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JUL 7 2020

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Judge John H. Fishel :
Magisterial District Judge : 3 JD 2020
Magisterial District 19-3-01 :
19th Judicial District :
York County :

OMNIBUS MOTION FOR RELIEF

NOW COMES, Magisterial District Judge John H. Fishel, by and through his attorneys, Robert A. Graci, Esquire, and Saxton & Stump, LLC, and, pursuant to Rule 411 of the Court of Judicial Discipline Rules of Procedure, C.J.D.R.P. No. 411, hereby files this Omnibus Motion for Relief, as follows:

1. Judge Fishel was appointed to a vacancy in the office of Magisterial District Judge for Magisterial District 19-3-01 in York County, Pennsylvania, and took office on July 6, 2009.
2. Judge Fishel was elected to the office to which he had been appointed on November 3, 2009 and was sworn in on January 4, 2010.
3. Judge Fishel was re-elected on November 3, 2015, was sworn in on January 4, 2016, and is serving his second full term as Magisterial District Judge for Magisterial District 19-3-01.

4. Judge Fishel served as President of the York County Magisterial District Judge Association from 2011 through 2016.

5. Judge Fishel served as President of the Special Court Judges Association of Pennsylvania from 2017 through 2018.

6. At the request of the Court Administrator of Pennsylvania, Judge Fishel has served as Chair of the Magisterial District Judge Security Task Force for the Administrative Office of Pennsylvania Courts since 2019 and continues to serve in that capacity.

7. On October 1, 2019, Judge Fishel was notified of the existence of a Non-Discrimination and Equal Employment Opportunity Complaint filed against him by one of the clerks employed in Magisterial District 19-3-01 and that an investigation of that complaint by the York County Court Administrator's Office was underway.

8. Upon being confronted with the information giving rise to the Court Administrator's investigation, Judge Fishel immediately recognized his potential misconduct and took steps to rectify it by: a) obtaining a copy of the Unified Judicial System's Policy on Non-Discrimination and Equal Employment Opportunity, distributing it among his staff, and having each member initial it; b) locating an on-line program on sexual harassment offered by the Commonwealth and providing it to his staff; c) personally taking the management version of the

sexual harassment program; and d) seeking additional training and counselling on this subject from the Court Administrator's Office.

9. Before receiving notice of the conclusion of the investigation by the Court Administrator's Office by York County President Judge Joseph C. Adams by letter and email on November 4, 2019, Judge Fishel self-reported his potential misconduct by letter to Richard W. Long, Chief Counsel of the Judicial Conduct Board (Board), dated October 30, 2019, and delivered by hand on October 31, 2019.

10. Under the policies of the Unified Judicial System, President Judge Adams was duty bound to report the findings of the investigation by the Court Administrator's Office to the Board and did so after Judge Fishel made his self-report to the Board.

11. Judge Fishel's self-report pertained to most, if not all, of the allegations contained in the Non-Discrimination and Equal Employment Opportunity Complaint.

12. Since the filing of his self-report, Judge Fishel fully cooperated in the Board's investigation.

13. On June 29, 2020, the Board filed an eight-count Complaint against Judge Fishel.

14. For the conduct described in the Complaint, most, if not all of which was referenced in Judge Fishel's self-report, the Complaint charges that Judge Fishel violated Rules 1.1, 1.2, 2.5(A) and 2.8(B) of the Rules Governing Standards of Conduct of Magisterial District Judges. *See* Board Complaint, Counts 1-4, ¶¶ 14-29, pp. 7-9.

15. The Complaint alleges that the conduct giving rise to the asserted violations of Rules 1.1, 1.2, 2.5(A) and 2.8(B) of the Rules Governing Standards of Conduct of Magisterial District Judges set forth in counts 1 through 4 of the Complaint "constitute[] automatic, derivative violations of Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania" and alleges four additional counts against Judge Fishel for the violations alleged in counts 1 through 4. *See* Board Complaint, Counts 5-8, ¶¶ 30-37, pp. 9-10.

Motion for Admission to Judicial Diversion Program

16. The averments set forth above are incorporated herein by reference as though set forth in full.

17. Admission to the Court's Judicial Diversion Program is "a matter of privilege, not or right." *See* Court of Judicial Discipline, INTERIM POLICY STATEMENT, Judicial Diversion Program (IPS), ¶ 2, p. 3.

18. Without depreciating the seriousness of the alleged conduct charged in the Board Complaint, it is believed, and therefore averred, that the conduct

alleged, if proven, would not likely result in the imposition of serious discipline such as suspension or removal from office following adjudication. IPS, ¶ (a), p. 1.

19. The conduct alleged in the Board Complaint does not involve criminal charges. IPS, p. 2.

20. The conduct alleged in the Board Complaint does not involve corruption. IPS, p. 2.

21. Judge Fishel has not previously had formal charges filed against him as a Magisterial District Judge. IPS, ¶ (d), p. 2.

