

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Michael J. Cabry, III
Magisterial District Judge
Magisterial District Court 15-3-06
Chester County

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2 JD 2021

JUDICIAL CONDUCT BOARD AMENDED PRE-TRIAL MEMORANDUM

AND NOW, this 6th day of June, 2022, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (the Board), by and through undersigned counsel, and files this amended pre-trial memorandum, as follows:

A. TRIAL WITNESSES

The Board will not be calling any witnesses.

B. EXHIBITS

1. A true and correct copy of the criminal complaint filed against former Magisterial District Judge Cabry at **Commonwealth v. Michael J. Cabry, III**, MJ-15203-CR-181-2020.
2. A true and correct copy of Presentment No. 13 of the 45th Statewide Investigating Grand Jury, CP-22-MD-607-2019, dated September 25, 2020, recommending criminal charges be filed against former MDJ Cabry.
3. A true and correct copy of the secure docket of **Commonwealth v. Michael Cabry, III**, CP-15-CR-3380-2020.
4. A true and correct copy of written guilty plea colloquy executed by former MDJ Cabry on September 22, 2021, at **Commonwealth v. Michael Cabry, III**, CP-15-CR-3380-2020.
5. A true and correct copy of the sentencing sheet executed by the Honorable Stephen B. Lieberman on September 22, 2021, at **Commonwealth v. Michael Cabry, III**, CP-15-CR-3380-2020.

6. A true and correct copy of the September 22, 2021 transcript of the guilty plea colloquy and sentencing of former MDJ Cabry at ***Commonwealth v. Michael Cabry, III***, CP-15-CR-3380-2020.

C. PROPOSED STIPULATIONS

7. The parties stipulate to the authenticity and admissibility of all exhibits set forth at Paragraphs B (1)-(6).
8. Article V, § 18 of the Constitution of the Commonwealth of Pennsylvania grants to the Board the authority to determine whether probable cause exists to file formal charges against a judicial officer in this Court, and, when it determines that probable cause exists, to prosecute the case in support of such charges in this Court.
9. From approximately March 22, 2000, until his resignation on September 21, 2021, former MDJ Cabry served continuously as the duly elected Magisterial District Judge of Magisterial District Court 15-3-06, Chester County.
10. Pursuant to Article V, § 18(a)(7) of the Constitution of the Commonwealth of Pennsylvania, the Board determined that probable cause exists to file formal charges against former MDJ Cabry in this Court.
11. By criminal complaint filed October 6, 2020, at ***Commonwealth v. Michael J. Cabry, III***, MJ-15203-CR-181-2020, the Pennsylvania Office of Attorney General (OAG) filed criminal charges against former MDJ Cabry stemming from Presentment No. 13 of the 45th Statewide Investigating Grand Jury.
12. The OAG charged former MDJ Cabry with the following offenses: (1) theft by unlawful taking, 18 Pa.C.S.A. § 3921(a), a felony of the third degree; (2) perjury, 25 P.S. § 3249(b), a misdemeanor of the first degree; (3) reporting by candidate and political committee, 25 P.S. § 3246(a), an ungraded misdemeanor; (4) reporting by candidate and political committee, 25 P.S. § 3246(b)(2), an ungraded misdemeanor; (5) reporting by candidate and political committee, 25 P.S. § 3246(b)(4), an ungraded misdemeanor; and (6) lawful election contributions, 25 P.S. § 3254(a), an ungraded misdemeanor.
13. Former MDJ Cabry waived his right to a preliminary hearing and the aforementioned charges were bound over for trial in the Court of Common Pleas.
14. On September 22, 2021, at ***Commonwealth v. Michael J. Cabry, III***, CP-15-CR-3380-2020, former MDJ Cabry pleaded guilty to the following offenses: (1) theft by unlawful taking, 18 Pa.C.S.A. § 3921(a), a misdemeanor of the second degree; (2) reporting by candidate and political committees, 25 P.S. § 3246(a), an ungraded misdemeanor; (3) report must list each expenditure and person,

25 P.S. 3246(B)(4), an ungraded misdemeanor; and (4) lawful election expenses, 25 P.S. § 3254.1, an ungraded misdemeanor.

15. In his written guilty plea colloquy, executed September 22, 2021, former MDJ Cabry admitted the following:

On or about November 13, 2016[,] through January 31, 2018, the defendant, while a candidate for public office, failed to file appropriate and accurate campaign reports of expenditures and receipts; failed to provide full and accurate account of expenditures and withdrew funds from his campaign account for purposes unrelated to his campaign. Additionally, the defendant unlawfully took funds from the campaign account and used the funds for personal expenses unrelated to political activity.

16. As a result of former MDJ Cabry's guilty plea, the Honorable Stephen B. Lieberman sentenced former MDJ Cabry on September 22, 2021, to an aggregate sentence of one year of probation.
17. Former MDJ Cabry has not appealed his judgment of sentence, and, consequently, it is final and factually binding for purposes of proceedings within this Honorable Court.
18. The parties stipulate and agree that former MDJ Cabry withdrew \$3,254.97 in 16 separate transactions from the Citizens for Cabry campaign account in 2017 at various casinos in Pennsylvania, New Jersey, and Delaware, for personal expenditures unrelated to political activity.

D. DISCOVERY CERTIFICATION

The Board, by and through undersigned counsel, hereby certifies that former MDJ Cabry has been furnished with all non-privileged evidence relevant to the charges contained in the Board Complaint as required by C.J.D.R.P. 401(D)(1).

E. EXCULPATORY CERTIFICATION

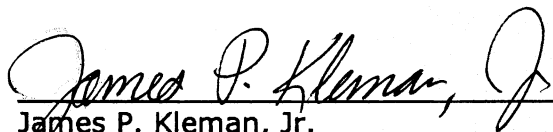
The Board, by and through undersigned counsel, hereby certifies that MDJ Cabry has not been provided with any exculpatory evidence relevant to the charges contained in the Board Complaint as required by C.J.D.R.P. 401(E), as no exculpatory evidence exists due to former MDJ Cabry's guilty plea and sentence.

Respectfully submitted,

FRANCIS J. PUSKAS, II
Chief Counsel

DATE: June 6, 2022

BY:



James P. Kleman, Jr.
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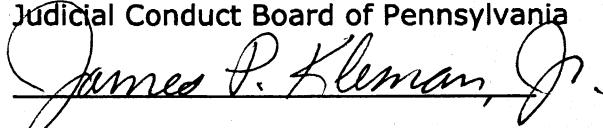
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CERTIFICATE OF COMPLIANCE

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: Judicial Conduct Board of Pennsylvania
Signature: 
Name: JAMES P. KLEMAN, JR.
Senior Deputy Counsel
Attorney No.: 87637

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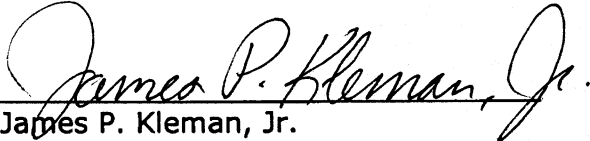
PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on June 6, 2022, a copy of the Board's Amended Pre-Trial Memorandum was sent by first class mail to Mr. Samuel C. Stretton, Esquire, counsel for former MDJ Michael J. Cabry, III at the following address and email:

Samuel C. Stretton, Esquire
301 South High Street
P.O. Box 3231
West Chester, PA 19381
strettonlaw.samstretton@gmail.com

Respectfully submitted,

DATE: June 6, 2022


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