

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

David W. Tidd :
Former Magisterial District Judge :
Magisterial District 03-2-04 : 3 JD 2016
Third Judicial District :
Northampton County :

RECEIVED AND FILED
COURT OF
JUDICIAL DISCIPLINE
OF PENNSYLVANIA

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**REPLY OF THE JUDICIAL CONDUCT BOARD
TO OMNIBUS MOTION OF THE RESPONDENT**

AND NOW, this 26th day of September, 2016, comes the Judicial Conduct Board of Pennsylvania by the undersigned counsel and files this Reply of the Judicial Conduct Board to the Omnibus Motion of the Respondent, David W. Tidd, by and through his counsel, Samuel C. Stretton.

I. Reply to Request for a Recusal of the Conference Judge

1. Admitted in part and denied in part. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested at a hearing. It is admitted that by its August 29, 2016 Order, the Court of Judicial Discipline appointed the Honorable David J. Barton as Conference Judge in this case. It is also admitted that through his counsel, Judge Tidd claims that he sought ethics advice and opinions directly from Judge Barton. To date, Judge Tidd has not presented any facts or evidence in support of his claim.

Board counsel is aware of only two inquiries presented to the Special Courts Judges Ethics and Professionalism Committee to which the Committee responded in writing. First, attached to Judge Tidd's March 17, 2016 response letter to the Board's February 19, 2016 Notice of Full Investigation is a copy of a September 25, 2011

Advisory Opinion authored by a member of the Ethics and Professionalism Committee other than Judge Barton. Judge Tidd did not provide the Board with a copy of his September 2, 2011 inquiry letter to the Committee. There is no indication that Judge Barton, a long serving member of the Ethics and Professionalism Committee, participated in the drafting of that advisory opinion.

Second, at his June 14, 2016 Board deposition, Judge Tidd provided Board counsel with a copy of an August 19, 2014 Memo from Magisterial District Judge Lorinda Hinch, another member of the Ethics and Professionalism Committee, which was delivered to Judge Tidd by facsimile. Judge Tidd did not provide the Board with a copy of his 2014 inquiry which prompted Judge Hinch to communicate with him. Judge Hinch wrote on the facsimile cover page, "I think this is pretty close to what you were asking. Feel free to give me a call should you have any further questions." Attached to the facsimile cover page is a copy of a June 26, 2014 advisory opinion authored by Judge Barton, acting in his capacity as a member of the Ethics and Professionalism Committee, in response to a June 3, 2014 inquiry of an individual judge other than Judge Tidd. The name of the addressee is redacted from the advisory opinion.

When viewed together, the facsimile and attached advisory opinion demonstrate only that Judge Hinch communicated with Judge Tidd about his 2014 inquiry and sent him a copy of an advisory opinion prepared by Judge Barton in response to another magisterial district judge who posed a question to him on a similar issue. The documents do not prove that Judge Tidd communicated directly with Judge Barton, nor do they demonstrate that Judge Barton was even aware of Judge Tidd's inquiry.

2. Denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested at a hearing. To the extent that any response is required, Judge Tidd asserts that he frequently and directly communicated with Judge Barton, in his capacity as a member of the Ethics and Professionalism Committee, to obtain advice on judicial ethics issues. Board counsel requests strict proof of Judge Tidd's allegations that led to his request that Judge Barton recuse from this case. In the absence of proof that Judge Barton communicated directly with Judge Tidd about ethical inquiries and/or provided him with advice on issues related to the conduct charged within the Board Complaint, there is no known basis for Judge Barton to recuse himself from his appointed role as Conference Judge.

WHEREFORE, it is respectfully requested that Judge Tidd's Request for a Recusal of the Conference Judge be denied.

II. Reply to Motion to Dismiss All Charges Based on Violations of Pennsylvania Wire Tap [sic] Statutes

3. Admitted in part and denied in part. It is denied that the Judicial Conduct Board does possess tapes of several years of activities in Judge Tidd's office. The Board does possess multiple audio and video recordings of activities in Judge Tidd's office which occurred on various, specific dates during 2014, 2015 and 2016. The remainder of paragraph 3 of Respondent's Omnibus Motion consists of a discovery request and as such will be addressed as required by the Court's rules pertaining to discovery.

4. No response required. By way of further response, paragraph 4 of Respondent's Omnibus Motion consists of a discovery request and as such will be addressed as required by the Court's rules pertaining to discovery.

5. Denied as improper conclusion of law and argument to which no response is required. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested. By way of further response, and separately addressing the multiple conclusions of law contained in paragraph 5 of Respondent's Omnibus Motion, the Board provides the following.

a. It is denied that the audio recordings are in violation of the Pennsylvania Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S.A. §§ 5701, *et. seq.* (hereinafter referred to as the Wiretap Act), and should therefore be stricken.

The Wiretap Act does not apply to the audio recordings in question because the audio recordings do not meet the definition of oral communication governed by the Wiretap Act. The Wiretap Act criminalizes the interception, disclosure or use of the contents of an intercepted oral communication. The term oral communication is defined by the Wiretap Act as

Any oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation.

18 Pa.C.S.A. § 5702.

The Pennsylvania Supreme Court has held that in order to have an expectation of non-interception under the Wiretap Act, an individual must have

a reasonable expectation of privacy. *Agnew v. Dupler*, 717 A.2d 519, 523 (1998). In order to find the reasonable expectation of privacy, the reviewing court must first determine if the individual exhibited an expectation of privacy and second, determine if society accepts that expectation as reasonable. In *Agnew v. Dupler*, conversations between three police officers took place in their squadroom. The Pennsylvania Supreme Court held that the statements made in the squadroom, which were heard by the Police Chief through an open telephone line, did not meet the definition of "oral communication" under the Wiretap Act because there was "no reasonable expectation of non-interception" since there was no reasonable expectation of privacy in the conversations.

Applying the reasoning from the *Agnew* decision to the audio recordings from Judge Tidd's office, it is clear that Judge Tidd did not possess an expectation that his words were not subject to interception because he did not exhibit an expectation of privacy when he spoke in the presence of the public and staff in the public area of his court facility, where his words could be heard by anyone in the office as well as persons outside of the office who were connected to the office by telephone. Examples of Judge Tidd's failure to exhibit an expectation of privacy are set forth in the Board Complaint at paragraphs 22 through 36, 46 to 54 and 56 to 59. Furthermore, any expectation of privacy by Judge Tidd would not be reasonable by an objective standard since it is clear that people present in the office and even speaking with the office by telephone could hear communications taking place there. Within the Board Complaint at paragraphs 22 through 36 it is demonstrated

that members of the public, police officers and staff were able to hear Judge Tidd's words since they were spoken in the public area of the court facility.

