mr. McLaughlin knew her case was a priority and he still chose to leave her courtroom. Clearly, both, Mr. McLaughlin and eventually the Superior Court disagreed with Judge Younge, but that should not lead this Court to the conclusion that she abused the contempt powers. Mr. McLaughlin knew that he was attached and he nevertheless

⁵ In its opening statement, the Board stated that Mr. Mixon would provide such testimony. He simply did not. To the extent that the Board may rely on Mr. McLaughlin's testimony regarding notice of his contempt hearing, please see the discussion of the same below.

⁶ Mr. McLaughlin also agreed that it was not Judge Younge's responsibility to provide him with service. In Philadelphia, the judge issues the order and the court staff serves that order on the appropriate party. Any attempt by the Board to suggest that Judge Younge engaged in misconduct of her court staff failed to give Mr. McLaughlin legal notice is not compelling and wholly unsupported by any evidence.

exited Judge Younge's courtroom. Judge Younge believed that she was within her discretion to find Mr. McLaughlin in contempt. The fact that the Superior reversed her decision does not equate to misconduct under the Judicial Canons.

B. The Totality of the Circumstances Do Not Require Interim Suspension.

While Judge Younge concedes that the testimony of Judge Gantman supports the general allegations in the Complaint related to undue delay in the filing of fast track opinions through May 2018, a fair consideration of this evidence does not support the Petition's request for interim suspension with or without pay. The totality of the circumstances analysis in this matter, weighs against suspension. As noted above, this Court considers the following factors when deciding whether suspension is required : (1) nature of the allegations in the complaint; (2) its relation, or lack thereof, to the duties of the responding judicial officer; (3) the impact on the administration of justice in this Commonwealth; (4) the harm or possible harm to the public confidence in the judiciary; and 5) as well as any other circumstances relevant to the conduct in question.

1. Respondent Concedes the First Four Prongs Through May 2018.

Judge Younge concedes that the Board, with respect to testimony of Judge Gantman of undue delay through May of 2018, has prima facially demonstrated that the alleged conduct meets the first four prongs of the test.⁷ The Board did not, and cannot, establish the first four factors for any period of time in the last eighteen (18) months.

2. The Fifth and Final Prong Weighs Heavily in Judge Younge's Favor.

The fifth prong of the test permits this Court to consider any other circumstances relevant to the conduct involved. Judge Younge respectfully requests that this Court consider the timing of the allegations along with past precedent when evaluating the totality of the circumstances.

⁷ Respondent, however, does not concede that the allegations are wholly factual.

a) *Judge Younger Has Had No Recent Delayed Opinions.*

In its Opening Statement, the Board argued that reassigning Judge Younger from Family Court to Statutory Appeals in the Civil Trial Division “does not fix the problem” because the allegations, including those regarding undue delay, undermine the public’s confidence in the judiciary at the present time.⁸ This contention is belied by the facts elicited (or rather, not elicited) at the hearing. There is no evidence before this Court that Judge Younger has had a single unduly delayed opinion in the last eighteen months.⁹ Apparently, reassigning Judge Younger did, in fact, fix the problem. This begs the following questions: What changed? Did Judge Younger evolve into a different person overnight or did other factors contribute to the delayed opinions? The Board has offered no explanation of how or why Judge Younger’s performance miraculously improved. In the proper time and in the proper forum, this Court will hear facts which will provide said explanation.

The Board described the statutory appeals cases which Judge Younger currently hears as complex and contended that allowing her to remain on the bench negatively impacts the proper administration of justice. To the contrary, Judge Younger contends that removing her unnecessarily from a busy, specialized unit where she has presided since July, 2018 without issue, would be to the detriment of the public and negatively impact the administration of justice. Judge Younger desires to continue to serve the citizens of Philadelphia who elected her during the pendency of this matter.

⁸ The Board has not, and cannot, contend that the extensive media coverage of the allegations in the Complaint demonstrate that the allegations undermine the public confidence in the judiciary.

