

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

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OF PENNSYLVANIA

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IN RE:

Andrew M. Hladio :
Magisterial District Judge :
Magisterial District 36-1-01 : 6 JD 2016
36th Judicial District :
Beaver County :

**JUDICIAL CONDUCT BOARD'S BRIEF
IN SUPPORT OF PROPOSED CONCLUSIONS OF LAW**

I. Procedural History:

This is a consolidated matter arising from two Board Complaints filed against the Honorable Andrew M. Hladio, former Magisterial District Judge for Magisterial District Court 36-1-01 of Beaver County, Pennsylvania. The Board filed its First Board Complaint on December 7, 2016 at 6 JD 2016 and its Second Board Complaint on October 10, 2017 at 3 JD 2017. On October 27, 2017, this Court consolidated the two Complaints at 6 JD 2017. On October 25, 2018, the Board and Judge Hladio, by his counsel, Heidi F. Eakin, filed *Joint Stipulations of Fact in Lieu of Trial and Waiver of Trial, Pursuant to C.J.D.R.P. No. 502(D)(1)*. That pleading contains Stipulated Facts pertaining to the First Board Complaint (6 JD 2016) at Paragraph Nos. 1-188, Stipulated Facts pertaining to the Second Board Complaint (3 JD 2017) at Paragraph Nos. 189-288, and 63 Exhibits. The parties stipulated to the authenticity and admissibility of the Exhibits. On that same day, Judge Hladio filed *Respondent's Addendum to Joint Stipulations of Fact*.

This brief is limited to a discussion of the charges of harassment, retaliation, bias and prejudice, and demeanor. The Joint Stipulations of Fact pleading differs from the First Board Complaint in that it does not include the facts pertaining to

"Trucking Violation Cases," set forth in the First Board Complaint, 6 JD 2016, at Paragraph Nos. 184-208. Therefore, the corresponding charges in the First Board Complaint are withdrawn, as set forth in detail in the Conclusion section of this Brief, and in the February 1, 2019 *Motion to Withdraw Counts from First Board Complaint*. All other charges remain before this Court for decision.

II. Discussion:

As a preliminary matter, the Board charged Judge Hladio with failure to comply with the Unified Judicial System of Pennsylvania Policy on Non-Discrimination and Equal Employment Opportunity (UJS Policy), violations of the Rules Governing Standards of Conduct of Magisterial District Judges, which prohibit bias, prejudice, sexual harassment and retaliation, and the Pennsylvania Constitution. Within those charges, the Board set forth relevant sections of the UJS Policy. Whether or not the charged judicial conduct meets the burden of proof for sexual harassment or retaliation under federal and state laws is not the issue before this Court.

This issue was addressed by the North Dakota Supreme Court upon review of the North Dakota Judicial Conduct Commission's application for discipline. *In re Disciplinary Action Against Corwin*, 843 N.W.2d 830 (N.D. 2014) (judge violated Canons by his conduct of sexually harassing and retaliating against court reporter, who repeatedly and explicitly rebuffed his advances). In his defense before the Commission hearing panel, Judge Corwin sought to introduce expert testimony to prove that his conduct did not violate federal and state sexual harassment laws. The Commission hearing panel declined to hear such testimony and stated:

This matter comes before the Judicial Conduct Commission not as a matter in dealing with employment law or law concerning sexual harassment, but rather the matter dealing with the code involving judicial ethics. The Canons do not provide a definition for sexual

harassment. In a matter such as this, sexual harassment is clearly recognized. The hearing panel obviously cannot know absolutely what was going on in Judge Corwin's mind so as to derive his true intent. All the hearing panel can do is serve as a third party looking in to the facts that are being presented to make determinations. Based upon the hearing panel's review of this evidence submitted, it is clear that sexual harassment occurred.

Id. at 835. The North Dakota Supreme Court rejected the defense's argument that the Commission hearing panel erred when it would not permit expert testimony on the federal and state sexual harassment laws. In affirming the ruling of the Commission hearing panel, the Supreme Court stated:

We reject this argument for several reasons. First, N.D. Code Jud. Conduct Canon 3(C)(2) does not require the establishment of sexual harassment under federal or state law to constitute a violation of its provisions, and this court has recognized that judicial disciplinary proceedings "are neither civil nor criminal." Second, N.D. Jud. Conduct Canon 3(C)(2) requires a finding of "conduct that *could reasonably be perceived* as sexual harassment." Third, because the only issues before the hearing panel are whether Judge Corwin violated provisions of the Code of Judicial Conduct, whether his conduct constituted sexual harassment as defined under federal or state law was not a relevant inquiry.

Id. at 836 (emphasis in original) (citations omitted). Instead, the N.D. Supreme Court looked to the definition of "sexual harassment" within its Unified Judicial System Policy, finding that the Policy sufficiently defined the type of conduct that could be perceived as sexual harassment, and concluded that the Commission hearing panel did not err in its refusal to permit the requested expert testimony. *Id.* at 836-37. The North Dakota Supreme Court determined that there was clear and convincing evidence of judicial misconduct, pursuant to the prohibitions set forth in its UJS Policy, and imposed a sanction of suspension for one month without pay and a fine of \$11,958.56 for costs and expenses of disciplinary proceedings. *Id.* at 840.

In an earlier case, the New Jersey Supreme Court reached a similar conclusion in *In the Matter of Seaman*, 627 A.2d 106 (N.J. 1993) (judge engaged in a pattern of sexual harassment, both physical and verbal in nature, toward a law clerk, which violated the Code). The New Jersey Advisory Committee on Judicial Conduct determined that there was clear and convincing evidence that Judge Seaman engaged in the alleged conduct of sexual harassment and recommended in its presentment that the Supreme Court impose a sanction of public censure. *Id.* at 109. Upon review, the N.J. Supreme Court determined that its consideration of the charged misconduct was limited to whether it violated the Code:

Because the focus of judicial-disciplinary matters is necessarily on the canons of judicial conduct, we inquire into whether the facts as determined demonstrate conduct on the part of the respondent that is incompatible with those canons.

We must state, prefatorily, that the inquiry before the Court is not whether respondent's behavior constituted sexual harassment as such. Although undoubtedly all forms of behavior that cross the legal threshold of sexual harassment would constitute judicial misconduct, many forms of offensive interpersonal behavior that would violate the *Code of Judicial Conduct* would not meet the legal definition of sexual harassment. Nevertheless, we cannot overstate that although we must address the ultimate issue of whether judicial conduct violates the canons, the charges of misconduct against respondent equate with sexual harassment.

Id. at 110 (emphasis in original). The N.J. Supreme Court imposed a sanction of suspension without pay for 60 days and required Judge Seaman to complete an educational program.

This court recently decided a case of sexual harassment and limited the scope of analysis to violations of the UJS policy and the Canons and Rules of the Pennsylvania Code of Judicial Conduct. *In re Muth*, 2 JD 2017, slip op. at 6-8 (Pa.Ct.Jud.Disc. Oct. 31, 2018) (display of images of naked and partially naked

women on his personal computer at his judicial office violated UJS Policy and Old Canons 2A and 4C).

In contrast, this Court recently looked to federal employment law when considering charges of retaliation. *In re Tidd*, 175 A.3d 1151, 1158-59 (Pa.Ct.Jud.Disc. 2017) (relying solely on decisions in federal employment discrimination cases, found violation of Rule 2.16 where “[judge’s] angry confrontation of his judicial staff was inappropriate conduct for any judge in Pennsylvania, and would deter a reasonable employee from cooperating with the Board”).

The charge of retaliation in *Tidd* was an issue of first impression in Pennsylvania judicial discipline cases. Although this Court held that Judge Tidd’s angry confrontational conduct toward his court clerks violated Rule 2.16, because of its deterrent effect, it declined to find violations of Rule 2.16 pertaining to Tidd’s requests that the President Judge transfer two of his court clerks, one of whom had filed a complaint against him with the Board. This Court reasoned:

Significantly, Judge Barratta testified that whether or not to transfer clerks was a decision of the President Judge of Northampton County, and one for which he required a substantial and legitimate reason. Because Judge Tidd’s requests were just that –requests- and not actual employment decisions, we conclude that his mixed-motive requests to transfer [the two clerks] which did not result in any adverse employment decisions do not constitute retaliation under Rule 2.16.

Id. at 1160. This Court analyzed the charge of retaliation in *Tidd* by applying a standard used for all employers accused of retaliation in civil cases.

However, matters before this court do not involve civil charges, but instead are limited to violations of ethical standards as set forth in the Rules and the Pennsylvania Constitution. Although proceedings in this Court are sometimes

referred to as “quasi-criminal,” that designation refers to the procedural notice afforded to respondent judges. See *In re Carney*, 79 A.3d 490, 508 (Pa. 2013). As set forth succinctly in *Corwin*, “judicial disciplinary proceedings are neither civil nor criminal.” *Corwin*, 843 N.W. at 836. Therefore, the analysis of the charged conduct of sexual harassment and retaliation in this case should be restricted to the Rules Governing Standards of Conduct of Magisterial District Judges and the UJS Policy.

