

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

IN RE: JUDGE MARISSA J. BRUMBACH :  
MUNICIPAL COURT JUDGE :  
1ST JUDICIAL DISTRICT : 2 JD 2022  
PHILADELPHIA COUNTY :  
:

**RESPONDENT JUDGE MARISSA J. BRUMBACH'S MOTION TO FILE A  
REPLY BRIEF**

Respondent Judge Marissa J. Brumbach, by and through the undersigned counsel, requests the opportunity to submit a Reply Brief in Further Support of her Omnibus Motion and avers as follows:

1. On January 31, 2023, Judge Brumbach filed her Omnibus Motion.
2. On February 9, 2023, the Board filed its Response to Judge Brumbach's Omnibus Motion.
3. There is no rule permitting or prohibiting a reply brief to be filed with regard to omnibus motions.
4. Judge Brumbach respectfully requests this Court allow her the opportunity to submit a short reply brief so that she can respond to arguments raised by the Board.
5. In its memorandum of law attached to its Response, the Board appears to raise new arguments to support its allegations.
6. In particular, the Board now asserts that: the definition of adjudication in the judicial discipline context is unique; Judge Brumbach's conduct amounted to

a “verdict” in each case; and this case is comparable to *In re Merlo*, 34 A.3d 932 (Pa.Ct.Jud.Disc. 2011).

7. Judge Brumbach would be prejudiced if she did not have the opportunity to respond to these arguments.

8. Moreover, no delay will result because Judge Brumbach’s proposed Reply Brief is attached hereto as Exhibit A.

WHEREFORE, it is respectfully requested that this Honorable Court grant Judge Brumbach’s Motion to File a Reply Brief.

Dated: February 22, 2023

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## CERTIFICATE OF SERVICE

I, Matthew H. Haverstick, hereby certify that on February 22, 2023, I caused a true and correct copy of the attached Motion to File a Reply Brief to be served on the following via email:

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## CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Kleinbard LLC

Signature: /s/ Matthew H. Haverstick

Name: Matthew H. Haverstick

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# **EXHIBIT A**

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

IN RE: JUDGE MARISSA J. BRUMBACH :  
MUNICIPAL COURT JUDGE :  
1ST JUDICIAL DISTRICT : 2 JD 2022  
PHILADELPHIA COUNTY :  
:

**RESPONDENT JUDGE MARISSA J. BRUMBACH'S REPLY BRIEF TO THE  
BOARD'S RESPONSE TO JUDGE BRUMBACH'S OMNIBUS MOTION**

Respondent, Marissa Brumbach, by and through her undersigned counsel, submits this Reply Brief to the Judicial Conduct Board's Response to Judge Brumbach's Omnibus Motion ("Response").

Despite the Board's efforts in its Memorandum in support of its Response, the Board's Complaint continues to fail to support charges of misconduct because: (1) adjudication is defined as a matter of law; (2) an adjudication in the judicial conduct context is no different from an adjudication in the criminal context; and (3) *In re Merlo*, 34 A.3d 932, 962 (Pa. Ct. Jud. Disc. 2011) is not on point. The facts as alleged in the Board's Complaint do not support a conclusion that an adjudication—or any misconduct—occurred and therefore the Complaint should be dismissed with prejudice. See Respondent's Omnibus Motion paragraph 65-69.

## I. ARGUMENT

### A. Adjudication has a specific legal definition.

The Board's suggestion that it is improper to identify the precise definition of adjudication—a term that forms the entire basis of its Complaint<sup>1</sup>—is unconvincing for two reasons. First, it is contrary to common sense. Courts routinely examine a term's context and dictionary definition when a term's definition is at issue. *See, e.g., A.S. v. Pennsylvania State Police*, 143 A.3d 896, 906 (Pa. 2016). A definition of the term adjudication—one that is not supported by law or the term's context—would create an untenable result. *See* Board's Response at 24-25. Second, the Board's argument is internally inconsistent. Specifically, after decrying Judge Brumbach's "technical" definition of adjudication, the Board proceeds to offer its own "technical" definition of the term—albeit one that is misguided and self-serving. *See id.* This demonstrates that, no matter how the Board tries to avoid the definition of adjudication, the term's definition is essential to whether the claims in its Complaint are sufficient as a matter of law.