Assuming, *arguendo*, that the audio recordings in question meet the definition of oral communication within the Wiretap Act, they fall within an exception to the Wiretap Act which states that it is not unlawful and no prior court approval is required for an interception of an oral communication where all parties to the communication have given prior consent to the interception. 18 Pa.C.S.A. § 5704(4).

Consent is not defined in the Wiretap Act. However, consent within the meaning of the Wiretap Act has been found where individuals leave messages on telephone answering machines for the reason that:

any reasonably intelligent person leaving a message on an ordinary answering machine would have to be aware of, and *consented by conduct* to, the recording of the message on the answering machine tape . . . and *by the very act of leaving a message, expressly consent by conduct to the taping of that message.*

Comm. v. DeMarco, 578 A.2d. 942, 948 (1990) (emphasis in original).

In *Comm. v. Jung*, 531 A.2d. 498 (1987), the Superior Court explained that an individual does not consent to the recording of his words within the meaning of the Wiretap Act where the recording is made surreptitiously. Taken together, *DeMarco* and *Jung* show that consent within the meaning of the Wiretap Act hinges on knowledge that one's words are being intercepted.

The audio recordings from Judge Tidd's office, when viewed in light of the reasoning from *DeMarco* and *Jung*, fall within the exception to the Wiretap Act and are not prohibited interceptions for the following reasons. Judge Tidd

participated in the request for, and placement of, the recording device. He has demonstrated knowledge of the existence of the recording device in depositions before the Board. Paragraph 58 of the Board Complaint describes one such instance where Judge Tidd demonstrated his knowledge of the audio recording device. Multiple signs were displayed in plain view of Judge Tidd and any person in his office alerting people to the presence of the audio recording device. His knowledge of the recording device combined with his conduct of making the statement within close proximity to the device shows that he consented by his conduct to the interception.

b. It is neither admitted nor denied that Judge Tidd gave anyone consent to listen to the audio recordings. The Board is not in possession of any evidence thereof and strict proof is required should this issue be deemed relevant by the Court. To the extent that any response is required and by way of further response, Judge Tidd's permission or consent was not required for anyone to listen to or observe the recordings made in the public part of his judicial facility on equipment bought by the Administrative Office of Pennsylvania Courts for use in a court facility in Northampton County and possess by Northampton County.

c. It is admitted that the Board did not ask Judge Tidd to provide permission or consent to give the audio recordings to anyone or to listen to them. It is neither admitted nor denied that any other entity or person asked Judge Tidd to provide permission to give the audio recordings to anyone. The Board is not in possession of any evidence thereof and strict proof is required should this issue be deemed relevant by the Court. Moreover, Judge Tidd's

permission or consent was not required for anyone to listen to or observe the recordings made in the public part of his judicial facility on equipment bought by the Administrative Office of Pennsylvania Courts for use in a court facility in Northampton County and possessed by Northampton County.

d. It is denied as an improper conclusion of law and argument that the audio recordings should not be used as evidence in a court proceeding because they violate the Wiretap Act and were not properly obtained.

By way of further response, should the Court find that the audio recordings do fall within the meaning of the Wiretap Act's definition of oral communication and the audio recordings do not fall within an exception to the prohibition against interception because Judge Tidd consented to them, the Wiretap Act does not provide an avenue by which Judge Tidd may seek exclusion of the audio recordings as he is not an aggrieved person as defined by the applicable court decisions.

Section 5721.1 (b) of the Wiretap Act provides that an aggrieved person who was a party to an interception may move to exclude the contents of any oral communication from a court proceeding. The *DeMarco* opinion, addressed the question of who is an "aggrieved person" within the meaning of the Wiretap Act. Recognizing that DeMarco was the individual who installed and operated the answering machine, the Court stated:

Any construction of the term "aggrieved person" to include the individual responsible for the invasion of privacy involved in an unlawful interception must be rejected as absurd and unreasonable and as being contrary to what "the context clearly indicates otherwise." . . . The legislature could not have intended that such evidence be suppressible at the defendant's

request. . . . The absurdity of such a construction is manifest.

Id. at 948-49.

DeMarco makes it clear that Judge Tidd, who participated in the request for, and placement of, the recording device, is not an "aggrieved person" within the purpose, meaning and context of the Wiretap Act and cannot, therefore, ask this Court to disallow the use of the audio recordings as evidence against him.

6. Denied as requiring no response. To the extent that a response may be required, Judge Tidd has requested the complete set of all recordings and transcripts therefrom in his Motion for Discovery. His request may be properly addressed within the confines of that motion.

WHEREFORE, it is respectfully requested that Judge Tidd's Motion to Dismiss all Charges Based on Violations of Pennsylvania Wire Tap [sic] Statutes be denied.

III. Reply to Motion to Dismiss Based on Statute of Limitations and Laches

7. Denied as stated. The dates of the alleged misconduct vary from 2011-2016 and therefore fall within a five-year period preceding and including the August 26, 2016 filing date of the Board Complaint.

8. Admitted.

9. Denied as stated. In the Board Complaint, Section A, Retaliation, Paragraph No. 8, the first statement of fact describes a discussion at a 2011 meeting that is relevant to Judge Tidd's 2015 and 2016 retaliatory conduct. On August 11, 2011, former President Judge McFadden met with Judge Tidd about an anonymous

complaint pertaining to his judicial conduct. In response to Judge Tidd's statement that he suspected his court clerks had filed the anonymous complaint, former President Judge McFadden warned him not to retaliate against the clerks. These facts pertain to a disciplinary warning by President Judge McFadden and demonstrate that Judge Tidd knew that retaliatory conduct was impermissible. Judge Tidd is charged with retaliatory conduct in violation of Canon 2, Rule 2.16(B) of the Rules Governing Standards of Conduct of Magisterial District Judges for conduct committed in 2015 and 2016, not 2011.

