

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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COURT OF JUDICIAL DISCIPLINE
COMMONWEALTH OF PENNSYLVANIA

IN RE: JUDGE MARISSA J. :
BRUMBACH :
MUNICIPAL COURT JUDGE : 2 JD 2022
1ST JUDICIAL DISTRICT :
PHILADELPHIA COUNTY :

JUDGE MARISSA J. BRUMBACH'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Judge Marissa Brumbach, by and through her undersigned counsel, files her Proposed Findings of Fact and Conclusions of Law, as set forth below:

I. INTRODUCTION

Judge Brumbach provided notice for a single personal day almost two months in advance and before she was even assigned to a courtroom for that day. Judge Brumbach gave such advance notice to allow Judge Dugan to give as much notice as possible so as to avoid any disruption of courtroom operations. Judge Brumbach also provided a reason for her personal leave day: an event in Florida. Because he never responded, Judge Brumbach remained concerned about whether he planned to provide coverage for B Court since the matters listed in B Court had not been administratively continued in advance. Judge Brumbach's concern was compounded when Judge Dugan sent an email on January 3, 2022, indicating that he was experiencing coverage issues in other courtrooms within the Municipal Court due to other jurists taking last minute judicial leave. Indeed, President Judge Dugan chose not to act in advance by administratively closing B Court upon being notified Judge

Brumbach would be taking judicial leave on January 7, 2022. Judge Brumbach thought of a solution that would alleviate Judge Dugan’s coverage issues and that would ensure the administration of justice would not be burdened or unduly delayed. Judge Brumbach discussed the solution with the relevant stakeholders: members of courtroom operations and the district attorney. Judge Brumbach then presented the solution to Judge Dugan in an email on January 6, 2022 where she specifically asked for him to let her know if there was an “alternate plan” that would obviate the need for her proposed solution.

In response to Judge Brumbach’s email, Judge Dugan replied that he had “not authorized [Judge Brumbach] to be off on January 7th.” This was notwithstanding the fact that there is no written policy, rule, or administrative order that gives the President Judge authority to grant or deny leave days *and* that Judge Brumbach complied with Judge Dugan’s personal preference that a judge provide a reason for a use of a personal leave day.

In any event, Judge Dugan enlisted Judge Pittman to talk with Judge Brumbach regarding her November 6, 2022 email. Judge Brumbach explained her proposed solution to Judge Pittman. When Judge Pittman left his conversation with Judge Brumbach, he did not think that she adjudicated any case.

It was not until Marge Fenerty—who is not a lawyer—reviewed the copies of the paper citations that the terms “disposed” and “adjudicated” entered the narrative. Ms. Fenerty told Judge Pittman that the cases were adjudicated. Judge Pittman, who had not seen the tickets or reviewed eTIMS, relayed Marge’s story to Judge Dugan,

who also had not seen the tickets. Marge's narrative took hold. Other than reviewing the tickets after he suspended Judge Brumbach from judicial duties on January 10, 2022, Judge Dugan did not investigate whether the citations were actually adjudicated via eTIMS or question how it was possible that he was able to relist all of the cases scheduled for January 7, 2022 without causing a mass double jeopardy violation. Judge Dugan simply adopted Ms. Fenerty's inexact use of adjudication.

Critically, however, Judge Brumbach's proposed solution did not happen, nor could it have happened for at least three reasons: (1) January 7, 2022 was a snow day; (2) Judges Pittman and Dugan intended to provide coverage for B Court and (3) Judge Brumbach did not enter (or cause to be entered) on January 6, 2022, the notations on the paper citations into eTIMS. By the time Judge Brumbach came to Judge Dugan with this plan—a plan that Judge Pittman agreed reasonable minds could differ over whether it was a good idea or not—*nothing* happened. In fact, Judge Brumbach never intended to move forward with her proposed solution if Judge Dugan intended to provide coverage for B Court.

It turns out that Judge Dugan did intend to provide coverage for B Court, but never communicated that intention to Judge Brumbach. And that's the common thread weaved throughout this now two-year-old story: President Judge Dugan did not communicate with Judge Brumbach and allowed his baseless frustration with Judge Brumbach to interfere with his leadership obligations. Whereas Judge Brumbach gave reasonable notice for a single day off two months in advance and provided a reason for that request, Judge Dugan ignored her and created the

uncertainty that compelled Judge Brumbach to identify a solution that would properly administer justice in her absence.

Every action Judge Brumbach took from November 10, 2021 to January 7, 2022 was intended to give fidelity to her black robe:

- She provided approximately two months' notice for a single personal leave day;
- She gave a reason for that personal leave day;
- She identified coverage issues in Municipal Court and worked with court administration, operations, and the district attorney to create a solution that would ensure due process rights were protected;
- She presented the proposed solution to Judge Dugan and Judge Pittman; and
- She explained the proposed solution to Judge Pittman.

Against this backdrop, and as established at trial, the Judicial Conduct Board of the Commonwealth of Pennsylvania has failed to establish by clear and convincing evidence that Judge Brumbach violated any canon of judicial conduct or provision in the Pennsylvania Constitution. To the contrary, the evidence adduced at trial—including the testimony of the Board's own witnesses—confirms that Judge Brumbach did not engage in any conduct that satisfies any of the Board's nine charges. This Court should therefore enter judgment in Judge Brumbach's favor on each of the nine charges.

II. PROPOSED FINDINGS OF FACT

Procedural Background.

1. Respondent the Honorable Judge Marissa J. Brumbach is a Municipal Court Judge in the First Judicial District, Philadelphia County and has served as a Municipal Court Judge from 2018 through present.

2. On December 14, 2022, the Judicial Conduct Board commenced this action by filing a Complaint against the Honorable Judge Marissa J. Brumbach, alleging nine counts of judicial misconduct.

3. On that same date, the Board filed a Petition for Relief for Interim Suspension Without Pay.

4. On January 12, 2023, after briefing and an evidentiary hearing, this Court denied the Board's Petition.

5. At the conclusion of discovery, a trial was held before this Court on November 16, 2023, during which, the following witnesses testified:

- a. Judge Joffie Pittman, who has been a Municipal Court Judge from 2015 to present. From January 1, 2022 until December 31, 2023, Judge Joffie Pittman served as the Administrative Judge of the Traffic Division of the Philadelphia's Municipal Court ("Traffic Court").
- b. Judge Patrick Dugan, who has served as a Municipal Court Judge from 2007 to present, was the President Judge of the Philadelphia Municipal Court during the relevant time period. Judge Dugan. Specifically, Judge Dugan's term as President Judge of Municipal Court started in 2019 and ended in

January 2024. (Tr. Tran. 144:8-13; 158:12-13); (Board's Exhibit 97 (Interim Susp. Hr'ing Tran. 18:9-12)).

- c. Marge Fenerty, Assistant District Court Administrator in Traffic Court during the relevant time period. (Tr. Tran. 154:25-155:2).
- d. Chief of Courtroom Operations in Traffic Court during the relevant time period, Donna Sofronski. (Tr. Tran. 35:8).
- e. Richard Delario, who was the Tipstaff in B Court. (Tr. Tran. 25:14-26:8).

Traffic Court, B Court.

6. At the time of the alleged conduct, Judge Brumbach was assigned to Philadelphia Municipal Court's Traffic Division B Court ("B Court"), which is responsible for hearing cases related to citations for moving violations—often referred to as traffic tickets.

7. Traffic Court utilizes an electronic docketing and case management system, known as eTIMS. (Board's Exhibit 97 (Interim Susp. Hr'ing Tran. 142:16-143:4); *see also* (Board's Exhibit 96b (Exhibit 1; Appendix: Summary of Annual Report Publications of the First Judicial District)).

8. When a citation is issued, it is either electronically transmitted by law enforcement to the eTIMs system, or a paper citation is forwarded to Traffic Court, where it is manually scanned and entered into the eTIMs system administrative staff. (Tr. Tran. 221:17-222:16).

9. The eTIMS system constitutes the official record and docket of the Traffic Court. (Tr. Tran. 291:17-18); *see also* (Board's Exhibit 96b (Exhibit 1; Appendix: Summary of Annual Report Publications of the First Judicial District)). Specifically, the legally binding information regarding any given matter, including its status, hearing date, and notice date are all reflected in eTIMS. (Tr. Tran. 221:17-222:16; 223: 4-19 (referring to Defense Exhibit 5, Rasheed Banton's case file)); *see also* (Board's Exhibit 96b (Exhibit 1; Appendix: Summary of Annual Report Publications of the First Judicial District)).

10. Approximately two weeks before a hearing is scheduled to occur, the Central Records Department is responsible for printing citations from eTIMs, preparing the paper files for each person whose citation is scheduled for a hearing, and transmitting those files to Courtroom Operations. (Tr. Tran. 36:8-9).

11. The paper case filed folders are something that paperwork and documents are kept in. (Tr. Tran 118: 19-22). In this regard, the paper files are not similar to the Quarter Sessions file or contained within what used to be the Clerk of Quarter Sessions nor within the Office of Judicial Records and Retention. (Tr. Tran 118 24-25).

12. The paper case file folders—which include copies of e-tickets—are printed by Central Records from eTIMS. (Tr. Tran. 37:19-22).

13. The paper citations in those files are either e-tickets printed from the computer or, in cases where the driver receives, a paper ticket, they are carbon copies of the citation. (Tr. Tran. 37:19-38:2).

14. Importantly, however, based on the credible and un rebutted testimony of the witnesses, including those called by the Board, the paper files and attendant citations are not the official docket, nor are they part of the formal record of any proceeding in Traffic Court. (Tr. Tran. 221:17-222:16; 223: 4-19 (referring to Defense Exhibit 5, Rasheed Banton’s case file)).

15. The citation form requirements do not include the contents which are placed on the back of the paper citation in Philadelphia County. See, Pa. R. Crim. P. 1002, 1031 and Pa. R. Crim. P. 403 (Contents of Citation)(notice to appear, instructions on the process to plead guilty and the notice to ticketholders who fail to appear, by operation of law, consent to having their matter resolved in absentia. (Board’s Exhibit 96b (Exhibit 1: Judge Brumbach’s Answer to the Board’s NOFI))

16. The contents on back of the citation in Philadelphia County are not required by law; nor is the back representative of admissible evidence to prove a conviction. Pa. R. Crim. P. 403; (Board’s Exhibit 96b (Exhibit 1: Judge Brumbach’s Answer to the Board’s NOFI))

17. As Judge Pittman explained, the paper files are “[n]ot an official Court file, it’s just a dummy file with certain information in it.” (Tr. Tran 119: 1-3). As explained more fully by Judge Pittman, on January 6 and 7, the paper citations “were just tickets sitting in the file....” (Tr. Tran. 129: 21-22).

18. As explained by Ms. Sofronski, the paper case files are transmitted from the Central Records Department to Courtroom Operations approximately a week before their scheduled hearing date. (Tr. Tran. 36:8-25).

19. Upon receiving the case files—which are sometimes referred to as “bundles”—the Courtroom Operations staff reviews each case file to make sure the right paperwork, including the copies of traffic citations. (Tr. Tran. 36:18-25).

20. As part of this preparation process Central Records, places a stamp on the paper traffic citation indicating the date that the citation is scheduled. (Tr. Tran., 38:4-11).

21. If a case is rescheduled, the paper traffic citation is stamped with a new date when Central Records is preparing the case file for the new date. (Tr. Tran. 38:14-17). As such, it is not unusual for a single citation to contain multiple dates.

22. The only way to know when and by whom the paper citations were adjudicated is by reviewing a certified docket or the case history from eTIMS; it is impossible to know from the paper citations themselves. (Tr. Tran. 138: 3-25); (Defendant’s Exhibits 3-47).

23. Judges assigned to Traffic Court use the paper citations as a worksheet to make notations regarding each citation. (Tr. Tran. 127:10-15); (Board’s Exhibit 97 (Interim Susp. Hr’ing Tran. 144:2-6).

24. Each paper citation includes 17 “Disposition Codes.” (Defendant’s Exhibits 3-47).

25. A judge's markings and any annotations of Disposition Codes on the paper citations are not on the record until they are placed on eTIMs.

(Board's Exhibit 97 (Interim Susp. Hr'ing Tran. 59-160)).

26. The paper citations do not have any legal import unless or until they are entered into eTIMS. (Tr. Tran. 129:19-22) (Judge Pittman testifying that Judge Brumbach did not adjudicate the tickets because "they were just tickets sitting in the file at that point").

27. Rather, the Judge's notations on the paper citation constitutes instructions to a member of the Court Listings staff, known as "the Dispositioner." (Board's Exhibit 97 (Interim Susp. Hr'ing. 144:5-6; 154:19-25; 159:19-21)).

28. Specifically, once a judge circles a "Disposition Code" and signs the paper citation, at the direction of that judge, the paper citation is delivered by court staff to the Dispositioner. (Board's Exhibit 97 (Interim Susp. Hr'ing. 144:5-6; 154:19-25; 159:19-21)).

29. The Dispositioner is responsible for entering into eTIMS the various notations which have been made on the paper files, together with the appropriate disposition code for every traffic citation and the judge's code number. (Board's Exhibit 97 (Interim Susp. Hr'ing. 144:5-6; 154:19-25; 159:19-21)).

30. Absent specific direction from the Judge, a paper citation is not transmitted to the Dispositioner.

31. Municipal Court judges do not use the eTIMS System (Board's Exhibit 97 (Interim Susp. Hr'ing Tran. 143:14-15; 163:18-22)). In fact, Municipal Court judges are not issued a username or password to access eTIMS.

32. Once the Dispositioner enters the Disposition Code at the instruction of a judge, the eTIMS system generates a conviction, imposes a sentence and ultimately results in an adjudication, which is reflected in the docket report as well as in the Ticket History contained within eTIMS. In the event of an adjudication of guilt, it is only upon the Dispositioner's entry of said information that a Notice of Conviction, the cost and fines imposed constituting the sentence, and the ticketholder's notice of appellate rights are generated, docketed, and automatically printed for mailing to the ticketholder. (Board's Exhibit 97 (Interim Susp. Hr'ing. 159:22-160:11)); (Board Exhibit 99 (Judge Pittman's Tr. Dep. 65:3-16)).

33. In this regard, Judge Pittman confirmed that a citation, in the specific context of Traffic B Court, a citation is adjudicated only after it has been delivered to the Dispositioner for disposition. (Tr. Tran. 125:7-20).

34. Specifically addressing annotations on paper citations, Judge Pittman was unequivocal in stating that any such markings do not amount to a disposition and that a citation is not disposed "until the clerk puts it into the system. (Board Exhibit 99 (Judge Pittman's Tr. Dep. at 64:3-11)).

