

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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

JUDGE MARISSA J. BRUMBACH’S PRE-TRIAL MEMORANDUM

In accordance with this Court’s September 18, 2023 Order, Marissa Brumbach, by and through her undersigned counsel, files this Pre-trial Memorandum and avers as follows:

A. Trial Witnesses

Judge Brumbach may call some or all of the following witnesses at trial:

1. The Honorable Patrick Dugan will testify regarding his role in the events underlying the Board’s Complaint.
2. The Honorable Joffie Pittman will testify regarding his role in the events underlying the Board’s Complaint.
3. The Honorable Marissa Brumbach will testify regarding her role in the events underlying the Board’s Complaint.
4. Donna Sofronski will testify regarding her role in the events underlying the Board’s Complaint.
5. Dominic Reda will testify regarding his role in the events underlying the Board’s Complaint.

6. Jan Greco will testify regarding her role in the events underlying the Board's Complaint.

7. The Honorable Amanda Cooperman (retired) will testify as to the character of Judge Brumbach.

8. Judge Brumbach may call some or all witnesses identified in the Judicial Conduct Board's Pre-trial Memorandum.

B. Exhibits

Judge Brumbach may introduce some or all of the following exhibits at trial, in her case in chief:

1. A true and correct copy of the November 10, 2021 e-mail from Judge Brumbach to Judge Dugan.

2. A true and correct copy of the January 6, 2022 e-mail from Judge Brumbach to Judge Dugan and Judge Dugan's response thereto.

3. A true and correct copy of the January 3 and 4, 2022 emails sent on behalf of Judge Dugan asking for additional coverage.

4. True and correct copies of the text messages between Judge Dugan and Judge Pittman from January 6-12, 2023.

5. True and correct copies of the text messages between Judge Brumbach and Judge Pittman.

6. A true and correct copy of the January 9, 2022 email from Judge Dugan to Judge Brumbach.

7. A true and correct copy of the January 10, 2022 email from Judge Brumbach to Marge Fenerty.
8. A true and correct copy of the January 14, 2022 email from Judge Dugan to Judge Brumbach.
9. A true and correct copy of the Notes of Testimony from the January 6, 2023 Interim Suspension Hearing.
10. A true and correct copy of the January 19, 2022 Confidential Request for Investigation, and any attachments thereto.
11. A true and correct copy of the January 10, 2022 email from Judge Brumbach to Judge Dugan and Judge Pittman.
12. A true and correct copy of the March 2, 2022 deposition testimony of Marge Fenerty and any exhibit attached thereto.
13. A true and correct copy of the March 2, 2022 deposition testimony of Donna Sofronski and any exhibit attached thereto.
14. A true and correct copy of the September 28, 2022 deposition testimony of Judge Pittman and any exhibit attached thereto.
15. A true and correct copy of the October 24, 2023 deposition testimony of Judge Dugan and any exhibit attached thereto.
16. A true and correct copy of the May 5, 2022 deposition testimony of Darren Waite and any exhibit attached thereto.
17. A true and correct copy of the Board's Interview of Judge Dugan and any exhibit attached thereto.

18. A true and correct copy of the Board's Interview of Judge Pittman and any exhibit attached thereto.
19. A true and correct copy of Judge Dugan's October 24, 2023 deposition testimony and any exhibit attached thereto.
20. A true and correct copy of Judge Pittman's October 31, 2023 deposition testimony and any exhibit attached thereto.
21. A true and correct copy of the 2005 First Judicial District of Pennsylvania Traffic Court Tipstaff Training Program, 2005.
22. A true and correct copy of Pennsylvania Rule of Judicial Administration 704 regarding Judicial Leave.
23. A true and correct copy of the Philadelphia Traffic Court Organizational Development, September 2005.
24. A true and correct copy of the Philadelphia Traffic Court Cross Training Documentation, Effective 2009-2010.
25. A true and correct copy of the Philadelphia Municipal Court—Traffic Division, eTIMs Reference Manual, 2014.
26. A true and correct copy of the document titled "Court Clerk" provided to the Board by Judge Brumbach in discovery.
27. A true and correct copy of Judge Dugan's October 31, 2022 email to Judge Brumbach regarding the Municipal Court Fall Conference and the Conference Agenda.
28. A true and correct copy of the Disposition by Judge Report.

