

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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MONTGOMERY COUNTY
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11:00 AM

IN RE:

William I. Maruszczak :
Magisterial District Judge :
Magisterial District 38-1-09 : 1 JD 2018
38th Judicial District :
Montgomery County :

MEMORANDUM OF THE JUDICIAL CONDUCT BOARD IN SUPPORT OF REPLY
TO THE MOTION OF THE RESPONDENT, JUDGE WILLIAM I. MARUSZCZAK,
TO BE PLACED IN THE DIVERSIONARY PROGRAM

I. RESPONSE AND OBJECTION TO RESPONDENT'S REQUEST TO BE PLACED
INTO THE JUDICIAL DIVERSION PROGRAM.

Article V, § 18(b)(5) of the Constitution of this Commonwealth grants this Court the authority to order removal from office, suspension, censure, or other discipline as authorized by Section 18(b)(5) and as warranted by the record. **See** Pa.Const., Art. V., § 18(b)(5); **see also In re Roca**, 173 A.3d 1176, 1190 (Pa. 2017). It was with this precept in mind that this Court initiated its exploration of judicial diversion. **See** Attachment "A," at 4-5 (**In re Wilson**, 1 JD 2017 (Pa.Ct.Jud.Disc. 2018) (3/19/2018 Order), Interim Policy Statement at 4-5 (unnumbered)).

This Court's Interim Policy Statement serves as a guidepost for a respondent judge's admission into the Judicial Diversion Program (the Program) following the initiation of formal proceedings by the Board in this Court. **See** Attachment "A," at 4. This Court stated clearly that admission into the Program was a matter of grace, not of right, and that certain classes of charged misconduct would preclude a judge's admission into the Program, *i.e.*, criminal charges, corruption, and cases that "would not likely result in the imposition of serious discipline, such as suspension or removal from office following adjudication[.]" **Id.**, at 4-5. In further describing the Program, this Court indicated that its primary focus was to offer a path to rehabilitation for judges who engaged in either minor misconduct, *i.e.*, where the presumptive sanction was not suspension or removal, who had a disability, or who had substance abuse issues. **Id.**, at 4. In all cases, this Court reserved the right and obligation to ensure that only appropriate judicial officers would be invited to participate in the Program. Thus far, this Court, with the assent of the Board, employed the Program to resolve the matters filed by the Board in **In re Domitrovich**, 1 JD 2014, and, most recently, **In re Wilson**, 1 JD 2017. It is with this backdrop that Respondent requests admission into the Program in the present case.

Fundamentally, Respondent's conduct differs in many important respects from the respondent judges in both **Domitrovich** and **Wilson**. In both cases, the respondent judges' conduct, described in broad terms, arose from their on-bench judicial improvidence and ignorance of the law. These types of misconduct can be rectified through the types of remedial steps offered by the Program. On the other hand, the most serious misconduct charged by the Board against Respondent occurred off-bench; bore no relationship whatsoever to any flaw in his judicial skills; and was pointedly deliberate. As such, the remedial measures offered in **Domitrovich** and **Wilson** would be of little value to redress such conduct as alleged here.

To explain, taking the Board's allegations as true for purposes of review of Respondent's motion, the most serious allegations of Respondent's misconduct, with the exception of the recusal issue involving Jalil Bami, arise from his obvious desire to extract a personal reckoning from three individuals who he felt "betrayed" him in his 2015 re-election campaign. *See, e.g., In re Maruszczak*, 1 JD 2018 (Pa.Ct.Jud.Disc. 2018), 2/27/2018 Board Complaint, at 4-10. In one instance, on the day after the general election, Respondent directly threatened, albeit falsely, to conduct a press conference and charge publicly that Marcene Rogovin covered up an accident involving former Municipal Court Judge Joseph Waters. *Id.*, at 5, ¶ 23. This threat followed Respondent's deliberate public accosting of Ms. Rogovin on primary election day and his attempts to utilize Ms. Rogovin's husband as a means to dissuade her from the exercise of her right to engage in the political process. *Id.*, at 4-5, ¶¶ 12-19. Respondent's conduct toward Ms. Rogovin is reflected in his conduct towards both Robert DeFelice and Carole Kenney – in each case, Respondent made a deliberate choice to confront these persons in public and private and then to harass them for the exercise of their rights because Respondent thought that they betrayed his friendship. *Id.*, at 8-9, ¶¶ 59-77.