35. Aptly summarizing this point, Judge Pittman explained that "there is no magic that happens when a judge writes on a ticket" and that "the magic doesn't happen until it gets dispositioned" in eTIMS. (Tr. Tran. 138:23-139:2).

36. Judge Pittman further elaborated that, until the markings on a paper ticket are entered into eTIMS by the Dispositioner, they have no legal effect and no notices of appellate rights or any other event attendant to an adjudication occur. (Tr. Tran. 126:12-127:15).

37. Testimony from witnesses and a review of the exhibits introduced into evidence further underscores the clear lack of formality attendant in annotation of paper citations. (Tr. Tran. 138:7-139:2; 224:1-25); (Defense Exhibits 3-47); (Board Exhibit 96b (Exhibit 1: Judge Brumbach's Answer to the Board's NOFI)).

38. Most notably, it is not unusual for paper citations to bear multiple stamped dates and other annotations. (Tr. Tran. 138:7-139:2; Tr. Tran. 224:1-25) (Defense Exhibits 3-47).

39. The following are just a few examples of situations that could lead to the presence of such additional markings:

- a. Where a case is rescheduled or continued, the original date and the new date will both appear on the paper traffic citation. (Tr. Tran. 38:18-21; 52:14-18).
- b. If a ticketholder appears in court late—after a judge already reviewed the paper citation and circled a code, but before the judge released the paper citation to the Dispositioner for entry into eTIMS, the judge could cross-out an *absentia* finding and circle a new code. (Board's Exhibit 97 (Interim Susp. Hr'ing. 161:23-164:13)); (Tr. Tran. 123:18-127:4).

c. If a ticketholder appears late, but court is already in recess, a judge may allow the hearing to be rescheduled—provided that the Dispositioner has not yet had the opportunity to enter any notations into the eTIMS Docketing System resulting in an adjudication in *absentia*. (Board’s Exhibit 97 (Interim Susp. Hr’ing Tran. 162 7-14)).

40. In any of the above cases, the notations along with the signatures of the judge remain on the paper citations—exactly as they were placed when first considered and when they are brought to B Court on the relistment date, the next judge will cross out previous notations and make their own. (Board’s Exhibit 97 (Interim Susp. Hr’ing Tran. 162 7-14)). When notations do not result in a docket entry for any variety of reasons the notations remain on the paper citations. Then at the relistment, the next judge will cross out previous notations and make their own. Judge Brumbach has seen up to three cross outs on the back of a paper citation. (Board’s Exhibit 97 (Interim Susp. Hr’ing Tran. 162: 21-25 and 163: 1-2)).

41. In short, the evidence, including testimony from Judge Pittman, firmly establishes that often times such notations do not result in a docket entry for a variety of reasons, but the notations remain on the paper citations. (Tr. Tran. 127:10-15; 129: 19-22; 138:7-139:2); (Board Exhibit 99 (Judge Pittman Tr. Dep. at 63:20-64:22))

42. Thus, the only way to determine whether a paper citation was adjudicated is by checking eTIMS; it is impossible to tell by a review of the paper

citation whether a case was adjudicated. (Tr. Tran. 125:1-20; 138:23-139:2) (Defense Exhibits 3-47).

43. In addition to the testimony of Judge Pittman, Judge Brumbach's detailed and credible testimony shows that the paper citations are, in essence, work sheets with little formal significance. (Tr. Tran. 127:10-15; 129: 19-22; 138:7-139:2); (Board Exhibit 99 (Judge Pittman Tr. Dep. at 63:20-64:22))

44. Specifically, Judge Brumbach explained that, during her tenure, she has reviewed approximately 10,600 paper files and countless paper citations, (Board's Exhibit 97 (Interim Susp. Hr'ing. 165:7-12)), and would often encounter paper citations in B Court that were previously marked by other jurists but some intervening event occurred before the citations were adjudicated. (Board's Exhibit 97 (Interim Susp. Hr'ing. 161:23-164:13)).

45. Illustrating this point, Judge Brumbach recounted her first experience with such a situation: "when it first had happened to me when I was a new Judge in 2018, I - I specifically asked about it because, I mean, it looks like this was taken care of already. And I really - I didn't know the process. I didn't know how things worked. I didn't know about the eTIMS System or the E-Docketing System." (Board's Exhibit 97 (Interim Susp. Hr'ing. 162:23-163:4)). And on that occasion, Judge Brumbach relayed that she asked the court officer to check the docket to ensure that the case was not adjudicated. (Board's Exhibit 97 (Interim Susp. Hr'ing. 162:23-163:24)).

Judicial Leave

46. The Philadelphia Municipal Court has never published, promulgated, or otherwise adopted a written policy or administrative order governing judicial leave, or personal leave days.

47. Although the First Judicial District's Administrative Governing Board has established guidelines for use of vacation time, it is undisputed that those policies are inapplicable to judges' use of single-day personal leave in Municipal Court. (Board's Exhibit 98 (Judge Dugan's Trial Dep. at 90:2-4; 92:2-8)); (Board's Exhibit 114).

48. Specifically, as relevant here, no written policy exists that: (a) requires a jurist to provide a reason for use of a personal day; or (b) grants the President Judge of the Municipal Court power to approve or disallow personal leave. (Tr. Tran. 190:8-15; 196:5-10); (Board's Exhibit 98 (Judge Dugan's Trial Dep. at 79:13-15)).

49. Similarly, although Rule of Judicial Administration 704, titled "Judicial Leave" broadly proscribes prolonged absence, it does not confer the President Judge with authority to grant or deny leave requests. (Board's Exhibit 97 (Interim Susp. Hr'ing. 195:13-20)).

50. Aside from the broad parameters established by the Supreme Court, there is no limit or policy on the number of personal days a judge in Municipal Court can take. (Board's Exhibit 98 (Judge Dugan's Trial Dep. at 22:25-23:10)).

51. Although no binding authority exists in this regard, President Judge Dugan's administrative agenda with regard to judicial leave is to provide coverage if

a Judge assigned to a particular courtroom is unable to sit that day. (Tr. Tran. 101:15-18).

52. Judge Pittman testified that there is no rule prohibiting single days off and that “if anybody needs a day, it’s never been a problem.” (Board Exhibit 99 Judge Pittman Tr. Dep. 98:22-99:18)).

53. With respect to coverage and a judge’s expectation that coverage would be provided, Judge Dugan explained that his “goal is not shut a courtroom down.” (Tr. Tran. 208:3-16).

54. The result, however, is Judges of the Municipal Court have voluntarily deferred their inherent power and responsibility to control their respective calendars—including the authority to continue cases—to President Judge Dugan. (Board’s Exhibit 97 (Interim Susp. Hr’ing Tran. 146:4-5)).

55. The bench of the Municipal Court has consented to this arrangement with the expectation that President Judge Dugan will handle the courtroom vacancies resulting from judicial leave appropriately and in a timely fashion. (Board’s Exhibit 97 (Interim Susp. Hr’ing Tran. 140:1-20)).

56. As Judge Pittman explained, when a judge is not able to preside, one of three things would occur: (1) coverage would be provided; (2) the cases would be moved to a different courtroom; or (3) the cases would be continued. (Tr. Tran. 102:13-102:14).

57. Furthermore, Judge Pittman testified that, in his twenty-two month tenure as Administrative Judge of Traffic Court, “we have never

opened a Court or had a court be run when a Judge hasn't been there. One of those three scenarios is always taking place[.]” (Tr. Tran. 112:22-113:1).

58. Judge Dugan approves “a vast majority for single days” and he testified that “I grant people a day off if it’s not an emergency. Just give me an explanation.” (Board’s Exhibit 98 (Judge Dugan’s Trial Dep. at 32:5-25)). Indeed, according to Judge Dugan, “almost every single one of them have been approved with a reason.” (Board’s Exhibit 98 (Judge Dugan’s Trial Dep. at 18:23-25)).

59. With regard to sufficiency of notice for a personal day, Judge Dugan agreed that two months constitutes adequate notice. (Tr. Tran. 177:17-178:1).

60. Judge Pittman further emphasized that two months’ notice was “more than adequate. I wish more judges would provide two months’ notice.” (Board’s Exhibit 99 (Judge Pittman’s Trial Dep. at 100:17-21); (Tr. Tran. 142:17-23)).

November 10, 2021

61. On November 10, 2021, Judge Brumbach sent Judge Dugan an email informing him that she would “be attending an event in Florida on January 7, 2022, and unable to preside that day.” (Board Exhibit 103).

62. At that time, Judge Brumbach was not yet assigned to any courtroom for the month of January; in fact, the judicial assignment calendar was not released until on or about November 29, 2021. (Tr. Tran. 261:25-262:2); (Board’s Exhibit 97 (Interim Susp. Hr’ing 141:6-9)).

63. As the President Judge, Judge Dugan is in charge of judicial assignments. (Tr. Tran. 144:20-21); 42 Pa.C.S. § 325.

64. Also at this time, no notices scheduling a hearing date for January 7, 2022's B Court list had been sent. (e.g., Defendant's Exhibit 44 (Scheduled Hearing Worksheet with "Run Date 12/24/21" indicating that the "Trial Notice Date" was "12/18/21"); Board's Exhibit 98 (Judge Dugan's Trial Dep. at 61:23-62:2)).

65. Judge Brumbach gave such advance notice with the understanding that President Judge Dugan preferred to provide coverage in the even to judicial leave and with the expectation that he would take the appropriate steps consistent with his own administrative agenda. (Board's Exhibit 97 (Interim Susp. Hr'ing Tran. 140:22-141:5)).

66. To alleviate unforeseen coverage issues and to fully ensure smooth courtroom operations, President Judge Dugan could have chose to act in advance by administratively closing B Court upon being notified Judge Brumbach would be taking judicial leave on January 7, 2022, particularly since Notice of Trial Dates were not mailed to ticketholders until December 18, 2021. (Board's Exhibit 97 (Interim Susp. Hr'ing Tran. 204: 9-25; 205:1-25); *see also* (e.g., Defendant's Exhibit 44 (Scheduled Hearing Worksheet with "Run Date 12/24/21" indicating that the "Trial Notice Date" was "12/18/21"); (Board's Exhibit 98 (Judge Dugan's Trial Dep. at 61:23-62:2)).

67. Judge Brumbach's notice was made sufficiently in advance of the date to avoid any disruption of courtroom operations if Jude Dugan had

taken the appropriate steps to handle Judge Brumbach's planned judicial leave.

68. Judge Brumbach credibly testified that she gave such advance notice because she is "acutely aware of [her] responsibility and [her] duty as a Judge to the calendar, to the people, to the courtroom and what [she is] supposed to do." (Board's Exhibit 97 (Interim Susp. Hr'ing. 140:23-141:2)).

69. As Judge Brumbach further explained, when she takes judicial leave, she considers the cases on her calendar and the people who are scheduled to appear on the of her leave. (Board's Exhibit 97 (Interim Susp. Hr'ing. 141:12-18)).

70. Judge Brumbach further elaborated that, if it were up to her, she would have had the matters listed for January 7, 2022 administratively relisted in well in advance of January 7, 2022. (Tr. Tran. 301:5-302:6) and (Board's Exhibit 97 (Interim Susp. Hr'ing Tran. 196:11-18.)). But given the aforementioned arrangement, she—along with her colleagues—had deferred that authority to president Judge Dugan.

71. More broadly, as it pertains to judicial leave, Judge Brumbach credibly testified that she keeps track of her leave requests and that she "has taken less time and judicial leave than any of [her] colleagues[.]" (Board's Exhibit 97 (Interim Susp. Hr'ing. 197:4-12)) see also Tr. Tran. 266-273)). Importantly, Judge Brumbach's testimony in this regard is uncontroverted.

72. Judge Brumbach further explained that, she had studied judicial leave requests of other jurists to understand how the process works and observed that "judicial leave in single days is given quite freely, quite regularly." In fact, in 2019,

based on emails to which Judge Brumbach was privy, Judge Dugan had given single days in judicial leave of 247 days for the complement of 25 Judges in Municipal Court. (Board's Exhibit 97 (Interim Susp. Hr'ing. 195:17-25)).

Once again, Judge Brumbach's rendition in this respect was uncontroverted.

73. In the intervening months following receipt of the November 10, 2021 email, President Judge Dugan did not respond to, or even acknowledge, Judge Brumbach's email. (Tr. Tran. 146:22-23; 228:2-10; 228:23-229:7; (Board's Exhibit 98 (Judge Dugan's Trial Dep. at 62:24-64:9)).

74. In fact, Judge Dugan acknowledged that Judge Brumbach had provided a reason for her day off in accordance with his preferences and her two-month notice was provided reasonably in advance of her requested date off. (Board's Exhibit 98 (Judge Dugan's Trial Dep. at 77:9-21; 94:7-14)).

75. Judge Dugan concedes that part of the reason he did not respond to Judge Brumbach's otherwise reasonable request was his overall frustration with Judge Brumbach. (Board's Exhibit 98 (Judge Dugan's Trial Dep. at 71:23-72:6)); (Board's Exhibit 97 Interim Susp. Hr'ing at 57:16-18)).

76. That frustration stemmed in large measure from Judge Brumbach's repeated inquiries into the basis for his *ad hoc* policies on and alleged authority relative to judicial leave. 42 Pa.C.S. § 325 (Powers of president judge); *see also* (Board's Exhibit 98 (Judge Dugan's Trial Dep. at JCB BNOOI - JCB BN0060 (Board Exhibit 98 Attachment)); and (Board's Exhibit 96b (Exhibit 1: Judge Brumbach's Answer to the Board's NOFI)).

77. Based on Judge Dugan’s testimony and demeanor, it is readily apparent that he allowed his personal animus toward Judge Brumbach to result in a breakdown of communication and interfere with his leadership obligations. (Tr. Tran. 92:5-8); (Board’s Exhibit 98 (Judge Dugan’s Trial Dep. at. 85:11-17)); and (Board’s Exhibit 103).

78. The Board has offered no comparative testimony or evidence regarding judicial leave taken by judges in the Municipal Court, Philadelphia County or across the Commonwealth of Pennsylvania.

Week of January 3, 2022.

79. On January 3, 2022, President Judge Dugan sent an email to the full complement of Municipal Court judges indicating that he was experiencing coverage issues that week. (Board’s Exhibit 104).

80. Given President Judge Dugan’s January 3, 2022 email, and given President Judge Dugan’s lack of response to her November 10, 2021 email—and his failure to take any other within his authority to plan for Judge Brumbach’s noted absence— Judge Brumbach credibly testified that she wanted to ensure that her single personal leave day would not burden the administration of the Municipal Court and she also wanted to set proper expectations for court staff in her absence. (Tr. Tran. 235:22-236:9).

