

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Judge Marissa J. Brumbach	:	
Municipal Court Judge	:	2 JD 2022
1st Judicial District	:	
Philadelphia County	:	

COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

OCT 27 2023

RECEIVED AND FILED

JUDICIAL CONDUCT BOARD PRE-TRIAL MEMORANDUM

AND NOW, this 27th day of October, 2023, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board) by and through undersigned counsel, pursuant to this Court's September 18, 2023 Order and files this Pre-trial Memorandum:

A. TRIAL WITNESS LIST

The Board may call some or all of the following witnesses at trial:

1. The Honorable Patrick F. Dugan
President Judge of the Philadelphia Municipal Court
Stout Criminal Justice Center, Suite 1301
1301 Filbert Street
Philadelphia, PA 19107

President Judge Dugan will testify regarding his email communications with Judge Brumbach, and his communications with Judge Joffie Pittman and Margaret Fenerty about Judge Brumbach completing of 95% of the cases scheduled in traffic court on January 7, 2022, without the need for coverage, and the actions he took in response to the information he received from those communications. President Judge Dugan will also testify about the First Judicial District's vacation leave policy and the unwritten policy on judicial leave for personal reasons, and Judge Brumbach's compliance with those policies prior to January 7, 2022.

2. The Honorable Joffie C. Pittman III
Administrative Judge of the Municipal Court
Stout Criminal Justice Center, Suite 1301
1301 Filbert Street
Philadelphia, PA 19107

Judge Pittman will testify regarding his communications with President Judge Dugan, Judge Brumbach, and Margaret Fenerty regarding Judge Brumbach completing of 95% of the cases scheduled in traffic court on January 7, 2022, without the need for coverage.

3. Daren Waite, Esq.
Assistant District Attorney
Philadelphia Office of the District Attorney
3 S. Penn Square
Philadelphia, PA 19107

Assistant District Attorney Waite will testify regarding the circumstances surrounding his review of traffic citations on January 5, 2022.

4. Margaret Fenerty
First Judicial District
369 City Hall
Philadelphia, PA 19107

Ms. Fenerty will testify regarding her communications with President Judge Dugan, Judge Pittman, and her review of the traffic citations scheduled for court on January 7, 2022, that Judge Brumbach reviewed on January 5 or 6.

5. Donna Sofronski
First Judicial District
369 City Hall
Philadelphia, PA 19107

Ms. Sofronski will testify regarding the circumstances surrounding Judge Brumbach's review of the traffic citations scheduled for court on January 7, 2022, including her communications with Judge Brumbach, Margaret Fenerty, and Richard Delario.

6. Richard Delario
First Judicial District
369 City Hall
Philadelphia, PA 19107

Mr. Delario will testify regarding the circumstances surrounding Judge Brumbach's review of the traffic citations scheduled for court on January 7, 2022, including his communications with Judge Brumbach, Donna Sofronski, and Assistant District Attorney Daren Waite.

B. BOARD EXHIBITS

The Board may introduce some or all of the following exhibits at trial, in its case in chief:

1. Judicial Conduct Board Confidential Request for Investigation opened by Judicial Conduct Board Chief Counsel Richard W. Long on January 19, 2022.
2. November 17, 2022, video and corresponding transcript of the deposition of Honorable Marissa J. Brumbach, taken by Melissa L. Norton, Interim Chief Counsel, Judicial Conduct Board of Pennsylvania.
3. The Scheduled Hearing Worksheet, Traffic Citation, and Certificate of Disposition for each traffic citation scheduled for Courtroom B on January 7, 2022.