10. Denied as stated. Paragraph No. 28 of the Board Complaint at Section B, Improper Demeanor, again describes the August 11, 2011 meeting, referenced in Paragraph No. 9 above, and former President Judge McFadden's warning to Judge Tidd that he must not retaliate against his clerks. Paragraph No. 29 states that "Beginning in 2011 and on at least three occasions," the court clerks at Judge Tidd's district court complained to court administrators about his conduct. There is no mention of the years 2012 and 2014 in Paragraph Nos. 28 and 29, although Section B does enumerate instances of improper demeanor extending from 2011 through 2016. These facts demonstrate that prior to the August 18, 2011 filing of the Confidential Request for Investigation at 2014-510, the court clerks sought relief at the county level.

11. Denied as stated. Paragraph No. 60 of Section C, *Ex Parte* Communications, generally describes Judge Tidd's *ex parte* communications to have occurred between 2011 and 2016. Specific examples of Judge Tidd's 2011, 2012, 2014 and 2015 *ex parte* communications are set forth at Paragraph Nos. 71 through 82. Judge Tidd's *ex parte* communications are repetitive in nature and indicative of

a pattern of misconduct which is subject to consideration by this Court. Rule 15 of the Judicial Conduct Board Rules of Procedure provides that the Board may consider alleged misconduct which occurred within the four-year period preceding the filing of the complaint with the Board. J.C.B.R.P. No. 15. An exception to Rule 15 provides that alleged instances of a recurring misconduct which took place prior to the four-year limitations period may also be considered if the last instance of the conduct falls within the four-year period. *Id.* All of Judge Tidd's *ex parte* communications are subject to consideration because the last instance of such misconduct occurred within the four-year limitations period.

12. Denied as stated. It is denied that the Board Complaint contains allegations that Judge Tidd engaged in misconduct in 2007. Paragraph No. 86 of Section D, Special Consideration, describes the conduct of Police Officers in Northampton County who issued parking citations to Attorney Burke between 2007 and 2015. The officers then filed those parking citations in Judge Tidd's district court. The 2007 parking citation is later listed in Paragraph No. 96 with a parenthetical explanation that Judge Tidd decided the citation in April 2013, long after he assumed the bench in January 2010. It is not alleged that Judge Tidd provided special consideration to Attorney Burke in 2007, the year that the police issued the citation. It is alleged that Judge Tidd provided special consideration to Attorney Burke in 2013, the year he decided the citation.

13. Denied as stated. It is denied that any of the alleged conduct set forth in Section D, Special Consideration occurred in 2010 or 2011. Paragraph No. 97 of Section D, Special Consideration, sets forth the dates January 2010 through November 30, 2014. Those dates indicate the time period when enumerated parking

tickets were issued to Attorney Burke, filed in Judge Tidd's district court and decided by Judge Tidd. Judicial misconduct during that period of time is reviewable under the Old Rules Governing Standards of Conduct of Magisterial District Judges, effective through November 30, 2014. In January 2010, Judge Tidd assumed the bench. The 2007 parking citation issued to Attorney Burke was already filed in Judge Tidd's district court when he first became judge; however, he did not adjudicate the matter until April 2013. The five other parking citations were issued between 2012 and 2014 and adjudicated by Judge Tidd prior to November 30, 2014. Judge Tidd did not decide any of the citations in 2010 or 2011.

14. Denied as stated. It is denied that Section E, Failure to Recuse, at page 29 contains any reference to conduct specifically occurring in 2011 and 2013. This section pertains to Judge Tidd's conduct of presiding over cases in which Attorney Burke represented litigants. The alleged misconduct in this section is different from the conduct set forth in Section D, Special Consideration, which pertains to Judge Tidd's *ex parte* communications with and the preferential treatment he provided to Attorney Burke who routinely failed to pay fines and costs on parking citations.

15. Admitted. It is admitted that Section F, Failure to Accord Full Right to Be Heard, sets forth the factual basis for misconduct which occurred between 2011 and 2016 as follows:

Year of misconduct	Paragraph Nos.
2011	134-138.
2012	139-145.
2014	146-148
2015	149-150

Judge Tidd's repetitive acts of failing to accord litigants their full right to be heard, beginning in 2011 and extending through 2016, comprise a pattern of misconduct which is subject to consideration by this Court. Rule 15 of the Judicial Conduct Board Rules of Procedure provides that the Board may consider alleged misconduct which occurred within the four-year period preceding the filing of the complaint with the Board. J.C.B.R.P. No. 15. An exception to Rule 15 provides that alleged instances of a recurring misconduct which took place prior to the four-year limitations period may also be considered if the last instance of the conduct falls within the four-year period. *Id.* All of Judge Tidd's alleged acts of failing to accord litigants their full right to be heard are subject to consideration because the last instance of such misconduct occurred within the four-year limitations period.

16. Admitted in part and denied in part. It is admitted that Section G contains allegations of misconduct in 2010 and 2011 that relate back to 2006. It is denied that Section G, Conflicts of Interest and Prioritization Business of Court, lists an allegation of misconduct that occurred in 2006. Paragraph No. 153 provides the date range of 2006 through 2011 when Judge Tidd and Attorney John Everett Cook were law partners. Paragraph No. 154 states that on February 23, 2006, Judge Tidd, acting in his role as attorney, filed a Bankruptcy Petition on behalf of his then clients, Jose and Maria Nieves. Those two paragraphs present background facts relevant to Judge Tidd's October 1, 2010 conduct of entering judgment for the plaintiff and against Ms. Nieves in a civil matter, *Society Hill at Saucon Valley v. Nieves*, Docket No. MJ-03204CV-0000134-10, while his firm continued to represent the Nieves in the bankruptcy matter. The background facts at Paragraph Nos. 153 and 154 are also

relevant to Judge Tidd's 2011 conduct of agreeing to represent Ms. Nieves in the enforcement action in *Society Hill at Saucon Valley v. Nieves*, even though he had ruled against Ms. Nieves on October 1, 2010 in the underlying civil matter. Judge Tidd's 2010 and 2011 conduct in the Nieves matter is part of an ongoing pattern of misconduct arising from conflicts of interest which extended through March, 2015.