A review of the case law in sister jurisdictions suggests that this Court’s ruling in *Tidd*, in reliance on federal employment law decisions, was too narrow. The overarching principal in judicial ethics matters is that judges are held to a higher standard of conduct. See New Rule 1.2 cmt. [2] (“A magisterial district judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Conduct Rules”). See also Old Canon 2 cmt. Furthermore, this Court reviews complaints of judicial misconduct on a case-by-case basis. *In re Eakin*, 150 A.3d 1042, 1047 (Pa.Ct.Jud.Disc. 2016). Therefore, the conclusions pertaining to retaliation in *Tidd* should be confined to the facts of that particular case.

This same view of looking only to the Canons or Rules of judicial ethics, when analyzing charges of misconduct, has been adopted in cases involving purely retaliatory conduct by a judge toward persons who are complainants or witnesses to the alleged misconduct. For instance, in a Minnesota case, a City Attorney filed a complaint with the Minnesota Board on Judicial Standards against Judge Ginsberg, based on his handling of cases assigned to his Assistant City Attorneys. *In re Conduct of Ginsberg*, 690 N.W.2d 539, 546 (Minn. 2004). The City Attorney requested that

while his complaint was pending, the district court refrain from scheduling those cases assigned to his Assistant City Attorneys to Judge Ginsberg's court. *Id.*

In response, Judge Ginsberg engaged in multiple acts of retaliatory conduct. He called the City Attorney, discussed the subject matter of the complaint against him, and complained about one of the Assistant City Attorneys. He also inappropriately announced in court that litigants should blame the City Attorney for continuances, necessitated by his request not to schedule his Assistant City Attorneys to handle cases before him. The Minnesota Supreme Court concluded that Judge Ginsberg's retaliatory conduct toward the lawyers who appeared before him "reflect[s] a disrespect for the disciplinary process and a lack of recognition or acknowledgment of possible fault on his part." *Id.* at 549. The analysis was confined to whether the conduct violated the canons and did not involve a comparison to federal and state employment law.

In an Arkansas case, a public defender filed a complaint with the Judicial Discipline and Disability Commission (JDDC) against the respondent judge for his conduct of continuing a suppression hearing in a criminal case, conducting his own investigation and ruling on the suppression motion based on that prohibited investigation. *Letter of Censure to Crow* (Arkansas Judicial Discipline and Disability Commission May 17, 2013). <https://jddc.arkansas.gov/commission-final-actions>. After learning of the complaint, Judge Crow filed a complaint with the Committee on Professional Conduct (CPC) against the public defender for misleading the Court in the suppression matter. In a second case, Judge Crow also conducted an independent investigation of a DWI matter and, based on his findings, confronted one of the attorneys in the hallway of the courthouse and warned the attorney to get

ready for trial. Judge Crow later claimed that he considered reporting the attorneys to the Committee on Professional Conduct. In its letter of censure, the Commission admonished Judge Crow as follows:

Retaliating against complainants and witnesses is not appropriate judicial behavior and it affects the public's confidence in the judiciary. Your willingness to make admissions and your promise to avoid such behavior in the future negated a likely recommendation of suspension.

Id. at 7. The Commission warned Judge Crow against any action against a complainant in a JDDC case that could give the mere appearance of retaliation, as follows:

You will refrain from threatening lawyers with "turning them into the CPC" without clear grounds. You are encouraged to consult with an ethics expert before filing a CPC complaint in the future. Filing complaints against those who complain against you should be done with the greatest of caution.

Id. at 8. The JDDC's analysis was limited in scope to whether Judge Crow's retaliatory conduct violated the Code of Judicial Conduct, and did not look to federal or state laws.

The aforementioned decisions from other state judicial conduct commissions provide persuasive guidance for this Court's analysis of the charges of judicial misconduct in this case. In determining whether Judge Hladio engaged in sexual harassment and retaliation, as charged in the Board Complaint, this Court should limit its analysis to whether the conduct violated the Rules Governing Standards of Conduct of Magisterial District Judges, the Pennsylvania Constitution and the UJS Policy.

Harassment

Count 1: 6 JD 2016

Judge Hladio has violated Rule 2A of the Old Rules Governing Standards of Conduct of Magisterial District Judges by his conduct, which occurred between 2010 and prior to November 30, 2014. Rule 2 is titled "Impropriety and the Appearance of Impropriety to be Avoided" and provides, in pertinent part:

(A) Magisterial district judges shall respect and comply with the law and shall conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Magisterial district judges shall not allow their family, social or other relationships to influence their judicial conduct or judgment.

R.G.S.C.M.D.J. No. 2A.

Jude Hladio has violated Canon 1, Rules 1.1 and 1.2 of the New Rules Governing Standards of Conduct of Magisterial District Judges by his conduct, which occurred after November 30, 2014. Rule 1.1 is titled "Compliance with the Law" and provides:

A magisterial district judge shall comply with the law, including the Rules Governing Standards of Magisterial District Judges.

R.G.S.C.M.D.J. Canon 1, Rule 1.1. The definition of "law" within the Terminology Section of the New Rules includes the UJS Policy.

Law - Refers to constitutional provisions, statutes, decisional law, Supreme Court Rules and directives, including this Code of Judicial Conduct and the Unified Judicial System Policy of Non-Discrimination and Equal Opportunity, and the like which may have an effect upon judicial conduct.

R.G.S.C.M.D.J. Terminology.

Rule 1.2 is titled "Promoting Confidence in the Judiciary" and provides:

A magisterial district judge shall act at all times in a manner that promotes public confidence in the independence, integrity and

impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

R.G.S.C.M.D.J. Canon 1, Rule 1.2.

By his 2010 to December 2016 conduct, Judge Hladio has violated the Unified Judicial System of Pennsylvania Policy on Non-Discrimination and Equal Employment Opportunity (UJS Policy), enacted in 2008 and revised in 2013 and 2016. Since its inception, the UJS Policy has required that all judges adhere to and comply with the policy:

Accordingly, all judicial officers, managerial and supervisory Personnel of the System, and Supreme Court Boards and Committees shall ensure adherence to and compliance with this Policy and the procedures intended to facilitate its implementation and administration.

UJS Policy at 2 (2016). The same language is set forth in the UJS Policy in 2008 and the revised 2013 Policy.

A judicial officer who fails to adhere to and comply with the UJS Policy may be subject to disciplinary actions and penalties as follows:

Violations of this Policy may result in disciplinary action as prescribed by the appropriate policies, which govern the behavior and performance of Personnel of the System, Supreme Court Boards and Committees, and Related Staff.

Id. at 6.

Any Personnel of the System or Supreme Court Boards and Committees who have been found to have violated this Policy, impeded the investigation of any complaint filed under this Policy, or retaliated against individuals who have provided evidence or have otherwise cooperated with any investigation or a complaint filed under this Policy, may be subject to appropriate remedial or disciplinary action up to and including discharge, as provided by the policies governing their employment with the UJS.

Id.

Any judicial officer or attorney who – after proper investigation by the appropriate authority – has been found to have violated this Policy,

impeded this investigation of any complaint filed under this Policy, or retaliated against individuals who have provided evidence or have otherwise cooperated with any investigation of a complaint filed under this Policy, may be subject to remedial or disciplinary action by the Disciplinary Board (in the case of attorneys) or the Court of Judicial Discipline (in the case of judicial officers).

Id. at 7.

The Board proved by clear and convincing evidence that by his 2010-2014 pattern of improper, harassing conduct toward N.B., the Office Manager at Magisterial District Court 36-1-01, Judge Hladio failed to adhere to the UJS Policy and thereby violated Rule 2A.

As set forth in this Court's October 31, 2018 Opinion in *In re Muth*, the UJS Policy prohibits a judge from engaging in "all forms of discrimination and harassment in a Court Facility." *In re Muth*, 2 JD 2017, slip op. at 6-7.

The UJS Policy defines sexual harassment as follows:

2. Prohibition against Harassment

a. Sexual Harassment

Sexual harassment is sex discrimination. Equal Employment Opportunity Commission (EEOC) guidelines define sexual harassment as unwelcome sexual attention, sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature where:

...

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

UJS Policy at 3 (2016). The same language is set forth in the UJS Policy in 2008 and the revised 2013 Policy. The UJS Policy explicitly states:

"[Sexual harassment] refers to behavior that a reasonable person could and does consider unwelcome or personally offensive. Sexual harassment involves improper behavior or requests that establish improper *quid pro quo* workplace requirements of a sexual nature, or

which otherwise creates a hostile work environment for a reasonable person of that gender. Types of sexual harassment include:

...

2. "Hostile Work Environment" Harassment – Is when unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature create an atmosphere which unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment for any individual.

Id.

The UJS Policy prohibits discrimination and harassment based on sex and numerous other protected classes. The UJS Policy announces a zero tolerance policy for discrimination and harassment in the workplace and assigns judicial officers and others with the responsibility for its oversight. The Policy also provides that discriminatory and harassing conduct "constitute[s] misconduct, warranting appropriate disciplinary action." *Id. See also Muth*, 2 JD 2017, slip op at 7.

As a magisterial district judge, Judge Hladio was familiar with, and at all times required to ensure adherence to and compliance with the UJS Policy, which prohibits sexual harassment and retaliatory conduct and "ensure[s] that all individuals having business with the UJS are treated in a dignified, civil, respectful and non-discriminatory manner." UJS Policy at 1.