29. A true and correct copy of the Philadelphia Municipal Court Traffic Division, eTIMS General Inquiry and Payment Processing Hearing Officer Training.

30. A true and correct copy of the President Judge Desk Book.

31. A true and correct copy of all documents labeled “Defendant File” that were produced to the Board on October 6, 2023.

32. A true and correct copy of the publicly available docket sheet and docket summary associated with each of the 95 citations at issue.

33. A true and correct copy of the First Judicial District Judicial Leave Policy.

34. A true and correct copy of the October 24, 2019 email from Judge Brumbach to Judge Dugan and any response thereto.

35. A true and correct copy of the February 9, 2022 email from Judge Brumbach to Judge Dugan and any response thereto.

36. A true and correct copy of any document provided by Judge Brumbach to the Board during discovery.

37. A true and correct copy of the June 20, 2019 letter from Judge Brumbach to Judge Dugan as well as the June 13, 14, and 18, 2019 emails between Judge Brumbach and Judge Dugan.

38. A true and correct copy of all emails regarding assignment changes from Judge Dugan to all municipal court judges.

39. Judge Brumbach reserves the right to supplement this Exhibit list.

C. Proposed Stipulations

Judge Brumbach does not agree to any of the proposed stipulations in the Board's Pre-trial Memorandum. Judge Brumbach offers the following proposed stipulations:

1. The parties agree to the authenticity and admissibility of the documents listed in this Pre-trial Memorandum.
2. Judge Marissa J. Brumbach is a Municipal Court Judge in the First Judicial District, Philadelphia County.
3. Judge Brumbach has served as a Municipal Court Judge from 2018 through the present.
4. At the time of the conduct alleged in the Board's complaint, Judge Brumbach was assigned to the Traffic Division of the Philadelphia Municipal Court (Traffic Court)
5. At all times relevant hereto, the practice and procedure of Traffic Court was as follows:
 - a. The Traffic Court's electronic docketing and case management system is known as eTIMs;
 - b. Judges assigned to Traffic Court do not have access to eTIMs;
 - c. Each judge is assigned a unique code number for identification on eTIMS.

d. When an individual is issued a traffic citation, the citation is either electronically transmitted by law enforcement to the eTIMs system or a paper citation is forwarded to Traffic Court so that it can be manually scanned and entered into the eTIMs system;

e. Individual ticketholders are assigned a hearing date and a notice of hearing is generated by eTIMs and is sent to the ticketholder;

f. In Traffic Court, Courtroom B, cases are scheduled in one of three time slots: 9:30 a.m.; 1:00 p.m.; and 2:30 p.m.;

g. Prior to the hearing, the Central Records Department is responsible for printing citations from eTIMs and preparing the paper files for each person whose citation is scheduled for a hearing;

h. The Central Records Department typically prepares the paper files at least two weeks in advance of a scheduled hearing;

i. As part of this preparation process Central Records stamps the date of the hearing on the paper citation;

j. It is not unusual for paper citations to have multiple stamps if, for example, a case was continued;

- k. It is not unusual for a paper citation to have a judge's signature crossed out and for the paper citation to be marked and signed by a different judge;
- l. When an individual receives a traffic citation for the first time, a paper file is created for that person;
- m. Each person's paper file contains every citation issued to that person to date.
- n. Judges assigned to Traffic Court use the paper citations as a worksheet to make notations regarding each citation;
- o. Each paper citation includes 17 "Disposition Codes" and a blank space where the Judge enters his or her unique code referenced in Subparagraph (c) *supra*.
- p. Once a judge circles a "Disposition Code" and signs the paper citation, at the direction of that judge, the paper citation is delivered by court staff to the Dispositioner;
- q. Absent specific instruction from the Judge, a paper citation is not transmitted to the Dispositioner;
- r. The Dispositioner is responsible for entering into eTIMS the various notations which have been made on the paper files, together with the appropriate disposition code for every traffic citation and the judge's code number;

