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COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

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ATTORNEY FOR RESPONDENT

IN RE:
JUDGE SCOTT DICLAUDIO
FIRST JUDICIAL DISTRICT
PHILADELPHIA COMPLAINT

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: COMMONWEALTH OF
: PENNSYLVANIA COURT OF
: JUDICIAL DISCIPLINE
:
: NO. 1 JD 2025
: NO. 2 JD 2025
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**RESPONDENT'S BRIEF IN OPPOSITION TO THE JUDICIAL CONDUCT BOARD'S
PETITION FOR RELIEF FOR INTERIM SUSPENSION WITHOUT PAY**

Judge Scott DiClaudio ("Judge DiClaudio"), by and through his attorney, Michael T. van der Veen, hereby submits this Brief in Opposition to the Judicial Conduct Board's Petition for Relief for Interim Suspension Without Pay. In support thereof, Judge DiClaudio represents the following:

FACTS AND PROCEDURAL HISTORY

On or about June 1, 2025, Mr. Dwayne Jones ("Mr. Jones") approached Judge DiClaudio at a concert he was attending at The Mann Center in Philadelphia, Pennsylvania. Judge DiClaudio had never met Mr. Jones before and has not met him since. At that time, Mr. Jones handed Judge DiClaudio his card which Judge DiClaudio put into his cell phone case. Mr. Jones told Judge DiClaudio that he had a court case and wanted to know what kind of judge Judge Shaffer was. Mr. Jones said he had pled guilty, but Mr. Jones did not say when any future court dates or hearings would be. Judge DiClaudio's immediate response was that Judge Shaffer was a good judge who

always does the right thing. Mr. Jones did not in any way ask Judge DiClaudio to talk to Judge Shaffer or to influence his case in any way. Nor did Judge DiClaudio offer.

Over the intervening two (2) weeks, Judge DiClaudio made no effort to contact Judge Shaffer or find out about the nature or status of Mr. Jones' case. On June 12, 2025, Judge Shaffer came to Judge DiClaudio's courtroom unannounced to pay for tee shirts which he had ordered for himself and his clerk, Nicole Vernacchio. Judge DiClaudio and Judge Shaffer conversed in Judge DiClaudio's chambers as they had done on many occasions previously. Well into this conversation, Judge DiClaudio remembered that Mr. Jones had mentioned Judge Shaffer at the concert. Not remembering his name, Judge DiClaudio told judge Shaffer "Some guy . . ." and remembered that he had given Judge DiClaudio his card. Judge DiClaudio pulled the card out of his phone case and identified the "guy" as Dwayne Jones. Judge DiClaudio reported the conversation as described above and told Judge Shaffer that his full response was that he was a good judge who does the right thing. At no point was there no discussion of the case, its nature, or its status.

On or about June 13, 2025, Judge Shaffer recused himself from the Jones matter. Per the docket, on or about June 16, 2025, The Honorable Scott J. O'Keefe sentenced Mr. Jones to 11.5 to 23 months of incarceration, permitted him to serve the sentence on house arrest, and imposed a three-year term of probation to be served consecutively.

On June 25, 2025, Administrative Judge Anders placed Judge DiClaudio on administrative duties, meaning Judge DiClaudio is not currently hearing any active cases, but instead is only working on appellate matters for which he previously made rulings .

On or about July 1, 2025, the Judicial Conduct Board ("the Board") sent Judge DiClaudio a Notice of Full Investigation which indicated the Board was investigating allegations of misconduct. This Notice of Full Investigation requested Judge DiClaudio provide a response to

the various inquiries. On August 22, 2025, Judge DiClaudio, through his attorney, filed a Response to this Notice of Full Investigation.

On or about September 9, 2025, the Judicial Conduct Board of the Commonwealth of Pennsylvania filed a Complaint charging Respondent with various violations of the Rules of the Code of Judicial Conduct and the Constitution of the Commonwealth of Pennsylvania. On that same day, the Board also filed a Petition for Relief for Interim Suspension Without Pay (“Petition”).

