

Commonwealth of Pennsylvania
COURT OF JUDICIAL DISCIPLINE

IN RE:

DOCKET NO. 1 JD 2025

JUDGE SCOTT DICLAUDIO

COMMON PLEAS JUDGE

1ST JUDICIAL DISTRICT

PHILADELPHIA COUNTY

CERTIFIED FROM THE RECORD

JUL 2 - 2025


Clerk of Court

OMNIBUS MOTION OF THE RESPONDENT, JUDGE SCOTT DICLAUDIO

Judge Scott DiClaudio hereby files this Omnibus Motion pursuant to the Rules of Procedure of the Court of Judicial Discipline, Rule 411, in the above captioned matter. The Respondent requests the following and raises the following issues:

I. Respondent requests all Discovery

1. Pursuant to the Rules of Procedure of the Court of Judicial Discipline, Rule 401, all discovery must be completed within sixty (60) days upon service of the Complaint.
2. Service was made on or about May 1, 2025. Accordingly, Discovery should be completed on or about July 1, 2025.
3. As the Judicial Conduct Board presumably had complete discovery prior to filing this complaint, there should be no reason that said discovery should not be passed on time and perhaps forthwith. In addition to the discovery that the undersigned anticipates receiving, it is respectfully requested that additional information be provided.

4. Information has recently been disclosed to the Respondent that indicated the Judicial Conduct Board, specifically Melissa Norton, Chief Counsel, initiated the complaint in this matter.
5. While confusing, it appears that the Judicial Conduct Board may be in violation of its own operating procedures. OP 3.01, published on the JCB's website, states:
6. **Opening a Complaint: Except when acting on its own initiative or at the written request of the Supreme Court of Pennsylvania, or the State Court Administrator, the Board shall not initiate any preliminary inquiry or investigation without having first received a complaint.**
7. The Respondent has not had adequate time to research this issue as the "confidential request for investigation" was only provided in the last few days. The Respondent had frequently requested this exact information on several occasions and the JCB declined to provide said information until the last day of the discovery process. This information was definitively within the sole possession of the JCB, as it was written by the Chief Counsel herself, and would have been the first document in the file. It is hard to imagine a good faith basis for failing to provide this document in a timelier fashion. When the respondent, who is acting as his own counsel, informally asked the assigned Counsel for the JCB, as a courtesy, if the JCB ITSELF filed the complaint, a non-answer was given. This request was made on several occasions and always met with the same response: "It will be provided in discovery." One can only speculate why the JCB would withhold this information for an additional forty-five (45) days.
8. In reading the initial complaint made by Ms. Norton, it is apparent the allegations that precipitated this investigation are fraught with theory, speculation, and conjecture. The complaint states: "it **seems** that Judge DiClaudio discussed his position as a Judge while speaking with the reporter" and "for example, the reporter writes that DiClaudio's Court Crier '**may have** addressed him as whiz Honor.'"
9. The reporter's article was lighthearted in nature, and it was obvious to all that the "Whiz Honor" phrase was meant as a joke, added independently by the reporter.
10. It is doubtful the JCB would have moved forward with this complaint had it been sent anonymously. The information contained within the complaint is both insufficient and speculative and should not have caused any further judicial review

by the JCB. The investigation only moved forward because of the Prestige of Ms. Norton herself. The Irony is palpable, as the complainant in the instant matter ostensibly uses the Prestige of her Office, the same as the Respondent is alleged to have done.

11. As a result of this initial complaint, the JCB sent an undercover investigator to interact with the Respondent at Shay's Steaks. This extreme action is infrequently used by the JCB. It is hereby requested that information regarding all other matters where an investigator has been used in an undercover capacity be provided to the Respondent. Additionally, while redacted, the information that was gleaned by said investigation is also requested. The Investigator in the instant matter confirmed the Respondents position that no impropriety had occurred, and it is alleged that but for the Chief Counsel initiating the complaint, the matter would have been dismissed.
12. The Respondent respectfully requests to review, in camera, the last two hundred (200) complaints that were declined by the JCB. The Respondent realizes that this may be prohibited by Statute, however, considering the aforementioned information, it is inherently justifiable. The initial complaint was insufficient to begin an investigation, and the subsequent undercover investigation garnered only exculpatory information. While one could only speculate, it is conceivable the assigned prosecutor chose to continue with this investigation because of the identity of the complainant.

