

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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OF PENNSYLVANIA

SEP 19 2024

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

**RESPONDENT JUDGE MARISSA J. BRUMBACH'S SANCTIONS HEARING
WITNESS LIST AND MEMORANDUM**

In accordance with this Court's July 11, 2024 Order, Marissa Brumbach, by and through her undersigned counsel, files this Pre-hearing Witness List. Judge Brumbach also submits a short Memorandum in support of the argument she intends to advance at the September 25, 2024 Sanctions Hearing.

A. Witnesses

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

1. Jessica Natali, Esq.
2. Fran Lairdieson

B. Exhibits

Judge Brumbach may introduce some or all of the following exhibits at the hearing:

1. A true and correct copy of a letter by Judge (retired) Amanda Cooperman in lieu of live testimony.
2. A true and correct copy of a letter by Joe Tucker, Esq. in lieu of live testimony.
3. A true and correct copy of the transcript from the Administration of the Oath of Office for Marissa Brumbach, January 25, 2018.

C. Memorandum of Law

The factual and procedural background are well-known to this Court and will not be repeated herein. When this Court decides whether to impose a sanction for an ethical violation, it is guided by two primary considerations. First, the Court will review the ten “*Deming* factors”—a non-exclusive list of factors first articulated in *In re Deming*, 108 Wash.2d 82, 736 P.2d 639 (1987). Second, the Court will review sanctions in other cases such to ensure the sanction imposed is equitable compared to similar conduct. *See, e.g., In re Younge*, 2 JD 2019 at 3 (Pa. Ct. Jud. Disc., June 2, 2021). Here, both considerations weigh in favor of issuing the violation without further penalty.

Before turning to those considerations, it’s important to note that “[t]he Constitution of Pennsylvania states that the Court of Judicial

Discipline is to impose sanctions (or **decide not to impose sanctions**) on errant jurists as ‘warranted by the record.’” *In re Michael J. Cabry, III*, 2 JD 2021 at 2 (Feb. 22, 2023) (quoting Pa. Const. art. V, § 18). The Pennsylvania Constitution clearly allows for wide discretion when imposing a sanction, including the option not to impose a sanction. *See* Pa. Const. art. V, § 18 (“A decision of the court *may* order removal from office, suspension, censure or other discipline as authorized by this section and as warranted by the record.” (emphasis supplied)); *In re Cabry III*, at 2 (noting that the court has “wide discretion to fashion the appropriate” sanction); *In re Eagen*, 814 A.2d 304, 306–07 (Pa. Ct. Jud. Disc. 2002) (observing the court’s discretion). In this way, a judicial discipline case is “[u]nlike a criminal case in which the range of penalties is determined by the number of charges and the statutory sentence mandated for each offense upon which there is a finding of guilt, the scope of sanctions available to this Court is not so circumscribed.” *In re Eagen*, 814 A.2d at 306. Indeed, this Court is guided only “by the nature of the conduct itself and any mitigating or aggravating circumstances.” *Id.* at 306-07.

With this constitutional framework in mind, we turn to the *Deming* factors.

1. The *Deming* Factors weigh in favor of no further penalty.

Start with the *Deming* Factors. The first factor considers “whether the misconduct is an isolated instance or evidenced a pattern of conduct.” *In re Hladio*, 220 A.3d 1219, 1220 (Pa.Ct.J.D. 2019). Here, Judge Brumbach’s conduct, *i.e.*, circling a disposition code and affixing her initials to the back of paper traffic

citations the day before the citations were scheduled for a hearing in anticipation that the ticketholders would not appear—was an isolated incident.

The second factor considers the nature, extent, and frequency of the occurrence of the acts of misconduct. *See Hladio*, 220 A.3d at 1220. Here, as described above, the act was isolated.

The third factor evaluates whether the conduct occurred in or out of the courtroom. *See Hladio*, 220 A.3d at 1220. Here, the conduct occurred in Judge Brumbach's robing room, and not in the courtroom.

The fourth factor considers whether the misconduct occurred in the judge's official capacity. *See Hladio*, 220 A.3d at 1220. The conduct occurred in Judge Brumbach's official capacity.

The fifth factor considers whether the judge acknowledged or recognized that the act occurred. *See Hladio*, 220 A.3d at 1220. From the start, Judge Brumbach has acknowledged the factual underpinnings of the case. In other words, Judge Brumbach acknowledged that she did not plan on being in court on January 6, 2021 and that she planned to circle and initial the back of the paper traffic citations in advance of January 6, 2021 in anticipation that the ticketholders would not appear so that the administration of justice would not be affected in the event that coverage was not provided. Judge Brumbach further acknowledged that her conduct was based on her understanding and interpretation of the law as well as the

common practice and procedure required to occur for a disposition/adjudication to officially and lawfully take effect in Philadelphia Traffic Court.

