COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Judge Mark V. Tranquilli	:	
Court of Common Pleas	:	4 JD 2020
5th Judicial District	:	
Allegheny County	:	

ANSWER OF JUDICIAL CONDUCT BOARD TO RESPONDENT'S VERIFIED PETITION FOR RELIEF REGARDING AUGUST 26, 2020 ORDER OF COURT AND ATTACHED MEMORANDUM OF LAW

AND NOW, this 11th day of September, 2020, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board) by and through undersigned counsel, and files this Answer to Respondent's Verified Petition for Relief Regarding August 26, 2020 Order of Court:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted in part, denied in part. It is admitted that Judge Tranquilli has not been charged with any crime. As to the remainder of the averment, the Board is without sufficient information to either admit or deny it. Accordingly, it is denied.
9. Admitted.
10. Admitted.

11. Admitted in part, denied in part. It is admitted that Judge Tranquilli was transferred to the criminal division of the Allegheny County Court of Common Pleas on January 3, 2018. The Board is without sufficient information to admit or deny the remainder of this averment. Accordingly, it is denied. To the extent that the records of Judge Tranquilli's assignments confirm the remainder of this averment, those records speak for themselves.
12. Admitted.
13. This averment states a conclusion for which no response is necessary. To the extent a response is necessary, the Board acknowledges that Judge Tranquilli conducted trials as required by his judicial assignment.
14. The Board is without sufficient information to admit or deny this averment. Accordingly, it is denied. To the extent that the records of Judge Tranquilli's assignments confirm this averment, those records speak for themselves.
15. The Board is without sufficient information to admit or deny this averment. Accordingly, it is denied. To the extent that the records of Judge Tranquilli's assignments confirm this averment, those records speak for themselves.
16. The Board is without sufficient information to admit or deny this averment. Accordingly, it is denied. To the extent that the records of Judge Tranquilli's assignments confirm this averment, those records speak for themselves.
17. The Board is without sufficient information to admit or deny this averment. Accordingly, it is denied. To the extent that the records of Judge Tranquilli's assignments confirm this averment, those records speak for themselves.

18. Admitted in part. It is admitted that ***Commonwealth v. Rice***, CP-02-CR-4083-2017 constituted a jury trial, the jury returned the verdict on January 24, 2020, and allegations of Judge Tranquilli's misconduct arose from a post-trial discussion he had with the prosecutor and defense attorney. The Board is without sufficient information to admit or deny that the ***Rice*** trial was the third jury trial conducted by Respondent Judge Tranquilli in January 2020 where the jury rendered its verdict late on a Friday. Accordingly, that averment is denied. To the extent that trial records confirm this averment, those records speak for themselves.

19. Denied. By way of further response, President Judge Clark's Order of February 6, 2020, did no more than *temporarily assign* Respondent Judge Tranquilli to administrative duties only. It was copied to the Supreme Court of Pennsylvania, but did not constitute an Order of the Supreme Court of Pennsylvania or an official pronouncement of its approval. By its own words, President Judge Clark's Order directed a new temporary assignment, not a de facto suspension, which a President Judge of the Court of Common Pleas would have no legal authority to impose.

20. Admitted in part, denied in part. It is admitted that President Judge Clark initially assigned Respondent Judge Tranquilli to preside over summary appeals after the allegations of misconduct against him were revealed to the public in media reports. The Board is without sufficient information to admit or deny the involvement, if any, of the Administrative Office of Pennsylvania Courts or the Supreme Court of Pennsylvania in President Judge Clark's decision. Accordingly, this averment is denied.

21. Admitted in part, denied in part. It is admitted that Respondent Judge Tranquilli's counsel made a request for preservation of evidence to the Allegheny County District Attorney's Office for electronically stored information regarding the allegations against Respondent Judge Tranquilli of Assistant District Attorney Thaddeus "Ted" Dutkowski. The remainder of the averment, which contends that Respondent Judge Tranquilli "fully cooperated" with the Board's investigation, constitutes a conclusion for which no response is necessary.

22. This averment fails to state facts upon which the Board is able to formulate a response. By way of further answer, the Board will comply with its discovery obligations in due course, as modified by this Court's directive to expedite same.

23. This averment states a conclusion for which no response is necessary. The Board will submit its argument regarding same in the attached memorandum of law.