17. Admitted. It is admitted that Section G, Conflicts of Interest and Prioritization of Business of Court, contains references to Judge Tidd's 2011 and 2012 conduct at pages 44 and 45, his 2013 conduct on page 46 and his 2012 conduct on page 47. Judge Tidd's 2011, 2012 and 2013 conduct in the cited cases is part of an ongoing pattern of misconduct arising from conflicts of interest which extended through March, 2015 and is subject to consideration by this Court. Rule 15 of the Judicial Conduct Board Rules of Procedure provides that the Board may consider alleged misconduct which occurred within the four-year period preceding the filing of the complaint with the Board. J.C.B.R.P. No. 15. An exception to Rule 15 provides that alleged instances of a recurring misconduct which took place prior to the four-year limitations period may also be considered if the last instance of the conduct falls within the four-year period. *Id.* All of Judge Tidd's alleged misconduct arising from conflicts of interest are subject to consideration because the last instance of such misconduct occurred within the four-year limitations period.

18. Admitted. It is admitted that Section G, Conflicts of Interest and Prioritization of Business of Court, contains references to 2011, 2012, 2013 and 2014 conduct on pages 48-51. Judge Tidd's 2011, 2012, 2013 and 2014 conduct in the cited cases is part of an ongoing pattern of misconduct arising from conflicts of interest which extended through March, 2015 and is subject to consideration by this

Court. Rule 15 of the Judicial Conduct Board Rules of Procedure provides that the Board may consider alleged misconduct which occurred within the four-year period preceding the filing of the complaint with the Board. J.C.B.R.P. No. 15. An exception to Rule 15 provides that alleged instances of a recurring misconduct which took place prior to the four-year limitations period may also be considered if the last instance of the conduct falls within the four-year period. *Id.* All of Judge Tidd's alleged misconduct arising from conflicts of interest are subject to consideration because the last instance of such misconduct occurred within the four-year limitations period.

19. Admitted in part and denied in part. It is admitted that Section H, Failure to Wear Judicial Robes, alleges that Judge Tidd failed to wear his judicial robes when conducting hearings at the counter of his district court from 2011 to February 2016. It is denied that specific instances of 2011 and 2012 misconduct pertaining to the wearing of judicial robes are listed on page 53. Paragraph No. 245 on page 53 states that beginning in 2011, former President Judge McFadden and Northampton County Court Administrators received complaints that Judge Tidd failed to wear his judicial robes while conducting hearings at the counter. Paragraph Nos. 246-247 on pages 53-54 allege that during meetings held in 2011 and 2012, former President Judge McFadden directed Judge Tidd to conduct hearings in the courtroom and to wear his judicial robes while he presided over the hearings.

20. Admitted.

21. Denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested at a hearing. By way of further response, it is denied that this Court

dismissed *In re DeLeon*, 902 A.2d 1027 (Pa.Ct.Jud.Disc. 2006) on the basis of a laches defense. Laches is an equitable affirmative defense. The dismissal in *DeLeon* was based on the Board's failure to comply with its own Rules of Procedure. When this Court decided *DeLeon* in 2006, Board Rule of Procedure No. 31 governed the disposition of a complaint filed with the Board. J.C.B.R.P. No. 31 (rescinded Feb. 5, 2007). Rule 31 provided that the Board must act within 180 days of the respondent judge's written response letter to the Notice of Full Investigation to either dismiss the complaint, issue a letter of counsel to the judge or authorize the filing of formal charges in this Court. J.C.B.R.P. No. 31(A). An exception to the rule provided that the Board could continue its investigation beyond the 180-day period if it had a good faith belief that further investigation was necessary or upon discovery of additional allegations which required further investigation. J.C.B.R.P. No. 31(C). In *DeLeon*, the Court dismissed the case based on the presumed prejudice attributable to the Board's delay in filing formal charges and the actual prejudice which arose from the deaths of fact and character witnesses. *In re DeLeon*, 902 A.2d at 1032. This Court did not examine the facts under a laches defense, but only under Rule 31 which the Board rescinded on February 5, 2007.

22. Denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested at a hearing. By way of further response, it is denied that the Board delayed its investigation or the filing of the August 26, 2016 Board Complaint against Judge Tidd. On August 18, 2014, the Board received the first in a series of Confidential Requests for Investigation pertaining to Judge Tidd's conduct. Prior to

receipt of the first anonymous complaint, the Board had no knowledge of any of the alleged misconduct set forth in the Board Complaint. The subsequent requests for investigation were received by the Board between April 14, 2015 and June 11, 2015. Considering the sheer number and complexity of the allegations against Judge Tidd, the Board acted within a reasonable amount of time.

It is denied that the Board had knowledge of Judge Tidd's alleged misconduct prior to receipt of the Confidential Request for Investigation at 2014-510. At no time prior to the Board's receipt of 2014-510 did the President Judges of the Court of Common Pleas of Northampton County communicate with the Board or its counsel about the conduct alleged in the Board Complaint.

It is denied that Judge Tidd has been prejudiced in any way by the length of time that elapsed between the Board's receipt of the requests for investigation of his conduct, starting in August 2014, and the filing of the August 26, 2016 Board Complaint and strict proof to the contrary is demanded.

23. Denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested at a hearing. By way of further response, it is denied that Judge Tidd is prejudiced by a lack of access to district court files following his resignation from the bench. Judge Tidd received the Board's Notice of Full Investigation on February 19, 2016. He did not resign from his position as Magisterial District Judge until July 25, 2016, greater than five months after he received the Notice. During that five-month period, Judge Tidd had every opportunity to obtain the court files that pertained to the charged conduct. First, Judge Tidd asked Deputy Court

Administrator Debra French to obtain the court files for his review. Ms. French declined to gather the files for him but did advise him that his court clerks could assist him. In his March 17, 2016 response to the Notice of Full Investigation, Judge Tidd claimed that he could not fully respond to specific questions because he did not have access to the files which were in his own district court. He requested that the Board provide the files even though charges had not been filed and discovery was not imminent.

At his April 19, 2016 Board deposition, Judge Tidd asserted that he did not think he was permitted to ask his court clerks to pull the court files that he needed to fully respond to the Notice of Full Investigation and to the questions posed at the deposition. Board counsel assured Judge Tidd that it was proper and permissible for him to access the files himself at his district court or to ask his court clerks to gather the documents necessary for his review. At his June 14, 2016 Board deposition, Judge Tidd admitted that he still had not obtained the files and relied on the Board to produce copies of the pertinent bankruptcy documents for his review prior to answering the deposition questions.