Judge Brumbach also acknowledged her conduct at the time she acted. Recall that Judge Brumbach told Judge Pittman (in person) and Judge Dugan (in writing) during the week of January 6, 2021. *See* CJD Op. at 18-19 (“Judge Brumbach notified the president judge of her plan in advance in the event that there was no coverage for her courtroom”). Judge Brumbach further told Judge Dugan and Judge Pittman about her acts in writing on January 10, 2021. Finally, Judge Brumbach continued to acknowledge and recognize that she circled and initialed the back of each of the paper citations when she answered the Judicial Conduct’s Board Notice of Full Investigation.

However, Judge Brumbach has challenged, and will continue to challenge, the admissibility and legal significance of her markings on the back of the paper citations based on her interpretation of the relevant rules of procedure, legal authorities, and the accepted practice and procedure of Philadelphia Municipal Court, Traffic Court. And it was (and remains) her constitutional right to advance meritorious legal arguments in her defense. This Court should, therefore, carefully distinguish Judge Brumbach’s full acceptance of her conduct from her firm legal defense. To blend these two separate concepts would dissuade jurists from defending against charges that are legally novel.

The sixth factor evaluates whether the judge evidenced an effort to change or modify her conduct. *See Hladio*, 220 A.3d at 1220. Judge Brumbach has repeatedly

said she never would have engaged in this act if she was told, at any time during her conversations with Judge Pittman or through correspondence with Judge Dugan, that they perceived what she intended may be or could be considered as “disposing of cases.” *See* N.T. (11/16/23), 245:25-246:6; N.T. (1/6/23), 164:11-17. Judge Brumbach also remains committed to her obligations as a judge to diligently study the law and stay abreast of developing legal principles.

The seventh factor considers the length of the judge’s service on the bench. Here, Judge Brumbach served as a judge since January 2018. During the proceedings before this Court, Judge Brumbach won retention in 2023 to a new term which expires January 7, 2030.

The eighth factor considers whether there have been prior complaints about the judge. *See Hladio*, 220 A.3d at 1220. Here, the Board has not filed any other complaints against Judge Brumbach.

The ninth factor evaluates the effect the misconduct has on the integrity of and respect for the judiciary. *See Hladio*, 220 A.3d at 1220. Here, the Court did not find that Judge Brumbach brought the judiciary into disrepute. Moreover, this Court concluded that no defendant was denied due process. *See* CJD Op. at 17.

The tenth factor considers the extent to which the judge exploited her position to satisfy personal desires. *See Hladio*, 220 A.3d at 1220. Here, this Court concluded “the plan was not evil in nature nor was it an attempted

abuse of power for personal gain”. *See* CJD Op. at 18. More significantly, this Court explained in its March 13, 2024 Opinion “The initial report of the alleged misconduct in this case sounded much worse than what the actual evidence showed.” CJD Op. at 18.

Taken together, these ten factors militate in favor of a violation without further penalty.

2. No further penalty is warranted under this particular set of factual circumstances.

This Court should also consider past cases to ensure that jurists are disciplined equitably when determining a just sanction, if any. *See In re Younge*, No. 2 JD 19 (June 2, 2021).

Judge Brumbach was not able to identify any cases from this Court where a jurist engaged in similar conduct and was found in violation of only a single judicial canon; nor was she able to identify any cases where a jurist was found in violation of Canon 2, Rule 2.5(A)(1). Judge Brumbach’s case is unique given the peculiarities of the practice and procedure of Philadelphia Traffic Court. In such circumstances, where a jurist is the first subject to sanctions for a specific type of conduct, leniency is warranted given that the exact contours of the offense were not firmly established by this Court’s prior jurisprudence. *See In re Angeles Roca First Judicial District Philadelphia County*, 173 A.3d 1176, 1189 (Pa. 2017) (observing that “a judge who commits misconduct after other judges have been sanctioned for similar misconduct has the benefit of the CJD's earlier decisions”); *id.* at 1189-90 (“the CJD's view of the appropriate sanction for a particular type of misconduct may be adjusted as

time and experience help to shape that tribunal's understanding of the measures which are necessary” to properly discipline a jurist).

