

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

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OF PENNSYLVANIA

OCT - 1 2019

RECEIVED AND FILED

IN RE:

Lyris F. Younge :
Court of Common Pleas :
First Judicial District : 2 JD 2019
Philadelphia County :

**JUDICIAL CONDUCT BOARD'S REPLY TO
RESPONDENT'S PETITION FOR SPECIAL RELIEF**

AND NOW, this 1st day of October 2019, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania, by and through Chief Counsel Richard W. Long and Deputy Counsel Elizabeth A. Flaherty, and files this Reply to Respondent's Petition for Special Relief.

1. **Denied as stated.** The Board Complaint speaks for itself. Any attempt to characterize its contents is denied and strict proof thereof is demanded at the time of trial or hearing. On August 20, 2019, the Board filed its Petition for Relief for Interim Suspension With or Without Pay. Contemporaneously, the Board filed the Board Complaint, a copy of which was attached to the Petition and "made a part hereof and incorporated herein by reference as though set forth in full." Petition for Interim Suspension at ¶ 3.

2. **Admitted.**

3. **Admitted**

4. **Denied as stated.** It is admitted that a five-judge panel of this Court presided over the September 12, 2019 Interim Suspension Hearing and heard testimony from four witnesses for the Board. At the conclusion of the September 12, 2019 Interim Suspension Hearing, this Court requested that counsel "submit to us a

memo Brief within a week as to what's your position on the Petition for Interim Suspension with or without Pay." Suspension Hrg. N.T. 132:21-23 (Sept. 12, 2019). This Court provided counsel with an option of delivering an oral argument at the close of the Interim Suspension Hearing, including argument within the Brief, or both. *Id.* at 132:25-133:2.

5. **Admitted.**

6. **Admitted.**

7. **Admitted.**

8. **Denied.** Board counsel complied with this Court's directive "to base your factual argument on what was presented [at the September 12, 2019 Interim Suspension Hearing.]" N.T. 134:22-23.

a. **Denied.** The "Factual Background" section of the Board's Brief is not argument. Throughout the Interim Suspension Hearing, this Court and counsel relied on the Board Complaint as a basis for the testimony of the Board's witnesses. The Factual Background section contains three citations to the Board Complaint. The first and second citations are on page 2 of the Board's Brief and merely indicate the page numbers for the factual allegations and for the charges contained within the Board Complaint. The third citation to the Board Complaint is at page 3 of the Board's Brief and pertains to Judge Younge's judicial work assignments. Superior Court President Judge Emeritus Susan Pikes Gantman testified about the assignment of Judge Younge to Chambers Weeks and her subsequent transfer to the Civil Division. *Id.* at 15:11-18.

- b. **Denied.** The Board did not supplement its argument with impermissible references to the Board Complaint. Pages 5-9 of the Board's Brief pertain to Judge Gantman's testimony about the allegations of inordinate delay. Within those pages are three cites to the Board Complaint. The first citation to the Board Complaint at page 5 of the Board's Brief, provides a general roadmap and signals the reader to that portion of the Board Complaint that is referenced by Judge Gantman during her testimony. The second citation to the Board Complaint is at page 7 of the Board's Brief and pertains to a case, *In the Interest of A.W., A Minor*. Judge Gantman testified about that case during direct testimony, while referencing Board Exhibit 1. *Id.* at 17:8-17. The third cite to the Board Complaint is at page 7 of the Board's Brief and pertains to two emails that are listed in Board Exhibit 1, admitted at the Interim Suspension Hearing, and also set forth in the Board Complaint. Judge Gantman testified about the June 24, 2016 email, regarding Judge Younge's request for an extension of time, and the July 8, 2016 email, which demonstrated that Judge Younge responded to that particular email. *Id.* at 33:19-36:13.
- c. **Denied.** Attorney Brian McLaughlin testified about Judge Younge's contempt ruling, delay and demeanor in *In the Interest of K.R., A Minor* and *In the Interest of B.T., A Minor*.
- i. Contempt Ruling: The first Board Complaint citation at page 10 of the Board's Brief is a general roadmap citation, signaling the reader to that portion of the Board Complaint referenced by Attorney McLaughlin during his testimony about contempt. Attorney McLaughlin testified

extensively about the lack of notice for the January 23, 2018 Contempt Hearing. Multiple citations to the record of the Interim Suspension Hearing pertaining to his testimony about notice are set forth in the Board's Brief. The citation to the Board Complaint at page 12 of the Board's Brief, alerts the Court to the corresponding paragraphs and subparagraphs in the Board Complaint, which pertain to the issue of notice.

