COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Joseph J. O'Neill	:	
Former Municipal Court Judge	:	
First Judicial District	:	
Philadelphia County	:	4 JD 2016

MOTION TO CONSOLIDATE PENDING BOARD COMPLAINTS

AND NOW, this 30th day of September, 2016, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board), by and through the undersigned counsel, and files this Motion to Consolidate Pending Board Complaints pursuant to Rule 701 of the Court of Judicial Discipline Rules of Procedure, and in support thereof, avers the following:

1. On March 11, 2015, the Board filed a Complaint against Judge Joseph J. O'Neill at 4 JD 2015, charging him with violations of Canons 2B, 3A(4), 3B(3) and 3C(1) of the former Code of Judicial Conduct, effective through November 30, 2014, and violations of the Constitution of the Commonwealth of Pennsylvania, Article V, § 17(b), as an automatic derivative violation, and the Disrepute and Administration of Justice Clauses of Article V, § 18(d)(1). A true and correct copy of the Board Complaint is attached hereto as Attachment 1 (March 11, 2015 Board Complaint).

2. On March 11, 2015, the Board filed a Petition for Relief for Interim Suspension With or Without Pay against Judge O'Neill.

3. Trial in the matter was scheduled before this Court on January 29, 2016.

4. On January 26, 2016, Assistant United States Attorney Richard Barrett of the United States Attorney's Office for the Eastern District of Pennsylvania notified

Board counsel that federal charges would be filed against Judge O'Neill in the near future.

5. On January 26, 2016, AUSA Barrett provided notice to the Board that the primary witness for the Board, FBI Special Agent Eric H. Ruona, who was also the lead agent in a federal investigation pertaining to Judge O'Neill, would not be permitted to testify at the planned January 29, 2016 trial in *In re O'Neill*, 4 JD 2015.

6. Based upon notice from AUSA Barrett, on January 27, 2016, Board counsel and Judge O'Neill's counsel filed a Joint Motion to Defer Trial in *In re O'Neill*, 4 JD 2015.

7. By Order dated January 27, 2016, this Court continued the trial in this matter.

8. Contemporaneously with the filing of this Motion, Board Counsel is filing a Board Complaint against Judge O'Neill alleging three counts of judicial misconduct. See Attachment 2 (September 30, 2016 Board Complaint).

9. The charges contained within both Board Complaints arise from a common core of facts such that evidence pertaining to each would be admissible in separate trials.

10. The evidence regarding the charges is separable and distinct.

11. Judicial economy will be best served by this Court conducting a joint trial of the separately filed Board Complaints and/or considering stipulations of fact from the parties.

12. Samuel C. Stretton, Esquire, counsel for Judge O'Neill, has informed undersigned counsel that he does not oppose this Motion for Consolidation.

WHEREFORE, it is respectfully requested that this Honorable Court enter an order consolidating the Board's March 11, 2015 Board Complaint and the September 30, 2016 Board Complaint for purposes of trial.

Respectfully submitted,

ROBERT A. GRACI
Chief Counsel

DATE: September 30, 2015

By: Elizabeth A. Flaherty
ELIZABETH A. FLAHERTY
Deputy Counsel
Pa. Supreme Court ID No. 205575

Judicial Conduct Board
601 Commonwealth Avenue, Suite 3500
Harrisburg, PA 17106
(717) 234-7911

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Joseph J. O'Neill	:	
Municipal Court Judge	:	
First Judicial District	:	
Philadelphia County	:	4 JD 2015

TO: Joseph J. O'Neill

You are hereby notified that the Pennsylvania Judicial Conduct Board has determined that there is probable cause to file formal charges against you for conduct proscribed by Article V, §§ 17(b) and 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania and Canons 2B, 3A(4), 3B(3), and 3C(1) of the Old Code of Judicial Conduct. The Board's counsel will present the case in support of the charges before the Pennsylvania Court of Judicial Discipline.

