

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

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COURT OF  
JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

2018 APR - 9 A 10: 50

IN RE:

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

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

AND NOW, this 9<sup>th</sup> day of April, 2018, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (hereinafter "Board"), by the undersigned counsel, and files this Reply of the Judicial Conduct Board To the Motion of the Respondent, Magisterial District Judge William I. Maruszczak, to be Placed in the Diversionary Program, as follows:

1. Denied. The Board is without sufficient information to form a belief regarding the veracity of this averment. By way of further answer, it is acknowledged that this Court has not, as yet, promulgated rules regarding Judicial Diversion, but it has issued, on two occasions, an Interim Policy Statement that sets forth the general parameters of the Judicial Diversion Program. These orders are available to the general public both on the internet and at this Court's offices. **See** Attachment "A," *In re Wilson*, 1 JD 2017 (Pa.Ct.Jud.Disc. 2018) (3/16/2018 Order); **see also In re Domitrovich**, 1 JD 2014 (Pa.Ct.Jud.Disc. 2016) (8/31/2016 Order) (not attached).
2. Denied. The Board is without sufficient information to form a belief regarding the veracity of this averment. By way of further answer, it is acknowledged that

Respondent's Exhibit "A" reproduces an article that appeared at the following internet address utilized by *The Legal Intelligencer*:

<https://www.law.com/thelegalintelligencer/2018/03/20/mdj-sent-to-diversion-program-for-allegedly-abusing-power-showing-bias/?slreturn=20180305130340>.

This article contains a hypertext link to the March 16, 2018 Order in the **Wilson** matter, attached hereto as Attachment "A."

3. Denied. The Board is without sufficient information to form a belief regarding the veracity of this averment. By way of further answer, a full and complete reading of Respondent's Exhibit "A" indicates that the Order in the **Wilson** matter was available online at the link that appears in the article.
4. This paragraph requires no response as it was excised by motion of Respondent's counsel, filed April 6, 2018.
5. This averment states a conclusion of law for which no response is required; to the extent a response is necessary, it is evident that the Orders entered regarding Judicial Diversion in the **Domitrovich** and **Wilson** cases are available to the general public either on the internet or through this Court and that, in the **Wilson** matter, counsel relied upon such an order to request the respondent's participation in the Judicial Diversion Program in that case.
6. Admitted in part. It is admitted that counsel for Respondent criticized the application of Judicial Diversion in the **Domitrovich** case in the context of his representation of the respondent in **In Re Roca**, 151 A.3d 739 (Pa.Ct.Jud.Disc. 2016), *affirmed*, 173 A.3d 1116 (Pa. 2017). The averment that former Judge Roca's conduct was "far less severe" than the *ex parte* communications by Judge Domitrovich constitutes a conclusion of law for which no response is required; to

the extent a response is necessary, former Judge Roca was removed for conduct deemed "corrupt" by this Court, one can hardly envision more severe judicial misconduct than actual corruption. **See In Re Roca**, 151 A.3d 379 (Pa.Ct.Jud.Disc. 2016) (December 12, 2016 sanction order, at 7). As to the averment in Paragraph 6 that Respondent's counsel was not aware of any rules for Judicial Diversion, the Board relies on its response set forth **supra** at Paragraph 5.

7. This averment states a conclusion of law for which no response is required; to the extent a response is necessary, this Court has promulgated an Interim Policy Statement available to the public regarding the basic parameters of the Judicial Diversion Program, which was relied upon by the respondent and his counsel in the **Wilson** matter. By way of further answer, prior to Respondent's filing of this motion, Board counsel offered to provide the Interim Policy Statement to Respondent's counsel in this matter.
8. Admitted. By way of further answer, the article speaks for itself.
9. This averment, framed as a request for relief, requires no response. To the extent a response is necessary, it is denied that Respondent should be placed into the Judicial Diversion Program for the reasons set forth in the attached Memorandum of Law of the Judicial Conduct Board in Support of Its Reply To the Motion of the Respondent, Judge William I. Maruszczak, to be Placed in the Diversionary Program.
10. Denied as stated. The Board Complaint filed against Respondent alleges that, during his re-election campaign, he inappropriately and publicly accosted three individuals who he knew and who he believed were supporting the opposing

