Judicial Conduct Board
Commonwealth of Pennsylvania
Robert A. Graci, Chief Counsel
717-234-7911

Press Release

June 14, 2013

TO: **Press**

FROM: **Robert A. Graci**
Chief Counsel

SUBJECT: **Kelly S. Ballentine**
No. 7 JD 13
Magisterial District Judge
District Court 02-2-01
Second Judicial District
Lancaster County

Harrisburg. By Order entered June 10, 2013, the Pennsylvania Court of Judicial Discipline ordered that Lancaster County Magisterial District Judge Kelly S. Ballentine be suspended from her judicial office without pay until May 31, 2013, and thereafter be placed on probation until December 31, 2014. In its prior May 28, 2013 Order, the Court granted the Judicial Conduct Board's February 11, 2013 Petition for Suspension Without Pay and ordered that such suspension be retroactive to February 11, 2013. The Court also directed Judge Ballentine to repay to the Commonwealth the sum total of her salary, the Commonwealth's share of her retirement contributions and the Commonwealth's share of her Social Security contributions during the period of suspension without pay. The Administrative Office of Pennsylvania Courts determined the repayment amounts due and, after recovery of the Commonwealth's share of retirement and Social Security contributions, Judge Ballentine must repay $18,296.93 to the Commonwealth. By prior order of the Court of Judicial Discipline, Judge Ballentine had been suspended from her judicial duties with full pay and medical benefits on February 22, 2012.

Judge Ballentine's probation is conditioned upon repayment of compensation paid to her by the Commonwealth during the period from February 11, 2013 to May 31, 2013, according to the following schedule:

$5,000.00 on or before July 1, 2013,

$1,296.93 on or before August 1, 2013,

$1,000.00 monthly thereafter, payable on the first day of each month until August, 2014.

The probation is subject to the supervision of the Court and requires that Judge Ballentine report monthly to the Chief Counsel of the Judicial Conduct Board or his designee at the times prescribed by the Board. The Board must file a written report monthly with the Court advising that, to its knowledge, Judge Ballentine, has, or has not, been in compliance with the repayment condition and with the Rules Governing Standards of Conduct of Magisterial District Judges and the provisions of Article V of the Pennsylvania Constitution pertaining to the conduct of magisterial district judges.

The Court of Judicial Discipline rejected the Board's recommendation that Judge Ballentine be removed from her judicial office and permanently barred from judicial office in the future, as well as ordering Judge Ballentine to reimburse the Commonwealth for the values of the compensation and benefits she received since she was suspended from performing all judicial duties on February 22, 2012.

Judge Ballentine is expected to resume her judicial duties on Monday, June 17, 2013.

Counsel

Board: **Elizabeth A. Flaherty, Assistant Counsel &**
Robert A. Graci, Chief Counsel

Respondent: **Heidi F. Eakin, Esquire**

Contact

Robert A. Graci, Chief Counsel

Court of Judicial Discipline Order attached.

For further information about the Pennsylvania Judicial Conduct Board, see the Board's Website at www.jcbpa.org.

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IN RE:

Kelly S. Ballentine
Magisterial District Judge
District Court 02-2-01
Second Judicial District
Lancaster County

: No. 7 JD 13

ORDER

AND NOW, this 10th day of June, 2013, after a hearing held on the question of sanctions on May 17, 2013, and after consideration of memoranda filed by the Judicial Conduct Board and the Respondent and exhibits presented by Respondent, it is hereby ORDERED that Respondent is suspended from her judicial office without pay until May 31, 2013, and thereafter she shall be placed on probation until December 31, 2014.

Probation shall be conditional upon Respondent's repayment of compensation paid to her by the Commonwealth during the period from February 11, 2013 to May 31, 2013 according to the following schedule:

$5,000.00 on or before July 1, 2013,

$1,296.93 on or before August 1, 2013,

$1,000.00 monthly thereafter on the first day of each month until August, 2014.