24. This averment states a conclusion for which no response is necessary. The Board will submit its argument regarding same in the attached memorandum of law.

25. This averment states a conclusion of law for which no response is necessary. The Board will submit its argument regarding same in the attached memorandum of law.

26. This averment states a conclusion of law for which no response is necessary. The Board will submit its argument regarding same in the attached memorandum of law.

27. This averment states a conclusion of law for which no response is necessary. The Board will submit its argument regarding same in the attached memorandum of law.

28. The Board is without sufficient information to admit or deny this averment. Accordingly, it is denied.

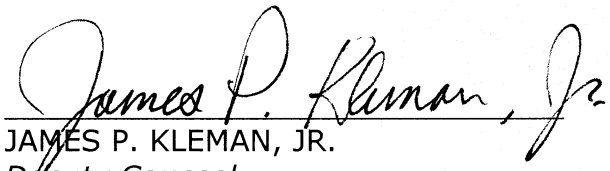
29. This averment states a conclusion of law for which no response is necessary. The Board will submit its argument regarding same in the attached memorandum of law.

30. This averment states a conclusion of law for which no response is necessary. The Board will submit its argument regarding same in the attached memorandum of law.

WHEREFORE, based upon the averments set forth above and the arguments in the Board's supporting memorandum, incorporated herein by reference as though set forth in full, the Board respectfully requests that this Honorable Court DENY Respondent Judge Tranquilli's Petition for relief and his request for an evidentiary hearing and oral argument.

Respectfully submitted,

RICHARD W. LONG
Chief Counsel

September 11, 2020 By: 

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COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Judge Mark V. Tranquilli	:	
Court of Common Pleas	:	4 JD 2020
5th Judicial District	:	
Allegheny County	:	

MEMORANDUM OF JUDICIAL CONDUCT BOARD IN RESPONSE TO RESPONDENT'S PETITION FOR RELIEF AND BRIEF IN SUPPORT OF PETITION FOR RELIEF REGARDING AUGUST 26, 2020 PER CURIAM ORDER

I. INTRODUCTION

The Constitution of this Commonwealth grants this Court the authority to suspend a judicial officer, *prior to a hearing*, when the Board files a complaint with this Court. ***See*** Pa.Const., Art. V, § 18(d)(2) (emphasis added). When the Board presents a petition to suspend a judicial officer, it bears the burden of showing that, based upon the totality of the circumstances, reasonable grounds exist that support an order of suspension. ***See In re Orie Melvin***, 57 A.3d 226, 234, 239 (Pa.Ct.Jud.Disc. 2012). This burden is a lesser standard of proof than the "clear and convincing" standard to which the Board is held to proving charges at a trial. ***Id.***, at 238 (citation omitted). Following the logic of ***Orie Melvin***, the provision of the authority to suspend on the basis of a Board Complaint, with or without pay, subsumes the obligation imposed on this Court to do so in the proper case. ***Cf. Orie Melvin***, 57 A.3d at 239-40 (grant of authority to suspend judicial officer without pay upon the filing of criminal charges subsumes obligation to do so).

In the present case, the Board sought the suspension of Judge Tranquilli on the basis of the filing of a Board Complaint. The Board Complaint alleges the following: (1) that Judge Tranquilli mocked and harassed litigants before their lawyers during a custody conciliation conference; (2) that Judge Tranquilli referred to a juror in a criminal trial by a racial epithet and stereotyping language; and (3) that he belittled, demeaned, and threatened criminal defendants appearing before him at sentencing with inappropriate language. As will be explained below, the totality of the circumstances of this case weigh in favor of this Court maintaining its suspension of Judge Tranquilli without pay during the pendency of the Board Complaint.

When considering whether the totality of the circumstances support an order of suspension, this Court considers the following non-exclusive list of factors: (1) the nature of the misconduct charged; (2) the relation of the charges to the duties of the responding judicial officer; (3) the harm or possible harm to public confidence in the judiciary; and (4) any other circumstances relevant to the conduct in question. ***See***

Orie Melvin, 57 A.3d at 239 (citation omitted). The Board will address these factors separately.