candidate. The Board Complaint alleges that Respondent failed to recuse himself from matters involving a litigant who he described as a "friend;" who contributed to his re-election campaign; whose social gatherings he attended; and in whose beach condominium he stayed as a guest. Further, the Board Complaint alleges that Respondent engaged in the unauthorized practice of law.

11. Denied. It is denied that Respondent should be placed into Judicial Diversion for the reasons set forth in the attached Memorandum of Law of the Judicial Conduct Board in Support of Its Reply To the Motion of the Respondent, Judge William I. Maruszczak, to be Placed in the Diversionary Program.
12. Denied. It is denied that Judicial Diversion is "arbitrary" or applied "haphazardly and without any real standard." To the contrary, the Judicial Diversion Program is an evolution of the law of judicial disciplinary jurisprudence in this Commonwealth, the basis for which appears in a publicly-available Interim Policy Statement. Merely because, in the Board's view, Respondent should not be availed of the benefit of Judicial Diversion, does not make the program "arbitrary," "haphazard[]," or lacking in "any real standard."
13. Denied. The Interim Policy Statement clearly sets forth that Judicial Diversion is an avenue of relief that is granted as a matter of privilege and not of right, and that is reserved for judicial officers who fall within certain classes of behavior, as identified in the Interim Policy Statement. By way of further response, it is denied that Respondent should be placed into the Judicial Diversion Program for the reasons set forth in the attached Memorandum of Law of the Judicial Conduct Board in Support of Its Reply To the Motion of the Respondent,

Magisterial District Judge William I. Maruszczak to be Placed in the Diversionary Program.

14. Denied. See Paragraph 9, *supra*.
15. Admitted in part; denied in part. It is admitted that, prior to the filing of the present Board Complaint, Respondent has not been the subject of public discipline in this Court. The Board is without sufficient information to form a belief regarding the veracity of the remainder of this averment; accordingly, it is denied.

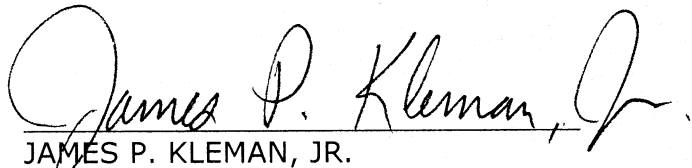
WHEREFORE, for the reasons set forth in this Reply and the attached Memorandum of Law of the Judicial Conduct Board in Support of Its Reply To the Motion of the Respondent, Judge William I. Maruszczak, to be Placed in the Diversionary Program, the Board respectfully objects to the admission of Respondent into Judicial Diversion, and it requests that this Court deny Respondent's admission into Judicial Diversion, or, in the alternative, to schedule a hearing during which the parties may present evidence and argument in support of their respective positions, and to grant such other relief as this Court deems proper.

Respectfully submitted,

ROBERT A. GRACI  
*Chief Counsel*

DATE: April 9, 2018

By:



JAMES P. KLEMAN, JR.  
*Deputy Counsel*

Pa. Supreme Court ID No. 87637  
Judicial Conduct Board  
Pennsylvania Judicial Center  
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By:



MELISSA L. NORTON  
*Deputy Counsel*

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(717) 234-7911

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

IN RE:

Mark A. Wilson  
Magisterial District Judge  
Magisterial District 27-1-02  
27<sup>th</sup> Judicial District  
Washington County

No. 1 JD 17

**ORDER**

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AND NOW, this 16<sup>th</sup> day of March 2018, it is hereby ORDERED that pursuant to the

