

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

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

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

MAR 19 2021

RECEIVED AND FILED

JUDICIAL CONDUCT BOARD PRE-TRIAL MEMORANDUM

AND NOW, this 19th day of March, 2021, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board) by and through undersigned counsel, pursuant to this Court's January 6, 2021, Order and files this Pre-trial Memorandum:

A. TRIAL WITNESS LIST

The Board may call some or all of the following witnesses at trial:

1. Tony Samento
P.O. Box 383
Dillsburg, PA 17019

Samento may testify regarding paragraphs 4 to 21 of the Board Complaint.

2. Lisa Verdekal
1 Courthouse Square
Carlisle, PA 17013

Verdekal may testify regarding paragraphs 22 to 32 of the Board Complaint.

3. Michelle Sibert, Esquire
1 Courthouse Square
Carlisle, PA 17013

Sibert may testify regarding paragraphs 22 to 32 of the Board Complaint.

4. Brandon Shorter
2001 Red Bank Road
Dover, PA 17315

Shorter may testify regarding paragraphs 33 to 38 of the Board Complaint.

5. Michael Travis, Esquire
3904 Trindle Road
Camp Hill, PA 17011

Travis may testify regarding paragraphs 33 to 38 of the Board Complaint.

6. Leanne Miller, Esquire
135 North George Street
York, PA 17401

Miller may testify regarding paragraphs 39 to 43 of the Board Complaint.

7. Joanne Clough, Esquire
P.O. Box 77
Camp Hill, PA 17001

Clough may testify regarding paragraphs 39 to 43 of the Board Complaint.

8. Bryan Bartosik-Velez, Esquire
1 Courthouse Square
Carlisle, PA 17013

Barosik-Velez may testify regarding paragraphs 4 to 56 of the Board Complaint.

9. Corey Fahnestock, Esquire
3601 Vartan Way
Harrisburg, PA 17110

Fahnestock may testify regarding paragraphs 44 to 56 of the Board Complaint.

10. The Honorable Mark Martin
507 North York Street
Mechanicsburg, PA 17055

Judge Martin may testify regarding paragraphs 44 to 56 of the Board Complaint.

11. Dawn Lippert
507 North York Street
Mechanicsburg, PA 17055

Lippert may testify regarding paragraphs 44 to 56 of the Board Complaint.

12. Pam Martz
1 Courthouse Square
Carlisle, PA 17013

Martz may testify regarding paragraphs 44 to 56 of the Board Complaint.

13. Lawrence Rosen, Esquire
1101 North Front Street
Harrisburg, PA 17102

Rosen may testify regarding paragraphs 5 to 13 of the Board's Amended Complaint.

14. Thomas Kimmett
1286 Hunters Ridge Drive
Mechanicsburg, PA 17050

Kimmett may testify regarding paragraphs 5 to 13 of the Board's Amended Complaint.

B. BOARD EXHIBITS

The Board may introduce some or all of the following exhibits at trial:

1. Audio recording of the October 5, 2017, hearing in the matter of *Samento v. Samento*, filed to Cumberland County Docket No. 2009-08051.
2. Transcript of the October 5, 2017, hearing in the matter of *Samento v. Samento*, Cumberland County Docket No. 2009-08051.
3. Plaintiff's Motion to Recuse filed December 28, 2017, in the matter of *Samento v. Samento*, Cumberland County Docket No. 2009-08051.
4. Court Order dated March 7, 2018, denying Motion to Recuse in the matter of *Samento v. Samento*, Cumberland County Docket No. 2009-08051.
5. Superior Court Opinion dated January 16, 2019, in the matter of *Samento v. Samento*, filed to 1890 MDA 2017.

6. Audio recording of the January 15, 2019, sentencing in the matter of *Commonwealth v. D'Andre Moore*, CP-21-CR-2521-2018.
7. Transcript of the January 15, 2019, sentencing in the matter of *Commonwealth v. D'Andre Moore*, CP-21-CR-2521-2018.
8. Audio recording of the August 8, 2018, proceeding in the matter of *Gnazzo v. Gnazzo*, Cumberland County Docket No. 2017-07655.
9. Transcript of the August 8, 2018, proceeding in the matter of *Gnazzo v. Gnazzo*, Cumberland County Docket No. 2017-07655.
10. Transcript of the October 3, 2018, proceeding in the matter of *Wingard v. Wingard*, Cumberland County Docket No. 2015-05774.
11. Audio recording of the June 6, 2019, hearing in the matter of *Kimmatt v. Kimmatt*, Cumberland County Docket No. 2019-04755.
12. Transcript of the June 6, 2019, hearing in the matter of *Kimmatt v. Kimmatt*, Cumberland County Docket No. 2019-04755.

