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OCT 17 2024

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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

NOTICE OF APPEAL OF RESPONDENT JUDGE MARISSA J. BRUMBACH

Notice is hereby given that Respondent Judge Marissa J. Brumbach appeals to the Supreme Court of Pennsylvania from the Order and Opinion entered in this matter on October 16, 2024. A copy of the Order and Opinion is attached hereto as Exhibit A. Respondent also appeals from the Order and Opinion entered on March 12, 2024 and the Order and Opinion entered on April 25, 2024. A copy of each are attached hereto as Exhibit B and Exhibit C, respectively.

Dated: October 17, 2024

/s/ Matthew H. Haverstick
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CERTIFICATE OF SERVICE

I, Matthew H. Haverstick, hereby certify that on October 17, 2024, I caused a true and correct copy of the attached Notice of Appeal to be served on the following via First Class Mail:

James P. Kleman Jr.
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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>
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EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA
RECORDS UNIT

IN RE: :
: :
Judge Marissa J. Brumbach :
Municipal Court Judge : No. 2 JD 22
1st Judicial District :
Philadelphia County :

BEFORE: Honorable Daniel E. Baranoski, P.J., Honorable Jill E. Rangos, J., Honorable Thomas E. Flaherty, J., Honorable Sonya M. Tilghman, J., Honorable Charles Becker, J., Honorable Steven D. Irwin, J., Honorable Carolyn H. Nichols, J., Honorable Jacob D. Corman, III, J.

PER CURIAM

FILED: October 16, 2024

OPINION AND ORDER

Judge Marissa Brumbach of the Philadelphia Municipal Court is before this Court for the determination of the appropriate sanction for her violations found in the Opinion and Order of March 12, 2024; and also described in the Opinion and Order of April 25, 2024, denying her objections to the findings of fact and conclusions of law. In those Opinions and Orders this Court detailed violations in Judge Brumbach's actions in signing Certificates of Disposition and thereby falsely affirming that all defendants had been given an opportunity to have a hearing on their case when that was not true. Judge Brumbach took these actions so she could vacation in Florida instead of presiding in court.

Factors Considered in Determining Sanction

In determining what sanction will be imposed for an ethical violation this Court is guided by the jurisprudence of our Supreme Court, and also by our prior decisions. Pennsylvania has adopted ten non-exclusive factors, sometimes called "Deming Factors" from the original Washington State case where they were exposted. *In re Roca*, 151 A.3d 739, 741 (Pa.Ct.Jud.Disc. 2016),

aff'd, 173 A.d 1176 (Pa, 2017), citing *In re Toczydlowski*, 853 A.2d 20 (Pa.Ct.Jud.Disc. 2004); *In re Deming*, 736 P.2d 639 (Wa- 1987). The ten factors and their application to this case are as follows:

1. Whether the misconduct is an isolated instance or evidenced a pattern of conduct: The misconduct here was committed in one episode.

2. The nature, extent, and frequency of occurrence of the acts of misconduct: Judge Brumbach signed Certificates of Dispositions which falsely stated that the parties had been given the chance to have trials in their cases in order that it would appear she had been presiding in court on a day when she instead was vacationing in Florida.

3. Whether the misconduct occurred in or out of the courtroom: The misconduct occurred outside the courtroom.

4. Whether the misconduct occurred in the judge's official capacity: The misconduct at issue here was committed in Judge Brumbach's capacity as a judge.

5. Whether the judge acknowledged or recognized that the acts occurred: Judge Brumbach has acknowledged her conduct but maintains it is inconsequential and normal procedure for the Philadelphia Municipal Court.

6. Whether the Judge has evidenced an effort to change or modify their conduct: Judge Brumbach maintains her conduct is inconsequential and stated at her Sanction Hearing that she will refuse to sign any paper Certificates of Disposition in the future.

7. The length of service on the bench: Judge Brumbach has served as a judge for seven years.

8. Whether there have been prior complaints about the judge: There have not been prior complaints about Judge Brumbach.

9. The effect the misconduct has upon the integrity of and respect for the judiciary: Judge Brumbach's misconduct eroded respect for the judiciary in turning in untruthful documents in order for her to take a vacation day.

10. The extent to which the judge exploited his or her position to satisfy personal desires: Judge Brumbach's misconduct was for personal purposes.

Judge Brumbach signed documents entitled "Certificates of Disposition" which stated that a hearing had been offered to the parties and that she was ruling afterwards. By signing the Certificates of Disposition, Judge Brumbach was affirming that the information therein was true and correct. These Certificates of Disposition were signed with a stamped date of January 7, 2022, although they were actually signed the day before so she could avoid being present in court and take a vacation. See the Opinion of March 12, 2024, at 16, 19-21 for a detailed discussion of this issue. Judge Brumbach's actions in signing, dating, and forwarding the Certificates of Disposition implied that an impartial hearing was offered to the parties on the date listed and that she was ruling on the case afterward. This was not true.