- s. A Judge's notations on the paper citation constitutes instructions to Dispositioner;
- t. A citation is adjudicated once the Dispositioner enters the "Disposition Code" associated with a particular citation and completes any other fields prompted by eTIMS;
- u. Once the actions in the aforementioned paragraph have been taken, a notice of the conviction, including the sentence, fines, and costs (if any) is generated and transmitted to the ticketholder;
- v. The appeals period does not begin to run until the Dispositioner enters into eTIMS the annotations and instructions contained on the paper citations and a sentence is imposed after having been automatically generated by eTims. *See Pa.R.Crim.P. 460(a); 471; 1037; Pa.R.App.P. 108(a); 301(a).*
- w. A "Disposition Code" that has been entered by the Dispositioner is reflected on the docket, within the Ticket History for each citation and becomes part of the individual's case's electronic record;
- x. Absent action by the Dispositioner, which can only be taken upon a judge's directive, the docket and the record of a case remains unchanged;

6. On November 10, 2021, Judge Brumbach sent Judge Dugan, President Judge of the Philadelphian Municipal Court—and Sharon Crimi (his assistant) via carbon copy—an email giving him the following notice:

Judge Dugan,

I am attending an event in Florida on January 7, 2022, and unable to preside that day.

Kindly let me know if I should make notifications or if you are going to handle it and provide coverage for the room (not yet assigned).

Thank you.

Judge Brumbach.

7. The event referenced above was a 50th birthday celebration for Judge Brumbach's partner's friend and business associate.

8. Judge Dugan never responded to Judge Brumbach's November 10, 2021 email, or otherwise acknowledge Judge Brumbach's correspondence relaying that she would not be able to preside on January 7, 2022.

9. The notice provided by Judge Brumbach was reasonable.

10. A written policy or guidance regarding personal leave days for Judges of the Philadelphia Municipal Court does not exist.

11. It is not unusual for Philadelphia Municipal Court Judges to take a personal leave day.

12. Although Judge Dugan has expressed a subjective preference that Municipal Court Judges provide him with a reason for taking a personal leave day, no binding authority exists that would require duly commissioned judges on the

Municipal Court to provide the President Judge with a reason for taking a personal leave day.

13. At the time Judge Brumbach sent the November 10 email, Judge Brumbach was not yet assigned to a courtroom on January 7, 2022.

14. The 95 paper citations attached to the Board's Complaint indicate that the ticketholders did not receive notice by mail of their January 7, 2022 hearing until December 18, 2021.

15. On January 3 and 4, 2022, Judge Dugan emailed the entire complement of Municipal Court Judges, indicating that that he was having issues providing coverage for each of the assigned courtrooms.

16. On January 6, 2022, Judge Brumbach emailed Judge Dugan as follows:

Since I have not heard from you regarding coverage and I am aware you are experiencing coverage issues across the Municipal Court with other judges, I have prepared the files for tomorrow after the Assistant District Attorney reviewed them. As such, a least 95% of the files will have been completed by me without the necessity of coverage. If court remains open tomorrow with the impending snow forecast and anyone shows up, my staff and the court staff know what to do. If you have an alternate plan, let me know and I will set the proper expectations.

17. On January 6, 2022, Judge Dugan responded: "The alternative plan is for you to show up and handle your list. Have you coordinated with court administration in Traffic on the 95%? So it is clear, I have not authorized you to be off on January 7th."

18. Despite his email, Judge Dugan planned to provide coverage for Judge Brumbach's room on January 7.

19. Judge Dugan did not communicate his plan to provide coverage in Traffic Court to Judge Brumbach.

20. On January 6, 2022, Judge Dugan texted Judge Pittman, expressing concern regarding whether Judge Brumbach had coordinated with administration regarding her plan.

