



**Judicial Conduct Board**  
Commonwealth of Pennsylvania  
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## Press Release

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**TO: Media/Press**

**FROM: Judicial Conduct Board**

**Date: December 7, 2009**

**SUBJECT: Confidentiality of Judicial Conduct Board Investigations**

The Judicial Conduct Board is filing the attached statement with the Interbranch Commission on Juvenile Justice in connection with the testimony being presented tomorrow by the Chief Counsel of the Board and by Board Member Edwin L. Klett, Esq. The statement discusses the important public policy reasons underlying the Constitutional prohibitions against disclosing complaints to the Commission and its investigations of those complaints

*The full text of the Statement is attached*

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For more information about the Judicial Conduct Board, please visit our website at [www.jcbpa.org](http://www.jcbpa.org).

**END**

**STATEMENT REGARDING THE CONFIDENTIALITY STANDARDS OF THE JUDICIAL CONDUCT BOARD AND THE LEGAL LIMITS OF TESTIMONY BY JUDICIAL CONDUCT BOARD WITNESSES  
TUESDAY, DECEMBER 8, 2009**

On November 9, 2009, the Judicial Conduct Board of Pennsylvania, through its chief counsel Joseph Massa, appeared to testify before the Interbranch Commission on Juvenile Justice at its public hearing in Wilkes-Barre, in accordance with a Commission subpoena. At the hearing, the Board answered numerous questions from the Commission regarding the internal structure of the Board, its constitutional mandate, and its methodology for handling matters submitted to it for review and investigation.

The Commission has now requested the Board to return to give further testimony at today's public hearing. It is the Board's desire to continue to provide all possible assistance to the Commission and to answer any and all of the Commission's questions, provided only that the answers do not violate the Board's constitutional mandate to maintain confidentiality unless public charges are filed.

The Constitution of Pennsylvania clearly mandates the Board to zealously protect the confidentiality of information it receives from complainants or that it develops in the course of investigations. The historical record indicates that the framers of Article V, § 18 were intentional in adopting it as a key priority for the Board -- their goal in doing so was to ensure that the Board remained effective in enforcing judicial discipline.

In carrying out its mission, the Board relies heavily on complaints and other information submitted to it voluntarily by concerned citizens. These citizens, unsurprisingly, are often litigants, lawyers or judicial branch employees — few others would have the necessary interaction with judges to learn of potential malfeasance. The corollary of such proximity to potential wrongdoing, of course, is vulnerability to potential retaliation.

To encourage potential complainants to come forward with important information, it is critical that the umbrella of complete confidentiality be maintained. And to accomplish that goal, the Board must do its part by always respecting, in every case, and in every controversy, the larger policy of protecting all elements of confidentiality. To deviate, even to serve other important interests, would be unconstitutional, and would destroy the very foundation of the Board's work.

Public disclosure under the Constitutional mandate is permitted in only one very limited circumstance:

If, independent of any action by the board, the fact that an investigation by the board is in progress becomes a matter of public record, the board may, *at the direction of the subject of the investigation*, issue a statement to confirm that the investigation is in progress, to clarify the procedural aspects of the proceedings, to explain the rights of the subject of the investigation to a fair

hearing without prejudice or to provide the response of the subject of the investigation to the complaint.<sup>1</sup>

In all other circumstances, the Board is absolutely prohibited from divulging any confidential information.

This mandate of confidentiality may be best illustrated through a discussion of the Board's history and the policy considerations behind its creation. Prior to the 1960s, the only methods of judicial discipline available in Pennsylvania were impeachment, address, and criminal conviction; for various reasons, all three methods proved highly cumbersome, imprecise, and ineffective.<sup>2</sup> Other states had had similar experiences, leading to the formulation of three new methods, known as the "New York Plan," which called for special *ad hoc* courts to be created whenever charges were raised against judges; the "California Plan," which called for the creation of a permanent commission on judicial discipline to handle such complaints; and the "New Jersey Plan," which granted the state supreme court the authority to prosecute and decide such charges.<sup>3</sup>

Pennsylvania resolved to select one of these options at its 1968 constitutional convention. The delegates were fully briefed on the benefits and drawbacks of each option,<sup>4</sup> and thus it was understood that one of the California Plan's primary features was that it permitted the maintenance of strict confidentiality over investigative proceedings. The Plan's proponents argued that such confidentiality was crucial for effective judicial discipline as it was necessary to overcome the natural reluctance of lawyers and others to report ethical violations, without fear of potential reprisals. The delegates ultimately adopted a California-style commission, the Judicial Inquiry and Review Board, which would function as both an investigative and an adjudicative body. Recognizing the advantages that confidentiality would have on the board's effectiveness, the delegates wrote the following language into the Constitution.

All papers filed with and proceedings before the board shall be confidential but upon being filed by the board in the Supreme Court,

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<sup>1</sup> *Id.*

<sup>2</sup> Preparatory Committee of the Pennsylvania Constitutional Convention 1967-1968, *Reference Manual No. 5: The Judiciary* 158-67. (The term "address" refers to an old procedure under which the legislature formally made a request to the executive branch that a judge be removed following impeachment or conviction of a crime.)

<sup>3</sup> *Id.* at 172-83.

<sup>4</sup> *Id.*; see also Burton R. Laub, *Issues Before the Judiciary Committee of the Pennsylvania Constitutional Convention*, 39 Pa. B.A.Q. 390, 396-401 (1968); *Statement of Bernard G. Segal on the Proposed Judicial Article Before the Preparatory Committee for the Pennsylvania Constitutional Convention*; *First Amendment Coal. v. Judicial Inquiry & Review Bd.*, 784 F.2d 467, 470-71 (3d Cir. 1986).

the record shall lose its confidential character. The filing of papers with and the giving of testimony before the board shall be privileged.<sup>5</sup>

In 1993, the General Assembly amended the Constitution's provisions on judicial discipline. This amendment replaced the Judicial Inquiry and Review Board with the Judicial Conduct Board, an investigative body, and Court of Judicial Discipline, a separate adjudicative body. The amended language on confidentiality is even more specific than it was in the 1968 provisions. The new language reads:

Complaints filed with the board or initiated by the board shall not be public information. Statements, testimony, documents, records or other information or evidence acquired by the board in the conduct of an investigation shall not be public information. . . .<sup>6</sup>

While the assigned task of the Commission to investigate the judicial wrongdoings in Luzerne County is important and laudable, its process can not be allowed to undermine the role of the Board as defined in the Pennsylvania Constitution.

In all other respects, the Board stands ready to assist the Commission in its important work.

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<sup>5</sup> Pa. Constitution of 1968, Art. V, § 18(h).

<sup>6</sup> Pa. Constitution of 1968, as amended 2003, Art. V, § 18(a)(8).