You have an absolute right to be represented by a lawyer in all proceedings before the Court of Judicial Discipline. Your attorney should file an entry of appearance with the Court of Judicial Discipline within fifteen (15) days of service of this Board Complaint in accordance with C.J.D.R.P. No. 110.

You are hereby notified, pursuant to C.J.D.R.P. No. 302(B), that should you elect to file an omnibus motion, that motion should be filed no later than thirty (30) days after the service of this Complaint in accordance with C.J.D.R.P. No. 411.

You are further hereby notified that within thirty (30) days after the service of this Complaint, if no omnibus motion is filed, or within twenty (20) days after the dismissal of all or part of the omnibus motion, you may file an Answer admitting or denying the allegations contained in this Complaint in accordance with C.J.D.R.P. No. 413. Failure to file an Answer shall be deemed a denial of all factual allegations in the Complaint.

COMPLAINT

AND NOW, this 11th day of March, 2015, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board) and files this Board Complaint against the Honorable Joseph J. O'Neill, Judge of the Municipal Court of Philadelphia. The Board alleges that Judge O'Neill violated the Constitution of the Commonwealth of Pennsylvania, Article V, §§ 17(b) and 18(d)(1), and the Code of Judicial Conduct delineated more specifically as follows:

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.

2. From November 15, 2007 to the present time, Judge O'Neill has served as Judge of the Municipal Court of Philadelphia, Pennsylvania.

3. On or about September 24, 2014, Municipal Court President Judge Marsha Neifield verbally informed Judge O'Neill that he was reassigned to limited judicial duties until further notice.

4. As a Municipal Court Judge, Judge O'Neill is, and was at all times relevant hereto, subject to all the duties and responsibilities imposed on him by the Constitution of the Commonwealth of Pennsylvania and the Code of Judicial Conduct.

5. Based on a Confidential Request for Investigation at JCB File No. 2014-579, the Board investigated the instant matter.

6. 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 is probable cause to file formal charges against Judge O'Neill in this Court.

A. ***EX PARTE* COMMUNICATIONS**

7. In 2011, both Judge O'Neill and former Judge Joseph C. Waters, Jr. served as Municipal Court judges in Philadelphia, Pennsylvania.

8. As a result of an investigation, the United States Attorneys' Office for the Eastern District of Pennsylvania filed a two count Information against former Judge Waters.

9. On September 24, 2014, former Judge Waters entered a negotiated guilty plea in the United States District Court for the Eastern District of Pennsylvania to one count of mail fraud (18 U.S.C. §§ 1341 and 2) and one count of honest services wire fraud (18 U.S.C. §§ 1343, 1346 and 2). *United States v. Waters*, Criminal No. 14-478.

10. Within the negotiated Guilty Plea Agreement of former Judge Waters, which incorporates the two count Information, are statements of fact demonstrating that he initiated *ex parte* communications with Judge O'Neill (Judge #2) pertaining to a civil matter, *Houdini Lock & Safe Company v. Donegal Investment Property Management Services*, Case No. SC-11-08-09-4192.

Houdini v. Donegal

11. Person #1, Samuel Kuttab, a politically active businessman, is an owner and manager of Donegal Investment Property Management Services (Donegal), identified as Company A in the two count Information, a real estate management business.

12. Kuttab provided political support to former Judge Waters during his 2009 quest for appointment to the bench.

13. Kuttab provided political and financial support to former Judge Waters during his 2009 judicial campaign for the Municipal Court and during his 2011 exploration of a possible run for the Court of Common Pleas of Philadelphia.

14. Houdini Lock & Safe Company (Houdini), identified as Company B in the two count Information, a Pennsylvania corporation, entered into a services contract with Donegal to provide monitoring and testing of a fire alarm system at a Donegal property on North Broad Street, Philadelphia, PA.

15. In accord with the contract, Houdini provided the agreed upon services to the fire alarm system at the Donegal property.

16. On August 9, 2011, Plaintiff Houdini filed a Statement of Claims against Defendant Donegal, claiming that Donegal failed to pay Houdini for the services it provided to Donegal under the terms of the contract.