Said probation shall be subject to the supervision of this Court and shall be subject to the condition that Respondent report monthly to the Chief Counsel of the Judicial Conduct Board or his designee at the times prescribed by the Judicial Conduct Board, and the Judicial Conduct Board shall file a written report monthly with this Court advising that, to its knowledge, Respondent, has, or has not, been in compliance with the

condition set out above and with the Rules Governing Standards of Conduct of Magisterial District Judges and the provisions of Article V of the Pennsylvania Constitution pertaining to the conduct of magisterial district judges.

The Court rejects the Board's recommendations contained in its Memorandum On Sanctions that this Court remove this Respondent from her judicial office and permanently bar her from judicial office in the future, as well as the recommendation that this Court should impose an additional sanction ordering Respondent to "reimburse the Commonwealth for the values of the compensation and benefits she received since she was suspended from performing all judicial duties," i.e., since February 22, 2012. The Board contends that we should remove her because the provisions of Article VI, §7 of the Pennsylvania Constitution and Article V, §18(d)(3) require that we do. We disagree for the following reasons.

As to Article VI, §7.

This section of the Constitution provides in pertinent part:

> All civil officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime.

It is clear that the removal is to be accomplished at the sentencing by the trial/sentencing judge.[1] This is undisputed[2] as the Supreme Court has so held on several occasions. See, e.g., the Court's opinion in In re Braig, 527 Pa. 248, 590 A.2d 284 (1991) where the Court held, quoting from its opinion in Commonwealth ex rel. Woods v. Davis, 299 Pa. 276, 149 A. 176 (1930) (dealing with Davis's contention that legislation was required in

[1] In fact there is no "conviction" until the judgment of sentence is imposed.

[2] See Judicial Conduct Board Memorandum on Sanctions, p. 6.

order to accomplish his removal from office after a conviction of misbehavior in office[3] under Article VI, §7[4]):

> We rejected this argument and, holding that the removal had been constitutionally imposed . . . . Observing that the framers of the Article [VI] had to have been aware of the many statutes which, "after defining the crime [any crime], say that the defendant 'on conviction' shall be fined and/or imprisoned, the penalty being imposed by the court before whom the defendant was convicted," we concluded that it must have been expected "that the constitutional provision providing for a specified punishment 'on conviction' [of misbehavior in office or infamous crime] would be interpreted in exactly the same way." 299 Pa. at 280-281, 149 A. 176.

In re Braig, supra, at 253, 590 A.2d 287. See, also, Braig v. State Employees Retirement Board, 138 Pa. Commw. 124, 132, 587 A.2d 371, 375 (1991). We believe these holdings of the Supreme Court make removal by the trial judge under Article VI, §7 (as well as under Article V, §18(d)(3)) the exclusive province and responsibility of the trial/sentencing judge. As Justice Papadakos observed, concurring in Braig:

> When a jurist is convicted of "misbehavior in office" the sentencing judge will impose the automatic forfeiture provision as part of the sentence which can then be reviewed as any other judgment of sentence. (Emphasis added.)

In re Braig, supra, at 259, 590 A.2d 290.[5] We believe that intervention by this Court into a separate judicial process would be contrary to the intention of the drafters of the

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[3] Davis was charged, tried and convicted of "misbehavior in office."

[4] Formerly Article VI, §4 of the Constitution.

[5] The legislature has also dealt with the removal of public officers. In Section 121 of Title 65, it provided:

> Any person, holding public office in this Commonwealth, who pleads nolo contendere or guilty, or is convicted in a court of record of extortion, embezzlement, bribery, malfeasance or misfeasance in office, or fraudulent conversion of public monies or property, or for any misdemeanor in office, shall forfeit his office, and the sentence imposed by the court shall include the direction for the removal from office of such person. (Emphasis added.)

We believe that this statutory injunction, that removal shall be by the trial court, ipso facto and ipso jure, carries with it the concomitant injunction that no other court shall do it.