81. Specifically, Judge Brumbach explained that she “wanted to see if there was something that I could offer—some solution I could offer. Because he was

now in an apparent jam” and that she was “trying to help.” (Board’s Exhibit 97 (Interim Susp. Hr’ing. 148:7-11; 205:20-25)).

82. Critically, Judge Brumbach’s proposed solution was an option only if one of two things did not happen: (1) if Judge Dugan did not provide coverage; and (2) if there was not a snow day. (Board’s Exhibit 97 (Interim Susp. Hr’ing. 147:7-21)).

83. Judge Brumbach’s proposed solution was as follows:

- a. ADA Waite would review the cases scheduled for January 7 to determine which if any to withdraw for lack of probable cause; ADA Waite (or any other ADA assigned to the Courtroom) would conduct such a review as a matter of course prior to every scheduled hearing. (Tr. Tran. 233:25-234:16)
- b. After the ADA had concluded his review of the January 7, 2022 paper citations, Judge Brumbach would analyze the citations to conduct a *preliminary* assessment of the appropriate resolution of each matter, in the event that the ticketholders would not appear to contest that ticket. (Board’s Exhibit 97 (Interim Susp. Hr’ing. 151:14-19));
- c. If courts were open and if coverage was not provided, Judge Brumbach would issue a continuance for any person who appeared to contest their ticket. (Board’s Exhibit 97 (Interim Susp. Hr’ing. 151:22-25));
- d. For any person who did not appear, Judge Brumbach planned to call the court staff to release the paper citations to the Dispositioner for

adjudication in accordance with her instructions and assessment of the facts set forth in the citation. (Board's Exhibit 97 (Interim Susp. Hr'ing. 160:14-161:6; 176:22-177:4)).

84. According to Judge Brumbach's proposed solution, there were three potential outcomes:

- a. A ticketholder could appear for a summary proceeding and that person would have been given a continuance. (Board's Exhibit 97 (Interim Susp. Hr'ing. 151:22-25)). This preserved the right to be heard.
- b. A ticketholder's citation would be withdrawn by the ADA and therefore not be subject to any citation.
- c. A ticketholder would fail to appear on January 7, 2022. For those individuals who did not appear—and for those individuals *only*—Judge Brumbach *intended* to instruct staff to retrieve the corresponding paper citations she had already marked and give them to the dispositioner for entry into the eTIMS. (Board's Exhibit 97 (Interim Susp. Hr'ing. 177-182)).

85. Sometime during the week of January 7, 2022, Judge Brumbach communicated her proposed solution to Mr. Delario, the ADA, and Ms. Sofronski and explained that it would only be necessary in the event Judge Dugan did not provide coverage for B Court on January 7, 2022. (Tr. Tran. 230:1-18); (Board's Exhibit 97 (Interim Susp. Hr'ing. 147:23-149)).

86. Judge Brumbach fully explained her proposed plan to each of the three individuals, none of whom voiced an objection to it. (Tr. Tran. 233-235:5).

87. Of particular relevance here, ADA Waite did not object to Judge Brumbach's proposed solution. (Board Exhibit 97 (Interim Susp. Hr'ing 170:21-23)). To the contrary, ADA Waite agreed with the course of action and never once claimed that he, or the Commonwealth generally, were denied the opportunity to be heard. (Board Exhibit 97 (Interim Susp. Hr'ing 170:21-23)).

88. Similarly, sometime during the week of January 7, 2022, Judge Brumbach asked Mr. Delario whether she could get the cases ahead of the scheduled hearing date. (Tr. Tran. 27:9-13).

89. Mr. Delario responded that he would ask his supervisor, Ms. Sofronski. (Tr. Tran. 27:12-14).

90. Ms. Sofronski's director, Dom Reda, confirmed that the cases can be reviewed in advance of the scheduled hearing. (Tr. Tran. 39:8-16), at which point she handed the case files to Mr. Delario. (Tr. Tran. 28:5-15; 39:18-20).

91. Thereafter, upon Judge Brumbach' instructions, Mr. Delario transmitted the cases to ADA Waite. (Tr. Tran. 28:13-19).

92. Mr. Delario recalls Judge Brumbach telling him that she would not be in court on January 7, (Tr. Tran. 30:1-3).

93. Mr. Delario does not recall the exact details of his conversation with Judge Brumbach, but he does recall that Judge Brumbach told him that she would not be in court on January 7, (Tr. Tran. 30:1-3; 33:1-22).

94. In addition, because Judge Brumbach did not want to create more work for Ms. Sofronski, Judge Brumbach checked with her to confirm that the paper citations—or bundles—were already printed and ready. (Board's Exhibit 97 (Interim Susp. Hr'ing. 148:3-20)).

95. Ms. Sofronski she does not recall the particulars of her conversation with Judge Brumbach, but she remembers that Judge Brumbach told her: (1) she would not be there on January 7; (2) she had not heard from Judge Dugan about a replacement; and (3) that she was a phone call away if Ms. Sofronski needed anything on Friday. (Tr. Tran. 44:17-45:21).

96. Notably, no witness refuted the level of detail Judge Brumbach testified she provided in her conversations with Mr. Delario, Ms. Sofronski, and ADA Waite. See (Tr. Tran. 30:1-3; 33:1-22; 44:17-45:21).

97. Judge Brumbach never intended to conclude, ahead of time, whether a person who appeared for hearing on January 7, 2022, was guilty. (Board's Exhibit 97 (Interim Susp. Hr'ing. 151:5-9)).

98. Judge Brumbach knew an adjudication resulted from a final order of court, following a judgment and a sentence being imposed from within eTIMS.

99. After the District Attorney reviewed the files, the District Attorney gave the files back to Mr. Delairo, and Judge Brumbach asked Mr. Delario to return the files to Ms. Sofronski. (Tr. Tran. 28:22-25; 32:11-15).

100. Mr. Delario gave the files to Ms. Sofronski, who checked them to make sure all the files were accounted for, and put them back in the drawer in Courtroom Operations. (Tr. Tran. 28:23-25; 40:6-8).

101. Later that day or the next day, Mr. Delario asked if Judge Brumbach could review the files. (Tr. Tran. 40:15-17).

102. Ms. Sofronski confirmed with Mr. Reda that Judge Brumbach could review the files and she gave them to Mr. Delario to bring to Judge Brumbach. (Tr. Tran. 40:15-22).

103. Mr. Delario returned the files to Ms. Sofronski after Judge Brumbach reviewed them and Ms. Sofronski checked to make sure all files were accounted for—and everything in the files was accounted for. (Tr. Tran. 41:19-21).

104. The files remained in Ms. Sofronski's possession in Courtroom Operations until Ms. Fenerty removed them in the afternoon on January 6, 2022. (Tr. Tran. 43:12-44:6; 66:6-25).

105. The files were never in the possession, custody or control of the dispositioner. (Tr. Tran. 43:12-44:6; 66:6-25).

106. Judge Brumbach never intended to adjudicate any case prior to January 7, 2022. As she explained: "I would never do that, nor did [she] have

the ability or capability to achieve that.” (Board’s Exhibit 97 (Interim Susp. Hr’ing. 170:11-13)).

107. Judge Brumbach’s intent was to ensure each defendant’s right to a hearing was preserved as evidenced by that fact that she did not intend to release the paper citations to the dispositioner until she confirmed the ticketholder did not appear in court. (Board’s Exhibit 97 (Interim Susp. Hr’ing. 160:14-161:6)).

108. Judge Brumbach’s proposed solution was based on data that she compiled since she took the bench. Specifically, Judge Brumbach tracked the number of individuals who appear in B Court for a hearing. (Board’s Exhibit 97 (Interim Susp. Hr’ing. 144:17-145:12; 189:24-190:20)); (Tr. Tran. 231:4-20). Judge Brumbach was able to determine that number of individuals who appear in traffic court was about four or five percent of the cases listed. (Tr. Tran. 230-233:12); (Board’s Exhibit 97 (Interim Susp. Hr’ing. 147:7-21)) see also (Board’s Exhibit 98b (Exhibit 1; Judge Brumbach’s Answer to the Board’s Notice of Full Investigation (NOFI); Appendix: Summary of Annual Report Publications of the First Judicial District and Appendix Trends in Traffic Court)).

109. Based on Judge Brumbach’s data, approximately two to four people appeared in B Court from October 2021 to January 2022. (Board’s Exhibit 97 (Interim Susp. Hr’ing. 189:24-190:20)) See (Board’s Exhibit 96b (Exhibit 1; Judge Brumbach’s Answer to the Board’s Notice of Full Investigation (NOFI); Appendix: Summary of Annual Report Publications of the First Judicial District and Appendix Trends in Traffic Court)).

110. In the four days before January 7, 2022, only five people in total appeared in B Court and none on January 4, 2022. (Tr. Tran. 231:24-232:3); (Board's Exhibit 97 (Interim Susp. Hr'ing. 189:24-190:20) See (Board's Exhibit 96b (Exhibit 1; Judge Brumbach's Answer to the Board's Notice of Full Investigation (NOFI); Appendix: Summary of Annual Report Publications of the First Judicial District and Appendix Trends in Traffic Court)).).

111. Judge Brumbach and Judge Pittman discussed the inefficiencies in B Court and the extraordinary low number of people were appearing in B Court. (Board's Exhibit 96b (Judge Brumbach's Deposition 39:2-5)).

112. Judge Brumbach's proposed solution was also based on her review and understanding of the applicable rules and practices of Traffic Court. (Board's Exhibit 97 (Interim Susp. Hr'ing. 152:11-155:8)) See (Board's Exhibit 96b (Exhibit 1; Judge Brumbach's Answer to the Board's Notice of Full Investigation (NOFI); Appendix: Summary of Annual Report Publications of the First Judicial District and Appendix Trends in Traffic Court)).

113. Judge Brumbach's proposed solution was based on data she collected including the number of individuals who appear in traffic court being so few—which was about four or five percent of the cases listed. (Tr. Tran. 230-233:12); (Board's Exhibit 97 (Interim Susp. Hr'ing. 147:7-21)).

114. The data showed that the Assistant District Attorney was withdrawing 45 percent of the list, and over 35 percent of the people listed, were simply not showing up to traffic court and would be considered summarily in absentia. (Tr. Tran. 230:20-22).

115. Judge Brumbach's proposed solution was also based on her review and understanding of the applicable rules and practices of Traffic Court and the small number of people showing up to B Court. (Board's Exhibit 97 (Interim Susp. Hr'ing. 152:11-155:8)). See (Board's Exhibit 96b (Exhibit 1; Appendix Trends in Traffic Court)); see also, (Board's Exhibit 96b) (Exhibit 1; Appendix: Summary of Annual Report Publications of the First Judicial District)).

116. Notably, Judge Pittman largely corroborated Judge Brumbach's testimony regarding the inefficiencies in Traffic Court and the documentary evidence presented by the parties shows that he was in communication with Judge Brumbach and his colleagues regarding. (Board's Exhibit 99 (Judge Pittman's Tr. Dep. at 62:16-23)).

117. Judge Brumbach's alternate plan if coverage was not able to be provided by President Judge Dugan recognized operational efficiency and case processing and her fiscal responsibility to control expenditures and to help minimize delay. See, Board's Exhibit 96b (Exhibit 1; Appendix: Summary of Annual Report Publications of the First Judicial District)

118. Individuals who do not appear for their hearing consent to having their matter resolved in absentia thereby waiving their right to be heard. (Tr. Tran. 234:3-8); (Pa.R.Crim.P. 1031).

119. A traffic citation is handled summarily when a ticketholder is in absentia, there is no evidence produced by the ADA or sworn testimony; rather, the Judge simply reviews the four corners of the paper citation to determine whether there is sufficient evidence for the offense charged. (Tr. Tran. 225:7-18).

120. As Judge Brumbach explained: “You know, no more due process happens for someone in absentia than me looking at this and making a determination. There is no more formality. Like it or not that's what - that is how it is handled, you know, you might say I might even like that, well, I could say I might not like that either. This is what happens, this is a matter of what is happening there,” (Board’s Exhibit 97 (Interim Susp. Hr’ing. 206:23-207:6)).

121. As Judge (now Justice) McCaffery observed during questioning of Ms. Fenerty, a straight guilty or not guilty determination would be made “after a hearing. . .[i]n other words, somebody showed up, the evidence was presented, and the Judge finds the person guilty or not guilty based upon the evidence presented.” (Board’s Exhibit 97 (Interim Susp. Hr’ing. 112:23-113:4)).

122. Then-Judge McCaffery observed during questioning of Ms. Fenerty Guilty or not guilty in *absentia* “is a completely different thing” because there is no live testimony and the judge makes her decision based on her reading of the citation. (Board’s Exhibit 97 (Interim Susp. Hr’ing. 113:5-117:25)).

123. Judge Brumbach’s expectation was that one person may have appeared in B Court which would have been consistent with the number of people who had shown up to B Court in the four days preceding January 7, 2022, as supported by the data collected by Judge Brumbach. See (Board’s Exhibit 96b (Exhibit 1; Appendix Trends in Traffic Court)).

124. Judge Brumbach’s solution took into consideration unnecessary delay and judicial cost of continuing matters. (Tr. Tran. 322-335); see also, (Board’s Exhibit 96b (Exhibit 1; Appendix: Summary of Annual Report Publications of the First Judicial District)).

125. Judge Brumbach offered what she believes was a viable solution to Judge Dugan’s coverage issue and would have abandoned her proposed solution if anyone had told her that they believed it would result in adjudications before January 7, 2022 or if they advised her that her solution was lawfully improper or questionable for any reason. Judge Brumbach explained: “If anyone had told you that they thought you were trying to dispose of or adjudicate these citations doing what you did, what would you have done? I would say absolutely not, cross them out, throw them out, reprint them, continue all the cases. I \would never do that. It's not something that I would ever, ever, do. Not as I sit here, not as I think back

on it. I think it's a viable solution. I still believe it's a viable solution. But no one wants to have a conversation about that it's a viable solution under unique circumstances to be able to properly use a court, be efficient, move cases along. We also have a duty to that as well.” (Tr. Tran. 246: 1-13).

126. Judge Brumbach would never have made notations on the paper citations if she believed that doing so resulted in an adjudication. (Board’s Exhibit 97 (Interim Susp. Hr’ing. 164:14-20)).

127. Judge Dugan, in response to a question from Judge Irwin, was not able to identify any procedural or local rule that says a judge cannot review and notate the paper citations outside of an open court room. (Tr. Tran. 199:21-200:18).

Week of January 7, 2022.

Judge Brumbach’s January 6, 2022 Email to Judge Dugan.