17. A hearing on the *Houdini v. Donegal* matter was scheduled before Judge Segal on September 30, 2011.

18. On or about September 30, 2011, counsel for Donegal and Kuttab entered a motion for a continuance, stating that he needed more time to prepare for the trial. Attorney for Plaintiff Houdini opposed the motion.

19. On September 30, 2011, Judge Segal presided over the Houdini hearing, granted the defense continuance and ordered that the case proceed to trial without any further defense continuances.

20. Subsequently, the *Houdini* trial was scheduled for November 16, 2011 before Judge O'Neill.

21. On or about November 16, 2011, former Judge Waters called Judge O'Neill on the telephone about the *Houdini* trial that was pending before him.

22. During the November 16, 2011 telephone conversation, former Judge Waters informed Judge O'Neill that "Donegal is Kuttab," identified Kuttab, as "a friend of mine," and asked Judge O'Neill to "take a hard look at it," referring to the *Houdini v. Donegal* case.

23. The two count Information includes the following quoted language from a November 16, 2011, recorded telephone conversation between former Judge Waters and Judge O'Neill, identified as Judge #2:

WATERS:	Uh, you got a case this afternoon, [Company B. v. Company A]. All right, uh - -
JUDGE #2:	Yeah? You got me.
WATERS:	Huh?
JUDGE #2:	You got me. Do I?
WATERS:	Yeah, [Company A] is [Person #1]. He's a friend of mine, so if you can take a hard look at it.
JUDGE #2:	Who's your guy? The defendant?
WATERS:	Yeah, the defendant.
Judge #2:	Okay.
WATERS:	All right?
Judge #2:	No problem.

24. On or about November 16, 2011, Judge O'Neill presided over the *Houdini v. Donegal* trial.

25. During the November 16, 2011 *Houdini v. Donegal* trial, Kuttab testified on behalf of his company, Donegal.

26. At the conclusion of the trial, Judge O'Neill entered judgment in favor of Donegal and against Houdini, dismissing Houdini's claim that Donegal failed to pay Houdini for services rendered and its claim for damages in the amount of $2,738.44.

27. Houdini's attorney provided notice to Kuttab and Donegal that it planned to file an appeal from Judge O'Neill's decision in *Houdini v. Donegal* in the Court of Common Pleas of Philadelphia.

28. Former Judge Waters advised Kuttab and Donegal to enter into a settlement agreement with Houdini rather than be subject to the appeal process.

29. As a result of the settlement negotiations, the parties entered into a settlement agreement whereby Kuttab, on behalf of Donegal, agreed to pay $600 to Houdini instead of $2,738.44, the full amount of Houdini's damages claim.

30. The November 16, 2011 recorded telephone conversation, quoted at Paragraph No. 23 above, demonstrates that Judge O'Neill participated in *ex parte* communication with former Judge Waters about the *Houdini* trial, a matter that was pending before him.

31. The November 16, 2011 recorded telephone conversation, quoted at Paragraph No. 23 above, demonstrates that Judge O'Neill entertained an *ex parte* request to provide favorable treatment to the litigant, Donegal, and to Kuttab, who is politically connected with or a friend of former Judge Waters.

32. Judge O'Neill's ruling in *Houdini* favored Kuttab and Donegal, the litigant for whom former Judge Waters requested special consideration during the *ex parte* telephone conversation.

33. The purpose of the November 16, 2011 telephone call from former Judge Waters to Judge O'Neill was to provide a "secret advantage" to Kuttab and Donegal.

34. The "secret advantage" was to prevent Houdini from receiving payment for security services rendered to Donegal.

35. By his November 16, 2011 *ex parte* communication, Judge Waters intended to and did use his position as judge to influence Judge O'Neill's decision at the *Houdini v. Donegal* trial.

36. On November 16, 2011, Judge O'Neill did not tell former Judge Waters to stop the *ex parte* request for special consideration or inform him that he would not provide preferential treatment to Donegal and Kuttab.