Judge Tidd failed to conduct a review of case files that were housed at his own district court while he continued to serve as judge. He chose to wait for formal discovery. The Board has provided exculpatory discovery to Judge Tidd's counsel and will provide the remainder of discovery within 60 days of the service of the Board Complaint as required under this Court's Rules of Procedure. See C.J.D.R.P. No. 401(A). Judge Tidd's own failure to dedicate the time and effort to refresh his recollection about the facts of the cases relevant to the charged conduct cannot now be claimed to have prejudiced his ability to mount a defense. It is denied that many

witnesses would not be available for trial in this matter. Judge Tidd failed to name any witnesses who would be unavailable for trial and strict proof of this claim is requested at a hearing.

24. Denied as stated. All of the Confidential Requests for Investigation relevant to the charges in the Board Complaint were received by the Board in 2014 and 2015. The conduct charged in the Board Complaint occurred in 2011, 2012, 2013, 2014, 2015 and 2016. Although some of the conduct occurred 3, 4 and 5 years prior to the filing of the Board Complaint, none of the conduct occurred 6 or 7 years ago. Judge Tidd's alleged misconduct is repetitive in nature and indicative of a pattern of misconduct which is subject to consideration by this Court. Rule 15 of the Judicial Conduct Board Rules of Procedure provides that the Board may consider alleged misconduct which occurred within the four-year period preceding the filing of the complaint with the Board. J.C.B.R.P. No. 15. An exception to Rule 15 provides that alleged instances of a recurring misconduct which took place prior to the four-year limitations period may also be considered if the last instance of the conduct falls within the four-year period. *Id.* All of Judge Tidd's alleged misconduct which predated a relevant four-year limitations period is subject to consideration because the last instance of such misconduct occurred within the four-year time period.

The Board did not delay its investigation or the filing of charges against Judge Tidd, but did so timely as set forth in Paragraph 22. It was not until August 18, 2014 that the Board first became aware of allegations of misconduct. The number of requests for investigation does not produce prejudice. Judge Tidd received notice of all the conduct alleged in the requests for investigation and had an adequate opportunity to respond as required under the Constitution of the Commonwealth of

Pennsylvania at Article V, § 18(a)(8). The level of difficulty to defend against the numerous charges of misconduct is not a basis for a claim of prejudice.

25. Denied as stated. It is denied that Judge Tidd has been prejudiced and denied that “[I]f complaints were brought timely, [Judge Tidd] could have resolved all issues and/or timely changed his conduct.” Judge Tidd has not been prejudiced by delay at any stage. In August 2011 and February 2012, President Judge McFadden and Northampton County Court Administrators worked with Judge Tidd on many of the same issues that are now charged in the Board Complaint. Judge Tidd participated in meetings and received specific directives to change his demeanor and the manner in which he conducted the business of court. Judge Tidd had ample opportunity to “reform” his conduct. His persistent disregard for the directives and warnings he received four to five years ago at the local level caused the complainants to reach out to the Judicial Conduct Board for relief in 2014 and 2015. The Board filed the Complaint in a timely fashion. There was no undue delay and certainly no delay of five to eight years.

26. Denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested at a hearing. By way of further response, laches is an equitable defense. In order for laches to apply, a respondent must prove the following elements: 1. A lack of due diligence by the complaining party who delayed the filing of the action; and 2. The respondent was prejudiced by the delay. *In re Lokuta*, 964 A.2d 988, 1130 (Pa.Ct.Jud.Disc. 2008) (citing *Weinberg v. State Board of Examiners*, 501 A.2d 239 (Pa. 1985)). Examples of prejudice which support a claim of laches include the

death of witnesses, the unavailability of witnesses, the loss or destruction of records and a change in position of the respondent. *Lokuta*, 964 A.2d at 1130. Additionally, in Pennsylvania, a respondent who brings a defense of laches against the Commonwealth is required to make a "stronger showing" than when asserting the defense against an individual party. *Weinberg*, 501 A.2d at 243.

27. Denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested at a hearing. By way of further response, there is no extreme or extraordinary delay. Upon receipt of the several requests for investigation beginning in August 2014, the Board exercised due diligence in investigating the multiple allegations of misconduct and timely filed the Board Complaint on August 26, 2016.

28. Denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested at a hearing. By way of further response, it is denied that Judge Tidd has been prejudiced. See response at Paragraph No. 25 pertaining to Judge Tidd's prior opportunities to resolve issues and change his conduct. See response at Paragraph No. 23 regarding his access to files. There is no proof that "witnesses might no longer be available or able to be found or that recollections will be dim." Such claims are merely speculative and fail to meet the standard for proof of prejudice. Judge Tidd does not name any witnesses who have died or are unavailable. He does not cite specific records which are lost or destroyed. Finally, there is no claim that Judge Tidd's position has changed other than he resigned as

judge on July 25, 2016, five months after his receipt of the Notice of Full Investigation, during which time he had full access to all pertinent court records. Based on Judge Tidd's failure to prove a lack of diligence by the Board and his failure to provide evidence of any prejudice that he has suffered, let alone meet the higher standard of a "stronger showing" required when bringing a defense of laches against the Commonwealth, Judge Tidd's motion to dismiss based on laches should be denied.

29. Denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested at a hearing. To the extent that any response is required, it is denied that the Board's Rules contain a statute of limitations for the filing of a Board Complaint. Rule 15 of the Board's Rules of Procedure sets forth a four-year limitations period and provides:

Except where the Board determines otherwise for good cause, the Board shall not consider complaints arising from acts or omissions occurring more than four years prior to the date of the complaint, provided, however, that when the last episode of an alleged pattern of recurring judicial misconduct arises within the four-year period, the Board may consider all prior acts or omissions related to such an alleged pattern.

J.C.B.R.P. No. 15. The Rule contains two exceptions: good cause and a pattern of recurring judicial misconduct. Even without a determination of good cause, when alleged instances of a pattern of misconduct are spread over an extended period of time, the Board may look back and consider misconduct that precedes the four-year limitations period but only if the last act of the alleged pattern occurred within the four year limitations period. In this case, all of the alleged misconduct falls either

within the four-year period or else is part of a pattern with the last instance occurring within the relevant four-year period. Because the elements are met for the exception of a pattern of misconduct, there was no need for the Board to make a determination about good cause. Therefore, Judge Tidd's allegation that Board counsel violated Rule 15 is meritless.