Old Rule 2A

The Stipulations and Exhibits prove by clear and convincing evidence that Judge Hladio failed to comply with the UJS Policy and thereby violated Rule 2A. Judge Hladio repeatedly invited N.B. on dates and was not deterred by her consistent and repeated rejections of his unwelcome advances. N.B. kept detailed notes of Judge Hladio's unwelcome, inappropriate and objectionable behavior toward her, including his repetitive inquiries about her personal life, and reported his conduct to Court

Administration on multiple occasions. (Exhibits 1, 2, 5, 17 and 21) Beginning in 2011, following receipt of complaints from N.B. and other court clerks about Judge Hladio's inappropriate behavior, the District Court Administrator met with and warned Judge Hladio not to pursue a personal relationship with N.B. and not to create a hostile work environment at the workplace. (Stip. 25, 26-28) Judge Hladio persisted in his pursuits of N.B. and demonstrated sulking, vindictive behavior toward her when she refused to go out with him or to answer his prying questions about her personal life. (Stip. 30-33) On one occasion in 2012, Judge Hladio showed up at N.B.'s home uninvited and unannounced. Again, N.B. reported Judge Hladio's harassing conduct to the District Court Administrator. (Stip. 34, 31)

In November 2012, then-President Judge John D. McBride, the District Court Administrator and the Deputy Court Administrator met with Judge Hladio and advised him that his conduct violated the UJS Policy pertaining to sexual harassment. Then President Judge McBride told Judge Hladio that he was prohibited from creating a hostile work environment and that he must stop both his unwelcome advances toward N.B. and his sulking, vindictive behavior toward her and the other clerks. Judge McBride specifically advised Judge Hladio that he was prohibited from retaliating against N.B. and other district clerks who filed complaints against him. (Stip. 35-41)

Despite those warnings, Judge Hladio subsequently asked N.B. to go out with him on multiple occasions. (Stip. 44-45) In March or April 2014, after discovering that N.B. was involved in a relationship with another man, Judge Hladio began acting in an angry, punitive manner toward N.B. He yelled at her, refused to speak with her on some occasions and at other times, spoke to her in a sarcastic manner. He ignored N.B.'s work-related questions, reassigned N.B.'s Office Manager work

responsibilities to other court clerks, adding to their workloads, and spoke negatively about N.B.'s job performance to the other clerks. This hostile conduct was ongoing through November 30, 2014. (Stip. 46-55)

By his 2010 through November 30, 2014 conduct of persistently inviting N.B. on dates, inquiring about her personal life, and showing up at her home uninvited, when she made it abundantly clear that his sexual advances were unwelcome, Judge Hladio violated the UJS Policy against sexual harassment and failed to treat N.B. in a dignified, civil, respectful and non-discriminatory manner. By his conduct of acting in an angry manner toward N.B., yelling at her, speaking sarcastically to her, ignoring her work-related questions and demonstrating sulking, vindictive behavior, Judge Hladio violated the UJS Policy against creating a hostile work environment and failed to treat N.B. in a dignified, civil, respectful and non-discriminatory manner. By his failure to comply with the UJS Policy, Judge Hladio failed to comply with the law in violation of Rule 2A. This same conduct gave the appearance of impropriety, in violation of Rule 2A.

By his conduct of sexual harassment, creating a hostile work environment, and failing to treat N.B. in a dignified, civil, respectful and non-discriminatory manner, Judge Hladio failed to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and thereby violated Rule 2A. Finally, by his conduct of pursuing a personal relationship with N.B., despite her rejection of his sexual advances and the multiple warnings from Court Administration and then President Judge McBride, Judge Hladio allowed his social or other relationships to influence his judicial conduct or judgment, and thereby violated Rule 2A.

New Rules 1.1 and 1.2

The Board proved by clear and convincing evidence that Judge Hladio continued to create a hostile work environment between December 1, 2014 and December 2016, and thereby violated the UJS Policy and Rules 1.1 and 1.2. He held back bills from N.B. that required his approval. (Stip. 56-57) He yelled and behaved in an angry manner toward N.B. and the other court clerks when they failed to comply with his directives. Pursuant to one directive, he assigned office duties to the three district court clerks, assigning one to the phone, one to the counter and one to himself, Judge Hladio. In explaining that directive, he told L.D. that her work performance was unsatisfactory because she did not make him "number one." He told her that the first priority is to make him and his needs "number one." (Stip. 59, 63, 64) (Exhibit 3, 6)

At times, Judge Hladio refused to speak to N.B. At other times, he spoke sarcastically to her, ignored her questions about work matters and acted in a sulking vindictive manner. He continued to reassign N.B.'s job duties to other clerks. On February 24, 2016, Judge Hladio openly criticized N.B.'s work performance when speaking with J.T., telling her that N.B. was not doing her job and cannot follow directions. On May 6, 2015, he again criticized N.B.'s work performance while speaking with L.D. (Stip. 61 and 65) (Exhibit 3) Judge Hladio's actions, in response to N.B.'s rejection of his repetitive sexual advances and questions about her personal life, created an atmosphere which unreasonably interfered with an individual's work performance and created an intimidating, hostile or offensive work environment.

By his December 1, 2014 to December 2016 conduct of creating a hostile work environment, and his failure to treat N.B. and the other court clerks in a dignified,

civil, respectful and non-discriminatory manner, Judge Hladio failed to adhere to and comply with the UJS Policy and thereby violated Rule 1.1. By that same conduct Judge Hladio failed to act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and thereby violated Rule 1.2. Finally, by the aforementioned conduct, Judge Hladio failed to avoid impropriety and the appearance of impropriety, and thereby violated Rule 1.2.

Bias, Prejudice and Harassment

Judge Hladio has violated Canon 2, Rule 2.3(B) of the New Rules Governing Standards of Conduct of Magisterial District Judges. Rule 2.3 is titled "Bias, Prejudice, and Harassment" and provides, in pertinent part:

(B) A magisterial district judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender . . . age

R.G.S.C.M.D.J. Canon 2, Rule 2.3(B). Judicial duties includes administrative duties.

R.G.S.C.M.D.J. Canon 2, Rule 2.3(A). Comment [2] to Rule 2.3 includes hostile acts as a manifestation of bias or prejudice. Comment [2] also provides, in pertinent part:

Even facial expressions and body language can convey to parties and lawyers in the proceeding, the media, and others an appearance of bias or prejudice. A magisterial district judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

Rule 2.3 cmt. [2]. Additionally Comment [5] demonstrates that Rule 2.3 should be considered in unison with the UJS Policy:

The Supreme Court's Rules and Policies, eg., the Rules of Judicial Administration and the Unified Judicial System Policy on Non-Discrimination and Equal Employment Opportunity, have continued force and effect.

Rule 2.3 cmt. [5].

Count Four: 6 JD 2016

The Board proved by clear and convincing evidence that during the period of December 1, 2014 through December 2016, Judge Hladio demonstrated bias and prejudice and engaged in harassment against N.B., and thereby violated Rule 2.3(B). Judge Hladio knew that N.B. had repeatedly rejected his unwelcome sexual advances and had refused to answer his prying questions about her personal life. He knew that N.B. was dating another man. In response, Judge Hladio created an untenable hostile work environment and treated N.B. in an angry manner. He treated her differently than the other clerks, often refusing speak to her or respond to her work related questions. At other times, Judge Hladio spoke to N.B. in a sarcastic manner, if at all.

Moreover, Judge Hladio continually interfered with N.B.'s ability to perform her job responsibilities and took away some of her Office Manager duties, assigning them to, and burdening the other clerks. On multiple occasions, he spoke negatively about N.B. to her co-workers. (Stip. 56-57) These hostile acts by Judge Hladio could reasonably be perceived as manifesting bias and prejudice against N.B. In the performance of his judicial duties, including his administrative duties, Judge Hladio's words and actions did manifest bias and prejudice and he engaged in harassment based on sex against N.B., and thereby violated Rule 2.3(B).

Count Four: 3 JD 2017

The Board proved by clear and convincing evidence that during the week of August 7-11, 2017, Judge Hladio demonstrated bias and prejudice against Beaver County Assistant District Attorney Angela Reed Strathman, who prosecuted cases before him in Central Court, and thereby violated Rule 2.3(B). Judge Hladio yelled at, criticized and demonstrated an improper demeanor toward ADA Reed Strathman.

In open court, Judge Hladio pointed out ADA Reed Strathman's young age, remarked that she was inexperienced, questioned her truthfulness and asked her if she was even an attorney. (Stip. 253-255) (Exhibits 46, 47) Judge Hladio stipulated that during that same week, he did not raise his voice or yell at, criticize or demonstrate an improper demeanor toward older female attorneys in Central Court. He did not comment on the age or level of experience of older female lawyers, who appeared before him, and did not question their truthfulness or ask, "Are you an attorney?" (Stip. 267-268) It could reasonably be perceived that Judge Hladio's words and conduct manifested bias and prejudice against ADA Reed-Strathman based on her age.