37. At the November 16, 2011 *Houdini* trial, Judge O'Neill did not disclose to the litigants and their attorneys that he engaged in *ex parte* communication with former Judge Waters prior to the proceeding.

38. On November 16, 2011, Judge O'Neill did not recuse himself from the November 16, 2011 *Houdini* trial, despite his *ex parte* communication with former Judge Waters prior to the proceeding.

39. Judge O'Neill did not timely report his November 16, 2011 *ex parte* telephone communication with former Judge Waters regarding the *Houdini* matter to the Judicial Conduct Board.

B. CHARGES

COUNT 1

40. By virtue of some or all of the facts set forth in Part A, Judge O'Neill violated Canon 2B of the Old Code of Judicial Conduct, effective through June 30, 2014, and is therefore subject to discipline pursuant to Article V, § 18(d)(1) of the Pennsylvania Constitution.

41. Canon 2B provides in part:

> Judges should not . . . convey or knowingly permit others to convey the impression that they are in a special position to influence the judge.

42. On November 16, 2011, Judge O'Neill engaged in *ex parte* communication with former Judge Waters about the *Houdini* trial, a matter pending before him.

43. On November 16, 2011, Judge O'Neill failed to tell Judge Waters to stop communicating with him about the *Houdini* matter that was pending before him.

44. On or after November 16, 2011, Judge O'Neill failed to advise former Judge Waters that he would not consider his *ex parte* telephone communication when deciding the *Houdini* matter.

45. By his failure to put a stop to the November 16, 2011 *ex parte* communication with former Judge Waters, Judge O'Neill conveyed the impression to Judge Waters and others, including Kuttab and Donegal, that he was receptive to requests for special consideration.

46. By his failure to put a stop to the November 16, 2011 *ex parte* communication with former Judge Waters, Judge O'Neill conveyed the impression to Judge Waters and to others, including Kuttab and Donegal, that Judge Waters was in a special position to influence him.

47. By his failure to advise former Judge Waters that he would not consider the November 16, 2011 *ex parte* communication, Judge O'Neill permitted former Judge Waters to convey the impression to others, including Kuttab and Donegal, that he was in a special position to influence Judge O'Neill.

48. By his judgment in favor of Donegal at the *Houdini* trial, which was in accord with Judge Waters' November 16, 2011 *ex parte* request for special consideration, Judge O'Neill conveyed the impression to Judge Waters and others, including Kuttab and Donegal, that former Judge Waters was in a special position to influence his judicial decisions.

49. By his judgment in favor of Donegal in the *Houdini* case, Judge O'Neill conveyed the impression to Judge Waters and others, including Kuttab and Donegal, that he provided preferential treatment to the litigants in accord with Judge Waters' November 16, 2011 *ex parte* request for special consideration.

50. As a result of all of the conduct set forth above, Judge O'Neill violated Canon 2B of the Old Code of Judicial Conduct.

COUNT 2

51. By virtue of some or all of the facts set forth in Part A, Judge O'Neill violated Canon 3A(4) of the Old Code of Judicial Conduct, effective through June 30, 2014, and is therefore subject to discipline pursuant to Article V, § 18(d)(1) of the Pennsylvania Constitution.

52. Canon 3A(4) proscribes *ex parte* communication and provides in part:

> Judges . . . except as authorized by law, must not consider *ex parte* communications concerning a pending proceeding.

53. On November 16, 2011, Judge O'Neill engaged in *ex parte* communication with former Judge Waters about the *Houdini* case, a proceeding pending before him that same day.

54. Judge O'Neill was not authorized by law to engage in *ex parte* communication with former Judge Waters regarding the *Houdini* matter.

55. As a result of all of the conduct set forth above, Judge O'Neill violated Canon 3A(4) of the Old Code of Judicial Conduct.