WHEREFORE, Respondent respectfully asks this Honorable Court to order Discovery in the possession of the Judicial Conduct Board. The discovery should be produced FORTHWITH or in the alternative, no later than July 1, 2025. Additionally, Respondent, as a Sitting Common Pleas Judge with an extensive docket of Serious and Significant matters scheduled, requests additional time to respond to the Complaint filed. The Respondent requests that Respondent's answer to the complaint be deferred until after the matters in this motion are resolved.

II. Rules of Evidence

13. Pursuant to Rule 101A of the Pennsylvania Rules of Evidence, this matter and all Courts in the Commonwealth of Pennsylvania Unified Judicial System are identical.

Accordingly, this matter shall be governed by well-established evidentiary principles.

III. Burden of Proof

14. Pursuant to Article 5, Section 18, subsection B.5 of the Pennsylvania Constitution, the subject of the charges SHALL be presumed innocent in any proceeding before the Court, and the Board SHALL have the burden of proving the charges by clear and convincing evidence. Pennsylvania Jurisprudence defines Clear and Convincing Evidence as “testimony that is so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction without hesitation, of the truth of the precise facts in issue.”

In Re: K.M., 53 A.3d 781, 786 (Pa Super.20112)

IV. Request to Permit Video Testimony, or Accept Affidavits, for Individuals Described Below

15. Shay’s has been extremely fortunate to have patrons who have gone out of their way to showcase the food and atmosphere of the restaurant. These patrons, and dozens of celebrities, have a combined social media presence and following of over 50 million individuals, resulting in a combined viewership that exceeds one hundred Million views. This evidence would be probative to refute the allegation that Respondent used his friend’s podcast to promote his wife’s restaurant. That specific podcast garnered 10 views in its first week. It would be nonsensical that Respondent, who had access to millions of potential viewers, through the above, would use this podcast and Respondent’s “position”, to “promote” his wife’s restaurant.
16. Most of these celebrities would testify under oath and consistently with each other that: Respondent was not present when the photos were taken, or posts were made; they had never met Respondent and had NO IDEA the husband of the owner was in fact a Judge. A great majority of these individuals would testify that they did not learn of the position of the Respondent until several months had passed, and some would testify that the first time they learned of it was when this complaint was filed and published, thus gaining worldwide notoriety.
17. Included in this list of witnesses are:

Adam Richman (Man vs. Food), Mr. Points Guy, Mrs. Dow Jones, Saquon Barkley, A.J. Dillon, Matt Cardona, Brian Meyers, Meek Mill, Gilly Da Kid, Steve Burton, Billy Corrigan, Natalia Markova, Kiki Wong, Bryan Idol, Rikishi, Jared McCain, Ariel Hwuani, The Boys in the Back, Sparkles, Tucker Durkin, Shawn Johnson, Jerimah Trotter, Many Furies, Dar the Food Guru, The Godfather of Meat, Rob Van Dam, John Garbarino, The Samboners, Sarah Backman, The Red Clay Strays, Thom Latimer, Eddie Clutch, Jan Kasienski, Yelp Executives (Shay's was named the number 3 "STEAKHOUSE" in America on YELP, The ONLY Cheesesteak Restaurant in the Top 25), Google Executives (Shay's is the number 1 rated cheesesteak restaurant in the Country), Captain Matty Mo, Genty Stein. Additionally, Google Representatives will confirm approximately 5,000,000 views on their site in the last year.

18. Additionally, there are several witnesses that would attest to the Undersigned refusing to do Media, Podcasts, and Appearances. Included, but not limited to; Nugget at Night (declined to host a segment on National Radio Show); Meek Mill, (Declined to post ANY mention of Shay's to his 23 MILLION Instagram followers); CBS Morning News (Declined to be featured on Morning show); Gilly Da Kid Podcast (declined); and Philadelphia Magazine.