Additionally, Judge Hladio stipulated that during the week of August 7-11, 2017, he did not raise his voice or yell at, criticize or demonstrate an improper demeanor toward young male attorneys in Central Court. He did not comment on the age or level of experience of young male attorneys who appeared before him, question their truthfulness, or ask, "Are you an attorney." (Stip. 269-70) It could reasonably be perceived that Jude Hladio's words and conduct manifested bias and prejudice against ADA Reed Strathman based on sex.

By his conduct of yelling at, criticizing and demonstrating an improper demeanor toward ADA Reed Strathman, questioning her truthfulness, repeatedly commenting on her youth and inexperience and asking if she was an attorney, but refraining from directing such conduct toward older female attorneys and young male attorneys, Judge Hladio manifested bias or prejudice against ADA Reed Strathman based on age and sex, and thereby violated Rule 2.3(B).

Retaliation

Prior to the enactment of the New Rules Governing Standards of Conduct of Magisterial District Judges, retaliatory conduct by judges was impermissible and the basis for discipline. The UJS Policy, enacted in 2008, expressly prohibits retaliation as follows:

Prohibition Against Retaliation

Retaliation *in any form* against any person who complains about harassment or discrimination, who files a harassment or discrimination complaint, or who cooperates with, or assists in, the investigation of such complaints is prohibited under this Policy. Retaliation by any Personnel of the System . . . will be considered misconduct warranting disciplinary action.

. . .

Charges of retaliation will be viewed as separate and distinct from the original complaint or action which precipitated the alleged retaliation and may form the basis for a new complaint. Retaliation may result in disciplinary action even though the original harassment or discrimination complaint was determined to be unfounded and dismissed.

UJS Policy at 4 (2016) (emphasis added). The same language is set forth in the UJS Policy in 2008 and the revised 2013 Policy. Therefore, Judge Hladio is subject to discipline for all retaliatory conduct toward N.B, which occurred prior to the enactment of New Rule 2.16(B).

Cases from other jurisdictions demonstrate that retaliatory conduct by a judge can take various forms and warrants discipline, even in the absence of an adverse employment decision. See *Letter of Censure to Crow* at 3 (judge filed complaints with a lawyer disciplinary agency against lawyer who filed a complaint against the judge); *In re Conduct of Ginsberg*, 690 N.W.2d at 546 (judge telephoned a complainant lawyer and cast aspersions on other lawyer witnesses to the alleged misconduct); and *In re Disciplinary Action Against Corwin*, 843 N.W.2d at 834-35

(judge complained about the work performance of a complainant law clerk, who had filed a sexual harassment complaint against him, and attempted to have her reassigned, disciplined or terminated by court administration).

Some retaliation cases involve adverse employment action. For example, a judge in Indiana routinely favored some of her employees over others, designated one employee as a confidant and announced to those in her inner circle that she was "suspicious" of their fellow employees, whom she described as lacking in trustworthiness, "disloyal" and "out to get her." *In re Brown*, 4 N.E.3d 619, 627 (Ind. 2014). When Judge Brown learned that the chief bailiff was preparing a complaint against her, she took away some of the bailiff's job responsibilities and ultimately terminated her while she was on leave. *Id.* at 627-28. Additionally, Judge Brown retaliated against two other employees, because of their cooperation in the disciplinary proceedings against her, by issuing disciplinary warnings to them. Her actions toward disfavored employees included ignoring them, failing to share scheduling information with them and taking away select job responsibilities. *Id.* at 627. Finally, Judge Brown retaliated against a commissioner, who contemplated a candidacy for judge, by taking away duties normally assigned to the commissioner and limiting their communication. *Id.* at 627. The Indiana Supreme Court concluded, "The use of judicial power as an instrument of retaliation is a serious violation of the Code of Judicial Conduct" (citing *Matter of Danikolas*, 838 N.E.2d 422, 430 (Ind. 2005)) and imposed a sanction of removal. *Id.* at 628-630.

In the cited *Danikolas* case, a magistrate filed a complaint with the Indiana Commission against Judge Danikolas for engaging in *ex parte* communications and entering an order, rescinding the magistrate's contempt order in a divorce matter.

In re Danikolas, 838 N.E.2d. at 425. Upon deposition by Judge Danikolas's attorney, the magistrate refused to admit that the contempt order was improper. *Id.* at 426. In response, Judge Danikolas terminated the magistrate. The magistrate filed another request for investigation with the Commission. *Id.* at 427. The Supreme Court determined that Judge Danikolas retaliated against the magistrate when she terminated her employment and imposed a sanction of a 60-day suspension without pay. *Id.* at 431. All of the aforementioned cases are persuasive in the analysis of whether Judge Hladio retaliated against numerous individuals, as charged in the Board Complaints.

2010-2014 Retaliatory Acts: UJS Policy and Canon 2

The Joint Stipulations of Fact and Exhibits demonstrate by clear and convincing evidence that between 2010 and November 30, 2014, Judge Hladio engaged in retaliatory conduct and thereby violated Canon 2 of the Old Rules Governing Standards of Magisterial District Judges.

N.B. and other clerks from Judge Hladio's district court began filing complaints with Court Administration at the Court of Common Pleas of Beaver County in 2010. (Stip. 25) Then President Judge McBride, District Court Administrator DeFilippi, and Deputy District Court Administrator Bowers met with Judge Hladio on multiple occasions and specifically warned him not to retaliate against N.B. and the other court clerks who complained about his conduct. (Stip. 28, 41) Despite that notice, Judge Hladio engaged in multiple forms of retaliatory conduct toward N.B.

The same conduct that created a hostile work environment between 2012 and November 30, 2014 was also retaliatory. In 2012, Judge Hladio demonstrated sulking, vindictive behavior toward N.B. when she refused to go out with him or

answer his questions about her personal life. (Stip. 33) During a November 2012 meeting, then President Judge McBride cautioned Judge Hladio not to retaliate against N.B. or the other clerks and advised him that if he received additional complaints about his conduct, then he would file a complaint with the Board. (Stip. 41-42) Judge Hladio did not heed the warnings.

In March or April 2014, Judge Hladio discovered that N.B. was involved in a relationship with another man. (Stip. 46) Thereafter, Judge Hladio began a pattern of conduct, which included acting in an angry, punitive manner toward N.B. He yelled at her, refused to speak with her on some occasions and at other times, spoke to her in a sarcastic manner. (Stip.47-50) Judge Hladio ignored N.B.'s work-related questions, reassigned her Office Manager work responsibilities to other court clerks, adding to their workloads, and spoke negatively about N.B.'s job performance to the other clerks. (Stip. 51-53) This conduct continued up until the filing of the first Board Complaint in December 2016.

The UJS Policy prohibits a judge from engaging in retaliatory conduct, "*in any form,*" against a person who complains about harassment or discrimination. UJS Policy at 4 (emphasis added). It also prohibits a judge from retaliating against anyone who assists or cooperates with the investigation of a complaint of harassment or discrimination. *Id.* Judge Hladio was aware that N.B. and other clerks had complained about his harassing behavior to Court Administration, and that they were cooperating and assisting with the investigation of those complaints. Judge Hladio knew that then President Judge McBride, the District Court Administrator and Deputy Court Administrator Bowers had directed him to stop his sexual harassment of N.B., not to create a hostile work environment and not to retaliate against N.B. and the

other clerks. Yet he intentionally and persistently engaged in numerous forms of retaliatory conduct. As a result of Judge Hladio's intentional and persistent pattern of retaliatory conduct toward N.B., he violated the U.J.S. Policy and thereby violated Old Canon 2, requiring judges to comply with the law.

Count Five: 6 JD 2016

Judge Hladio has violated Canon 2, Rule 2.16(B) of the New Rules Governing Standards of Conduct of Magisterial District Judges, which explicitly prohibit retaliation. Rule 2.16 is titled "Cooperation and Disciplinary Authorities" and provides, in pertinent part:

(B) A magisterial district judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a magisterial district judge or a lawyer.

R.G.S.C.M.D.J. Canon 2, Rule 2.16(B). The Board proved by clear and convincing evidence that Judge Hladio created a hostile work environment at his district court and engaged in retaliatory conduct against N.B.

Between December 1, 2014, when the New Rules became effective, and December 2016, when the Board filed its first Complaint, Judge Hladio continued his pattern of retaliatory conduct. He yelled at and acted in an angry manner and punitive manner toward N.B., demonstrating sulking and vindictive behavior. Sometimes, he refused to speak to N.B. On other occasions, he spoke to her in a sarcastic manner, and ignored her questions about work related matters. (Stip. 48)

On May 6, 2015 and February 24, 2016, Judge Hladio spoke negatively about N.B.'s work performance to her co-workers, Court Clerks, L.D. and J.T., respectively. (Stip. 61, 65) During this same period of time, Judge Hladio reassigned N.B.'s work duties to her co-workers. He held back bills that required his approval, interfering

with and negatively affecting N.B.'s ability to timely pay amounts owed by the district court. (Stip. 53-59)

On October 18, 2016, Judge Hladio sent an email to Deputy Court Administrator Bowers, complaining about N.B.'s attitude and unwillingness to train a new court clerk, P.S. He claimed that N.B. "would snap and yell at her that she was busy." Judge Hladio asserted that N.B. "put her down" and that P.S. was "threatened and intimidated." (Exhibit 7 at 6) All of the allegations proved false. On October 19, 2016, Deputy District Court Administrator Bowers met with and interviewed P.S., who stated that N.B. and J.T. "had been great." P.S. refuted all of Judge Hladio's claims, reporting that N.B. "would sit next to her and explain procedures" and that she had compiled a "file folder full of notes." (Exhibit 7 at 5) Judge Hladio intentionally filed a complaint against N.B., containing false allegations about her work performance, as a means of retaliating against her.