128. By January 6, 2022, Judge Brumbach had not heard from Judge Dugan regarding her November 10, 2021 email. Judge Brumbach emailed Judge Dugan on January 6, 2022 because she felt “compelled by [her] duty to make sure that everyone’s expectations are set for the next day. [she was] not going to be there, [she] already kn[e]w that. [she] kn[e]w there’s a pending snow forecast. But that d[id]n’t matter. . . the courtroom and court staff should be apprised of what to expect the next day.” (Board’s Exhibit 97 (Interim Susp. Hr’ing. 165:16-22)).

129. On January 6, 2022, Judge Brumbach replied to her November 10, 2021 email and informed Judge Dugan of her proposed solution wherein she expressly asked if Judge Dugan had “an alternate plan” so that she could “set proper expectations.” (Board’s Exhibit 103).

130. Judge Dugan replied to that email later on January 6, 2022. (Board’s Exhibit 103).

131. Also in response to Judge Brumbach’s January 6, 2022 email, Judge Dugan texted Judge Pittman. (Tr. Tran. 92:5-8); (Board Exhibit 105).

132. After receiving the texts from Judge Dugan, Judge Pittman spoke with Judge Brumbach. (Tr. Tran. 95:1-5).

133. As the Administrative Judge, Judge Pittman has a better understanding of the practice and procedure in Traffic Court than Judge Dugan. (Board Exhibit 97 (Interim Susp. Hr’ing 52:22-53:5)).

134. According to Judge Pittman, Judge Brumbach told him that she and the ADA reviewed the paper files. (Tr. Tran. 95:9-14); (Board Exhibit 97 (Interim Susp. Hr’ing 166:16-167-25)).

135. Judge Pittman recalls discussing coverage for the courtroom. (Tr. Tran. 95:24-96:4).

136. Judge Pittman does not recall the particulars of his conversation with Judge Brumbach, but he largely agreed with Judge Brumbach’s memory and recordation of the conversation. (Tr. Tran. 128:9-23); (Board Exhibit 99 Judge Pittman’s Tr. Dep. 76:12-84:12; 78:10-16)).

137. Judge Brumbach testified that she told Judge Pittman about her proposed solution and that she adequately and completely explained her proposed solution to him. (Tr. Tran. 239:23-240:4); (Board Exhibit 97 (Interim Susp. Hr'ing 167:19-25)).

138. Judge Pittman never told Judge Brumbach not to proceed with her plan. (Board Exhibit 97 (Interim Susp. Hr'ing 168:14-15)).

139. Judge Pittman intended to provide coverage for Judge Brumbach and therefore whatever her plan was, in his view, did not matter. (Tr. Tran. 104:7-16; 104: 25-105:8).

140. Judge Pittman testified that they would either provide coverage for Judge Brumbach or continue the cases so he didn't see any issue. (Tr. Tran. 107:6-10).

141. On January 11, 2022, Judge Pittman sent Judge Dugan an email summarizing his conversation with Judge Brumbach (Tr. Tran. 97:5-7); (Board Exhibit 108).

142. Judge Pittman's January 11, 2022 email to Judge Dugan (Board's Exhibit 108) was not produced to Judge Brumbach until October 30, 2023. (Board Exhibit 99) (Judge Pittman's Trial Dep. 94:10-15).

143. This email was sent to Judge Dugan in reply to an email that Judge Brumbach sent to Judge Dugan and himself. (Tr. Tran. 107:17-19) and (Board Exhibit 108).

144. In his January 11, 2022 email, Judge Pittman did not deny any of Judge Brumbach's accounting of her conversation with him; nor did he deny it on the stand. (Tr. Tran. 107-110:12; 128: 9-22) see also (Board Exhibit 99 (Judge Pittman's Tr. Dep. At 83-84)).

145. Judge Pittman testified that the first three paragraphs of Judge Brumbach's January 10, 2022 email (Board's Exhibit 108) are "pretty much accurate." (Board's Exhibit 99) (Judge Pittman's Tr. Dep. 95:21-25)).

146. Judge Pittman agreed that after reviewing all the manuals and procedures that bind Traffic Court, there is nothing wrong with a district attorney or judge reviewing the paper tickets ahead of time. (Tr. Tran. 122:9-123:10; Board's Exhibit 99 (Judge Pittman's Tr. Dep. at 60:1-2)).

147. According to Judge Pittman Judge Brumbach did not adjudicate the citations on January 6, 2022. (Tr. Tran. 129:1-22); (Board's Exhibit 99 (Judge Pittman's Tr. Dep. at 89:19-90:9)).

148. According to Judge Pittman it was not possible for Judge Brumbach to adjudicate the citations on January 6, 2022 because he intended to provide coverage on January 7. (Tr. Tran. 129:23-130:9).

149. Judge Dugan planned to provide coverage for Judge Brumbach's courtroom on January 7, 2022, yet Judge Dugan never told Judge Brumbach that he planned to cover the courtroom. (Tr. Tran. 178:18-179:9); (Board's Exhibit 97 (Judge Dugan's Trial Dep. at 85:11-17)).

150. Judge Pittman never saw the paper tickets. To the extent he told Judge Dugan they were adjudicated, that information came from Ms. Fenerty. (Tr. Tran. 131-132).

151. Judge Dugan never looked at the paper tickets until January 9, 2022; he relied on Ms. Fenerty's observations and her opinion that the tickets were adjudicated. (Tr. Tran. 155).

152. In Judge Pittman's view Judge Brumbach's plan was just a plan and it didn't happen; moreover, Judge Pittman testified that reasonable minds could differ about whether Judge Brumbach's plan was a good or bad idea. (Tr. Tran. 134:13-135:3).

153. Judge Pittman had previously complained to Judge Brumbach about the process in Traffic Court, and he and Judge Brumbach had extensive discussion about the problems of Traffic Court. (Board's Exhibit 99 (Judge Pittman's Tr. Dep. at 62:16-23)).

154. Judge Pittman perceived Traffic Court as being disorganized and believed that the process in Traffic Court could be condensed to make it a lot more efficient. (Board's Exhibit 99 (Judge Pittman's Tr. Dep. at 58:9-24)).

155. Judge Pittman agreed that he did not oppose Judge Brumbach or any Judge brainstorming about how to make Traffic Court run better and would have supported good ideas to take to Judge Dugan. (Board's Exhibit 99 (Judge Pittman's Tr. Dep. at 62:21-63:19)).

156. Judge Pittman texted Judge Brumbach about Traffic Court on a number of occasions including the following: “I’m going to get that group together so that we can discuss changes to traffic court” and suggested that ““We have to do something about it [Traffic Court]” and “We need to have a meeting amongst ourselves with the people who sit there and come up with a plan to present to Dugan because it’s ridiculous.” He also texted “Finished my 1:30 list in 10 minutes. Now I’m waiting for the 2:30 list that has 4 people on it. Who does this scheduling[?].” (Board’s Exhibit 99 (text messages between Judge Pittman and Judge Brumbach from May 15, 2019 and May 17, 2019)).

157. These texts demonstrate that Judge Pittman identified many of the same issues with Traffic Court that Judge Brumbach identified and was open to proposing solutions to make Traffic Court more efficient.

158. Every single case scheduled for January 6, 2022 was continued and the paper tickets were reprinted recirculated, re-annotated, and marked-up and initialed by a different Judge. (Tr. Tran. 138: 3-25) (Defendant’s Exhibits 3-47); (Tr. Tran. 247:1-18).

159. The paper files, as they are represented in Defendant Exhibit 3-47, reveal, seventeen of the files do not contain anything that has Judge Brumbach’s signature on it. Those things were thrown away. Tr. Tran. 247:1-18); see also (Defendant’s Exhibits 3-47).

160. The paper files included in Defense Exhibits 3 through 47 indicate:

- d. There are 45 ticket holders each with a corresponding paper file. (Defendant's Exhibits 3-47).
- e. 20 of the paper files have Reprinted Copies of the Electronic Ticket from eTIMS and the copies of paper citations with Judge Brumbach's notations no longer appear in the paper file. (Defendant's Exhibits 3-47).
- f. 10 of the paper files reveal that the citations as notated by Judge Brumbach were reused and cross outs appear over Judge Brumbach's name and her prior notations (Defendant's Exhibits 3-47).
- g. 1 of the paper files reveal citations were Reprinted Copies of the Electronic Ticket from eTIMS and contain notations from another judge but also contain the citations with Judge Brumbach's name and notations (Defendant's Exhibits 3-47).
- h. 5 of the paper files reveal citations some of them were Reprinted Copies of the Electronic Ticket from eTIMS and contain notations from another judge but they also contain the citations with cross outs appear over Judge Brumbach's name and her prior notations (Defendant's Exhibits 3-47).
- i. 3 of the paper case files contain Reprinted Copies of the Electronic Ticket from eTIMS that are blank and none of the citations as notated by Judge Brumbach. (Defendant's Exhibits 3-47).

- j. 1 of the paper case files contain citations with notations and with cross outs but nothing added. (Defendant's Exhibits 3-47).
- k. 5 of the paper files reveal citations were Reprinted Copies of the Electronic Ticket from eTIMS which are blank and but they also contain the citations with cross outs over Judge Brumbach's name and her prior notations (Defendant's Exhibits 3-47).

161. The only way to know when and by whom their notations on the paper citations resulted in being adjudicated is by reviewing a certified docket or the case history from eTIMS; it is impossible to know from the paper citations themselves. (Tr. Tran. 138: 3-25); (Defendant's Exhibits 3-47).

162. Judge Brumbach would have welcomed a discussion from Judge Dugan about his thoughts regarding her proposed plan. As Judge Brumbach testified: "And if [Judge Dugan] weren't happy with that solution, which of course it was a snow day, he could have called me, hey, let's talk about it, let's talk about the legality of it, here is my understanding of the law, here's my understanding of the rules, here is when an adjudication happens." (Board's Exhibit 97 (Interim Susp. Hr'ing. 205:17-23)).

163. It was Judge Brumbach's good intentions are further evidence by the fact that she explained her proposed solution to two Judges who were in leadership in Municipal Court. (Board's Exhibit 97 (Interim Susp. Hr'ing. 170:14-171:2)).

164. On January 6, Sharon Crimi, who is President Judge Dugan's assistant, contacted Ms. Fenerty about the email that Judge Brumbach Sent Judge

Dugan (Board's Exhibit 103) and asked her to "investigate." (Tr. Tran. 62:16-63:6; 64:14-15).

165. On Thursday January 6, Ms. Fenerty came to Ms. Sofronski's office on two occasions to review the paper files; the first time she left the files with Ms. Sofronski and the second time she took the files with her. (Tr. Tran. 43:12-44:16; 63:8-66-1).

166. Ms. Sofronski sent an email to Ms. Fenerty with a cc to Mr. Reda. (Tr. Tran. 46-47:15; Board's Exhibit 100).

167. Ms. Fenerty initially asked Ms. Sofronski not to cc anybody on the email, but Ms. Sofronski felt uncomfortable about that request. (Tr. Tran. 58:16-25).

168. Ms. Sofronski told Judge Pittman about Ms. Fenerty's request and informed him that it made her uncomfortable. (Tr. Tran. 59:1-10).

169. Ms. Fenerty went to Ms. Sofronski's office on two occasions: the first time she fanned through the paper files and observed that Judge Brumbach's initials appeared on the paper citations and that the disposition codes were circled; and the second time she reviewed each paper file individually. (Tr. Tran. 63:8-66:1).

170. After Ms. Fenerty reviewed the files the second time she told Judge Pittman that she observed Judge Brumbach's initials on the paper tickets and the disposition code circled. (Tr. Tran. 65:23-66:1).

171. Ms. Fenerty's investigation consisted only of her review of the paper citations; she did not review the eTIMS docket. (Tr. Tran. 63:8-66:1).

172. Ms. Fenerty incorrectly told Judge Pittman that the tickets were "adjudicated." (Tr. Tran. 105:24-106:3).

173. Ms. Fenerty made copies of the paper citations at Judge Dugan's request and provided him with the copies on Monday January 10, 2022. (Tr. Tran. 66:6-25; 67:14-25; 105:16-106:4).

174. When Ms. Fenerty took the files to make copies, she retrieved the files from a cabinet or drawer in Ms. Sofronski's office. (Board's Exhibit 97 (Interim Susp. Hr'ing. 104:14-21)).

175. At that time, nothing was entered into ETIMs. (Board's Exhibit 97 (Interim Susp. Hr'ing. 105:4-7)).

176. On January 11, 2022, Ms. Fenerty emailed Judge Dugan about her version of what occurred on January 6, 2022. (Board's Exhibit 102).

177. In this email, Ms. Fenerty, who is not a lawyer, incorrectly referred to Judge Brumbach's notations on the paper citations as "adjudications." (Board's Exhibit 102).

178. Ms. Fenerty's use of the terms "disposition" and "adjudication" were based solely on her reading words printed on the back of the paper citations and were not, in any way, the legally correct use of those terms. (Board's Exhibit 97 (Interim Susp. Hr'ing. 107:18-21; 87:7-10)).

179. Ms. Fenerty does not have the authority to adjudicate or disposition cases. (Board's Exhibit 97 (Interim Susp. Hr'ing. 102:14-25)).

180. Ms. Fenerty testified that not one of the 95 paper tickets had a raised seal on them. (Tr. Tran. 80:15-17).

181. Ms. Fenerty testified that not one of the 95 citations were dispositioned. (Tr. Tran. 81:8-9); (Board's Exhibit 97 (Interim Susp. Hr'ing. 101:25-102:10)).

182. Ms. Fenerty, testified not one of the ticketholders of the 95 citations were adjudicated in eTIMS. (Board's Exhibit 97 (Interim Susp. Hr'ing. 104:2-9)).

183. According to Ms. Fenerty, not one of the 95 paper tickets was marked guilty or not guilty as if to indicate that a trial on the merits had taken place. (Tr. Tran. 78:18-79:5); (Board's Exhibit 97 (Interim Susp. Hr'ing. 112:10-113:15)).

184. On January 9, 2022, Judge Dugan texted Judge Brumbach that she was not assigned to Traffic Court on January 10, 2022. (Board's Exhibit 106).

185. Thereafter, Judge Dugan assigned Judge Brumbach to administrative duties only which means that "there's pretty much nothing to do." (Board's Exhibit 97 (Interim Susp. Hr'ing. 50:7-22)); (Board's Exhibits 107 and 110).

186. Judge Dugan testified twice that he “suspended” Judge Brumbach. (Tr. Tran. 181:7; 181:9-10).

187. Judge Dugan made his decision to place Judge Brumbach on administrative duty based on the legally incorrect conclusion that the citations were adjudicated. (Board’s Exhibit 97 (Interim Susp. Hr’ing. at 50:25-51:4; 61:25-62:19)).