A. NATURE OF THE CHARGES

When addressing the issue of suspension, this Court must first consider the nature of the charges in the Board Complaint. ***Orie Melvin***, 57 A.3d at 239. The Board charged Judge Tranquilli with a number of violations of the Code of Judicial Conduct and the Constitution of this Commonwealth stemming from his misconduct both on and off the bench, though, all of the allegations relate intrinsically to the performance of Judge Tranquilli's judicial duties.

As alleged in the Board Complaint, in ***Commonwealth v. Rice***, CP-02-CR-4083-2017 case, Judge Tranquilli engaged in a post-trial discussion with Assistant District Attorney Thaddeus "Ted" Dutkowski and defense attorney Joseph Otte, Esquire, after the defendant was acquitted of the charge of possession with intent to deliver. ***See*** Board Complaint, at 4. The ***Rice*** trial was, in fact, a re-trial of the possession with intent to deliver charge after a previous mistrial of the defendant before Judge Tranquilli and a jury. ***Id.***, at 3. The purpose of this post-trial discussion was apparently due to Judge Tranquilli's wish to critique the performance of the attorneys at the re-trial, specifically, Assistant District Attorney Dutkowski's exercise of discretion in picking jurors during *voir dire*. ***Id.***, at 4. Judge Tranquilli requested this post-trial discussion on the heels of his visibly negative reaction to the verdict, and his unusual act of sentencing the defendant on the simple possession conviction that was extant from the previous trial. ***Id.***, 4.

The post-trial discussion began with Judge Tranquilli asking ADA Dutkowski what he was thinking "putting that **knucklehead**, Juror #11, on the jury" due to Juror #11's discussion of the concepts of "probable cause" and "reasonable suspicion" in the jury's deliberations. ***Id.*** (emphasis added). Juror #11 evidently revealed this to Judge Tranquilli during Judge Tranquilli's post-trial meeting with the jury. ***Id.*** After insulting Juror #11, Judge Tranquilli questioned ADA Dutkowski why he permitted Juror #12 to be seated. ***Id.***, at 4-5. Juror #12 was the mother of a public defender, and, Judge Tranquilli mused that she and her child would "go to Sunday dinner and [her child] will tell her all about the people being wrongly charged and having their rights violated" as a consequence of their relationship. ***Id.***, at 5.

At the nadir of this exchange, Judge Tranquilli brought up the parties' decision to seat Juror #4, a black female, apparently in her 20s, who wore her hair in a kerchief during trial. Judge Tranquilli observed to ADA Dutkowski, "[y]ou weren't out of strikes when you decided to put **Aunt Jemima** on the jury." ***Id.***, at 5 (emphasis added). Judge Tranquilli expressed that he knew ADA Dutkowski was "going to have a problem" when he saw Juror #4 seated, meaning, he was not going to convict the defendant of possession with intent to deliver, because Juror #4's facial expressions and body language toward the Commonwealth's presentation of evidence and argument evinced a negative attitude toward the Commonwealth's case and her predisposition to vote for acquittal. ***Id.*** When making these observations, Judge Tranquilli observed that ADA Dutkowski "**knew darn well that when she [Juror**

#4] goes home to her baby daddy, he's probably slinging heroin, too." ***Id.*** at 5 (emphasis added).

Judge Tranquilli's description of Juror #11 as a "knucklehead" due to the substance of his deliberation with other jurors in the context of his criticism of ADA Dutkowski's exercise of his discretion during *voir dire*, taken as true, violates a number of Canon provisions, not the least of which is his duty to promote public confidence in the judiciary, ***see*** Canon 1, Rule 1.2, and his duty to be patient, dignified, and courteous to those whom he deals in an official capacity, ***see*** Canon 2, Rule 2.8(B). This is equally true of Judge Tranquilli's racially-biased references to Juror #4, however, as to her, his misconduct was amplified to the point of being a violation of both Canon 2, Rule 2.3(B) and the Unified Judicial System's Policy on Non-Discrimination and Harassment, which, by the terms of the Code, constitutes a violation of Canon 1.1. ***See, e.g.,*** Canon 1, Rule 1.1; ***see also*** Code of Judicial Conduct "Terminology" section, definition of "Law." It is obvious that judges of this Commonwealth denigrate the office when they utilize racially-biased language or engage in racist conduct, and this behavior cannot and will not be tolerated or excused by the Board.