V. Request for "Bill of Particulars", More Specificity on Allegations

19. The Judicial Conduct Board has alleged in Count 1 – a violation of Canon 1, Rule 1.2.

It is alleged that the Respondent violated this Canon in failing to promote public confidence in the Judiciary. It is hereby requested that the Board set forth with specificity which "trait" the Respondent is alleged to have violated and what respective conduct is alleged to have occurred.

- A. Acting in a manner that fails to promote public confidence in the Independence of the Judiciary,
- B. Acting in a manner that fails to promote public confidence in the integrity of the Judiciary,
- C. Acting in a manner that fails to promote public confidence in the Impartiality of the Judiciary,
- D. Failing to avoid impropriety,
- E. Failing to avoid the appearance of impropriety.

20. It is hereby requested that the Board set forth with specificity what specific actions are alleged that the Court exhibited that would serve as a basis for the allegation that violated this section. It is requested that if more than one section is alleged to have been violated, each action shall be addressed Ad Seriatim.

21. The Judicial Conduct Board has alleged in Count 2 – a violation of Canon 1, Rule 1.3.

22. It is alleged that the Respondent violated this Canon in Avoiding Abuse of the Prestige of Judicial Office. This Section is violated if the Court abused his office by advancing personal or economic interests of the Judge or others.

23. It is requested that the Board set forth with specificity what actions the Respondent engaged in that meets this Canon. What action does the Board allege constitutes an “Abuse”?

VI. Request to PERCLUDE any and all hearsay documents, including, but not limited to, ALL Google and Yelp reviews.

24. The Board has made allegations based on the “reviews” published on the internet. It is well settled law that Hearsay cannot be admitted into evidence. This specific set of documents are in fact being used for the “truth of the matter asserted”, i.e. that the Respondent made representations to a few patrons of the restaurant. The “reviews” must be prohibited from being used in this matter.

25. The “reviews” cannot be cross examined as to their truthfulness or accuracy. The Respondent has always and consistently informed all patrons that Jackee DiClaudio is the owner of the establishment. As an aside, the undercover investigator sent by the Board supports and corroborates this assertion.

26. The notion that this type of evidence would be admissible is further exasperated by its anonymity. The Reviewers cannot be identified, nor verified, as several fail to state their surname.

VII. Request to dismiss all Charges after the preclusion of Hearsay Documents.

27. The Board used the “reviews” to establish alleged violations of Judicial Conduct.

28. Without the benefit of improper evidence in this manner, there is no evidence to suggest a violation has transpired.

VIII. Request to Dismiss:

29. Recognizing the Court of Judicial Discipline must accept the Board's factual basis at this level, the undersigned alleged actions, even if believed, fail to establish Universal Disrepute to the Entire Judiciary.

30. In Smith, ID 1239, even if a Judicial officer's actions could reasonably result in a lessening of respect for the Judge, it cannot be assumed that the same actions would necessarily bring the Judicial office into disrepute. In other words, that the wrongful actions of a Judicial Officer bring the Judicial office into disrepute is only the first step of the inquiry. The second step is that UNIVERSAL disrepute resulted.

Canon 1, Rule 1.2 can be broken down into two parts:

- A. A Judge shall always act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary,
- B. Shall avoid impropriety and the appearance of impropriety.

31. According to the Judicial Conduct Board, the definition of "independence" is as follows:

"A Judge's freedom from influence or controls other than those established by law or rule."

There are no facts alleged that would cause the Respondent to be in violation of this aspect of Canon 1, Rule 1.2.

32. According to the Judicial Conduct Board, the definition of "integrity" is as follows:

"Probity, fairness, honesty, uprightness, and soundness of character."

There are no facts alleged that would cause the Respondent to be in violation of this aspect of Canon 1, Rule 1.2.

33. According to the Judicial Conduct Board, the definition of “impartiality” is as follows:

“Absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a Judge.”

There are no facts alleged that would cause the Respondent to be in violation of this aspect of Canon 1, Rule 1.2.