Constitution, antithetical to an orderly and logical jurisprudential process and at variance with the decisions of our Supreme Court.[6]

As to Article V, §18(d)(3).

This section of the Constitution provides:

> (3) A justice, judge or justice of the peace convicted of misbehavior in office by a court, disbarred as a member of the bar of the Supreme Court or removed under this section shall forfeit automatically his judicial office and thereafter be ineligible for judicial office.

We note that when analyzing this language in Braig, the Supreme Court observed:

> In its Petition, the Board cited only the first of these, conviction for misbehavior in office, as the grounds for the relief requested. Our resolution of this case, however, requires that we distinguish between this

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[6] In addition to the above quotation, Justice Papadakos set out his belief

> . . . that Article V, Section 18(l) is applicable where a jurist is charged specifically with the crime of "misbehavior in office." . . . I am concerned that the majority has chosen to avoid speaking clearly on what crime must be charged in such cases and, in so doing, has failed to give direction to the bench and bar in the manner that these very important cases are to be commenced, prosecuted and disposed.

Id. We believe that consideration might well be given to the Justice's idea that the constitutional call for removal for "conviction of misbehavior in office" (as in Article V, §18(l) – now §18(d)(3)) should be limited to cases where a jurist is charged specifically with the crime of "misbehavior in office." If that were the case, the jurisprudential exercise in these cases would be measurably simplified for,

- if that were the case, everybody would know at the beginning of the criminal case – especially the lawyers and the charged jurists – that if a guilty plea is made, or if conviction happens, removal will surely follow, and

- if that were the case, everyone will know at the end of the criminal case – especially the lawyers and the charged jurists – whether the jurist pled to or was convicted of "misbehavior in office" or not (which was not the case in Braig, nor in this case), and

- if that were the case, there would be no messy situations (as in Braig, as here) where we find ourselves litigating (relitigating?) in a different court, at a later time (in Braig, 1 year and 5 months later, in this case 4 months later) the question of whether the charged jurist pled to or was convicted of "misbehavior in office," or not.

Nor, in order to accomplish this, is there any need to debate the merits (or unmerits) of the respective positions held in 1990 of Justice Papadakos and the other Justices as to whether the Legislature could or could not eliminate the common law crime of misbehavior in office when it enacted the Crimes Code of 1973 (see Braig, supra, at 254, 590 A.2d 287, and n.7, infra). This can be accomplished by a simple legislative enactment creating a new crime called "misbehavior in office" and defining it as the old crime was defined.

condition precedent to forfeiture and the other condition specified, removal under Section 18. This latter form of removal, following formal charges, investigation by the Board, recommendation of discipline, and action by the Court, may be founded on a wide range of activity, described in subsection (d) – "violation of section 17 of [Article V], misconduct in office, neglect of duty, failure to perform duties, [and] conduct which prejudices the proper administration of justice or brings the judicial office into disrepute." If the Constitution provides "conviction for misbehavior in office" as a separate basis for forfeiture, this must be something different from the forfeiture accompanying removal directed by the Court on the basis of the record developed before the Judicial Inquiry and Review Board.

Id. at 251-52, 590 A.2d 286.

The Court went on to say:

> Based on our reading of all the cases, we must conclude that the language of Article V, Section 18(l),[7] like the identical language of present Article VI, Section 7, refers to the offense of "misbehavior in office" as it was defined at common law. This conclusion is not without its difficulties, however. Since the enactment of the Crimes Code effective June 6, 1973, common law crimes have been abolished and "[n]o conduct constitutes a crime unless it is a crime under this title or another statute of this Commonwealth." 18 Pa.C.S. §107(b). Thus no prosecution on a charge of "misbehavior in office" can now be undertaken. Rather than reach the difficult question whether the legislature could effectively nullify the constitutional provision by abolishing the crime referred to therein, we think it prudent to adopt a holding under which the constitutional provision may still be given effect. Therefore, we hold that the automatic forfeiture provision of Article V, Section 18(l) applies where a judge has been convicted of a crime that satisfies the elements of the common law offense of misbehavior in office.[8]

Id. at 254, 590 A.2d 287-88.