C. STIPULATIONS

It can reasonably be expected that opposing counsel may agree to the following stipulations:

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 January 2, 2012, to the present, Respondent has served continuously as a Judge of the Court of Common Pleas of Cumberland County.
3. As a judicial officer, Respondent was subject to all the duties and responsibilities imposed on him by the Constitution of the Commonwealth of Pennsylvania and the Code of Judicial Conduct adopted by the Supreme Court of Pennsylvania.

Additionally, based on Respondent's Answer to Complaint filed on July 8, 2020, and information contained in exhibits which have been provided to Respondent pursuant to C.J.D.R.P. No. 401(D)(1) and (E), it can reasonably be expected that Respondent will agree to the following stipulations:

Samento v. Samento:

4. On October 5, 2017, Respondent was presiding over a hearing in a civil action in the matter of *Samento v. Samento*, Cumberland County Docket No. 2009-08051.
5. After the moving party testified and presented a witness, the responding party took the witness stand to testify.
6. During the responding party's testimony, counsel for the moving party voiced a hearsay objection whereupon the following exchange took place:

Judge: Well, I don't know what he is saying so I don't know.

Attorney: He was indicating what he learned from the State Police.

Judge: And I don't –

Witness: I'm sure there's a record of this.

Judge: Sir.

Witness: I'm sorry.

Judge: Sit down now. Down. Out of that seat.

Witness: I'm sorry.

Judge: Move it like you have a purpose.

Witness: I'm sorry, Your Honor

7. An audio recording of the proceeding established that at times during the exchange described above, the volume of Respondent's voice was excessively loud and his tone was angry.
8. At this point, Respondent stood and leaned over the witness stand where the responding party was seated causing him to abruptly slide his chair back, colliding with the wall behind him.
9. While standing and leaning over the witness stand, the following exchange took place:

Judge: I'll tell you when I'm coming back. It's not going to be today. You get your client under control or I am going to tear him up on the stand. Do you understand me?

Attorney: I'm not sure, Your Honor, but I'll try to.

Judge: He talks over me one more time, I am going to rule summarily against him. Do you understand?

Attorney: Yes, Your Honor.
10. An audio recording of the proceeding established that at times during the exchange described above, the volume of Respondent's voice was excessively loud and his tone was angry.
11. At the conclusion of the above exchange, Respondent left the courtroom and did not return to the bench that day relative to the *Samento v. Samento* matter.
12. The responding party was not afforded an opportunity to finish his testimony or to present further witnesses regarding the issue before Respondent on October 5, 2017.
13. By order dated November 6, 2017, Respondent found in favor of the moving party.

14. On December 5, 2017, the responding party filed an appeal in the Superior Court of Pennsylvania of Respondent's November 6, 2017, order.
15. On December 28, 2017, the responding party filed a motion requesting that Respondent recuse himself from the case, asserting that the Respondent had exhibited animosity and hostility toward him.
16. Respondent denied the motion to recuse by order dated March 7, 2018.
17. 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."
18. In its January 16, 2019, opinion, the Superior Court called the transcript of the October 5, 2017, hearing "disconcerting."
19. In its January 16, 2019, opinion, the Superior Court stated that the audio recording confirmed the "hostility" of the trial court toward the responding party.
20. In its January 16, 2019, opinion, the Superior Court found that Respondent had denied the responding party's due process rights by abruptly terminating the hearing.
21. In its opinion, the Superior Court found that Respondent had abused his discretion when he denied the responding party's motion for recusal.

Commonwealth v. D'Andre Moore:

22. On January 15, 2019, Respondent was presiding over sentencing in the matter of *Commonwealth v. D'Andre Moore*, CP-21-CR-2521-2018.
23. At the time of the sentencing proceeding referenced above, the courtroom was open to the public.

24. At the time of the sentencing proceeding referenced above, members of the public as well as the alleged victim and a victim advocate were present in the courtroom.
25. The Assistant District Attorney (ADA) representing the Commonwealth called the case and noted on the record that Respondent had just been provided a written restitution request.
26. Respondent indicated that the request was "different from the one that was in the file."
27. Thereafter, the transcript of the proceeding indicates that the following exchange took place:

ADA: I don't think there was anything in the file.