Although some of the same conduct is charged as harassment and violation of the law, the UJS policy provides that retaliatory conduct must be considered separately. The Policy provides:

Charges of retaliation will be viewed as separate and distinct from the original complaint or action which precipitated the alleged retaliation and may form the basis for a new complaint.

UJS Policy at 4. Therefore, regardless of this Court's determination pertaining to the charges that Judge Hladio engaged in sexual harassment and created a hostile work environment, those same facts must be considered separately and distinctly under the charge of retaliation.

Judge Hladio engaged in this pattern of retaliatory conduct toward N.B. because she rejected his sexual advances, reported his inappropriate conduct to

Court Administration, cooperated with and assisted with the investigation of those complaints, and cooperated and assisted with the Board's investigation. By his conduct, Judge Hladio did retaliate, directly or indirectly against a person known or suspected to have assisted or cooperated with an investigation of his judicial conduct, and thereby violated Rule 2.16(B), the UJS Policy and Rule 1.1.

Count Five: 3 JD 2017

The Board proved by clear and convincing evidence that between December 1, 2014 and October 10, 2017, when the Board filed its second Board Complaint, Judge Hladio violated Rule 2.16(B) and the UJS Policy by his retaliatory conduct toward individuals at both his district court and at Central Court.

During the course of the Board's investigation, Judge Hladio became aware that his court clerks, N.B., J.T. and L.D., had not only complained about his conduct to Court Administration, but had also cooperated with the Board's investigation. Judge Hladio learned this information by means of the Board's Notices of Full Investigation, the Board's depositions, the Board's Complaints, discovery documents and the February 17, 2017 Suspension Hearing, where Deputy District Court Administrator Aileen Bowers testified as a Board witness. Then President Judge McBride, District Court Administrator DeFilippi, and Deputy District Court Administrator Bowers had previously warned Judge Hladio that he was prohibited from retaliating against N.B. and the other court clerks. (Stip. 41)

March 22, 2017 Letter to Inspector General

While he was suspended with pay, and despite those warnings, Judge Hladio sent a letter, dated March 22, 2017, to the Inspector General of the Commonwealth of Pennsylvania, with a copy to the Auditor General. (Stip. 189) (Exhibit 44) In that

letter, he complained about the work performance of N.B., J.T., L.D. and Deputy District Court Administrator Bowers, all of whom were known to be witnesses for the Board at trial in 6 JD 2016. (Stip. 190-191) By sending that March 22, 2017 letter to individuals in positions of power in the Commonwealth of Pennsylvania, Judge Hladio retaliated against persons known or suspected to have assisted with the Board's investigation of Judge Hladio's alleged misconduct, and thereby violated Rule 2.16(B).

By that same conduct, Judge Hladio violated the UJS Policy against retaliation. Judge Hladio knew that N.B. had repeatedly complained to Beaver County Court Administration and then President Judge McBride about his ongoing pattern of harassment toward her, beginning with sexual harassment and, upon her rejection of his sexual advances, continuing with creating a hostile workplace. Judge Hladio knew that N.B. cooperated with and assisted with their investigation of those complaints and with the Board's investigation. By his conduct of sending the March 22, 2017 letter to the Inspector General and the Auditor General, complaining about N.B.'s work performance, Judge Hladio retaliated against N.B., and thereby violated the UJS Policy against retaliation and Rule 1.1, Failure to Comply with the Law.

June 28, 2017 EEOC Complaint

Sometime in February 2017, the same month when this Court suspended him with pay, Judge Hladio contacted federal authorities and began the process of filing a complaint against the Administrative Office of Pennsylvania Courts (AOPC) under the Americans with Disabilities Act (ADA). One week after he resumed the bench, on June 28, 2017, Judge Hladio signed a Charge of Discrimination against AOPC with the U.S. Equal Employment Opportunity Commission (EEOC), under the ADA. (Stip.

193-194) (Exhibit 43) Within the EEOC Complaint, Judge Hladio claimed that N.B., the very person whom he had harassed, had harassed him at district court. He also claimed that Central Court staff at the Court of Common Pleas of Beaver County had made false allegations against him, which occurred while he served, on a rotating basis, as the presiding judge of Central Court. (Stip. 196-197) Finally, he claimed that then President Judge McBride and Deputy District Court Administrator Bowers failed to take corrective measures when he complained about clerks and staff at his district court and at Central Court. (Stip. 198)

Judge Hladio knew that his district court clerks and the staff at Central Court had complained about his conduct and cooperated with the investigations by Court Administration and the Board. Judge Hladio knew that then President Judge McBride and Ms. Bowers had assisted or cooperated with the Board's investigation. He also knew that all of the named individuals were listed as witnesses at the upcoming trial in 6 JD 2016. (Stip. 199)

By his conduct of filing the EEOC complaint and alleging misconduct by the very people who had lodged complaints against him, or were administratively dealing with those complaints, Judge Hladio retaliated against those individuals that he knew or suspected had assisted or cooperated with the Board's investigations of his conduct. Therefore, he violated Rule 2.16(B). By that same conduct, Judge Hladio violated the UJS Policy against retaliation, and is subject to discipline by this Court, pursuant to Rule 1.1, Failure to Comply with the Law.

Central Court

On July 25, 2017 and September 5, 2017, Judge Hladio sent complaints via email to Deputy District Court Administrator William Hare and President Judge

Richard Mancini, which contained false, intemperate and irrelevant statements about individuals whom he knew or suspected had cooperated with the Board's investigation. Within the September 5, 2017 email, Judge Hladio alleged, without factual basis, that on August 8, 2017, Assistant District Attorney (ADA) Angela Reed Strathman had violated Pennsylvania Rule of Professional Conduct No. 3.8 and retaliated against him in Central Court because of his EEOC claim. In that September 5, 2017 email, Judge Hladio disclosed that he had sent an email to EEOC, alleging that ADA Reed Strathman had retaliated against him. (Stip. 200-202)

Whereas, the Joint Stipulations of Fact and Exhibits prove by clear and convincing evidence, that Judge Hladio engaged in judicial misconduct toward ADA Reed Strathman at Central Court during the week of August 7-11, 2017. He repeatedly berated, and exhibited an improper demeanor and engaged in retaliatory conduct toward her.

On August 11, 2018, while presiding over two separate proceedings in *Commonwealth v. Thomas*, Judge Hladio lectured a defendant and, then later lectured a defense attorney, about Pennsylvania Rule of Professional Conduct 3.8(b), even though it was inapplicable to both proceedings. (Stip. 273-275; 276-277) (Exhibit 46 Audio at 08:00-11:00; 25:28-26:51; Exhibit 49 Transcript at 9:20-12:13; 24:3-25:25) Later that same day, Judge Hladio stated on the record that Beaver County Assistant District Attorney Chad Parks was complying with Pa.R.P.C 3.8(b) when he agreed to the continuances in *Commonwealth v. Yokel* and *Commonwealth v. Arbes*. (Stip. 278-270). Judge Hladio told ADA Parks, "Some people do not understand the rule," and "You might want to tell some of your DAs or your boss." (Stip. 280) ADA Parks knew about the August 8, 2018 incident involving ADA Reed

Strathman and refused to convey Judge Hladio's message to her, to his colleagues or to District Attorney Lozier. (Stip. 280-281) (Exhibit 46 Audio at 3:18:08-3:20:16; 3:26:17-3:27:58; Exhibit 49 Transcript at 134:19-135:9; 139:14-141:11) ADA Parks submitted an Incident Report to Court Administration, memorializing the incident at Central Court. (Exhibit 53)

Less than a month later, Judge Hladio sent the September 5, 2018 email to Deputy Court Administrator Hale and President Judge Mancini, casting aspersions against ADA Reed Strathman, wrongly claiming that she violated the Rules of Professional Conduct and speculating that she had retaliated against him. Judge Hladio knew or suspected that ADA Reed Strathman had assisted or cooperated with the Court Administration's investigation and the Board's investigation. By his intentional actions to harm ADA Reed Strathman professionally, by reporting that she engaged in attorney misconduct and retaliated against him, Judge Hladio retaliated, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of his conduct, and thereby violated Rule 2.16(B), the UJS Policy and Rule 1.1.

Similarly, in his September 5, 2017 email to Deputy Court Administrator Hale and President Judge Mancini, Judge Hladio alleged, without any basis in fact, that on August 7, 2017, Deputy District Court Administrator Bowers retaliated against him in Central Court, through her husband's law partner, Attorney Kenneth Fawcett, because of Judge Hladio's EEOC disability discrimination claim. (Stip. 203) Based on a conflict of interest, Attorney Fawcett properly asked for a continuance from a case before Judge Hladio. Judge Hladio knew that Ms. Bowers had assisted or cooperated with the Court of Common Pleas investigation and the Board's

investigation of allegations of judicial misconduct. By his intentional actions to harm Ms. Bowers professionally, by speculatively alleging that she conspired with, and retaliated against him through Attorney Fawcett, Judge Hladio retaliated, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of his conduct, and thereby violated Rule 2.16(B), the UJS Policy and Rule 1.1.