34. According to the Judicial Conduct Board, the definition of “impropriety” is as follows:

“Includes conduct that violates ***the Law, Court rules, or provisions of this code, and conduct that undermines a judges independence, integrity or impartiality.***”

There are no facts alleged that would cause the Respondent to be in violation of this aspect of Canon 1, Rule 1.2.

35. According to the Judicial Conduct Board, the test for “appearance of impropriety” is as follows:

“Whether the conduct would create in reasonable minds a perception that the Judge violated this Code or engaged in other conduct that reflects adversely on the Judge’s honesty, impartiality, temperament, or fitness to serve as a Judge.”

There are no facts alleged that would cause the Respondent to be in violation of this aspect of Canon 1, Rule 1.2.

36. Canon 1, Rule 1.3 states: A Judge Shall not abuse the prestige of Judicial Office to advance the personal or economic interests of the Judge or others, or allow others to do so. According to the Judicial Conduct Board:

“It is improper for a Judge to use or attempt to use his or her position to gain personal advantage or preferential treatment of any kind”. “A Judge should also not lend the prestige of his or her office to advance the private interest of others nor convey or knowingly permit others to convey the impression that they are in a special position to influence the Judge”

37. Additionally, it would be unjust to find on these facts that the Respondent's conduct "was so extreme that it brought the Judicial Office itself into disrepute" and thereby constitutes a violation of the disrepute clause of Article 5, section 18, D1 of the Constitution of Pennsylvania. When trying to gauge the significance in the inclusion of "extreme" in the statute we must look at common sense guidance of that term. Synonyms for "extreme" are: Unconscionable, Devilish, Insane, and Immeasurable. The Boards claim in this matter must fail as the facts of this matter certainly do not align with definition.

VIII. Request to supplement alleging the Arbitrary methods of the Judicial Conduct Board

38a. This is the Fourth (4th) Complaint this Court has had to respond to in the last twelve (12) months.

38b. The Judicial Conduct Board investigated a complaint of the Respondent's conduct, in which he "Raised his Voice" while chastising the Assistant District Attorney for being woefully unprepared and failing to investigate a PCRA claim prior to making a recommendation. Vital and Absolutely Necessary information was lacking while the Court decided on the merits of the Petition. After the Respondent's extensive and timely review, the DA's office held a press conference alleging the Respondent "delayed justice". These Unfounded and FALSE allegations Allege defamatory information, put the entire Judiciary in a "bad light", and cast a pale over the entire Criminal Justice System.

39. The Judicial Conduct Board did not interview any of ten witnesses provided, who were available and ready to testify about the allegation and would provide exculpatory evidence on behalf of the Respondent.

40. The Board on three (3) occasions conducted an inquiry about matters alleging Respondents "delay in the administration of Justice". On the first occasion, approximately eighteen (18) months ago, the Respondent explained in detail the mechanisms of PCRA filing in Philadelphia County. In short, Respondent is responsible for adjudicating approximately One Thousand (1,000) matters of Post-Conviction Relief (of which approximately 975 are Homicide related). Most of those matters are the Initial PCRA petition or Counseled petitions. These matters are always heard in open Court and listed in Courtroom 1001 of the Criminal Justice Center. Before the Respondent was entrusted to solely supervise the PCRA program, it was the policy to "share" these matters with the entirety of Criminal Bench in Philadelphia (Several dozen Jurists).

41. On matters that are deemed to be Pro Se or "serial" petitions, the First Judicial District has hired a very competent staff to filter and advise the Respondent on the issues

presented in those petitions. These are only “technically” assigned to the Respondent, and a Brief and Opinion are submitted for the Respondent’s review. These matters are never truly assigned to Judge DiClaudio. These matters are never listed in the courtroom. The Respondent never gives new court dates or continuances. The new listing dates are given by Court Administration. The Respondent would only know of the existence of these matters after a brief is written by a law clerk assigned to the First Judicial District.

42. After a response was submitted by the Respondent on the first matter, alleging “delay in the administration of justice”, a verbal explanation was given to the Judicial Conduct Board. A written answer was requested and provided and that Complaint was promptly dismissed.