Recently in **In re Tidd**, 3 JD 2016 (Pa.Ct.Jud.Disc. 2018) (4/4/2018 Slip. Op., at 5), this Court found that, even in the absence of specific intent, "retaliation is serious misconduct" in the context of a respondent judge's retaliation against his staff for their suspected cooperation with a Board investigation. Logically, then, it follows that a judge, who, in the course of his personal affairs, *intends* to extract some measure of *revenge* for a perceived slight and then acts upon that desire in a public way, at the very least, engages in "serious misconduct." *Id.*; *see also In re Carney*, 79 A.3d 490, 503 (Pa. 2013) ("One aspiring to, or holding, the office [of judge] cannot reasonably expect to be a rogue in his or her private life without thereby staining the integrity of the position."). Moreover, the obvious inference to be drawn from the open and unrepentant methods employed by Respondent as described in the Board Complaint is that he felt entitled to engage in his conduct both because he was a judicial officer and because he felt entitled to be reelected. **Carney**, 79 A.3d at 503 (noting that respondent judge's conscious desire to engage in disreputable conduct invites the view that certain judges appear to believe that they are above the law). It is the view of Board counsel that the likely sanction for serious misconduct is a serious sanction, such as suspension or removal following adjudication. This is especially true where, as here, the misconduct was not coupled with any relevant mitigating factors, such as a voluntary resignation.

Therefore, despite Respondent's claim that his case "seems the perfect case" for the Program, it is not. Respondent's conduct was, in fact, indicative of personal corruption, as the desire for revenge is the quintessential corrupt motive. Moreover, and, more importantly, it is the Board's view Respondent's conduct would likely result in the imposition of serious discipline such as suspension or removal from office following adjudication. As such, the terms of the Interim Policy Statement exclude Respondent from participation in the Program, and the Board hereby objects to his participation in the Program. **See** Attachment "A," at 4-5.

II. CONCLUSION

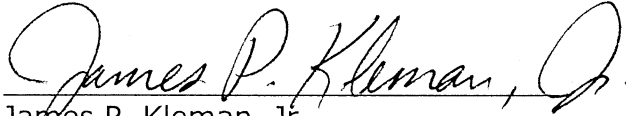
For the foregoing reasons, the Board respectfully objects to Respondent's participation in the Program, and it requests that this Court deny his Motion to be placed in the program, or, in the alternative, to schedule a hearing during which the parties may present evidence and argument in support of their respective positions, or to enter such other relief as it deems appropriate.

Respectfully submitted,


ROBERT A. GRACI
Chief Counsel

DATE: April 9, 2018

BY:


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COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Mark A. Wilson
Magisterial District Judge
Magisterial District 27-1-02
27th Judicial District
Washington County

:
:
: No. 1 JD 17
:
:

ORDER

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AND NOW, this 16th day of March 2018, it is hereby ORDERED that pursuant to the Interim Policy Statement/Judicial Diversion Program (attached hereto) Magisterial District Judge Jay Weller (Mentor) is appointed as a counselor and mentor to help resolve issues present in this case, specifically:

1. Understanding of, respect for and compliance with the Pennsylvania Rules of Criminal Procedure, especially as they relate to and affect the liberty interests of defendants.
2. Conducting business of court in a manner that upholds and promotes public confidence in the independent, integrity, and impartiality of the judiciary.
3. Consistent use of appropriate and effective communication strategies;

Statement of Reasons

1. On March 30, 2017, the Judicial Conduct Board filed a Complaint against Magisterial District Judge Mark A. Wilson, alleging that he engaged in the following conduct:
 - a. He and/or his office staff assisted with the preparation of a private criminal complaint, identifying the crime and the citation to the criminal code on the complaint form, before its review by the assigned Assistant District Attorney. He then presided over the criminal matter.
 - b. Considered *ex parte* communications of a complainant in a pending private criminal matter and initiated *ex parte* communications with the assigned Assistant District Attorney about a pending or impending proceeding.