21. Judge Dugan never attempted to speak with Judge Brumbach in person or by telephone about the email that Judge Brumbach sent Judge Dugan on January 6, 2022.

22. On January 6, 2022, Judge Pittman, prompted by Judge Dugan's text message, spoke with Judge Brumbach about her plan.

23. During her January 6, 2022 conversation with Judge Pittman, Judge Brumbach informed him that:

- a. She had not disposed of any citations;
- b. the ADA assigned to handle the 95 citations scheduled to be presented to her on January 7, 2022 had reviewed the files;
- c. Judge Brumbach had reviewed the 95 citations and attendant files in preparation for the next day's hearing;
- d. if any person appeared to contest their citation, their case would be continued and they would be given a subsequent date on which they could present their case;

24. Judge Pittman responded that he understood and "got it" regarding her plan.

25. Judge Pittman never told Judge Brumbach not to proceed with her plan.

26. Judge Pittman never told Judge Brumbach he was aware that Judge

Dugan planned to provide coverage for Traffic Court on January 7, 2022.

27. Judge Dugan never told Judge Brumbach not to proceed with her plan.

28. Judge Pittman does not remember the details of his January, 6 2022 conversation with Judge Brumbach, but he does not dispute the accuracy or veracity of Judge Brumbach's version of the conversation.

29. Philadelphia Courts were closed on January 7, 2022 because it was a snow day.

30. All traffic citations scheduled in Traffic Court for January 7, 2022 were continued.

31. Because of the Court closure, each of the 95 citations at issue were continued to different dates in 2022.

32. Each of the 95 citations were subsequently withdrawn, dismissed or adjudicated *via* eTIMS, under the auspices of different judges—not Judge Brumbach.

33. Judge Brumbach's name does not appear in the Ticket History of eTIMS for any of the 95 citations.

34. No person holding any of the above citations received a Notice of Conviction, as a result of Judge Brumbach actions.

35. Per Judge Brumbach's instructions, had courts been open on January 7, 2022—and had Judge Dugan neglected to arrange for coverage for the 95 citations at issue in the present Complaint—no person who appeared for a hearing would have had their matter adjudicated in eTIMS because Judge Brumach made clear that any individual who appeared to contest their citation would receive a continuance to be heard on another day in Traffic Court.

36. At no point were the paper files associated with the 95 citations in the possession, custody, or control of the Dispositioner.

37. On January 6, 2022, Judge Dugan, *via* Ms. Crimi (his administrative assistant), instructed Marge Fenerty who is the Director of Personnel, the Hiring Manager, Liaison to PennDOT and handles special projects like cancellations and correspondence for the Administrative Judge and Deputy Court Administrator, to review the paper citations.

38. On January 6, 2022, the paper files were in the possession, custody, and control of Donna Sofronski.

39. On January 10, 2022, Judge Brumbach was placed on Administrative duty by President Judge Patrick Dugan via text message.

40. Judge Dugan largely relied on statements made to him by Marge Fenerty's after her review of the paper citations to take the above action against Judge Brumbach.

41. Judge Dugan did not personally review the paper citations until sometime on Monday—after placing Judge Brumbach on administrative duty.

42. The original paper citations—as they existed on January 6, 2023—are no longer in existence.

43. The original paper citations were placed back into circulation and subsequently marked by other judges who presided over the continued cases.

44. Some of the original paper citations were lost or thrown away and others reprinted from eTIMs and placed into the paper files.

D. Discovery Certification

Judge Brumbach certifies that she has furnished the Board with the materials required to be exchanged under C.J.D.R.P. 401(D)(1).

Dated: October 30, 2023

/s/ Matthew H. Haverstick
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CERTIFICATE OF SERVICE

I, Matthew H. Haverstick, hereby certify that on October 30, 2023, I caused a true and correct copy of the attached Omnibus Motion 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:	<u>/s/ Matthew H. Haverstick</u>
Name:	Matthew H. Haverstick
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