188. Judge Dugan admitted during questioning by Judge McCaffery that the cases were not adjudicated, no person was prevented from getting their day in court, no dues process violations occurred because the courts were closed on January 7 and everything was administratively continued. (Board’s Exhibit 97 (Interim Susp. Hr’ing. at 61:25-62:19)).

189. On January 11, 2022, Ms. Fenerty emailed Judge Dugan and said “As you are aware, [the 95 citations] were not dispositioned.” (Board’s Exhibit 102).

190. Yet, the very next day, January 12, 2022, Judge Dugan falsely advised Court Administrator Geoff Moulton that the “dispositions remained of record.” (Board’s Exhibit 109 at p. 3). Judge Dugan further falsely relayed that Judge Brumbach had “disposed of the complete Friday, January 7, 2022 lists[.]” (Board’s Exhibit 109 at p. 2).

191. Judge Dugan also falsely told Court Administrator Geoff Moulton that Judge Pittman relayed to him that Judge Brumbach “was disingenuous[.]” Judge Pittman never testified to that. (Board’s Exhibit 109 at p. 2).

192. In his memorandum to Court Administrator Geoff Moulton, Judge Dugan did not explain the traffic court processes. (Tr. Tran. 186:19-187:7); (Defense Exhibit 2).

193. In his memorandum to Court Administrator Geoff Moulton, Judge Dugan did not make any reference to Judge Brumbach's November 10, 2021 notice of judicial leave on January 7, 2022. (Tr. Tran. 189:9-13).

194. Judge Pittman testified that the text messages between Judge Pittman and Judge Dugan in Board Exhibit 105 were turned over in a "piecemeal" fashion because the Board did not ask for the texts. Board Exhibit 99 Judge Pittman Tr. Dep. at 101:1-23)).

195. Judge Brumbach is a prepared, well-studied, and thoughtful jurist who stays abreast of the changes in the law and rules so that she can fairly administer justice. (Board's Exhibit 97 (Interim Susp. Hr'ing. at 139:1-25)).

196. Judge Brumbach expressed her she felt about becoming a judge and being a judge to this Court: "I think that if I were the judge I – I would – I would – the lawyers coming in would know that I would be knowledgeable, I would be open to argument, I would be accepting of case law that was on point. Because I – I think that our profession is ever evolving." (Board's Exhibit 97 (Interim Susp. Hr'ing Tran. 139:20-25)).

197. Judge Brumbach further testified: "And we always have to stay on top of what the laws are, what the rules are, how they change, what the

impact of those changes are, and that they would get a fair trial before me, that their clients would feel that the court was always respectful and always gave them a chance to - to be heard. So I - I think that's kind of the path that led me there.” (Board’s Exhibit 97 (Interim Susp. Hr’ing Tran. 139:1-8)).

198. Judge Brumbach’s integrity is unblemished and she is an honorable judge. (Board’s Exhibit 96b: Judge Brumbach Deposition 56-65); and (Board Exhibit 96b) and See, Board’s Exhibit 96b (Exhibit 1: Judge Brumbach’s Answer to the Board’s NOFI); (Board’s Exhibit 98 (Judge Dugan’s Trial Dep: JCB BN002)).

199. In the absence of proof, the inconsistencies and motives suggesting foul play, the Board failed to offer a scintilla of reliable evidence that Judge Brumbach excluded even one individual or participant from the courtroom to have their day in court.

200. In the absence of proof, the inconsistencies and motives suggesting foul play, the Board failed to offer a scintilla of reliable evidence that Judge Brumbach been denied an actual human being due process or the right to be heard.

201. In the absence of proof, the inconsistencies and motives suggesting foul play, the Board failed to offer a scintilla of reliable evidence that Judge Brumbach had an illicit motive.

202. In the absence of proof, the inconsistencies and motives suggesting foul play, the Board failed to offer a scintilla of reliable evidence that Judge Brumbach had any personal agenda.

203. In the absence of proof, the inconsistencies and motives suggesting foul play, the Board failed to offer a scintilla of reliable evidence Judge Brumbach actions were prejudicial to the administration of justice.

204. In the absence of proof, the inconsistencies and motives suggesting foul play, the Board failed to offer a scintilla of reliable evidence of extreme conduct.

205. Judge Brumbach was diligent, and responsible to her duties.

206. Judge Brumbach had no intent for planned advanced entry of adjudication and no advanced adjudication in fact by Judge Brumbach.

207. In the absence of proof, the inconsistencies and motives suggesting foul play, the Board failed to offer a scintilla of reliable evidence of a pattern of misconduct.

208. Judge Brumbach was fully transparent.

209. Judge Brumbach upheld the Constitution and the law faithfully exercising her judicial discretion precisely for that.

210. The conduct of Judge Brumbach in Traffic Court does not constitute misconduct in office.

211. The conduct of Judge Brumbach was not such that constitutes a failure to perform the duties of office.

212. The conduct of Judge Brumbach was not such that brings the judicial office into disrepute.

213. The conduct of Judge Brumbach was not such that constitutes failure to devote the time necessary for the prompt and proper disposition of the business of his office.

214. The conduct of Judge Brumbach was not such that constitutes a failure to accord to every person who is legally interested in a proceeding, or their lawyer, full right to be heard according to law.

215. There is no indication in the record that Canons of Judicial Conduct were violated by Judge Brumbach.

216. Every alleged factual statement offered by the Board is unsupported on this record.

217. Judge Brumbach's integrity is unblemished and her commitment to protecting the integrity of the court system and participants is unwavering as exhibited by the series of events leading up to January 7, 2022, and every day since she ascended the bench in 2018.

218. Judge Brumbach stated:

My integrity is based in sound moral and ethical principles and because of our minimal contact you do not know me, my ability and work ethic or recognize my deep respect for the courts and the City of Philadelphia or the importance of a decent work environment. I plan on a wonderful journey as judge in the Philadelphia Municipal Court. I have a wealth of knowledge, data and the intellectual ability to provide real solutions that may be integrated into our antiquated system which supports many of our colleague's ideas or thoughts for change in the Municipal Court while achieving the preservation of our judgeships and bringing the treatment of our court in line with the courts throughout the Commonwealth.

(Board's Exhibit 98 (Judge Dugan's Trial Dep: JCB BN002)).

III. DISCUSSION

The Board has the high burden of proving each charge by clear and convincing evidence, *In re Sullivan*, 135 A.3d 1164, 1172 (Pa. Ct. Jud. Disc. 2016). To sustain this burden, the “witnesses’ testimony must be sufficiently clear, direct, weighty, and convincing.” *In re Berkhimer*, 930 A.2d 1255, 1258 (Pa. 2007); *accord In re Tidd*, 175 A.3d 1151, 1155 (Pa. Ct. Jud. Disc. 2017) (“Clear and convincing evidence has been defined as evidence that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” (quotations omitted)). Importantly, the deliberate choice of the “clear and convincing standard,” rather than a mere preponderance of evidence, is “more than an empty semantic exercise.” *Addington v. Texas*, 441 U.S. 418, 425 (1979) (“In cases involving individual rights, whether criminal or civil, the standard of proof at a minimum reflects the value society places on individual liberty.” (cleaned up)). Rather, the fact that the Board is required to meet the “intermediate standard of proof” is, reflects a collective societal judgment that “the individual interests at stake are both particularly important and more substantial than mere loss of money.” *In re T.R.*, 465 A.2d 642, 643 (Pa. 1983) (internal quotation marks and citations omitted)

Applying settled legal principles to the foregoing facts adduced at trial, this Court should have little difficulty in dismissing the Complaint, as the Board has utterly failed to carry its burden with regard to any of the nine counts lodged against Judge Brumbach.

However, before turning to the substantive allegations against Judge Brumbach, it is important to emphasize that the Board has not only failed to adduce the quantum of proof necessary to carry its burden, but the *quality* of its investigation is lacking in two ways.

One, judicial disciplinary proceedings are quasi-criminal in nature; and judges must be afforded the same constitutional rights as criminal defendants, which would necessarily include notice as to what type of conduct is prohibited, consistent with due process. *See In re Merlo*, 58 A.3d at 8; *Chiovero*, 570 A.2d at 60 (judicial canons give little notice to those affected as to kinds of prohibited activity; breadth of canons must be considered in determining degree of notice afforded judge consistent with due process). “Basic elements of procedural due process include adequate notice, an opportunity to be heard, and an opportunity to defend one's self before a fair and impartial tribunal.” *Commonwealth v. Thompson*, 281 A.2d 856 (Pa. 1971). The Board’s continuously shifting alternative theories have had Judge Brumbach inside a house of mirrors.¹ This is unfair and has had a major impact

¹ For example, the Complaint was based solely on theory that Judge Brumbach adjudicated the citations before January 7, 2022. The Board also stated that this case was not about taking vacation, rather it was about what she did in order to take that vacation day.” (Board’s Exhibit 97 (Interim Susp. Hr’ing. at 219:812)). Board Counsel then-Interim Chief Melissa Norton told this Court at the Interim Suspension Hearing upon questioning that it was not about taking the vacation, instead that Judge Brumbach pre-judged all of the cases. (Board’s Exhibit 97 (Interim Susp. Hr’ing Tran. 223:2-12)). In later filings the Board argued that Judge Brumbach *pre*-adjudicated cases. *See, e.g.*, Board’s Memorandum of Law in Reply to Respondent’s Omnibus Motion at 25 (“Whatever semantical gymnastics Judge Brumbach presently employs to defend herself, these so-called ‘notations’ were, in fact, verdicts on each of the citations, albeit neither final nor appealable.”) (emphasis added). And at trial, the Board shifted its focus to Judge Brumbach’s previous vacation leave requests—despite the fact that they are entirely irrelevant to the charges as filed in the Complaint. Not only are they irrelevant, but they also do not support the conclusions that the Board attempts to draw from them. For example, the Board suggested that Judge Brumbach abandoned her judicial assignment on January 7, 2022 and has similarly done so in the past, yet every piece of correspondence the Board admitted into evidence of communications between Judge Brumbach and Judge Dugan regarding

upon her having had a clear understanding of the allegations and facts alleged for a proper opportunity to defend herself before the Court of Judicial Discipline.² The Board also ignored evidence that contradicted its theory—for example, that Judge Pittman intended to cover the room. The Board further failed to collect *all* relevant documents before bringing charges. Judge Brumbach had to repeatedly ask for the complete text message exchange between Judge Dugan and Judge Pittman during the relevant time frame. And Judge Pittman agreed that the reason he did not provide all of the messages at first was because the Board did not ask for them. Worse still, the Board and Judge Brumbach were not provided with Judge Pittman’s January 11, 2022 email until October 30, 2022—approximately two-weeks before trial. That the Board did not already have this exculpatory evidence before that late date is further evidence that it did not properly investigate this matter.

Moreover, Judge Brumbach asked the Board for eTIMS generated documents, repeatedly, to support her defense, including copies of the certified record, copies of the docket and current copies of the citations themselves that

judicial leave do not support that conclusion, are in complete contradiction to this highly offensive, and prejudicial statement used solely to inflame the Court. (Board’s Exhibit 98 (Judge Dugan’s Trial Dep. JCB BNOOI - JCB BN0060 (Board Exhibit 98 Attachment)).

²“The discipline of a judicial officer is a process which begins the moment a complaint is received by the board. The judicial officer is entitled to due process at all stages of the proceeding before the board, the court, and on appeal. A denial of due process by the board may be remedied by the court or on appeal.... [T]he guarantee of due process requires that the board’s procedures be reviewable. The court’s rule of procedure 411(D)(3), allowing an accused judicial officer to challenge the board’s procedural integrity, is a valid exercise of the court’s rule-making authority, and is perfectly in keeping with the constitutional mandate that the court conduct its hearings in accordance with the principles of due process.”

In re Hasay, 686 A.2d 809, 817 (Pa. 1996) (quotations removed).

would come from the paper files in Traffic Court: none ever having been produced.

(Board's Exhibit 97 (Interim Susp. Hr'ing Tran. 171:7-12))

The Board has failed to present any evidence extracted from eTIMS. Without a certified docket or the case history from eTIMS it is impossible to know if the paper citations with cross outs over Judge Brumbach's notations and signature and placement of other notations on the reprinted versions of the citations resulted in an adjudication after notations and codes were put into eTims. (Tr. Tran. 138: 3-25); and see (Defendant's Exhibits 3-47).

Collectively, these failures violated Judge Brumbach's right to due process. The prejudice to Judge Brumbach by the Judicial Conduct Board's failure to provide due diligence calls into question the validity and comprehensiveness of the investigation and suggests the Judicial Conduct Board's investigation was not conducted through an impartial lens or free from suspected bias, purposeful delay and personal agenda.³

Two, the Board's case is largely predicated on the testimony of President Judge Dugan, a fellow jurist who readily acknowledged to having a contentious relationship with Judge Brumbach. Whether Judge Dugan's "frustration" with Judge Brumbach was reasonable is, of course, not directly at issue in this case and this Court need not opine on that question. But a question that is squarely

³ In this regard, the Board has violated number of its own Rules: Pa St J Cond Bd P Rule 26 (Screening); Pa St J Cond Bd P Rule 27 (Recommendation Of Counsel); Pa St J Cond Bd P Rule 1(Definitions); Pa St J Cond Bd P Rule 2 (Rules Of Construction); Pa St J Cond Bd P Rule 14; OP 2.12 – Standard Meeting Materials; OP 2.13 – Reviewing And Processing Complaints; OP 2.22 – Responsibilities In Furtherance Of Board Objectives; OP 3.03 – Scope Of Preliminary Inquiry By Staff; OP 3.04 – Expeditious Resolution Of Complaints; And OP 4.06 – Complaints Of Legal Error.

implicated here is whether President Judge Dugan’s judgement relative to Judge Brumbach—whether consciously or not—has been clouded by the interpersonal conflict. A review of the relationship between the two jurists confirms that the answer to that question is in the affirmative.

Specifically, as Judge Brumbach testified, her disagreements with the President Judge began as early as March of 2019, when Judge Dugan admonished her for taking the bench at 9:30 a.m. (the time reflected on official court documents) rather than 10:00 a.m., which had ostensibly become the “unwritten rule.” The two jurists then continue to clash frequently—largely over the scope and nature of the President Judge’s authority to dictate the time and manner of taking judicial leave. The cantankerous nature of this discourse is set forth in the attachments to the Board’s Exhibit 98 and, indeed, President Judge Dugan’s visceral reaction to Judge Brumbach was laid bare in the tone and tenor of his testimony at trial. Judge Dugan’s inability to provide an unbiased assessment of Judge Brumbach’s conduct is also reflected in his Memorandum to Geoff Moulton, which often omits important information, lacks much-needed context, and is generally couched in a manner that unfairly (and inaccurately) impugns Judge Brumbach’s character. (Board’s Exhibit 109).