Consider the following cases where there was a finding of disrepute combined with the underlying conduct of the jurist violating the rules of ethics which resulted in only a reprimand. *See In re Cicchetti*, 698 A.2d 704 (Pa. Ct. Jud. Disc. 1997) (conduct of common pleas court judge who made persistent sexual advances towards a subordinate employee who repeatedly rejected the advances found to have brought judicial office into disrepute and warranted “severe reprimand and censure”); *In re Joyce*, 712 A.2d 847 (Pa. Ct. Jud. Disc. 1998) (magisterial district judge who attempted to influence the outcome of traffic cases found to have brought office into dispute and received a reprimand); *In re Toczydlowski*, 853 A.2d 24 (Pa. Ct. Jud. Disc. 2004) (magisterial district judge who was placed in ARD for marijuana abuse found to have brought office into disrepute and given public reprimand); and *In re Marraccini*, 908 A.2d 377 (Pa. Ct. Jud. Disc. 2006) (magisterial district judge who entered waiting room and called all defendants “morons” found to have brought office into disrepute and was reprimanded);

In contrast to these authorities, Judge Brumbach’s conduct herein is not factually comparable, nor did it result in a finding of disrepute. Thus, the imposition of a reprimand on this record would be inequitable and unwarranted. *See In re Younge, supra* (observing that this court should consider past cases to ensure that jurists are punished equitably.); *accord Pa.*

Const. art. V, § 18 (“A decision of the court may order removal from office, suspension, censure or other discipline as authorized by this section and as warranted by the record.”).¹

This Court’s Findings and Opinion have sufficiently admonished Judge Brumbach and warned her and other jurists against the specified conduct. And the violation does not disappear; it forever remains of record as a violation.

Moreover, no penalty is warranted in light of the fact that this is the first time this Court has ever deemed the type of conduct at issue herein a violation of the Code of Judicial Conduct. Until this time, Judge Brumbach did not have notice that her interpretation of the local rules of Philadelphia Traffic Court amounted to a violation of the Code. Indeed, this Court has all but opined that Judge Brumbach made a mistake in her interpretation of and use of a form and certain practices as they exist in the Philadelphia Traffic Court. Judge Brumbach accepts the Court’s interpretation and will adhere to those findings in the future when she returns to the bench to perform her judicial duties. In exercising its discretion Judge Brumbach asks the Court of Judicial Discipline be guided by the nature of the

¹ The Code of Judicial Conduct also provides:

[I]t is not intended that disciplinary action would be appropriate for every violation of the Code’s provisions. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

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conduct itself and all of the mitigating circumstances as presented to the Court on this record. *See In re Shaw*, 192 A.3d 350, 372 (Pa. Ct. Jud. Disc. 2018).

Judge Brumbach's act as related to the back of the paper citations was not criminal in nature and this Court determined that the Board failed to prove that Judge Brumbach's act failed to promote public confidence in the independence, integrity and impartiality of the judiciary. *See CJD Op.* at 24 (observing that the Board failed to prove, *inter alia*, Canon 1, Rule 1.2). Judge Brumbach's conduct also did not implicate her obligation related to the duties of judicial office, as prescribed by law; and her duties took precedence over her personal and extrajudicial activities. *See CJD Op.* at 24 (observing that the Board failed to prove, *inter alia*, Canon 2, Rule 2.1). Judge Brumbach's conduct did not implicate negatively her obligation to cooperate with other judges and court officials in the administration of court business. *CJD Op.* at 24 (observing that the Board failed to prove, *inter alia*, Canon 2, Rule 2.5(B)). Judge Brumbach's act, as stated herein, at all times, accorded and intended to accord to every person or entity who has a legal interest in a proceeding, or that person or entity's lawyer, the right to be heard according to law. *See CJD Op.* at 24 (observing that the Board failed to prove, *inter alia*, Canon 2, Rule 2.6(A)). Finally, Judge Brumbach's act herein did not "prejudice the proper administration of justice" nor were they "so extreme that it brought the judicial office itself into disrepute[.]" *CJD Op.* at 24 (observing that the Board failed to prove, *inter alia*, Pa. Const. art. V, § 18(d)(1)).

With its opinion, the Court made clear what conduct is permissible in regard to the back of paper citations in Philadelphia Traffic Court. Moving forward, Judge Brumbach, and other judges who preside in Philadelphia Traffic Court, will be deterred from this type of conduct in the future. The Court's instruction, and admonition of Judge Brumbach sufficiently protects the integrity of the judiciary and upholds public confidence. *See In re Berkhimer*, 930 A.2d 1255, 1259, 1260 (Pa. 2007) ("The Court of Judicial Discipline is charged with protecting the integrity of the judiciary and upholding public confidence in the judicial branch of government."). A sanction beyond a violation without further penalty, *i.e.*, private reprimand, is unwarranted, unnecessary and goes beyond the Court's obligations.

In sum, a violation without further penalty should be deemed appropriate under this particular set of factual circumstances. *See In re Cabry III*.

Dated: September 18, 2024

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CERTIFICATE OF SERVICE

I, Matthew H. Haverstick, hereby certify that on September 18, 2024, 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
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