The Court then came to grips with the argument JIRB was making as follows:

> Proceeding from the premise that misbehavior in office is established by a breach of a statutorily imposed duty, the Board argues that Braig has

[7] Section 18(l) contains the same language as current Section 18(d)(3).

[8] Justice Papadakos, on the other hand, concurring said: "Unlike the majority, I have no hesitancy in concluding that the People, in adopting Article V, Section 18(l), preserved the common law crime of 'misbehavior in office' and that it is still a viable, chargeable offense which could not be abrogated by the Legislature when it enacted the current Crimes Code." In re Braig, supra, at 259, 590 A.2d 290 (concurring opinion).

> committed such a breach. The duty, they argue, is set out in Article V, Section 17(b), which provides that "Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court." . . . Without depreciating the importance of Section 17(b), we do not agree that it constitutes the type of <u>positive</u> duty the breach of which constitutes misbehavior in office. As it is stated, it is a negative duty, a duty <u>not</u> to engage in certain conduct. By comparison, in all the cases where violation of a statutory duty was identified as the equivalent of misbehavior in office, the statute required that the officeholder perform a particular act or exercise a function of the office in a particular way. (Emphasis the Court's.)

<u>Id.</u> at 255-56, 590 A.2d 288.

Such a "negative duty" is evident in this case as well. A review of the definition of the offense of tampering with public records or information 18 P.S. §4911 reveals that, like Section 17(b) of Article V, "it [does not] constitute the type of <u>positive</u> duty the breach of which constitutes misbehavior in office." (Emphasis the Court's.) That section provides:

> §4911. Tampering with public records or information
>
> (a) Offense defined. – A person commits an offense if he:
>
> (1) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;
>
> (2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (1) of this subsection; or
>
> (3) intentionally and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

As it is stated, as Section 17(b), it imposes "a negative duty, a duty <u>not</u> to engage in ... [the] conduct [described in §4911]." (Emphasis the Court's.) As a consequence, as the

Supreme Court held in Braig, it does not constitute misbehavior in office. Consonant with that decision, we so hold here.

In addition, we note that in Braig, the Supreme Court observed:

> . . . that violation of Article V, Section 17 is specifically identified in Section 18(d) as one of the bases for proceedings before the Board [now the Court of Judicial Discipline] and discipline perhaps less than removal. We noted at the outset, however, that the constitution sets out conviction of misbehavior in office as a basis for forfeiture separate from removal under Section 18. It would thus be unreasonable to find that violation of Section 17 constituted the breach of positive duty underlying the offense of "misbehavior in office."

Id. at 256, 590 A.2d 288. It would be no less unreasonable to hold that a finding that conduct constitutes "misconduct in office"[9] under Section 18(d)(1), for which a reprimand could be determined to be the appropriate discipline, nevertheless required removal under Section 18(d)(3). It would be equally unreasonable to hold the conduct in question, though found not to amount to "misconduct in office" under Section 18(d)(1), nevertheless required removal under Section 18(d)(3).

This Court's conclusion that the suspension followed by probation herein ordered is the appropriate sanction in this case is based upon the following considerations:

1. Respondent reported, in a letter to Chief Counsel of the Judicial Conduct Board dated June 6, 2011 as follows:

> Please be advised that it has come to my attention that action taken in the course of my judicial authority as Magisterial District Judge amounts to behavior that may have the appearance of impropriety and as such should be reported to the Judicial Conduct Board.[10] (Exhibit A).

[9] "Misconduct in office" has been held to be the same as "misbehavior, misfeasance or misdemeanor in office." Commonwealth v. Green, 205 Pa. Super. 539, 546, 211 A.2d 5, 9 (1965).