Against this backdrop, this Court should consider President Judge Dugan’s testimony on matters involving Judge Brumbach with a healthy dose of circumspection.

A. Judge Brumbach did not violate Canon 1, Rule 1.1.

Because Judge Brumbach did not adjudicate any of the 95 citations and, concomitantly, did not deprive any litigant of the right to be heard, the Board cannot sustain any of the nine alleged counts of misconduct. Despite the Board's eleventh-hour attempt to recast its theory in different terms, the entirety of this case is predicated on its ability to prove that Judge Brumbach: (a) adjudicated the 95 citations before their January 7, 2022 list date; and (b) in doing so, denied the ticketholders their right to be heard. Simply put, if the Board cannot prove that Judge Brumbach—as a matter of law—adjudicated the cases originally scheduled for January 7, 2022, no rule of law or canon judicial conduct was violated and, thus, none of the nine counts of alleged misconduct can be sustained. Because the Board has fallen woefully short of presenting sufficient facts to prove by clear and convincing evidence that Judge Brumbach adjudicated any of the 95 citations—much less that her action actions infringed any ticketholder's right to be heard—judgment should be granted in Judge Brumbach's favor.

1. Judge Brumbach did not adjudicate any of the 95 citations before January 7, 2022.

The facts presented during the trial confirm what the Board would have known had it adhered to its duty to conduct a diligent investigation: Judge Brumbach's annotation of the 95 citations did not constitute an "adjudication."⁴ The Board's Complaint is premised on the assumption that Judge Brumbach

⁴ Indeed, Judge Brumbach thoroughly explained in her NOFI why her actions did not result in an adjudication. (Board Exhibit 96b (Exhibit1)).

adjudicated the citations thereby denying the right to be heard. But she did not. An “adjudication” is a legal term. *J.C. v. Dep’t of Public Welfare*, 980 A.2d 743, 747 (Pa. Cmwlth. 2009). Specifically, an “adjudication” is “a final, appealable judgment[.]” *Id.*; see Black’s Law Dictionary (11th ed.) (“adjudicate” means “[t]o rule on judicially”). Indeed, appeals from Philadelphia Traffic Court take place “after the entry of a guilty plea or conviction[.]” Pa. R.Crim.P. 1037; see also Pa. R. Crim. P. 460(a) (allowing for an appeal from a summary proceeding by “filing a notice of appeal within 30 days after **entry** of the guilty plea, the conviction, or other final order from which the appeal is taken.”) (emphasis added). The term “entry” as used in Rules 1037 and 460 is defined as “the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the magisterial district judge computer system.” Rule 460, cmt; see also Pa. R. Crim. P. 471 (a certified copy of the disposition report is generated when a matter is adjudicated). The common thread running through these rules is finality. That is, to constitute an “adjudication,” the judicial act must result in a final pronouncement or decree settling the rights of the parties in the particular dispute.

Given that the Board’s Complaint is based on conduct that occurred in the context of summary criminal proceedings in Philadelphia’s Traffic Court, to properly evaluate Judge Brumbach’s actions, this Court must look to the rules in Philadelphia’s Traffic Court. And a review of those rules similarly confirms that Judge Brumbach’s conduct did not result in an “adjudication.” In Philadelphia’s Traffic Court, an adjudication cannot occur unless and until the paper citations with

the markings and code notations are transmitted to the Dispositioner at a judge's direction and those annotations are entered into the electronic docket in accordance with those instructions. (Tr. Tran. 125:1-20; 129:1-22). Here, the evidence adduced at trial shows that the paper citations were never in the possession or control of the Dispositioner and therefore could not have been adjudicated as a matter of law. See (Tr. Tran. 129:1-22).

And that is precisely why it was legally sound for each of the 95 citations to be reused, reprinted and notated on and by a different jurist at different time in 2022. See (Defense Exhibits 3-47); (Board's Exhibit 96b (Exhibit 1: Judge Brumbach's Answer to the Board's NOFI)). To illuminate, if the Board's contention is correct, then the Municipal Court engaged in a mass double jeopardy violation because, under its theory, multiple defendants who had been "adjudicated" as "not guilty in absentia," were retried for the same offense. That is, if an adjudication occurred on January 6, 2022, then each of the 95 citation-holders' double jeopardy rights were violated when they were later retried for the same offense. *See e.g., Commonwealth v. Johnson*, 231 A.3d 807, 297 (Pa. 2020) (The Double Jeopardy Clause "protects a defendant in a criminal proceeding against multiple punishments or repeated prosecutions for the same offense.").

Indeed, the Board's theory runs headlong into yet another settled legal principle—the coordinate jurisdiction rule—which prohibits jurists sitting in coequal jurisdiction from undoing or reversing each other's decisions. If the Board's

theory were correct, none of the 95 citations could be subsequently disposed of without a violation of that doctrine.

Finally, whatever may be left of the Board's theory is utterly eviscerated by the fact none of the individuals who were issued the 95 citations in question were notified of their appellate rights on January 6. The reason, of course, is obvious: appellate rights did not attach until the citations were adjudicated upon entry of notations and codes on a different date, when the notations of a different judge (not Judge Brumbach) were entered into eTIMS. *See* Pa. R.Crim.P. 1037 (providing that appeals from Philadelphia Traffic Court take place "after the entry of a guilty plea or conviction"); *see also* Pa. R. Crim. P. 460(a)

To the extent the Board intends to renew its argument that "adjudication" should be defined differently in the context of judicial discipline than the settled definition it has received in the criminal context. This Court should therefore reject any definition of "adjudication" that is inconsistent with its accepted use in the criminal context and that would result in Judge Brumbach being punished for conduct that is otherwise legal.⁵

That is exactly why the paper citations that Judge Brumbach preliminarily marked on January 6, 2022 were scratched-off and remarked by other jurists at a later date. *See, e.g.,* (Defense Exhibit 44). The undisputed facts confirm that the

⁵ The Board has previously argued that the term adjudication means something different in "the context of judicial disciplinary proceedings[.]" Board's Omnibus Reply at 23. This argument is incorrect and would set a dangerous precedent, whereby a jurist could comply with the relevant rules of procedure applicable in her court only to have the Board hold that jurist to a different set of rules and standards that are of its own making.

paper citations—even after being signed—had no legal significance or effect until the notations including the signer’s name were electronically docketed by the dispositioner to result in adjudication. (Tr. Tran. 126:12-127:15). Then—and only then—could the matter have been considered adjudicated. (Tr. Tran. 129:1-22).⁶

Critically, Judge Pittman—the Board’s own witness—testified that Judge Brumbach did not adjudicate any of the 95 citations. (Tr. Tran. 129:1-22). He further testified that it was not possible for Judge Brumbach to adjudicate the citations because he intended to provide coverage on January 7. (Tr. Tran. 129:23-130:9). In fact, Judge Pittman directly refuted the Board’s theory that that Judge Brumbach’s signature on each citation is what transformed the paper citations into an adjudication, when he agreed that “there is no magic that happens when on Judge writes on a ticket” and that the “magic doesn’t happen until it gets dispositioned” in ETIMs. (Tr. Tran. 138:23-139:2); (Tr. Tran. 126:12-127:15); (Tr. Tran. 127:5-15 (Judge Brumbach’s notations on January 6 had the same legal effect as notes)).

Judge Pittman’s testimony is particularly compelling given that he is the only witness offered by the Board who previously presided over cases in Traffic Court. Judge Pittman’s testimony is corroborated by the fact that **every** case scheduled for January 7 appears to have been administratively re-listed to another date and

⁶ The fact that the paper citations do not bear any of the traditional hallmarks of judicial action (for example a raised seal) further demonstrate that they are, in essence, informal worksheets. Indeed, annotating a disposition code is not required by any statute or rule of court. *See, e.g.*, Pa. R. Crim. P. 403 (Contents of Citation); Pa. R. Crim. P. 1002.1.

adjudicated by some other judge—although conclusive proof of the timing and manner of final adjudication would require review of eTIMS. *See* (Defense Exhibits 3-47 indicating that each of the cases was adjudicated at a later date in 2022).

Finally, not only is it impossible to characterize the *effect* of Judge Brumbach’s actions resulting in “adjudications,” but it is also impossible to conclude that she marked the citations with the *intent* of rendering “adjudications.” At no point after conducting her review of the matters scheduled for January 7, did Judge Brumbach give the paper files to the dispositioner for disposition. *See* (Tr. Tran. 66: 2-13; 78:1-16). Judge Brumbach credibly and extensively testified that in developing her never-executed plan, her sole intent was to provide a solution for the coverage issues that Judge Dugan was experiencing coverage issues. *See* (Tr. Tran. 246: 1-13). The Board did not offer any testimony—direct or circumstantial—tending to suggest that Judge Brumbach’s intent was anything but genuine. To the contrary, Judge Brumbach’s actions prior to January 7, 2022 provide strong indication that, at all times, her intent was to justly and efficiently administer the cases. In particular, Judge Brumbach, at every turn and opportunity, Judge Brumbach was fully forthcoming regarding the details of her proposed solution, as she emailed Judge Dugan about it and explained it to Judge Pittman, Ms. Sofronski, ADA Waite, and Mr. Delario. The candor and openness with which she communicated her proposal do not reflect ill-intent. (Board’s Exhibit 96b (Exhibit 1: Judge Brumbach’s Answer to the Board’s NOFI)).

In short, what the Board characterizes as “adjudications” were nothing more than notations on paper citations. (Tr. Tran. 129:19-22). Judge Brumbach intended to propose a solution to a problem, mentioned it to Judge Dugan and explained it to Judge Pittman. Significantly, Judge Pittman—whose experience and knowledge of Traffic Court far outpaces that of President Judge Dugan—agreed that reasonable minds could differ about whether Judge Brumbach’s plan was a good or bad idea. (Tr. Tran. 134:13-135:3). Nor has the Board offered any testimony, or made any legal argument, that Judge Brumbach’s plan in fact was unlawful, or even improper. A necessary predicate to a holding that Judge Brumbach’s proposed course of action amounts to a violation of any Canon is that the conduct was wrong in the first place. The Board never has even attempted to prove to the contrary. But on an even more fundamental, any competing views regarding the merits of Judge Brumbach’s proposal were (and remain) utterly irrelevant; not only was her solution never going to implemented because, as Judge Pittman, made clear, he intended to provide coverage, but courts were closed and January 7 and because. *See* (Tr. Tran. 129:23-130:9).

2. Judge Brumbach did not deprive any person the right to be heard.

The Board has further failed to prove by clear and convincing evidence that Judge Brumbach denied any person the right to be heard. Because January 7 was a snow day, every ticketholder’s citations were administratively continued and they were provided a later date. (Defense Exhibits 3-47). The Board has not identified one person whose right to be heard was interfered with. More importantly, the Board has failed to present any evidence extracted from eTIMS. Without a certified

docket or the case history from eTIMS it is impossible to know if the paper citations with cross outs over Judge Brumbach’s notations and signature and placement of other notations on the reprinted versions of the citations resulted in an adjudicated after notations and codes were put into eTIMS. (Tr. Tran. 138: 3-25); and see (Defendant’s Exhibits 3-47).

Moreover, at the January 6, 2023 hearing, the Board argued—for the first time—that the Commonwealth’s due process rights were deprived by Judge Brumbach’s actions. Because this argument was not alleged in the Complaint, it should not be considered.

Factually, the undisputed facts make clear that: (a) the Commonwealth reviewed every file before Judge Brumbach; (b) no adjudication resulted from Judge Brumbach’s conduct; and (c) court was closed on January 7 and each of these cases was administratively re-listed and heard at a later date.

Legally, the due process clauses of the Federal and State Constitutions are designed, by their very terms, to protect people from the State. *See* U.S. Const., amend. XIV (“nor shall any State deprive any person of life, liberty, or property, without due process of law;”); *see also* U.S. Const., amend. V (“nor shall any person . . . be deprived of life, liberty, or property, without due process of law;”); Pa. Const. art. I, § 9 (“In all criminal prosecutions the *accused* hath a right to be heard...”).⁷

⁷ The same is true of the various protections afforded under Article I of the State Constitution. *See* Pa. Const. art. 1, § 25 (“To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.”); *see also Com., Office of Atty. Gen., ex rel. Kelly v. Packer Tp.*, 49 A.3d 495, 499 (Pa. Cmwlth. 2012) (“The Pennsylvania Constitution protects individual citizens against government infringement; it does not recognize or protect the rights of local governments from encroachment by state government.” (internal citations and quotation marks

To the extent the Board's use of "due process" is an inartful (and inaccurate) shorthand for the right to be heard that is contemplated in Rule 2.6(A) of the Rules of Judicial Conduct, the Board's claims likewise fail. Based on the undisputed facts here, the ADA was afforded the opportunity to review every case as he would as a matter of course. The ADA agreed with the course of action and never once claimed that he, or the Commonwealth generally, were denied the opportunity to be heard. (Board Exhibit 97 (Interim Susp. Hr'ing 170:21-23)).

Accordingly, applied to the present matter, the Board has not established by clear and convincing evidence that Judge Brumbach denied any person or party the right to be heard. Not one of the 95 citations was adjudicated and, absent a resulting adjudication, no ticketholder was denied the right to be heard.

3. The Board has not established, by clear and convincing evidence that Judge Brumbach violated any other law or canon of judicial ethics.

The Board has not alleged or proved any other violation of law. And as set forth more fully herein, the Board has not established by clear and convincing evidence that Judge Brumbach violated any canon of judicial ethics.

During its closing argument, which was riddled with farfetched innuendo and references to "facts" never adduced, the Board claimed that Judge Brumbach "refuses to apply the law as written." But the record is utterly bereft of any evidence to support this assertion and no attempt has ever been made to identify

omitted)). In fact, Article I, Section 6 was amended to provide the Commonwealth with a right to a jury trial because prior to that, if the accused didn't want a jury trial, the Commonwealth couldn't ask for it. *See, e.g., Grimaud v. Commonwealth*, 806 A.2d 923, 933 (Pa. Cmwlth. 2002).

what “law” Judge Brumbach purportedly refused “to apply . . . as written.” (Tr. Tran. 322:17-18). To the contrary, the evidence at trial and on this record is clear that Judge Brumbach consulted the legal authorities available to her—in addition to the relevant policies and practices applicable to Traffic Court—and identified what she believed to be a solution that complied with the laws. In fact, no other witness even attempted to examine Judge Brumbach’s proposed solution by referencing legal precepts and the Board’s own witness—Judge Pittman—was unequivocal in his assessment that reasonable minds could differ over whether her proposed solution was sound. Importantly, her proposed solution *never happened*. And the evidence at trial confirms that it could never have happened. (Tr. Tran. 322:17-18).