- ii. Inordinate Delay: During the Interim Suspension Hearing, Attorney McLaughlin testified about delay in the appeal from Judge Younge's contempt ruling in *In the Interest of K.R., A Minor* and *In the Interest of B.T., A Minor*. At page 13 of the Board's Brief, the citation to the Board Complaint signals the reader to the corresponding portion of the Board Complaint containing allegations about delay on appeal. Attorney McLaughlin testified about the Superior Court's ruling on appeal, concluding that he was not in contempt. N.T. 54:9-21. The second citation to the Board Complaint at page 13 is a cross-reference to the corresponding paragraphs in the Complaint, which describe the Superior Court's Opinion. The Superior Court Opinion is readily available to Respondent and her counsel online at the Pennsylvania Unified Judicial System website at <https://ujportal.pacourts.us/>. This Court may take judicial notice of that consolidated Opinion.
- iii. Demeanor: During the Interim Suspension Hearing, Attorney McLaughlin testified extensively about Judge Younge's demeanor toward him when he attempted to apologize to her about his absence from her

courtroom for a Termination of Parental Rights Hearing. At page 14 of the Board's Brief, the citation is to Page 34, Paragraph 111 of the Board Complaint. This Court specifically referenced Page 34, Paragraph 111 during the Interim Suspension Hearing and posed multiple follow-up questions based on this same paragraph. N.T. 68:21-77:10.

d. **Denied.** During the Interim Suspension Hearing, Attorney Aaron Mixon testified about the ensuring the right to be heard, upholding and applying the law, and fairness and impartiality in *In the Interest of S.S., A Minor*, inordinate delay in that same case and improper demeanor in *In the Interest of J.C., A Minor*.

i. Fairness, Impartiality and Right to Be Heard: At Page 15 of the Board's Brief, the citation to the Board Complaint provides a roadmap to the pages and paragraphs, which correspond to Attorney Mixon's testimony about inordinate delay and fairness, impartiality and right to be heard in *In the Interest of S.S., A Minor*. During the Interim Suspension Hearing, this Court specifically asked Board counsel to provide pertinent page and paragraph numbers in the Board Complaint, which were relevant to Attorney Mixon's testimony. N.T. 92:21-23. Specific citations to Attorney Mixon's testimony about the lack of testimony and evidence at the Adjudicatory Hearing in *In the Interest of S.S., A Minor*, are provided in the Board's Brief at pages 15-16.

ii. Inordinate Delay: At page 16 of the Board's Brief, the citation to the Board Complaint provides a roadmap to the page and paragraphs that set forth the allegations pertaining to inordinate delay. When beginning

to elicit direct testimony from Attorney Mixon about delay in *In the Interest of S.S., A Minor*, Board counsel provided the page and paragraph number to this Court. *Id.* at 95:6-11. The Board's Brief at Page 16, second to last line, includes citations to Attorney Mixon's testimony about inordinate delay (N.T. 94:4-96:12).

- iii. Improper Demeanor: At page 17 of the Board's Brief, the citation to the Board Complaint provides the page and paragraph numbers of the allegations within the Complaint, which are the subject of Attorney Mixon's testimony. During the Interim Suspension Hearing, Attorney Mixon testified about those same underlying facts in *In the Interest of J.C., A Minor*. *Id.* at 89:15-90:14. On page 18 of the Board's Brief, the citation to the Board Complaint at Page 22, Paragraph 61 pertains to an excerpt from the Permanency Hearing in *In the Interest of J.C., A Minor*. Board counsel introduced page 22, Paragraph 61 of the Board Complaint during the direct examination of Attorney Mixon and he authenticated the audio recording. *Id.* at 84:17-19. This Court repeated the paragraph number when asking Board counsel to limit the audio to Paragraph 61. *Id.* at 87:19-21.
- e. **Denied.** Attorney Brandi McLaughlin testified *In the Interest of N.M., A Minor* about ensuring the right to be heard, upholding and applying the law, and fairness and impartiality, delay and demeanor.
 - i. Fairness, Impartiality and Right to Be Heard: The citations within the Board's Brief to pages and paragraph numbers within the Board Complaint are included for purposes of referring the reader to the

allegations that correspond with the specific testimony by Attorney McLaughlin. The citation at page 19 of the Board's Brief is a general reference to the alleged facts within the Board Complaint, which pertain to the right to be heard, upholding and applying the law, fairness and impartiality. The citation to the Board Complaint at Page 20 of the Board's Brief pertains to the first set of Appeals. It is directly preceded by a specific citation to Attorney McLaughlin's testimony. The citation to the Board Complaint at Page 21 of the Board's Brief corresponds directly with the Attorney McLaughlin's testimony, which is cited on the same page at Line 2.