Thankfully, racist or racially-motivated conduct by judges is rare in this Commonwealth, but not altogether absent from the annals of its judicial disciplinary jurisprudence. Perhaps the most succinct and pointed observation of this Court's view of this general class of misconduct can be found in ***In re Eakin***, 150 A.3d 1042 (Pa.Ct.Jud.Disc. 2016), which, when reviewing emails meant to be humorous and shared privately, the Court observed the following:

> *Respondent's e-mails have been characterized in various terms. Whether labeled misogynistic, racially-biased, biased against national-origin, or biased toward sexual orientation, they represent a list of topics which should give any jurist pause. The list also corresponds, in a number of instances with categories protected by the laws of the United States and our Commonwealth.* ***Significantly, they could cause citizens to wonder whether their cases received unbiased consideration by Respondent, something that we find abhorrent to the principles to which Respondent has ostensibly dedicated his entire professional career.*** *A reasonable inference that Respondent lacked the impartiality required of judges also fundamentally lessens public confidence in the judiciary. We acknowledge the context in which many of these communications occurred, Respondent's expectation that they would remain private, and that humor is often expressed in poor taste and rooted in the extreme. However, the pattern evidenced by the body of all of the emails demonstrated a misjudgment by Respondent, both in his understanding of how electronic communications work, as well as the substantive content of those communications.*

Eakin, 150 A.3d at 1058 (emphasis added).

If racially-biased "humor" emails sent privately among a judge and his friends constitute acts that stain a judge's integrity to the point that could cause citizens to wonder whether their cases received unbiased consideration by that judge, then it is with greater force that Judge Tranquilli's acts, *i.e.*, demeaning a juror to two lawyers based on the juror's race, appearance, and the judge's stereotyped view of the juror's family situation, cry out for the swift action of suspension. ***See generally Eakin***, 150 A.3d at 1058. Were this the only set of allegations relating to race pending against Judge Tranquilli, there might be a colorable claim under this Court's precedent that the suspension, like Justice Eakin's suspension, should be with pay. ***Id.***, 150 A.3d at 1046, 1058. They are not, however, the only set of allegations relating to race pending against Judge Tranquilli.

In ***Patterson v. Patterson***, 15-00312, during a custody conciliation held on August 14, 2015, Judge Tranquilli belittled the parties, in the presence of their attorneys, by telling them the following: (1) that he did not care about their children; (2) his only concern was his own three children; (3) he was a homicide prosecutor and, as such, passing time in the family division; (4) he was not the "brain surgeon" that he believed the other family division judges "think they are;" (5) he was more of a "slice and dice" guy than a "brain surgeon; (6) he was a "butcher;" (7) he would "split their baby in half like Solomon and sleep like a baby that night." Additionally, and more reprehensibly, Judge Tranquilli then mocked the Pattersons, who are black, by affecting an accent described as Ebonics when discussing with them how he expected them to behave while communicating with each other. ***See*** Board Complaint, at 2. Pointedly, Judge Tranquilli said to Mr. and Ms. Patterson, "And when I say communication, I don't mean '**and den da bitch done dis, and den da bitch done dat**.'" (emphasis added). ***Id.***, at 3.

Obviously, overall, the type of behavior exemplified in the ***Patterson*** case is exactly the type of impatient, undignified, rude and discourteous behavior that this Court previously found to be the basis for sanction in cases involving other judicial officers. ***See, e.g., In re Marraccini***, 908 A.2d 377, 382 (Pa.Ct.Jud.Disc. 2006); ***see also In re Merlo***, 34 A.3d 932, 967-73 (Pa.Ct.Jud.Disc. 2011), *affirmed*, 58 A.3d 1 (Pa. 2012). Moreover, and more importantly, Judge Tranquilli's use of "Ebonics" to mock the parties, taken as true, manifests direct bias or prejudice by his words and conduct, which is explicitly forbidden by Canon 2, Rule 2.3(B) of the Code of Judicial Conduct. It cannot be gainsaid that such conduct is, in fact, more injurious to the judiciary's reputation than that reported in the ***Rice*** case, as it constitutes a situation where a judge manifested a biased or prejudiced attitude directly to litigants and their lawyers, who, at the time, wanted a neutral arbiter to conduct a conciliation. The allegations in ***Patterson*** and ***Rice*** demonstrate that, unlike ***Eakin***, Judge Tranquilli should be suspended without pay. Yet, both the ***Patterson*** and ***Rice*** allegations, while shocking, do not exhaust the Board's claims against Judge Tranquilli.