The factual allegations posed in the Board’s Petition center around the aforementioned September 9, 2025 Complaint. This complaint accuses Judge DiClaudio of meeting with Judge Zachary Shaffer in his judicial chambers while showing Judge Shaffer “a piece of paper on which was written Judge Shaffer’s courtroom number and the name of Dwayne Jones, a defendant who had pled guilty before Judge Shaffer and was scheduled to be sentenced by Judge Shaffer...” The Complaint further alleges that Judge DiClaudio told Judge Shaffer “I’ve heard you might do the right thing anyway,” then ripped up the piece of paper and threw it away in a trash can.

On or about September 16, 2025, the Board filed a Motion to Allow Remote Testimony of their witness, Nicole Vernacchio.

On September 25, 2025, Judge DiClaudio filed an Omnibus Motion in response to both the Board’s Complaint and the Board’s Petition for Interim Suspension without Pay, requesting different forms of relief, including a Motion to Continue the October 6, 2025 Hearing on the Board’s Petition. This request for relief, as well as the Board’s request to allow the remote testimony of Nicole Vernaccio, were both denied by this Court.

On or about September 26, 2025, the Board filed a Brief in Support of their Petition for Relief for Interim Suspension Without Pay.

A Hearing on the Board's Petition is currently scheduled for October 6, 2025, at 9:30 A.M.

LAW AND ARGUMENT

The Constitution of the Commonwealth of Pennsylvania vests the Court of Judicial Discipline power to grant an interim suspension of a member of the judiciary prior to a final formal adjudication of a complaint filed by the Judicial Conduct Board.¹ Pa. Const. art. V, § 18.

It is the burden of the Board to persuade the Court of Judicial Discipline that "the totality of the circumstances requires the entry of an interim order of suspension." *In re Smith*, 712 A.2d 849 (Pa. Ct. Jud. Disc. 1998)(emphasis added).

"Whether to enter an interim order directing the suspension of a judge is discretionary and **does not flow as an automatic or ministerial consequence** upon the Judicial Conduct Board's petition alleging that a judge has been charged with a felony, or that the Board **has filed formal charges with the Court.**" *Id.*, at 851(emphasis added).

"In determining whether an interim order suspending a judicial officer without pay should be entered, the Judicial Conduct Board does not undertake to decide the underlying case; rather, the Board's function is to ascertain what it is upon which the charges are based in order to determine whether there are reasonable grounds to support a suspension without pay, or, in other words, to assure that the decision to suspend is not baseless or unwarranted." *In re Melvin*, 57 A.3d 226 (Pa. Ct. Jud. Disc. 2012).

The Board, curiously, misstates the factors that the Court of Judicial Discipline evaluates under a totality of the circumstances analysis when determining whether to put a Judge on interim suspension. These factors include: "[1]the nature of the **crime charged**; [2] its relation, or lack

¹ "Prior to a hearing, the court may issue an interim order directing the suspension, with or without pay, of any justice, judge or justice of the peace against whom formal charges have been filed with the court by the board or against whom has been filed an indictment or information charging a felony. An interim order under this paragraph shall not be considered a final order from which an appeal may be taken." Pa. Const. art. V, § 18

thereof to the duties of the responding judicial officer; [3] the impact or possible impact on the administration of justice in this Commonwealth; [4] the harm or possible harm to the public confidence in the judiciary; [] [5] any other circumstances relevant to the conduct in question.” *In re Larsen*, 655 A.2d 239, 247 (Pa. Ct. Jud. Disc. 1994).

Judge DiClaudio submits that when reviewing all of the aforementioned factors and his reputation as an outstanding jurist in the Commonwealth of Pennsylvania, i.e. when examining the totality of the circumstances, the Board’s Petition for Interim Suspension Without Pay should be denied.

A. The nature of the crime charged is nonexistent and therefore does not weigh in favor of granting the Board’s request for interim suspension of Judge DiClaudio.