Judge: Oh, there was. I read the file. See, I come in on the weekends and read these files.

ADA: Right. There was no restitution in the file. That's not restitution. It is saying there's no restitution.

Judge: Yes.

ADA: At the time of the plea I informed - -

Judge: Yes. I'm saying it is different than what is in the file I read over - -

ADA: I informed the Court - -

Judge: Why do you talk over me? Step out of here. Get out. Take him back down to the cell. I will deal with him when I am ready. You, out.

ADA: Your Honor - -

Judge: Out. Now. Do you not listen? What is the problem with your hearing today? You, out. Out. Hand that file to somebody else.

28. An audio recording of the proceeding established that at times during the exchange described above, the volume of Respondent's voice was excessively loud and his tone was angry.
29. At this point, Respondent left the courtroom for a brief period of time.
30. A few moments later, when Respondent reentered the courtroom, the following exchange took place:

Judge: Haul her out. She is the first one out of this courtroom. I walk back in here and she is still here. Get her out. Move it, sheriff.

ADA: I'm sorry, Your Honor.

Judge: Move it. Quit talking. Lord have mercy. You show me enough disrespect all freaking day long. What is your problem? Get out of here. She does not walk back into this courtroom, sheriff.
31. An audio recording of the proceeding established that at times during the exchange described above, the volume of Respondent's voice was excessively loud and his tone was angry.
32. Respondent's conduct during the sentencing proceeding on January 15, 2019, was the subject of a newspaper article. The reporter, who was present in the courtroom during the January 15, 2019 proceeding, described it as an "explosion."

Gnazzo v. Gnazzo:

33. On August 8, 2018, Respondent was presiding over a custody proceeding in the matter of *Gnazzo v. Gnazzo*, Cumberland County Docket No. 2017-07655.
34. During the cross examination testimony of one of the parties, Lucy M. Gnazzo, counsel voiced an objection prompting Respondent to make the following statement:

Folks, are we going to fight? Or are we going to get this information. I am taking a break because you folks can't get to a landing. It is not a difficult case. Get me facts and I will get you a decision. Please, step down. We are taking a break.

35. An audio recording of the proceeding established that at times during the statement described above, the volume of Respondent's voice was excessively loud and his tone was angry.
36. While making the above statement, Respondent threw his glasses onto his desk.
37. After making the above statement, Respondent left the bench.
38. When Respondent returned to the bench, the attorney who had been questioning Ms. Gnazzo declined to ask any further questions of her.

Wingard v. Wingard:

39. On October 3, 2018, Respondent was presiding over a custody proceeding in the matter of *Wingard v. Wingard*, Cumberland County Docket No. 2015-05774.
40. During the direct examination of the plaintiff, the plaintiff exhibited some confusion leading to the following exchange between the plaintiff, her attorney and Respondent:

Attorney: I'm going to stop you right now.

Plaintiff: Sure.

Attorney: Is this the November order or the May order are you - - do you want to take a minute and look at the November order first before I ask you these questions?

Plaintiff: Sure.

Judge: 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?

Attorney: Yes, I am, Your Honor.

Judge: 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.

41. Immediately after stating that he had "other things to do," Respondent left the courtroom.
42. During the exchange described above, the volume of Respondent's voice was excessively loud and his tone was angry.
43. Respondent returned to the courtroom four minutes later and made the following statement:

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.

Interaction with Attorney:

44. On August 2, 2019, Attorney Corey Fahnestock was in the Cumberland County Courthouse waiting to meet with a client.
45. Respondent's law clerk, Bryan Bartosik-Velez approached Fahnestock and told him that Respondent wanted an attorney to "cover" a criminal proceeding in his courtroom.
46. Respondent's law clerk asked Fahnestock to "cover" the criminal proceeding.
47. Fahnestock was unfamiliar with the criminal proceeding referenced by Respondent's law clerk.
48. Fahnestock declined the request to "cover" the criminal proceeding.