22. President Judge Adams has known Judge Fishel since 1993 when President Judge Adams was an Assistant District Attorney and Judge Fishel was a police officer.

23. As President Judge, Judge Adams has supervisory responsibilities over all York County magisterial district judges, including Judge Fishel. *See* Rule 605(a) of the Pennsylvania Rules of Judicial Administration, Pa.R.J.A. 605(a).

24. Since becoming President Judge, Judge Adams has worked with Judge Fishel and relies on him in matters involving magisterial district judge issues.

25. President Judge Adams is willing to give Judge Fishel another chance as he believes that Judge Fishel has learned from this experience resulting in the investigations by the Court Administrator's Office and the Board.

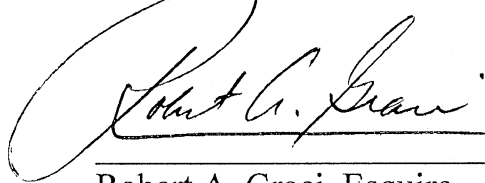
26. President Judge Adams is willing to advocate on behalf Judge Fishel to the extent necessary based, in part, on what Judge Fishel has done as a Magisterial District Judge and his capabilities.

27. In the past this Court has utilized the services of a mentor when admitting Judicial Officers into the Judicial Diversion Program, *See* IPS, ¶ 2, p. 3 (referring to “providing mentoring”); ¶ 3, p. 4 (referring to “mentoring programs, or other forms of remedial action” and “counselor, mentor or other professional appointed to supervise the diversion program”); and ¶ 5, p. 4 (stating “[q]ualified counselors, mentors or other professionals will be appointed by the Court to supervise the Judicial Diversion Program plan”). *See also In re: Domitrovich*, 1 JD 14 (Court of Judicial Discipline 2016) (appointing former Superior Court Judge Maureen Lally Green as counselor and mentor for common pleas court judge admitted to Judicial Diversion Program); and *In re: Wilson*, 1 JD 17 (Court of Judicial Discipline 2018) (appointing Magisterial District Court Judge Jay Weller “as a counselor and mentor to help resolve the issues present in this case” involving magisterial district judge admitted to Judicial Diversion Program)

28. President Judge Adams is willing to serve as mentor to Judge Fishel if the Court should deem the services of a mentor necessary to Judge Fishel’s admission to the Judicial Diversion Program.

WHEREFORE, it is respectfully requested that the Court schedule a hearing and admit Judge Fishel to the Judicial Diversion Program subject to the appropriate terms, conditions and obligations of the Judicial Diversion Program as determined by the Court.

Respectfully submitted,




Robert A. Graci, Esquire
Supreme Court ID No. 26722
Saxton & Stump, LLC
4250 Crums Mill Road
Harrisburg, Pa 17112
Phone: 717-216-5511
Cell: 717-585-3684
Fax: 717-547-1900
rag@saxtonstump.com

Counsel for Judge John H. Fishel

Date: July 7, 2020

VERIFICATION

I, John H. Fishel, verify that the statements in the foregoing Omnibus Motion for Relief are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.



John H. Fishel

Date: 07/07/20

COMMONWEALTH OF PENNSYLVANIA
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IN RE:

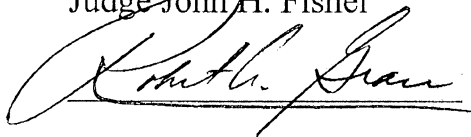
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CERTIFICATE OF COMPLIANCE

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: Judge John H. Fishel

Signature:



Name: Robert A. Graci, Esquire
Counsel for Judge John H. Fishel

Attorney No.: 26722

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COURT OF JUDICIAL DISCIPLINE**

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PROOF OF SERVICE

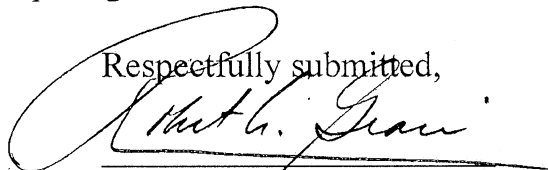
In compliance with Rule 122(D) of the Court of Judicial Discipline Rules of Procedure, C.J.D.R.P. No. 122(D), the foregoing Omnibus Motion for Relief was served upon Melissa L. Norton, Deputy Counsel to the Judicial Conduct Board via regular mail and email addressed as follows:

Melissa L. Norton
Deputy Counsel
Judicial Conduct Board of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
Harrisburg, PA 17106

and

Melissa.Norton@jcbpa.org

Respectfully submitted,



Robert A. Graci, Esquire

Counsel for Judge John H. Fishel

Date: July 7, 2020