WHEREFORE, it is respectfully requested that Judge Tidd's Motion to Dismiss Based on Statute of Limitations and Laches be denied.

IV. Reply to Motion to Dismiss Based on Setting Up All Persons Who Worked for David Tidd Against Him

30. Denied and strict proof thereof is demanded at a hearing. By way of further response, it is denied that the court clerks who worked in Judge Tidd's district court were ordered to disregard his directives, report only to the President Judge, the Judicial Conduct Board and its investigators. Such allegations are mere speculation. Beginning in 2011 and continuing through 2016, the court clerks who worked at Judge Tidd's office were subjected to his improper demeanor and witnessed his judicial misconduct on an ongoing basis. The court clerks first sought relief and direction at the county level from the President Judge and court administrators. The court clerks were reluctant to file formal complaints against Judge Tidd because they feared for their jobs and did not want to be subjected to retaliatory conduct. As a result, in 2011-2012, Deputy Court Administrator French suggested that the clerks keep a log of the issues that they believed were problematic in Judge Tidd's district court. In August 2014, the Board received an anonymous complaint which provided details of the alleged misconduct. Board counsel and its investigators never advised the court clerks to disregard Judge Tidd's directives, but did encourage them to

continue to report their concerns to President Judge Baratta, to court administrators and to the Board. Advising the clerks to communicate with the Board about any ongoing issues of misconduct, particularly retaliatory misconduct, was proper.

31. Denied and strict proof thereof is demanded at a hearing. By way of further response, it is denied that employees would not respond to Judge Tidd. It is denied that when he complained he was told that employees did not work for him. By way of further explanation, the court clerks assigned to Judge Tidd's district court are employees of Northampton County. In 2016, the court clerks communicated with Deputy Court Administrator Debra French about Judge Tidd's change in policy regarding the recall and reissuance of warrants to particular constables. Deputy Court Administrator French did advise the court clerks that they must comply with Judge Tidd's directives. Based on heightened discord between Judge Tidd and his court clerks following his receipt of the February 19, 2016 Notice of Full Investigation, the court clerks began communicating with Judge Tidd by memo. The Board has no knowledge that anyone told Judge Tidd that his court clerks did not work for him. Strict proof is requested at a hearing.

32. Denied and strict proof thereof is demanded at a hearing. By way of further response, it is denied that the clerks assigned to Judge Tidd's district court were disloyal to him from the time he was elected to the position of magisterial district judge. The court clerks were faced with an untenable working environment. Beginning in 2011, greater than one year after Judge Tidd assumed the bench, the court clerks properly voiced their concerns about his demeanor and various instances of judicial misconduct to former President Judge McFadden and court administrators. It is denied that two to four court clerks were "secretly drafted" by former President

Judge McFadden, President Judge Baratta, any of the court administrators, past or present, or by Board counsel or its investigators. Deputy Court Administrator French advised the court clerks to keep a log of Judge Tidd's conduct so that they would have documentation to support their claims if they decided to move forward with a formal complaint at a future date. Board counsel and its investigators requested that the court clerks memorialize instances of misconduct by Judge Tidd during the ongoing investigation. Such documentation is standard procedure in investigations of misconduct and is not evidence that court administrators or the Board told the court clerks to "keep book" on Judge Tidd.

33. Denied and strict proof thereof is demanded at a hearing. By way of further response, it is denied that anyone "secretly told [the court clerks] to spy on him." When confronted with an intolerable work environment, and upon witnessing the manner in which Judge Tidd conducted the business of court, the court clerks properly sought relief through the county court system and ultimately through the Judicial Conduct Board. At all times, the court clerks were hardworking people who were intent on performing their jobs in an ethical manner. They followed the advice of the court administrators and Board counsel to accurately document their observations of Judge Tidd's conduct. There is nothing unconscionable or unfair about court clerks reporting the alleged ongoing misconduct to the proper authorities.

34. Denied and strict proof thereof is demanded at a hearing. By way of further response, it is denied that Judge Tidd's due process rights have been violated as a result of the Board's investigation. His allegation that someone "used paid employees [presumably the court clerks] to develop cases against him" is unsubstantiated by the evidence. Judge Tidd is solely responsible for the breakdown

of his working relationship with the court clerks assigned to his district court. The actions of the court clerks are based on their observations of his repetitive acts of misconduct. Former President Judge McFadden and court administrators provided notice to Judge Tidd in 2011-2012 in a series of meetings that complaints were received about his conduct. During those meetings, President Judge McFadden and court administrators specifically told Judge Tidd that he must change his conduct. Judge Tidd had the opportunity to correct his problems but failed to follow the directives from President Judge McFadden and court administrators. He willfully continued to demonstrate an improper demeanor and to improperly conduct the business of court. No one directed the court clerks to "keep book on David Tidd" or "set him up." Attempting to deflect blame does not absolve Judge Tidd from the consequences of his actions.

35. Denied as improper conclusions of fact and law and argument requiring no response. To the extent that any response is required, it is denied that the proceedings of the Board or that of the president judges and court administrators of Northampton County are unfair or contrary to the jurisprudence and fundamental due process of the United States. Judge Tidd violated the Rules Governing the Standards of Conduct of Magisterial District Judges and Article V, §§ 17(b) and 18(d)(1). Judge Tidd received proper notice of the conduct under investigation and has been afforded full due process under the law by the county court system and by the Board.

36. Admitted in part and denied in part as improper conclusions of law to which no response is required. To the extent that any response is required, it is admitted that Attorney Craig Simpson represented Judge Tidd in 2015

and through February 19, 2016 and that Attorney Stretton then entered his appearance as counsel for Judge Tidd. It is denied that the Board, through its counsel or investigators ever communicated directly with Judge Tidd when he was represented by counsel. It is denied that the court clerks who were assigned to Judge Tidd's district court were agents of the Board, President Judge Baratta or the court administrators of Northampton County.

37. Denied as an improper conclusion of law requiring no response.

To the extent that this paragraph alleges, asserts or suggests a violation of the Rules of Professional Conduct, it should be stricken as including scandalous or impertinent matter. To the extent that any further response is required, Rule 4.2 of the Pennsylvania Rules of Professional Conduct provides:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Pa.R.P.C. No. 4.2. The rule prohibits a lawyer from communicating with a represented party about the subject matter that is at issue. In the instant case, the subject matter that gave rise to Judge Tidd securing legal representation is the charged judicial misconduct. Judge Tidd is represented by counsel. Board counsel has consistently communicated with Judge Tidd's counsel since his legal representation was first made known. As set forth above, it is denied that the Board, through its counsel or investigators, ever communicated with Judge Tidd while he was represented by counsel, except through his counsel. Therefore, Rule 4.2 is inapplicable to the facts and circumstances of this case.