49. Respondent's law clerk then asked Fahnestock for his name and indicated that he would inform Respondent that Fahnestock had refused to comply with Respondent's request.
50. A few moments later, Respondent approached Fahnestock and told him to follow Respondent into a small conference-type room in the courthouse.
51. Fahnestock complied with Respondent's direction.
52. When Respondent entered the small conference-type room, it was being used by a Cumberland County Magisterial District Judge as a courtroom.
53. Respondent directed everyone except Fahnestock, Respondent's law clerk, and the Magisterial District Judge to leave the room.
54. After the door was closed, Respondent told Fahnestock that when he tells an attorney to go somewhere, the attorney is required to do so.
55. While addressing Fahnestock in the small conference-type room, the volume of Respondent's voice was excessively loud and his tone was angry.
56. While addressing Fahnestock, Respondent's voice was loud enough to be heard by people outside of the room.

Kimmett v. Kimmett:

57. On June 6, 2019, Respondent presided over a hearing on a Petition for Protection from Abuse (PFA) in the matter of *Kimmett v. Kimmett*, Cumberland County Docket No. 2019-04775.
58. During the proceeding, as Mr. Kimmett was testifying on direct examination, his attorney, Lawrence J. Rosen, attempted to approach the witness stand in order to show Kimmett a document.

59. As Rosen approached the witness stand, Respondent addressed him, saying "Don't walk towards this witness. You will be out of the courtroom in a heartbeat."
60. Rosen, who is hearing impaired, replied, "I'm sorry, Your Honor?"
61. Before responding to Rosen's question, Respondent quickly stood up, taking a position close to Rosen.
62. While Respondent remained standing, the following exchange between Respondent and Rosen took place:

Judge: Do not walk towards the witness.

Attorney: Oh, I'm sorry.

Judge: You will be out of this courtroom in a heartbeat. Can you hear me now?

Attorney: I can.

Judge: Did you see Mr. Edger approach the witness?

Attorney: No.

Judge: Why do you think he doesn't do it?

Attorney: I want to give him an exhibit, Your Honor.

Judge: You can't.

Attorney: I cannot?

Judge: How did Mr. Edger do it?

Attorney: I don't recall.

Judge: Were you not here? Were you not paying attention?

Attorney: I was here Your Honor. I didn't mean to offend you.

Judge: You have.

63. An audio recording of the proceeding established that at times during the exchange described above, the volume of Respondent's voice was excessively loud and his tone was angry.
64. Immediately after the exchange, Respondent left the courtroom.
65. Approximately four minutes later, Respondent returned to the courtroom and the hearing proceeded.
66. All of the above listed exhibits, which have been provided to Respondent pursuant to C.J.D.R.P. No. 401(D)(1) and (E) are admissible and authentic.

D. DISCOVERY CERTIFICATION

The Board, by and through undersigned counsel, hereby certifies that it has furnished Respondent with the materials required to be exchanged under C.J.D.R.P. No. 401(D)(1).

E. EXCULPATORY EVIDENCE CERTIFICATION

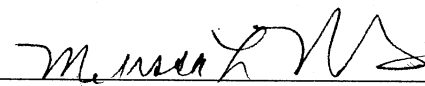
The Board, by and through undersigned counsel, hereby certifies that it has provided Respondent with any exculpatory evidence relevant to the charges contained in the Board Complaint in accordance with C.J.D.R.P. No. 401(E).

Respectfully submitted,

RICHARD W. LONG
Chief Counsel

Date: March 19, 2021

By:



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

Judicial Conduct Board
Pennsylvania Judicial Center
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P.O. Box 62525
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**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

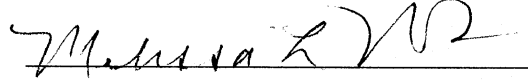
Judge Thomas A. Placey :
Court of Common Pleas : 2 JD 2020
9th Judicial District :
Cumberland County :

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 :
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PROOF OF SERVICE

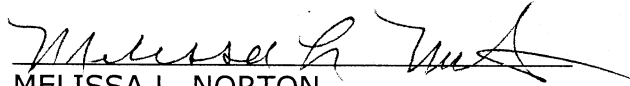
In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on the date below, a copy of the Judicial Conduct Board's Pre-Trial Memorandum was sent via first class mail to Heidi Eakin, counsel for Judge Placey, at the following address and via email:

2807 Market Street
Camp Hill, PA 17011
heidieakin@gmail.com

Respectfully submitted,

DATE: March 19, 2021

By:



MELISSA L. NORTON

Deputy Counsel

Pa. Supreme Court ID No. 46684

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