The Board also accused Judge Tranquilli of making inappropriate remarks to litigants during sentencing proceedings before him. The Board Complaint alleges that, in ***Commonwealth v. Cherrell Russell***, CP-02-CR-9998-2017, Judge

Tranquilli stated the following about the defendant's family situation when sentencing the defendant:

> JUDGE TRANQUILLI: So, Ms. Russell, are you familiar with the phrase, if you lay down with dogs, you wake up with fleas? Have you ever heard that before in your life?
>
> THE DEFENDANT: I have.
>
> JUDGE TRANQUILLI: So now you have laid down twice with dogs, but you have woken up with two lovely children, probably two lovely children I'm betting you were probably not planning on. And for the cost of three shiny quarters in any bathroom in any rest stop in Pennsylvania, you probably could have gone a different direction.

See Russell, N.T. Sentencing, 10/31/2018, at 10-11; ***see also*** Board Complaint, at 7.

Later in the same proceeding, Judge Tranquilli addressed the defendant as follows when discussing the probation component of her sentence:

> JUDGE TRANQUILLI: I'm going to tell you what I tell every single person I put on probation. I don't have to take any notes because I know I give this speech to everybody. Don't feel like a lone ranger. [Your attorney] has known me for 25 years.
>
> I have a notoriously low tolerance for misbehavior. I was a District Attorney [sic] for 20 years, and for the last 13 years, all I did was dead body cases, dead body, dead body, dead body. For the last eight years, I ran the Homicide Unit. If I had a nickel for every picture of a dead person I looked at on my desk while I was eating a turkey sandwich, I could retire right now and be a rich man. As a result of these experiences, there is no milk of human kindness left in these veins. It is just too much death.
>
> So what that means for you is, the take away is this. If I ever see you again in my courtroom for a probation violation, the story ends with you in a red jumpsuit, handcuffs and shackles being led off to the state correctional institution at Muncy where they put the females.

See Russell, N.T. Sentencing, 10/31/2018, at 22-23; ***see also*** Board Complaint, at 7.

In addition to these inappropriate remarks, Judge Tranquilli told the defendant in ***Commonwealth v. Jamie Maurice Koskey***, CP-02-CR-1856-2018, that he would "cast him down with the [S]odomites...in state prison," if he did not report to jail in 30 days as ordered. ***See Koskey***, N.T. Sentencing, 3/13/2019, at 23; ***see also*** Board Complaint, at 7-8. These remarks evince Judge Tranquilli's boastful and cruel disposition towards defendants appearing before him, and they demonstrate

the exact opposite of the patience, dignity, respect, and courtesy that a judge is duty bound by the Code to provide, even to those who have been adjudged guilty of criminal acts. ***See, e.g., Merlo***, 34 A.3d at 967-73. Ultimately, then, this Court is left with a judge who manifests bias and prejudice in his official duties; who demonstrates callousness and cruelty to litigants and their lawyers; and who believes that, despite these facts, he is entitled to maintain his pay as if he did none of these things. Surely, this Court will not credit such hubris.

B. HARM OR POTENTIAL HARM TO THE JUDICIARY AND OTHER CONSIDERATIONS

Given the nature of the offenses charged against Judge Tranquilli, the nature of the harm to the judiciary should be readily apparent and self-evident to this Court. As indicated above, rarely do judges give vent to the type of misconduct alleged here. However, when they do, such matters often become a subject of public discourse, and the notion of an impartial judiciary quickly erodes.