38. Denied as an improper conclusion of law requiring no response.

To the extent that this paragraph alleges, asserts or suggests a violation of the Rules of Professional Conduct, it should be stricken as including scandalous or impertinent matter. To the extent that any further response is required, it is denied that the Board's communications with the court clerks assigned to Judge Tidd's district court undermined the attorney/client relationship of Mr. Stretton and Judge Tidd. It is also denied that those same communications resulted in the court clerks being agents of the Board and the Court Administrator's Office or working against Judge Tidd. Pennsylvania Rule of Professional Conduct No. 4.2 does not prohibit a lawyer from communicating with persons assigned to work under the supervision of a person who is represented by a lawyer. Therefore, Rule 4.2 did not prohibit Board counsel from communicating with the court clerks assigned to Judge Tidd's district court.

Upon request of Board counsel, the court clerks provided court files and other evidence to the Board in support of complaints filed against Judge Tidd. The act of providing court files and other evidence to a Commonwealth agency, tasked by the Pennsylvania Constitution to investigate and prosecute judicial misconduct, does not in any way undermine the attorney-client relationship that Judge Tidd enjoys with Mr. Stretton or previously enjoyed with Mr. Simpson.

WHEREFORE, it is respectfully requested that Judge Tidd's Motion to Dismiss Based on Setting Up All Persons Who Worked for David Tidd Against Him be denied.

V. Reply to Motion to Dismiss Based on Failure to State Cause of Action

39. Admitted in part and denied in part. The Complaint is a written document which speaks for itself and any attempt to characterize or describe its content is denied. It is admitted that Paragraph Nos. 84-108 of Section D of the

Board Complaint pertain to allegations of special consideration. It is admitted that some of the facts in that section pertain to Attorney Burke who received multiple parking citations and failed to timely pay them. It is denied that providing notice to Attorney Burke that a warrant for his arrest is about to issue if he fails to pay fines and costs on a parking citation is a permissible "old fashioned courtesy." It is denied that Attorney Burke had "an unfortunate habit." To the extent that this allegation requires a response, it is denied and strict proof thereof is demanded. Warrants are issued from Judge Tidd's district court to defendants who ignore prior notices to appear in court and pay fines and costs due on traffic citations. When Attorney Burke failed to appear at court to pay fines and costs on traffic tickets, warrants did not issue to Attorney Burke per instruction of Judge Tidd to his court clerks. Instead, Judge Tidd called Attorney Burke to warn him that a warrant would be issued from his court unless he paid the fines and costs. In so doing, Judge Tidd provided special consideration to his friend, Attorney Burke. The Complaint is structured to set forth the alleged facts and related charges of violations of the Rules or Canons and the Pennsylvania Constitution and comports with the requirements of Rule 302(A) of the Rules of Procedure of the Court of Judicial Discipline which requires that a Complaint state in plain and specific language the nature of the charge and specify the allegations of fact upon which the charge is based. The facts set forth at Section D provide the basis to prove the conduct charged at Counts 4 A, B & C by clear and convincing evidence. The request to dismiss this count is without merit and should be denied.

40. Denied as argument and improper conclusions of law requiring no response. The Complaint is a written document which speaks for itself and any

attempt to characterize or describe its content is denied. To the extent that any response is required, it is denied that "it would be a sad day" if a judge is prohibited from providing preferential treatment to an attorney who regularly appears before him by warning him that a warrant will issue unless he pays the fines and costs due and owing on an outstanding parking citation. Judge Tidd's court provided standard notices to Attorney Burke of parking citations. The responsibility to timely pay fines and costs on an outstanding parking citation was that of Attorney Burke. By holding back on issuing a warrant that should issue to Attorney Burke, Judge Tidd provided him with special consideration and deprived the court system, the municipality, the county and the Commonwealth of fees associated with the issuance and return of a warrant. It is denied that Section F, Failure to Recuse, comprised of Paragraph Nos. 109-119, fails to state a cause of action or in any way demonstrates that most magisterial district judges "would be unable to hear cases with local attorneys." Some of the facts presented in Section F demonstrate that Judge Tidd should have recused from cases in which Attorney Burke represented litigants because of their close friendship. Additional facts in Section F demonstrate that Judge Tidd should have recused from a summary trial in which the landlord of his district court building was a litigant. The Board Complaint is confined to the specific facts alleged against Judge Tidd and is not applicable to the conduct of any other judge. The Complaint is structured to set forth the alleged facts and related charges of violations of the Rules or Canons and the Pennsylvania Constitution and comports with the requirements of Rule 302(A) of the Rules of Procedure of the Court of Judicial Discipline which requires that a Complaint state in plain and specific language the nature of the charge and specify the allegations of fact upon which the charge is based. The facts set forth at

Section F provide the basis to prove the conduct charged at Counts 5A & B by clear and convincing evidence. The request to dismiss this count is without merit and should be denied.

41. Denied as argument and improper conclusions of law requiring no response. The Complaint is a written document which speaks for itself and any attempt to characterize or describe its content is denied. To the extent that any response is required, it is denied that the allegations pertaining to Judge Tidd sleeping on the floor while wearing his judicial robes fails to state a cause of action. It is denied that the facts set forth in Section I pertain to one occasion. Paragraph Nos. 249-250 describe two separate occasions, January 12, 2012 and January 23, 2012, when Judge Tidd slept in his judicial robes on the floor. The fact that court clerks assigned to Judge Tidd's district court observed him sleeping in his judicial robes on the floor provides evidence of the conduct charged. The Complaint is structured to set forth the alleged facts and related charges of violations of the Rules or Canons and the Pennsylvania Constitution and comports with the requirements of Rule 302(a) of the Rules of Procedure of the Court of Judicial Discipline. Rule 302(A) requires that a Complaint state in plain and specific language the nature of the charge and specify the allegations of fact upon which the charge is based. The facts set forth in the Board Complaint at Section I, Paragraph Nos. 249-250, provide the basis to prove by clear and convincing evidence the conduct charged at Count 10A. The request to dismiss this count is without merit and should be denied.