43. When the Respondent appeared in Harrisburg to testify in the above captioned matter, the Attorney assigned to the matter personally handed the respondent two additional Complaints alleging “Delay in the Administration of Justice”. Both complaints alleged Respondent’s delay in administering justice in two unrelated matters. Again, this allegation was proven frivolous as the matters were not on the Respondent’s Docket, even a cursory review of the public Court Docket would have shown the allegations were meritless. It is hereby requested that the Judicial Conduct Board provide the names of the complainants in those matters to the Respondent. The matters were never listed in the undersigned Courtroom and the Respondent never re-listed the matter for any future date. It should be noted that Philadelphia Courts only give approximately 120-day dates for listings. The Respondent was served with the two “new” allegations on or about February 12, 2025. The longest date available for Respondent to give in Court at that time was in June 2025. Even a brief investigation would have alerted the Board that the reason these dates were given was a result of the First Judicial District listing these matters, not the Respondent, and the impetus of said date was the consideration that the matter could not be adjudicated as those matters were under appeal in the Superior Court of Pennsylvania and those dates were given as “place holder” dates until the adjudication in the Appellate Court.

44. There is no doubt that the Board knows of the hard work and dedication the Respondent has exhibited in the last decade. Attached to the initial response was a detailed ledger of the matters the Respondent has adjudicated since his ascension to the Bench. In the first approximately five years on the Bench, the Respondent supervised the SMART program in Philadelphia. The Respondent resolved almost 10,000 Felony matters in those years, more than any Jurist in the Commonwealth. When the Respondent began its initial term, a unique Judge was responsible for supervising each Division: East Division, Northwest Division, Center City Division, and the IP program. When the Honorable Judge

Minehart asked the Respondent which Division he wished to supervise, the response was instant and firm, “all four”. When the PCRA backlog became too great because of the Open File Policy of District Attorney Larry Krasner (an Incredible idea - as dozens, if not hundreds, of injustices have been remedied by that revolutionary decision), the Respondent was asked to supervise the PCRA program. The number of adjudications by the Respondent has dwarfed prior adjudications per year, tenfold. To allege that Respondent has ever “delayed the Administration of Justice” is almost comical.

45. To further illustrate the Board’s lack of objectivity or perhaps animus toward the respondent, a “deep dive” of social media must have occurred while investigating this matter. Near the very end of Respondent’s deposition, the Board marked as an exhibit a Twitter page allegedly attributed to Respondent. The Twitter page consisted of a single entry, had zero followers, had zero posts, and the Name was DASCOTT DiCLAUDIO. The page had a very small photo of the Respondent, which is the first photo that comes up when Google is searched using the Respondent’s name. It also contained a larger photo that depicted a naked black man. The Respondent was asked if it posted this entry, which was posted six (6) years ago, in 2019! The Respondent vehemently denied having anything to do with the obviously false social media account.

46. An investigative report of Edward Howley was included in the partial discovery provided to Respondent. Dated, 6/19/2024, the report opines:

“At the direction of Chief Investigator Paul Fontanes, I went to Shay’s Steaks on 6/19/24. This is located at 200 N. 16th St. Phila, PA 19102. Prior to going to that location, I reviewed several online images and articles that depicted Judge Scott DiClaudio’s face, so I was familiar with him. At approximately 3:10 PM, I entered the establishment and was immediately greeted by DiClaudio, who was standing in front of the counter where the customers were. He showed me how to use the ordering tablet / Kiosk and explained different options. While helping me, he **spoke loudly so everyone could hear and said, “this is my wife’s business”**. After helping me, he socialized with customers and then announced that he had to run errands and exited the establishment. He did not return. I left at approximately 3:20 pm. **“I did not see anything inside the store that indicated he was a Judge.”**”

47. It should be noted that this information has been consistently relayed to the Board by the Respondent. The Board failed to contact or interview any of the witnesses provided by the Respondent, all of whom would have corroborated the testimony of the Respondent. There were, and are, at least a dozen reputable witnesses who would attest to almost identical conduct and habits as memorialized by the JCB’s investigator. When investigating a Common Pleas Judge, one would think that the JCB would conduct a more

thorough investigation before alleging misconduct. One would hope that the JCB would prioritize interviewing those witnesses before searching Twitter, Facebook and reading over 2,500 GOOGLE and YELP reviews (of which approximately 2,490 are extremely positive – resulting in a review score of 4.9 out of 5). Some may opine that this complaint is more of a prosecution or persecution than an investigation.