Rather than respond to this salient point, or discuss any of the "totality of the circumstances" test restated in ***Orie Melvin***, Judge Tranquilli asserts that "[since] the outset of [the Board's] investigation of [Judge Tranquilli] and continuing until this Court's August 26, 2020 Per Curiam Order, [Judge Tranquilli] has been under a *de facto* suspension with pay, approved by our Supreme Court, by virtue of President Judge Clark's February 6, 2020 Order of Court." ***See*** Brief for Judge Tranquilli, at 6. In fact, Judge Tranquilli was ***not*** suspended by President Judge Clark or the Supreme Court, which surely had the authority to do so, if it elected to take such action, under its power of superintendency over inferior tribunals. ***See, e.g., In re Bruno***, 101 A.3d 635 (Pa. 2014). Rather, the text of the February 6, 2020 Order indicates that President Judge Clark temporarily assigned Judge Tranquilli to administrative duties only; this order came shortly after public outcry against Judge Tranquilli's initial reassignment to summary appeals cases only, in that it was argued publically that he should not preside over any cases involving black litigants during the pendency of the allegations against him. Evidently, President Judge Clark credited this argument and did what she could to address the situation in the short term. Nevertheless, President Judge Clark's orders clearly did not divest this Court of the ability to enter a suspension of Judge Tranquilli without pay on the basis of the charges against him, and, because the Supreme Court has not entered any order on the subject, this Court's suspension order controls over any prior temporary assignment order entered by President Judge Clark. ***Cf. Bruno***, 101 A.3d at 641 (when suspension orders of CJD and Supreme Court conflict, Supreme Court order controls).

Judge Tranquilli presents a corollary argument that "the interim suspension without pay as entered in the present situation considering the factual predicate not provided by the Board, may be viewed as the kind of punishment rejected by our Supreme Court in ***Bruno***[.]" Judge Tranquilli's brief, at 9. This claim is demonstrably off point. First, as in the case of any interim suspension, the "factual predicate" provided by the Board is the allegations contained in the charges themselves; this is true whether the Board seeks interim suspension on the grounds of a Board Complaint or following the filing of criminal charges against a judge by a law

enforcement agency. As is its typical procedure, the Board attached the verified Board Complaint it filed against Judge Tranquilli to its Petition, which was filed concomitantly with the Petition itself. The fact that, in many instances, the Court has held a hearing following the filing of a petition for interim suspension based on a Board Complaint only, *i.e.*, without accompanying felony criminal charges, does not bind this Court going forward to any particular course of action. Rather, this Court is bound only by the Constitution and its prior jurisprudence, which states explicitly that

> *[the] constitutional amendments of 1993 establishing this Court of Judicial Discipline, invest this Court with authority to enter two different types of orders.*
>
> *The first—the type we are most frequently requested to enter—is an order imposing a sanction against a judicial officer. This type of order is authorized by Article V, § 18(b)(5) of the Constitution and is to be entered in cases where the Board has filed formal charges, and only after "a hearing or hearings." Section 18(b)(5) also specifies certain rights to which judicial officers shall be entitled in such hearings. Orders under § 18(b)(5) are final and appealable.*
>
> *The second type of order which the Constitution empowers this Court to enter is authorized by Article V, § 18(d)(2). These orders are styled "interim orders" and are authorized to be entered "prior to a hearing." These orders are not final and are not appealable.*
>
> *[The CJD] hold[s] that the rights set out in § 18(b)(5) as available to judicial officers in proceedings leading to final orders of sanctions are not available in interim proceedings under § 18(d)(2). The fundamental constitutional scheme negates any other conclusion. We also hold that that constitutional scheme in no way offends any overweening notion of due process which may be said to derive from the Constitutions of the United States or of Pennsylvania.*
>
> * * *
>
> *It is obvious that the provisions of [Section 18(b)(5)], including those specifying various rights to be afforded the subject of the charges, are intended to apply in cases where formal charges have been filed and where the Court is asked "to determine whether a sanction should be imposed." The sanctions imposed under this section are final—not interim. It is not surprising that, in such a context, the drafters of the Constitution would require that principles of due process be observed or that the Respondent be presumed innocent or that the burden of proof be clear and convincing evidence.*
>
> *It is also obvious that this process will take time; and, if a sanction is found to be called for, a separate hearing will be required to determine*

the appropriate sanction, which will take more time, and if an appeal from a final order of sanction is taken to the Supreme Court, this will take even more time.

We believe that it is obvious that it was the recognition that substantial time would necessarily pass between the time a judicial officer was charged and the time when an order of removal or suspension could be effected, that impelled the drafters to provide for the expeditious entry of "interim orders," and so they did, in § 18(d)(2) of Article V. It was only by empowering this Court to suspend "prior to a hearing," i.e., without a hearing, that the integrity of the judicial system could be safeguarded during this interim period. It is noted that the drafters authorized the entry of interim orders only in cases where the Board has already filed formal charges and proceedings under § 18(b)(5) are underway, and in cases where a judicial officer has been charged in "an indictment or information [with] a felony." It was in those cases where the drafters perceived the need to provide this Court with the authority for immediate or expeditious suspension in order to avert adverse public perception which may follow if a judicial officer charged with serious offenses continues on the bench or continues on the public payroll.