Deciding cases and signing judicial documents in knowing violation of requirements to give the parties an opportunity to have their day in court is a violation of the judge's duty to be competent and diligent.

Very few cases similar to the present one exist. One with some similarities is ***In re Shaffer*, 885 A.2d 1153 (Pa.Ct.Jud.Disc. 2005)**. Judge Shaffer included falsehoods on his progress reports to the Administrative Office of the Pennsylvania Courts indicating the cases he was handling were going according to schedule when in reality many of his

decisions were overdue by months or even years. For the unexcused delay and his misstatements on the progress reports Judge Shaffer was sanctioned with probation for eighteen months. This Court found that Judge Brumbach falsely filled out the Certificates of Disposition in one episode rather than repeatedly as Judge Shaffer did. However, this episode involved the fraudulent signing of ninety-five (95) certificates of disposition.

There are several mitigating factors in this case. Judge Brumbach did ask for the vacation day off from her supervising judge well in advance, but did not receive a timely reply and this is certainly a mitigating factor; however, she did deliberately sign false documents in order to take a day off whether or not it was ever approved. Another mitigating factor is that Judge Brumbach notified the administrative judge and the then president judge of her plan, in advance. Judge Brumbach's plan was also just to be carried out for defendants who failed to appear for court.

Not only were there the above mitigating factors from Judge Brumbach's actions during the incident on January 6, 2022, there is the extenuating circumstance that Judge Brumbach has already been serving a form of a "suspension" since January 2022 when she was administratively removed by the former president judge from hearing any cases in court. For over two and a half years since, and up to the current time, Judge Brumbach has not heard any cases in a courtroom although she was still being compensated. Based on these mitigating circumstances, Judge Brumbach's counsel argued that no further penalty should be imposed.

The Board argued that Judge Brumbach is completely non-apologetic and that this minimizes any effect of her actions. In Judge Brumbach's allocution statement at the sanction hearing, she blamed others for this

incident including the former president judge, the Philadelphia Municipal Court and the rules of procedure, the Judicial Conduct Board and even this Court. She requested that that this Court "vacate its imposition of a violation and enter an order in arrest of judgment based upon legal error..." (*Sanction Hearing transcript, page 29, 9-14*). Judge Brumbach indicated that she will never again complete or sign a paper certificate of disposition and will demand access to electronically enter dispositions into the computer system (*Sanction Hearing transcript, page 28, 15-23*), which is a clerical task assigned to clerks or dispositioners. Throughout this entire episode, Judge Brumbach asserted vehemence in her arguments and has not demonstrated any remorse for her actions. She continues to refuse to comply with established municipal court procedures and any administrative authority that the president judge may have over the municipal court. Although this Court carefully considered Judge Brumbach's counsel's request of a sanction of no further penalty, it must be weighed against the Board's position that Judge Brumbach's vituperative and incorrect behavior can damage the public confidence in the judiciary and that any sanction imposed should guard against that from happening in the future (*Sanction Hearing Transcript, page 37-38*).

Based on the totality of the circumstances and factors of this case as presented in the trial and the subsequent proceedings, this Court has determined that a short period of probation is appropriate. This Court hereby sets the Sanction for Judge Brumbach as a reprimand and six months of probation to give Judge Brumbach an opportunity to comply with proper court procedures and administrative policies. The condition of her probation

is that she not commit any further misconduct. The president judge and administrative judge of the Philadelphia Municipal Court shall advise this Court at the end of Judge Brumbach's probation whether, in their view, she has successfully complied with the term of probation.

PER CURIAM

EXHIBIT B

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

MAR 12 2024

RECEIVED AND FILED

IN RE:

Judge Marissa J. Brumbach :
Philadelphia Municipal Court Judge : No. 2 JD 2022
1st Judicial District :
Philadelphia County :

BEFORE: Honorable Ronald S. Marsico, P.J., Honorable Daniel E. Baranoski, J., Honorable Jill Rangos, J., Honorable Thomas E. Flaherty, J., Honorable Sonya M. Tilghman, J., Honorable Charles L. Becker, J., Honorable Steven D. Irwin, J., Honorable Carolyn H. Nichols, J.

OPINION BY JUDGE BARANOSKI

FILED: March 12, 2024

OPINION AND ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

Respondent Marissa J. Brumbach (Judge Brumbach) was elected a Municipal Court Judge for the Philadelphia Municipal Court in 2017 and took office in January 2018. Judge Brumbach has served continuously as a Municipal Court Judge from 2018 to the present.¹

¹ During these proceedings before this Court, Judge Brumbach won re-election in 2023 to a new term which expires January 7, 2030.