The three citations to the Board Complaint at page 22 of the Board's Brief pertain to the second set of Appeals. Attorney McLaughlin's corresponding testimony at the Interim Suspension Hearing is cited on Page 22, Lines 5 and 10. Additionally, Attorney McLaughlin provided direct testimony about the filing of the second set of appeals. N.T. 113:15-23. Board counsel now recognizes and seeks to correct an error in the date contained in the sentence just prior to the second citation to the Board Complaint on page 22 of the Board's Brief, which should read as follows: "Judge Younge filed her 1925(a)(2)(ii) Opinion on February 9, 2018, 52 days prior to the required due date." This information is correctly stated at Page 23 under "Inordinate Delay." The third citation to the Board Complaint at Page 22 of the Board's Brief pertains to the result of the consolidated appeals.

At the Interim Suspension Hearing, Attorney McLaughlin testified about the outcome in those consolidated appeals. *Id.* at 114:19-115:14.

- ii. Inordinate Delay: The final two citations to the Board Complaint appear at Page 23 of the Board's Brief and pertain to Inordinate Delay. During the Interim Suspension Hearing, Attorney McLaughlin testified that she and co-counsel Leotta filed the first set of appeals on January 6, 2017 and that Judge Younge filed her 1925(a)(2)(ii) Opinion in August 2017. *Id.* at 107:6-108:24. This testimony corresponds directly with the first citation to the Board Complaint on Page 23 of the Board's Brief.

Attorney McLaughlin testified about filing the second set of appeals, immediately after Judge Younge's ruling at the Termination of Parental Rights Hearing. *Id.* at 113:11-24. This testimony corresponds to the second citation at Page 23 of the Board's Brief, citing Paragraph 31 of the Board Complaint. Attorney McLaughlin did not provide direct testimony about the delayed 1925(a)(2)(ii) Opinion by Judge Younge in the second set of appeals. The dates of the second set of appeals and the filing date for Judge Younge's 1925(a)(2)(ii) Opinion are set forth in the Superior Court's May 4, 2018 Opinion, which is available to Respondent's counsel on the UJS website. This Court may take judicial notice of that consolidated Opinion.

9. **Denied.** Pursuant to this Court's directive, the factual argument set forth in the Board's Brief is based on the testimony presented at the September 12, 2019 Interim Suspension Hearing. By way of further explanation, the sole purpose

of including the citations to the Board Complaint in the Board's Brief is to identify the allegations about which each witness testified.

10. **Denied.** The factual argument set forth in the Board's Brief in Support of its Petition for Relief for Interim Suspension is based on the testimony presented at the September 12, 2019 Interim Suspension Hearing and therefore, fully complies with this Court's directive.


WHEREFORE, the Board respectfully requests that this Court deny Judge Younge's Petition for Special Relief.

Respectfully submitted,

RICHARD W. LONG
Chief Counsel

October 1, 2019

By:


Elizabeth A. Flaherty
Deputy Counsel
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**COMMONWEALTH OF PENNSYLVANIA
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IN RE:

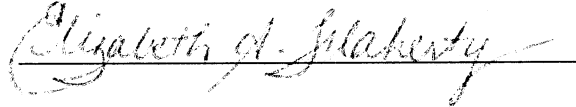
Lyris F. Younge :
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CERTIFICATE OF COMPLIANCE

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

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PROOF OF SERVICE


In compliance with Rule 122(D) of the Court of Judicial Discipline Rules of Procedure, on October 1, 2019, a copy of the *Judicial Conduct Board's Reply to Repondent's Petition for Special Relief* was sent by U.S. Mail to Charles M. Gibbs, Esquire, counsel to the Honorable Lyris F. Younge at the following address:

Charles M. Gibbs, Esquire
McMonagle Perri McHugh Mischak Davis
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Respectfully submitted,

October 1, 2019

BY:


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