Orie Melvin, 57 A.3d at 231-233.

To this end, this Court concluded that, when considering the issue of interim suspension, a respondent judicial officer receives all the process that they are due when they receive a post-suspension, "pre-termination," i.e., pre-sanction, hearing before any final sanction is imposed and when pre-suspension procedures extended to the respondent judicial officer demonstrate that the respondent judge had adequate notice an opportunity to be heard. ***Id.***, 57 A.3d at 237. Here, it is obvious that Judge Tranquilli will have a post-suspension, pre-sanction hearing in the form of a trial, that he is represented by counsel, and that he, through his counsel, has received all pleadings filed by the Board in due course.

Further, it is clear from a full and thorough reading of ***Orie Melvin*** that this Court's authority to suspend a judicial officer under Section 18(d)(2) does not impose a greater or lesser burden of proof on the Board depending upon whether the Board seeks suspension on the basis of a Board Complaint or felony charges. Moreover, the above makes no mention, as Judge Tranquilli would have it, of the cabining of this Court's authority to suspend with or without pay, prior to a hearing, based upon the basis of the request for the suspension. While it may be that another agency's action on the facts giving rise to the suspension provide an additional layer of due process, *i.e.*, felony charges by a law enforcement agency filing, such criminal charges remain only an accusation against a judicial officer until proven at trial, like a Board Complaint in this Court, and are proof only of the accusation itself, not the underlying conduct. As such, the question here for the Court is as it has always been in these matters, which is whether the totality of the circumstances, including the nature of the allegations, are such that suspension is warranted and whether it should be with or without pay. ***Orie Melvin***, 57 A.3d at 239. The fact that the Court elected

to suspend without pay in this instance without a hearing and in the absence of felony charges, in Board Counsel's view, reflects the outrageousness of Judge Tranquilli's conduct as charged, rather than the supposedly-lacking "factual predicate" claimed now by Judge Tranquilli. The fact that the Court did not do so in prior cases is simply irrelevant, as this Court was not presented previously with a factual scenario like the present case. Conversely, if Judge Tranquilli wishes to use Pennsylvania Supreme Court precedent on the subject of interim suspensions as a guidepost, it is noteworthy that, in ***In re Philadelphia Traffic Court Judge Willie Singletary***, 377 Judicial Admin. Dkt. (January 5, 2012), the Supreme Court suspended former Judge Singletary without pay solely on the basis of a Petition filed by the Administrative Judge of Traffic Court, without a hearing, despite the fact that no felony charges were filed against him at that time or on the matter giving rise to the suspension, and the suspension took place *after* the transferal of his judicial assignment to other Judges of the Philadelphia Traffic Court by the Administrative Judge of Traffic Court, and *prior* to the filing of a Board Complaint in this Court on the matter, which ultimately occurred in March 2012. ***See, e.g., In re Willie F. Singletary***, 3 JD 2012, Board Complaint with attached exhibits (delineating procedural history).

Importantly, the Board's aim at this stage of the proceedings, is not to "punish" Judge Tranquilli, but to safeguard the integrity of the judiciary pending the disposition of the charges in this case. Judge Tranquilli claims that this function has already been satisfied by President Judge Clark's temporary assignment and that further action by this Court is unnecessary. First, such a weighty constitutional authority cannot, and should not, be left to others, even president judges, to discharge by the limited means at their disposal. Only this Court, and the Supreme Court, have the power to suspend a judicial officer in the interim between the filing of charges and trial. ***See*** Pa.Const. Art. V, § 18(d)(2); ***see also Bruno***, 101 A.3d at 641. Further, as made clear by this Court, its authority to suspend with or without pay, which includes the authority to do so "prior to a hearing," subsumes the obligation to do so in the proper case. ***Orie Melvin***, 57 A.3d at 239-240. For the reasons stated herein, this is, in fact, the proper case to do so.