The Board also maintains that the term adjudication means something different in "the context of judicial disciplinary proceedings[.]" *Id.* at 23. This

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<sup>1</sup> The Board references a variation of the term "adjudication" approximately six times in its Complaint. In fact, the Board's allegations depend on proving that Judge Brumbach actually adjudicated each case thereby causing due process violation (right to be heard) to ticketholders. *See, e.g., N.T.*, at 223-25 (Attorney Norton indicating that opposing counsel would argue whether the cases were "actually adjudicated"). The basis of the Complaint is best captured in paragraph 18 where the Board alleges that Judge Brumbach "adjudicated most of the citations prior to the scheduled hearing date." Complaint at ¶ 18.

argument is incorrect and would set a dangerous precedent. To illuminate, the Board's Complaint is based on Judge Brumbach's conduct that took place in the context of summary criminal proceedings in Philadelphia's traffic court—namely, her purported “adjudication” of the 95 citations originally calendared for January 7, 2022. Thus, in order to evaluate Judge Brumbach's conduct, this Court must look to the rules governing Philadelphia's traffic court. As such, we turn to the criminal rules of procedure and related appellate rules of procedure. The rules inform us of that an adjudication is a precise event that triggers, *inter alia*, appellate rights, *see* Pa.R.Crim.P. 460(a); Pa.R.Crim.P. 1031; Pa.R.Crim.P. 1037;<sup>2</sup> *see also* Pa.R.A.P. 108(a)(1); Pa.R.A.P. 301(a),<sup>3</sup> and a certified copy of the disposition report, *see* Pa.R.Crim.P. 471.

According to the criminal rules an adjudication results upon “entry” of a final order where “entry” is defined as “the date on which the issuing authority enters or

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<sup>2</sup> Indeed, the Board may not overlook the Philadelphia Traffic Court Procedural Rule 1030 (Scope of Summary Traffic Court Rules) Comment:

These rules were developed in 2005 to accommodate the procedures Philadelphia Traffic Court has implemented to address the issues in summary traffic cases unique to Philadelphia, to more efficiently handle the vast number of summary traffic cases, and to protect the defendants' rights to a fair and prompt disposition of their cases.

Pa.R.Crim.P. 1030, cmt.

<sup>3</sup> Rules 108 and 301 apply except in a criminal case where no post-sentence motion has been filed. Post-sentence motions are not required for summary offenses. This exception therefore cannot apply in the summary context. Appellate rights relating to summary offenses are as prescribed in Rule 460, which is consistent with Rule 301(a).



records the guilty plea, the conviction, or other order in the magisterial district judge computer system.” Pa.R.Crim.P. 460, cmt; *see* Pa.R.Crim.P. 1037(“a defendant appeals after the entry of a guilty plea or a conviction in any Traffic Division summary proceeding”); Pa.R.Crim.P. 1031; Pa.R.Crim.P. 471. Critically, the Board agrees no entry had occurred as it relates to the 95 paper citations. *See* Board’s Response at 25. Indeed, there was no verdict, sentence, conviction, judgment, or final order of court resolving any of the citations. Thus, the Board effectively concedes that no adjudication occurred, and no person was denied due process. Any definition of “adjudication” that is inconsistent with its accepted use in the criminal context would result in jurists being punished for conduct that is otherwise legal.

The Board attempts to assert that *J.C. v. Dep’t of Pub. Works*, 980 A.2d 743 (Pa. Cmwlth. 2009) supports the Board’s effort to ignore the definition of adjudication in the criminal context in favor of an undefined definition of the term in the judicial discipline context. But this argument likewise fails.

Unlike *J.C.*, the Board’s Complaint is alleging that Judge Brumbach’s conduct in Philadelphia’s traffic court amounted to an adjudication. The only fair way to assess whether Judge Brumbach’s conduct resulted in an adjudication is to view her conduct through the lens of the rules, processes, practice, and procedures to which she was bound when she presided over matters in Philadelphia’s traffic court. The Board is unable to point to any authority that suggests the definition of adjudication in the judicial discipline context is different than its accepted definition in the criminal context. Indeed, it would be wholly unfair for a jurist to comply with

the relevant rules of procedure applicable in her court only to have the Board hold that jurist to a different set of rules and standards. That would be the result of the Board's argument and it would set a remarkably dangerous precedent.