Contrary to the Board’s assertion that the factor to be considered is the “nature of the **alleged misconduct**,” this Honorable Court should actually evaluate the **nature of the crime charged** – which is nonexistent. Judge DiClaudio has not been charged with any criminal offense. The Board states the factors listed above have expanded their reach to disciplinary cases beyond just those that involve criminal charges against members of the Judiciary but provides not one cite to support this. Instead, the Board cites *In re Smith*, a case in which an interim suspension **with pay** was deemed unwarranted even where the Judge was charged with felonies by the Attorney General’s Office.

Interestingly, the Court in *Smith* acknowledged the Republican Committee of Lebanon County’s vendetta to have the Judge removed from the bench, much like is the case here.

In re Jaffe, one of only a few cases to have an interim suspension granted, involved an Allegheny County Judge who was federally indicted on felonies in the Western District of Pennsylvania for extorting money from two (2) lawyers who represented a number of Plaintiffs before him. 814 A.2d 308 (Pa. Ct. Jud. Disc. 2003).

In re Larsen involved a Supreme Court Justice who was charged with 27 felonies in Allegheny County. The Board filed for interim suspension **with** pay which would convert to without pay after a finding of guilt, prior to the Justice's trial, which was denied by the Court. The Justice was convicted of two (2) felony counts, and the Board filed for an interim suspension without pay, which was granted by the Court.

In re Melvin concerned a Supreme Court Justice who was charged by a grand jury presentment with numerous criminal offenses, including: theft of services (a third degree felony); conspiracy to commit theft of services (a third degree felony); conspiracy to tamper with physical evidence (second degree misdemeanor); solicitation to tamper with or fabricate physical evidence (second degree misdemeanor); official oppression (second degree misdemeanor); and misapplication of entrusted government property (second degree misdemeanor). 57 A.3d 226 (Pa. Ct. Jud. Disc. 2012). The Justice was accused of using her state-employed sisters, and individuals who worked for/with her sisters, to perform work for the Justice's campaign during working hours. *Id.* During this time, the Justice ignored a Supreme Court Order that prevented judicial staffers from engaging in political activity and ordered/demanded/bullied her staff into continuing to violate this Order. *Id.* The Court of Judicial Discipline found the totality of the circumstances warrants interim suspension as it was the only way to ameliorate the harm of the public's confidence in the judicial system. *Id.*

All of the cases cited by the Board have one thing in common, they all include respondents who were charged with criminal offenses. That is not the case here. It is clear this analysis was designed to be used in situations that involve an individual charged with a criminal offense; not an individual who is accused of violating the judicial code of conduct.

As such, Judge DiClaudio submits the nature of this nonexistent crime charged does not weigh in favor of granting the Board's request for interim suspension of Judge DiClaudio, and this Honorable Court should deny the Board's Petition.

B. The relation, or lack thereof of the crime charged to the duties of Judge DiClaudio is nonexistent and therefore does not weigh in favor of granting the Board's request for interim suspension of Judge DiClaudio.

First, there is no crime charged, and therefore this factor is irrelevant. Notwithstanding this fact, there is no relation between the allegations posed by the Board and Judge DiClaudio's duties as a current Judge on the Court of Common Pleas of Philadelphia – Criminal Division. Up until his placement on administrative duties, Judge DiClaudio predominately handled Post Conviction Relief Act Petitions, and ordered multiple exonerations over the last several years. Judge DiClaudio is well-respected and well-known for handling his cases efficiently and effectively in his court room. Since his placement on administrative duties, Judge DiClaudio has continued to work efficiently and effectively in submitting opinions to the Superior Court for his cases that are presently on appeal. Nothing presented by the Board demonstrates that these allegations would hinder Judge DiClaudio's abilities to continue to write his opinions in his Chambers while remaining on administrative duties until a final adjudication by a formal hearing on the Complaint.

As such, Judge DiClaudio respectfully requests this Honorable Court deny the Board's Petition.