COUNT 3

56. By virtue of some or all of the facts set forth in Part A, Judge O'Neill violated Canon 3B(3) of the Old Code of Judicial Conduct, effective through June 30, 2014, and is therefore subject to discipline pursuant to Article V, § 18(d)(1) of the Pennsylvania Constitution.

57. Canon 3B(3) provides:

> Judges should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

58. Judge O'Neill should have recognized that the November 16, 2011 telephone conversation with former Judge Waters about the *Houdini* case was a prohibited *ex parte* communication about a pending proceeding and therefore, unprofessional conduct.

59. Judge O'Neill had a duty to timely notify the Judicial Conduct Board that former Judge Waters initiated *ex parte* communication with him regarding the *Houdini* matter when that case was pending before him.

60. Judge O'Neill failed to notify the Judicial Conduct Board about the *ex parte* communication with former Judge Waters about the *Houdini* matter, despite his knowledge of the duty to take appropriate disciplinary measures against former Judge Waters.

61. As a result of all of the conduct set forth above, Judge O'Neill violated Canon 3A(4) of the Old Code of Judicial Conduct.

COUNT 4

62. By virtue of some or all of the facts set forth in Part A, Judge O'Neill violated Canon 3C(1) of the Old Code of Judicial Conduct, effective through June 30, 2014, and is therefore subject to discipline pursuant to Article V, § 18(d)(1) of the Pennsylvania Constitution.

63. Canon 3C(1) provides in part:

> Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where:
>
> (a) they have a personal bias or prejudice concerning a party . . . .

64. On November 16, 2011, Judge O'Neill engaged in *ex parte* communication with former Judge Waters about the *Houdini* case, a proceeding pending before him that same day.

65. On November 16, 2011, Judge O'Neill had a duty to recuse himself from the *Houdini* proceedings because his impartiality might reasonably be

questioned after Judge Waters requested preferential treatment for Kuttab and Donegal.

66. On November 16, 2011, Judge O'Neill failed to recuse himself from the *Houdini* proceedings, even though his impartiality as to Kuttab and Donegal could reasonably be questioned following the *ex parte* communication with former Judge Waters.

67. As a result of all of the conduct set forth above, Judge O'Neill violated Canon 3C(1) of the Old Code of Judicial Conduct.

COUNT 5

68. By virtue of some or all of the facts set forth in Part A, Judge O'Neill violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania, and is therefore subject to discipline pursuant to Article V, § 18(d)(1) of the Pennsylvania Constitution.

69. Article V, § 17(b) provides in part:

> Justices and judges shall not . . . violate any canon of legal or judicial ethics prescribed by the Supreme Court.

70. A violation of the Code of Judicial Conduct is an automatic derivative violation of Article V, §17(b).

71. By his conduct as set forth above, Judge O'Neill violated Article V, § 17(b) as a direct result of his violations of Canons 2B, 3A(4), 3B(3) and 3C(1).

COUNT 6

72. By virtue of some or all of the facts set forth in Part A, Judge O'Neill violated the Administration of Justice Clause of Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania and is therefore subject to discipline.

73. Article V, §18(d)(1) provides in pertinent part:

> A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for . . . conduct which prejudices the proper administration of justice . . .

74. Judge O'Neill engaged in conduct which prejudiced the proper administration of justice when he participated in *ex parte* communication with former Judge Waters regarding the *Houdini* trial, a proceeding pending before him.

75. Judge O'Neill engaged in conduct which prejudiced the proper administration of justice when he failed to recuse himself from the November 16, 2011 *Houdini* trial, a proceeding pending before him.

76. Judge O'Neill engaged in conduct which prejudiced the proper administration of justice because the litigants in the *Houdini* case, for whom former Judge Waters requested special consideration, did in fact receive a favorable judgment at the November 16, 2011 trial; whereas, the opposing party and opposing counsel in *Houdini* knew nothing about the *ex parte* communication between Judge O'Neill and former Judge Waters.

77. By all of his conduct as set forth above, Judge O'Neill violated the Administration of Justice Clause of Article V, § 18(d)(1).