District Court

Judge Hladio also demonstrated other forms of retaliatory conduct toward individuals at his district court. In June 2017, Judge Hladio investigated Constable Alex Korol's display of political signs in his yard, seeking to prove that Korol violated rules governing the conduct of constables. He repeatedly threatened to take away Constable Korol's work assignments and to stop using his constable services. (Stip. 205, 207, 216) (Exhibits 39-42) On June 29, 2017, while yelling at Constable Korol about his salary for services performed for the district court, Judge Hladio demanded to see his IRS 1099 Form. (Stip. 201-211) That same day, Judge Hladio announced his motivation to Constable Korol:

"I'm swinging for everyone. My lawyers said to swing for everyone."

(Stip. 212) Judge Hladio knew or suspected that Constable Alex Korol had assisted or cooperated with the Board's investigation pertaining to Judge Hladio's harassment of N.B. By his intentional efforts to interfere with, and harm Constable Korol professionally and economically, Judge Hladio retaliated, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of his conduct, and thereby violated Rule 2.16(B), the UJS Policy and Rule 1.1.

In June 2017, Judge Hladio attempted to employ yet another means of retaliation. He encouraged Constable Kolakowski, who also worked for his district court, to file a complaint against N.B. and Constable Korol with President Judge Mancini, alleging that N.B. did not know how to manage levy action paperwork and Korol refused to handle levy actions. (Stip. 209) Judge Hladio knew or suspected that N.B. and Constable Korol had assisted or cooperated with the Board's investigation

By his intentional efforts to persuade Constable Kolakowski to file a complaint against N.B. and Constable Korol, and thereby harm them professionally, Judge Hladio retaliated, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of his conduct, and thereby violated Rule 2.16(B), the UJS Policy and Rule 1.1.

The Board proved by clear and convincing evidence that Judge Hladio engaged in many forms of retaliation, both direct and indirect, against individuals at his district court and at Central Court who either complained about alleged conduct of harassment and discrimination, or cooperated or assisted with the investigation of those complaints. Accordingly, he is subject to discipline for his violations of the UJS Policy and the Rules prohibiting retaliation.

DEMEANOR

Between 2010 and November 30, 2014, Judge Hladio repeatedly demonstrated an impatient, undignified and discourteous demeanor toward his court clerks and Central Court staff, in violation of Rule 4(C) of the Old Rules Governing Standards of Conduct of Magisterial District Judges. Rule 4 is titled "Adjudicative Responsibilities" and provides, in pertinent part:

C. Magisterial District judges shall be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom they deal in their official capacity.

Old R.G.S.C.M.D.J. No. 4C.

Between December 1, 2014 and October 10, 2017, excluding his period of suspension, Judge Hladio repeatedly demonstrated an impatient, undignified and discourteous demeanor toward his district court clerks, police officers, constables, and lawyers and staff at Central Court, in violation of Canon 2, Rule 2.8(B) of the New Rules Governing Standards of Conduct of Magisterial District Judges. Rule 2.8 is titled "Decorum, Demeanor, and Communication in an Official Capacity" and provides, in pertinent part:

(B) A magisterial district judge shall be patient, dignified, and courteous to litigants, witnesses, lawyers, authorized representatives, court staff, court officials, and others with whom the magisterial district judge deals in an official capacity.

R.G.S.C.M.D.J. Canon 2, Rule 2.8(B).

This Court's jurisprudence and that of the Pennsylvania Supreme Court support a finding that the Board has proved by clear and convincing evidence that Judge Hladio violated these Rules during the relevant time periods. In *Merlo*, this Court determined that the Respondent's rude, ridiculing, unfair, harshly critical and belittling behavior toward her court staff violated Rule 4C. *In re Merlo*, 24 A.3d 932, 973 (Pa.Ct.Jud.Disc. 2011), *aff'd* 58 A.3d 1 (Pa.2012). Similarly, in *Lokuta*, this Court determined that the respondent judge's "attitude and demeanor towards those with whom she came into contact in the course of everyday business of her judicial office," including her court staff, violated Canon 3A(3), which is analogous to Rule 4C. *In re Lokuta*, 964 A.2d 988, 1031-1032 (Pa.Ct.Jud.Disc. 2009), *aff'd*, 11 A.3d 427 (Pa.

2011). The witnesses in *Lokuta* presented testimony of violations “describing incident after incident, occurring continually, repeatedly, unpredictably.” *Id.*

In deciding whether a judge fails to abide by the Rule or Canon to treat others in a patient, dignified and courteous manner, this Court contemplates that although the temperament of judges may vary, there is no excuse for discourteous conduct:

We do not come to this conclusion unmindful that all judges do not come to their office with the same allotment of equanimity – some have a lower threshold of intolerance than others; but, whatever their idiosyncratic predispositions, in the conduct of their judicial duties there is no place for discourtesy.

Id. at 1032. (See also, *In re Zoller*, 792 A.2d 34, 35-36 (Pa.Ct.Jud.Disc.2002)). Rules 4C and 2.8(B) apply to on and off bench conduct, as long as the judge is acting in an official capacity. *Zoller*, 792 A.2d at 35 (“Respondent’s use of the language which is stipulated he used constitutes a violation of Rule 4C whether these outbursts came during or after the hearing, inasmuch as, in either case, he was acting in his official capacity.”).

In this case, it is essential to analyze charges of improper demeanor separately from charges of retaliation. In *Tidd*, this Court declined to analyze some of the allegations of improper demeanor under Rules 4C and 2.8(B) because it determined that the same conduct violated Rule 2.16(B), prohibiting retaliation. *Tidd*, 175 A.3d at 1162, 1168 n.16 (“In concluding that Judge Tidd’s other conduct did not violate Old Rule 4(c) or New Rule 2.8(b) (demeanor), we do not look to retaliatory conduct, *infra*, as we feel that conduct is fully addressed within the retaliation violation.”). However, a primary purpose of judicial discipline is to provide guidance to other judges about the types of conduct that are impermissible and may subject them to sanction.

"In disciplining a judicial officer for his misconduct, that tribunal not only punishes the wrongdoer, but also repairs the damaged public trust and provides guidance to other members of the judiciary regarding their conduct."

In re Berkheimer, 930 A.2d 1255, 1259-60 (2007). In this case, it is essential to analyze all of Judge Hladio's unacceptable, egregious and improper demeanor under Rules 4C and 2.8(B), and thereby inform other judges about the high standard that is expected and demanded of all judges under those Rules.

Count Two: 6 JD 2016

District Court

Beginning in 2010, N.B. and other court clerks at Judge Hladio's district court filed complaints with Court Administration of the Court of Common Pleas of Beaver County, alleging that Judge Hladio's conduct toward them was inappropriate and offensive. Judge Hladio stipulated that in August 2011, the District Court Administrator told him to stop his inappropriate language and intrusive, offensive behavior toward the court clerks. (Stip. 25-26) In 2012, when N.B. refused to go out with him or answer his prying questions about her personal life, Judge Hladio behaved in a sulking, vindictive manner toward N.B. at district court. (Stip. 33)

In November 2012, after receiving another complaint from N.B., then President Judge McBride admonished Judge Hladio and directed him to stop his sulking and vindictive conduct toward N.B. and the other clerks at his district court. (Stip. 33, 37) In April 2014, after learning that N.B. was dating another man, Judge Hladio acted in an angry, punitive manner toward N.B. He refused to speak with her, ignored her questions and at other times spoke to her in a sarcastic manner. (Stip. 46-51) By the aforementioned conduct, Judge Hladio failed to act in a patient, dignified and

courteous manner toward N.B. and the other district court clerks with whom he deals in his official capacity, and thereby violated Old Rule 4C.

Between December 1, 2014 and December 2016, Judge Hladio continued his sulking and vindictive conduct toward N.B. He acted in an angry, punitive manner toward her, refusing to speak with her at times, speaking to her sarcastically at other times, and ignoring her work-related questions. Judge Hladio yelled and behaved in an angry manner toward all his court clerks when they failed to comply with his directives about clerical matters. (Stip. 55, 59) By the aforementioned conduct, Judge Hladio failed to act in a patient, dignified and courteous manner toward N.B. and the other court clerks with whom he deals in his official capacity, and thereby violated Rule 2.8(B).