On January 10, 2022, Judge Brumbach was placed on administrative duties and not permitted to hear any cases by President Judge Patrick Dugan (President Judge Dugan) of the Philadelphia Municipal Court.

After receiving a complaint and conducting an investigation, the Judicial Conduct Board (Board) filed a formal Complaint with this Court on December 14, 2022. In its Complaint, the Board alleges that Judge Brumbach violated nine separate charged provisions of the Pennsylvania Constitution and the Code of Judicial Conduct (Code) as follows:

1. Compliance with the Law - Canon 1, Rule 1.1
A judge shall comply with the law, including the Code of Judicial Conduct.
2. Promoting Confidence in the Judiciary – Canon 1, Rule 1.2
A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
3. Giving Precedence to the Duties of Judicial Office – Canon 2, Rule 2.1
The duties of judicial office, as prescribed by law, shall ordinarily take precedence over a judge’s personal and extrajudicial activities.
4. Competence, Diligence and Cooperation – Canon 2, Rule 2.5(A)
A judge shall perform judicial and administrative duties competently and diligently.
5. Competence, Diligence and Cooperation – Canon 2, Rule 2.5(A)

A judge shall cooperate with other judges and court officials in the administration of court business.

6. Ensuring the Right to Be Heard – Canon 2, Rule 2.6(A)

A judge shall 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.

7. Article V § 17(B) Constitution of the Commonwealth of Pennsylvania

Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon or judicial ethics prescribed by the Supreme Court.

8. Article V § 18(d)(1) Constitution of the Commonwealth of Pennsylvania

"... conduct which prejudices the proper administration of justice..."

9. Article V § 18(d)(1) Constitution of the Commonwealth of Pennsylvania

"...conduct which was so extreme that it brought the judicial office itself into disrepute..."

On December 14, 2022, the Board filed with this Court a Petition for Relief for Interim Suspension Without Pay. The Court scheduled a Hearing on the Petition for Relief for Interim Suspension Without Pay for January 6, 2023.

On December 29, 2022, Judge Brumbach filed an Answer to the Petition for Relief for Interim Suspension Without Pay. On January 5, 2023, Respondent filed a Brief in Opposition to the Board's Petition for Relief for Interim Suspension Without Pay.

On January 6, 2023, this Court held a Hearing on the Petition for Relief for Interim Suspension Without Pay in the Main Courtroom of the Superior Court of Pennsylvania located at 530 Walnut Street in Philadelphia before a panel of judges.²

On January 12, 2023, this Court DENIED the Petition for Relief for Interim Suspension Without Pay.

A plethora of motions were filed after the Interim Suspension Hearing. Judge Brumbach's Omnibus Motion was filed on January 31, 2023 (after an extension of time was granted) which requested:

1. Counts 1 through 9 to be dismissed because the facts alleged do not prove misconduct;
2. The dismissal of the Complaint pursuant to Rule 411 (D) (3) because the Board violated its own procedures;
3. The preclusion of Exhibits 1 to 95 as evidence in that no adjudication occurred;
4. The preclusion of Exhibits 1 to 95 pursuant to Pa.R.E. 1002; and

² The panel of judges consisted of Judge James Eisenhower, P.J., Judge Ronald S. Marsico, Judge Daniel D. McCaffery, Judge Daniel E. Baranoski, Judge Thomas E. Flaherty, and Judge Charles L. Becker.

5. The preclusion of Exhibits 1 to 95 from evidence because the Board failed to preserve the original copies.

The Board filed its Response to Respondent's Omnibus Motion on February 9, 2023. Respondent then filed a Motion to File a Reply Brief on February 22, 2023, along with the Reply Brief, which this Court granted along with an Order providing the Board an opportunity to file a Rebuttal Brief if so desired. On March 24, 2023, Judge Brumbach filed a Motion for Extension of Discovery.

On April 3, 2023, this Court DENIED Judge Brumbach's Omnibus Motion, prompting her to file two motions on April 20, 2023, Respondent's Motion to Compel Discovery and Respondent's Motion to Issue Subpoenas Duces Tecum. On April 25, 2023, Judge Brumbach filed her Answer to the Board's Complaint.

On April 26, 2023, the Board filed its Response to Respondent's Motion to Compel Discovery and Respondent's Motion to Issue Subpoenas Duces Tecum.