In reality, when stripped to its essence, the Board requests that this Court punish Judge Brumbach for proposing an idea. And taken to its logical conclusion, the Board’s theory would punish well-meaning jurists who propose innovative solutions that could help our courts run more efficiently. As a result, this Court should conclude that the Board has failed to prove Count 1.

B. Judge Brumbach did not violate Canon 1, Rule 1.2.

Board is has also failed to present any facts—let alone a quantum of evidence that would constitute clear and convincing proof—that Judge Brumbach has ever acted in a manner inconsistent with her duty to “promote public confidence in the independence, integrity, and impartiality of the judiciary” and failed to avoid “impropriety and the appearance of impropriety.” *See In re Sullivan*, 135 A.3d at

1172. In *Matter of Larson*, 616 A.2d 529, 584 (Pa. 1992)⁸ As explained by the Supreme Court, the appearance of impropriety standard “is not to be given an overly scrupulous gloss, because an overly suspicious mind often assigns guilt where none exists.” 616 A.2d at 584 (quotations omitted). Elaborating on this point, the *Larsen* panel observed that “[j]ust as this Board and our Supreme Court require clear and convincing evidence before it will conclude misconduct has occurred, reasonable citizens require more than vague conjectures and subtle innuendo before they will entertain suspicions of judicial misconduct or ascribe the ‘appearance of impropriety’ to ambiguous facts and circumstances.” The Court closed by caution that “there is little to be gained and much which may be irretrievably lost in the adoption and application of jaundiced presumptions of judicial misconduct.” *Id.*

The Board erroneously argues that *In re Merlo*, 34 A.3d 932, 962 (Pa.Ct.Jud.Disc. 2011) is similar to this case. Judge Merlo, in landlord and tenant cases, instructed her staff to conduct hearings, “enter judgment,” and send the required notice without her being present. Critically, and unlike Judge Brumbach, Judge Merlo’s staff carried out standing instructions over a two-year period such that the staff made judicial determinations that resulted in adjudications. *See In re Merlo*, 34 A.3d at 963. *In re Merlo* is not factually comparable. To start, Judge Merlo was chronically absent and devised a standing order that her staff actually implemented to adjudicate landlord tenant cases. *See id.* at 962-63. Here, Judge Brumbach proposed a solution that to help Judge Dugan’s stated coverage issues

⁸ Although *Larsen* was superseded by Constitutional Amendment, the Court’s analysis on this point was unaffected.

and that solution *never* happened nor could it have happened. Whereas Judge Merlo standing order was actually effectuated and resulted in adjudications, Judge Brumbach's proposed solution did not result in *any* adjudication. In this regard, the Board is attempting to punish Judge Brumbach for an idea—an idea that she formed after consulting with relevant stake holders; and one that she raised with Judge Dugan and Judge Pittman.

The notion that Judge Brumbach proposed this solution solely for her own benefit is untrue and contradicted by the facts of record that show Judge Brumbach intended to help Judge Dugan with his stated coverage issues and desired to set proper expectations for court staff. For this additional reason, Judge Brumbach's conduct is entirely dissimilar to Judge Merlo's. Judge Merlo created a standing order to facilitate excessive and chronic absenteeism. Judge Brumbach, on the other hand, proposed her solution to *help* Judge Dugan and properly set the expectations of her court staff. Indeed, that is Judge Brumbach provided almost two months' notice and gave a reason for her leave day—in accordance with Judge Dugan's preference—and it is also why, on January 6, 2022, Judge Brumbach emailed Judge Dugan proposing her plan and asking if he had an alternate plan. In the end, Judge Brumbach followed the proper procedure to take a single days' leave and attempted to help Judge Dugan.

Moreover, unlike *In re Merlo*, at no time was Judge Brumbach's staff instructed to make judicial decisions, determine facts or enter court action resulting in final judgments for or against a ticketholder wanting to contest their motor

vehicle violations or make formal entry of agreements between litigants on any subject matter.⁹ In fact, none of the 95 citations were ever adjudicated by *anyone* nor could they have been because the courts were closed on January 7, 2022 and every case scheduled for that day was administratively relisted. Judge Merlo was punished for excessive absenteeism and lateness as well as cases resulting in adjudication without her taking testimony over a two-year period as required by Pa.R.C.P.M.D.J. 512. *See* Pa.R.C.P.M.D.J. 512; *cf.* Pa. R. Crim. P. 1031 (ticketholders who fail to appear, by operation of law, consent to absentia finding). Thus, there is nothing “strikingly similar” to Merlo.

Additionally, in its closing remarks, the Board leaned heavily on the “appearance of impropriety” that was allegedly caused by Judge Brumbach’s actions. (Tr. Tran. 322-25). The Board claims that “any reasonable person looking at the back of the citation would feel a Judge made a decision” and that it would appear to “Joe Smith” that he would not have the chance to present his case. *Id.* There is no clear and convincing evidence to prove either of these simplistic assertions.

To begin, the record is utterly bereft of any evidence to support even the inference that, to some unidentified person in an indeterminate time and undisclosed location, it “appears” that an adjudication took place. At its core the

⁹ To explain, the facts presented by the Board indicate that Merlo “committed the following improper acts: (1) without statutory authorization, she authorized her staff to “find” facts alleged by a party in a pending dispute, i.e., to receive facts alleged by a plaintiff-landlord in a complaint; (2) she permitted her staff to utilize these facts to issue a document that, on its face, appeared to be a valid, enforceable notice of judgment; and (3) in so doing, she failed to follow the pertinent Rules of Civil Procedure of Magisterial District Judges.” *In Re: Merlo*, Brief of Judicial Conduct Board, , 2012 WL 8693632 at *45.

Board's argument is premised precisely on the type of "vague conjectures and subtle innuendo" involving "ambiguous facts and circumstances" that the Larsen panel held was insufficient to demonstrate an "appearance of impropriety." *Matter of Larsen*, 616 A.2d 529, 582 (Pa. 1992)

Moreover, although a reasonable person standard applies, our High Court rejected that it be a reasonable uniformed or misinformed person standard. *Id.* Here, the Board's arguments rest entirely on an *uniformed* person—a person who does not know Traffic Court and who does not have access to the official docket on eTIMs.¹⁰ Accordingly, this Court should reject the Board's formulation of this Canon, as it is inconsistent with Supreme Court precedent and, in any event, belied by the credible testimony of those who understand Traffic Court best.

The Board rests its argument on the fact that Judge Brumbach marked and signed the back of the paper citations. But Judge Pittman expressly testified that "there is no magic that happens when a judge writes on a ticket" and that "the magic doesn't happen until it gets dispositioned" in eTIMS. (Tr. Tran. 138:23-139:2). This is readily apparent by the fact that jurists crossed out Judge Brumbach's notations and filled in their own notations when the cases were relisted and (presumably) adjudicated. *See* (Defense Exhibit 3-47). Moreover, the court staff and

¹⁰ In this regard, The Board has failed to offer any supporting evidence that (1) the paper file is available to the public or public access exists, (2) that the paper files are shared or handled by defense attorneys or pro se ticketholders, or (3) paper files are subject to Right to Know disclosure.

district attorney assigned to B Court never testified that Judge Brumbach's action were improper or appeared improper.¹¹

As for the public's confidence in the judiciary, Judge Brumbach offered a solution that, based on her experience and her understanding of the applicable rules and practices in Traffic Court was a viable alternative in the event that coverage was unavailable. (Board's Exhibit 97 (Interim Susp. Hr'ing. 147:7-21;152:11-155:8)). Judge Brumbach further brought her idea to the attention of Judge Dugan and explained it to Judge Pittman and the judicial staff as well as ADA Waite. These discussions demonstrate that Judge Brumbach was forthright about her solution and sought input on whether it would work and whether Judge Dugan had an "alternate plan." (Board 103). Far from eroding the public's trust in the judiciary, these types of open conversations seeking solutions promote confidence. In this regard, it is also notable that Judge Brumbach testified that she would welcome a legal conversation about her proposed solution. (Tr. Tran. 241:19-242:15) ("I would welcome legal conversation with anyone about it."), which stands in stark contrast to cases where a jurist conceals information. *See Sullivan*, 135 A.3d 1164, 1175 (Pa.

¹¹ Typically, this Court has concluded an appearance of impropriety exists based on a relationship between the parties. *See, e.g., In re McFall*, 617 A.2d 707, 713 (Pa. 1992) (appearance of impropriety where judge was under investigation and agreed to cooperate with authorities in relation to that investigation and those authorities were later parties in a case). In *McFall*, the appearance of impropriety existed given the judge's relationship with a party in a case. Whereas the appearance of impropriety in *McFall* is readily apparent based on its facts, the Board's theory regarding Judge Brumbach's appearance is opaque and unsupportable. The Board's allegations rest on Judge Brumbach's review of the paper citations and preliminary note taking. But this type of pre-deliberative preparation is routinely undertaken by jurists across the Commonwealth and there is nothing inherently improper about preparation. There is simply no evidence of an improper conduct, or the appearance of improper conduct, especially given Judge Brumbach's stated intent—at all times—was to ensure the ticketholders who appeared maintained their right to be heard.

Ct. Jud. Disc. 2016) (appearance of impropriety where the jurist received ex-parte information and did not disclose that contact or recuse).

Ultimately, when the Board's speculation and what if's are set aside, it is clear that *nothing* happened to the citations and that Judge Brumbach's conduct did not appear improper in any way. No case was adjudicated. Nor did Judge Brumbach attempt to adjudicate them. The fact that she returned the paper citations to Ms. Sofronski—who is not a Dispositioner—for safe-keeping evidences her intent that they not be adjudicated unless she instructed as much on January 7, 2022. Except, that day never came because it was a snow day.

The Board has not set forth clear and convincing evidence that Judge Brumbach's conduct was improper or appeared improper. *See In re Tidd*, 175 A.3d 1151, 1155 (Pa. Ct. Jud. Disc. 2017) ("Clear and convincing evidence has been defined as evidence that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.") (quotations and citation omitted). Accordingly, this Court should conclude that the Board has failed to prove Count 2

C. Judge Brumbach did not violate Canon 2, Rule 2.1.

Judge Brumbach gave her judicial office precedence over her personal activities and nothing in the Board's presentation sets forth clear and convincing evidence to the contrary. *See In re Sullivan*, 135 A.3d at 1172. Far from neglecting her responsibilities, Judge Brumbach's proposed solution—which did not and could not have taken effect—was born entirely out her desire to ensure that her judicial

duties were satisfied given President Judge Dugan’s failure to communicate with her that he would be covering the courtroom.¹²

Unable to identify any concrete failure to give precedence to judicial duties, the Board broadly argues that Judge Brumbach’s “issues with Judge Dugan” are the basis for this charge. (Tr. Tran. 325: 21-22). More specifically, the Board argues that Judge Brumbach’s “job is to appear on the bench, not a birthday party in Florida.” (Tr. Tran. 326:2-3). The Board further argues that Judge Brumbach was required to be in B Court on January 7, 2022 because “[s]he did not get that answer back that she was excused.” (Tr. Tran. 326:4-10). But the Board has never identified a single rule, guidance, or policy even remotely suggest that jurists are required to obtain permission from the President Judge before taking judicial leave, or provide a reason to the President Judge for taking a day off—particularly when doing so would require them to forego their right to privacy. (Tr. Tran. 190:8-15; 196:5-10). Similarly, the Board has never been able to identify any authority giving the President Judge power to make subjective evaluations on whether the reasons provided by a judge are sufficient to warrant leave. *See id.*

In fact, the Board’s theory is undermined by its own witnesses. Specifically, Judge Dugan agreed that there is no written policy that requires jurists to ask for the President Judge’s permission or receive his approval before taking judicial

¹² The Board’s argument also defies common sense. A jurist that does not give precedence to judicial duties would simply refuse to appear for court. The fact that Judge Brumbach went through the trouble of developing an alternative plan for maintaining some semblance of efficiency in the event coverage was not provided, evinces a profound commitment to her judicial duties, not a disregard of them.

leave. *See id.*; (Tr. Tran. 326:4-5) (She was not excused). And nothing in Section 325 of the Judicial Code, which enumerates the powers of president judges, suggests the existence of such sweeping authority. *See* 42 Pa.C.S. § 325 (Powers of president judge). Similarly, recall that Rule of Judicial Administration 704, which is the only prescription governing personal time off by judges, permits judicial leave and presumes that judges will use judicial leave. Rule 704’s restrictions on the use of judicial leave set in when a jurist misses fifteen days in a thirty-day period—a benchmark not implicated here.¹³

Moreover, despite the fact that she was not obligated to do so, Judge Brumbach complied with Judge Dugan’s preference that jurists provide him with reasonable notice and a reason for their personal leave day. Importantly, at that time, Judge Brumbach was not yet assigned to any courtroom for the month of January; according to Judge Brumbach, the judicial assignment calendar was not released until on or about November 29, 2021. (Tr. Tran. 261:25-262:2). Also at that time, notices scheduling a hearing date for the ticketholders associated with the 95 citations had not yet been sent. (*e.g.*, Defendant’s Exhibit 44 (Scheduled Hearing Worksheet with “Run Date 12/24/21” indicating that the “Trial Notice Date” was “12/18/21”). Board witness, Judge Pittman and Judge Dugan agreed this amount of notice was reasonable. (Board’s Exhibit 99 (Judge Pittman’s Trial Dep. at 100:17-

¹³ Rule 704 speaks to the presumption of quantity of Judicial Leave (being a total of fifteen (15) days in a thirty-day period) as well as requiring an assessment of the conduct of a jurist to other jurists in the same or comparable position. To that end, the reasons remain immaterial to Board’s burden of proof since the days specified are so few to raise a rebuttable presumption under Rule 704; but also, an assessment to comparable jurists across the Commonwealth within the Court of Common Pleas as well as the Philadelphia Municipal Court, would establish this charge has no merit; yet again, the Board’s absence of proof is clear on this record they have offered no evidence to support this charge.

21); (Tr. Tran. 142:17-23); (Board's Exhibit 97 (Judge Dugan's Trial Dep. at 77:9-21; 94:7-14)). Thus, even under Judge Dugan's exalted view of the powers given to President Judges, Judge Brumbach gave precedence to her judicial duties by giving Judge Dugan sufficient notice to provide coverage for B Court on January 7, 2022.

To infer an ethical violation from the averments of illusory power and authority will place a duty upon which jurists future conduct is measured, infringes upon their autonomy, their use of judicial leave, and set explicit power and authority to a president judge and support their refusal without justifiable reason or rational basis for use of judicial leave in any form. While Judge Brumbach may be the one subject to its process, the decision that comes from here will have an impact on each and every judge across the Commonwealth.