4. Email chain between Judge Brumbach and President Judge Dugan from November 10, 2021, through January 6, 2022, regarding Judge Brumbach attending an event in Florida on January 7, 2022, and her completion of 95% of the cases scheduled for January 7, 2022, without the need for judicial coverage.
5. Screenshot of text messages between President Judge Dugan and Judge Pittman on January 6, 2022.
6. Screenshot of text messages between President Judge Dugan and Judge Pittman on January 9, 2022.
7. Screenshot of text messages between President Judge Dugan and Judge Pittman on January 10, 2022.
8. January 9, 2022, email from President Judge Dugan to Judge Brumbach advising her that she was not assigned to traffic court on Monday, January 10, 2022.
9. Screenshot of text messages from President Judge Dugan to Judge Brumbach on January 9, 2022, and January 10, 2022, informing her of the change in her judicial assignments on January 10, 2022, and the remainder of the week.
10. Email dated January 10, 2022, from Judge Brumbach to Margaret Fenerty regarding her attempt to obtain the case file folders for the traffic citations that were scheduled for court on January 7, 2022.
11. Email dated January 10, 2022, from Judge Brumbach to President Judge Dugan and Judge Pittman detailing what occurred from Thursday, January 6, 2022, through the morning of January 10, 2022.

12. Email Donna Sofronski sent Margaret Fenerty on January 11, 2022, explaining what occurred with Judge Brumbach on the week of January 3, 2022.
13. Email Margaret Fenerty sent Judge Dugan on January 11, 2022, explaining what occurred with Judge Brumbach on the week of January 3, 2022.
14. Memo President Judge Dugan wrote to State Court Administrator Geoff Moulton on January 12, 2022, explaining what occurred on the week of January 3, 2022.
15. Email dated January 14, 2022, from President Judge Dugan to Judge Brumbach informing her that he was temporarily assigning her to perform only administrative duties.
16. Transcript of the January 6, 2023, hearing in the Court of Judicial Discipline concerning the Board's Petition for Interim Suspension Without Pay filed on December 14, 2022.
17. The First Judicial District of Pennsylvania Judicial Leave Policy.
18. Email chains (12) between President Judge Dugan and Judge Brumbach occurring between the dates of Tuesday, March 15, 2019, through Tuesday, October 19, 2021.

C. STIPULATIONS

It can reasonably be expected that opposing counsel will agree to the following stipulations:

1. Article V, § 18 of the Constitution of the Commonwealth of Pennsylvania grants to the Board the authority to determine whether there is probable cause to file

formal charges against a judicial officer in this Court, and thereafter, to prosecute the case in support of such charges in this Court.

2. From January 1, 2018, to the present, Judge Brumbach has served continuously as a Municipal Court Judge for Philadelphia County, Pennsylvania.
3. Pursuant to Article V, § 18(a)(7) of the Constitution of the Commonwealth of Pennsylvania, the Board determined that there is probable cause to file formal charges against Judge Brumbach in this Court.
4. On November 10, 2021, Judge Brumbach sent Philadelphia Municipal Court President Judge Patrick Dugan an email stating,

I am attending an event in Florida on January 7, 2022, and unable to preside that day. Kindly let me know if I should make notifications or if you are going to handle it and provide coverage for the room (not yet assigned).

Thank you.

5. Judge Brumbach was unable to preside on January 7, 2022, because she would be attending a 50th birthday party in Florida for her partner's friend and business associate.
6. President Judge Dugan did not respond to Judge Brumbach's email.
7. Between November 10, 2021, and January 6, 2022, President Judge Dugan did not call Judge Brumbach on the telephone, text her, or speak to her in person about her being unable to preside in court on January 7, 2022.

8. Between November 10, 2022, and January 6, 2022, Judge Brumbach made no further efforts to communicate with President Judge Dugan about her being unable to preside in court on January 7, 2022.
9. Judge Brumbach was scheduled to preside in Traffic Court's Courtroom B during the week of January 3 through 7, 2022.
10. On January 7, 2022, the traffic citations listed for Courtroom B were divided into three groupings at 9:00 a.m., 1:00 p.m., and 2:30 p.m.
11. On Monday, January 3, and Tuesday, January 4, 2022, Judge Brumbach came to believe that there may issues with finding enough judges to provide the needed judicial coverage during the week.
12. Knowing that she would be in Florida on Friday, January 7, 2022, and there may be coverage issues for absent judges during the week, Judge Brumbach decided to review the traffic citations scheduled for court on January 7, 2022.
13. Since few defendants tended to show up for Traffic Court, Judge Brumbach decided to evaluate each traffic citation to determine if the defendant would be guilty *in absentia* if the defendant did not appear in court on January 7, 2022.
14. Donna Sofronski is the Chief of Courtroom Operations for Traffic Court.
15. Sofronski supervises the preparation of case file folders for each defendant scheduled to appear for hearings in Traffic Court.