On May 6, 2023, Judge Brumbach filed a Motion for Extension of Discovery Deadline. On May 17, 2023, this Court appointed Judge Baranoski as the Conference Judge in this case. A Hearing was held on all motions before

Judge Baranoski with counsel from both sides on June 16, 2023. On July 5, 2023, this Court issued an Order DISMISSING Respondent's Motion to Compel Discovery as the issue was Moot as the Board was not in possession of the requested items. The Order also GRANTED the Respondent's Motion to Issue Subpoenas Duces Tecum and GRANTED the Motion to extend the period for discovery.

The Board filed its Pre-Trial Memorandum on October 27, 2023, and Judge Brumbach filed her Pre-Trial Memorandum on October 31, 2023. On November 3, 2023, a Pre-Trial Conference was held before the Conference Judge where counsel failed to reach any consensus on stipulations. Judge Brumbach's counsel advised that she would be filing additional motions later that day. Judge Brumbach filed a Renewed Omnibus Motion seeking to have this case Dismissed With Prejudice, a Motion in *Limine* to Preclude Evidence Regarding Judge Brumbach's Previous Requests for Personal Leave or Vacation, a Motion in *Limine* to Preclude Copies of the Paper Citations from Entering Into Evidence, and a Motion in *Limine* to Preclude the Use of the Term "Adjudication" Beyond its Established Legal Meaning. Because of the voluminous amount of material contained in the renewed and new motions filed by Judge Brumbach, the Board was granted an extension of time until November 13, 2023, to file its reply to the motions.

The trial for Judge Brumbach was held on November 16, 2023, in the Main Courtroom of the Superior Court of Pennsylvania in Philadelphia before a panel of judges.³ All Judge Brumbach's motions were discussed prior to the trial. All of the recently filed motions of Judge Brumbach were DENIED. The motion to preclude paper copies of the 95 traffic citations was denied and the Board submitted those copies as evidence which were admitted.⁴ At the one-day trial, the Board called:

- Richard Delario (B Court Tipstaff)
- Donna Sofronski (Chief of Courtroom Operations)
- Marge Fenerty (Chief of Staff for Traffic)
- Judge Joffie Pittman (Phila Municipal Court Administrative Judge)
- Judge Patrick Dugan (Phila Municipal Court President Judge)

Judge Brumbach testified as the only witness for the defense.

³ The trial panel of judges consisted of Judge Ronald S. Marsico, PJ, Conference Judge Daniel E. Baranoski, Judge Thomas E. Flaherty, Judge Charles L. Becker and Judge Steven D. Irwin.

⁴ The 95 citations submitted as evidence were in the Board's Exhibit Binder Tab # 1. While there were many exhibits admitted, not all exhibits were the subject of testimony at trial.

On February 12, 2024, the Board filed its Proposed Findings of Fact and Conclusions of Law. On February 14, 2204, Judge Brumbach filed her Proposed Findings of Fact and Conclusions of Law.

II. LEGAL STANDARDS

The Preamble to Pennsylvania Code of Judicial Conduct (2014) states that "[a]n independent, fair, honorable and impartial judiciary is indispensable to our system of justice."

Our Supreme Court has adopted the various rules of judicial discipline, to discharge its obligation to "conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system for the protection of the citizens of this Commonwealth." *In re Bruno*, 627 Pa. 505, 101 A.3d 635, 675 (2014).

The Court of Judicial Discipline has original jurisdiction over actions alleging judicial wrongdoing prosecuted by the Judicial Conduct Board. See **PA. CONST. ART. V, § 18 (b)(5)**. Because such proceedings are quasi-criminal, respondent judges are afforded the same constitutional rights as are criminal

defendants. The Board must prove the charges by clear and convincing evidence. *In re Sullivan*, 135 A.3d 1164, 1172 (Pa. Ct. Jud. Disc. 2016).

Clear and convincing evidence has been defined as evidence "that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Eakin*, 150 A.3d 1042, 1046 (Pa. Ct. Jud. Disc. 2016) (*quoting* *Matter of Sylvester*, 521 Pa. 300, 555 A.2d 1202, 1203-04 (1989)). The Court of Judicial Discipline considers facts stipulated to by the parties as having been proven by the party with the burden of proof by clear and convincing evidence. *Id.* at 1047. "Credibility of witnesses and the weight of evidence is within the province of the trier of fact, who is free to believe all, part or none of the evidence." *Commonwealth v. Scott*, 146 A.3d 775, 777 (Pa. Super. 2016).

III. FINDINGS OF FACT

From all testimony and evidence presented, this Court makes the following findings of fact:

1. Judge Brumbach and President Judge Dugan have obvious problems with communication. While the source of their personal friction is not

entirely clear, it is apparent that they had a poor working relationship such that Judge Brumbach did not want President Judge Dugan to have any "in person" conversation with her.