C. The impact or possible impact on the administration of justice in this Commonwealth is would be negative if Judge DiClaudio is suspended without pay, and therefore does not weigh in favor of granting the Board's request for interim suspension of Judge DiClaudio.

As mentioned above, Judge DiClaudio hears thousands of cases a year. More recently, Judge DiClaudio has handled predominately Post Conviction Relief Act Petitions, exonerating many individuals who have been incarcerated for years. Judge DiClaudio handles matters in his

courtroom efficiently, effectively and with respect for those criminal defendants who come before him. Judge DiClaudio strives to make the decisions in accordance with the presented facts and the law, and has gained an incredible reputation for his fairness, impartiality and judicial abilities. Presently, Judge DiClaudio writes opinions for many cases that are presently on appeal before the Superior Court of Pennsylvania.

In fact, suspending him without pay would negatively impact the administration of justice, because it would create a backlog of cases that are on appeal that require judicial opinions. Suspending Judge DiClaudio would require his cases to be transferred to another Judge, who would then have to take copious amounts of time to be caught up to speed on the matters, thus extending cases for individuals who are incarcerated, and creating an inevitable backlog for the Superior Court.

Furthermore, even if the allegations in the Board's Complaint were true (and they absolutely are not), this would have no impact on the administration of justice in this Commonwealth. Judge Shaffer recused himself from the Jones matter, and the individual was sentenced before another competent Court of Common Pleas Judge in Philadelphia and sentenced to house arrest, which was an appropriate sentence given the nature of the charges.

As such, Judge DiClaudio submits that not allowing him to continue working would have a reverse effect on the administration of justice, and respectfully requests this Honorable Court deny the Board's Petition.

D. The harm or possible harm to the public confidence in the judiciary is nonexistent and therefore does not weigh in favor of granting the Board's request for interim suspension of Judge DiClaudio.

"It cannot be *presumed* that a violation of any other provision, constitutional, canonical or criminal automatically lowers public acceptance of the authority of the judicial office." *In re Jennings*, 192 A.3d 372, 378 (Pa. Ct. Jud. Disc. 2018)(internal citations omitted).

Here, there have been no complainants by criminal defendants or litigants concerning Judge DiClaudio's ability to remain an active member of the judiciary. Judge DiClaudio in his time on the bench has resolved tens of thousands of cases and remains committed to seeing all of his cases through, an important part of which, is filing judicial opinions for the appellate court to review.

Further, none of the allegations involve any kind of mistrust, theft, or any crimen falsi allegation that would contribute to the public's lack of confidence in the judiciary. Instead, the allegation here is that Judge DiClaudio told Judge Shaffer "I've heard you might do the right thing anyway."

As such, Judge DiClaudio submits there is no harm or possible harm to the public confidence in the judiciary, and respectfully requests this Honorable Court should the Board's Petition.

E. Judge DiClaudio's outstanding reputation as a jurist in the Commonwealth of Pennsylvania and the weak-in-nature allegation against him does not weigh in favor of granting the Board's request for interim suspension of Judge DiClaudio.

The assertion that Judge DiClaudio made statements that would influence another Judge's sentencing decision is patently untrue. The allegations in the Complaint filed against Judge DiClaudio accuse him of violating Judicial Canon 1, Rules 1.1 and 1.2; Canon 2, Rules 2.10 and 2.4; and Article V, Sections 17(b) and 18(d)(1) of the Constitution of the Commonwealth of

Pennsylvania. Importantly, Comment 5 to rule 1.2 says, "Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."

First, the allegations against Judge DiClaudio are nonsensical. Judge DiClaudio did not seek out Judge Shaffer, rather Judge Shaffer came to Judge DiClaudio's courtroom unprompted and uninvited. Then, after a conversation in chambers, Judge DiClaudio tells Judge Shaffer that he told a random person that he was a good judge and threw away the card with the person's name on it. If Judge DiClaudio were trying to influence a case or participate in any kind of impropriety, he would have sought out Judge Shaffer by going to his courtroom, sending him an e-mail or text message. Judge DiClaudio would have asked Judge Shaffer for a certain result, yet nothing in the Board's allegations against Judge DiClaudio supports this. The Board's logic does not make any rational sense.