16. Prior to January 7, 2022, case file folders were prepared for each defendant scheduled to appear in Courtroom B on January 7, 2022.
17. At a minimum, each case file folder prepared for January 7, 2022, contained paper copies of docket sheets, traffic citations, and scheduled hearing worksheets.
18. In accordance with standard practice, when preparing the case file folders, Traffic Court staff stamped the date "JAN 07 2022" onto the "Date of Adjudication" line on the Certificate of Disposition, which is printed on the back of each traffic citation.
19. In accordance with standard practice, if a case is continued, the Date of Adjudication line is restamped with the date of the rescheduled hearing.
20. The Certificate of Disposition is where judges presiding in traffic court will mark their adjudications, write down total due in fines and costs, and affix their signatures.
21. The seal of the Philadelphia Municipal Court is affixed on the Certificate of Disposition.
22. Traffic Court staff will typically provide judges with the case file folders on the day the cases are scheduled for court.
23. Prior to the judge receiving the case file folders, an Assistant District Attorney (ADA) from the Philadelphia Office of the District Attorney would review the

case file folders to determine which traffic citations, if any, should be withdrawn.

24. If the ADA decides to withdraw a traffic citation, he will circle the code for the adjudication of "Prosecution Withdrawn" on the Certificate of Disposition.
25. After the ADA completes his review, the case file folders are provided to the judge to approve the withdraw.
26. When the judge receives the case file folders, the judge initials the scheduled hearing worksheet.
27. If the requested withdraw is approved, the judge will enter her initials on the back of the traffic citation.
28. On Tuesday, January 4, or Wednesday, January 5, 2022, Judge Brumbach first looked at the case file folders for the traffic citations scheduled in Courtroom B on January 7, 2022.
29. On January 4 or 5, 2022, Judge Brumbach asked Richard Delario, one of Sofronski's Tipstaff General, if the case file folders for the traffic citations scheduled on Friday, January 7, 2022, were completed.
30. After Delario informed her that the case file folders were complete for Friday, Judge Brumbach asked if he could give them to the ADA so he could review the case file folders to determine which traffic citations, if any, to withdraw.
31. Delario informed Sofronski of Judge Brumbach's request before he gave the ADA the case file folders.

32. After reviewing the request with her supervisor, Domenic Reda, Sofronski directed Delario to give the case file folders to ADA Darren Waite for review as requested.
33. On January 5, 2022, Delario provided ADA Waite with the case file folders and informed him that Judge Brumbach was not planning on being present on January 7, 2022, and wanted him to review the files to see which cases, if any, should be withdrawn.
34. ADA Waite works in Courtroom B and Courtroom D of Traffic Court on a weekly basis.
35. ADA Waite began working in Traffic Court in late 2020 or early 2021.
36. For traffic citations scheduled for hearings in Courtroom B, the police officers who issued the traffic citation are not required to appear.
37. When prosecuting each traffic case, ADA Waite can rely on the information contained in the traffic citation.
38. Typically, on the day the traffic cases are scheduled for court, he will review the traffic citations in the case file folders to determine whether there are any issues with probable cause or the statute of limitations.
39. If he sees a problem with probable cause or the statute of limitations, ADA Waite will withdraw those traffic citations.
40. Normally, the first time ADA Waite would see the case file folders would be the day the cases are scheduled for court.

41. After ADA Waite is finished reviewing the case file folders, the court staff will take them and give them to the judge assigned to Courtroom B.
42. On January 5, 2022, ADA Waite reviewed the case file folders as requested.
43. When ADA Waite decided to withdraw a traffic citation, he circled the code "012" for the adjudication of "Prosecution Withdrawn" on the Certificate of Disposition located on the back of the traffic citation.
44. During ADA Waite's review, he decided to recommend the withdraw of seventeen (17) traffic citations.
45. After he finished his review, ADA Waite returned the case file folders to Delario.
46. Prior to this instance, ADA Waite had never been asked to review case file folders prior to the day the cases were scheduled for court.
47. During the time he was reviewing the files on Wednesday, January 5, 2022, Judge Brumbach informed ADA Waite that she would not be in court on Friday, January 7, 2022.
48. On January 5 or 6, 2022, Judge Brumbach again asked Delario for the case file folders so that she could complete a review.
49. On January 5 or 6, 2022, Delario informed Sofronski that Judge Brumbach wanted to review the case file folders for matters scheduled for January 7, 2022.