- c. Failed to disqualify himself from a private criminal matter in which his impartiality might reasonable be questioned.
- d. Demonstrated an angry demeanor and made intemperate comments to a constable when instructing him to serve an arrest warrant and bring the criminal defendant to court immediately.
- e. Routinely imposed monetary bail conditions in criminal matters involving theft and theft-related offenses without consideration of Pa.R.Crim.P. No. 523, "Release Criteria."
- f. Ordered the commitment of individuals for failure to meet monetary bail conditions, prior to those individuals appearing before him to have their bail conditions imposed.
- g. Issued arrest warrants for individuals charged with misdemeanors of the second degree in welfare fraud cases, contrary to Pa.R.Crim.P. No. 509(1)-(2)(b)(c).

By this Order this matter is being considered for Judicial Diversion. All acts by the Mentor are under the authority of the Court of Judicial Discipline attendant with the immunities thereto.

Method to be Employed

1. To help resolve the issues presented by the Complaint in this case and to educate Judge Wilson, the Mentor will meet at least once a month for the following period: March 15, 2018 through August 15, 2018.
2. The sessions may be in-person meeting with the judge and/or by electronic or telephonic means.
3. The Mentor may include communications with the President Judge of the Court of Common Pleas of Washington County in the mentoring sessions as needed.
4. Both the Mentor and Judge Wilson are to work together in a collegial, cooperative, and honest manner, in good faith, and with due regard for the responsibilities and competencies of the other.

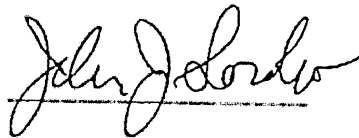
5. Mentoring will occur on the subjects set forth in the initial paragraph of this order. Judge Wilson is to use his best efforts to attend continuing education programs, read and study written materials, engage in good faith discussion about the issues presented and to resolve those issues with the guidance of the Mentor.

6. The Mentor shall observe Judge Wilson at his District Court while he is conducting arraignments, bail hearings and any other proceedings that the Mentor deems necessary to the accomplishment of the stated goals of this diversion program.

7. Judge Wilson shall take notes to reflect the basis for his decisions during arraignments, bail hearings, and any other proceedings that the Mentor deems necessary to the accomplishment of the stated goals of this diversion program. The Mentor shall conduct file reviews and discuss Judge Wilson's judicial decisions, particularly as it pertains to the "Release Criteria" set forth in Pa.R.Crim.P. No. 523 and other issues identified in this case.

8. **Effect of a substantial failure to comply with the term of the Agreement.** If the Mentor concludes, at the end of the period, that Judge Wilson has not satisfactorily complied with the terms of this Order, he is to notify the Court of Judicial Discipline of the same, by email and/or in writing. No other report is required except if requested by the Court of Judicial Discipline.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John J. Jordan", is written over a horizontal line. The signature is cursive and somewhat stylized.

INTERIM POLICY STATEMENT Judicial Diversion Program

The Court of Judicial Discipline wishes to explore the possibility of implementation of a permanent Judicial Diversion Program as a disposition available to the Court upon the filing of a formal complaint or a petition for relief¹ by the Judicial Conduct Board.

The Court adopts this Interim Policy Statement for guidance and uniform practices pending the decision of the Court to adopt a permanent Judicial Diversion Program.

The Court hopes to develop this Judicial Diversion Program to rehabilitate, and not to punish, therefore the Program, interim and permanent, is for judges who, while charged with ethical violations, typically fall into one of the following categories:

- a. Judicial officers charged with conduct that, if proven, would constitute a violation of the Constitution, the Code of Judicial Conduct, the Rules Governing Standards of Conduct of Magisterial District Judges, or Orders of the Supreme Court of Pennsylvania, but would not likely result in the imposition of serious discipline such as suspension or removal from office following adjudication;
- b. Judicial officers with a mental, physical or emotional disability. In addition to the authority vested in the Court under C.J.D.R.P. No. 601;
- c. Judicial officers with substance abuse issues;

¹ Pursuant to C.J.D.R.P. No. 701, the Judicial Conduct Board may file a Petition for Relief rather than file formal charges under Article V, §18(b)(5) of the Pennsylvania Constitution.

d. Judicial officers who have not previously had formal charges filed against them.

This Judicial Diversion Program is not an option in cases involving criminal charges or corruption.