The Board also critiques Judge Brumbach for not citing to the Black's Law Dictionary definition used by the *J.C.* Court and then proceeds to omit the portion of the *J.C.* Court's discussion that confirms Judge Brumbach's point:

Black's Law Dictionary defines "adjudication" as "1. [t]he legal process of resolving a dispute; the process of judicially deciding a case. 2. *JUDGMENT*." BLACK'S LAW DICTIONARY 45 (8th ed.2004) (emphasis added). **Under this common meaning of the term "adjudication," a final, appealable judgment is anticipated. Thus, the common meaning of "judicial adjudication" is a final, appealable judgment rendered by a court.**

*J.C.*, 980 A.2d at 747<sup>4</sup> (bold portion not cited to by Board); see Board's Response at 24. The argument that the first portion of that definition somehow undercuts Judge Brumbach's theory is wrong. The Board emphasizes the words "legal process" and "deciding" as though those terms support its argument that an adjudication occurs before a final judgment. See Board's Response at 24. But the "legal process" in Philadelphia's traffic court ultimately concludes with final judgment; indeed, the

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<sup>4</sup> The *J.C.* panel ultimately held:

These circumstances support our conclusion that, as used in the Law, a judicial adjudication in a criminal case occurs when an appealable judgment of sentence is imposed. Under this interpretation, a suspension of the 60-day investigation/final determination period does not end with the entry of a plea in a criminal case; rather, the suspension may continue until a final, appealable judgment of sentence is imposed.

*J.C.*, 980 A.2d at 748.

common thread in each definition of adjudication—as expressed in case law, Black’s Law Dictionary, and the rules—is a final and appealable order resolving a dispute. The Board’s definition would stop the resolution of the “legal process” short before a case is judicially concluded and punish a jurist when no adjudication occurred as a matter of law.

The “legal process” of Philadelphia Traffic Court, B Court—a court that resolves summary motor vehicle violations—is unique and the Board may not infer more formality to an *absentia* determination by the court than that which exists in the normal course of those proceedings in B Court.<sup>5</sup> The record belies the Board’s new argument that Judge Brumbach failed to conduct a proper trial *in absentia* prior to rendering a verdict. When a case is handled *in absentia* the prosecution presents no witnesses and by law the ticketholder waives the right to be heard and consents to absentia finding. See N.T., 207-211; 126-29; see also Pa.R.Crim.P. 1031. The Judge’s determination is based on a review of the information contained on the ticket and the certified driving record. See N.T., 199-200; 207-211; 126-29.<sup>6</sup>

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<sup>5</sup> Moreover, it is improper to equate the proceedings in Philadelphia’s Traffic, Court B Court with, for example, felony or misdemeanor trials in the Philadelphia Court of Common Pleas. It would likewise be erroneous to assume that Philadelphia Traffic Court, B Court functions with a court clerk entering in real time oral decisions made directly from the bench. This is a critical mistake. Critically, no dispositions or court actions are entered into the traffic court electronic docket in real time from anything a judge says orally from the bench. Every entry made by a dispositioner into the docket is copied from some form of written instruction.

<sup>6</sup> The Board alleges for the first time “Judge Brumbach’s failure to conduct a trial *in absentia* prior to rendering a verdict in the citation pleaded in the complaint, as required by Pa.R.Crim.P. 1031 is a clear violation of the law[.]” Board’s Response at 25. First, no trials or proceedings were held for any of the 95 citations because Courts were closed on January 7. Second, Judge Brumbach’s plan

Ultimately, the Board's shifting arguments in support of its Complaint are evidence that its Complaint is fundamentally flawed. No matter whether the Board argues: (1) Judge Brumbach adjudicated the cases; (2) what would have occurred on January 7 (and not what did occur or could have occurred) would have amounted to misconduct; (3) Judge Brumbach pre-judged the cases (a theory which implicitly concedes that no person's due process rights were ever denied);<sup>7</sup> (4) the notations on the paper citations were "verdicts"<sup>8</sup> albeit not final or appealable orders; or (5) Judge Brumbach failed to conduct a trial in *absentia*, the Board cannot escape the fact that the conduct alleged did not amount to misconduct in any form as a matter of law.