50. In Delario's twenty (20) years as a Tipstaff, this was the first time a judge ever asked him to provide her with case file folders a day or two in advance of the date the cases were scheduled for court.
51. After reviewing the request with Reda, Sofronski delivered the bundle of case file folders to Judge Brumbach in the judge's robing room.
52. In Sofronski's interactions with Judge Brumbach on January 5 or 6, 2022, the judge informed her that she had asked President Judge Dugan for the day off on January 7, but had not heard back from him.
53. Judge Brumbach told Sofronski that she did not know if there would be judicial coverage on January 7 and that she was intending to send President Judge Dugan an email.
54. In her review of the case file folders, Judge Brumbach evaluated each traffic citation to determine whether the defendant would be found guilty *in absentia* or not guilty *in absentia* if the defendant did not appear in court on January 7, 2022.
55. Judge Brumbach reviewed the traffic citations in the case file folders on January 5 or 6, 2022.
56. When reviewing the traffic citations, Judge Brumbach circled the code "009" for the adjudication of "Guilty in Absentia", and code "008" for the adjudication of "Not Guilty in Absentia" on the Certificate of Disposition form printed on the back of each traffic citation.

57. In the afternoon of January 6, 2022, Judge Brumbach asked Sofronski for the case file folders to review for a second time to be sure that she had properly marked the cases relative to any filed summons and/or certified mailings.
58. Upon her second review of the case file folders, Judge Brumbach scribbled over the circled adjudication codes and her initials that she had previously marked on the Certificates of Disposition of twenty (20) traffic citations.
59. When circling the codes for "Guilty in Absentia" or "Not Guilty in Absentia", Judge Brumbach had no specific knowledge whether any specific defendant would or would not appear for court on January 7, 2022.
60. Neither ADA Waite nor any other ADA was present when Judge Brumbach reviewed the traffic citations.
61. When evaluating whether she should find a defendant guilty *in absentia* or not guilty *in absentia*, Judge Brumbach did not consult with ADA Waite or any other ADA.
62. After circling the appropriate adjudication code given her evaluation of each traffic citation, Judge Brumbach initialed each Certificate of Disposition where the original signature of the judge of the Philadelphia Municipal Court Traffic Division is to be placed.
63. For each traffic citation that ADA Waite indicated his intention to withdraw, Judge Brumbach initialed the bottom of the Certificate of Disposition where the original signature of the judge of the Philadelphia Municipal Court Traffic Division is to be placed.

64. Even though Judge Brumbach completed the Certificate of Disposition on the back of each traffic citation prior to January 7, 2022, the anticipated adjudications would not be entered into the official docket report until it was confirmed on January 7 that the defendant did not appear for court.
65. To finalize the proposed adjudications while she was in Florida, Judge Brumbach planned to call the court staff after each scheduled listing at 9:00 a.m., 1:00 p.m., and 2:30 p.m. on January 7, 2022, to determine which defendants did not appear for court.
66. Upon being informed on the call which defendants did not appear for court, Judge Brumbach planned to direct the cases for those defendants to be forwarded to the disposer.
67. The disposer would also be given the case file folders containing the traffic citations that ADA Waite sought to withdraw, which were also initialed by Judge Brumbach.
68. The disposer is a court employee responsible for entering a judge's adjudication as marked on the Certificate of Disposition into the official docket reports.
69. If a defendant appeared in court on January 7, 2022, and no judicial coverage was provided to adjudicate the cases, Judge Brumbach planned to have the defendant's case or cases continued to another date.
70. Judge Brumbach marked the Certificates of Disposition on the 95 traffic as follows:

- a. Code "009" for the adjudication of "Guilty in Absentia" were circled on twenty-eight (28) citations;
- b. Code "008" for the adjudication of "Not Guilty in Absentia" were circled on thirty (30) citations;
- c. Code "012" for the adjudication of "Prosecution Withdrawn" were circled on seventeen (17) citations;
- d. Circled adjudications and Judge Brumbach's initials on twenty (20) citations were scribbled over in a manner indicating that Judge Brumbach had reconsidered the adjudication she had circled on the traffic citations.