Central Court Clerk Shannon Preininger

In or about January 2016, Judge Hladio demonstrated an improper demeanor toward Central Court Clerk Shannon Preininger when she handed up a form from an ADA and defense counsel, who had agreed upon a disposition and a fine in a particular case. When Ms. Preininger handed the form to Judge Hladio, he yelled, "You don't tell me what the fine is. I tell you." (Stip. 85-87) Furthermore, Judge Hladio yelled at Ms. Preininger on a routine basis whenever he presided at Central Court and yelled at other individuals who appeared before him. (Stip. 77-83)

On March 21, 2016, Judge Hladio demonstrated an improper demeanor toward Court Clerk Preininger. Throughout the 9:30 a.m. to 12:30-1:00 p.m. Central Court session, Judge Hladio repeatedly yelled at Ms. Preininger in front of other individuals, who were present in the courtroom. He yelled at her for not communicating the

names of the defendants and yelled at her each time she handed up paperwork to him at the bench. (Stip. 78-81)

On May 16, 2016, Judge Hladio yelled at Ms. Preininger when she asked if he was ready to begin proceedings. He continued to yell at her, accusing her of failing to announce specifics about each case, which was not a standard procedure required of the Central Court clerk. (Stip. 88-92) By his conduct, Judge Hladio failed to act in a patient, dignified and courteous manner toward Court Clerk Preininger with whom he deals in a professional capacity, and thereby violated Rule 2.8(B).

Central Court Assistant District Attorney Ashley Elias

Generally, when Judge Hladio presided over cases in Central Court, he demonstrated an agitated and angry demeanor, which grew progressively worse during the first six months of 2016. (Stip. 93-94) Beaver County Assistant District Attorney Ashley Elias appeared regularly in Central Court and up until June or July 2015, Judge Hladio demonstrated an appropriate demeanor toward her. However, beginning in June or July 2015, Judge Hladio began to treat ADA Ashley Elias differently than he treated other attorneys who appeared before him. (Stip. 95-97) His demeanor and attitude toward her changed after she prevailed in an appeal from Judge Hladio's ruling in *Commonwealth v. Moore*, Docket No. MJ-36201-CR-0000183-2015. (Stip. 103)

Judge Hladio demonstrated anger and dislike for ADA Elias in Central Court. On May 16, 2016, he insisted that she state, "May it please the Court," before addressing him, a formal greeting that was not required in Central Court by Judge Hladio or any other magisterial district judge. (Stip. 104-106) On May 16, 2016, Judge Hladio yelled at Court Clerk Preininger when she asked him to consider ADA

Elias's request for him to conduct a hearing in absentia, expected to last five minutes, during a delay in Attorney Goodwald's presentation of his case. (Stip. 107-109) Forty minutes later, when ADA Elias again asked to present the hearing in absentia, Judge Hladio yelled at her in front of a crowded courtroom of ADAs, public defenders, other attorneys, police officers and defendants. Judge Hladio continued to yell at her for approximately two minutes. District Attorney David J. Lozier entered Central Court in response to a report he received from another ADA about Judge Hladio's improper demeanor toward ADA Elias. (Stip. 110-113)

DA Lozier observed Judge Hladio ignore ADA Elias's requests pertaining to her cases and ignore requests from the Public Defenders involved in the same cases as ADA Elias. When DA Lozier repeated ADA Elias's requests, Judge Hladio paid attention to him and acted on those requests. However, he continued to ignore ADA Elias. Moreover, Judge Hladio routinely put ADA Elias's cases at the end of the Central Court session, causing long delays for all those involved in Elias's cases. (Stip. 114-117) By all of his conduct toward ADA Elias, Judge Hladio failed to act in a patient, dignified and courteous manner toward an attorney with whom he deals in an official capacity, and thereby violated Rule 2.8(B).

District Court Police Officers and Litigants

On March 24, 2014, Judge Hladio demonstrated an improper demeanor toward Ambridge Borough Police Officer Sean A. Owen, the citing officer in *Commonwealth v. Carrazan*. Docket No. MJ-36101-TR-0000144-2014. Officer Owen had waited for two and one-half hours while Judge Hladio conducted a summary trial in another matter. (Stip. 162-164) During the *Carrazan* hearing, Judge Hladio posed a question about case law. When Officer Owens attempted to look up the case law in his Bridge

and Traffic Study binder, Judge Hladio told him he had "thirty-seven seconds" to find the information. After approximately one minute, Judge Hladio dismissed the *Carrazan* case, telling Officer Owens that he should have been prepared. (Stip. 165-167) By his conduct, Judge Hladio failed to act in a patient, dignified and courteous manner toward an officer with whom he deals in an official capacity and thereby violated Rule 4C.

On May 6, 2015, Judge Hladio kept an intoxicated, agitated criminal defendant, R.F., waiting in the reception area for a total of 40 minutes, with police officers in attendance, while he spoke with court clerks about job expectations and job performance. (Stip. 67, 118-143) Judge Hladio refused to permit the defendant into the courtroom, despite repeated requests from the clerks, L.D. and J.T. The incident followed his March 10, 2015 Board deposition, where Judge Hladio responded to questions about the Board's investigation to date. As a result, Judge Hladio believed that it was a "set up" and that the police, the court clerks and the defendants were all trying to set him up. (Stip. 132-134) By his conduct of refusing to permit the defendant into the courtroom for an arraignment and causing the police and the clerks to struggle to manage the defendant, Judge Hladio failed to act in a patient, dignified and courteous manner toward the litigant, the police officers and his court clerks, with whom he deals in a professional capacity, and thereby violated Rule 2.8(B).

On March 29, 2016, Judge Hladio spoke for approximately ten minutes in a degrading tone to a litigant, J.H., who entered a guilty plea to one count of Public Drunkenness and Similar Conduct. He told her that people in the community were complaining about people like her and that he did not need people like her in his

town, urinating on themselves and being drunk all the time. (Stip. 144-150) Next, Judge Hladio displayed an inappropriate demeanor toward Ambridge Borough Police Officer Timothy Depenhart, the citing officer, who recommended a minimal fine, based on J.H.'s limited financial resources and her good behavior during the past year. (Stip. 151-152)

In response, Judge Hladio raised his voice and engaged in a heated exchange with Officer Depenhart. Judge Hladio made the following series of degrading statements to Officer Depenhart:

"Oh, so if you don't have money you can do whatever you want in town;"

"I guess it's ok to urinate everywhere and on yourselves, be drunk in public in this town just because you don't have any money;"

"How about if all these people were to come live in your community and urinate on themselves and everywhere while being drunk;" and

"We don't need them here and you think its ok since they deserve a minimal fine."

(Stip. 153-159) By his conduct toward J.H. and Officer Depenhart, Judge Hladio failed to act in a patient, dignified and courteous manner toward a litigant and a police officer, with whom he deals in his professional capacity, and thereby violated Rule 2.8(B).

Count Two: 3 JD 2017

District Court

On June 29, 2017, Judge Hladio demonstrated an improper demeanor toward Constable Alex Korol who performed work assignments for his district court. Judge Hladio yelled at Constable Korol, quoting his earnings at "\$250,000" for work performed at his district court. Constable Korol stated that he earned approximately \$250,000 over a twelve-year period for court assignments that pay a specific fixed

amount of money. Judge Hladio continued to yell at Constable Korol, demanding to see his IRS Form 1099. (Stip. 210-211) That same day, Judge Hladio told Constable Korol:

“I’m swinging for everyone. My lawyers said to swing for everyone.”

(Stip. 212)

On July 6, 2017, Judge Hladio became angry and yelled at Constable Korol after he asked if Judge Hladio had talked about political signs in his yard with President Judge Mancini. Judge Hladio demanded that Constable Korol provide the names of the people who told him that he spoke with President Judge Mancini about the political signs. (Stip. 214-215) (Exhibits 39-42) By his conduct toward Constable Korol, Judge Hladio failed to act in a patient, dignified and courteous manner toward a constable with whom he deals in his professional capacity and thereby violated Rule 2.8(B).

Central Court

During the week of August 7-11, 2017, Judge Hladio demonstrated an improper demeanor toward Assistant District Attorney Angela Reed Strathman while presiding over Central Court, speaking to her in an argumentative manner and in a condescending tone. (Stip. 236) On August 7, 2017, ADA Reed Strathman introduced herself to Judge Hladio and handled five cases before him. In the first case, *Commonwealth v. Moreland*, Judge Hladio denied ADA Reed Strathman’s request for a continuance and admonished her by stating that she should have been better prepared. (Stip. 217-220) (Exhibit 54) In the second case, *Commonwealth v. Ours*, ADA Reed Strathman requested a continuance in a case involving a bench warrant. (Exhibit 55) Judge Hladio argued with ADA Reed Strathman for

approximately five minutes, about the issues presented, and said her "youth" was the reason she did not understand what he was saying to her. (Stip. 221-224)

In the third matter, *Commonwealth v. Bradley*, Police Officer Robert Turyon did not appear because Central Court staff had sent an erroneous notice to him, telling him that the case was continued to a later date. (Exhibit 56) After granting a defense continuance, requested by Attorney Fawcett because of a conflict of interest, Judge Hladio instructed court tipstaff to request a copy of the erroneous continuance notice from ADA Reed Strathman and Officer Turyon. Even though ADA Reed Strathman had never met Judge Hladio or appeared before him in the past, Judge Hladio said he needed to see proof of the error to determine if ADA Reed Strathman was telling him the truth. (Stip. 226-233)

On August 8, 2017, Judge Hladio continued to demonstrate an improper demeanor toward ADA Reed Strathman, which escalated to the need for intervention by DA Lozier. In *Commonwealth v. Reno*, ADA Strathman objected to the pro se defendant's request for a continuance. (Exhibit 57) Following her objection, Judge Hladio rudely asked:

"Are you even an attorney? If you were, you should know how important it is to have an attorney present?"