Judge DiClaudio is up creek without a paddle. He is being accused by the Board of judicial misconduct, without any real and convincing evidence against him, and that alleged misconduct is the basis for the Board's request to have him suspended without pay. The Board, prior to a formal hearing, and prior to even providing Judge DiClaudio discovery, has determined that interim suspension of a well-respected jurist is the appropriate remedy for the case at bar. Notably, Judge DiClaudio has requested discovery multiple times, and has yet to be provided with anything. How can Judge DiClaudio be given a fair chance to defend himself without access to the evidence of the allegations against him? This failure to provide Judge DiClaudio with discovery, then demand that he be suspended without pay is a blatant violation of his right to due process. Judge DiClaudio

is an innocent man jailed by the actions of the Board who have made it crystal clear of their agenda to ruin him and his reputation if this Honorable Court grants the Board's Petition.

A criminal defendant is entitled to more due process than what Judge DiClaudio has been afforded. An individual charged with a crime at least gets to hear the evidence against him at a preliminary hearing and be afforded a Criminal Complaint and Affidavit of Probable Cause outlining the allegations against him or her. Here, Judge DiClaudio was served with a complaint that outlines very serious allegations of judicial misconduct, and before he even had an opportunity to respond to the complaint or be provided with any additional information, the Board filed the present petition. Put differently, the Board knows the allegations against Judge DiClaudio are weak, and this Petition is an attempt to bootstrap their case against a well-respected Judge in the Philadelphia community.

Despite not being charged with a criminal offense, the Board found it necessary to file a Petition to take away his livelihood, despite Judge DiClaudio still hard at work each and every day writing opinions for appellate cases that were previously before him.

Lastly, the Board in their Brief in Support of Interim Suspension allege that Judge Anders' limiting directive to Judge DiClaudio can be rescinded at any time prior to the final adjudication of the Complaint. Yet, the Board, despite indicating Judge Anders would be a witness for them, has provided not even a scintilla of evidence to indicate that Judge Anders would rescind this directive.

As such, Judge DiClaudio submits that when viewing the totality of the circumstances, the Board's Petition should be denied.

WHEREFORE, for the foregoing reasons, this Honorable Court should enter an Order denying the Board's Petition for Petition for Relief of Interim Suspension Without Pay.

Respectfully submitted,

**VAN DER VEEN, HARTSHORN,
LEVIN & LINDHEIM**

Date: October 1, 2025

BY: */s/ Michael T. van der Veen*
Michael T. van der Veen, Esquire
Attorney for Respondent

VERIFICATION

I, Michael T. van der Veen, Esquire, verify that the statements made in the foregoing motion are true and correct. I understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,

**VAN DER VEEN, HARTSHORN,
LEVIN & LINDHEIM**

Date: October 1, 2025

BY: */s/ Michael T. van der Veen*
Michael T. van der Veen, Esquire
Attorney for Respondent

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ATTORNEY FOR RESPONDENT

IN RE:
JUDGE SCOTT DICLAUDIO
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:
: **NO. 1 JD 2025**
: **NO. 2 JD 2025**
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CERTIFICATE OF COMPLIANCE

I, Michael T. van der Veen, Esquire, certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

**VAN DER VEEN, HARTSHORN,
LEVIN & LINDHEIM**

Date: October 1, 2025

BY: */s/ Michael T. van der Veen*
Michael T. van der Veen, Esquire
Attorney for Respondent

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CERTIFICATE OF SERVICE

I, Michael T. van der Veen, hereby certify a copy of this Brief in Opposition was sent electronically, by email, and/or by USPS first class mail upon the following:

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Respectfully submitted,

**VAN DER VEEN, HARTSHORN,
LEVIN & LINDHEIM**

Date: October 1, 2025

BY: */s/ Michael T. van der Veen*
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Attorney for Respondent