COUNT 7

78. By virtue of some or all of the facts set forth in Part A, Judge O'Neill violated the Disrepute Clause of Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania and is therefore subject to discipline.

79. Article V, § 18(d)(1) provides in pertinent part:

> A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for . . . conduct which . . . brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity.

80. Judge O'Neill engaged in conduct which brought the judicial office into disrepute when he participated in *ex parte* communication with former Judge Waters regarding the *Houdini* trial, a proceeding pending before him.

81. Judge O'Neill engaged in conduct which brought the judicial office into disrepute when he failed to recuse himself from the *Houdini* trial, a proceeding pending before him.

82. By all of the allegations of misconduct set forth above, Judge O'Neill engaged in conduct so extreme as to bring disrepute upon the judicial office itself in violation of the Disrepute Clause of Article V, § 18(d)(1).

83. By all of his conduct as set forth above, Judge O'Neill violated the Disrepute Clause of Article V, § 18(d)(1).

WHEREFORE, Joseph J. O'Neill, Municipal Court Judge, is subject to disciplinary action pursuant to the Constitution of Pennsylvania, Article V, § 18(d)(1).

Respectfully submitted,

ROBERT A. GRACI
Chief Counsel

DATE: March 11, 2015

By: Elizabeth A. Flaherty
ELIZABETH A. FLAHERTY
Deputy Counsel
Pa. Supreme Court ID No. 205575

Judicial Conduct Board
601 Commonwealth Avenue, Suite 3500
Harrisburg, PA 17106
(717) 234-7911

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Joseph J. O'Neill	:	
Municipal Court Judge	:	
First Judicial District	:	
Philadelphia County	:	4 JD 2015

VERIFICATION

I, Elizabeth A. Flaherty, Deputy Counsel to the Judicial Conduct Board, verify that the Judicial Conduct Board found probable cause to file the formal charges contained in the Board Complaint. I understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,

ROBERT A. GRACI
Chief Counsel

March 11, 2015 BY: Elizabeth A. Flaherty

Elizabeth A. Flaherty
Deputy Counsel
Pa. Supreme Court ID No. 205575

Judicial Conduct Board
Pennsylvania Judicial Center
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COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Joseph J. O'Neill	:	
Municipal Court Judge	:	
First Judicial District	:	
Philadelphia County	:	4 JD 2015

PROOF OF SERVICE

In compliance with Rule 122(D) of the Court of Judicial Discipline Rules of Procedure, on or about March 11, 2015, a copy of this *BOARD COMPLAINT* was sent by Certified Mail to Judge O'Neill's counsel, Samuel C. Stretton, Esquire, who agreed to accept service on behalf of his client, Judge O'Neill:

Samuel C. Stretton
Attorney at Law
301 South High Street
P.O. Box 3231
West Chester, PA 19381-3231

Certified Mail No. 7161 7145 5373 0150 1917
Return Receipt Requested

Respectfully submitted,
ROBERT A. GRACI
Chief Counsel

March 11, 2015 BY: Elizabeth A. Flaherty
Elizabeth A. Flaherty
Deputy Counsel

Pa. Supreme Court ID No. 205575
Judicial Conduct Board
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COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Joseph J. O'Neill	:	
Former Municipal Court Judge	:	
First Judicial District	:	
Philadelphia County	:	4 JD 2016

TO: Joseph J. O'Neill

You are hereby notified that the Pennsylvania Judicial Conduct Board has determined that there is probable cause to file formal charges against you for conduct proscribed by Article V, §§ 17(b) and 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania. The Board's counsel will present the case in support of the charges before the Pennsylvania Court of Judicial Discipline.

You have an absolute right to be represented by a lawyer in all proceedings before the Court of Judicial Discipline. Your attorney should file an entry of appearance with the Court of Judicial Discipline within fifteen (15) days of service of this Board Complaint in accordance with C.J.D.R.P. No. 110.