Interim Policy Statement/Judicial Diversion Program (attached hereto) Magisterial District Judge Jay Weller (Mentor) is appointed as a counselor and mentor to help resolve issues present in this case, specifically:

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

**Statement of Reasons**

1. On March 30, 2017, the Judicial Conduct Board filed a Complaint against Magisterial District Judge Mark A. Wilson, alleging that he engaged in the following conduct:

- a. He and/or his office staff assisted with the preparation of a private criminal complaint, identifying the crime and the citation to the criminal code on the complaint form, before its review by the assigned Assistant District Attorney. He then presided over the criminal matter.
- b. Considered *ex parte* communications of a complainant in a pending private criminal matter and initiated *ex parte* communications with the assigned Assistant District Attorney about a pending or impending proceeding.

**Attachment A**

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

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

**Method to be Employed**

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



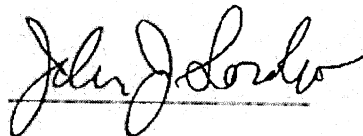
5. Mentoring will occur on the subjects set forth in the initial paragraph of this order. Judge Wilson is to use his best efforts to attend continuing education programs, read and study written materials, engage in good faith discussion about the issues presented and to resolve those issues with the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

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

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

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

BY THE COURT:

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

**INTERIM POLICY STATEMENT  
Judicial Diversion Program**

The Court of Judicial Discipline wishes to explore the possibility of implementation of a permanent Judicial Diversion Program as a disposition available to the Court upon the filing of a formal complaint or a petition for relief<sup>1</sup> by the Judicial Conduct Board.

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

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

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

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

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

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

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

Article V, § 18(b)(5)

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

Article V, § 18(d)

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

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

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

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

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

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

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

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

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

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

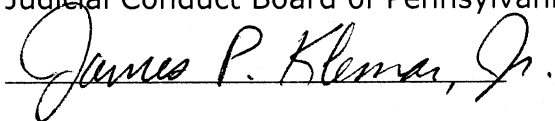
**IN RE:**

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

**CERTIFICATE OF COMPLIANCE**

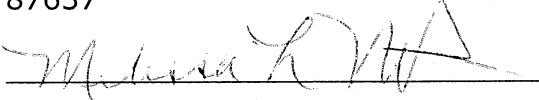
We certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Judicial Conduct Board of Pennsylvania

Signature: 

Name: James P. Kleman, Jr.  
*Deputy Counsel*

Attorney No.: 87637

Signature: 

Name: Melissa L. Norton  
*Deputy Counsel*

Attorney No.: 46684

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

**IN RE:**

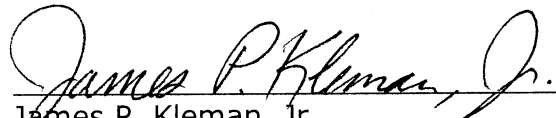
William I. Maruszczak	:	
Magisterial District Judge	:	
Magisterial District 38-1-09	:	1 JD 2018
38 <sup>th</sup> Judicial District	:	
Montgomery County	:	

**PROOF OF SERVICE**

In compliance with Rule 122(F) of the Court of Judicial Discipline Rules of Procedure, on or about April 9, 2018, a copy of the Board's Reply of the Judicial Conduct Board To the Motion of the Respondent, Judge William I. Maruszczak to be Placed in the Diversionary Program and accompanying Memorandum of Law was sent by first class mail to Samuel C. Stretton, Esquire, counsel for Respondent Judge William I. Maruszczak at the following addresses :

Samuel C. Stretton, Esquire  
103 South High Street  
P.O. Box 3231  
West Chester, PA 19381-3231

Respectfully submitted,



James P. Kleman, Jr.  
*Deputy Counsel*  
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Judicial Conduct Board  
Pennsylvania Judicial Center  
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Harrisburg, PA 17106  
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DATE: April 9, 2018