42. Denied as argument and improper conclusions of law requiring no response. The Complaint is a written document which speaks for itself and any attempt to characterize or describe its content is denied. To the extent that any

response is required. To the extent that any response is required, it is denied that the allegations pertaining to Judge Tidd using his judicial robes as a pillow while he slept on the floor of his court office fails to state a cause of action. Section I, Paragraph No. 251 describes Judge Tidd's May 27, 2015 conduct of using his judicial robes as a pillow. The fact that court clerks assigned to Judge Tidd's district court observed his rolled up judicial robes on the floor of his office when he rose from the sleeping position provides evidence of the conduct charged. The Complaint is structured to set forth the alleged facts and related charges of violations of the Rules or Canons and the Pennsylvania Constitution and comports with the requirements of Rule 302(a) of the Rules of Procedure of the Court of Judicial Discipline. Rule 302(A) requires that a Complaint state in plain and specific language the nature of the charge and specify the allegations of fact upon which the charge is based. The facts set forth in the Board Complaint at Section I, Paragraph No. 251, provide the basis to prove the conduct charged at Count 10B by clear and convincing evidence. The request to dismiss this count is without merit and should be denied.

43. Denied. This paragraph contains a conclusion of law and argument to which no response is required. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested at a hearing. To the extent that any response is required, Judge Tidd did not have a right to privacy in his court office just because his door was closed when he began sleeping in or on his judicial robes. Judge Tidd was on duty during regular working hours at his district court on January 12 and 23, 2012 and on May 27, 2015 when he slept on the floor of his court office. As part of his judicial duties, Judge Tidd was required to be available to conduct the business of

court. The fact that his door to his office was closed initially did not preclude his court clerks from knocking on the door and opening it to inform him that the business of court required his immediate attention. It is a conclusion of law and for this Court alone to decide whether or not such conduct rises to the level of the charged violations. The request to dismiss this count is without merit and should be denied.

44. Admitted in part and denied as argument and improper conclusions of law requiring no response. The Complaint is a written document which speaks for itself and any attempt to characterize or describe its content is denied. It is admitted that Paragraph No. 73, Section C, *Ex Parte* Communications re: Traffic Matters, pertains to the January 23, 2012 *ex parte* communications between Judge Tidd and Attorney Matthew Potts. It is admitted that the specific instance of *ex parte* communications was not presented in the Board's February 19, 2016 Notice of Full Investigation or the May 9, 2016 Supplemental Notice of Full Investigation. Board counsel did not pose specific questions about the alleged *ex parte* communication between Judge Tidd and Attorney Potts at the two Board depositions. To the extent that any response is required, it is denied that all of the Board's allegations must be contained in the original Notice of Full Investigation issued to a respondent judge. However, Judge Tidd had notice that facts discovered during an ongoing Board investigation could be incorporated into violations charged in the Board Complaint. The following language appears in the first full paragraph on page 2 of the February 19, 2016 Notice of Full Investigation addressed to Judge Tidd:

The ongoing investigation may discover facts concerning the allegations that could change the violations investigated or charged.

This statement is derived from Judicial Conduct Board Rule 30(B)(2)(d) and refutes Judge Tidd's claim that facts not specifically set forth in the Notice of Full Investigation may not be later included in the Board Complaint. Furthermore, the February 19, 2016 Notice of Full Investigation did address *ex parte* communications and contained the following allegations:

16. Routinely, after greeting the party to a case who arrives first at your district court, you discuss the case outside the presence of the other party.

17. After discussing the case with one party and outside the presence of the other party, you work out a deal and adjudicate matters at the counter of the reception area of your district court while dressed in your street clothes.

18. When you work out a deal with one of the parties at the counter on a case scheduled before you, you often rule on the matter before the other party arrives at your district court.

19. On a routine basis, you negotiate plea deals on traffic cases with defendants without a police officer present.

The language of the allegations at Paragraph Nos. 16-19 of the February 19, 2016 Notice of Full Investigation provided sufficient notice to Judge Tidd that the facts and circumstances of his *ex parte* communications with Attorney Potts could be charged as misconduct. Attorney Potts represented a defendant in a summary traffic trial. Attorney Potts arrived at Judge Tidd's court before the police officer and went into Judge Tidd's office with him. Judge Tidd spoke with Attorney Potts about his client's case outside the presence of the police officer and worked out a deal before the police officer arrived. Even if the Board was restricted to charging based on prior specific notice of each act, which it is not, this conduct is sufficiently similar to Paragraph Nos. 16-19 of the Notice of Full Investigation to constitute adequate notice that Judge

Tidd could be charged for his *ex parte* communication with Attorney Potts. The request to dismiss this alleged instance of misconduct for as not timely presented is without merit and should be denied.

WHEREFORE, it is respectfully requested that Judge Tidd's Motion to Dismiss for Failure to State Cause of Action be dismissed.

45. No response required.

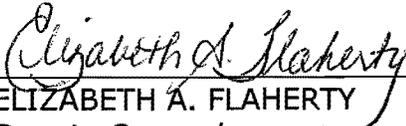
WHEREFORE, it is respectfully requested that Judge Tidd's Omnibus Motion, including his request that the case be dismissed and/or certain charges be dismissed, be denied.

Respectfully submitted,

ROBERT A. GRACI
Chief Counsel

DATE: September 26, 2016

By:


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**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

David W. Tidd	:	
Former Magisterial District Judge	:	
Magisterial District 03-2-04	:	3 JD 2016
Third Judicial District	:	
Northampton County	:	

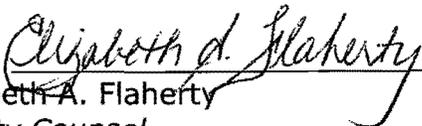
PROOF OF SERVICE

In compliance with Rule 122(F) of the Court of Judicial Discipline Rules of Procedure, on or about September 26, 2016, a copy of this *Reply of the Judicial Conduct Board to Omnibus Motion of the Respondent* was sent by first-class mail and by email to former Magisterial District Judge Tidd's counsel, Samuel C. Stretton, Esquire, at the following address:

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Respectfully submitted,
ROBERT A. GRACI
Chief Counsel

September 26, 2016

BY: 
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