You are hereby notified, pursuant to C.J.D.R.P. No. 302(B), that should you elect to file an omnibus motion, that motion should be filed no later than thirty (30) days after the service of this Complaint in accordance with C.J.D.R.P. No. 411.

You are further hereby notified that within thirty (30) days after the service of this Complaint, if no omnibus motion is filed, or within twenty (20) days after the dismissal of all or part of the omnibus motion, you may file an Answer admitting or denying the allegations contained in this Complaint in accordance with C.J.D.R.P. No. 413. Failure to file an Answer shall be deemed a denial of all factual allegations in the Complaint.

BOARD COMPLAINT

AND NOW, this 30th day of September, 2016, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board), by and through the undersigned counsel, and files this Board Complaint against the Honorable Joseph J. O'Neill, former Judge of the Municipal Court of Philadelphia. The Board alleges that Judge O'Neill violated the Constitution of the Commonwealth of Pennsylvania, Article V, §§ 17(b) and 18(d)(1), delineated more specifically as follows:

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.

2. From November 15, 2007 until February 2, 2016, Judge O'Neill served as Judge of the Municipal Court of Philadelphia, Pennsylvania.

3. On or about September 24, 2014, Municipal Court President Judge Marsha Neifield verbally informed Judge O'Neill that he was reassigned to limited judicial duties until further notice.

4. As a result of the reassignment, Judge O'Neill continued to perform limited judicial duties at the Municipal Court until February 2, 2016.

5. As a Municipal Court Judge, Judge O'Neill was at all times relevant hereto, subject to all the duties and responsibilities imposed on him by the Constitution of the Commonwealth of Pennsylvania and the Code of Judicial Conduct.

6. On February 2, 2016, this Court entered an Order at 4 JD 2015, granting the Board's Petition for Relief and suspending Judge O'Neill without pay.

A. CRIMINAL CONDUCT

7. On March 2, 2016, the federal government filed a Grand Jury Indictment, charging Judge O'Neill with two counts of making false statements to federal agents in violation of Title 18, United States Code, Section 1001, which occurred during the FBI's investigation of *ex parte* communications between Judge O'Neill and former Municipal Court Judge Joseph C. Waters about a Municipal Court case, *Houdini Lock and Safe Co. v. Donegal Investment Property Management Services*, SC-11-08-09-4192. A true and correct copy of the Grand Jury Indictment is attached hereto, incorporated by reference and marked as Board Exhibit 1.

8. On May 26, 2016, Judge O'Neill appeared at a hearing before U.S. District Court Judge Juan R. Sanchez of the Eastern District of Pennsylvania and entered a guilty plea to two counts of making false statements to federal agents in violation of 18 U.S.C. § 1001. A true and correct copy of the Guilty Plea Agreement, executed by the parties, is attached hereto, incorporated by reference and marked as Board Exhibit 2.

9. A violation of 18 U.S.C. § 1001 is a felony.

10. By letter dated May 31, 2016, Judge O'Neill submitted his resignation from his position as Municipal Court Judge to Governor Thomas Wolf, effective May 26, 2016.

11. On September 7, 2016, U.S. District Judge Sanchez imposed sentence upon Judge O'Neill as follows: four-years of probation for each of the two counts of making false statements to federal agents, to run concurrently, with the first six months to be served as unmonitored house arrest; 200 hours of community service,

and a $5,000 fine. A true and correct copy of the Judgment and Sentencing Order is attached hereto, incorporated by reference and marked as Board Exhibit 3.

B. CHARGES

Count 1

12. By virtue of some, or all of the facts set forth in Part A, Judge O'Neill violated the Felony Conviction Clause of Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania and is subject to discipline.

13. Article V, § 18(d)(1) provides in pertinent part:

> A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for conviction of a felony; . . . .

14. On May 26, 2016, Judge O'Neill entered a Guilty Plea Agreement with federal authorities to two counts of making false statements to federal agents.