Additionally, Judge Tranquilli makes much of the fact that the Board Complaint is verified, whereas the Petition for Interim Suspension does not include an attached verification. Rule 706 of this Court's Rules of Procedure directs that a "petition or answer which sets forth facts which do not already appear of record, shall be verified by the party filing it or by counsel for the Board, subject to the penalties of unsworn falsification to authorities under the Crimes Code, 18 Pa.C.S. § 4904." As Judge Tranquilli would have it, Board Counsel filing a petition requesting interim suspension on the basis of the filing of a verified Board Complaint would be obliged to verify the fact that the Board filed a verified Board Complaint containing the allegations upon which the interim suspension could be granted. This interpretation of Rule 706 is simply nonsensical and elevates form over substance, and, is, in Board Counsel's view entirely unnecessary where, as here, the Board attaches the Board Complaint to the interim suspension petition and incorporates it in full, inclusive of the verification attached to the original Board Complaint.

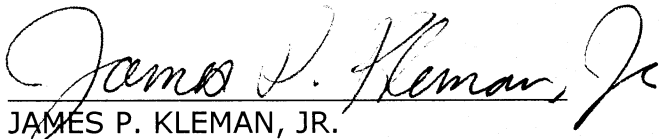
In all, it is apparent that Judge Tranquilli's consternation arises from the fact that he was suspended without pay and that, in addition to his loss of pay, his medical benefits were supposedly affected by the suspension order.[1] These considerations, while undoubtedly important to Judge Tranquilli, are true of any judge who may be facing charges and a corresponding suspension in this Court and cannot be the polestar for this Court's analysis. Rather, in Board Counsel's view, the nature and quality of Judge Tranquilli's conduct which, in part, he is willing to admit and has already apologized for, is what drives this case, as it did in ***Orie Melvin***. ***Id.***, 57 A.3d at 252. Judge Tranquilli's pattern of conduct as delineated in the Board Complaint can best be described as that of the prototypical bully - he mocked, belittled, and flaunted his authority to those subject to it with little regard for the rules that should have constrained his conduct or for commonly understood notions of decency and professionalism, and, like other common bullies, when chastened for such activity, he retreated to fanciful excuses and self-victimization as his defense. These latter acts, of course, belie any limited apology Judge Tranquilli has made for his misconduct, and this Court should give great weight to these considerations when ruling upon his petition for relief.

C. CONCLUSION

For the foregoing reasons, the Board respectfully requests that this Court deny Judge Tranquilli's request to vacate its prior suspension order and his request for an evidentiary hearing and oral argument. The Board also requests this Court to maintain its suspension of Judge Tranquilli without pay until final disposition of the charges pending against him.

Respectfully submitted,

RICHARD W. LONG
Chief Counsel

September 11, 2020 By: 

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[1] Board Counsel received notice from AOPC Chief Counsel Gregory Dunlap, in response to news articles generated by Judge Tranquilli's Petition for Relief, that his medical benefits were NOT affected by this Court's suspension order, which is silent as to those benefits. Nevertheless, Board Counsel's argument remains the same.

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Judge Mark V. Tranquilli	:	
Court of Common Pleas	:	4 JD 2020
5th Judicial District	:	
Allegheny County	:	

VERIFICATION

I, James P. Kleman, Jr., Deputy Counsel to the Judicial Conduct Board, verify that the facts set forth in the foregoing Answer and attached Memorandum of law are true and correct to the best of my knowledge, information, and belief. I understand that the statements made in this Board Complaint are subject to the penalties of 18 Pa.C.S.A. § 4904, regarding unsworn falsification to authorities.

September 11, 2020 By: James P. Kleman Jr.

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Allegheny County	:	

PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on September 11, 2020, a copy of the Board's Answer and attached Memorandum of Law was sent by UPS Overnight mail to Judge Tranquilli's counsel, John E. Quinn, Esquire, and Matthew Logue, Esquire, at the following address:

John E. Quinn, Esquire
Matthew Logue, Esquire
Quinn Logue LLC
200 First Avenue, 3rd Floor
Pittsburgh, PA 15222-1512

UPS Overnight Mail
Tracking No.

September 11, 2020 By: James P. Kleman, Jr.

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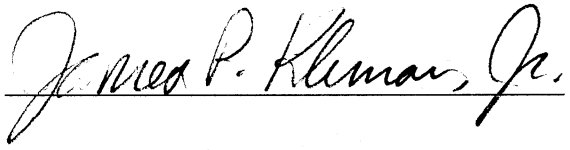
CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System* 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.
Deputy Counsel

Attorney No: 87637