2. Due to problems President Judge Dugan had with Judge Brumbach, President Judge Dugan scheduled Judge Brumbach to preside in Traffic Court for six (6) months when most judges have a shorter rotation in Traffic Court.
3. Philadelphia Municipal Court has a "Judicial Leave Policy".⁵ The policy states that "judges are given five weeks (25 workdays) of vacation per year at times approved by the President Judge of Municipal Court or the Administrative Judge". This vacation leave is to be utilized in periods of at least a week and single day requests are discouraged.
4. Philadelphia Municipal Court also has an unwritten policy and a past practice of permitting judges to have additional personal days off with permission of the president judge if the requesting judge presents a valid reason and does not disrupt court operations.

⁵ The First Judicial District of Pennsylvania Judicial Leave Policy was submitted in the Board's Exhibit Binder under Tab # 21.

5. On November 10, 2021, Judge Brumbach sent President Judge Dugan an email requesting to take off on January 7, 2022, to attend an event in Florida and also requested coverage for her courtroom assignment.⁶

6. President Judge Dugan never answered Judge Brumbach's email request for coverage on January 7, 2022.

7. Having not received a response, on January 6, 2022 at 9:31 AM, Judge Brumbach again emailed President Judge Dugan stating:

*"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, at 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. Thank you."*⁷

8. On January 6, 2022 at 11:39 AM, President Judge Dugan responded to Judge Brumbach by email:

*"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."*⁸

⁶ Board's Exhibit 103 and included in Evidence Binder under Tab # 10

⁷ Board's Exhibit 103 and included in the Evidence Binder under Tab # 10

⁸ Board's Exhibit 103 and included in the Evidence Binder under Tab # 10

9. Judge Brumbach concluded from her experience and her personal study that most defendants do not appear for their scheduled trial in Philadelphia Traffic Court.

10. There were 95 traffic citations for the 45 defendants scheduled to be heard in Traffic Court where Judge Brumbach was scheduled to preside on January 7, 2022.⁹

11. Based on her experience, Judge Brumbach developed a plan for those cases *IF* there was no coverage for that courtroom and *IF* court was open despite the expected snow. That plan was:

a. Judge Brumbach obtained the 95 citations in advance of January 7, 2022. Judge Brumbach had the Assistant District Attorney review them and see if the prosecution intended to withdraw any. The ADA did withdraw a total of 17 traffic citations.

b. Judge Brumbach then reviewed the remaining citations and rendered dispositions of "Guilty in Absentia" or "Not Guilty in Absentia" based solely on the information on the citation or in

⁹ Board's Exhibits 1 to 95 and included in the Evidence Binder under Tab # 1

the file. There were 40 citations marked as "Guilty in Absentia" and 38 that were marked "Not Guilty in Absentia".

- c. After marking or circling the above dispositions, Judge Brumbach then initialed or signed the signature line on the bottom of each "Traffic Division Docket Certificate of Disposition" sheet (often on the back of the traffic citation) by the preprinted seal of the Philadelphia Municipal Court where it says:

"The information contained on this page is true and correct and the Seal of the office is affixed hereon."

The signature line where Judge Brumbach signed is marked:

*"Original Signature of Judge/Hearing Officer
Philadelphia Municipal Court Traffic Division"*

- d. Judge Brumbach advised her staff to call her while she was in Florida on January 7, 2022 and advise of the status of the cases. The above dispositions were only for defendants who did not appear. If any defendant appeared for court, their case was to be continued to another date.

12. Donna Sofronski, Chief of Courtroom Operations, testified that judges are permitted to review cases in advance.
13. Sofronski also testified that after the court case, the judge completes the "Certificate of Disposition" and the case is sent to the Dispositioner Unit for entry into the eTIMS computer system.
14. On January 6, 2022 after receiving Judge Brumbach's email, President Judge Dugan contacted Administrative Judge Pittman to investigate what Judge Brumbach's plan was. Administrative Judge Pittman spoke to Judge Brumbach.
15. President Judge Dugan had Sofronski pull the 95 traffic citations to review and make copies.
16. President Judge Dugan and Administrative Judge Pittman testified that there was going to be coverage for Judge Brumbach's courtroom on January 7, 2022.
17. Judge Brumbach's plan did not need to occur as there was going to be coverage for the Traffic Courtroom on January 7, 2022.
18. Philadelphia Municipal Court was closed on January 7, 2022 because of snow.

19. President Judge Dugan made a complaint to Court Administrator Geoff Moulton concerning Judge Brumbach's actions and the matter was referred to the Board for investigation.

20. President Judge Dugan, Administrative Judge Pittman and Judge Brumbach all agreed that generally witnesses do not appear in Traffic Court and the presiding judge makes a finding of disposition solely from the information on the citation without any testimony.