1. The Pennsylvania Constitution provides authority to the Court of Judicial Discipline to implement a Judicial Diversion Plan:

Article V, § 18(b)(5)

Upon the filing of formal charges with the court by the board, the court shall promptly schedule a hearing or hearings to determine whether a *sanction* should be imposed against a justice, judge or justice of the peace pursuant to the provisions of this section. The court shall be a court of record, with all the attendant duties and powers appropriate to its function. Formal charges filed with the court shall be a matter of public record. All hearings conducted by the court shall be public proceedings conducted pursuant to the rules adopted by the court and in accordance with the principles of due process and the law of evidence. Parties appearing before the court shall have the right to subpoena witnesses and to compel the production of documents, books, accounts and other records as relevant. The subject of the charges shall be presumed innocent in any proceeding before the court, and the board shall have the burden of proving the charges by clear and convincing evidence. All decisions of the court shall be in writing and shall contain findings of fact and conclusions of law. A decision of the court may order removal from office, suspension, censure or other discipline as authorized by this section and as warranted by the record.

Article V, § 18(d)

A justice, judge or justice of the peace shall be subject to disciplinary action pursuant to this section as follows:

(1) A justice, judge or justice of the peace may be suspended, removed from office *or otherwise disciplined* for conviction of a felony; violation of section 17 of this article; misconduct in office; neglect or failure to perform the duties of office or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity or is prohibited by law; or conduct in violation of a canon or rule prescribed by the Supreme Court. In the case of a mentally or physically disabled justice, judge or justice of the peace, the court may enter an order of removal from office, retirement, suspension *or other limitations on the activities of the justice, judge or justice of the peace as warranted by the record*. Upon a final order of the court for suspension without pay or removal, prior to any appeal, the justice, judge or justice of the peace shall be suspended or removed from office; and the salary of the justice, judge or justice of the peace shall cease from the date of the order.

2. The Judicial Diversion Program is an alternative to formal disciplinary procedures and sanctions, and participation is a matter of privilege, not of right. The purpose of the Program is to improve the quality of the judiciary by providing mentoring, educational, remedial and rehabilitative programs for judicial officers. The Court of Judicial Discipline expressly reserves the right and obligation to ensure that only appropriate judicial officers are invited to participate in the Program and to ensure the compliance of judicial officers with the conditions of the Program.

3. Upon the filing of a formal complaint or petition for relief, but before adjudication, the Court of Judicial Discipline may invite a judicial officer to comply with a Judicial Diversion Program plan, including but not limited to education, counseling, drug and alcohol testing and follow-up treatment, docket management training, monitoring and/or mentoring programs, or other forms of remedial action, including any combination of dispositions that the Court of Judicial Discipline believes will reasonably improve the conduct the judicial officer. Such invitation may be accompanied by the deferral of final disciplinary proceedings.

If a judicial officer refuses to agree to the diversion plan formal proceedings will be followed.

If the counselor, mentor or other professional appointed to supervise the diversion program reports to the Court of Judicial Discipline, or if the Court of Judicial Discipline otherwise determines, that the judicial officer has been noncompliant with the terms, conditions and obligations of diversion formal proceedings will be re-instituted and the judicial officer will be removed from the diversion program.

4. The judicial officer will be required to sign a formal Judicial Diversion Program agreement or contract outlining the terms, conditions and obligations of the diversion plan.

5. Qualified counselors, mentors or other professionals will be appointed by the Court to supervise the Judicial Diversion Program plan, and

will be permitted to submit to the Court of Judicial Discipline reimbursement vouchers for expenses accrued during their service. The Court of Judicial Discipline shall determine what, if any, additional reasonable compensation shall be paid to any counselor, mentor, or other professional appointed by the Court.

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

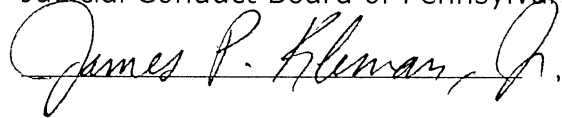
William I. Maruszczak	:	
Magisterial District Judge	:	
Magisterial District 38-1-09	:	1 JD 2018
38 th Judicial District	:	
Montgomery County	:	

CERTIFICATE OF COMPLIANCE

We 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: Judicial Conduct Board of Pennsylvania

Signature:



Name:

James P. Kleman, Jr.
Deputy Counsel

Attorney No.:

87637

Signature:



Name:

Melissa L. Norton
Deputy Counsel

Attorney No.:

46684