(Stip. 239-241) Judge Hladio lectured ADA Reed Strathman, speculating that the reason she asked for a continuance in *Reno* was because she had "no experience" and claiming that her "youth" was the problem. Judge Hladio then told ADA Reed Strathman, "You should know that I always grant a continuance on the first listing of a case." In response, and after the defendant had left the courtroom, ADA Reed Strathman reminded Judge Hladio that he had denied a Commonwealth request for a continuance the day before in the *Moreland* case. Judge Hladio yelled at ADA Reed

Strathman for approximately five minutes, telling her he can do whatever he wants, he did not need any "guff" from her, and accusing her of having no respect for the court. Judge Hladio again asked ADA Reed Strathman if she was even an attorney and made condescending remarks that her age was the problem. (Stip. 241-247)

After his verbal attack, Judge Hladio requested that DA Lozier come to the courtroom. DA Lozier insisted that the meeting take place on the record in Central Court and that ADA Reed Strathman be present. The audio recording system at Central Court recorded their August 8, 2017 conversation and subsequent proceedings that day. It was also used to record proceedings on August 10-11, 2017. (Stip. 250-252)

Throughout the August 8, 2018 meeting, Judge Hladio spoke in a raised voice when addressing DA Lozier and ADA Reed Strathman. Judge Hladio accused ADA Reed Strathman of having no respect of the court. Again, Judge Hladio asked her if she was even an attorney and declared that she was inexperienced and had no understanding of how a subpoena worked. Judge Hladio again made a derogatory remark about ADA Reed Strathman's age, using the term "youth." (Stip. 253-255) After DA Lozier explained that ADA Reed Strathman had professional experience clerking for then President Judge McBride, Judge Hladio said:

"Wait, you were a clerk for Judge McBride? Oh, okay, now I understand."

(Stip. 256, 258) (Exhibit 46 Audio at 0:01-13:20; Exhibit 47 Transcript at 2:2-19:2)

Later that same day, when ADA Reed Strathman asked Judge Hladio how he wanted to proceed in a criminal case, *Commonwealth v. Strayhorn*, in which the defendant was in jail in another county. Judge Hladio responded in a condescending manner, asking ADA Reed Strathman if she needed to look at his files to see what

she should be doing. (Stip. 259-261) (Exhibit 46 Audio at 1:15:35 – 1:18:14; Exhibit 47 Transcript at 57:24-60:20)

On August 10, 2017, Judge Hladio continued to question ADA Reed Strathman's requests in court proceedings. He raised his voice, spoke in a condescending manner and again attempted to hand his case files to her so that she could "understand" what was going on in the proceedings. (Stip. 265-266) (Exhibit 46 Audio at 2:08:55-2:09:48; Exhibit 48 Transcript at 68:18 -69:22)

Several individuals filed incident reports with Court Administration about Judge Hladio's conduct in Central Court and described his inappropriate demeanor toward ADA Reed Strathman. Central Court Clerk Preininger stated that Judge Hladio was "belligerent." (Exhibit 50) Beaver County Deputy Sheriff Steven A. Montani described Judge Hladio's behavior as "demeaning" and "agitated." (Exhibit 51) ADA Reed Strathman termed his communications as "argumentative," "condescending," "aggressive," and said, "His tone and demeanor made me feel like he was specifically attacking me." (Exhibits 52) By his rude, demeaning and condescending attitude and behavior toward ADA Reed Strathman, Judge Hladio failed to be patient, dignified and courteous to a lawyer with whom he deals in his official capacity, and thereby violated Rule 2.8(B).

III. Conclusion

By letter to Pennsylvania Governor Tom Wolf, dated November 14, 2017, Judge Hladio resigned his position as Magisterial District Judge, effective November 17, 2017. His resignation does not preclude the need for disciplinary action in this case. This Court's analysis of Judge Hladio's conduct and potential disciplinary

sanction will provide guidance for other judges. The following language from *Ginsberg* echoes this Court's statements about the purpose of judicial discipline:

"As we have explained, the primary purpose of judicial discipline is not to punish the judge, but rather to send a message to the judge, to other judges, and to the public that the conduct at issue violated the standards to which we hold judges and that such conduct shall not be condoned."

In re Ginsberg, 690 N.W.2d at 551. See *In re Sullivan*, 121 A.3d 623, 628-29 (Pa.Ct.Jud.Disc. 2015) (citing *In re Melograne*, 812 A.2d 1164, 1168 (2002)).

Judge Hladio's conduct establishes the following violations as charged in the Board Complaints:

6 JD 2016:

1. At Count One, Part A, the Board has proved by clear and convincing evidence that Judge Hladio violated the UJS Policy and Old Rule 2A. (Paragraph No. 218: withdrawn)

2. At Count One, Part B, the Board has proved by clear and convincing evidence that Judge Hladio violated the UJS Policy and Canon 1, Rules 1.1. (Paragraph No. 225: withdrawn)

3. At Count One, Part C, the Board has proved by clear and convincing evidence that Judge Hladio violated Canon 1, Rule 1.2.

4. At Count Two, Part A, the Board has proved by clear and convincing evidence that Judge Hladio violated Old Rule 4C.

5. At Count Two, Part B, the Board has proved by clear and convincing evidence that Judge Hladio violated Canon 2, Rule 2.8(B).

6. At Count Three, Part A, the charge of a violation of Old Rule 4A is withdrawn at Paragraph Nos. 260-264 (pertaining to overweight trucking cases).

7. At Count Three, Part B, the Board has proved by clear and convincing evidence that Judge Hladio violated Canon 2, Rule 2.2. (Paragraph Nos. 269 & 270: withdrawn)

8. At Count Three, Part C, the charge of a violation of Canon 2, Rule 2.4(A) is withdrawn at Paragraph Nos. 272-275 (pertaining to overweight trucking cases).

9. At Count Four, the Board has proved by clear and convincing evidence that Judge Hladio violated Canon 2, Rule 2.3(B).

10. At Count Five, the Board has proved by clear and convincing evidence that Judge Hladio violated Canon 2, Rule 2.16(B).

11. At Count Six, the Board has proved by clear and convincing evidence that Judge Hladio violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania.

12. At Count Seven, the Board has proved by clear and convincing evidence that Judge Hladio violated the Administration of Justice Clause of Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania. (Paragraph No. 299: withdrawn)

13. At Count Eight, the Board has proved by clear and convincing evidence that Judge Hladio violated the Disrepute Clause of Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania.

3 JD 2017:

14. At Count One, the Board has proved by clear and convincing evidence that Judge Hladio violated Canon 2, Rule 2.16(B).

15. At Count Two, the Board has proved by clear and convincing evidence that Judge Hladio violated Canon 2, Rule 2.8(B).

16. At Count Three, the Board has proved by clear and convincing evidence that Judge Hladio violated Canon 1, Rule 1.2.

17. At Count Four, the Board has proved by clear and convincing evidence that Judge Hladio violated Canon 2, Rule 2.3(B).

18. At Count Five, the Board has proved by clear and convincing evidence that Judge Hladio violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania.

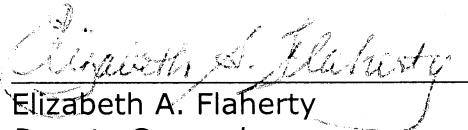
19. At Count Six, the Board has proved by clear and convincing evidence that Judge Hladio violated the Disrepute Clause of Article V, § 18(d)(1).

Respectfully submitted,

RICHARD W. LONG,
Chief Counsel

Date: February 1, 2019

By:


Elizabeth A. Flaherty

Deputy Counsel

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**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

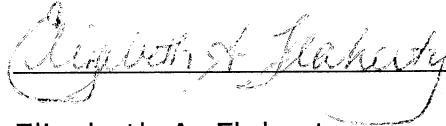
Andrew M. Hladio :
Magisterial District Judge :
Magisterial District 36-1-01 : 6 JD 2016
36th Judicial District :
Beaver County :

CERTIFICATE OF COMPLIANCE

I 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.

Submitted by: Judicial Conduct Board of Pennsylvania

Signature:



Name:

Elizabeth A. Flaherty
Deputy Counsel

Attorney No.: 205575

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Andrew M. Hladio	:	
Magisterial District Judge	:	
Magisterial District 36-1-01	:	6 JD 2016
36th Judicial District	:	
Beaver County	:	

PROOF OF SERVICE

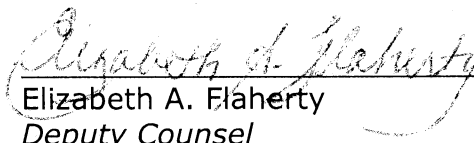
In compliance with Rule 122(D) of the Court of Judicial Discipline Rules of Procedure, on or about February 1, 2019, a copy of this *Brief in Support of Proposed Conclusions of Law* was sent by email and First-class mail to Heidi F. Eakin, Esquire, counsel to Magisterial District Judge Hladio at the following address:

Heidi F. Eakin, Esquire
Costopoulos, Foster & Fields
831 Market Street
Lemoyne, PA 17404-1518

Respectfully submitted,

February 1, 2019

BY:


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Deputy Counsel

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