[10] This is an example of self-reporting which we rarely see, even though any judicial officer who does so is generally observing a high standard of conduct and acting so as to promote public confidence in the judiciary. (See Canons 1 and 2 of the Code of Judicial Conduct and Rules 1 and 2 of the Rules Governing Standards of Conduct of Magisterial District Judges.)

2. In that letter Respondent goes on to relate to Chief Counsel how she came to receive the three tickets[11] and the circumstances leading to her dismissal of them.

Those circumstances are as follows:

Respondent has been a long time sufferer of Crohn's disease,[12] the most distressing and troublesome symptom of which is the emergency need to use the bathroom; the onset of this symptom is unpredictable and abrupt.

Respondent has stated in her "Sentencing Memorandum"[13] that she has been conducting one of the busiest magisterial districts in the Commonwealth[14] – with an under-size support staff. She testified that her district office has only one bathroom for the use of herself, her staff and all the people whom the vicissitudes of life bring to her office. (Sanction hearing, May 17, 2013, N.T. 67). This would include police, sheriffs, constables, bondsmen, landlords, tenants, all sorts of persons charged with all sorts of crimes, traffic offenders, truants, witnesses, all nature of civil litigants and lawyers.

In these conditions it often happened that when Respondent had urgent need to access the restroom at the office, it was in use. In addition, Respondent didn't like to use the office restroom; it didn't score well in privacy, so she would take chances: "I would take the chance on making it to my home to take care of my emergency situations." (N.T. 67). On these occasions Respondent would get in her car, and drive to her home

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[11] We note that all three of these tickets were issued for violation of local ordinances, not for violations of the Pennsylvania Motor Vehicle Code.

[12] This is well documented in the medical records submitted by Respondent at the sanction hearing.

[13] Sentencing Memorandum – this Court does not impose sentences.

[14] We note that pages 1 and 2 of Exhibit B to Respondent's Memorandum, which are the two Summonses issued on the two tickets given on November 1, 2010 are Docket Nos. TR-0004578-2010 and TR-0004579-2010 which means that her court had processed 4,577 traffic cases before these in 2010. This certainly provides support for Respondent's representation that her's was a busy court.

three blocks away and park at the first and only parking available. This was what happened on November 1 and November 8, 2010 when she got the three tickets at issue here. Respondent testified that she "was having medical issues stemming from Crohn's disease [and] on both occasions I had run home from my office which is three blocks away and opted for the first and only convenient parking available."[15] (Exhibit A, p. 2).

As part of Exhibit B, mentioned above, Respondent provided five pages of computer printouts from the City of Lancaster records of traffic tickets issued to Respondent between April 21, 2008 and September 5, 2012.[16] There is a total of 24 tickets for parking violations listed as issued to Respondent during that period. Nineteen of these tickets were for parking in front of her home (including the ticket for an expired registration). This ticket was placed on Respondent's car on November 1, 2010 along with the ticket for parking in a no parking zone. The other five tickets were for parking violations at other locations in the city during that period.

Respondent testified – and the city's records verify – that it was Respondent's practice to pay the fines. (Exhibit A, p. 1). However, she did not pay the fines for the two tickets issued November 1, 2010 or for the ticket issued November 8, 2010. Respondent did not testify why she did not pay those tickets; but the city's records (Exhibit B) establish that tickets become "past due" 15 days after issuance, and that the

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[15] Insofar as the expired registration ticket is concerned, the police commonly give the vehicle owner ten days to get the vehicle inspected before issuing a ticket. In any event, Respondent had the car inspected with a current sticker in place by November 8 when she got another parking ticket which was <u>not</u> accompanied by an expired registration ticket.

[16] The city did not have records older than those for 2008. (Exhibit A, p. 1).