IV. DISCUSSION

The Board has the burden of proving each charge by clear and convincing evidence, *In re Sullivan*, 135 A.3d 1164, 1172 (Pa. Ct. Jud. Disc. 2016). To meet this burden, the evidence "must be clear, direct, weighty, and convincing." Clear and convincing evidence has been defined as evidence that is so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.¹⁰

¹⁰ *In re Berkheimer*, 930 A.2d 1255, 1258 (2007) and *In re Tidd*, 175 A.3d 1151, 1155 (Pa. Ct. Jud. Disc. 2017)

A. Disposition

A key question presented in the course of this case concerns what is an actual "disposition" of a case and when does it occur. The Board argues that a disposition occurs when the judge makes a finding of Guilty, Not Guilty, Guilty in Absentia, etc. and signs the certificate as such. Judge Brumbach argues that the judge is only making notes and the disposition does not actually occur until the Dispositioner Unit enters the disposition into the eTIMS computer system.

We find that Judge Brumbach's argument fails in this regard. The eTIMS unit has no statutory judicial authority but merely records what the judge has noted on the "Certificate of Disposition". The judge is the authority who makes the finding for the case. Therefore, we find that Judge Brumbach made a disposition on each of these 95 traffic citations at issue here and affixed her official signature on each indicating such disposition. The subsequent entering or recording of Judge Brumbach's disposition by the Dispositioner Unit into eTIMS is a ministerial act.

B. Deprivation Of Right to be Heard

The Board argues that defendants were deprived of their rights by not having their day in court to receive a fair trial. The Board also argues that the Government was denied its due process rights by not having the right to amend or present additional evidence.

We find that this argument fails as Judge Brumbach made this plan only for defendants who failed to appear. The Government, through the Assistant District Attorney, had the option to amend or present additional evidence when it reviewed the files in advance (and withdrew seventeen of the traffic citations). All of the traffic cases at issue here were eventually rescheduled with Judge Brumbach's recorded disposition being vacated. There is no evidence that anyone was denied their rights, that anyone failed to receive a fair trial, or that the Government was denied due process under the particular facts of this case.

C. Giving Precedence to Duties of Judicial Office

Philadelphia Municipal Court has a written vacation policy where judges can take a week of vacation at a time. Philadelphia Municipal Court also has an unwritten and informal policy where judges can take off a day at a time. Judge Brumbach requested to have January 7, 2022 off about two months in advance but was ignored. Judge Brumbach was never advised whether the

request would be approved or denied. On January 6, 2022, President Judge Dugan advised Judge Brumbach that request was not approved and that she was expected to cover her courtroom. A trip to Florida obviously requires planning and Judge Brumbach should have been advised of a determination before January 6, 2022. However, President Judge Dugan and Administrative Judge Pittman both testified that coverage was going to be provided for Judge Brumbach's courtroom on January 7, 2022 so we know that her personal day off was going to be approved regardless of what President Judge Dugan had emailed Judge Brumbach.

D. Compliance with the Law; and Competence, Diligence and Cooperation

The initial report of the alleged misconduct in this case sounded much worse than what the actual evidence showed. Judge Brumbach's plan was not evil in nature nor was it an attempted abuse of power for personal gain. Judge Brumbach had planned to be away on a particular date and requested leave and coverage well in advance. Judge Brumbach's request was ignored. To be of assistance to the president judge for court scheduling, Judge Brumbach developed a plan to push cases through the Philadelphia Municipal Court system for Traffic Court. Judge Brumbach notified the president judge of her

plan in advance in the event there was no coverage for her courtroom. By providing such notification, the president judge could have stopped the plan in advance if he disagreed with it, which he eventually did. President Judge Dugan was also planning to provide coverage for Judge Brumbach's courtroom thus negating the need for implementing Judge Brumbach's plan. The plan was only to be used for cases in which defendants failed to appear. By coincidence, Philadelphia Municipal Court was cancelled on January 7, 2022 because of snow.

On the other hand, we find that Judge Brumbach should not have signed an official "Certificate of Disposition" and affixed her signature to these 95 traffic cases in advance. We find that circling her finding and affixing her signature is an official disposition. Judge Brumbach signed a statement that "[T]he information contained on this page is true and correct and the Seal of the office is affixed hereon". Although that statement is pre-printed on the disposition form along with the pre-printed Seal of the Philadelphia Municipal Court, Judge Brumbach signed it. This disposition record was also pre-stamped with the date of January 7, 2022 by courtroom operations prior to being given to Judge Brumbach, Judge Brumbach signed the citation records on January 6, 2022 giving the impression that it was from a proceeding that occurred on the pre-stamped date of January 7, 2022. Judge Brumbach's actions in signing the disposition reports authenticated 40 dispositions of

"Guilty in Absentia" and 38 dispositions of "Not Guilty in Absentia". Had coverage not been provided or had court not been closed due to snow, these matters could have accidentally been transferred to, or recorded by, eTIMS for entry. A judge should not sign a disposition for a case before considering all evidence in an actual fair and impartial hearing or trial.