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allowed for the District Attorney to review the 95 citations before she reviewed them—a procedure materially similar to that which typically occurs during an *in absentia* hearing in Traffic Court B. See N.T., 170-171; 207-211; 126-29.

<sup>7</sup> See, N.T., at 215-217; 222-223.

<sup>8</sup> Consider the Board's argument that Judge Brumbach's "notations" constituted "verdicts" and that "verdicts" do not have to be final or appealable. This is the first time the Board has alleged the notations were "verdicts." In its complaint, the Board's allegation was that Judge Brumbach's notations were adjudications.

The Board has switched to the term verdict in an attempt to escape the fact that it cannot prove an adjudication occurred because none of the cases resulted in a final and appealable order. But as with "adjudication" a "verdict" implies a final judicial decision. See, e.g., *Commonwealth v. Severns*, 663 A.2d 210, 212 n.3 (Pa. Super. 1995) (noting that a trial court's "authority over a verdict in a non-jury trial, once the verdict is recorded, is limited to reconsideration of post-verdict motions . . ."). Thus, just like "adjudication," a "verdict" is final only when it is entered or recorded. That the Board is even raising such an argument is evidence of how weak its position really is. The Board asserts that Judge Brumbach has employed "semantical gymnastics" but the Board is the one who finds itself on the balance beam.

**B. The Board's reliance upon *In re Merlo* is misplaced.**

The Board erroneously argues that *In re Merlo*, 34 A.3d 932, 962 (Pa.Ct.Jud.Disc. 2011) is similar to this case. Judge Merlo, in landlord and tenant cases, instructed her staff to conduct hearings, “enter judgment,” and send the required notice without her being present. Critically, and unlike Judge Brumbach, Judge Merlo’s staff carried out standing instructions over a two-year period such that the staff made judicial determinations that resulted in adjudications. *See In re Merlo*, 34 A.3d at 963. *In re Merlo* is not factually comparable. Unlike *In re Merlo*, at no time was Judge Brumbach’s staff instructed to make judicial decisions, determine facts or enter court action resulting in final judgments for or against a ticketholder wanting to contest their motor vehicle violations or make formal entry of agreements between litigants on any subject matter.<sup>9</sup> In fact, none of the 95 citations were ever adjudicated by *anyone* nor could they have been because the courts were closed on January 7, 2022 and every case scheduled for that day was administratively relisted. Judge Merlo was punished for excessive absenteeism and lateness as well as cases resulting in adjudication without her taking testimony over a two-year period as required by Pa.R.C.P.M.D.J. 512. *See Pa.R.C.P.M.D.J.*

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<sup>9</sup> To explain, the facts presented by the Board indicate that Merlo “committed the following improper acts: (1) without statutory authorization, she authorized her staff to “find” facts alleged by a party in a pending dispute, i.e., to receive facts alleged by a plaintiff-landlord in a complaint; (2) she permitted her staff to utilize these facts to issue a document that, on its face, appeared to be a valid, enforceable notice of judgment; and (3) in so doing, she failed to follow the pertinent Rules of Civil Procedure of Magisterial District Judges.” *In Re: Merlo*, Brief of Judicial Conduct Board, , 2012 WL 8693632 at \*45.

512; *cf.* Pa. R. Crim. P. 1031 (ticketholders who fail to appear, by operation of law, consent to absentia finding). Thus, there is nothing “strikingly similar” to Merlo.

## II. CONCLUSION

This Court should dismiss the Board’s Complaint because Judge Brumbach’s conduct has not violated any law or canon of Judicial Discipline. The Board’s arguments to the contrary strain credulity and are entirely unsupported by the law.

Dated: February 22, 2023

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Dated: February 22, 2023

/s/ Matthew H. Haverstick

## CERTIFICATE OF SERVICE

I, Matthew H. Haverstick, hereby certify that on February 22, 2023, I caused a true and correct copy of the attached Reply Brief to the Board's Response to Judge Brumbach's Omnibus Motion to be served on the following via overnight Federal Express and email:

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