November 1 tickets became "past due" on November 16 and the November 8 ticket on November 23.[17]

As noted, Respondent, in Exhibit A, stated that she was having medical issues stemming from Crohn's disease during this time. The medical records verify this: Respondent was seen in some medical facility[18] on November 8, 2010 complaining of "lump on abdomen and buttock – noted yesterday – painful." The diagnosis was "Cyst, Sebaceous x2." She was given antibiotics and sent home. The records of the Lancaster Urgent Care Center establish that Respondent went to that facility on November 10, 2010 where two abscesses were "packed." That didn't work and so, on November 12, she went to Heart of Lancaster Hospital where emergency surgery was performed and the abscesses on the left upper quadrant and right buttocks were "opened up and packed." She was discharged on November 15. One week later, on November 22, 2010, Respondent was seen by her surgeon, Dr. Paul G. Newman. The records include a letter from Dr. Newman to Dr. Peter A. Hurtubise (Respondent's primary physician) dated November 22, 2010 reporting on Respondent's visit on that date. In the letter, Dr. Newman reports on the surgery and Respondent's "several days in the hospital," as well as on his examination of Respondent on November 22, 2010. He reported that at that time the right buttock was essentially healed and that the one on the left upper quadrant was "granulating but still opened." She returned to Dr. Newman for her final post-surgery visit on December 10, 2010 when, although there was "some residual induration, there [was] no evidence of infection."

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[17] Up until this date the fine is paid to the city, and after this date the "past due" cases are filed with the magisterial district judge in whose district the violation occurred.

[18] This record does not include the name of the facility.

So there is no mystery as to why Respondent did not pay the tickets at issue here. She was otherwise occupied. She was in the hospital. She was in pain; she had surgery. She forgot about them. She forgot about them – probably until December 17, 2010 or shortly thereafter – which brings us to another subject.

The subject to which we refer is the Statute of Limitations contained in 42 Pa.C.S.A. §5553 which is applicable here. That statute provides:

> §5553. Summary offenses involving vehicles
>
> (a) General rule. – Except as provided in subsection (b) or (c),[19] proceedings for summary offenses under Title 75 (relating to vehicles) must be commenced within 30 days after the commission of the alleged offense or within 30 days after the discovery of the commission of the offense or the identity of the offender, whichever is later, and not thereafter.

Inspection of MDJ forms 617A "Summons for Summary Case Traffic" for the alleged offenses of November 1, 2010 are stated to have been printed on 12/21/2010. Those forms provide for the entry of the date the case was filed in the magisterial district court. On both forms for the November 1 tickets that date is stated to be "12/17/2010." (Exhibit B, pp. 1-2). That date is more than 30 days after November 1, 2010. It is also more than 30 days after the police knew Respondent was "the offender." She was, after all, the lady whom they had ticketed dozens of times for parking in a no parking zone in front of her home and she was, also, the African American judge who drove the BMW, and in whose courtroom they appeared, no doubt, on a regular basis. The corresponding Summons for the November 8, 2010 ticket is not part of this record but we can say two things about that case: 1. the Statute of Limitations for filing that case expired on December 8, which is 10 days <u>before</u> December 17, the date on which the November 1

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[19] The exceptions in subsections (b) and (c) have no application here.

case was filed, and 2. there is no evidence or any reason to think that the November 8 case was filed before the November 1 case; in which case the Statute of Limitations would bar the November 8 case as well. We think the evidence establishes that all three of these cases were filed after the Statute of Limitations had expired and, thus, were eminently dismissible.

This does not provide justification for Respondent's dismissal of her own cases. Nor do we believe that Respondent considered it as such – Respondent wasn't thinking about the Statute of Limitations here, we don't think she even realized it had expired. She testified about a police officer named George who is responsible for all the parking tickets in the City of Lancaster with whom she has dealt over the years; and she said:

> But in my mind, because I've handled so many parking ticket cases and because I know the system and the way the city disposes of tickets, again, I apologize for it not throwing red flags up, but it's the way they would have been disposed of had I gone through the proper channels, had I sent it out to a different judge so that a different judge could hear my cases and have George there. The disposition would have been the same. (N.T. 69-70).