While what Judge Brumbach did by signing these dispositions in advance appears prejudicial to all parties involved, this Court cannot consider her actions in a vacuum. This Court accepts the testimony that the procedure described above is how traffic cases are handled in Philadelphia. Philadelphia Municipal Court judges make dispositions on traffic matters without any witness testimony or evidence presented in court. They determine verdicts of "Guilty", "Not Guilty", "Guilty in Absentia", "Not Guilty in Absentia", etc. based solely on what is written on the traffic citation. Therefore, what Judge Brumbach did is an accepted practice; she just did it a day ahead of time.

When a defendant does not appear for a traffic summary trial and there is a likelihood that the sentence will not involve imprisonment, the trial may be conducted in the defendant's absence.¹¹

¹¹ Pa.R.Crim.P. Rule 1002 (D) Philadelphia Municipal Court Procedures

However, the Rules of Criminal Procedure have an internal contradiction as far as how this may be done. Per Pa.R.Crim.P. 1002 (D) (1) for Philadelphia Municipal Court:

“At trial, the judge shall proceed to determine the facts and render a verdict in the same manner as trials in criminal cases are conducted in the Court of Common Pleas when a jury trial has been waived; however, the law enforcement officer observing the defendant’s alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant. The allegations in the citation may be recited on behalf of the observing law enforcement officer by his or her representative or designee. The failure of a defendant to appear will be deemed to be a waiver of the right to present defense witnesses.”¹²

Local Court Rules for the city of Philadelphia also state that the law enforcement officer who issued or filed the citation need not appear for the summary trial. ¹³

According to testimony in this case, not only does the observing police officer not appear in Philadelphia Municipal Court, no representative or

¹² This rule is also mirrored for the rest of the Commonwealth in Pa.R.Crim.P. Rule 454 (B) Trial in Summary Cases. However, most Magisterial District Judges require witness or affiant testimony for a summary trial.

¹³ Philadelphia Municipal Court Local Rule 454 Trial in Summary Cases, Role of the Affiant, Sentencing Orders under Evidence, section (b) (1).

designee on behalf of the police appear either. Philadelphia has approximately 6,400 police officers. While we understand that it would be impractical and possibly financially impossible to have every observing police officer or affiant appear for summary trials at one central location, it is not known how that “trial” can be held in the “same manner as trials in criminal cases are conducted in the Court of Common Pleas when a jury trial has been waived”¹⁴ without any witnesses or testimony. The basic constitutional right of a defendant to cross examine his or her accuser would be eliminated if no witnesses are required in court. Even if a defendant does not appear, some witnesses sworn testimony of a witness, or some similar evidence, should be required to find a defendant “Guilty in Absentia”.

Therefore, this Court accepts that what Judge Brumbach did is the common practice in Philadelphia Municipal Court except that she just did it a day early assuming most defendants would not appear.

It should be noted that since the Brumbach case was filed in this Court, the Pennsylvania Superior Court has weighed in on summary traffic trials in ***Commonwealth v. Smith***, 290 A.3d 316 (Pa. Super. 2023). The Superior Court held that Rule of Criminal Procedure 462(C), which governs a trial *de novo*, is mandatory. Rule 462(C) provides that in cases of summary proceedings under the Vehicle Code or local traffic ordinances, other than

¹⁴ Pa.R.Crim.P. Rule 1002 (D) (1)

parking offenses, the officer who observed the alleged offense must appear and testify. The Court also held that the defendant's failure to appear did not negate Rule 462(C). Rule 462(C) does not depend on the defendant's presence. Rule 462(C) requires the Commonwealth to present competent evidence proving the offense. In **Smith**, the trial court did not determine that there was good cause for the officer's unavailability and did not grant a continuance. The trial court was required under Rule 462(C) to dismiss the charge and it erred by not doing so. One could conclude that if the Commonwealth cannot meet its burden in a trial *de novo* without the officer who observed the alleged offense, then it cannot meet its burden in the original summary trial before a Philadelphia Municipal Court Judge or a Magisterial District Judge.

V. CONCLUSIONS OF LAW

1. Judge Brumbach's signature on the 95 Certificates of Disposition constitutes a violation of Canon 2, Rule 2.5 (A) Competence, Diligence and Cooperation: A judge shall perform judicial and administrative duties competently and diligently.