- 71. The marks on the Certificates of Disposition in preparation for January 7, 2022, are the same marks Judge Brumbach makes on traffic citations when she reviews the traffic citations on the date the cases are scheduled for traffic court.
- 72. Judge Brumbach completed her review of the case file folders prior to emailing Judge Dugan on Thursday, January 6, 2022.
- 73. On January 6, 2022, at 9:31 a.m., President Judge Dugan and his Executive Secretary, Sharon Crimi, received an email from Judge Brumbach.
- 74. The email stated,

Happy New Year.

Since I have not heard from you regarding coverage and I am aware you are experiencing coverage issues across the Municipal Court with other judges, I have prepared the files for tomorrow after the Assistant District Attorney reviewed them. As such, at least 95% of the files will have been completed by me without the necessity of coverage. If court remains open tomorrow with the impending snow forecast and anyone shows up, my staff and the court staff know what to do. If you have an alternate plan, let me know and I will set the proper expectations.

Thank you.

75. Judge Dugan responded to Judge Brumbach's email with an email stating,

The alternative plan is for you to show up and handle your list. Have you coordinated with court administration in Traffic on the 95%?

So it is clear, I have not authorized you to be off on January 7th.

76. After responding to Judge Brumbach, President Judge Dugan had Crimi forward Judge Brumbach's email to Margaret Fenerty, the Chief of Staff at the Philadelphia Municipal Court Traffic Division.
77. When forwarding the email, Crimi asked Fenerty to call her.
78. When Fenerty called Crimi, Crimi asked her to look into the matter.

79. In the afternoon of January 6, 2022, Fenerty called Sofronski and asked her to look at the back of the traffic citations that Judge Brumbach had previously reviewed.
80. When Sofronski checked the traffic citations on January 6, 2022, she noticed that they were initialed by Judge Brumbach.
81. After Sofronski informed Fenerty that the traffic citations were initialed, Fenerty came and took possession the case file folders to review.
82. When doing a cursory review of the traffic citations within case file folders, Fenerty noticed that adjudications listed on the Certificate of Dispositions were circled and the citations were initialed by Judge Brumbach.
83. Fenerty then informed Crimi about what she discovered.
84. After Fenerty informed Crimi about what she discovered, Judge Dugan sent a text message to Traffic Court Administrative Judge Joffie Pittman asking him to talk to Fenerty about Judge Brumbach taking care of 95% of the cases listed for Courtroom B on January 7, 2022.
85. In the afternoon of Thursday, January 6, 2022, Judge Pittman informed Fenerty that he was going over to see Judge Brumbach to see what happened.
86. Judge Pittman went to Judge Brumbach's chambers to ask her about the cases scheduled for Friday and her plan on not being present on that day.

87. When he returned, Judge Pittman told Fenerty that he did not think that the traffic citations were signed.
88. After Fenerty asked him whether he looked at the traffic citations, he said, "no."
89. In Judge Pittman's experience, it is not a common occurrence for a judge to circle the adjudication code and initial the traffic citation the day before the case is scheduled.
90. In the afternoon of January 6, President Judge Dugan asked Fenerty to go back to Sofronski and look at the case file folders again.
91. Fenerty looked through the case file folders one by one and saw that Judge Brumbach had circled the codes for the adjudications of "Guilty in Absentia" and "Not Guilty in Absentia", and "Prosecution Withdrawn" and had signed each traffic citation with her initials.
92. Per President Judge Dugan's directions, Fenerty obtained the case file folders from Sofronski and gave them to her administrative assistant to make copies of the traffic citations and scheduled hearing worksheets.
93. After the copies were made, she provided them to President Judge Dugan.
94. Judge Dugan did not speak to Judge Brumbach directly about what she did to resolve 95% of the traffic citations scheduled for January 7, 2022.
95. As President Judge, Judge Dugan was responsible for ensuring that courtrooms were covered by other judges when the judge assigned to the

courtroom is absent due to an emergency, a vacation, or an approved personal day.