15. On September 7, 2016, U.S. District Judge Sanchez imposed sentence upon Judge O'Neill to an aggregate of four-years of probation, 200 hours of community service and a $5,000 fine.

16. As a result of the sentencing, Judge O'Neill was convicted of two felonies.

17. By all of his conduct as set forth above, Judge O'Neill violated the Felony Conviction Clause of Article V, § 18(d)(1).

Count 2

18. By virtue of some or all of the facts set forth in Part A, Judge O'Neill violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania and is therefore subject to discipline pursuant to Article V, § 18(d)(1) of the Pennsylvania Constitution.

19. Article V, § 17(b) provides in part:

> 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.

20. By virtue of his conviction for two felony offenses of making false statements to federal agents in violation of 18 U.S.C. § 1001 as set forth above, Judge O'Neill engaged in activity prohibited by law.

21. By all of the conduct set forth above, Judge O'Neill violated Article V, § 17(b).

22. <u>Count 3</u>

23. By virtue of some or all of the facts set forth in Part A, Judge O'Neill violated the Disrepute Clause of Article V, § 18(d)(1).

24. Article V, § 18(d)(1) provides in pertinent part:

> A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for . . . conduct which . . . brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity.

25. By his conduct of making false statements to federal agents for which he was convicted of two felony offenses, Judge O'Neill engaged in conduct so extreme as to bring disrepute upon the judicial office itself.

26. By all of the conduct set forth above, Judge O'Neill violated the Disrepute Clause of Article V, § 18(d)(1).

WHEREFORE, Joseph J. O'Neill, former Municipal Court Judge, is subject to disciplinary action pursuant to the Constitution of the Commonwealth of Pennsylvania, Article V, § 18(d)(1).

Respectfully submitted,

ROBERT A. GRACI
Chief Counsel

DATE: September 30, 2015

By: Elizabeth A. Flaherty
ELIZABETH A. FLAHERTY
Deputy Counsel
Pa. Supreme Court ID No. 205575

Judicial Conduct Board
601 Commonwealth Avenue, Suite 3500
Harrisburg, PA 17106
(717) 234-7911

COMMONWEALTH OF PENNSYLVANIA

COURT OF JUDICIAL DISCIPLINE

IN RE:

Joseph J. O'Neill	:	
Municipal Court Judge	:	
First Judicial District	:	
Philadelphia County	:	4 JD 2016

VERIFICATION

I, Elizabeth A. Flaherty, Deputy Counsel to the Judicial Conduct Board, verify that the Judicial Conduct Board found probable cause to file the formal charges contained in the Board Complaint. I understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,

ROBERT A. GRACI
Chief Counsel

September 30, 2016

BY: Elizabeth A. Flaherty
Elizabeth A. Flaherty
Deputy Counsel
Pa. Supreme Court ID No. 205575

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COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Joseph J. O'Neill Municipal Court Judge First Judicial District Philadelphia County	:	4 JD 2015

PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on September 30 2016, a date and time-stamped copy of the *Board Complaint* was served by UPS Overnight Air to Judge O'Neill's counsel, Samuel C. Stretton, Esquire at the following address:

Samuel C. Stretton, Esquire
301 South High Street
P.O. Box 3231
West Chester, PA 19381-3231

Respectfully submitted,

DATE: September 30, 2016

Elizabeth A. Flaherty
Deputy Counsel
Pa. Supreme Court ID No. 205575

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COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Joseph J. O'Neill Municipal Court Judge First Judicial District Philadelphia County	:	4 JD 2015

PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on September 30 2016, a date and time-stamped copy of the *Motion to Consolidate Pending Board Complaints* was served by UPS Next Day Air to Judge O'Neill's counsel, Samuel C. Stretton, Esquire at the following address:

Samuel C. Stretton, Esquire
301 South High Street
P.O. Box 3231
West Chester, PA 19381-3231

Respectfully submitted,

DATE: September 30, 2016

Elizabeth A. Flaherty
Deputy Counsel
Pa. Supreme Court ID No. 205575

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