In the end, therefore, this Court should have little difficulty concluding that the Board failed to prove by clear and convincing evidence that Judge Brumbach violated Canon 2, Rule 2.1

D. Judge Brumbach did not violate Canon 2, Rules 2.5(A) and (B).

Judge Brumbach has performed her duties competently and diligently, and has cooperated with other judges in the administration of justice. To put a fine point on it, not *one* fact advanced by the Board implicates this Rule. *See In re Sullivan*, 135 A.3d at 1172. Judge's Brumbach's competence and diligence is not in question here. By all accounts, Judge Brumbach is diligent in her preparation and thoroughly competent in her duties as a judge.

Judge Brumbach has likewise cooperated with other Judges in the administration of justice. In fact, no evidence has been presented that *any* of Judge Brumbach's colleagues (with the exception of President Judge Dugan) ever encountered difficulties in their relationship with her. And as for Judge Dugan, Judge Brumbach complied with his preference that she supply a reason for her absence—despite the fact that this preference had no basis in rule of policy. (Board's Exhibit 103). Judge Brumbach communicated her anticipated absence almost two months in advance—before she was assigned to a courtroom and before the individual defendants were assigned to B Court for January 7—so that Judge Dugan had adequate time to prepare. *See* (Tr. Tran. 261:25-262:2); (*e.g.*, Defendant's Exhibit 44 (Scheduled Hearing Worksheet with "Run Date 12/24/21" indicating that the "Trial Notice Date" was "12/18/21"). She further communicated her proposed solution to Judges Dugan and Pittman and inquired about whether there was an alternate plan in place so that her room would be covered. *See* (Board's Exhibit 103); (Tr. Tran. 95:9-14; 239:23-240:1). As relayed during her testimony, if it were up to Judge Brumbach, she would have administratively relisted the matters scheduled for January 7, 2022 well in advance of that date. (Tr. Tran. 301:12-19); (Board's Exhibit 97 (Interim Susp. Hr'ing Tran. 196:11-18)).

Judge Brumbach's clear compliance with Canon 2, Rule 2.5(A) is further reflected in the fact that, in developing her proposed solution, she worked with court staff and the assistant district attorney to ensure that the alternative plan was viable and acceptable to them. She further communicated her proposed solution to Judge

Dugan and Judge Pittman as an alternative to coverage given Judge Dugan's stated issues with coverage during the week of January 7, 2022. Indeed, Judge Brumbach expressly asked Judge Dugan whether he had an "alternate plan," so as to obviate the need for her alternative proposed solution. (Board Exhibit 103). Judge Brumbach's efforts to communicate further evince her stated desire to help Judge Dugan and prepare her court staff so that their expectations were set and that justice could be administered. (Board's Exhibit 97 (Interim Susp. Hr'ing. 148:7-11)). Judge Brumbach's alternate plan if coverage was not able to be provided by President Judge Dugan recognized operational efficiency and case processing and her fiscal responsibility to control expenditures and to help minimize delay. *See* Board's Exhibit 96b (Exhibit 1; Appendix: Summary of Annual Report Publications of the First Judicial District)

In short, the undisputed material facts do not establish a violation of Canon 2, Rule 2.5(A)-(B) and, if anything, the facts adduced at trial confirm Judge Brumbach's steadfast compliance with these Rules, as they show that Judge Brumbach communicated with court staff, ADAs, and other Judges and worked to administer justice by advancing a plan that would alleviate any coverage issues the Court was experiencing. The Board has not set forth clear and convincing evidence that Judge Brumbach's conduct was improper or appeared improper. *See In re Tidd*, 175 A.3d 1151, 1155 (Pa. Ct. Jud. Disc. 2017) ("Clear and convincing evidence has been defined as evidence that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts

in issue.”) (quotations and citation omitted). These facts plainly demonstrate Judge Brumbach’s efforts to cooperate with court staff, Judge Dugan, and Judge Pittman, and also establish her efforts to uphold her duty to proper administration of justice. The Board has therefore failed to prove, by clear and convincing evidence, a violation of Canon 2, Rules 2.5(A) and (B).

Finally, insofar as the alleged violation of Canon 2, Rule 2.5(B) is based on the Judge Brumbach’s relationship with President Judge Dugan, the Board has similarly failed to carry its burden. In this regard, while the relationship between the two jurists is plainly contentious, the Board has failed to establish that the conflict is a result of Judge Brumbach’s lack of cooperation or collegiality. To the contrary, as Judge Brumbach relayed in painstaking detail, President Judge Dugan’s rude behavior and heavy-handed approach to leadership played a major (if not outsized) role in the deterioration of the professional relationship between the two.

E. Judge Brumbach did not violate Canon 2, Rule 2.6(A).

For the reasons set out in Section A, the Board failed to prove by clear and convincing evidence that Judge Brumbach violated Canon 2, Rule 2.6(A). *See In re Sullivan*, 135 A.3d at 1172.

F. Judge Brumbach did not violate Article V, § 17(b) of the Pennsylvania Constitution.

The Board alleged that Judge Brumbach violated Article V, Section 17(b) because she violated the canons of judicial ethics cited herein. *See* Complaint at ¶¶ 44-50. As explained above, the paper citations are not an official record; rather they are used by judges to annotate instructions to the dispositioner for entry into

eTIMS. The Board is attempting to transform an act—i.e., making notations on the paper citations—that is otherwise not legally recognized as an adjudication into an adjudication simply by calling it an adjudication. Indeed, the Board used the term “adjudication” approximately twelve times in its Complaint notwithstanding the fact that the cases were not legally or factually adjudicated.

For these reasons, and those developed more fully in Sections A-E and G, the Board did not prove a violation of any law or canon of judicial ethics by clear and convincing evidence. Judge Brumbach exercised her judicial discretion, and inherent power and acted within settled authority, and complied with the Rules of Procedure and common practice at all times, even as related to her proposed solution. As such, this Court should conclude that the Board has not met its burden with respect to County 7. *See In re Sullivan*, 135 A.3d at 1172.

G. Judge Brumbach did not Violate Article V, § 18(d)(1) of the Pennsylvania Constitution.

The Board has not established a violation of Article V, Section 18(d)(1) by clear and convincing evidence. *See In re Sullivan*, 135 A.3d at 1172. Judge Brumbach has neither “prejudice[d] the proper administration of justice” nor has she brought “the judicial office into disrepute.” Pa. Const., art. V, § 18(d)(1).

The Board failed to show by clear and convincing evidence that Judge Brumbach “prejudice[d] the proper administration of justice” because each of the cases was continued—due to January 7, 2022, being a snow day—and therefore every litigant had a full and fair day in court. Pa. Const., art. V, § 18(d)(1). Judge Brumbach’s proposed solution did not infringe upon the right to be heard, nor would

it have. Indeed, matters *in absentia* do not require an opportunity to be heard since those who fail to appear automatically are deemed to have consented to a finding by the court in their absence and have therefore waived their right to be heard. In B Court, as supported by the record, the judge reads the citation for sufficiency and provides instructions to the dispositioner for proper entry into the electronic docket, eTImS. As Judge McCaffery observed, a straight guilty or not guilty determination would be made “after a hearing. . .[i]n other words, somebody showed up, the evidence was presented, and the Judge finds the person guilty or not guilty based upon the evidence presented.” (Board’s Exhibit 97_(Interim Susp. Hr’ing Tran. 112-13)). Guilty or not guilty in *absentia* “is a completely different thing” because there is no live testimony, and the judge makes her decision based on her reading of the citation. (Board’s Exhibit 97 (Interim Susp. Hr’ing Tran. at 113:1-25; 114:1-25;115:1-25; 116:1-25 and 117:1-25). Moreover, in B Court, judges do not announce a verdict for *absentia* findings in open court. The judge simply reviews the paper citation, notates the back, and releases them to the dispositioner for adjudication. Given these facts, Judge Brumbach’s proposed solution comported with the proper administration of justice.

The Board further failed to show that Judge Brumbach brought “the judicial office into disrepute.” Pa. Const., art. V, § 18(d)(1). In this context, “disrepute” is defined as “necessarily incorporating some standard with regard to the reasonable expectations of the public of a judicial officer's conduct” and is “determined on a

case-by-case basis.” *In re Merlo*, 58 A.3d 1, 10 (Pa. 2012) (cleaned-up).¹⁴

Importantly, “conduct of a judge which results in a decline in the public esteem for that judge, may not support the conclusion that the conduct has brought the judiciary as whole into disrepute,” rather the Board must put forth a “persuasive showing” that “the conduct is so extreme as to have brought the judicial office itself into disrepute.” *See In re Berkhimer*, 930 A.2d 1255, 1258 (Pa. 2007).

Judge Brumbach’s conduct upholds and exemplifies fairness, honesty, dignity and integrity of and respect for both the law and the judiciary and its process from within the court system as well as for the protection of all its participants. In no way has her conduct prejudiced the proper administration of justice or obstructed or interfered with those activities that enable the systematic operation of courts.

This case is readily distinguishable from those where this Court has found a violation of Section 18. *See In re Berry*, 979 A.2d 991, 996-97 (Pa. Ct. Jud. Disc. 2009) (collecting cases). Judge Brumbach did not engage in any offensive behavior, *see, e.g., In re Berkhimer*, 930 A.2d at 1258-59; *In re Cicchetti*, 743 A.2d 431, 443-44 (Pa. 2000); *In re Hamilton*, 932 A.2d 1030 (Pa. Ct. Jud. Disc. 2007), nor did she attempt to interfere with or influence the outcome of a case. *See In re Zupsic*, 893 A.2d 875, 896-99 (Pa. Ct. Jud. Disc. 2005); *In re Trkula*, 699 A.2d 3, 8 (Pa. Ct. Jud. Disc. 1997).

As developed more fully above, Judge Brumbach proposed a solution to Judge Dugan to help alleviate his coverage issues. Judge Brumbach’s proposed solution

¹⁴ As developed above, this case is plainly distinguishable from *In re Merlo*.

was based on her interpretation of the rules and practices applicable in Traffic Court, and was always intended to ensure that the ticketholders' right to be heard as safeguarded. She coordinated with court staff and the assistant district attorney and she informed Judge Dugan and Judge Pittman of her proposed solution. Judge Brumbach genuinely attempted to propose a practical and legal solution that would enhance Traffic Court's operation. And, it bears repeating that Judge Brumbach's proposed solution was never executed, nor could it have been for any number of reason developed above.

These facts fall far short of a "persuasive showing" of conduct so extreme that it brought the *entire* judiciary into disrepute. *In re Berkheimer*, 930 A.2d 1255, 1258 (Pa. 2007). Instead, the facts show Judge Brumbach's deep desire to fulfil her judicial duties and make Traffic Court a more efficient and effective court.

H. Conclusion

By now it should be clear that the Board has fallen woefully short of meeting its heavy burden of proof: evidence "that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Eakin*, 150 A.3d 1042, 1046 (Pa. Ct. Jud. Disc. 2016) (quoting *Matter of Sylvester*, 555 A.2d 1202, 1203–04 (Pa. 1989)).¹⁵

¹⁵ "The burden of proof was therefore upon the [Board], and he was obliged to establish the issue of fact thus raised by clear, precise, and indubitable testimony. That is to say, if the case is submitted to the jury, the evidence must carry clear conviction to the minds of the jurors that the witnesses are credible; that the facts are distinctly remembered, and are truly and accurately stated; and, to the mind of the court, that if the facts alleged are true the matters in issue are definitely and distinctly established." *Gould v. Saunders*, 134 Pa. 445, 456–57, 19 A. 694, 695 (1890) (citation omitted).

The Board’s shifting positions throughout this case indicate it’s still not sure which target they are aiming at. The Complaint, which forms the basis of these charges alleged Judge Brumbach adjudicated the 95 citations and that was the *sole basis* for the nine-count complaint. But as the case developed, and that theory was definitively disproved, the Board argued that Judge Brumbach “pre-adjudicated” cases or “attempted” to adjudicate cases. Until finally, approximately a month before trial, the Board’s focus shifted to Judge Brumbach’s previous requests for days off. That is notwithstanding the fact that none of the prior leave requests are relevant here. The only relevant leave request was the one on November 10, 2021. In any event, none of facts or theories are pled in the Complaint. And this Court should not countenance the Board’s “whatever sticks” method—not in a quasi-criminal proceeding in which Judge Brumbach’s vocation and reputation are on the line. Judge Brumbach has not had a full and fair opportunity to litigate these additional theories, since the Board has made them up as the case moved along.

Judge Brumbach has been on administrative duty—or as Judge Dugan said, “suspended”—since January 2022. And as Judge Dugan explained, it means that Judge Brumbach has had nothing to do. That two-year period has been incredibly difficult on Judge Brumbach as she fought vigorously to clear her name from the Board’s charges.

Judge Brumbach did not violate the Constitution or Code of Judicial Conduct, and no evidence exists to the contrary. The Board’s allegations are untrue, remain unproven and conclusory.

Judge Brumbach respectfully asks this Court to conclude that the Board has failed to prove each of its nine counts by clear and convincing evidence and allow her the opportunity to resume the bench with a fresh perspective and new optimism to serve the citizens of Philadelphia.

IV. CONCLUSIONS OF LAW

1. Judge Brumbach did not adjudicate any of the cases scheduled for January 7, 2022.

2. Judge Brumbach did not deny any person their right to due process.

3. The Board has failed to establish by clear and convincing evidence that Judge Brumbach violated Canon 1, Rule 1.1 (Count 1).

4. The Board has failed to establish by clear and convincing evidence that Judge Brumbach violated Canon 1, Rule 1.2 (Count 2).

5. The Board has failed to establish by clear and convincing evidence that Judge Brumbach violated Canon 2, Rule 2.1 (Count 3).

6. The Board has failed to establish by clear and convincing evidence that Judge Brumbach violated Canon 2, Rule 2.5(A) (Count 4).

7. The Board has failed to establish by clear and convincing evidence that Judge Brumbach violated Canon 2, Rule 2.5(B) (Count 5).

8. The Board has failed to establish by clear and convincing evidence that Judge Brumbach violated Canon 2, Rule 2.6(A) (Count 6).

9. The Board has failed to establish by clear and convincing evidence that Judge Brumbach violated Article V, Section 17 of the Pennsylvania Constitution (Count 7).

10. The Board has failed to establish by clear and convincing evidence that Judge Brumbach violated Article V, Section 18(d)(1) of the Pennsylvania Constitution (Counts 8 & 9).

Dated: February 12, 2024

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CERTIFICATE OF SERVICE

I, Matthew H. Haverstick, hereby certify that on February 12, 2024, I caused a true and correct copy of the attached Respondent's Proposed Findings of Fact and Conclusions of Law to be served on the following via email:

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:	Kleinbard LLC
Signature:	<u>/s/ Matthew H. Haverstick</u>
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