48. To elucidate this point, it should be noted that the initial complaint alleged (The Board DID NOT move forward with the allegation) the Respondent, “on occasion, worked at Shay’s Steaks as early as 3pm on a weekday, when it would otherwise be in court/chambers.” The Board then took the bold step to interview Administrative Judge Dan Anders about the policy and procedure of Philadelphia County’s Judicial “work hours”. In summary, Judge Anders informed the investigator there is no set policy about work hours. Judge Anders instead looked at the individual Jurists’ diligence in the adjudication of the matters before them. It is doubtful the Board could find a single witness to allege the Respondent’s work ethic is anything less than stellar. The last two (2) Supervising Criminal Court Judges, the Honorable Leon Tucker and the Honorable Lucretia Clemons, had to force the Respondent to take Chambers weeks and Vacation weeks. On multiple occasions the aforementioned Judges “went over Respondent’s head” to coordinate with the staff and family in the blocking of the Respondent’s calendar.

49. This allegation is more perplexing as said allegation undoubtedly was a result of Investigator Howley’s Report. Investigator Howley interacted with the Respondent at 3:00pm on June 19th, 2024. June 19, 2024, was a Court and National Holiday, known as Juneteenth. That day, after several hours of community service, on the way home, (the Respondent lives 24 feet, literally, from the restaurant) there was an innocent interaction with Investigator Howley.

50. It is alleged that Respondent’s actions place the entire Judiciary of Pennsylvania in disrepute. When this allegation was made, without any evidence to substantiate it, and with the Respondent forced to respond, the matter was made public, disseminated, and published to hundreds of media outlets in the World. Unsubstantiated allegations of this nature are so salacious, they impinge the integrity of not only the Respondent but sully the reputations of all Jurists. As an aside, in the Respondent’s response, it was necessary to inform the Board of the proximity of the Respondent’s home address where, he, his wife, and small child reside. The Nature of the Respondent’s calendar is extremely serious and the Board’s reckless and capricious actions have potentially put the Respondent’s family in danger.

IX. Request to join the matter of Leonard Sosnov, Petitioner and Defender Association of Philadelphia v. Judicial Conduct Board of Pennsylvania, Respondent, Docketed as Misc. No. E.D. 2025 in the Supreme Court of Pennsylvania

51. It has been alleged that the Judicial Conduct Board has violated its own Charter and Rules by initiating complaints and investigations by arbitrary and capricious means. The Respondent wishes to join that action as it is consistent with the matter at hand.

XI. Request to dismiss as there was no *mens rea*, a requirement in this action.

52. The Respondent sought and received informal advice from the Judicial Ethics committee prior to supporting his wife in this endeavor. At all times, the Respondent attempted to abide by said advice. There have been hundreds of opportunities to use the prestige of office to advance the economic interests of the Respondent's wife, however, the Respondent has diligently and steadfastly avoided that pitfall.

53. It should be emphasized that the Podcast the Board uses a basis for this Complaint was an informal discussion on Mental health with a friend. After lending a friendly ear and advice for several months, that friend asked the Respondent to do a Podcast about Mental Health. The name of the Podcast: People Talking Sitting Down, invokes Mental Health issues. There was no intent to promote Shay's Steaks, it was meant to help Respondent's friends 'mental health' and perhaps others who would benefit from knowing the Judiciary is aware and cares about this important issue. As an aside, after listening to said podcast, it certainly appears that the Respondent's demeanor, passion, and compassion would PROMOTE the confidence in the Judiciary, not the contrary as alleged.

Respectfully submitted,

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