Even so, this is no justification for dismissing them herself and Respondent was quick to acknowledge that; she said:

> But I understand it's the process that was used to get us to that disposition that is the problem. So I'm well aware of my responsibility. I'm well aware that it was poor judgment in this particular situation. (N.T. 70).

We don't know all that was in Respondent's mind when she dismissed these citations on the computer but we know that one thing on her mind was dread of the publicity which would be attendant to any hearing if she had pled not guilty and sent the cases to another judge for trial. She was asked:

> PRESIDING JUDGE CLEMENT: Why didn't you plead not guilty and have a summary trial?
>
> Were you concerned that your Crohn's disease would become a public issue?

MS. BALLENTINE: Absolutely.

PRESIDING JUDGE CLEMENT: And was that part of your thought process by just discharging the citation?

MS. BALLENTINE: It wasn't initially. When I was actually doing the disposition in the computer, that's not what I was thinking about.

When I was talking to the officer who handles these situations, that definitely was my concern, because, of course, all of it's public knowledge when you go to have a hearing. And for a judge to have a not guilty hearing on a traffic citation in Lancaster County, that would have been of public interest.

And, yes, so I thought – and, again, I wasn't ready to have my medical condition be part of the public knowledge . . . . (N.T. 74-75).

3. Respondent's cooperation in the Judicial Conduct Board at every stage of its investigation and prosecution of this case.

4. Respondent's evident contrition and remorse.

5. Respondent's excellent reputation in her community as attested by numerous (47) letters placed into this record from family members, neighbors, educators, including a high school principal and a school board commissioner, lawyers and clergy, as well as by her reelection to her judicial office after this matter had become public and was well known to the people in her district.

6. The offending conduct here was an isolated incident which we believe would never have happened save for the coming together of a number of events and circumstances, as

- Respondent's affliction with Crohn's disease,
- the onset of an urgent need to use a restroom,
- the inadequacy of the restroom in the court office,
- the need to use the restroom at her home,
- the non-existence of a legal parking space near her home at the time,

- the issuance of the tickets while she used the restroom at home,
- the onset of a painful medical condition requiring treatment including hospitalization and surgery during the critical 15-day period when she would, ordinarily, have paid the tickets.

7. The offending conduct here was not part of a pattern of misconduct over time; in fact we are aware of no other offending conduct of this Respondent during her service as a judicial officer; there is no evidence that there was; indeed, the Board has not contended that there was.

8. The evidence (presented by way of testimony at the sanction hearing and by numerous letters presented in lieu of testimony in court) is that Respondent has an exemplary record as a magisterial district judge and in fact conducted an extraordinarily busy court with a short staff.

9. We are convinced that this judge will not offend again. We hold that not only because of the unlikely confluence of the unlikely events and circumstances described above, but also because of her testimony – her allocution – at the sanction hearing and, as well, the testimony of the witnesses – especially of her father – on that occasion.

10. Neither intent to defraud nor any element of personal gain played any part in Respondent's decision to dismiss these tickets; but, rather it was Respondent's fear that her affliction would be publicized in the community which was the motivation.

Lastly, in this case we note also that the severe discipline recommended by the Board is not necessary in order to preserve the integrity of our judicial system and the public's confidence in it. Given this Respondent's perfectly unsullied record, her well demonstrated devotion to her job, the high level of respect for her in her community, the

mitigating circumstances described herein, the fact that we are talking about parking tickets here and the fact that the Board learned of her conduct from her, we are hard put to understand how we would be able to justify the sanctions recommended by the Board, so severe in nature and so inappropriate in this case.

This Order is effective as at May 31, 2013.

PER CURIAM

CERTIFIED FROM THE RECORD

JUN 10 2013

Wanda W. Sweigart
Clerk of Court