⁹ There was also no evidence of any allegations of improper demeanor, due process, or abuse of the contempt power since May, 2018.

b) *Past Precedent Weighs Against Suspension or In Favor of Suspension With Pay.*

Traditionally, interim suspension has been reserved for those jurists accused of committing crimes. See In Re: Sullivan, 74 A.3d 1187 (Pa. Ct.Jud.Disc. 2013)

Additionally, this Court has also suspended judges on an interim basis with pay where there was a clear showing of current impact on the administration of justice. Indeed, when this Court considered the matter of In Re: Bruno, this Court denied the Board’s Petition to suspend Judge Bruno without pay and instead issued a suspension with pay. 69 A.3d 780 (Pa. Ct.Jud.Disc. 2013). See also In Re: Eakin, 13 JD 2015 (Pa. Ct.Jud.Disc., Dec. 22, 2015).

The allegations of undue delay in writing opinions in the instant matter most closely mirror those in the matter of In Re: William R. Shaffer, 3 JD 20005 (Pa. Ct. Jud. Disc. May 16, 2005). Indeed, in this case, the Board neglected to even request suspension. In the Shaffer case, the Respondent was accused of and conceded that he failed to file opinions in matters for periods ranging from six months to thirty-four months in nine cases and willfully failed to report those matters as required by law. This Court sanctioned the respondent to a period of probation. The respondent was not subjected to interim suspension.

This Court in Bruno, 69 A.3d at 796, used an illustrative chart to demonstrate when in recent history it has granted the Board’s various suspensions. For ease, it is incorporated below:

CASE	TYPE OF PETITION	DISPOSITION BY CJD	CHARGES
Larsen	Interim Suspension With Pay	Denied (before trial)	Illegal drug purchase
Larsen	Interim Suspension Without Pay	Granted (after conviction)	Illegal drug purchase
Strock	Interim Suspension With Pay	Granted	Misappropriation of Court funds
Smith	Interim Suspension With Pay	Denied	This was a trumped-up case
McFalls	Interim Suspension Without Pay	Denied-suspended with pay	Failure to perform judicial duties and public drunkenness
Jaffe	Interim Suspension Without Pay	Granted	Extortion
Cioppa	Interim Suspension With Pay	Granted	Sexual harassment of litigants
Ballentine	Interim Suspension With Pay	Granted	Dismissing her own motor vehicle violations
Melvin	Interim Suspension With Pay	Granted	Improper use of judicial employees for personal benefit
Melvin	Interim Suspension Without Pay	Granted	Improper use of judicial employees for personal benefit

A thorough review of prior precedent strongly weighs against an interim suspension in this matter. Indeed, Justice Larson was not suspended with pay before his hearing even though he was accused of purchasing drugs. *Id.* This Court has reserved suspension for those matters that are grave and where the Board has met its burden. Here, the Board has failed.

In the alternative, should this Court determine that suspension is required, Judge Younge should be suspended with pay and without any loss of health or other benefits.

V. Conclusion

“Take nothing on its looks; take everything on evidence. There is no better Rule.”¹⁰ For the reasons noted above, Judge Younge respectfully requests that this Court deny the Petition in its entirety because the stubborn facts simply do not support the pliable allegations in the Complaint.

**MCMONAGLE, PERRI,
MCHUGH, MISCHAK & DAVIS, P.C.**



By : _____
Charles M. Gibbs, Esquire
1845 Walnut Street, 19th Floor
Philadelphia, PA 19103
(215) 981-0999
cgibbs@mpmpc.com
Attorneys for Judge Lyris Younge

¹⁰ Charles Dickens in *Great Expectations*.

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Lyris F. Younge :
Court of Common Pleas :
First Judicial District : 2 JD 2019
Philadelphia County :

PROOF OF SERVICE

In compliance with Rule 122(D) of the Court of Judicial Discipline Rules of Procedure, on or about September 25, 2019, a copy of **this BRIEF OF RESPONDENT, IN OPPOSITION TO THE PETITION FOR INTERIM SUSPENSION WITH OR WITHOUT PAY** was sent by USPS Overnight Delivery and via email to Elizabeth A. Flaherty, counsel for the Judicial Conduct Board at the following address:

Ms. Elizabeth A. Flaherty, Esquire
Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
Harrisburg, PA 17106

**MCMONAGLE, PERRI,
MCHUGH, MISCHAK & DAVIS, P.C.**



By: _____
Charles M. Gibbs, Esquire
1845 Walnut Street, 19th Floor
Philadelphia, PA 19103
(215) 981-0999
cgibbs@mpmpc.com
Attorneys for Judge Lyris Younge