96. Judge Brumbach's absence from Courtroom B on January 7, 2022, was not approved by President Judge Dugan.
97. Nonetheless, President Judge Dugan was prepared to provide coverage for Courtroom B on January 7, 2022, due to Judge Brumbach's pending absence.
98. Judge Brumbach left for Florida on Thursday, January 6 after court.
99. The courts were closed on January 7, 2022, due to a snowstorm.
100. The decision to close the courts because of the pending snowstorm was made between 6 p.m. and 7 p.m. on January 6, 2022.
101. By Sunday, January 9, 2022, from speaking to Fenerty and Judge Pittman, Judge Dugan was aware of what occurred with the 95 traffic citations.
102. Once Judge Dugan became aware of what happened with the 95 traffic citations, he decided to not allow Judge Brumbach to preside over Traffic Court on January 10, 2022.
103. On Sunday, January 9, 2022, Judge Dugan sent Judge Brumbach a text message informing her that she is no longer scheduled to preside in Traffic Court on Monday, January 10, 2022.
104. Upon her arrival to Traffic Court on Monday, January 10, 2022, Judge Brumbach was advised that Fenerty was in possession of the case file folders

for the traffic citations previously scheduled for Traffic Court on January 7, 2022.

105. Judge Brumbach went to Fenerty's office to retrieve the case file folders.
106. Upon asking Fenerty for the case file folders, Fenerty informed her that President Judge Dugan had instructed her not to return them to her.
107. In response, Judge Brumbach told Fenerty that the files were incomplete and asked her to return them to her when Fenerty was done with them.
108. On January 10, 2022, at 12:57 p.m., Judge Brumbach sent an email to President Judge Dugan and Judge Pittman detailing what occurred from Thursday, January 6, 2022, through the morning of January 10, 2022.
109. On January 14, 2022, President Judge Dugan sent Judge Brumbach an email advising her that she is "temporarily assigned to perform administrative duties only, effective immediately."
110. Each of the 95 citations were eventually rescheduled for another traffic court date.
111. It can reasonably be expected that opposing counsel will agree to stipulate to the admissibility and authenticity of the exhibits listed above at part B, excluding exhibits described in no. 18.

D. DISCOVERY CERTIFICATION

The Board, by and through undersigned counsel, hereby certifies that it has provided to Judge Brumbach all materials required to be exchanged under C.J.D.R.P. No. 401(D)(1).

E. EXCULPATORY EVIDENCE CERTIFICATION

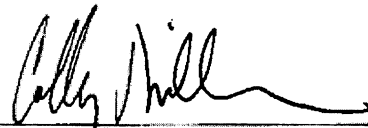
The Board, by and through undersigned counsel, hereby certifies that it has provided to Judge Brumbach all materials required to be exchanged under C.J.D.R.P. No. 401(E).

Respectfully submitted,

Melissa L. Norton
Chief Counsel

October 27, 2023

By:



COLBY J. MILLER
Deputy Chief Counsel
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(717) 234-7911

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Judge Marissa J. Brumbach :
Municipal Court Judge : 2 JD 2022
1st Judicial District :
Philadelphia County :


PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on October 27, 2023, a copy of the Board's Pre-Trial Memorandum was sent by First Class Mail and Email to Matthew H. Haverstick, Esquire as follows:

Matthew H. Haverstick, Esquire
Kleinbard LLC
Three Logan Square
1717 Arch Street, 5th Floor
Philadelphia, PA 19103
Email: mhaverstick@kleinbard.com

October 27, 2023

By:



COLBY J. MILLER
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**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

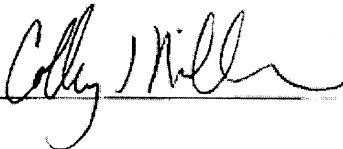
IN RE:

Judge Marissa J. Brumbach :
Municipal Court Judge : 2 JD 2022
1st Judicial District :
Philadelphia 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* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Judicial Conduct Board of Pennsylvania

Signature:  _____

Name: Colby J. Miller
Deputy Chief Counsel

Attorney No: 311599