2. By violating Canon 2, respondent thereby violated **ARTICLE V § 17(B) CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA** - Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon or judicial ethics prescribed by the Supreme Court.
3. The Board has failed to prove any of the remaining charges by clear and convincing evidence.
4. Per C.J.D.R.P. No. 503, the Board and the Respondent may elect to file written objections which shall include the basis for the objections to the Court's Findings of Fact and Conclusions of Law.
5. Any objections shall be filed with the Court within 10 days of the entry of these Findings of Fact and Conclusions of Law.
6. If objections are not filed within ten (10) days, these Findings of Fact and Conclusions of Law shall become final.
7. After Findings of Fact and Conclusions of Law become final pursuant to Rule 503, the Court shall hold a hearing in open court on the issue of possible sanctions.

EXHIBIT C

RECEIVED AND FILED

APR 25 2024

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE: :
: :
Marissa J. Brumbach : :
Municipal Court Judge : No. 2 JD 22
1st Judicial District : :
Philadelphia County : :

BEFORE: Honorable Ronald S. Marsico, P.J., Honorable Daniel E. Baranoski, J., Honorable Jill E. Rangos, J., Honorable Thomas E. Flaherty, J., Honorable Sonya M. Tilghman, J., Honorable Charles L. Becker, J., Honorable Steven D. Irwin, J., Honorable Carolyn H. Nichols, J.

PER CURIAM FILED: April 25, 2024

**Opinion and Order Denying Judge Brumbach's
Objections and Amended Objections
To the Findings of Fact and Conclusions of Law**

As set forth in the Court's unanimous Opinion of March 12, 2024, Judge Brumbach signed documents entitled "Certificates of Disposition" in which she affirmed that the information therein was true and correct. These Certificates of Disposition were signed with a date of January 7, 2022, although they were actually signed the day before. See the Opinion of March 12, 2024, at 16, 19-21 for a detailed discussion of this issue. Judge Brumbach's actions in signing, dating, and forwarding the Certificates of Disposition implied that an impartial hearing was offered to the parties and that she was ruling on the case afterward.

At the time of her premature signing of the Certificates of Disposition, Judge Brumbach had taken all the actions she could take to cause a disposition of the cases including deliberately attesting to the date of disposition and thereby implying that the disposition was reached after the parties had been offered a trial.

Judge Brumbach exercised judicial powers in signing the Certificates of Disposition when she did not know which defendants would actually appear and she thereby set in motion the ministerial acts leading to her rulings being recorded as the verdicts in those cases. By doing so Judge Brumbach took part in untruths concerning the date of the verdict and the extent of the court proceeding. Such improper actions implicate her competence and diligence.

Judge Brumbach misses the point by arguing that it is the docketing of the decision in Traffic Court that is the adjudication. As the record in this case made clear though the judge is not the official who physically enters judgment on the record; other judicial/clerical employees handle that ministerial task. Judge Brumbach's judicial actions are at issue here. It is those actions which are improper here. Judge Brumbach may have instructed her staff not to send the signed and authenticated dispositions to the *eTIMS* dispositional unit unless the defendant failed to appear, but that failsafe is not sufficient to justify signing and attesting to official dispositions in advance. In Traffic Court the verdict is effectively reached when the presiding judge circles their finding of guilty or not guilty and then signs the Certificate of Disposition (as Judge Brumbach did here prematurely.) **See Generally, Commonwealth v. Green, 862 A.3d 613 (Pa. Super. 2004)** (crucial action and date is that of Judge's action in court, not that of a clerk later filing supporting docket entries.)

Judge Brumbach also argues that she lacked the requisite intent to violate judicial ethical standards. Yet, Judge Brumbach did intentionally circle her disposition and sign the Certificates of Disposition knowing that the cases had not been called in court. Judge Brumbach may not have had any evil intent, but her actions were deliberate and knowing. **See generally, In re Muth, 237 A.3d 635**

(Pa.Ct.Jud.Disc. 2018) (Judge did not intend to display pornography to his office staff but is in violation for taking deliberate actions likely to lead to such exposure.)

Judge Brumbach's argument that she did not violate Canon 2, Rule 2.5(A) because nothing shown at trial implicates her judicial competence or diligence is rejected. Deciding a case and signing final judicial documents in knowing violation of a requirement to give the parties an opportunity to have their day in court so the judge could have a vacation day is obviously a violation of the duty of competence and diligence. To whatever degree that was not evident before, the Court makes that clear now.

Judge Brumbach's request for oral argument on her objections to the findings of fact and conclusions of law is rejected. The parties have been given repeated chances to argue, brief and point out any matters concerning the case. A full trial was conducted on this matter. The issues raised by Judge Brumbach in her post-verdict motion were addressed by the unanimous Court in the Opinion of March 12, 2024, and no new evidence or reasons not previously argued have been advanced. The Objections are DISMISSED.

A date for a Sanction Hearing will be set.